

It is difficult to measure the vast impact he has had on the lives of every single American.

No, he was not right on every issue. His past was not without mistakes and errors in judgment. But it is a credit to Senator BYRD that, over the years, he gained the wisdom to recognize the moments when he strayed from the right path. It is the mark of greatness that he worked hard to overcome these errors and set America on course for a more prosperous, more inclusive future.

In recent years, Senator BYRD raised his voice against the unilateral invasion of Iraq.

He fought to preserve the filibuster, ensuring that the voice of the minority will always have a place in this august Chamber. He offered his support to a young Senator from Illinois named Barack Obama, as he fought to become the first African-American President of the United States.

Senator BYRD's historic tenure spanned 11 administrations, thousands of bills, and more than half a century. Thanks to his leadership, and the leadership of others he has inspired and mentored over the years, we live in a very different world today.

The year he launched his first campaign for the House of Representatives, gas cost about 25 cents a gallon, Winston Churchill was Prime Minister of the United Kingdom, and I was only 15 years old.

Senator BYRD has left an indelible mark on this Nation, and for that we will be forever grateful.

But today, as we remember and celebrate the contributions he has made, we also offer our condolences to his friends and loved ones in this time of mourning. We offer our sympathies to the people of West Virginia, who have lost a staunch advocate. We offer our fervent hope that a new generation of Americans, liberal and conservative; Black and White; from all races and religions and backgrounds.

We hope that a new generation will take up the legacy of patriotism and service that was left to us by Senator BYRD; that today's young people will inherit his fierce loyalty to the Constitution, and recognize their responsibility to confront every challenge we face.

So I ask my colleagues to join with me in honoring the life of our dear friend, Senator ROBERT BYRD.

And I call upon every American to learn from the example set by this son of the West Virginia hills who overcame poverty, lack of education, and the prejudice of his times to become one of the greatest public servants in our history.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that the cloture vote on the motion to proceed to H.R. 5297 be delayed to occur at 2:15 tomorrow, Tuesday, June 29; further that if cloture is invoked on the motion to proceed, then all postcloture time be considered yielded back, and the Senate then proceed to consideration of H.R. 5297; further, that as if in executive session, I ask unanimous consent the previous order with respect to the vote on confirmation of the nomination occur upon the use of time specified in the order governing consideration of the nomination with any other provision of the previous order remaining in effect, which would mean the vote would be at 5:30 tonight.

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

#### NOTIFYING THE HOUSE OF REPRESENTATIVES OF THE ELECTION OF A PRESIDENT PRO TEMPORE

Mr. REID. Mr. President, I have a resolution at the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 568) notifying the House of Representatives of the election of a President pro tempore.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid on the table.

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

The resolution (S. Res. 568) was agreed to, as follows:

S. RES. 568

*Resolved*, That the House of Representatives be notified of the election of the Honorable Daniel K. Inouye as President of the Senate pro tempore.

#### NOTIFYING THE PRESIDENT OF THE UNITED STATES OF THE ELECTION OF A PRESIDENT PRO TEMPORE

Mr. REID. I have a resolution at the desk.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 569) notifying the President of the United States of the election of a President pro tempore.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution be agreed to and

the motion to reconsider be laid on the table.

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

The resolution (S. Res. 569) was agreed to, as follows:

S. RES. 569

*Resolved*, That the President of the United States be notified of the election of the Honorable Daniel K. Inouye as President of the Senate pro tempore.

#### EXTENSION OF MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent that the Senate continue in morning business until 5 o'clock today.

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

Mr. REID. As I indicated, we will have one vote at 5:30 today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### NOMINATION OF ELENA KAGAN

Mr. McCONNELL. Madam President, the Judiciary Committee just wrapped up its hearings on the first day of the nomination of Elena Kagan to be an Associate Justice of the Supreme Court. These hearings will provide Senators on both sides of the aisle an opportunity to examine Ms. Kagan's record, legal experience, and background in light of the awesome responsibility that comes with a lifetime appointment on our Nation's highest Court. These hearings also provide an opportunity for the American people to focus their attention on a woman whom President Obama would like to see deciding cases on many of the most important and consequential issues we face as a people, long after the President's time in office is through.

In the near term, she would be ruling on the actions and policies of an administration of which she is now a member. So it is well worth asking why the President chose Ms. Kagan in the first place. We know the President and Ms. Kagan are former colleagues, and we know from the President himself that they are friends. We know he views her as an important member of his team and that he was especially pleased with her handling of the Citizens United case. The President is no doubt confident that Ms. Kagan shares his view that judges should be judged primarily on their ability to empathize with some over others; in other words, that she embraces the empathy standard he has talked about time and time again. But as I have said before, while empathy may be a very good quality in general, in a court of law it is only

good if you are lucky enough to be the guy the judge empathizes with. In those cases, it is the judge, not the law, who determines your fate.

In a nation such as ours, conceived from its very beginning as a nation not of men but of laws, this is a very dangerous road to go down. In the case of President Obama's previous nominee to the Supreme Court, Senators had many years of court cases to study in determining whether Sonia Sotomayor could be expected to treat everyone who came before her equally, just as Americans would expect in a judge and just as the judicial oath requires. In Elena Kagan's case, however, no such record exists. She has no experience as a judge, nor does she have much of a record as a legal practitioner. This is one of the reasons some have raised Ms. Kagan's experience as an issue.

It stands to reason that in order to know what kind of judge John Roberts or Sam Alito or Sonia Sotomayor would be, it was useful for Senators from both parties to look at the kind of judge these nominees had been. Since Ms. Kagan has not had the judicial or private practice experience common to most modern-day nominees, it is all the more important that we look more closely at the kind of experience she has had. A review of that experience reveals a woman who has spent much of her adult life not steeped in the practice of law but in the art of politics. To be more specific, when we look at Elena Kagan's resume, what we find is a woman who spent much of her adult life working to advance the goals of the Democratic Party.

As a young woman in college, she spent one summer working 14 hours a day for a liberal Democratic candidate for the Senate, and when her candidate lost, Ms. Kagan wrote that she believed the "world had gone mad, that liberalism was dead." If all we had were the comments of an impassioned young student, they would not be worth all that much. Few of us would want everything we wrote as a college student put up on an overhead projector.

Yet the trajectory of Ms. Kagan's career, the testimony of those who know her work well, and the recently released records of her time as a political adviser in the Clinton White House, suggest otherwise. Taken together, they suggest someone, as one news story put it, who long after college and even at the highest peaks of political influence was "driven and opinionated, with a flare for political tactics. . . ."

What else do we find in Ms. Kagan's resume? Well, she volunteered for the Dukakis Presidential campaign, working as an opposition researcher to defend the then-Governor of Massachusetts from attacks, and to look for ways to attack the Republican opposition. As an aide to President Clinton, Ms. Kagan did not serve mostly as an attorney, as she put it, but as a policy advocate, frequently looking for ways to advantage Democrats over Republicans.

If you believe the role of a judge is to be an impartial arbiter, these things cannot be ignored. Indeed, Members of both parties should appreciate the importance of confirming judges who are more interested in what the law says than in how the law can be used to advantage any one individual, party, or group. It is to no one's advantage if judges cannot be expected to rise above politics. As the chairman of the Judiciary Committee once put it:

No one should vote for somebody that's going to be a political apparatchik for either the Democratic Party or the Republican Party.

If there is one thing we can all agree on, it is that politics should end at the courtroom door.

So this is one of the key questions Senators will be looking to answer as these hearings proceed: Is someone who has done the kind of political work Ms. Kagan has done in her career more or less likely to restrain her political views if she were confirmed to a lifetime position on the country's highest Court?

Ms. Kagan has never made a secret of her professional aspirations. She has cultivated all the right friendships along the way, which is all well and good. No one ever rose to the heights of their profession by ignoring or upsetting the people who could get them there. But the question before us is whether Ms. Kagan's political views would be more or less constrained by the Constitution she swears to uphold once she reaches her goal.

Some of Ms. Kagan's supporters wish us to focus on her personality. They wish to point out she has a knack for making friends and for getting along well with different kinds of people in academia and among the political class. Once again, these are all fine qualities. No one has any doubt that Ms. Kagan is bright and personable and easy to get along with. But the Supreme Court is not a dinner club. If getting along in polite society were enough to put somebody on the Supreme Court, then we would not need confirmation hearings at all.

The goal here is not to determine whether we think someone will get along well with the other eight Justices; it is whether someone can be expected to be a neutral and independent arbiter of the law rather than a rubberstamp for any administration.

These are just some of the questions Senators will be asking and which Ms. Kagan will be expected to answer. No one should have any doubt that Republicans will treat Ms. Kagan with the same respect and professionalism they treated Judge Sotomayor. But questions must be answered and clear judgments must be made.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Madam President, I listen sometimes on the floor of the Senate and think there should be an Olympic Gold Medal for flexibility. It is interesting. For example, the flexibility would mean you are flexible enough to understand if a Republican President were to send down a nominee for the Supreme Court, and that person had never served as a judge previously, that would be a big advantage, and you would argue that would be something that is very salutary, that this person does not have judicial experience. Such was the case of Chief Justice Rehnquist, who did not have such experience. But because they were nominated by a Republican, it was a big advantage not to have judicial experience. Now a Democrat sends a nominee down and all of a sudden not having judicial experience is a liability. That is some flexibility, as far as I am concerned.

I met with the nominee, Ms. Kagan, and she is a great nominee. I am sure she is going to be confirmed easily in the Senate. I cannot believe the Judiciary Committee will have any opportunity to find very much wrong with this very credible, very high-qualified, well-qualified nominee. I did not come here to say that. But listening, again, as I do, I keep hearing the sound of sawing on the floor of the Senate, sawing away in a partisan manner. I simply wanted to observe that much of this has very little to do with substance and has everything to do with partisan politics that we hear on the floor of the Senate.

#### REMEMBERING SENATOR ROBERT C. BYRD

Mr. DORGAN. Madam President, today I rise on the floor of the Senate recognizing that we have white roses and a black drape adorning the desk of the late Senator ROBERT C. BYRD.

I had told him personally in the past that when my service is done I will have considered it a great privilege to have served in this body at the time when ROBERT BYRD served in this body. He was a lot of things. He was smart and tough and honest. Because he legislated and because of his career here, this is a better country, I am convinced of that.

All of us know Senator BYRD grew old here and became someone with health problems in recent years and yet even last week would come to this Chamber and cast his vote. In recent weeks I had several visits with him on the floor of the Senate.

All of us know as well that he loved his country. He, most of all, loved the Senate. He wrote a two-volume book of history on this body, and I say to anybody listening, if they enjoy history and enjoy knowing anything about the wonderful history of this body, read what Senator BYRD has written. It is extraordinary.