For those who are following this debate closely, they probably heard this mentioned by others, but I want to make a point of it. There is an important article for people to read, and they can go online to find it. It is from the June 1st New Yorker magazine.

A man who is a surgeon in Boston, an Indian American, whose name is Dr. Atul Gawande, wrote an article about health care in America today. I will not go into detail about what he found, but it is an eye opener because he went to one of the most expensive cities in America when it comes to treating Medicare patients. It is McAllen, TX. He could not figure out why in McAllen, TX, they were spending about $15,000 a year for Medicare patients—dramatically more than other towns in Texas and around the country.

What he found, unfortunately, is that many of the doctors in that city were treating elderly patients by running up their charges, by ordering unnecessary tests, by ordering hospitalizations and things that were not being ordered in other cities. The reason is, there was a financial incentive. The more tests, the more procedures, the more hospitalizations they can charge to Medicare, the more the doctor was paid.

Well, Dr. Gawande went down and met with the doctors and confronted them with it. There was no other explanation. That was it.

Then he went to Mayo Clinic in Rochester, MN—a place I respect very much, a place that has treated my family and treated them well. He found out the cost for treating Medicare patients in Rochester, MN, is a fraction of what it is in McAllen, TX.

At the Mayo Clinic it is cheaper to treat a Medicare patient than it is in McAllen, TX. Why? Well, it turns out it is pretty basic. The doctors who are on the staff of the Mayo Clinic are paid a salary. They are not paid by the patient or by the procedure. So their interest is not in running up a big medical chart of tests. Their interest is getting that patient well, and doing it effectively. They do it with fewer procedures and less money spent and better results at the end of the day.

So now we have a choice in this health care debate: Do we want to continue the example of McAllen, TX, which is abusing the system, charging too much, and not giving good health care results, or do we want to move to a Mayo Clinic model, one that basically is much more efficient and effective, keeps people healthier, at lower cost? I hope the answer is obvious. It is to me. I would like to see us move toward incentives such as the Mayo Clinic system.

The President spoke to the American Medical Association in Chicago last week. It was a mixed review. They were very courteous to him. There were a few people dissatisfied with his remarks, but it is a free country. We can expect that. Some of those doctors in that room understand it is time for change and some of them do not. Some of them think change is going to be bad for them and bad for our country. But most of us understand if we work together in good faith, conscientiously, we can change this health care system for the better, reduce its costs, preserve our choice of doctors and hospitals, make certain quality is rewarded, and also make certain we cover those 46 or 47 million uninsured Americans and come up with a health care system that does not break the bank—not for families, not for businesses, and not for governments in the future.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SOTOMAYOR NOMINATION

Ms. KLOBUCHAR. Mr. President, I will be joined on the floor today by some of my fellow women Senators to talk about the President's nominee for the Supreme Court. I will note that some of my colleagues on the other side of the aisle came to the floor yesterday to, as one news report described it, ''kick off their campaign against her.'' So we wanted to take this opportunity to get the facts out to correct any misconceptions and to set the record straight.

The Supreme Court confirmation hearing for Judge Sotomayor will begin on July 13, but my consideration of her will not begin then. I began considering her the day she was announced because, as a member of the Judiciary Committee, I wish to learn as much as I can about President Obama's choice to fill one of the most important jobs in our country.

Even though there are many questions that will be asked and many areas we will want to focus on, I wish to speak today about how Judge Sotomayor appears to me based on my initial review. After meeting with her and learning about her, I am very positive about her nomination. Judge Sotomayor knows the Constitution, she knows the law, but she also knows America.

I know Americans have heard a lot about her background and long career as a judge. But it is very important for us to talk about what a solid nominee she is because we have to keep in mind that there have been accusations and misstatements, many made by people outside of this Chamber on TV and 24/7 cable. There have been misstatements.

It came to me a few weeks ago when I was in the airport in the Twin Cities in Minnesota. A guy came up to me on a tram in the airport and said: Hey, do you know how you are voting on that woman?

I said that I want to listen to her and see how she answers some of the questions.

He said: I am worried.

I said: Why? She is actually pretty moderate.

He said: She is always putting her emotions in front of the law.

I said: Do you know that when she is on a panel with three judges—which they often do on the circuit court where she sits now, and they have her and two other judges—95 percent of the time she comes to an agreement with the Republican-appointed judge on the panel? You must be thinking the same thing about those guys because you cannot just say that about her.

That incident made me think we really need to set the record straight here about the facts, that we should be ambassadors of truth and get out the truth about her record and the kind of judge we are looking for on the U.S. Supreme Court. We need to make sure she gets the same civil, fair treatment other nominees have been given.

Judge Sotomayor's story is a classic American story about what is possible in our country through hard work. She grew up, in her own words, in modest and challenging circumstances and worked hard for every single thing she got. Many of you know her story. Her dad died when she was 9 years old, and her mom supported her and her brother. Her mom was devoted to her children's education. In fact, her mom was so devoted to her and her brother's education that she actually saved every penny she could so that she could buy Encyclopedia Britannica for her kids. I remember when I was growing up that the Encyclopedia Britannica had a hallowed place in the hallway. I now show my daughter, who is 14, these encyclopedias from the 1960s, and she doesn't seem very interested in them. They meant a lot to our family and also to Judge Sotomayor.

Judge Sotomayor graduated from Princeton summa cum laude and Phi Beta Kappa, and she was one of two people to win the highest award Princeton gives to undergraduates. She went on to Yale Law School, which launched her three-decades-long career in the law. So when commentators have questions about whether she is smart enough—you cannot make up Phi Beta Kappa. You cannot make up that you have these high awards. These are facts.

Since graduating, the judge has had a varied and interesting legal career. She has worked as a private sector civil litigator, she has been a district court and an appellate court judge, and she taught law school.

The one experience of hers that particularly resonates for me is that, immediately graduating from law school, she spent 5 years as a prosecutor at the Manhattan district attorney's office, which was one of the busiest and most well thought of prosecutor's offices in our country. At the time, it paid about half as much as a job in the private

sector, but she wanted the challenge and trial experience, she told me when we met, and she took the job as a prosecutor. Before I entered the Senate, I was a prosecutor. I managed an office of about 400 people in Minnesota, which was the biggest prosecutor's office in our State. So I was very interested in this experience we had in common.

One of the things that I learned and that I quickly learned that she understood based on our discussions is that, as a prosecutor, the law is not just some dusty book in your basement. After you have interacted with victims of crime, after you have seen the damage crime can do to a community, the havoc it can wreak, after you have interacted with defendants who are going to prison and you have seen their families sitting in the courtroom, you know the law is not just an abstract subject; you see that the law has a real impact on real people.

As a prosecutor, you don't just have to know the law, you have to know people, you have to know human nature. Sonia Sotomayor's former supervisor said that she was an imposing and commanding figure in the courtroom who would weave together a complex set of facts, enforce the law, and never lose sight of whom she was fighting for. Of course, she was fighting for the people in those neighborhoods, the victims of crime. Judge Sotomayor's experience as a prosecutor tells me she meets one of my criteria for a Supreme Court nominee: She is someone who deeply appreciates the power and impact that laws have and that the criminal justice system has on real people's lives. From her first day at that Manhattan district attorney's office, Judge Sotomayor learned that the law is not just an abstraction.

In addition to her work as a prosecutor, I have also learned a lot about Judge Sotomayor from her long record as a judge. She has been a judge for 17 years—11 years as an appellate judge and 6 years as a trial judge. President George H.W. Bush—the first President Bush—gave her the first job she had as a Federal judge. She was nominated by a Republican President. The job was to be a district judge in the Southern District of New York. Her nomination to the Southern District was enthusiastically supported by both New York Senators, Democratic Senator Daniel Patrick Moynihan and Republican Senator Alfonse D'Amato.

If you watch TV or read newspapers or blogs, you know that Judge Sotomayor has been called some names. It always happens in these Supreme Court nominations—the nominees are called names by talking heads on TV and on the radio. In most cases, these commentators may have read a case or two of hers or, even worse, a speech and took a sentence or so out of context, and they have decided they are entitled to make a sweeping judgment about her judicial fitness based on a few words taken out of context.

I think just about everything in a nominee's professional record is fair game to consider. After all, we are obligated to determine whether to confirm someone to an incredibly important position with lifetime tenure. That is a constitutional duty I take very seriously. But that said, when people get upset about a few items and a few speeches a judge has given, I have to wonder, do a few statements someone made in public, for which they said they could have used different words, do those trump 17 years of modest, reasoned, careful judicial decisionmaking? I don't think so.

If we want to know what kind of a Justice she will be, isn't our best evidence to look at the type of judge she has already been? Here are the facts. As a trial judge, Sonia Sotomayor presided over roughly 450 cases on the Second Circuit and participated in more than 3,000 panel decisions. She has authored more than 200 appellate opinions. In cases where she and at least one Republican-appointed judge sat on a three-judge panel, she and the Republican-appointed judge agreed 95 percent of the time, as I mentioned. The Supreme Court has only reviewed five cases where she authored the decision and affirmed the decision below in two of them. The vast majority of her cases have not been in any way overturned or reversed by a higher court.

It is worth noting that this nominee, if confirmed, would bring more Federal judicial experience to the Supreme Court than any Justice in 100 years.

With that, I see one of my colleagues, the Senator from New Hampshire. We will have a number of women Senators here today. I will come back and finish my remarks sometime in the next half hour. I think it is very important that Senator SHAHEEN, the Senator from New Hampshire, be able to say a few words about the nominee.

I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from New Hampshire is recognized.

Mrs. SHAHEEN. Mr. President, I am delighted to be here this afternoon to join my friend and colleague from the State of Minnesota, Senator KLOBUCHAR, in supporting the nomination of Judge Sonia Sotomayor to be a Justice of the Supreme Court.

Everyone in New Hampshire was very proud 19 years ago when former President George Bush nominated New Hampshire's own David Souter as an Associate Justice of the Supreme Court. Every action Justice Souter has taken since he began service to our Nation's highest Court has only reinforced that pride. So when Justice Souter announced in early May that he intended to retire at the end of his term and return home to New Hampshire, I took particular interest in whom President Obama would select to fill David Souter's seat.

I believe the President has made a thoughtful and outstanding choice in nominating Judge Sonia Sotomayor.

Judge Sotomayor has had a distinguished career as a Federal judge. As has been widely noted, if confirmed, she would bring more Federal judicial experience to the Supreme Court than any Justice in 100 years. Today, David Souter is the only member of the Supreme Court with prior experience as a trial court judge. Sonia Sotomayor, too, would be the only Justice with experience as a trial court judge. I happen to agree with Senator KLOBUCHAR. I think it is important that at least one of the nine Supreme Court Justices have that experience. It is trial judges, after all, who day-in and day-out must apply the legal principles enunciated in Supreme Court opinions.

Judge Sotomayor also served 5 years as a local prosecutor and practiced law for 7 years as a trial attorney with a law firm. Judge Sotomayor, because of her experience, will be ever mindful of the need to provide those in the courtroom with clear and practical decisions. More important, she will understand how Supreme Court opinions affect real human beings.

As a trial judge, every day Judge Sotomayor directly faced innocent victims of crime, vicious perpetrators of crime, and occasionally the wrongfully accused. She directly faced injured parties seeking civil redress and civil defendants who may have made honest mistakes. She had to answer: What is the right verdict? What is the right length of incarceration? What is the right level of damages? These are not easy decisions. I know that because my husband was a State trial court judge for 16 years. Trial court judges must be able to live with the justice they mete out. To do it well, it takes more than an understanding of the law, it takes an understanding of people. Judge Sotomayor has a great understanding of both.

I had the pleasure of meeting with Sonia Sotomayor the day she fractured her ankle. I said to her as she came into my office: Boy, you are tough. She said: I grew up in the Bronx; we had to be tough. She handled that painful injury with grace and humor. She has a first-rate temperament and also a first-rate intellect. After growing up in a public housing project in the South Bronx, she excelled at both Princeton and Yale Law School.

I believe Judge Sonia Sotomayor is an excellent choice to replace David Souter as a Supreme Court Justice. She deserves a fair and a thorough hearing without delay. I look forward to that hearing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank my colleague, Senator SHAHEEN, for her remarks and for her reminiscence of meeting with the judge and once again the judge showing how she perseveres in the face of adversity.

I wish to talk a little bit more—I was ending my last comments talking about how, in fact, this nominee would bring more Federal judicial experience to the Supreme Court than any Justice

in 100 years. I had earlier noted my exchange with someone in an airport, where he wondered if she was worthy of this, if she was able to apply the facts, apply the law.

Clearly, when you look at this experience she brings and you compare it to any of these other nominees on the Supreme Court, she stands out. She stands out not only because of her unique background, as she overcame obstacles to get here, but she stands out as to her experience, all those years as a prosecutor, all those years as a Federal judge. That makes a difference.

I wish to address one other point that has been made about Judge Sonia Sotomayor in her capacity as a judge. It is something Senator SHAHEEN mentioned, this temperament issue. There have been some stories and comments, mostly anonymous, I note, that question Judge Sotomayor's judicial temperament. According to one news story about this topic, Judge Sotomayor developed a reputation for asking tough questions at oral arguments and for being sometimes brusque and curt with lawyers who were not prepared to answer them. So she was a little curt, one anonymous source said. Where I come from, asking tough questions and having very little patience for unprepared lawyers is the very definition of being a judge. I cannot tell you how many times I have seen judges get very impatient with lawyers who were not prepared and who did not know the answer to a question. As a lawyer, you owe it to the bench and to your clients to be as well prepared as you possibly can be.

As Nina Totenberg said on National Public Radio, if Sonia Sotomayor sometimes dominates oral arguments at her court, if she is feisty, even pushy, then she would fit right in on the U.S. Supreme Court.

I would add this to that comment. Surely, we have come to a time in this country where we can confirm as many gruff, to-the-point female judges as we have confirmed gruff, to-the-point male judges. Think how far we have come with this nominee.

When Sandra Day O'Connor graduated from law school 50-plus years ago, the only offer she received from a law firm was for a position as a legal secretary. She had this great background, a very impressive background, and yet the only offer she received was as a legal secretary.

Judge Ginsburg, who now sits on the Court, faced similar obstacles. When she entered Harvard in the 1950s, she was only 1 of 9 women in a class of more than 500. One professor actually asked her to justify taking a place that would have gone to a man in that class in Harvard. Mr. President, 9 women, 500 spots, and someone actually asked her to justify the fact that she was there. I suppose she could justify it now, saying she is now on the U.S. Supreme Court. Later Justice Ginsburg was passed over for a prestigious clerkship despite her impressive credentials.

Looking at Judge Sotomayor's long record as a lawyer, a prosecutor, and a judge, you can see we have come a long way.

She was confirmed by this Senate for the district court. She was nominated at that point by the first President Bush.

She was confirmed by this Senate for the Second Circuit, and she now faces a confirmation hearing before our Judiciary Committee and confirmation, again, for a position with the U.S. Supreme Court.

I will tell you this, after learning about Judge Sotomayor, her background, her legal career, her judicial record, similar to so many of my colleagues, I am very impressed. To use President Obama's words, I hope Judge Sotomayor will bring to her nomination hearing and to the Supreme Court, if she is confirmed, not only the knowledge and the experience acquired over the course of a brilliant legal career but the wisdom accumulated from an inspiring life's journey.

Actually today, Justice O'Connor was on the ''Today Show.'' She was asked about her work on the Court and what it was like. She was actually asked about Judge Sotomayor. She was asked: When you retired, you let it be known you would like a woman to replace you and you were sort of disappointed when a woman didn't replace you. So what is your reaction to Judge Sotomayor's nomination?

Justice O'Connor said: Of course, I am pleased that we will have another woman on the Court. I do think it is important not to just have one. Our nearest neighbor, Canada, also has a court of nine members and in Canada there is a woman chief justice and there are four women all told on the Canadian court.

Then she was asked: Do you think there is a right number of women who should be on the Court?

Justice O'Connor, this morning, said: No, of course not.

But then she pointed out: But about half of law graduates today are women, and we have a tremendous number of qualified women in the country who are serving as lawyers and they ought to be represented on the Court.

She was also asked later in the interview about opponents of Judge Sotomayor who have brought up this term ''activist judge.''

She was asked: I know that is a term you have railed against in the past. What is it about the term that you object to?

She answered: I don't think the public understands what is meant by it. It is thrown around by many in the political field, and I think that probably for most users of the term, they are distinguishing between the role of a legislator and a judge, and they say a judge should not legislate. The problem, of course, Justice O'Connor says, is at the appellate level, the Supreme Court is at the top of the appellate level. Rulings of the Court do become binding law. So it is a little hard to talk in terms of who is an activist.

I, again, ask people to look at Judge Sotomayor's opinions. When I talked with her about this, she talked about how she uses a set formula, laying out the facts, laying out the law, showing how the law applies to the facts, and then reaching a decision.

We can also look at her record where, in fact, when she was on a three-judge panel with two other judges, when you look at her record of what she agreed with judges who had been appointed by a Republican President, 95 percent of the time they reached the same decision. So unless you believe those Republican-appointed judges are somehow activist judges, then I guess you would say she is an activist judge. But I think when you look at her whole record, you see someone who is moderate, sometimes coming down on one side and sometimes coming down on another.

I can tell you, as a former prosecutor, I did not always just look at whether I agreed with the judge if I was trying to figure out if someone would be a good judge. I would look at whether they applied the laws to the facts, whether they were fair. Sometimes our prosecutor's office would not agree with a judge's decision. We would argue vehemently for a different decision. In the end, when we evaluated these judges, when we decided whether we thought they were a fair person to have on a case, we looked at that whole experience, we looked at that whole experience to make a decision about whether this was a judge who could be fair.

That is what I think when you look at her record—and I am looking very much to her hearing, where we are going to explore a number of these cases—again, colleagues on one side of the aisle will agree with one case or disagree with another, and the other side of the aisle would have made a decision one way or the other.

You have to look at her record as a whole. When you look at her record, you will see someone of experience, someone thoughtful, someone who makes a decision based on the facts and based on the law.

I am very much looking forward to these hearings. I know that some of my colleagues are coming to the Chamber as we speak. I am looking forward to their arrival as we become, as I said, ambassadors of truth to get these facts out as so many things have been bandied about in names and other things that get into people's heads. I think it important for all those watching C–SPAN right now and for all of those who are in the galleries today, that people take these facts away with them—the facts of her experience, that in over 100 years of judicial experience, when you look back 100 years, she has more experience on the bench than any of the Justices who were nominated. You have to go back 100 years to find someone with that much experience. You look at that work she has done as

a prosecutor, you look at the work she has done throughout her whole life, where she basically came from nothing, worked her way up, got into a good college, got into a good law school, did it on her own, with maybe a little help from her mom who bought the ''Encyclopedia Britannica.''

As I said at the beginning, this is a nominee who not only understands the law, understands the Constitution but also understands America.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. KLOBUCHAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. KLOBUCHAR. Mr. President, I am pleased that my colleague from Louisiana, Senator LANDRIEU, who has spoken many times in the past about the importance of fair judges and strong judges, is here today to discuss this nominee.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thank my colleague for her passionate remarks about this particular nominee. I am happy to join many of my colleagues in supporting a woman I consider to be an extraordinarily accomplished woman, and I commend President Obama for his selection.

As the Senate Judiciary Committee prepares for its confirmation hearing, I wished to come to the floor to express my strong support for this nominee. As we all know, the Supreme Court serves as the highest tribunal in the Nation. As the final arbitrator of our laws, the Supreme Court Justices are charged with ensuring the American people achieve the promise of equal justice under our law and serving as interpreters of our Constitution. It is a very important charge.

It is our duty as Senators to ensure that the members of this High Court, which we are asked to confirm, serve as impartial, fairminded Justices who apply our laws, not merely their ideology. The American people deserve no less.

A number of my colleagues have expressed concerns regarding this nominee. Those are not concerns I share. Having reviewed her resume, her academic credentials, having reviewed her time on the bench on the Second Circuit, as well as in a trial capacity, she has an expansive judicial record, and I think that provides evidence of the kind of Justice she will be on the Supreme Court.

She has been described as a ''fearless and effective prosecutor.'' She has served for 6 years as a trial judge in New York, as I said, on the Federal district court, and 11 years on the circuit court of appeals. So she has been in the courtroom on both sides of the bench representing a variety of clients, and she has written extensively. I think that record reflects the kind of balance, fairminded, intellectual rigor we are looking for.

Talking about Democratic and Republican Parties, she has been appointed by both a Democratic administration and a Republican administration. So clearly there were some things that were seen in her and her service by President George Bush as well as President Bill Clinton.

She has participated in over 3,000 decisions. She has written over 400 signed opinions on the Second Circuit. If confirmed, Judge Sotomayor would bring more Federal judicial experience to the Supreme Court than any Justice in 100 years. That is a very strong and powerful statement, and I think a compelling statement, to the Members of this body.

I had, as many of us have, the opportunity to meet with Judge Sotomayor in my office earlier this month. In addition to having an impressive professional resume, her personal journey as a young woman from a struggling, very middle-class background from the Bronx also captured my attention. She came up the hard way, with a lot of hard knocks but with a loving and supportive family around her to lead her and guide her. Tutors and teachers saw in this young girl a tremendous amount of promise and potential, and she has most certainly lived up to the promise her mother and grandmother and others saw in her at a young age.

I believe she is the kind of person who will bring not only extraordinary intellect and character and credibility but a tremendous breadth of experience that will be very helpful in dealing with the issues the Court has before it today and will in the near future. She has not only been a champion in many ways, but her life has been an inspiration to all Americans, proving that with determination and hard work anything is possible.

Finally, it goes without saying that she is a historic choice that will bring a wealth of experience and added diversity to the Nation's highest Court. When confirmed, she will become only the third woman to serve on the Nation's highest court and the first Hispanic Justice in the history of the United States. This is truly a remarkable turning point. I wish she could receive, because of her outstanding resume—not just because of her gender and background and culture. I believe her resume should garner the support of a broad range of Members of this body. Hopefully, that is the way it will come out in the final vote. She most certainly, from my review, deserves our support, and I look forward to doing what I can to process her nomination as it is debated by the full Senate.

I thank my colleague from Minnesota, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. I thank my colleague Senator LANDRIEU for her very kind and thoughtful remarks about the nominee.

We are now joined by the Senator from Missouri, Senator MCCASKILL, who as a former prosecutor I am sure will shed some light on the subject.

I also thank the Senator from Kansas for allowing us to take an additional 5 minutes.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mrs. MCCASKILL. Mr. President, I thank my friend, the Senator from Minnesota, for helping to get us organized this afternoon to spend a little time talking about an outstanding Federal judge.

I also thank my colleague from Kansas for giving us a few minutes to make these remarks.

I will confess that I wasn't familiar with Judge Sotomayor before she was nominated. I started looking at her resume, and there are so many things in her resume that are, frankly, amazing that you can get distracted by—where she went to school, where she got her law degree, and the fact that she has been at several levels of the Federal bench; and also, of course, that she had a very big job with complex litigation in a law firm. But the part of her resume that spoke to me was her time as an assistant district attorney in New York.

I don't know that most Americans truly understand the difference between a State prosecuting attorney and a Federal prosecuting attorney. Those of us who have spent time in the State courtrooms like to explain that we are the ones who answer the 911 calls. When you are a State prosecutor, you don't get to pick which cases you try. You try all of the cases. When you are a State prosecutor, you don't have the luxury of a large investigative staff or maybe a very light caseload. It would be unheard of for a Federal prosecutor to have a caseload of 100 felonies at any given time, but that is the caseload Judge Sotomayor handled as an assistant district attorney during her time in the District Attorney's Office in New York.

When she came to the prosecutor's office, ironically it was almost exactly the same year I came to the prosecutor's office as a young woman out of law school. I was in Kansas City; she was in New York. I know what the environment is in these prosecutors' offices. There are a lot of aggressive type A personalities, and it is very difficult to begin to handle serious felony cases because everybody wants to handle the serious felony cases. In only 6 months, Judge Sotomayor was promoted to handle serious felony cases in the courtroom. She prosecuted every type of crime imaginable, including the most serious crimes that are committed in our country.

She had many famous cases. One was the Tarzan murderer, where she joined

law enforcement officers in scouring dangerous drug houses for evidence and witnesses. After a month of trial, she convicted Richard Maddicks on three different murders and he was sentenced to 67 years to life in prison.

A New York detective had a hard time finding a New York prosecutor willing to take his child pornography case. Judge Sotomayor stepped up, winning convictions against two men for distributing films depicting children engaged in pornographic activities. These were the first child pornography convictions after the Supreme Court had upheld New York's law that barred the sale of sexually explicit films using children.

After her time as a prosecutor, she eventually became a trial judge. A trial judge is an unusual kind of experience for a Supreme Court Justice. But keep in mind what the Supreme Court Justices do: They look at the record of the trial. They are trying to pass on matters of law that emanate from the courtroom. What a wonderful nominee we have, one who has not only stood at the bar as a prosecutor but also sat on the bench ruling on matters of evidence, ruling on matters of law. I am proud of the fact that she has this experience. If she is confirmed, or when she is confirmed, she will be the only Supreme Court Justice with that trial judge experience, because she is replacing the only Supreme Court Justice with that experience—Judge Souter.

This is a meat-and-potatoes moderate judge. This is a judge who has agreed with Republicans on her panels 95 percent of the time. This is a judge who has the kind of experience that will allow her to make knowing and wise decisions on the most important matters that come in front of our courts in this country.

We have a ''gotcha'' mentality around here. We all engage in it at one time or another. It is gotcha, gotcha, gotcha. It is an outgrowth of the political system of this grand and glorious democracy we all participate in. It is not my favorite part, but it is real. Justice Sotomayor will become a Supreme Court Justice, after having gone through a gotcha process. We are going to hear a lot of gotchas over the coming weeks. But at the end of the day, this is a smart, proud woman who has fought her way through a system against tremendous odds to show that she has integrity, grit, intellect, and the ability to pass judgment in the most difficult intellectual challenges that face a Supreme Court Justice.

I am proud to support her nomination, and I look forward to the day—and I am confident that the day will come—she will take her place on the highest Court in the land.

Mr. President, I again thank the Senator from Kansas for his indulgence, and I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, again I thank the Senator from Kansas, and also Senator MCCASKILL, Senator SHAHEEN, and Senator LANDRIEU, who spoke today. I also know that Senators GILLIBRAND, FEINSTEIN, MIKULSKI, BOXER, and MURRAY will be speaking, or may have already and will be in the next few weeks on this nominee, as will many of my colleagues.

I appreciate this time, Mr. President. We are very excited about this upcoming hearing, and we are glad to be here as ambassadors for the truth.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I believe under a previous agreement I have time allotted at the present time; is that correct, if I could inquire of the Chair.

The PRESIDING OFFICER. The Senator may be recognized under cloture.

Mr. BROWNBACK. Mr. President, I rise today to discuss the nomination of Judge Sonia Sotomayor to the U.S. Supreme Court. I had the opportunity to meet with Judge Sotomayor 2 weeks ago. I was in the Senate when she was previously before this body on the Second Circuit Court nomination, and I appreciated the chance to meet with her recently.

I have also appreciated the chance to review her record in depth and also to hear my colleagues speak about Judge Sotomayor, because it represents the distinction that I think is very important to note here. My colleague from Missouri just spoke, and she was talking about the wonderful qualifications of Judge Sotomayor and the candidate's background and experiences that she brings. She has a very interesting, a very American story to tell of her background. It is a compelling story. She is the daughter of immigrants who overcame diversity to go to two of the Nation's best universities. I admire that, and I admire the things they pointed out in their presentation of her background and what she has done. I think those are all admirable characteristics.

But what we are doing here is picking somebody to be on the U.S. Supreme Court, and what their judicial philosophy is that they will take with them. It isn't all just about the background or the experience. It is about the judicial philosophy that comes forward, and that is what my colleagues didn't discuss. So that is what I want to discuss here this afternoon.

I have had the chance to review Judge Sotomayor's records. In 1998, the Senate voted to promote Judge Sotomayor to the appellate court. I voted against her at that time because I was concerned not about her background, not about her qualifications, but I was concerned that she embraced an activist judicial philosophy. That is what I want to talk about today, because that is what we are deciding when we put somebody on the Supreme Court—what is the judicial philosophy this person carries with them.

It is not necessarily about their own background or their qualifications. Those are important to review, but at the heart is what is the judicial philosophy. Is this a person who supports an activist judiciary getting into many areas in which the American public doesn't think they should go into or is it a person who believes in more of a strict constructionist view, that the Court is there to be an umpire and not an active player in policy development? Are they an umpire who calls the balls and strikes, and not how do we do law; how do we rewrite what is here?

I think the Court loses its lustre when it gets into becoming an active player in policy development instead of being a strict umpire of policy development. Unfortunately, what I saw in Judge Sotomayor in 1998 was somebody who embraced an activist judicial philosophy. During a 1996 speech at Suffolk University Law School 2 years before the Senate voted on her nomination to the Second Circuit, Judge Sotomayor said:

> The law that lawyers practice and judges declare is not a definitive capital ''L'' law that many would like to think exists.

Translated, that is to say the law is not set. It is mobile, as moved by judges, not by legislatures. This is not the rule of law. This is the rule from the bench. This is the rule of man, and it makes our law unpredictable. That is not good for a society like ours which is based on the rule of law, not the rule by a person.

Any nominee to the Federal bench, and especially to the U.S. Supreme Court, must have a proper understanding and respect for the role of the Court—for the role they would assume. The Court must faithfully hold to the text of the Constitution and the intent of the Founders, not try to rewrite it based on ever changing cultural views. This is at the heart of what a judge does.

Democracy, I believe, is wounded when Justices on the high Court, who are unelected, invent constitutional rights and alter the balance of governmental powers in ways that find no support in the text, the structure, or the history of the Constitution. Unfortunately, in recent years, the courts have assumed a more aggressive political role. In many cases, the courts have allowed the left in this country to achieve through court mandates what it cannot persuade the people to enact through the legislative process. The Constitution contemplates that the Federal courts will exercise limited jurisdiction. They should neither write nor execute the law.

This is very basic in our law and goes back to the very Founders. As Chief Justice John Marshall said in his famous 1803 case, Marbury v. Madison, that every law student has studied at length, the role of the court is simple. It is to ''say what the law is.'' It is not to write the law. It is not to rewrite the law. It is to ''say what the law is,'' what did the legislature pass, when it needs interpretation. It is not about

writing it. It is not about the mobility, that the law isn't with a capital ''l,'' and we can move it here based on these factors that we think are different with the cultural environment and we may have to move it over here in 10 years because the environment has changed and the law changes with it.

If the law changes, it is by legislatures. It is not by the court. That is why Marbury v. Madison said the law is to ''say what the law is,'' not to rewrite it.

In Federalist 78, Alexander Hamilton wrote this—law students study this as well:

> Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatsoever. It may truly be said to have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

The court is to have judgment. A judge is to have judgment, not write the law.

In Hamilton's view, judges could be trusted with power because they would not resolve divisive social issues—that is for the legislature to do—short-circuit the political process, or invent rights which have no basis in the text of the Constitution.

I have long believed the judicial branch preserves its legitimacy with the public and has its strength with the public through refraining from action on political questions. This concept was perhaps best expressed by Justice Felix Frankfurter, a steadfast Democrat appointed by President Franklin Delano Roosevelt. Justice Frankfurter said this:

> Courts are not representative bodies. They are not designed to be a good reflex of a democratic society. Their judgment is best informed, and therefore most dependable, within narrow limits. Their essential quality is detachment, founded on independence. History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures. Primary responsibility for adjusting the interests which compete in the situation before us of necessity belongs to the Congress.

That is to quote Justice Frankfurter.

I recall a private meeting I had with then-Judge Roberts, before assuming the position of Chief Justice, when he had been nominated to be Chief Justice—a wonderful Justice on the Supreme Court who then-Senator Obama voted against. Senator Obama voted against the confirmation of John Roberts, voted against the confirmation of Samuel Alito to the Supreme Court based, I believe, primarily on judicial philosophy because they believed in strict constructionism; that a court was to be a court and not a legislative body. Then-Senator Obama voted against both John Roberts and against Samuel Alito.

In my meeting with Judge Roberts, he talked about baseball and about the courts and his analogy to baseball. He gave a great analogy, I thought, when he said:

> It is a bad thing when the umpire is the most watched person on the field.

Imagine that, watching a baseball game and the thing you are watching the most is the umpire because the umpire is both umpire and a player. How confusing, how difficult, and what a wrong way to have a game. He, of course, Judge Roberts, was alluding to the current situation in American governance where the legislature can pass a law, the executive sign it, but everybody waits, holding their breath to see what the courts will do with it.

Unfortunately, Judge Sotomayor seems to me far too interested in being both an umpire and active player. Prior to becoming a Federal judge, Sonia Sotomayor spent more than a decade on the board of directors of the Puerto Rican Legal Defense and Education Fund. A September 25, 1992, article in the New York Times referred to Judge Sotomayor as ''a top policy maker'' on the group's board.

In 1998, the group brought suit against the New York City Police Department, claiming that a promotion exam was discriminatory because the results gave a disproportionate number of promotions to White police officers. As a judge on the appellate court, Judge Sotomayor was involved in a nearly identical case, Ricci v. Destefano, involving a group of White firefighters seeking promotion in New Haven, CT. City officials in New Haven decided to void the results of the exam because it had a disparate impact on minorities. Judge Sotomayor agreed with the city's decision, and we are now waiting on a ruling from the Supreme Court.

> Sotomayor's work as an activist challenging the New York Police Department's test results in 1998 is evidence that she may have allowed personal biases to guide her decision to rule against New Haven firefighters. I hope we can find out more in her confirmation interviews and in her hearings. But I am also troubled by the number of amicus briefs filed by the fund in support of what are radical positions on pro-abortion issues during the time Sotomayor was on this same board.

Six briefs were filed taking positions outside of the mainstream in support of abortion rights in prominent cases such as in Webster v. Reproductive Health Services or in Ohio v. Akron Center for Reproductive Health. In that Ohio v. Akron case, the Court upheld Ohio's parental consent laws. These are laws that say, before a minor can have an abortion, they must have parental consent.

Joining the majority opinion were moderate Justice Sandra Day O'Connor and liberal Justice John Paul Stevens. Yet the group that Judge Sotomayor was associated with filed a brief opposing this parental notification law, saying ''any efforts to overturn or in any way to restrict the rights in Roe v. Wade,'' they opposed any restriction, even allowing parents of a minor child to have parental notification that their child was going to go through this major medical procedure. She took a stand opposed to that parental right that most of the American public, 75 percent of the American public supports; that parental right of that notification. She opposed it.

According to the New York Times:

> The board monitored all litigation undertaken by the fund's lawyers, and a number of those lawyers said Ms. Sotomayor was an involved and ardent supporter of their various legal efforts during her time with the group.

I am also deeply concerned that Judge Sotomayor will bring this radical agenda to the Court.

Judge Sotomayor has given speeches and written articles promoting judicial activism. The President who appointed her said judges should have ''the empathy to recognize what it's like to be a young teenage mom; the empathy to understand what it is like to be poor or African-American or gay or disabled or old,'' and that difficult cases should be decided by ''what is in the Justice's heart.''

While I think it is admirable to have empathy, a Justice and a person who sits on the bench is to decide this based on the law. That is what they are to decide it upon, not an interpretation or rewriting of the law.

The President's view of the role of a Judge on the Court is not shared by Justices Marshall or Frankfurter, nor is it the view of Hamilton and the drafters of the Constitution.

The oath that all Supreme Court Justices take says:

> I will administer justice without respect to persons, and do equal right to the poor and to the rich.

That is the oath they take. The Justice is to be blind and just to hear the case and decide it based on the facts and what the law is and say what the law says, not what they wish it to be nor what is in their heart. It is to be blind and it is to hold these and to weigh these equally and fairly to determine the truth and to determine the outcome in the case.

The President is asking his nominees to ignore, in essence, their oath. I fear Justice Sotomayor is all too eager to comply.

In her writings, Judge Sotomayor has rejected the principle of impartiality and embraces a rather novel idea that a Judge's personal life story should come into play in the courtroom. In a 2001 speech at the UC Berkeley Law School, which was later published, Judge Sotomayor dismissed the

idea that ''judges may transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law,'' by saying that ''ignoring our differences as women or men of color we do a disservice both to the law and society.''

I am not sure why Judge Sotomayor believes the law is somehow different when interpreted by people of a different gender, but I think Judge Sotomayor is absolutely wrong and we do a disservice to law and society when we don't transcend our personal sympathies and prejudices and base our decisions upon the facts and the law.

Judge Sotomayor's view is contrary to the words engraved upon the Supreme Court's entrance which state ''equal justice under law.''

In the same 2001 speech, Judge Sotomayor made the following astonishing statement:

> Personal experiences affect the facts judges choose to see. . . . I simply do not know what the difference will be in my judging. But I accept there will be some.

When Judge Sotomayor says that ''personal experiences affect the facts judges choose to see,'' does that mean she is willing to ignore other facts? Is justice blind or is it actually interpreting and seeing which facts to pick and which facts not to pick?

The role of judges is to examine all the facts of a particular case, not solely the facts that deliver a desired outcome or solely the facts that the judge can relate to based on his or her personal biography. It is dangerous for this body to consent to elevating a judge who believes that justice equates with picking winners and losers based upon his or her own personal biases. That is not judging.

I hope my colleagues understand this 2001 speech at Berkeley was not an isolated incident. In a 1994 speech, Judge Sotomayor used language nearly identical to that of the 2001 speech, saying judges should not ignore their differences as women and people of color and to do so would be a disservice to the law and society. In 1994, Judge Sotomayor discussed the impact that more women on the bench will have on the ''development of the law.''

''Development,'' like this is about the writing of the law. If that is the case, that is done by the Congress not by the courts. Judges do not make law, and under no circumstances should they be under the impression they do.

Judge Sotomayor sees judges as lawmakers, as both umpire and player. In the 2005 appearance at Duke Law School, she said: ''The court of appeals is where policy is made.''

I wonder how Alexander Hamilton would respond. I think he would wholly disagree with that interpretation. Unfortunately, Judge Sotomayor's writings and statements lead me to believe that she is a proponent, a clear proponent, of an activist judiciary. I cannot support her nomination. I will vote no when it comes before the full Senate.

I ask unanimous consent that her speech in the Berkeley La Raza Law Journal be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Berkeley La Raza Law Journal, 2002]

RAISING THE BAR: LATINO AND LATINA PRESENCE IN THE JUDICIARY AND THE STRUGGLE FOR REPRESENTATION

Judge Reynoso, thank you for that lovely introduction. I am humbled to be speaking behind a man who has contributed so much to the Hispanic community. I am also grateful to have such kind words said about me.

I am delighted to be here. It is nice to escape my hometown for just a little bit. It is also nice to say hello to old friends who are in the audience, to rekindle contact with old acquaintances and to make new friends among those of you in the audience. It is particularly heart warming to me to be attending a conference to which I was invited by a Latina law school friend, Rachel Moran, who is now an accomplished and widely respected legal scholar. I warn Latinos in this room: Latinas are making a lot of progress in the old-boy network.

I am also deeply honored to have been asked to deliver the annual Judge Mario G. Olmos lecture. I am joining a remarkable group of prior speakers who have given this lecture. I hope what I speak about today continues to promote the legacy of that man whose commitment to public service and abiding dedication to promoting equality and justice for all people inspired this memorial lecture and the conference that will follow. I thank Judge Olmos' widow Mary Louise's family, her son and the judge's many friends for hosting me. And for the privilege you have bestowed on me in honoring the memory of a very special person. If I and the many people of this conference can accomplish a fraction of what Judge Olmos did in his short but extraordinary life we and our respective communities will be infinitely better.

I intend tonight to touch upon the themes that this conference will be discussing this weekend and to talk to you about my Latina identity, where it came from, and the influence I perceive it has on my presence on the bench.

Who am I. I am a ''Newyorkrican.'' For those of you on the West Coast who do not know what that term means: I am a born and bred New Yorker of Puerto Rican-born parents who came to the states during World War II.

Like many other immigrants to this great land, my parents came because of poverty and to attempt to find and secure a better life for themselves and the family that they hoped to have. They largely succeeded. For that, my brother and I are very grateful. The story of that success is what made me and what makes me the Latina that I am. The Latina side of my identity was forged and closely nurtured by my family through our shared experiences and traditions.

For me, a very special part of my being Latina is the mucho platos de arroz, gandoles y pernir—rice, beans and pork—that I have eaten at countless family holidays and special events. My Latina identity also includes, because of my particularly adventurous taste buds, morcilla,—pig intestines, patitas de cerdo con garbanzo—pigs' feet with beans, and la lengua y orejas de cuchifrito, pigs' tongue and ears. I bet the Mexican-Americans in this room are thinking that Puerto Ricans have unusual food tastes. Some of us, like me, do. Part of my Latina identity is the sound of merengue at all our family parties and the heart wrenching Spanish love songs that we enjoy. It is the memory of Saturday afternoon at the movies with my aunt and cousins watching Cantinflas, who is not Puerto Rican, but who was an icon Spanish comedian on par with Abbot and Costello of my generation. My Latina soul was nourished as I visited and played at my grandmother's house with my cousins and extended family. They were my friends as I grew up. Being a Latina child was watching the adults playing dominos on Saturday night and us kids playing lotería, bingo, with my grandmother calling out the numbers which we marked on our cards with chick peas.

Now, does any one of these things make me a Latina? Obviously not because each of our Carribean and Latin American communities has their own unique food and different traditions at the holidays. I only learned about tacos in college from my Mexican-American roommate. Being a Latina in America also does not mean speaking Spanish. I happen to speak it fairly well. But my brother, only three years younger, like too many of us educated here, barely speaks it. Most of us born and bred here, speak it very poorly.

If I had pursued my career in my undergraduate history major, I would likely. provide you with a very academic description of what being a Latino or Latina means. For example, I could define Latinos as those peoples and cultures populated or colonized by Spain who maintained or adopted Spanish or Spanish Creole as their language of communication. You can tell that I have been very well educated. That antiseptic description however, does not really explain the appeal of morcilla—pig's intestine—to an American born child. It does not provide an adequate explanation of why individuals like us, many of whom are born in this completely different American culture, still identify so strongly with those communities in which our parents were born and raised.

America has a deeply confused image of itself that is in perpetual tension. We are a nation that takes pride in our ethnic diversity, recognizing its importance in shaping our society and in adding richness to its existence. Yet, we simultaneously insist that we can and must function and live in a race and color-blind way that ignore these very differences that in other contexts we laud. That tension between ''the melting pot and the salad bowl''—a recently popular metaphor used to described New York's diversity—is being hotly debated today in national discussions about affirmative action. Many of us struggle with this tension and attempt to maintain and promote our cultural and ethnic identities in a society that is often ambivalent about how to deal with its differences. In this time of great debate we must remember that it is not political struggles that create a Latino or Latina identity. I became a Latina by the way I love and the way I live my life. My family showed me by their example how wonderful and vibrant life is and how wonderful and magical it is to have a Latina soul. They taught me to love being a Puerto Riqueña and to love America and value its lesson that great things could be achieved if one works hard for it. But achieving success here is no easy accomplishment for Latinos or Latinas, and although that struggle did not and does not create a Latina identity, it does inspire how I live my life.

I was born in the year 1954. That year was the fateful year in which Brown v. Board of Education was decided. When I was eight, in 1961, the first Latino, the wonderful Judge Reynaldo Garza, was appointed to the federal bench, an event we are celebrating at this conference. When I finished law school in 1979, there were no women judges on the Supreme Court or on the highest court of my

home state, New York. There was then only one Afro-American Supreme Court Justice and then and now no Latino or Latina justices on our highest court. Now in the last twenty plus years of my professional life, I have seen a quantum leap in the representation of women and Latinos in the legal profession and particularly in the judiciary. In addition to the appointment of the first female United States Attorney General, Janet Reno, we have seen the appointment of two female justices to the Supreme Court and two female justices to the New York Court of Appeals, the highest court of my home state. One of those judges is the Chief Judge and the other is a Puerto Riqueña, like I am. As of today, women sit on the highest courts of almost all of the states and of the territories, including Puerto Rico. One Supreme Court, that of Minnesota, had a majority of women justices for a period of time.

As of September 1, 2001, the federal judiciary consisting of Supreme, Circuit and District Court Judges was about 22% women. In 1992, nearly ten years ago, when I was first appointed a District Court Judge, the percentage of women in the total federal judiciary was only 13%. Now, the growth of Latino representation is somewhat less favorable. As of today we have, as I noted earlier, no Supreme Court justices, and we have only 10 out of 147 active Circuit Court judges and 30 out of 587 active district court judges. Those numbers are grossly below our proportion of the population. As recently as 1965, however, the federal bench had only three women serving and only one Latino judge. So changes are happening, although in some areas, very slowly. These figures and appointments are heartwarming. Nevertheless, much still remains to happen.

Let us not forget that between the appointments of Justice Sandra Day O'Connor in 1981 and Justice Ginsburg in 1992, eleven years passed. Similarly, between Justice Kaye's initial appointment as an Associate Judge to the New York Court of Appeals in 1983, and Justice Ciparick's appointment in 1993, ten years elapsed. Almost nine years later, we are waiting for a third appointment of a woman to both the Supreme Court and the New York Court of Appeals and of a second minority, male or female, preferably Hispanic, to the Supreme Court. In 1992 when I joined the bench, there were still two out of 13 circuit courts and about 53 out of 92 district courts in which no women sat. At the beginning of September of 2001, there are women sitting in all 13 circuit courts. The First, Fifth, Eighth and Federal Circuits each have only one female judge, however, out of a combined total number of 48 judges. There are still nearly 37 district courts with no women judges at all. For women of color the statistics are more sobering. As of September 20, 1998, of the then 195 circuit court judges only two were African-American women and two Hispanic women. Of the 641 district court judges only twelve were African-American women and eleven Hispanic women. African-American women comprise only 1.56% of the federal judiciary and Hispanic-American women comprise only 1%. No African-American, male or female, sits today on the Fourth or Federal circuits. And no Hispanics, male or female, sit on the Fourth, Sixth, Seventh, Eighth, District of Columbia or Federal Circuits.

Sort of shocking, isn't it. This is the year 2002. We have a long way to go. Unfortunately, there are some very deep storm warnings we must keep in mind. In at least the last five years the majority of nominated judges the Senate delayed more than one year before confirming or never confirming were women or minorities. I need not remind this audience that Judge Paez of your home Circuit, the Ninth Circuit, has had the dubious distinction of having had his confirmation delayed the longest in Senate history. These figures demonstrate that there is a real and continuing need for Latino and Latina organizations and community groups throughout the country to exist and to continue their efforts of promoting women and men of all colors in their pursuit for equality in the judicial system.

This weekend's conference, illustrated by its name, is bound to examine issues that I hope will identify the efforts and solutions that will assist our communities. The focus of my speech tonight, however, is not about the struggle to get us where we are and where we need to go but instead to discuss with you what it all will mean to have more women and people of color on the bench. The statistics I have been talking about provide a base from which to discuss a question which one of my former colleagues on the Southern District bench, Judge Miriam Cederbaum, raised when speaking about women on the federal bench. Her question was: What do the history and statistics mean. In her speech, Judge Cederbaum expressed her belief that the number of women and by direct inference people of color on the bench, was still statistically insignificant and that therefore we could not draw valid scientific conclusions from the acts of so few people over such a short period of time. Yet, we do have women and people of color in more significant numbers on the bench and no one can or should ignore pondering what that will mean or not mean in the development of the law. Now, I cannot and do not claim this issue as personally my own. In recent years there has been an explosion of research and writing in this area. On one of the panels tomorrow, you will hear the Latino perspective in this debate.

For those of you interested in the gender perspective on this issue, I commend to you a wonderful compilation of articles published on the subject in Vol. 77 of the Judicature, the Journal of the American Judicature Society of November–December 1993. It is on Westlaw/Lexis and I assume the students and academics in this room can find it.

Now Judge Cedarbaum expresses concern with any analysis of women and presumably again people of color on the bench, which begins and presumably ends with the conclusion that women or minorities are different from men generally. She sees danger in presuming that judging should be gender or anything else based. She rightly points out that the perception of the differences between men and women is what led to many paternalistic laws and to the denial to women of the right to vote because we were described then ''as not capable of reasoning or thinking logically'' but instead of ''acting intuitively.'' I am quoting adjectives that were bandied around famously during the suffragettes' movement.

While recognizing the potential effect of individual experiences on perception, Judge Cedarbaum nevertheless believes that judges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law. Although I agree with and attempt to work toward Judge Cedarbaum's aspiration, I wonder whether achieving that goal is possible in all or even in most cases. And I wonder whether by ignoring our differences as women or men of color we do a disservice both to the law and society. Whatever the reasons why we may have different perspectives, either as some theorists suggest because of our cultural experiences or as others postulate because we have basic differences in logic and reasoning, are in many respects a small part of a larger practical question we as women and minority judges in society in general must address. I accept the thesis of a law school classmate, Professor Steven Carter of Yale Law School, in his affirmative action book that in any group of human beings there is a diversity of opinion because there is both a diversity of experiences and of thought. Thus, as noted by another Yale Law School Professor—I did graduate from there and I am not really biased except that they seem to be doing a lot of writing in that area—Professor Judith Resnik says that there is not a single voice of feminism, not a feminist approach but many who are exploring the possible ways of being that are distinct from those structured in a world dominated by the power and words of men. Thus, feminist theories of judging are in the midst of creation and are not and perhaps will never aspire to be as solidified as the established legal doctrines of judging can sometimes appear to be.

That same point can be made with respect to people of color. No one person, judge or nominee will speak in a female or people of color voice. I need not remind you that Justice Clarence Thomas represents a part but not the whole of African-American thought on many subjects. Yet, because I accept the proposition that, as Judge Resnik describes it, ''to judge is an exercise of power'' and because as, another former law school classmate, Professor Martha Minnow of Harvard Law School, states ''there is no objective stance but only a series of perspectives—no neutrality, no escape from choice in judging,'' I further accept that our experiences as women and people of color affect our decisions. The aspiration to impartiality is just that—it's an aspiration because it denies the fact that we are by our experiences making different choices than others. Not all women or people of color, in all or some circumstances or indeed in any particular case or circumstance but enough people of color in enough cases, will make a difference in the process of judging. The Minnesota Supreme Court has given an example of this. As reported by Judge Patricia Wald formerly of the D.C. Circuit Court, three women on the Minnesota Court with two men dissenting agreed to grant a protective order against a father's visitation rights when the father abused his child. The Judicature Journal has at least two excellent studies on how women on the courts of appeal and state supreme courts have tended to vote more often than their male counterpart to uphold women's claims in sex discrimination cases and criminal defendants' claims in search and seizure cases. As recognized by legal scholars, whatever the reason, not one woman or person of color in any one position but as a group we will have an effect on the development of the law and on judging.

In our private conversations, Judge Cedarbaum has pointed out to me that seminal decisions in race and sex discrimination cases have come from Supreme Courts composed exclusively of white males. I agree that this is significant but I also choose to emphasize that the people who argued those cases before the Supreme Court which changed the legal landscape ultimately were largely people of color and women. I recall that Justice Thurgood Marshall, Judge Connie Baker Motley, the first black woman appointed to the federal bench, and others of the NAACP argued Brown v. Board of Education. Similarly, Justice Ginsburg, with other women attorneys, was instrumental in advocating and convincing the Court that equality of work required equality in terms and conditions of employment.

Whether born from experience or inherent physiological or cultural differences, a possibility I abhor less or discount less than my colleague Judge Cedarbaum, our gender and national origins may and will make a difference in our judging. Justice O'Connor has

often been cited as saying that a wise old man and wise old woman will reach the same conclusion in deciding cases. I am not so sure Justice O'Connor is the author of that line since Professor Resnik attributes that line to Supreme Court Justice Coyle. I am also not so sure that I agree with the statement. First, as Professor Martha Minnow has noted, there can never be a universal definition of wise. Second, I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.

Let us not forget that wise men like Oliver Wendell Holmes and Justice Cardozo voted on cases which upheld both sex and race discrimination in our society. Until 1972, no Supreme Court case ever upheld the claim of a woman in a gender discrimination case. I, like Professor Carter, believe that we should not be so myopic as to believe that others of different experiences or backgrounds are incapable of understanding the values and needs of people from a different group. Many are so capable. As Judge Cedarbaum pointed out to me, nine white men on the Supreme Court in the past have done so on many occasions and on many issues including Brown.

However, to understand takes time and effort, something that not all people are willing to give. For others, their experiences limit their ability to understand the experiences of others. Others simply do not care. Hence, one must accept the proposition that a difference there will be by the presence of women and people of color on the bench. Personal experiences affect the facts that judges choose to see. My hope is that I will take the good from my experiences and extrapolate them further into areas with which I am unfamiliar. I simply do not know exactly what that difference will be in my judging. But I accept there will be some based on my gender and my Latina heritage.

I also hope that by raising the question today of what difference having more Latinos and Latinas on the bench will make will start your own evaluation. For people of color and women lawyers, what does and should being an ethnic minority mean in your lawyering? For men lawyers, what areas in your experiences and attitudes do you need to work on to make you capable of reaching those great moments of enlightenment which other men in different circumstances have been able to reach. For all of us, how do change the facts that in every task force study of gender and race bias in the courts, women and people of color, lawyers and judges alike, report in significantly higher percentages than white men that their gender and race has shaped their careers, from hiring, retention to promotion and that a statistically significant number of women and minority lawyers and judges, both alike, have experienced bias in the courtroom?

Each day on the bench I learn something new about the judicial process and about being a professional Latina woman in a world that sometimes looks at me with suspicion. I am reminded each day that I render decisions that affect people concretely and that I owe them constant and complete vigilance in checking my assumptions, presumptions and perspectives and ensuring that to the extent that my limited abilities and capabilities permit me, that I reevaluate them and change as circumstances and cases before me requires. I can and do aspire to be greater than the sum total of my experiences but I accept my limitations. I willingly accept that we who judge must not deny the differences resulting from experience and heritage but attempt, as the Supreme Court suggests, continuously to judge when those opinions, sympathies and prejudices are appropriate.

There is always a danger embedded in relative morality, but since judging is a series of choices that we must make, that I am forced to make, I hope that I can make them by informing myself on the questions I must not avoid asking and continuously pondering. We, I mean all of us in this room, must continue individually and in voices united in organizations that have supported this conference, to think about these questions and to figure out how we go about creating the opportunity for there to be more women and people of color on the bench so we can finally have statistically significant numbers to measure the differences we will and are making.

I am delighted to have been here tonight and extend once again my deepest gratitude to all of you for listening and letting me share my reflections on being a Latina voice on the bench. Thank you.

Mr. BROWNBACK. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio is recognized.

Mr. BROWN. I thank the Chair.

(The remarks of Mr. BROWN pertaining to the introduction of S. 1343 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. LUGAR. Mr. President, today the Senate considers the nomination of Harold Koh to be Legal Adviser to the Department of State. After reading his answers to dozens of questions, attending his hearing in its entirety, meeting with him privately, and reviewing his writings, I believe that Dean Koh is unquestionably qualified to assume the post for which he is nominated. He has had a distinguished career as a teacher and advocate, and he is regarded widely as one of our Nation's most accomplished experts on the theory and practice of international law. He also has served ably in our government as a Justice Department lawyer during the Reagan administration and as Assistant Secretary of State for Democracy, Human Rights, and Labor from 1998 to 2001.

The committee has received innumerable letters of support for the nominee attesting to his character, his love of country, and his respect for the law. He enjoys support from the lawyers with whom he has worked, as well as those including former Solicitor General Kenneth Starr—whom he has litigated against.

Both in private meetings and in public testimony, Dean Koh has affirmed that he understands the parameters of his role as State Department Legal Adviser. He understands that his role will be to provide policymakers objective advice on legal issues, not to be a campaigner for particular policy outcomes. He also has affirmed that as Legal Adviser, he will be prepared to defend the policies and interests of the U.S. Government, even when they may be at odds with positions he has taken in a private capacity. In applying laws relevant to the State Department's work, he has stated clearly that he will take account of and respect prior U.S. Government interpretations and practices under those laws, rather than considering each such issue as a matter of first impression.

Finally, I believe Dean Koh respects the role of the Senate and the Congress on international legal matters, especially treaties. He has promised to consult with us regularly and fully, not just when treaties come before the Senate, but also on the application of treaties on which the Senate has already provided advice and consent, including any proposed changes in the interpretation of such treaties.

Absent extraordinary circumstances, President Obama and Secretary of State Clinton should be able to choose the individuals on whom they will depend for legal analysis, interpretation, and advice. Given Dean Koh's record of service and accomplishment, his personal character, his understanding of his role as Legal Adviser, and his commitment to work closely with Congress, I support his nomination and believe he is well deserving of confirmation by the Senate.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KAUFMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

Mr. KAUFMAN. Mr. President, I ask unanimous consent to speak as in morning business for 18 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SHORT SELLING

Mr. KAUFMAN. Mr. President, I rise again to speak out about the problems in the financial markets caused by abusive short selling activities, which includes naked short selling and rumor mongering. It can also include abuse of the credit default market by planting false suggestions that an issuer's survival is in doubt. My focus today, however, is on the first element—naked short selling.

Let me be clear about my main point. The public believes and the SEC has yet to discount that the effects of abusive naked short selling practices helped cement the demise of Bear Stearns and Lehman Brothers, as well as made it significantly harder for banks to raise critical capital in the throes of this financial crisis. It is no exaggeration to say that abusive short