

paign and the United Negro College Fund. In 1995, he was honored as 1 of the top 10 outstanding young citizens of Columbus, OH.

Mr. Chairman, I recommend Jim Gwin and Monte Marbley without any reservation whatsoever and I believe both of them will make very, very fine Federal judges. They have the demonstrated ability and they have the temperament to be able to dispense justice fairly and impartially and I am confident the committee will agree with this assessment and I hope to see their very swift confirmation.

Thank you very much, Mr. Chairman.

Senator DEWINE. Senator Glenn, thank you for that fine statement.

Let me turn now to our colleague from the State of New York, Senator D'Amato.

**STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR  
FROM THE STATE OF NEW YORK**

Senator D'AMATO. Thank you very much, Mr. Chairman. Might I ask that as I introduce the nominees, they have an opportunity to come forward.

First, it is my pleasure on behalf of both myself and Senator Moynihan, who has submitted an extensive statement, and let me just read a little part of it. He said today is a great day for New York, and he talks to the honor and privilege it is for him to put forth and join with me in support of three of the wonderful nominees that will be before this committee.

I am going to ask Mr. Richard Casey, who is the President's nominee for the southern district. This nomination follows the nomination of Mr. Casey by President Bush. Not very often do we get one nominee nominated by two Presidents for the same job, two Presidents of different parties. I think that is a testimony to our Presidents, their administrations, the Justice Department, and to the caliber of the nominee.

Second, Judge Sotomayor, who comes before the committee for the second time. It was less than 5 years ago when the judge was nominated for the southern district, a position that she has held now for almost 5 years and she is now nominated to one of the most important courts in the land, the Courts of Appeals, Second Circuit.

Then Judge Charles Siragusa from Rochester, whose wife went to law school, coincidentally, with my son, Christopher. I think she helped him get through. [Laughter.]

By the way, I want you to know that this is not a payback, that, indeed, I have been privileged to support this nomination.

Judge Siragusa was brought to the attention of the President by Senator Moynihan. Were it not for Senator Moynihan feeling somewhat under the weather, as he has a heavy, heavy cold, he would be here. I ask that his statement be inserted in the record as if read.

Senator DEWINE. His statement will be made a part of the permanent record.

Senator Torricelli.

Senator TORRICELLI. Mr. Chairman, I had three statements from him. Senator D'Amato, do you have all three statements from Senator Moynihan?

Senator D'AMATO. Yes; all three of them, and that is why I wanted to characterize his statement as this being a great day for the judicial system of this country, but particularly as it relates to these three magnificent individuals.

[The prepared statements of Senator Moynihan follow:]

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN ON THE CONFIRMATION OF SONIA SOTOMAYOR FOR THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

It is my great honor today to support Sonia Sotomayor, a most exemplary candidate for the United States Court of Appeals for the Second Circuit.

In March of 1991, I had the pleasure of recommending Sonia Sotomayor to be a U.S. District Court Judge for the Southern District of New York, a position which she currently holds. Her career as a District Court Judge has been a distinguished one. She has presided over a number of high profile cases, including one which, to the delight of baseball fans everywhere, put an end to a bitter strike in 1995. During the five year tenure, her decisions have been reversed only six times—an outstanding record.

Judge Sotomayor is a former Assistant District Attorney with the New York County District Attorney's office and was a partner at the law firm of Pavia & Harcourt. She has considerable experience in criminal law from her work as a prosecutor, as well as commercial litigation from her days in private practice.

Her academic achievements are truly outstanding. She was graduated *summa cum laude* from Princeton University in 1976, where she was elected Phi Beta Kappa and was a co-winner of the M. Taylor Pyne Honor Prize, awarded to the graduating senior who has most clearly manifested excellent scholarship and effective support of the best interests of the University. She received her law degree from Yale University, where she was an Editor for the Yale Law Journal.

I believe that Judge Sotomayor's considerable accomplishments merit appointment to the United States Court of Appeals for the Second Circuit and I am confident that, upon confirmation, she will serve with high distinction.

PREPARED STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN ON THE CONFIRMATION OF CHARLES J. SIRAGUSA TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NEW YORK

I am pleased to present to the committee New York State Supreme Court Justice Charles Joseph Siragusa, nominated to be United States District Judge for the Western District of New York.

Might I note that my judicial screening panel interviewed more than twenty applicants to fill the vacancy that resulted when Judge Michael A. Telesca took senior status. There were, as one might have expected, many splendid candidates. However, Judge Charles J. Siragusa stood out.

Judge Siragusa has served with great distinction in the Seventh Judicial District. He was elected to the State Supreme Court in 1992, following fifteen years as a prosecutor with the Monroe County District Attorney's office. In that capacity he tried over 100 felonies and was involved in a number of significant criminal cases including the prosecution of Arthur J. Shawcross, a serial killer responsible for the deaths of eleven women. He received widespread recognition and praise for his work on that case.

A native of Rochester, Judge Siragusa was graduated from LeMoyne College in DeWitt, New York in 1969. He received his law degree from Albany Law School 1969 and has been a member of the New York State Bar since 1977.

Judge Charles J. Siragusa is a man of great intelligence and unwavering principle. I am confident that, upon confirmation, he will serve with honor and distinction.

tor in his own right is here today to lend his support to his friend and colleague, former U.S. attorney Otto Obermeyer.

Mr. Casey's impressive legal career began as an assistant U.S. attorney in the Southern District in the Criminal Division. He joined the special commission for the State of New York investigating public corruption, and for over three decades, he has been practicing with Brown and Wood in New York City. So it is my distinct pleasure to put forward this nominee.

As it relates to Justice Sotomayor, what can one say? But only in this country, the daughter of a humble working family has risen by way of her legal scholastic stewardship to the highest trial court in the Federal district, the premiere district, I might add with some prejudice, the Southern District of New York, where she has distinguished herself.

I predicted to this committee almost 5 years ago that Judge Sotomayor would be an exemplary, outstanding justice. She has demonstrated that repeatedly. She has shown compassion, wisdom, one of the great intellects on the court. Her experience both as a prosecutor, civil litigator, and Federal trial judge makes her an exceptionally qualified candidate for the second circuit. She is here with her beautiful mama, and I am wondering if we could have your mother stand. Mrs. Sotomayor, congratulations to you.

Last but not least is Judge Siragusa, and I want you to know that the judge comes with one of the most highly rated records as a great trial judge, sitting in the Supreme Court in Monroe County, having served as first assistant district attorney and thereafter being recognized by more groups than one could possibly mention in terms of his service to community and in terms of his legal stewardship.

Of all of his great accomplishments, I might add, is the fact that the judge graduated from a wonderful school, and you know that my chief and top administrative assistant put this in. He said, after graduating from a wonderful college, LeMoyne College in Syracuse. So I want you to know, judge, that Mike Kinsella has never forgotten that kinship and we share that with this committee today.

I recommend him to this committee, along with Senator Moynihan, recognizing that the President has chosen well and also that this district is one of the busiest districts, most overworked districts, in the country and they certainly could use the judge as quickly as possible.

Mr. Chairman, it is a great honor to recommend these three nominees and join with our senior Senator in presenting them to the committee today.

Senator DEWINE. Senator D'Amato, thank you very much for joining us.

[The prepared statements of Senator D'Amato follows:]

PREPARED STATEMENT OF SENATOR ALFONSE D'AMATO INTRODUCING SONIA SOTOMAYOR

I am pleased to join my colleague, Senator Moynihan in the introduction of Judge Sonia Sotomayor to the Senate Judiciary Committee.

Several years ago I introduced Judge Sotomayor to the Judiciary Committee when she was nominated to the federal bench in the Southern District of New York. I was

confident then that she would be a fine addition to the federal bench and, nearly 5 years later, I remain confident of her abilities and fairness as a federal judge.

After graduating from Princeton University, Summa Cum Laude, and then earning a law degree from Yale, where she served as editor of the Yale Law School Journal, Judge Sotomayor worked in the New York County District Attorney's Office. She joined the law firm of Pavia & Harcourt and made Partner in 1988. In private practice, Judge Sotomayor has had significant experience in general civil litigation including real estate, employment, contract, intellectual property law and export commodity trading.

Judge Sotomayor has exercised her civic duties as a Board Member of a number of organizations, including the Puerto Rican Legal Defense & Education Fund, the New York State Mortgage Agency and the New York City Campaign Finance Board.

During her term in the Southern District of New York, she received numerous honors including the "Distinguished Woman in the Field of Jurisprudence" by the Secretary of State of Puerto Rico, "Recognition of Outstanding Achievement and Dedication to the Latino Community" by the Latino American Law Student Association of Hofstra University School of Law and an Award for "Outstanding and Dedicated Service to the People of New York County" by the District Attorney's Office. Her "Lifetime Achievement Award" was presented to her by both the National Puerto Rican Coalition and the Hispanic National Bar Association.

Judge Sotomayor's experience as prosecutor, civil litigator, and federal district court judge makes her an exceptionally qualified candidate for the Second Circuit. Her extensive knowledge of the law and her experience deciding federal cases prepares her for the complex legal decisions that must be made by Circuit Court judges.

I thank the Committee for this opportunity to present Judge Sotomayor and urge the Committee's swift consideration of her nomination to the Second Circuit.

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PREPARED STATEMENT OF SENATOR ALFONSE D'AMATO INTRODUCING CHARLES JOSEPH SIRAGUSA

I am pleased to introduce Mr. Charles Siragusa to the Senate Judiciary Committee. As the Committee is aware, the President has nominated Judge Siragusa to the position of District Court Judge for the Western District of New York.

I would like to take a moment to recognize his family members who are present—his bride (as of August 30, 1997) Lisa Serio Siragusa and his new parents-in-law, Mr. and Mrs. James Serio. (In fact, Judge Siragusa would have been before the Committee weeks ago had he been able to get a plane back from his honeymoon.)

Judge Siragusa is from Rochester, New York and has been a life-long New Yorker. After graduating from a wonderful school, LeMoyne College in Syracuse, and working for several years as a teacher in a Rochester school, Judge Siragusa entered law school, and graduated from Albany Law School.

Judge Siragusa's impressive legal career began as an Assistant District Attorney with the Monroe County District Attorney's Office. He was promoted to First Assistant District Attorney and was employed in that position for eight of his fifteen years of service. Judge Siragusa's work at the prosecutor's office has been recognized by many groups, awarding him distinguishing honors including, among others, the Gannet Rochester Times Union's Person of the Year (1991), Honorary Deputy Chief of the Rochester Police Department (1991), Exemplary Service Award from the Monroe County Sheriff's Department (1991) and a Distinguished Service Award for his contribution to the Italian American Community-Counsel General of Italy (1996).

Since 1993, Judge Siragusa has served New York State as a State Supreme Court Judge in Rochester, deciding cases in a fair and equitable manner.

This nominee has also served in several community positions, volunteering his leadership and knowledge for people in need. He has sat on the Advisory Board for Rape Crisis and the Families and Friends of Murdered Children and Victims of Violence.

I thank the Committee for allowing me this opportunity to introduce Judge Siragusa and I look forward to swift action on his nomination.

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PREPARED STATEMENT OF SENATOR ALFONSE D'AMATO INTRODUCING RICHARD CONWAY CASEY

It is an honor for me to introduce Richard Casey to the members of the Senate Judiciary Committee—a highly regarded and respected lawyer, and a close personal friend, who President Bill Clinton has nominated to the Southern District of New York, echoing a prior endorsement by former President George Bush.

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I commend the Chairman for holding this confirmation hearing for judicial nominees this afternoon and, in particular, for including Judge Sonia Sotomayor among those being considered. Judge Sotomayor has been an outstanding Federal District Court Judge. She was nominated to fill a vacancy on the Second Circuit Court of Appeals last June. There are currently four vacancies among the 13 judgeships that constitute that distinguished court. The Chief Judge of Second Circuit recently testified that in light of these vacancies 80 percent of Second Circuit 3-judge panels over the next 12 months will have to be filed by visiting judges, since there are simply not enough Second Circuit judges to complete them and to hear all the cases that need attention. I hope that we will proceed without delay to consider the nomination of Judge Sonia Sotomayor to the Second Circuit and move promptly to fill the vacancies plaguing the Second Circuit.

I note that we are also considering the nomination of Ronald Gilman to the Sixth Circuit, which nomination was received in July 16; the District Court nominations of Charles Siragusa and Richard Casey to the Western and Southern Districts in New York, which nominations were both received in mid-July; the District Court nominations of James Gwin and Algenon Marbley to the Northern and Southern Districts in Ohio, which nominations were received in late July and the District Court nomination of Dale Kimball to the District of Utah, which nomination was received on September 5, less than one month ago. I expect that Senator Thompson and Senator DeWine are likewise appreciative of the Chairman's willingness to include these nominees in this hearing. The confirmation process for the vacancy in Utah is likely to set the standard for how promptly this Committee can proceed to review and report federal judgeship nominations. We all look forward to Mr. Kimball's speedy confirmation.

Unfortunately, this is only the sixth confirmation hearing for judicial nominees that the Committee has convened all year. By this time two years ago, the committee had held nine confirmation hearings involving 36 judicial nominees.

While I am encouraged that the Committee is today proceeding with a hearing on these six nominees, there remains no excuse for the Committee's delay in considering the nominations of such outstanding individuals as Professor William A. Fletcher, Judge James A. Beaty, Jr., Judge Richard A. Paez, Ms. M. Margaret McKeown, Ms. Ann L. Aiken, and Ms. Susan Oki Mollway, to name just a few of the outstanding nominees who have all been pending all year without so much as a hearing. Professor Fletcher and Ms. Mollway had both been favorably reported last year. Judge Paez and Ms. Aiken had hearings last year but have been passed over so far this year.

After this hearing, which is the first time this year the Committee has been willing to hold two hearings in any one calendar month, the Committee will still have pending before it more than 40 nominees in need of a hearing from among the 69 nominations sent to the Senate by the President during this Congress. From the first day of this session of Congress, this Committee has never had pending before it fewer than 20 judicial nominees for hearings. The Committee's backlog has now doubled and is more than 40. Many of these nominations were before us last Congress, during the election year slowdown, and have had to be re-nominated by the President. The vacancies for which they are nominated have not been filled but persist for periods now reaching years. For example, the Committee has 10 nominees who have been pending for more than a year, including five who have been pending since 1995. Thus, while I am delighted that we are moving more promptly with respect to the nominees being considered today, I remain concerned about the other vacancies and other nominees.

Some of those pending before the Committee had hearings or were reported favorably by the Committee last Congress but have been passed over so far this year as the vacancies for which they were nominated more than two years ago persist. The President has sent us 69 judicial nominations so far this year and is sending more each week. Over the last three weeks, apparently in anticipation of the President's radio address on the judicial vacancy crisis, the Senate doubled its confirmations from 9 to 18 in the course of 23 days. I expect even those who have spent so much time this year holding up the confirmations of federal judges were uncomfortable defending this Senate's record of having proceeded on only 9 of the 61 nominees received through August of this year. With the two confirmations last Friday, the Senate achieved the snail-like pace of confirming two judges a month over the course of this year, while still faced with almost 100 vacancies.

The Senate continues to lag well behind the pace established by Majority Leader Dole and Chairman Hatch in the 104th Congress. By this time two years ago, the

Senate had confirmed 36 federal judges, double the number achieved this year. For purposes of perspective, let us also recall that by the end of September 1992, during the last year of the President Bush's term, a Democratic majority in the Senate had confirmed 59 of the 72 nominees sent to us by a Republican President. This Senate is on pace to confirm less than one-third of a comparable number of nominations.

Those who delay or prevent the filling of these vacancies must understand that they are delaying or preventing the administration of justice. We can pass all the crime bills we want, but you cannot try the cases and incarcerate the guilty if you do not have judges. The mounting backlogs of civil and criminal cases in the dozens of emergency districts, in particular, are growing taller by the day. National Public Radio broadcast a series of reports all last week on the judicial crises and quoted the Chief Judge and U.S. Attorney from San Diego earlier this week to the effect that criminal matters are being affected.

I have spoken about the crisis being created by the vacancies that are being perpetuated on the Federal courts around the country. At the rate that we are going, we are not keeping up with attrition. When we adjourned last Congress there were 64 vacancies on the federal bench. After the confirmation of 18 judges in nine months, there has been a *net increase* of 30 vacancies, an *increase* of almost 50 percent in the number of federal judicial vacancies.

The Chief Justice of the Supreme Court has called the rising number of vacancies "the most immediate problem we face in the federal judiciary." Chairman Hatch has said that we can do better. I agree with them and add that we must do better. I have urged those who have been stalling the consideration of these fine women and men to reconsider their action and work with us to have the Committee and the Senate fulfill its constitutional responsibility.

This weekend the President of the United States devoted his national radio address to the threat being posed to our judicial system by those who are intent on partisan and ideological intimidation of federal judges. I ask that a copy of the President's Radio Address on Judicial Nominations from September 26, 1997, be included in the record.

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#### RADIO ADDRESS OF THE PRESIDENT TO THE NATION

The PRESIDENT: Good morning. I want to talk this morning about a very real threat to our judicial system. For more than 220 years our nation has remained young and strong by meeting new challenges in ways that renew our oldest values. Throughout our history our judiciary has given life and meaning to those values by upholding the laws and defending the rights they reflect, without regard for politics or political party.

That is the legacy of the judicial system our founders established, a legacy we recalled this Thursday on the 40th anniversary of the court-ordered desegregation of Little Rock Central High School.

But in the past 18 months this vital partnership has broken down as the Senate has refused to act on nomination after nomination. And in federal courthouses across America, almost 100 judges' benches are empty. In 1996, the Senate confirmed just 17 judges—that's the lowest election-year total in over 40 years.

This year I've already sent 70 nominations to Congress, but so far they've acted on less than 20. The result is a vacancy crisis in our courts that Supreme Court Chief Justice William Rehnquist warned could undermine our court's ability to fairly administer justice.

Meanwhile, our courts are clogged with a rising number of cases. An unprecedented number of civil cases are stalled, affecting the lives of tens of thousands of Americans—from the family seeking life insurance proceeds, to the senior citizen trying to collect Social Security benefits, to the small business protecting its right to compete. In our criminal courts nearly 16,000 cases are caught in limbo, while criminals on bail await punishment and victims await justice. Our sitting judges are overloaded and overworked, and our justice system is strained to the breaking point.

The Senate's failure to act on my nominations, or even to give many of my nominees a hearing, represents the worst of partisan politics. Under the pretense of preventing so-called judicial activism, they've taken aim at the very independence our founders sought to protect. The congressional leadership has actually threatened sitting judges with impeachment, merely because it disagrees with their judicial opinions. Under this politically motivated scrutiny, under ever-mounting caseloads, our judges must struggle to enforce the laws Congress passes and to do justice for us all.

We can't let partisan politics shut down our courts and gut our judicial system. I've worked hard to avoid that. And the people I've nominated for judgeships and

had confirmed have had the highest rating of well qualified from the American Bar Association of any President since these ratings have been kept.

So today I call upon the Senate to fulfill its constitutional duty to fill these vacancies. The intimidation, the delay, the shrill voices must stop so the unbroken legacy of our strong, independent judiciary can continue for generations to come. This age demands that we work together in bipartisan fashion—and the American people deserve no less, especially when it comes to enforcing their rights, enforcing the law, and protecting the Constitution.

Thanks for listening.

Senator DEWINE. We will now proceed with our circuit court nominees. I would ask our two nominees to come forward. We apologize for moving everyone around, but I think that we will proceed with two panels, starting with the circuit court nominees.

As you come up, I will just ask you to remain standing and take the oath. Do you swear the testimony you shall give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. GILMAN. I do.

Judge SOTOMAYOR. I do.

Senator DEWINE. Thank you both for joining us today. We will start with Mr. Gilman. Mr. Gilman, is there anyone in the audience who is with you that has not been introduced that you would like to introduce? This is sort of a family day here today, which is just fine with me.

#### TESTIMONY OF RONALD LEE GILMAN, OF TENNESSEE, TO BE U.S. CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

Mr. GILMAN. Well, I appreciate it, Mr. Chairman. My wife, I believe, has been introduced, and my daughter, Sherry. Also, I have my cousins from Chevy Chase, Marian and Leon Blum.

Senator DEWINE. Let us have them all stand up, or maybe they are standing up already.

Mr. GILMAN. And I have three friends of my daughter Sherry, Rhonda Rivens, Allison Issacman, and Stuart Frisch are all here, living in the Washington, DC area. Thank you very much.

#### QUESTIONING BY SENATOR DE WINE

Senator DEWINE. Mr. Gilman, all of us have interest in all of the nominees. I obviously have a special interest in your nomination, because you will be serving in the sixth circuit. The State of Ohio, of course, also happens to be part of the sixth circuit.

I notice in your resume that you have worked as an arbitrator-mediator for the American Arbitration Association. I think you also worked as a referee in the Dalkon shield litigation.

Mr. GILMAN. Yes, Mr. Chairman.

Senator DEWINE. You have written on this topic. I wonder if you could just comment for us as to whether you think our system uses mediation enough, both at the Federal level and at the State level.

Mr. GILMAN. My own experience, of course, is in the Tennessee courts and it is just coming of age. It was just this year, as a matter of fact, that the Tennessee Supreme Court adopted an official rule for mediation. The Western District of Tennessee just set up its program this year. I believe it is something that has been quite helpful. I know the sixth circuit several years ago set up a special

counsel's office to try to resolve disputes, even when they reached the court of appeals.

It seems to me a way of shortening the process of resolving civil cases and the statistics show that about 80 percent of cases that are mediated end up being resolved. So I think the parties are better off and the courts are better off because it unclogs the system a good bit.

Senator DEWINE. What is your opinion? Are we using this to its fullest potential in the Federal system?

Mr. GILMAN. It is not yet, in my own experience in the Western District of Tennessee, not being fully—but it is just in the process of being utilized. I expect, though, as I have talked to colleagues in the States of, for example, Texas and Florida, where it has been in existence for approximately 10 years, I understand it has gotten to the point in those States where you cannot go to trial until you first try mediation, and that is probably the direction that we are going in, which, in fact, I think is healthy, as particularly mediation is not binding and the parties are not obligated to settle, so if they have to go to court, they certainly have the opportunity and the legal right to do so. But on the other hand, many of these civil cases get resolved far earlier and at far less expense to the parties than if they had to go through traditional litigation.

Senator DEWINE. Mr. Gilman, during your tenure as president of the Tennessee Bar Association, the Association drafted a professional creed for Tennessee lawyers. Is there anything particularly unique about that professional creed that we should take note of?

Mr. GILMAN. Only that probably the thing that seems most important is the need for attorneys to disagree without being disagreeable. Unfortunately, it seems to be more and more as the profession grows where the lawyers do not have regular contact with each other on a repeated basis that you find less civility in the process and that then reflects on the cost to the litigants and the prolonging of the litigation and the need for lawyers to be able to cooperate, particularly on procedural matters that do not affect the substance of the case, but rather than just schedule a deposition date and then have problems, oh, I am going to be out of town, to talk to each other first and do things informally, where it does not affect the merits but yet it greatly aids in the case being processed through the system, and that is sort of the heart of the professionalism and the creed standards.

Senator DEWINE. Thank you.

Senator Thurmond.

#### QUESTIONING BY SENATOR THURMOND

Senator THURMOND. Thank you, Mr. Chairman. Judge Sotomayor, a former Supreme Court Justice has expressed his view of consitutional interpretation as follows, and I quote, "We look to the history of the time of framing of the Constitution and the intervening history of interpretation, but the ultimate question must be, what do the words and the text mean in our time?" Do you agree with that statement?

**TESTIMONY OF SONIA SOTOMAYOR, OF NEW YORK, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT**

Judge SOTOMAYOR. No, sir, not fully. I agree with the first two parts of it, that you look at the Constitution and what it meant at the time. The last suggests that I would be trying to change its meaning today, and no. I think the first two would inform what the last result should be, which is what did it mean then and how to apply new facts to that if the issue is new facts.

Senator THURMOND. Mr. Gilman.

Mr. GILMAN. Senator, I think that—

Senator THURMOND. Do you want me to repeat that, or do you remember it?

Mr. GILMAN. If you would, that would be fine.

Senator THURMOND. "We look to the history of the time of framing of the Constitution and the intervening history of interpretation, but the ultimate question must be, what do the words and the text mean in our time?"

Mr. GILMAN. I think that we need to look more at the text of the Constitution as it was written. The words are important and I think that if the Constitution is to have enduring meaning, those concepts obviously have to be applied to current circumstances. New events arise all the time, but I think the Constitution has got to be interpreted within the meaning of its text.

Senator THURMOND. Now, this question is for both of you. You have both had some involvement with the American Bar Association. Do you believe that the ABA should take positions on social and public policy issues such as abortion and aid to the homeless?

Mr. GILMAN. I would be glad to answer first. I was actually in the House of Delegates for the last 8 years. I am no longer in the House. My term ended in August of this year. I believe the ABA does a tremendous amount of good in areas like continuing legal education and professionalism and providing legal services. My own opinion is it should not, though, Senator, be involved in these issues that are primarily social and moral on which lawyers have no particular expertise, and I, in fact, have voted against those kind of resolutions when they have come up before the House.

Judge SOTOMAYOR. I have only been an inactive member of the bar. I joined it largely because of its educational importance. The American Bar Association regularly issues studies on the current state of the law and analysis of where the law is and what is happening in that area and I receive their publications and receive them for that purpose.

I am aware, obviously, as any reader of newspapers, that they have taken larger positions on social issues. I believe, like Mr. Gilman, that that perhaps would not be terribly helpful to them generally because it undermines their effectiveness on the central issues of their mission, which is the education of lawyers.

Senator THURMOND. This question is for you. It is a sad fact that many young people get involved in selling drugs. Based on your experience as a judge, why do you believe many young, poor youths become drug dealers?

Judge SOTOMAYOR. Senator, I wish I had the answer. If we had the answer, we would have a solution to one of the worst ravages on our society, drugs, and I do not. The reason why kids become

in drugs, as I have learned as a judge, vary enormously. Some, because of the lure of easy money, something that perhaps they should not be tempted by, but they are. Others, through their own self-ignorance about the damage they are doing to society and to themselves. I simply do not have one reason I can give you. The reasons are myriad and complex.

Senator THURMOND. Now another question. Do you oppose mandatory minimum sentences for drug offenses?

Judge SOTOMAYOR. No, sir.

Senator THURMOND. Another question. Some argue that the Federal sentencing guidelines do not provide enough flexibility for the sentencing judge and some even say they should be abolished. What is your view of the Federal sentencing guidelines, based on your experience with them?

Judge SOTOMAYOR. Thus far, sir, in the vast majority of cases, I have found the guidelines to be very helpful in giving some comfort to me as a judge that I am not arbitrarily imposing sentences based on my personal feelings. I believe that congressional sentiment, as reflected in the guidelines, is important because it permits me not to impose my personal views but to let the democracy impose the society's views.

With respect to your second point, Senator, the guidelines already provide mechanisms for departures in appropriate circumstances. In my experience, when there are principled and reasoned grounds to depart, the guidelines already permit it.

Now, there is obviously discussion going on, I am very well aware of it, of issues that the Senate is taking up on changes within the guidelines with respect to some kinds or others or with respect to some issues or other. I expect, as has happened during the last 10 years, that the Sentencing Guideline Commission will continue to take up those issues and revisit them when they are appropriate.

Senator THURMOND. Thank you both for your presence and your testimony.

Senator DEWINE. Senator Sessions.

#### QUESTIONING BY SENATOR SESSIONS

Senator SESSIONS. Mr. Gilman, I think you are correct. We do need to look for ways to develop alternatives to litigation and I think we can do a better job of settling controversies many times without the expense and the trauma of a full-fledged litigation. I am impressed that you have tried 37 cases going directly to judgment. I think that helps you bring something to the circuit that would be a kind of experience and understanding of what it is like to be in the pit, if I might, so I congratulate you for that.

I notice that you are an Eagle Scout. I will ask you a legal opinion. Do you feel that the Washington Zoo appropriately denied the Boy Scouts the right to have a court of honor there because the Scouts affirmed a belief in a superior being? Do you think that would be an appropriate decision for them to make under the Constitution?

Mr. GILMAN.-I do not have any immediate opinion on that. I was not familiar with the issue, Senator.

Senator SESSIONS. Apparently, that has been somewhat of a controversy and I think they have backed down now, but originally, that was the explanation that I understand they gave. I think sometimes we do need to respect differences. We need to respect people's religious views and, under the Constitution, the right to exercise those views. I do not think they should be discriminated against because of that.

With regard to the Constitution, I think you were pretty clear about that. Do you take the view, and would you not agree that the Constitution was fundamentally a contract between the people and its government. The first three words, "We the People," shows that it was a contract with the people and we should be very careful before we alter the meaning of a contract which the people ratified.

Mr. GILMAN. I fully agree with that, Senator.

Senator SESSIONS. Judge Sotomayor, would you agree that if we respect that Constitution, we have to enforce it, the good and bad parts?

Judge SOTOMAYOR. Absolutely, sir.

Senator SESSIONS. Even if we do not agree with a part of it?

Judge SOTOMAYOR. Absolutely.

Senator SESSIONS. And we really undermine and weaken that Constitution when we try to bend it to make it fit our contemporary feelings of the moment?

Judge SOTOMAYOR. Sir, I do not believe we should bend the Constitution under any circumstance. It says what it says. We should do honor to it.

Senator SESSIONS. And when we honor it as it is written, I think we strengthen it and make it available to protect us when any great threat to our liberty arises. I agree with you on that.

You mentioned the sentencing guidelines that Senator Thurmond asked you about. I did notice that you had, on occasion, stated that you disagree with the mandatory minimums. Is that correct? I have heard that.

Judge SOTOMAYOR. Sir, I do not ever remember saying that. There may have been situations in which in a particular set of facts I was unhappy with the results, but I do not believe that I have ever stated that I was unhappy with mandatory minimums as a policy question, no, sir.

Senator SESSIONS. I think you made a good point about the fact that, as a judge, it would be easier to sleep at night when you basically have a guideline to help you decide what that sentence should be rather than having it totally your burden from 0 to 20 years. I think, in some ways, it provides more uniformity and would be easier on a judge.

Judge SOTOMAYOR. Unquestionably, sir.

Senator SESSIONS. Do you find it that way?

Judge SOTOMAYOR. I have no idea how the judges before me ever set a consistent standard by which to sentence individuals. The guidelines do provide that framework in a very helpful way.

Senator SESSIONS. I have been in court when I thought a person might get probation and they got 15 years and vice versa. I think something is not healthy when you have that much flexibility.

So I do believe in the guidelines and I think in the long run they are helpful, but I do notice in one case that you issued a sentence

and you were very critical of the guidelines and said, "I hope that yours," referring to, I believe, Louis Gomez's case, "will be among the many that will convince our new President and Congress to change these minimums. The only statement I can make is this is one more example of an abomination being committed before our sight. You do not deserve this, sir. I am deeply sorry for you and your family, but the laws require me to sentence you to the 5-year minimum. I have no choice." Would you like to comment on that?

Judge SOTOMAYOR. Sir, that is a case where the facts and my personal feelings would have imposed a different result, but I did not. I imposed what the law required. If that is—I am sorry, the name of the case is?

Senator SESSIONS. I think it was Louis Gomez.

Judge SOTOMAYOR. Can you tell me how far back that case was, sir?

Senator DEWINE. Ninety-three.

Judge SOTOMAYOR. If I am not mistaken, sir, that was before the safety valve provisions that were passed by Congress and I believe, and I could be completely mistaken, because it has been a very long time and I have had many sentences since, that I may have been talking about the mandatory minimums more than the guidelines in a first offense—exactly what Congress later did, which was to say, in a first offense situation with someone who is willing to cooperate, as that gentleman was but had nothing to give and he has no history of violence and none was used, that you could depart from the guideline minimums in that regard, or lower them.

So I may be mistaken, sir, but I do believe that that was the situation and that Congress did do what I had earlier stated, which was to look at the factual situations and the impact and make changes when they are appropriate.

Senator SESSIONS. I think the Congress should do that and I do not disagree with the judge calling on Congress and suggesting that they should consider making any changes in the law. However, I do think that a judge, would you not agree, has to be careful in conducting themselves in a way that reflects respect for the law and the system?

Judge SOTOMAYOR. Absolutely, but—

Senator SESSIONS. A second guess about—

Judge SOTOMAYOR. Maybe I would not have called it an abomination, but I was thinking more of the factual outcome in that case. But no question that all I meant in the context of that case was the facts of that particular case, which Congress did come very shortly thereafter to change. So, obviously, my strong feelings were reflected sufficiently that Congress—not because of me, obviously, I doubt they knew who I was at the time and may not all know who I am now—but it was because of the hardships that were created in many situations that caused the safety valve provision to be passed.

I do agree, however, that great respect both for the law and for the process is terribly important, and as I underscored there, I do what the law requires and I think that is the greatest respect I could show for it.

Senator SESSIONS. It is important to follow the law, though, in cases like this, had you not, it would have been reversed. But I

think that perhaps had you expressed your criticism with the skill you have done today, it might be a little better conduct for a judge. I just think that, as you know, when you set a standard of guidelines, everybody is not going to fit perfectly within it and maybe you have a responsibility to help that defendant to understand that, though it may be unfortunate and you personally would not have given as much, that there is a rationale to this law.

Judge SOTOMAYOR. I have done that on numerous occasions, Senator, and there, it was very shortly at the time that I took the bench and I believe that since then, I have always been very careful, and I say it repeatedly at sentencing. When I am faced with emotionally difficult situations for defendants and their families, often, I get a lot of letters from heartbroken family members and at sentencing, I explain to them that as much as I understand their pain, that I have a greater obligation to society to follow the law in the way that it is set forth.

Senator SESSIONS. One more thing. I noticed a New York Times article that indicated that you had not applauded or not stood and applauded when Justice Thomas appeared at the second circuit conference. Are you aware of that?

Judge SOTOMAYOR. Well, I never did say that, sir. I took the fifth amendment when the New York Times asked me that because of the raging controversy at the time. I thought it made no sense for a prospective nominee to enter that kind of political fray by any statement, but I do not think I ever did, sir.

Senator SESSIONS. Well, that might explain it. The question in the article was, when Justice Clarence Thomas was introduced at the second circuit conference, the question of the reporter was, were you among those who sat on her hands rather than giving him a standing ovation, and you said, "I will take the Fifth."

Judge SOTOMAYOR. I explained to her clearly, as I do to you now, I did that because I thought as a—at that point, I was a confirmed nominee, and as a judge, that I should never be making political statements to the press or anyone else and I thought that was a politically charged question.

Senator SESSIONS. Let me just ask you, did you see fit to stand and applaud when he—

Judge SOTOMAYOR. He was my Supreme Court Justice of my circuit. I stood up.

Senator SESSIONS. Thank you very much, Mr. Chairman.

Senator DEWINE. Senator Ashcroft.

#### QUESTIONING BY SENATOR ASHCROFT

Senator ASHCROFT. Thank you, Mr. Chairman. I appreciate the opportunity.

Mr. GILMAN, I was interested in Senator Sessions' question about the Boy Scouts, who for a time were deprived of an opportunity to conduct a ceremony at the zoo because their organization espoused a belief in a supreme being. I was more interested in your response. You seemed to express some uncertainty about whether or not that should be a disabling characteristic of an organization. Do you think that organizations or groups of people that express a belief in a supreme being should be subject to differential access to public facilities or should have fewer rights than others?

Mr. GILMAN. Oh, absolutely not. No. I think I just expressed that I was not familiar with that situation, Senator. No. I certainly would be—frankly, sounded shock that that would be a basis for denying the Boy Scouts of America access to a public facility.

Senator ASHCROFT. I would hope that that would be the way you would approach the first amendment. Thank you for clarifying that. It was not something I knew anything about, but I have come to trust my colleague from Alabama.

Senator SESSIONS. I am relying on Eagle Scout Mike Enzi, who examined that recently.

Senator ASHCROFT. Judge Sotomayor, at one time, you were asked to rule on a case of a prisoner who was removed from his food service job in prison because he was an open homosexual. The plaintiff sued under the 1983 provisions, arguing that prison officials violated his constitutional rights by transferring him from the food service job. Prison officials argue that he was reassigned from his food service job to prevent disciplinary problems that could arise from having open homosexuals prepare food.

You denied the motion for summary judgment on procedural grounds, but you wrote that a person's sexual orientation, standing alone, does not reasonably, rationally, or self-evidently implicate mess hall security concerns. You ruled that prison officials did not present evidence that having homosexuals prepare food was a real threat.

I wonder, as a Federal judge, how much difference—

Judge SOTOMAYOR. Sir, may I just interrupt one moment, and I apologize greatly. It was not a motion for summary judgment, it was a motion to dismiss, which has a different standard. So I am somewhat surprised when you say that I criticized them for not producing evidence, because on a motion to dismiss, they do not produce evidence. I have to take the prisoner's allegations on their face. And I am sorry. I did not know if that affected the premise of your question.

Senator ASHCROFT. I am going to find out here in a minute. I guess what I really want to know is, what level of deference does a Federal judge owe to prison officials when trying to figure out what security risks there are in a prison?

Judge SOTOMAYOR. Enormous. It is a rational basis, which means any government interest, as long as there is a reasoned, rational basis for it and it is not arbitrary and capricious, the prison officials can do what they like.

In that particular case, sir, as I said, it was a motion under 12(b)(6)—I believe it is 12(b)(6). It could have been 12(b)(6) or (5). But under either, you take the plaintiff, in this case, the prisoner's facts as stated. You do not in any way pay attention to what the defendants are saying. You take just the pleadings, and the pleadings in that case alleged that there was—the plaintiff claimed that there were no security threats against overt homosexuals whatsoever, that he was not aware of any threats, none had been directed in prison.

The reason I know this case so well, Senator, is I just tried it last week and it turned out the jury found in favor of the prison guards because there was one fact there that was slightly different. The prison claimed that it never removed him from the food line.

That was a factual dispute between them. They say that they asked him to leave and that he consented to leave because of the threats that had been made. And, in fact, the jury credited the prison guards on that claim and held for the defendants.

Senator ASHCROFT. You say you just tried this case last week?

Judge SOTOMAYOR. Yes.

Senator ASHCROFT. Is this on a second appearance before you, then? Is this the *Holmes v. Artuse*?

Judge SOTOMAYOR. *Holmes v. Artuse*.

Senator ASHCROFT. I had that as a 1995 case. Am I mistaken?

Judge SOTOMAYOR. It was. What happened, sir, in that case, is if you notice my—because it was a motion to dismiss, I had invited pro bono counsel to take on the case. They came on it later, I do not remember exactly when, and we just got it to trial last week.

Senator ASHCROFT. What was the outcome of the case?

Judge SOTOMAYOR. As I said, the jury found for the defendants on the initial question, which is that the prison had not removed him without his consent, that he had, in fact, consented to the removal. But those are issues of fact that a judge cannot decide on paper, sir. Those are factual questions always for a jury. Did X or Y happen?

Senator ASHCROFT. I think those are evidentiary questions.

Judge SOTOMAYOR. Exactly. Exactly.

Senator ASHCROFT. I guess it is possible that a judge can decide evidentiary questions in the absence of a jury, though.

Judge SOTOMAYOR. Well, in some circumstances.

Senator ASHCROFT. Do you believe that there is a constitutional right to homosexual conduct by prisoners?

Judge SOTOMAYOR. No, sir; there is not. The case law is very clear about that. The only constitutional right that homosexuals have is the same constitutional right every citizen of the United States has, which is not to have government action taken against them arbitrarily and capriciously. The Supreme Court said that last term in *Evans v. Romer*. But outside of that, that is a basic constitutional right, not to them in particular, but to the world that constitutes the United States.

Senator ASHCROFT. Do you think there should be one, a special constitutional right?

Judge SOTOMAYOR. I do not think that we should be making constitutional rights any greater than they exist right now. The Constitution should be amended sparingly, sir, as it has been throughout our history. It is something that should be done only after much history and much thought.

Senator ASHCROFT. Do you agree with the amendments that have been made to date?

Judge SOTOMAYOR. Yes, sir. It is a document that I live by.

Senator ASHCROFT. I agree with them and I think it was good that they were amended, so I accept the process. So in your judgment, you would not read additional rights into the Constitution, like a right for homosexual conduct on the part of a prisoner?

Judge SOTOMAYOR. I cannot do it, sir. I cannot do it because it is so contrary to what I am as a lawyer and as a judge. The Constitution is what it is. We cannot read rights into them. They have been created for us.

Senator ASHCROFT. Are there any rights that are not protected by the Constitution that, as a matter of policy, you would like to see protected?

Judge SOTOMAYOR. I have not thought about that in a while, sir. No.

Senator ASHCROFT. My time is not up.

Judge SOTOMAYOR. I think I answered.

Senator ASHCROFT. In your opinion, do you think Congress has the right constitutionally to restrict the jurisdiction of lower Federal courts?

Judge SOTOMAYOR. You know, I have not examined that question in the longest time, but I cannot—I am not thinking—we were created by legislation of Congress, so I would think that if Congress created it, Congress can take it away. What you cannot do is take away that which the Constitution would give the courts. I think that was established in *Marbury v. Madison*. But absent that, not looking at the question or studying it in depth, I cannot give a better answer than that.

Senator ASHCROFT. I thank you, Chairman DeWine. Thank you.

Senator DEWINE. Judge, one of the great burdens of being a Federal district court judge must be to deal with prisons. I have a little familiarity with that. When I was Lieutenant Governor in Ohio, one of my jobs was to oversee our prison system—so I have a great deal of sympathy with judges who have to deal with the litigation, and there is a tremendous amount of litigation.

I say that and preface it by way of an apology because I am going to turn to one more prison question, if I could. I do not have a name for this case, but I suspect you will recall it. The date I have is 1994 and the issue was multicolored necklaces under the clothing of prisoners. Do you remember the—

Judge SOTOMAYOR. Yes, I do.

Senator DEWINE. So you remember the name of the case?

Judge SOTOMAYOR. It is my *Campos* case. It is better known as the Santorea beads case, or at least colloquially known that way, I should say.

Senator DEWINE. My understanding is that there was a dispute involving the wearing of these beads. Again, I am going to summarize and you can correct me and then tell me a little bit about the case. What I am trying to get at is how you reason as a judge.

My understanding is that prison officials argued that the beads were gang symbols that provoked fights. Contrary to that, I assume the argument is the religious freedom question. Do you want to walk through for me how you balance that; and ultimately, do we get back to what we were just talking about a minute ago, a factual question?

Judge SOTOMAYOR. In that case, sir, yes, prison officials had taken the position that the wearing of beads of colors were a symbol of gang membership. The prisoners, in turn, had asked the prison officials to permit them to wear the beads under their shirts as opposed to visibly. So the question for me was, was it rational for the Government not to permit that alternative when I was balancing a religious right against a security concern.

The Supreme Court in these cases has held that you must give heightened deference to prison security concerns and other con-

cerns but that prisoners do not lose fundamental rights, like religion, in prison, and so that unlike the standard rational basis review that is given—this is before the Religious Restoration Act, Senator, it is not a part of the jurisprudence tied to that—

Senator DEWINE. I understand.

Judge SOTOMAYOR. The Court has said that it is a slightly different review in that context, that the context there is that you must balance as a judge the security concerns with readily accessible alternatives. There is no bright line rule, but there, unlike the traditional rational basis test where you take as a presumption that the Government is doing what it thinks is right, that is a jury or a factfinder, you must weigh whether there are reasonable alternatives that could be just as effective.

My reasoning in that particular case, as the opinion stated, was that, in essence, hiding the beads was a reasonable alternative because it could not show. I do not know if in the opinion, but I know when I spoke to the prison officers later, I said to them, if it turns out that they are finding ways to evade that, then, obviously, you can take steps that are different. But until that was tried first, because it was a reasonable, inexpensive alternative and not terribly costly, that I felt that that was consistent with Supreme Court precedent on this area.

Senator DEWINE. I appreciate your explanation. Let me move to one final case, the 1993 *Gonzalez* case. Let me quote you in that case. "We understand that you," referring to the defendant, "were in part a victim of the economic necessities of our society, but unfortunately, there are laws that I must impose." Do you recall that case at all?

Judge SOTOMAYOR. Not much, sir.

Senator DEWINE. I understand that, because we sit up here and we can look at all your cases and you have to try on the spot to remember a case that may have occurred, in this case, 4 or 5 years ago, so—

Judge SOTOMAYOR. I have had two or three *Gonzalez* cases, and I cannot, meaning not the same defendant, but different ones—

Senator DEWINE. Let me give you the additional facts, and if it refreshes your memory, fine, and you can tell me about it. If it does not, we will just move on.

My understanding is that Gonzalez had been convicted of constructively possessing at least 600 grams of cocaine. He exercised dominion and control of an apartment in which the cocaine was found. He also stated he knew someone else was supposed to pick up the cocaine to sell it and distribute it to others. Do you recall anything about that?

Judge SOTOMAYOR. No.

Senator DEWINE. OK. That is fine.

Judge SOTOMAYOR. I am terribly embarrassed to say that that fact situation is also extraordinarily common—

Senator DEWINE. And I can understand that. I appreciate it. Thank you.

Any other questions from any members of the committee? Senator Sessions?

Senator SESSIONS. I would like to ask—

Judge SOTOMAYOR. If you would like to—I am sorry, Senator.

Senator DEWINE. No, go right ahead, Judge.

Judge SOTOMAYOR. If you have a question generally about something I might have said, perhaps I—

Senator DEWINE. I think it is difficult, frankly, if you do not recall. I think it would be unfair to you to ask you anything further about that, if you do not recall it.

Judge SOTOMAYOR. Thank you, sir.

Senator DEWINE. Senator Sessions.

Senator SESSIONS. You mentioned that you appointed pro bono counsel in this prison case?

Judge SOTOMAYOR. We do not appoint them, sir. There are no funds to appoint counsel in civil cases, as you may know. What we do is put the case on a pro bono list, which is made up of volunteer lawyers, and the volunteer lawyers decide whether they want to take the case or not. So if I used the word "appoint" the lawyer there, what it means, in essence, is putting them on the list so that they are eligible to get a lawyer from that volunteer list if a lawyer chooses to take the case.

Senator SESSIONS. Those turn out to be often very expensive processes. Sometimes it is easy for a judge to call in a lawyer and then charge him to take a case—I am not saying you did, but I have seen that before—but the State has the expense of going through this whole process, which went on from 1995 until, I guess, just last week. A lot of expense goes into that. I think we have got to learn to do a better job.

Judge SOTOMAYOR. Senator, if I may add, I put people on a pro bono list very, very rarely. I am on the pro se committee of our court. I do it only when, generally, after some discovery has happened so I can take a look at what is there and determine whether there is some substance to the claim, and not initially in all cases, and where there may be a complex legal question.

For example, in that case and a few others, in that *Holmes v. Artuse*, where I did that, the Supreme Court was just considering an equal protection claim that I mentioned might elucidate this area. In a case like that, where there is an unsettled legal question, and you can define that by something where the circuits are split or the Supreme Court is hearing an issue, then I will usually ask for a lawyer because then the questions are so complex that one needs some help in terms of making sure that you have thought of all the arguments. You want the lawyers and not a pro se prisoner to brief them.

Senator SESSIONS. Thank you.

Senator DEWINE. I want to thank both of you very much and thank you for your patience. I would just again state that there may be questions from members of the committee who were not here today. They will be submitted to you in writing. On the other hand, there may not be any written followup questions.

Also, I would invite you, if you want to elaborate on any answer and want to submit anything in writing to us, the committee would be more than happy to receive that.

Judge SOTOMAYOR. Senator, may I take just half a second just to introduce my mother again and my fiance?

Senator DEWINE. I think that is very appropriate.

Judge SOTOMAYOR. My mother, Celina Sotomayor, is here, and my fiance, Peter White, and respecting your time, I will not introduce individually all of the wonderful supportive friends I have here, other than my godson, who is a Boy Scout.

Senator DEWINE. Let us have the godson stand up, then.

Judge SOTOMAYOR. Tommy John Butler. He is the back standing up.

Senator DEWINE. He is standing up anyway. Thank you very much.

Mr. GILMAN. Thank you, Senator.

Judge SOTOMAYOR. Thank you.

Senator DEWINE. Thank you very much.

Let me just make kind of a personal comment. As the father of eight kids, I have rarely seen children so quiet. We have a room full of children here and I congratulate all of you for staying with us.

I would ask our next panel to come up. We are going to take about a 4- or 5-minute break, then ask you to come forward. We are going to start this at 15 after, so we will give you a couple-minutes break. After the break, we are going to plow right on through. Thank you very much.

[Recess.]

Senator DEWINE. Let me thank all of you for coming today and thank you also for your patience.

Let me just start from my left with you, Judge Siragusa. Judge, is there anyone in the room you want to introduce? We are going to go right down and do that to begin with because I do not want you leaving here and getting home and realizing there is someone who has not been introduced.

Judge SIRAGUSA. Mr. Chairman, at the risk of correcting a U.S. Senator, it was my wife, Lisa, who attended law school with Senator D'Amato's son, although I am sure of two things, that she is very flattered by his comment and she will never let me forget it. [Laughter.]

Judge SIRAGUSA. My wife, Lisa, is here, and my in-laws, James and Lucille Serio, and I thank them for coming. Thank you.

Senator DEWINE. Thank you very much.

Mr. Marbley.

Mr. MARBLEY. Yes, Senator. I have been fortunate. I have had some very good support throughout this process and I have some law school classmates who were with me back in the old days at Northwestern who came and I would like to have them acknowledged for the record, if I may. One is Thomas Preston, who is with the IRS, and then another friend of mine, Antoinette Cook Bush was here. I do not know whether she left. She was a former staffer and now partner at Skadin Arps. Then I have Ronald Sullivan, who was like an understudy but he is a Harvard lawyer now, so I cannot call him that anymore, and he is a Washington attorney now, so thank you very much.

Senator DEWINE. Very good.

Mr. Kimball.

Mr. KIMBALL. Thank you, Senator. I am grateful to have my wife, Rachel, here. She is a nurse and I hope I do not need her medical services during the hearing. Our six children and 16 grandchildren