

Sotomayor Hearing, Day 4 (07/16/2009), Parts 30 to 40

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SENATE-HRG-SOTOMAYOR -30

XXX of this round.

LEAHY: Whether it will be the last round or not will be up to the Republican side. But I would yield now to Senator Coburn, who's been waiting patiently.

Senator Coburn?

COBURN: Thank you, Mr. Chairman, and good morning again.

SOTOMAYOR: Good morning, sir.

COBURN: Yesterday, you -- when I was asking you about foreign law, you said I should read your speech, so I did. I read your speech. So I want to come back to that for a minute, because I want to ask you the same question I've asked the only other two Supreme Court nominees that have come before the committee while I've sat on this committee.

And I want to ask you the same question. I -- my first statements yesterday was asking about whether you disagreed with Alito and Thomas, and you said basically you agree. So on the basis of that agreement, will you affirm to this committee and the American public that, outside of where you are directed to do so through statute or through treaty, refrain from using foreign law in making the decisions that you make that affect this country and the opinions that you write?

SOTOMAYOR: I will not use foreign law to interpret the Constitution or American statutes. I will use American law, constitutional law to interpret those laws except in the situations where American law directs the court.

COBURN: Thank you.

I want to ask you, also, another question that I asked both Justice Alito and Justice Thomas, and it's a problem I have with my colleagues here in the Senate. You've written extensively about some of the ambiguity that is in law. Would it be your opinion that we could do a much better job, maybe much clearer about what our intent is, when we write statutes?

And feel free to offend us all, because we sorely need it.

(LAUGHTER)

(UNKNOWN): Senator Coburn, speak for yourself.

(LAUGHTER)

COBURN: I'm speaking for the vast majority of American people. We do not do a thorough job in making clear our intent or the background of our intent when we send it.

And I'll give you an example, then. Two hundred and twenty times in the bill that just came out of the HELP Committee, we gave full shrift to the Secretary of HHS to write all the regulations without our intent, none of our intent. So you're -- as you sit -- if you sit -- on the Supreme Court, I'm sure many of those are going to come before you without our intent, but with a bureaucracy's intent or an executive branch intent.

So the question I'm -- ask you, in your experience, since you've noted the ambiguity that's in the law, would you make it a recommendation to your friends you've now established, all 19 of us on the Judiciary Committee, that we might do a better job of being much more clear in what we intend?

SOTOMAYOR: It would be presumptuous of me to tell you how to do your job, but I do know, in my conversations virtually with all 89 senators, perhaps not all of them, but the vast majority of them, somewhere in the conversation, there was reference to their feelings like yours that a better job could be done by Congress in making its intent clearer.

I think that that's a question that senators think about, or at least the ones that I've spoken to. And I think that the process is always bettered for a court when Congress's intent is more clearly stated.

COBURN: Yes.

And there's no doubt in your mind that, if we were much more clear, guidance would be better given to the Supreme Court as conflicts over the statutes and laws come forward.

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XXX laws come forward.

SOTOMAYOR: When Congress's intent is clear, the court applies that clear intent.

COBURN: Thank you. I want to go back to a couple of other areas that we talked about. One is -- is some answers to questions that you gave to -- questions from Senator Hatch.

Senator Hatch asked you to describe your understanding of the test or standard that the Supreme Court uses to determine whether a right should be considered fundamental. Specifically, he noted that, when determining whether a right is fundamental, the Supreme Court determined whether the right is deeply rooted in our nation's history and tradition, that it is necessary to an Anglo-American regime of ordered liberty, or that it is an enduring American tradition.

You refused to answer him, asserting that you responded that you haven't examined that framework in a while to know if that language is precise or not. "I'm not suggesting it's not," you said, "Senator. I

just can't affirm that description."

Similarly, you refused to describe to me the test the court used to determine whether a right is a fundamental right.

But in contrast to that, when Senator Kaufman asked you to give a very detailed description of the factor the courts consider when determining the doctrines of stare decisis, you stated and went through a long litany of the items with which the court uses with which to determine stare decisis. And you gave a fairly detailed analysis of that process and the doctrine of stare decisis.

And so I ask you again: Why can't you give us your description of what you think the parameters are that the court uses to determine a fundamental right, in light of the 14th Amendment, incorporation right?

SOTOMAYOR: All right. That language has been used in certain cases respecting the question of the incorporation of certain amendments. The question of -- and the general framework will be used with respect to any consideration of -- of incorporation.

That wasn't, I thought, the question that was being asked of me. I don't remember that being the specific question. All I'm saying to you is that the framework has been discussed by the court. In jurisprudence, it's developed over the last hundred years, subsequent to its established precedents on the Second Circuit. One of the questions that the court will address, if it decides to address the incorporation of the Second Amendment, is whether, in those related areas, it will use or not use the doctrines or framework of that precedent. There may be arguments on one side why, on another side why not. What I'm trying to do is not prejudge an issue...

COBURN: Well, I'm not...

SOTOMAYOR: ... that is still pending before the court.

COBURN: ... asking you to prejudge the issue. I'm asking you under what basis -- what is the -- what are the steps and the considerations, not the details of the case -- but, in other words, you can describe that for us in terms of stare decisis, but you can't describe that for us in terms of a fundamental right.

And to me, that's concerning, because we should understand -- and that should be transparent to the people in this country, how that works.

SOTOMAYOR: Because that's the very issue the court's going to look at. The question of stare decisis is a general framework that one uses not in a particular context of a case I'm going to choose always to look at the outcome of the case in this way. It's...

COBURN: Your Honor, I understand that. If I can't get you to go there, I want to quit and go on to something else, if I can.

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XXX if I can.

COBURN: I also asked you yesterday -- I want you to understand. You were raised in the Bronx. I was born in Wyoming and raised in Oklahoma. They're really geographically and culturally. Different areas. And so I want you to understand why I'm spending so much time talking with you about the Second Amendment.

My constituents in Oklahoma understand, as do most Americans, that the right to own guns hangs in the balance. It may very well hang in the balance with your ascendancy to the Supreme Court. For us, one wrong vote on what we consider -- regardless of what you consider -- but what we consider a fundamental right could get the holding of Heller.

And I have some serious concerns on that issue. And I want to ask you a few more questions.

Yesterday, you said that, clearly, a constitutional right only works if you can enforce it. And I agree. Tell me how American citizens would be able to enforce their individual constitutional right to bear arms if you're holding that it does not apply to the states in your previous case as the appellate level becomes the law of the land?

SOTOMAYOR: The only statement I can start with is Maloney was decided on the basis of precedent. It was decided on precedent the Supreme Court, in Heller, recognized as its precedent. It was based on Second Circuit precedent that had interpreted the constitutional -- the Supreme Court's prior precedent. It may well be, may not be, that Senator Hatch was right that the old precedent should be distinguished in a certain way. Others may be right that it shouldn't.

That issue was not the one the Maloney court decided Maloney on. It decided it on the rule of law. It was the rule of law that led Judge Easterbrook in the Seventh Circuit decision to say not what we should be doing, it's what the Supreme Court should do is to reexamine a precedent that's directly on point.

I can assure your constituents that I have a completely open mind on this question. I do not close my mind to the fact and the understanding that there were developments after the Supreme Court's rulings on incorporation that will apply to this question or be considered. I have a completely open mind.

COBURN: Do you not consider it ironic that the majority of the debate about the 14th Amendment in this country was about the taking of guns from freed slaves? Is that not ironic that we now have some kind of conflict that we're going to say that the whole reason in the debate about the 14th Amendment originated from states taking away the rights of people's fundamental right to defend themselves? Is that not an irony to you?

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XXX irony to you?

SOTOMAYOR: Senator, would you want a judge or a nominee who came in here and said, I agree with you; this is unconstitutional before I had a case before me, before I had both sides discussing the issues with me, before I spent the time that the Supreme Court spent on the Heller decision -- and that decision was mighty long. It went through two years of history, did a very thorough analysis and discussion back and forth on the prior opinions of the court.

I don't know that that's a justice that I can be.

COBURN: Well...

SOTOMAYOR: I can only come to this...

COBURN: I agree with you, your honor. I don't want you to tell us how you're going to rule. But I asked you, isn't it ironic that in this country where our law comes from Blackstone forward, comes from English law, which our founding was perpetrated and carried out under this fundamental right, and that we have the 14th Amendment right, and that we have through legal -- what I would consider as a physician -- schizophrenia have decided that we can't decide whether this is a fundamental right.

I'll finish with that point, other than to note the Presser reference was to privilege and immunity, not due process.

SOTOMAYOR: I understand the importance of the right. It was recognized in Heller. And all I can continue to say, Senator, is I keep an open mind on the incorporation doctrine.

COBURN: I appreciate that, your honor. Thank you very much.

Let me go back to an area that I know is -- not everybody wants to hear about, but I think it's important. I asked you about where we were in terms of settled law on Roe and Doe, and -- and today I only want to focus on Roe and Doe, not Casey.

What was the state the law, say, in 1974, one year after Roe? What was -- where did we stand in that issue?

SOTOMAYOR: That women have the right to terminate their pregnancy in some situations without government regulation, and in others there would be permissible government regulation.

COBURN: Let me -- did any of the...

SOTOMAYOR: That's generally, because the court did look at other questions in terms of government regulation.

COBURN: Then let me ask you this. Did any of the laws of the 50 states regulating abortion survive the decision in Roe?

SOTOMAYOR: I don't know that I could answer that question, because I don't...

COBURN: OK. That's -- that's fair. They didn't. Was there any limit to the right to abortion either in the age of the child in the womb or the reasons for electing that surgery? And if so, what are those limits, according to Roe and Doe?

SOTOMAYOR: I -- Senator, I don't actually remember the court addressing that, because my studies have been on the undue burden test established in Casey. So my experience in this area or my knowledge, really, has been most particularly concentrated on the Casey standard, which is...

COBURN: I understand that.

SOTOMAYOR: ... what Casey did was change the Roe standard.

COBURN: Which goes back to why I asked you those two hypothetical -- not abstract, but hypothetical cases yesterday, the 28-week and a 38-week infant, for the -- the truth is, ever since January 22, 1973, you can have an abortion for any reason you want in this country. And even though Carhart II has now been ruled, that's -- a procedure that will eliminate that pregnancy is still legal and viable everywhere in this country.

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XXX in this country.

COBURN: And so what I was trying to draw out to you is, where do we stand in this country, when 80 percent of the rest of the world allows abortion only before 12 weeks, only before 12 weeks? And yet we allow it for any reason at any time for any inconvenience under the health-of-the-woman aspect.

And that's the other reason why I raised the viability because technology and the state's interest under the Supreme Court ruling starts with viability. That's when a state can have interest. It's guaranteed, and there's limited ability states can have to control that after that.

Is the Casey ruling, the undue burden ruling test, is that a policy choice? I know it's the supreme law of the land today, but in your mind, would that represent a policy choice?

SOTOMAYOR: I understood that that was the court's framework for addressing both the woman's right to terminate her pregnancy under the Constitution and the state's rights to legislate and regulate in areas within its jurisdiction. So it was the court's way of attempting to address those two interests.

COBURN: And Justice Ginsberg's not real happy with those tests and neither was -- neither are several other members on the court.

I want to end up. Our conversation, when we had a private conversation, I approached you about the

importance of the cases that you decide to take if you're on the court. Let me ask you a few questions, and I just want your opinion, and I'm not trying -- this is not to put you in any box, and if you think it is, please say so -- you're trying to put me in a box.

Do you believe that the court's abortion rulings have ended the national controversy over this issue?

SOTOMAYOR: No.

COBURN: OK. You don't have to name them, but do you think there are other similarly divisive issues that could be decided by the court in the future?

SOTOMAYOR: That, I can't answer.

COBURN: I don't want you to name any. I'm just saying, as you think through your mind, do you think there are other similarly divisive issues that are -- that we could have that would divide the country so remarkably?

You know, assisted suicide, euthanasia...

SOTOMAYOR: I can only answer what exists. People are very passionate about the issues they believe in. And so almost any issue could find an audience or a part of our population that's fervent about it.

COBURN: Which is a great answer because, on these divisive issues, is it better that the court decides them or elected representatives? If you find a preference, if you were king tomorrow and you said we're going to decide this either in the Supreme Court or make -- force Congress to make the decision, which would you think would be better for us?

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XXX better for us?

SOTOMAYOR: In the first instance, it's always Congress or a state passing regulation that the court is reviewing and determining whether it complies with constitutional limits. So it's not a choice of either or.

It's always Congress' first interest or the state legislators' first interest with the non-veto of a...

COBURN: I've got 30 seconds left. I want to ask you another question. You said just a minute ago people are passionate about what they believe in. And I've read your speeches and your publications, and I believe you're passionate. And I believe your speeches reflect your passions.

I look at myself. And when I give a speech, you know, I let it all go, what I really believe. I'm more measured -- some people wouldn't believe that -- up here, but I am more measured when I'm here, but when I give a speech.

And the problem I'm having is, I really see a dissonance about what you said outside of your jurisprudence. And the only thing -- the only -- the only ability we have to judge is what that passion has relayed in the past and your statements here, in combination with your judicial practice.

And so you are an admirable judge, an admirable woman. You have very high esteem in my eyes for both your accomplishments and your intellect. I have yet to decide where I'm going on this, because I am still deeply troubled because of the answers that I couldn't get in the 50 minutes that I've been able to ask and also deeply troubled because I believe what you've spoken to the law students, what you've spoken in your writings truly reflect your real passions, which I sometimes find run in conflict with what I think the Constitution has to say.

But I thank you for giving us such a cordial response, and I am mightily impressed.

Thank you, Mr. Chairman.

LEAHY: Thank you, Senator.

SOTOMAYOR: Thank you, Senator.

LEAHY: Senator Coburn, the Republican side has asked for a third round of those who want to have another 10 minutes, and so you will have a chance for more questions if you wish, because I'm trying to be fair to both sides, and I'll allow that.

Before we go to Senator Franken, though, and -- and while you're still here, Senator Coburn, I had reserved about 10 minutes of my time, just used a minute or so of it.

You spoke about the Second Amendment, which is a significant issue. And it is one people care about. You spoke about gun owners out west and your life in both Wyoming and in Oklahoma.

I look at that, of course, because both Wyoming and Oklahoma have more restrictive gun laws than my own state of Vermont. I could say that virtually every state has more restrictive gun laws than we do in Vermont.

I've been a gun owner since my early teens. I have -- I target shoot at my home in Vermont as a way of relaxation all the time, own numerous weapons, handguns and long guns.

I have not heard anything or read anything in the judge's writings or speeches that would indicate to me that in any way I have to worry that Vermont gun owners -- and many Vermonters are gun owners, it's just a way of life -- that that's going to change.

It's not going to change for me. It's not going to change for weapons my two sons, one a former Marine, own. And I will still be -- if Judge Sotomayor is on the Supreme Court, I expect I'll still be back at my home, and you're welcome any time you'd like to come, and go target shooting -- and go target shooting with me there.

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XXX with me there.

SESSIONS: Mr. Chairman, I would just say briefly that -- but it is a real pivotal time we are in, because if the decision by Judge Sotomayor becomes law, any city -- maybe not Vermont -- but any city or state in America could virtually, I believe, fully ban all firearms, and that's just the way we are, and you may -- we can discuss how much precedent had to bound you to reach that conclusion.

But this is not a little bitty issue. It's very important right now.

LEAHY: But states made laws that they've gone along. Vermont has decided not to have the restrictive laws that you have in Alabama, and -- but states have made up their mind.

Senator Franken?

FRANKEN: Thank you, Mr. Chairman.

I have a letter here from several former U.S. attorneys from the Southern District of New York, some of them Republican-appointed and supporting the Judge's confirmation, and I'll read a little bit from it.

She -- says that each had personal experience, including appearing before Judge Sotomayor. "She came to our cases without any apparent bias, probed counsel actively with insightful and, at times, tough questions, and demonstrated time and again that she not only listens but is often persuaded by counsel. In our matters, Judge Sotomayor's opinions reflect clear discipline and" -- you know, it's great. It's a great letter. And I would ask that it be entered into the record.

Sir, can I enter into the record?

LEAHY: (OFF-MIKE)

FRANKEN: OK. Thank you.

Thank you, Judge Sotomayor, for your patience and your terrific answers. We've heard a lot about your thoughts on specific cases and on principles of jurisprudence. I'd like to ask a much more general question, and one that I think is a really good question in job interviews. And that is, "Why do you want to be a Supreme Court justice?"

SOTOMAYOR: You're going to hate me for taking a few minutes, but can I tell you a story?

FRANKEN: I would love it.

SOTOMAYOR: Because it will explain who I am and why.

When Senator Moynihan first told me that he would consider sending my name to Senator D'Amato for consideration as a district court judge, he asked me to keep it quiet for a little bit of time, and I asked permission to tell my mom and Omar. He said, "Sure."

So, they were visiting, and I told them, and mom was very, very excited. And she then said, "How much more money are you going to earn?" And I stopped and I said, "I'm going to take a big pay cut."

Then, she stopped and she stopped, and she said, "Are you going to do as much foreign travel as you do now," because I was flying all over the U.S. and abroad as part of my private practice work. And I said, "Probably not, because I'm going to live in a courthouse in Lower Manhattan near where I used to work as a Manhattan D.A."

Now, the pause was a little longer, and she said, "OK." Then, she said, "Now, all the fascinating clients that you work with," and you may have heard yesterday I had some fairly well known clients, "You're going to be able to go traveling with them and with the new people you meet, right?" And I said, "No. Most of them are going to come before me as litigants to the cases I'm hearing, and I can't become friends with them."

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XXX friends with them."

SOTOMAYOR: Now the pause was really long, and she finally looked and she says, "Why do you want this job?" And Omar, who was sitting next to her, said, "Celina, you know your daughter"-- this is in Spanish -- "You know your daughter." This is in Spanish. "You know your daughter and her stuff with public service." That really has always been the answer.

Given who I am, my love of the law, my sense of importance about the rule of law, how central it is to the functioning of our society, how it sets us apart, as many senators have noted, from the rest of the world, have always created a passion in me, and that passion led me to want to be a -- a lawyer first and now to be a judge, because I can't think of any greater service that I can give to the country than to be permitted the privilege of being a justice of the Supreme Court.

FRANKEN: Thank you.

Well, I, for one, have been very impressed with you, Judge. And I certainly intend to support your confirmation for the court.

I guess there is another round. I thought I was going to be the only thing between you and the door, so I -- I -- I plan to just yield my -- all the rest of my time. But since I'm not, I'd like to ask you some -- no, I'm going to yield the rest of my time, if that's OK.

LEAHY: Thank you. Thank you very much, Senator Franken.

I will reserve my time. We'll have -- as Senator Sessions has asked us -- 10-minute rounds. I think they'll be primarily on the Republican side. I may speak again when they finish.

But we'll begin with you, Senator Sessions.

SESSIONS: Thank you. Thank you, Chairman Leahy.

I believe we've tried to meet our goal. I had a goal at the beginning that people would say this is one of the most fair and effective hearings we've ever had. I hope that has been the case.

It's a great issue, the choice of putting someone on the United States Supreme Court. And our nominee has a wonderful group of friends and a long and distinguished record, but a number of questions arose that are important.

The American people rightly are concerned that on important social issues that are not clearly stated in the Constitution, on important legal issues not clearly stated in our law, seem to be decided by unelected, lifetime-appointed courts. Those are big, big issues that we've discussed here today I hope in a way that's healthy and positive.

Judge, one thing I will ask you -- I asked Justice Roberts. I'm not sure how much good it did, because he came back asking for a pay raise the next week, I think. But can you live on that salary that you're paid? We have the largest deficit in the history of the republic. A lot of people are going to have to tighten their belts. And are you prepared to do so, also?

SOTOMAYOR: I've been living on the salary for 17 years, so I -- I will suffer through more of it. It is difficult for many judges. The pay question is a significant one for judges who haven't received pay raises -- I think it's more than 20 years now, if I'm not mistaken.

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XXX I'm not mistaken.

SESSIONS: Well, you're saying pay raises based on -- they're getting pay raises almost every year, really, and the cost of living and that kind of thing. There was a big pay raise about 20 years ago.

I think that it's about four times the average family income in America.

I hope that you can live on it. If not, you probably shouldn't take the job.

All judges, whether they're activists or not, if asked, are going to say they follow the law. They just

have a different view of the law; they just have a little -- a more looser interpretation of the law. So that's why we've pressed some of these issues. We want to determine as best we can just how tightly you believe you're bound by the law and how much flexibility you might think that you have as a judge to expand the law to suit, perhaps, a predilection in some policy area or another.

Attorney General Holder recently said that he thought we lacked courage in discussing the race issue, and I think that's something that we should take seriously. That was a valid comment.

In my opinion, we've had a higher level of discussion of that issue than -- since I've been in this committee. And I hope we've done it in a way that's correct, because this is so sensitive, and it's so important, and we need to get it right, and we must be fair to everybody.

We know that there are cases when people have been discriminated against. They are entitled to a remedy. And the Supreme Court has been quite clear that, when you can show a history of discrimination -- and we've had that not just in the South, but in the South -- the jurisprudence has developed that it's appropriate for a judge to have a remedy that would encourage a move forward to a better opportunity those who've been held back. So that's good.

But the Supreme Court has also said that this is a dangerous philosophy, because, when you do that, you've identified one racial group and you've given them a preference over another. So it can be done in a legitimate way that's remedial.

And we still have vestiges of discrimination still in our society, and there will still be needs for remedial remedies. But I do think, as Justice Roberts said, the best way to end discrimination is quit doing it, and a lot of our orders in court decisions are such that they benefit one race over another solely because of their race. And it has to be tied to a remedy.

And that's why the Supreme Court has made clear that, when you do that, it must meet the highest scrutiny. The courts are supposed to review that very carefully, and the language they use is strict scrutiny. You don't favor one group over another without meeting that high standard.

So I'm -- I'm glad we've begun to discuss that, and we'll have the firefighters, and they'll be able to express their view on it in a little bit.

And, Judge, let me just say, before I go forward, that you've done a good job. You've had a good humor. You've been direct in your answers, and we appreciate that.

I will not support and I don't think any member of this side will support a filibuster or any attempt to block a vote on your nomination. It's a very important vote. We all need to take our time and think it through and cast it honestly, as the occasion demands. But I look forward to you getting that vote before we recess in August.

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XXX recess in August.

SESSIONS: Let me discuss -- Judge, I'll just express this as we go forward.

In your handling of the Ricci case, I think it's fair to say that it was not handled in the regular order. You said in your opening statement that the "process of judging is enhanced when the arguments and concerns of the parties to the litigation are understood and acknowledged. That is why I generally structure my opinions by setting out what the law requires and then by explaining why a contrary position sympathetic or not is accepted or rejected. And that is how I seek to strengthen both the rule of law and faith in the impartiality of our justice system," close quote.

I think that's a good statement, but I think what the panel did in this case did not meet that standard. I think it was action -- I would conclude, fairly I think -- contrary to the rules of the Second Circuit. Rule 32.1 says that summary orders are only appropriate where, quote, "a decision is unanimous and each judge of the panel believes no jurisprudential purpose would be served by an opinion."

And your clerk of your court there to the New York Times said this order, quote, "ordinarily issues when determination of the case revolves around well-settled principles of law."

And I would note that it was not a per curiam opinion at first. It was a summary order, which is even less of an impactful decision than the other.

But I think the Supreme Court made clear and I think most Americans understand that the firefighters case was more than that. It was a -- it had tremendous jurisprudential impact. And I think you were wrong to attempt to use the summary order, which, because it was objected to within your circuit, which resulted in a pretty roaring debate and discussion, and that you went forward, that you then did it in a per curiam way, which at least gave it a little higher credence, but you did not write the -- an in-depth opinion at all. In fact, it was still a per curiam and short opinion.

And I understand, according to some of the writers, that Judge Sack, New York Times, I believe, quoted by Stuart Taylor in National Journal, that -- that he was the most reluctant to join the opinion. Judge Pooler was in the middle. And I guess it didn't reference the third judge, but apparently you were the third judge they were pushing for this kind of result.

Did you fail to show the courage that Attorney General Holder has asked us to show and discuss this issue openly with an in-depth opinion? And wouldn't we have been better off if the case had been handled in that fashion?

SOTOMAYOR: Sir, no, I didn't show a lack of courage. The court's decision was clear in both instances on the basis for the decision. It was a thorough, complete discussion of the issues as presented to the district court. The circuit court's ruling was clear in both instances.

No, I did not lack courage.

SESSIONS: Well, I don't think it was a great district court opinion, but it was -- so I would disagree on that.

But, Mr. Chairman, you have been fair to us throughout. I don't know that every member of our side would use the time that they are allotted, and -- but I'm glad that you're allowing them the opportunity

to do so.

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XXX to do so.

LEAHY: Well, thank you. Thank you for that compliment, Senator.

I -- and I should compliment Senator Specter here. When he was chairman, I was ranking member, and we had to Supreme Court nominations. We tried to work out a time to (inaudible) everybody, and we did, and it was -- we were told by both Republicans and Democrats that nobody had complained about the amount of time. I've tried to do the same thing. It is a lifetime appointment. Been very impressed, of course, with our nominee, and that's been obvious.

Incidentally, she was originally nominated by President George H.W. Bush, and then by President Bill Clinton, now by President Barack Obama. President Clinton nominated her to the Second Circuit, and I have a letter addressed to the members of the committee -- well, actually to you and I, Senator Sessions, from former President Clinton.

And he speaks of her being able to make a unique contribution through her experience as a prosecutor and trial judge to the bench and hopes that we will have a speedy confirmation for her. And I will put that in the record.

One of the things is in -- also in trying to make sure everybody gets balanced time, but we've had -- a lot of us have served as either chairmen and ranking member of this committee. We know how important that is. And I use that to yield to Senator Hatch, who has had also the problem of having to schedule how things go. And I'll yield to you.

But thank you, Jeff. I appreciate that.

HATCH: Well, thank you, Mr. Chairman, and I echo Jeff's statement here.

Judge, you've been great throughout this process, and I appreciate it. But I have some questions I'd like to ask, but I think you can answer yes or no. Of course, you can qualify if you feel like it. But I would like to get through these, because they're important questions to me and millions of other people that I represent.

Judge, from 1980 to 1992, you were actively involved with the Puerto Rican Legal Defense and Education Fund. That's a well-known civil rights organization in our country.

Among many other activities, this group files briefs in Supreme Court cases. You served in nearly a dozen different leadership positions there, including serving on and chairing the Litigation Committee.

The New York Times has described you as a, quote, "Top policymaker," unquote, with the group, and said that you would meet frequently with the legal staff, review the status of cases, and played an active role in the fund's litigation. Lawyers at the fund described you as, quote, "An involved and ardent supporter of their various legal efforts during your time with the group," unquote.

The Associated Press looked at documents from your service with the fund that showed that you were, quote, "Involved in making sure that the cases, the fund's cases, handled were in keeping with its mission statement and were having an impact."

And when Senator Gillibrand introduced you to this committee on Monday, she compared your leadership role with the fund to Justice Ruth Bader Ginsburg's participation in the ACLU Women's Rights project or Justice Thurgood Marshall's participation on behalf of the NAACP Legal Defense and Education Fund.

So let me ask you just about a few abortion cases in which the fund filed briefs. And I do believe you're going to answer these yes or no, but again, certainly qualify if you feel like it.

I'm not asking for your present views, either personal or legal, let's get that straight, on these issues, nor am I asking how you might rule on these issues in the future. I just want to make that clear.