

factors were present in the case. Also, my favorable comment about the goal the defendants sought to achieve was a reference to their underlying goal of reducing the number of abortions, as is clear from the following statement from my sentencing remarks: "I think that people on both sides of the abortion issue would probably agree with you that reducing the number of abortions in this country is a desirable goal." My sentencing remarks also reflect extensive consideration of the seriousness of the offense and criticism of the defendants' conduct and tactics, as I have previously discussed. My sentencing remarks were fair and even-handed, and the 60-day jail sentence I imposed, at two-thirds of the maximum, could not be characterized as unduly lenient or a "validation" of the defendants' beliefs.

Mr. DURBIN. In light of Justice Sykes' statements in the case, I have serious concerns about whether she recognizes the fundamental right of privacy and about her ability to rule fairly in cases involving constitutionally protected rights to privacy.

But let me be clear. My opposition to this nominee is not because I am pro-choice on the abortion record and Justice Sykes may be pro-life. I and my Democratic colleagues have voted for over 95 percent of President Bush's nominees—191 judges as of today. It is likely that the vast majority of them were pro-life on the abortion issue.

Deborah Cook, now a judge on the U.S. Court of Appeals for the Sixth Circuit, was endorsed by the Ohio Right to Life organization. Lavenski Smith, a judge on the Eighth Circuit, sought to make all abortions in Arkansas illegal except to save the life of the mother. Michael Fisher, now on the Third Circuit, advocated that abortion is wrong and should be illegal even in cases of rape and incest. I voted for all three of these pro-life nominees.

I voted for James Browning, a judge we recently confirmed to the district court in New Mexico. Judge Browning had spoken at pro-life rallies and called the pro-choice position "the tyranny of the majority over the minority." He called on people who are pro-choice to "make the choice of life, not holocaust." Despite his passionate feelings, I voted to confirm him.

Why? Because unlike Justice Sykes, these judicial nominees—all of them I have mentioned, who do not share my views on this important issue—were honest and candid and open in their dealings with the committee. I think that is the bottom line. Even if I disagree with the nominee's point of view, I expect them to be honest and candid.

I have appointed in the district courts of Illinois men and women who do not share my views on critical issues. But I do not ask that of them. I do not come to any nominee with a litmus test, nor do I come to Justice Sykes with such a test.

I am also disappointed that Justice Sykes chose not to answer some basic questions I asked about some fundamental constitutional rights. Instead, she tried to hide behind the Wisconsin Code of Judicial Conduct.

Justice Sykes' refusal to answer my questions is in stark contrast to an

Ohio Supreme Court justice whom the Senate confirmed with my vote last year: Sixth Circuit nominee Deborah Cook.

I asked both nominees the exact same questions: whether they thought *Roe v. Wade* and *Miranda v. Arizona*—two landmark Supreme Court cases—were consistent with strict constructionism. I have asked this question over and over. Justice Cook answered my question with painful but direct honesty. This is what Justice Cook said:

If strict constructionism means that rights do not exist unless explicitly mentioned in the Constitution, then the cases you mention likely would not be consistent with that label.

That is a candid answer. I am certain it is an answer Justice Cook knew I did not agree with personally, but she was honest, and I respected her for it.

When Senator DEWINE of Ohio came to me and said, "I believe she is a good and fair person," I said: "I will give her the benefit of the doubt. I will support her nomination because of her candor and honesty."

Now, contrast that with the answer I received from Justice Sykes to the exact same question. She said:

This question requests a critique of certain United States Supreme Court cases that I am or will be required to interpret and apply as a judge in individual cases before the court. The Wisconsin Code of Judicial Conduct prohibits judges from engaging in extrajudicial commentary with respect to particular cases or legal issues that would appear to commit the judge in advance or suggest a promise or commitment of a certain course of conduct in office regarding particular cases or legal issues.

This is a major-league evasion. If judicial nominees could each hide behind the local code of ethics in their State and say they could not even tell us where they stand on landmark Supreme Court decisions, such as *Miranda* and *Roe v. Wade*, and whether these decisions are consistent with a certain judicial philosophy, then the Senate Judiciary Committee should turn out its lights and the Senate should walk away from any role in advising and consenting to judicial nominees. But that is not what I swore to uphold when I took the oath of office to serve in the Senate.

What Justice Sykes sent to me in response to that question was evasion with a capital "E," and I do not believe the Senate should accept such responses.

Justice Sykes' refusal to answer my questions was not only evasive but erroneous. I contacted Steven Lubet, an expert on judicial ethics and a law professor at Northwestern University Law School in Chicago. I showed him Justice Sykes' responses to my questions, and he wrote a letter stating that the Wisconsin Code of Judicial Conduct does not prevent Justice Sykes from answering my questions.

So this is my conclusion, having considered these three elements: first, that Justice Sykes has taken pride in the

fact that she is known as a hanging judge and is extreme in her sentencing procedures; second, that she was not open and honest with me in the sentencing of a case which involved people who were well known to be serial, at least, arrestees, if not criminals, because of their conduct; and, third, that she would not answer the most basic questions about her judicial philosophy, which I think goes to the core of our responsibility in the Senate Judiciary Committee.

Time and again, Justice Sykes has demonstrated she does not possess the qualities necessary to inspire the confidence we should expect from a Federal judge. She has been nominated to serve for the rest of her natural life on the second highest court in America. I do not believe she can provide the good judgment, candor, or fairmindedness that we must demand of each person seeking such an important appointment. I will vote "no" on this nomination.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak for up to 5 minutes as in morning business.

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

(The remarks of Mr. ALEXANDER and Ms. LANDRIEU pertaining to the introduction of the legislation are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. ALEXANDER). The Senate will return to legislative session.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 2005—Continued

Mr. STEVENS. Mr. President, I ask unanimous consent that the Chair lay before the Senate the Defense appropriations bill.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4613) making appropriations for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

AMENDMENT NO. 3490

Mr. STEVENS. Mr. President, I send an amendment to the desk on behalf of the Senator from Montana, Mr. BAUCUS.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. BAUCUS, proposes an amendment numbered 3490.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.