

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