

an understanding and the ability to stand in the shoes of other people across a broad spectrum of this country." Justice Alito and Justice Thomas were not testifying that they would be biased. What the partisan critics do not appreciate is that the opposite of empathy is indifference and a lack of understanding. Empathy does not mean biased or mean picking one side over another, it means understanding both sides.

When she was designated by the President, Judge Sotomayor said: "The wealth of experiences, personal and professional, have helped me appreciate the variety of perspectives that present themselves in every case that I hear. It has helped me to understand, respect, and respond to the concerns and arguments of all litigants who appear before me, as well as to the views of my colleagues on the bench. I strive never to forget the real-world consequences of my decisions on individuals, businesses, and government."

It took a Supreme Court that understood the real world to see that the seeming fair-sounding doctrine of "separate but equal" was a straightjacket of inequality. We do not need more conservative activists second guessing Congress and who through judicial extremism override congressional judgments intended to protect Americans' voting rights, privacy rights and access to health care and education.

In her widely misconstrued speech at the University of California at Berkeley, Judge Sotomayor said: "[J]udges must transcend their personal sympathies and prejudices and aspire to achieve a greater degree of fairness and integrity based on the reason of law." That parallels what Chief Justice Roberts said at his confirmation hearing when he testified about "the ideal in the American justice system" and judges "doing their best to interpret the law, to interpret the Constitution, according to the rule of law" and not substituting their own personal agenda.

Those who spent days asking Judge Sotomayor to explain what she meant in a partial quotation from that speech about the decisions reached by a "wise Latina woman with the richness of her experiences" miss that she begins that statement with the words, "I would hope." They miss that her statement is aspirational. She would "hope" that she and the other Hispanic women judges would be "wise" in their decisionmaking and that their experiences would help inform them and help provide that wisdom. Judge Sotomayor's critics have ignored her modesty in not claiming to be perfect, but rather in aspiring to the greatest wisdom and fairness she can achieve.

These critics also miss that Judge Sotomayor was pointing out a path to greater fairness and fidelity to law by acknowledging that despite the aspiration she shares with other judges, there are imperfections of human judging. By acknowledging rather than ignoring

that while all judges seek to set aside their personal views, they do not always succeed, and we can be on guard against those views influencing judicial outcomes.

Judge Sotomayor has described herself as "an ordinary person who has been blessed with extraordinary opportunities and experiences." In her opening statement at her Supreme Court confirmation hearing she spoke about witnessing the "human consequences" of judicial decisions. She testified that her judicial decisions "have not been made to serve the interests of any one litigant, but always to serve the large interest of impartial justice."

We have a long and important tradition in the law of seeking justice and fairness and equity. Judge Sotomayor spoke about the meaning of the word "justice" a decade ago and said: "Almost every person in our society is moved by that one word. It is a word embodied with a spirit that rings in the hearts of people. It is an elegant and beautiful word that moves people to believe that the law is something special."

In this country, the law is special, and it is special because of what it protects and what it can do. In England there were separate law courts and chancery courts. But, in the United States we have combined these functions to be performed by all of our Federal judges.

We all talk about the importance of judges following the law. Yet we should remember that the law that judges must follow includes the reconstruction amendments and particularly the 14th amendment, which transformed the rule of law and the role of judges and Congress in the United States. In the aftermath of the bloody, tragic Civil War, the 14th amendment was passed to give the courts and the Congress a more active role in defining and protecting civil rights. The complete abolition of slavery was only a part of its grand purpose. It was driven by a profound desire to arm the newly freed slaves—and all Americans—with the rule of law—set forth in the grand phrasing of the equal protection, due process, and privileges or immunities clauses—to guarantee their equal rights against invidious governmental discrimination.

The 14th amendment does not supplant but reinforces the historical equitable powers of our courts to redress problems. It is not just the statutes Congress writes, but also the precedent and interpretations of the courts that make up the law. We have a strong common law tradition in that regard. And we have a powerful equitable tradition that ensures that fairness and justice are done.

We need judges who appreciate when and how to use their equitable powers. Judges who follow the law are empowered to enjoin illegal behavior, as the Supreme Court did in its historic series of orders enjoining the States and others from segregating schools on the

basis of race. This does not mean that our courts have the power to remedy every problem in America. They do not. In addition, they can abuse their power, as I think the Supreme Court did when it intervened in the Presidential election in 2000 and determined its outcome. But, we should never forget that it is through its equitable powers that the Supreme Court and most other courts in this country are able to do justice and to ensure fairness and equity. In that regard, I believe that the experience and wisdom Judge Sotomayor has gained from an extraordinary life will benefit all Americans.

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

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

#### MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent to proceed to a period of morning business with Senators allowed to speak for up to 10 minutes each.

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

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

#### COMMENDING DR. RICHARD BAKER

• Mr. BYRD. Mr. President, the U.S. Senate is an institution that reveres precedent, continuity, and tradition. Ours is an institution that prides itself on the great men and women who preceded us in this Chamber, and the role this institution has played in protecting our Nation, and in making our Nation a better place in which to live, work, and raise families. This is an institution that prides itself on its history.

Therefore, it is important that the Senate have an official historian, along with an Historical Office to document our history, and supervise the management of the records of the Senate as an institution, of Senate committees, and of individual Senators.

For the past 34 years, the Senate has been fortunate, perhaps I should say we have been blessed, to have Dr. Richard Baker as the Senate Historian. Unfortunately for us, he is now leaving his position as Senate Historian, so I must say farewell.

This is a most reluctant and sad farewell. While I am pleased that Dr. Baker will now have the time and opportunity to pursue other endeavors, such as spending more time with his wife and other family members, as well as

completing some manuscripts he has been working on, I must say that I am truly sorry to see him leave.

In the preface of volume two of my four-volume history of the Senate, I pointed out that, "This work in its present form would not have been possible without the assistance of the professionals within the Senate historical office," which, of course, was headed by Dr. Baker. My little acknowledgment hardly begins to convey the debt of my gratitude to him for his assistance in that project.

Researching and writing that four-volume history took more than a decade, and during that 10-year period, whenever I went to him for assistance, whether for help in research or writing or just thinking about how I wanted to present a certain idea, he always went above and beyond the call of duty. He was always there, ready and eager to help. I will never forget how, time after time, he would simply say, "Senator, I'll be delighted to help."

He was always ready to help, although he was responsible to 99 other Senators, and had so many other responsibilities and functions. Since the office was created in 1975, following the Watergate scandal, Dr. Baker, the Senate's first and only historian, has ensured that the history of the Senate is properly collected, categorized, maintained, and preserved. In addition, he has advised Senators on how to manage their personal papers while they are here, and how to preserve them once they leave office, and has advised Senate committees on the transfer of their records to the National Archives.

Charged with maintaining an objective and thorough record of the institution, his office has collected information on important Senate events, and traced the background and the evolution of Senate rules, precedents and countless activities.

In a multitude of ways, through the publications that his office issues, in talks with Senators and our staffs, and in private consultations, Dr. Baker has provided Senators with a better understanding and appreciation of the U.S. Senate, and its importance and its role under the Constitution. His office has reminded us on a daily basis of the majesty, the uniqueness, and the greatness of our institution.

His office has undertaken its very important work objectively and without political motivation or slant. It always remained a completely non-partisan office. As a result, Dr. Baker earned the respect as well as the gratitude of Senators on both sides of the aisle. This explains why, even with the many changes in the Senate during his tenure as Senate Historian, including changes in Senate leaders and party control, no one has even considered

any change in the Senate Historical Office.

Because of his careful and methodical work in collecting the history of the Senate, I can safely predict that the work of his office will be vital to future historians. Years from now, when most of us are long gone—from the Senate, that is—historians will be using the records his office has compiled and the documents his office has produced, to write their histories of the Senate—and for that we will all be grateful.

I congratulate and I thank Dr. Baker for the marvelous work he has done. I wish him and his lovely wife Pat nothing but much happiness, great success, and the best of health as they embark on the next phase of their lives.●

#### BUDGET SCOREKEEPING REPORT

Mr. CONRAD. Mr. President, I wish to submit to the Senate the second budget scorekeeping reports for the 2010 budget resolution. The reports, which cover fiscal years 2009 and 2010, were prepared by the Congressional Budget Office pursuant to section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended.

The reports show the effects of congressional action through July 31, 2009, and include the effects of legislation since I filed my last reports on June 25, 2009. The new legislation includes P.L. 111-42, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003, and for other purposes; H.R. 3114, an act to authorize the Director of the U.S. Patent and Trademark Office to use funds made available under the Trademark Act of 1946 for patent operations in order to avoid furloughs and reductions-in-force, and for other purposes, pending Presidential action; S. 1107, the Judicial Survivors Protection Act of 2009, pending Presidential action; and H.R. 3357, an act to restore sums to the highway trust fund, and for other purposes, pending Presidential action. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of S. Con. Res. 13, the 2010 budget resolution.

For 2009, the estimates show that current level spending is \$982 million below the level provided for in the budget resolution for budget authority and \$3.8 billion above it for outlays while current level revenues match the budget resolution level. For 2010, the estimates show that current level spending is \$1,205.9 billion below the level provided for in the budget resolution for budget authority and \$715.8 bil-

lion below it for outlays while current level revenues are \$19.2 billion above the budget resolution level.

I ask unanimous consent to have the letters and accompanying tables from CBO printed in the RECORD.

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, August 4, 2009.

Hon. KENT CONRAD,  
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report shows the effects of Congressional action on the fiscal year 2009 budget and is current through July 31, 2009. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010, as approved by the Senate and the House of Representatives.

Pursuant to section 403 of S. Con. Res. 13, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the enclosed current level report excludes these amounts (see footnote 2 of Table 2 of the report).

Since my last letter dated June 25, 2009, the Congress has cleared for the President's signature the following acts, which affect budget authority and outlays for fiscal year 2009:

An act to authorize the Director of the United States Patent and Trademark Office to use funds . . . and for other purposes (H.R. 3114); and

An act to restore sums to the Highway Trust Fund, and for other purposes (H.R. 3357).

Sincerely,

DOUGLAS W. ELMENDORF,  
Director.

Enclosure.

TABLE 1.—SENATE CURRENT LEVEL REPORT FOR SPENDING AND REVENUES FOR FISCAL YEAR 2009, AS OF JULY 31, 2009

	[In billions of dollars]		
	Budget resolution <sup>1</sup>	Current level <sup>2</sup> /Current	Current level over/under (—) resolution
<b>ON-BUDGET</b>			
Budget Authority .....	3,668.6	3,667.6	–1.0
Outlays .....	3,357.2	3,361.0	3.8
Revenues .....	1,532.6	1,532.6	0.0
<b>OFF-BUDGET</b>			
Social Security Outlays <sup>3</sup> .....	513.0	513.0	0.0
Social Security Revenues .....	653.1	653.1	0.0

<sup>1</sup> S. Con. Res. 13, the Concurrent Resolution on the Budget for Fiscal Year 2010, includes \$7.2 billion in budget authority and \$1.8 billion in outlays as a disaster allowance to recognize the potential cost of disasters; those funds will never be allocated to a committee. At the direction of the Senate Committee on the Budget, the budget resolution totals have been revised to exclude those amounts for purposes of enforcing current level.

<sup>2</sup> Current level is the estimated effect on revenues and spending of all legislation, excluding amounts designated as emergency requirements (see footnote 2 of table 2), that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations, even if the appropriations have not been made.

<sup>3</sup> Excludes administrative expenses of the Social Security Administration, which are off-budget, but are appropriated annually.

SOURCE: Congressional Budget Office.