

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.

He loved the Constitution of the United States, and he never appeared on the floor of the Senate without having a copy of that Constitution in his suit pocket. He always had a copy of the Constitution with him.

He was also someone who did not just love the history of the Senate but loved Roman history. I recall sitting on the floor of the Senate many years ago when I first came to the Senate, listening to Senator BYRD talk about Roman history and the lessons in it for us. I recall him 1 day describing Hannibal crossing the Alps, with a conclusion of Hannibal, who had lost an eye—a one-eyed Carthaginian—on the plains, riding the last emaciated elephant before he was cornered, and taking a pill from a secret container in a ring and, rather than being captured, took his life.

I learned a lot listening to Senator BYRD on the floor of the Senate about a lot of things, including Roman history.

I also learned that he had one of the extraordinary memories you have ever known. And I thought today—because we are saddened but also mourning the loss of a friend and someone who served this country so well—I would read something he read on the floor of the Senate a couple of times, but he read the preamble to it and then recited it from memory, this great story. He did it because he was talking about a crime that occurred with respect to a dog, an animal. He talked a lot about his dog Billy, that he loved very much, and then he told us the story about a man named Vest, George G. Vest, who was to become a Senator later.

I will read what Senator BYRD said. He said:

At the turn of the century, George G. Vest delivered a deeply touching summation before the jury in the trial involving the killing of a dog, Old Drum. This occurred, I think, in 1869. There were two brothers-in-law, both of whom had fought in the Union Army. They lived in Johnson County, MO. One was named Leonidas Hornsby. The other was named Charles Burden.

Burden owned a dog, and he was named "Old Drum." He was a great hunting dog. Any time that dog barked one could know for sure that it was on the scent of a raccoon or other animal.

Leonidas Hornsby was a farmer who raised livestock and some of his calves and lambs were being killed by animals. He, therefore, swore to shoot any animal, any dog that appeared on his property.

One day there appeared on his property a hound. Someone said: "There's a dog out there in the yard." Hornsby said: "Shoot him."

The dog was killed. Charles Burden, the owner of the dog, was not the kind of man to take something like this lightly. He went to court.

This was Old Drum that was killed.

He won his case and was awarded \$25. Hornsby appealed, and, if I recall, on the appeal there was a reversal, whereupon the owner of the dog decided to employ the best lawyer that he could find in the area.

He employed a lawyer by the name of George Graham Vest. This lawyer gave a summation to the jury.

Senator BYRD recited the summation to the jury, and he did it without a note. It so reminded me of all the things I heard on the floor from Senator BYRD—yes, "The Ambulance Down in the Valley," a piece of lengthy prose without a note, and this without a note. He recited the summation to the jury by George Vest:

Gentlemen of the jury. The best friend a man has in the world may turn against him and become his enemy. His son or daughter whom he has reared with loving care may prove ungrateful. Those who are nearest and dearest to us, those whom we trust with our happiness and our good name, may become traitors to their faith. The money that a man has he may lose. It flies away from him perhaps when he needs it most. A man's reputation may be sacrificed in a moment of ill-considered action. The people who are prone to fall on their knees to do us honor when success is with us may be the first to throw the stone of malice when failure settles its cloud upon our heads. The one absolutely unselfish friend that a man can have in this selfish world, the one that never deserts him, the one that never proves ungrateful or treacherous, is the dog.

Gentlemen of the jury, a man's dog stands by him in prosperity and in poverty, in health and in sickness. He will sleep on the cold ground when the wintry winds blow and the snow drives fiercely, if only he can be near his master's side. He will kiss the hand that has no food to offer, he will lick the wounds and sores that come in encounter with the roughness of the world. He guards the sleep of his pauper master as if he were a prince.

When all other friends desert, he remains. When riches take wings and reputation falls to pieces, he is as constant in his love as the sun in its journey through the heavens. If fortune drives the master forth an outcast into the world, friendless and homeless, the faithful dog asks no higher privilege than that of accompanying him, to guard him against danger, to fight against his enemies. And when the last scene of all comes, and death takes his master in its embrace and his body is laid in the cold ground, no matter if all other friends pursue their way, there by his graveside will the noble dog be found, his head between his paws and his eyes sad but open, in alert watchfulness, faithful and true, even unto death.

Well, I read this summation to the jury in the case of Old Drum. But Senator BYRD recited it, as he did all of these similar circumstances, completely from memory.

Senator BYRD came to the floor, and he had a way with words that does not so much exist in the Senate anymore. I was sitting on the floor one day when another Senator came to the floor and said some very disparaging things about a President of the United States. They referred to the President in a way that was very disparaging. Senator BYRD did not like that, no matter who the President was. He came to the floor, and I am sure the person who was disparaging the President at that point never understood what had happened to him after Senator BYRD was done.

Mr. LEAHY. I remember that.

Mr. DORGAN. But Senator BYRD came to the floor, and he stood up, and he said this: I have served here long enough to see pygmies strut like Colossus. And he said, very like the fly in

Aesop's fable, sitting on an axle of a chariot, "My, what dust I do raise."

And it occurred to me he had just told someone what they had done was unbelievably foolish. I am not sure they understood it. But he wrapped it in such elegant language, as he always did.

In addition to serving at a time early on in his career when things were different, when there was perhaps less anger and less partisanship and committee chairmen and ranking members got together and decided what we needed to do for the country and did it together and came to the floor together, he was also, on the floor of the Senate, someone who knew the rules. He studied the rules because he understood that knowing the rules to this Chamber and how this process works was also important to be successful here.

Aside from that, he was a skillful legislator—very skillful. I watched him walk out of this Chamber from that door and very often stop as a bunch of Senate pages—high school kids who serve in the Senate—would gather around and then he would spend 15, 20 minutes telling them a story about the Senate, about the history of this great place. Too many of us walk back and forth around here, walking very briskly because we are late to go here or there and we are working on a lot of things. Senator BYRD always took time to talk to the pages—not just talk to them but tell them stories about what this great Senate has meant to this great country.

He also loved very much his late wife Erma and talked about her a lot to many of us.

He loved to play the fiddle. Early on when I came to the Senate, if you expressed even the least interest in music, he would get you down to his office and put a tape in his recording device to show us that he played the fiddle on the program "Hee Haw." He was so proud of that. He was someone who loved West Virginia, loved his country, and was a friend to all of us.

Today is a very sad day for those of us who see a desk that was occupied by a great U.S. Senator for so many decades, now occupied with a dozen roses and a black cloth, signifying that we have lost this great man. America has lost a great public servant. As one Member of the Senate, I say it has been a great privilege—my great privilege—to serve while Senator BYRD served in this body.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, I appreciate the words of the Senator from North Dakota. I recall sitting here on the floor, I tell my friend from North Dakota, who may well have been here at that time when Senator BYRD spoke of the pygmies strutting like a colossus. We both know who he meant and we both know the effect it had, and I thank him for reminding us of that.

I believe all of us who served with him and knew Senator BYRD were saddened by the news of his passing. No Senator came to care more about the Constitution or was a more effective defender of our constitutional government than the senior Senator from West Virginia. How many times did we see him reach into his jacket pocket and hold up the Constitution? He would say: This is what guides me.

I said in the Judiciary Committee today that many of us carry the Constitution and we can turn to it and read from it. Senator BYRD, if asked, would recite it verbatim from memory from page 1 straight through.

Senator BYRD was a Senator's Senator. During the time before he stopped playing, some of us would be at an event with him where he would play the fiddle. I recall one of those times when he played the fiddle, and now his successor as President pro tempore, Senator INOUE, played the piano, playing compositions only requiring one hand, and the two of them played in the caucus room now named after our late Senator Ted Kennedy. I heard him play in the happy times and the enjoyable times when he would try to bring Senators of both parties together and act like human beings.

I have also sat here with him when he reminded Senators of what the Constitution stood for, what our role was in the Constitution, when he spoke against going to war in Iraq without reason and without a declaration of war. It was one of the most powerful speeches I have heard him give. In over 36 years of serving with him, I heard many speeches.

Others will speak of his records for time served in the Senate and in Congress and the number of votes he cast. I think of him more as a mentor and a friend. I recall in the fall of 1974 becoming the Senator-elect and coming down here to talk to Senators and meeting with Senator BYRD and Senator Mansfield, Senator Mansfield being the leader, Senator BYRD the deputy leader. I recall one of the things he told me—both of them did: Always keep your word. ROBERT BYRD, ROBERT CARLYLE BYRD, if he gave you his word, you could go to the bank with it, but he would expect the same in return, as he should. That is something all of us should be reminded of and all of us should seek to achieve.

I was honored to sit near him on the Senate floor. Sitting near him in the same room we would engage in many discussions about the Senate and the rules or about the issues of the moment, or about our families. But now I sit here and I look at the flowers on his desk; I look at the drape on that desk. Over the many years I have had the privilege of representing the State of Vermont in this body, I have had to come on the floor of the Senate to see the traditional drapery and the flowers on either side of the aisle when we have lost dear colleagues; more than that, we have lost dear friends. Party is ir-

relevant. The friendship is what is important. It tugs at your heart and it tugs at your soul to see it. Walking in here and looking down the row where I sit and seeing that, I don't know when I have felt the tug so strong.

Marcelle and I were privileged to know BOB and Erma, his wonderful Erma. We would see them in the grocery store in Northern Virginia. Our wives would drive in together for Senate matters. I recall sitting with him in his office 1 day when we spoke of the death of his grandson and how it tore him apart to have lost him in an accident. He had his portrait in his office with a black drapery. We sat there—this man who could be so composed—we sat and held hands while he cried about his grandson. At that time I did not have the privilege of being a grandfather yet. Today, I think I can more fully understand what he went through. I remember the emotion and the strength of it. This was not just the person whom we saw often as the leader of the Senate, the chairman of a major committee, ready and in control, but a human being mourning somebody very dear to him.

He was a self-educated man. He learned much throughout his life, but then he had much to teach us all. It has been spoken about how he talked to the pages, but he would talk to anybody about his beloved Senate. He did more than that. He wrote the definitive history of the Senate. We all learned from him. He was a symbol of West Virginia. He was an accomplished legislator. He was an extraordinary American.

As a form of tribute I suspect Senator BYRD himself would appreciate—let me quote from Pericles' funeral oration from Thucydides History of the Peloponnesian War about the inherent strength of democracy. Senator BYRD was well familiar with this passage, and with its relevance to our Constitution and our form of government. I heard him use it before. Pericles is said to have spoken this:

Our form of government does not enter into rivalry with the institutions of others. Our government does not copy our neighbors, but is an example to them. It is true that we are called a democracy, for the administration is in the hands of the many and not of the few. But while there exists equal justice to all and alike in their private disputes, the claim of excellence is also recognized; and when a citizen is in any way distinguished, he is preferred to the public service, not as a matter of privilege, but as a reward of merit. Neither is poverty an obstacle, but a man may benefit his country whatever the obscurity of his condition.

Senator BYRD believed in this country. He believed that a youngster who had been adopted, who lived in a house without running water, who had to work for every single thing he obtained, could also rise to the highest positions in this body, a body he loved more than any other institution in our government, save one: the Constitution. The Constitution was his North Star and his lone star. It was what guided him.

Senator BYRD was such an extraordinary man of merit and grit and determination who loved his family. I recall him speaking of his grandchildren and great-grandchildren and he would proudly tell you about each of them. I remember even after he was a widower walking by and leaning over and saying, How are you? He would say, I am fine. How is Marcelle? And Senators from both sides of the aisle would come just to talk with him.

He drew strength from his deep faith. He took to heart his oath to support and defend the Constitution of the United States. The arc of his career in public service is an inspiration to us all, and it will inspire Americans of generations to come.

So, ROBERT, I say goodbye to you, my dear friend. I am not going to forget your friendship. I am not going to forget how you mentored me. But, especially, I will not forget, and I will always cherish even after I leave this body, your love of the Senate.

Senator BYRD, you are one of a kind. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, Members of the Senate are coming to the floor today from both sides of the aisle to acknowledge a moment in our history: the passing of ROBERT C. BYRD of West Virginia. Senator BYRD was the longest serving Senator in the history of the United States of America; a man who cast more than 18,000 votes; a man who served as majority leader, as chairman of the Appropriations Committee, as President pro tempore. He was, in fact, the Senate. He embodied the Senate in his life. It was his life.

Each of us, before we can become a Senator, takes a walk down this aisle and goes over to the side here where the Vice President of the United States swears us in. You put your hand on a Bible and you take an oath to uphold and defend the Constitution of the United States. You have to say that or you can't be a Senator. For many people, it is a formality. For ROBERT C. BYRD, it was a commitment, a life commitment to a document, the Constitution of the United States. He used to carry one in his pocket every day of his life. That is the kind of commitment most people will not make because they think: Well, maybe I will change my mind. For ROBERT C. BYRD, there was no changing his mind. He was committed to that Constitution.

For him, it was the North Star, it was the guiding light, it was the document that created this Nation, and he had sworn on his Bible to uphold and defend it, and he meant it. That is why he was so extraordinary.

He understood this Constitution because he understood what our government is about. He made a point of saying whenever a new President would come in, even a President of his own party: I will work with the President but as a Senator; I do not work for the President. We are equal to the President because we are an equal branch of

government. I will be glad to work with the President, but I have a responsibility as a Senator.

I remember so well in what I consider to be the finest hour I witnessed when it came to ROBERT C. BYRD. It was in October of 2002. It was a little over a year after 9/11. President George W. Bush was asking this Senate to vote for a resolution to invade Iraq. At the time, the pressure was building. Public sentiment was strongly in favor. Remember, there was talk about weapons of mass destruction, nuclear weapons, attacks on our allies and friends, even on the United States if we did not move, and move quickly. There was a prevailing growing sentiment to go to war.

But the Senator from West Virginia stood up, took out his Constitution, and said: This is a mistake. We should not be going to war.

He proceeded day after day, week after week, and month after month to stand there at that desk and lead the charge against the invasion of Iraq. It was an amazing display of his talent, which was prodigious, and his commitment to this Constitution as he saw it, and the fact that he was politically fearless.

I agreed with him on that issue. I was inspired by him on that issue. I can recall when my wife and I went to a Mass in Old St. Patrick's Church in Chicago, we were in the pew kneeling after communion. The church was quiet as people were returning from communion. An older fellow, whom I did not know, stood next to me in the aisle and looked down at me and said in a voice that could be heard across the church: Stick with BOB BYRD.

I came back and told him that story, and he just howled with laughter. I said: Senator BYRD, your reach is beyond West Virginia and beyond the Senate. It is in Chicago and across the country. What you are saying is resonating with a lot of people.

In the end, 23 people voted against that war—1 Republican and 22 Democrats. For a while, we were not popular. Over time I think that vote became more respected. ROBERT C. BYRD was our leader, and he used this Constitution as his inspiration.

He had such a sense of history. My favorite story related to about 16 or 18 years ago. I was a Member of the House of Representatives then on the Appropriations Committee, and ROBERT C. BYRD was the chairman of the Senate Appropriations Committee. He was a powerful man. We were supposed to meet downstairs in a conference committee, House and Senate, the conferees on both Appropriations Committees, on a transportation bill.

To no one's surprise and without any apology, Senator BYRD had quite a few West Virginia projects in that bill. Congressman FRANK WOLF of Virginia, a Republican, sat on the committee on the House side. When he looked at the West Virginia projects, he got upset. He said it publicly in the Washington

Post and other places that he had thought Senator BYRD had gone too far.

That was a pretty bold move by Congressman WOLF to make those statements in the minority about the chairman of the Senate Appropriations Committee. I could not wait for that conference committee because the two of them would literally be in the same room. In fact, it turned out to be even better. They were not even in the same room, but Senator BYRD's staff had reserved a chair directly across the table from Congressman WOLF.

The place was packed, waiting for this confrontation. Senator BYRD came in last and sat down very quietly in his chair and waited his turn. Congressman WOLF at some point asked for recognition and went after the Byrd West Virginia projects. FRANK is a passionate man. I served with him and agreed with him on many issues and disagreed on others. I respected him. He was passionate and committed and made it clear he thought this was unfair and unjust.

Senator BYRD, in his three-piece suit, sat across from him with hands on the table showing no emotion until after 15, 20 minutes, Congressman WOLF was exhausted by his protests about these Byrd projects, at which point Senator BYRD leaned over and said to whomever was presiding at that moment: May I speak? And they said: Of course.

Then he said—and I am going to paraphrase this. I think it is pretty close to what he said. There was no video camera there. I wish there had been. He said: In 1830, in January of 1830, January 19, 1830, which, if my memory serves me, was a Thursday, Daniel Webster and Mr. Hayne engaged in one of the most famous debates in American history. And off he went.

For the next 15 minutes, without a note, ROBERT C. BYRD tried to explain a very basic principle, and it was this: The Senate is created to give every State the same number of Senators—two Senators. The House is elected by popular vote. A small State such as West Virginia does not have much of a chance in the House of Representatives. It is small in a body of 435 Members. But in the Senate, every State, large and small—Virginia and West Virginia, Illinois, New York, California—each has two Senators.

The point Senator BYRD was making was: If I do not put the projects in in the Senate, we will never get them in in the House. That is what the Great Compromise, the Constitution, and the Senate and the House are all about.

It was a masterful presentation, which led to a compromise, one might expect, at the end of the day in which Senator BYRD did quite well for his State of West Virginia.

Years passed, and I was elected to this body. I came here and I saw Senator BYRD sitting in that seat one day, and I said: I want to tell you the most famous debate I can ever remember—there was not a camera in the room,

and I do not think anyone recorded it—I recalled his debate with FRANK WOLF.

I said: What I remember particularly is when you said: January 19, 1830, which was a Thursday, if I recall.

He said: Yes, I think it was a Thursday.

I said: I don't doubt it was a Thursday, but that little detail was amazing.

He kind of smiled. He did not say anything more. About an hour passed before the next rollcall, and he called me over to that desk. He had brought out a perpetual calendar and found January 19, 1830, and said: Mr. DURBIN, it was a Thursday.

I said: I didn't dispute it, Senator.

It was an example in my mind of a man who understood this Constitution, understood his use of that Constitution for his State—some would say he overused it, but he was fighting for his State every day he was here—his command of history and his command of the moment.

That was ROBERT C. BYRD. They do not make them like that anymore. There just are not many people in our generation who can even claim to be in that position.

I recall it and I remember very well another conversation I had with him. You see, history will show that in his early life, ROBERT C. BYRD was a member of the Ku Klux Klan. Many of his detractors and enemies would bring that up. He would be very open about it, not deny it but say that he had changed, and his votes reflected it.

I once said to him: Of all these thousands and thousands of votes you have cast, are there any you would like to do over?

Oh, yes, he said. Three. There was one for an Eisenhower administration appointee which I voted against, and I wish I voted for him. I think that was a mistake. And, he said, I was wrong on the civil rights legislation. I voted the wrong way in the 1960s. And, he said, I made a mistake and voted for the deregulation of the airline industry which cut off airline service to my State of West Virginia. Those were three.

If you have been in public life or even if you have been on this Earth a while, I think you have learned the value of redemption. ROBERT C. BYRD, in his early life, made a mistake with his membership in the Ku Klux Klan. He was open about it, and he demonstrated in his life that he was wrong and would do better in the future. That is redemption—political redemption—and, in my mind, it was total honesty.

There were so many other facets to this man too. Senator LEAHY talked about him playing the fiddle. That is the first time I ever saw him in person. He came to Springfield, IL, in 1976, when he was aspiring to run for President of the United States. He stood out from the rest of the crowd because he got up and said a few words about why he wanted to be President. Then he reached in and grabbed his fiddle and started playing it.

I tell you, it brought the house down. I don't remember who else was there. I think Jimmy Carter was there. But I do remember that BOB BYRD was there.

When I came to the Senate, I thought: I cannot wait to see or hear him play that fiddle again. I learned that after his grandson died in an automobile accident, he said: I will never touch it again, in memory of my grandson. That is the kind of family commitment he made as well. He would sing and occasionally have a Christmas party downstairs, and a few of us would be lucky enough to get invited. He would sing. He was a man who had gone through some life experiences and family experiences that were very meaningful to him.

I remember another day when I was on the floor of the Senate and there was a debate about the future of the National Endowment for the Arts. Senator Ashcroft of Missouri wanted to eliminate the National Endowment for the Arts and take away all its money. I stood up to debate him. I was brandnew here, not smart enough to know when to sit down and shut up. I started debating: I thought it was wrong, the arts are important, so forth.

Through the door comes BOB BYRD. He walks in here and asks if he could be recognized. Everything stopped when he had asked for recognition. They said: Of course.

He said: I want to tell you what music meant to me. I was an orphan, and I was raised in a loving family. Early in life, they went out and bought me a fiddle. Music has always been a big, important part of my life. Out of nowhere, this man gives this beautiful speech, and then he quotes poetry during the course of the speech.

As one can tell, all of us who served with him are great fans of ROBERT C. BYRD and what he meant to this Senate and what he meant to this Nation. West Virginia has lost a great servant who was so proud of his home State. Time and again that was always the bottom line for him: Is this going to be good for the future of my little State of West Virginia? He fought for them and put them on the map in some regards and some projects. He was respected by his colleagues because of the commitment to the people who honored him by allowing him to serve in the Senate.

There may be a debate as to whether there is a heaven. If there is a heaven and they have a table for the greats in the Senate, I would ask Daniel Webster to pull up a chair for ROBERT C. BYRD of West Virginia.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

#### NOMINATION OF GARY SCOTT FEINERMAN

Mr. BURRIS. Madam President, very shortly, we are going to be voting on a judicial nomination. I come before this body to bring my thoughts on that action.

As a lawyer, as a former attorney general for the State of Illinois, I consider it a great privilege to evaluate and confirm nominees to the bench. The constitutional power of advise and consent is one this Senate must exercise with discretion. It determines the makeup of our judicial branch and helps preserve the principle of equal justice under law.

That is why I have come to the floor today in support of Gary Scott Feinerman, President Obama's nominee to become a judge for the Northern District Court of Illinois.

Gary is an Illinois native and a graduate of both Yale and Stanford Universities. Over the past two decades, he has worked extensively in private practice—most recently for Sidley Austin, the respected Chicago law firm. He has served in the public sector, as well as a clerk to the U.S. Supreme Court and counsel at the Department of Justice.

From 2003 to 2007, he was Solicitor General of the State of Illinois. That is the person who argues the cases on behalf of the attorney general before the highest court, whether in Illinois or in the Nation. He held that position with distinction, proving his commitment to the highest ideals of fairness and justice.

Time and again over the years, Gary Feinerman has demonstrated his competence in the legal profession. His training is without equal. His experience is second to none. That is why I am proud to support his nomination to the Northern District Court of the State of Illinois.

We must demand the very best of our public officials, especially those who are entrusted with lifetime appointments on the Federal bench.

These fine men and women are charged with interpreting a body of law that is constantly evolving. They must navigate a treacherous landscape, full of gray areas, to arrive at sound legal truth. The answers are seldom easy, but I have confidence in Gary Feinerman's ability to rise to this challenge. At every stage, he has proven his considerable intellect and his passion for the law. I am proud to join the President in calling for his swift confirmation. I ask my colleagues to join me in pledging to afford the nominee with a fair and timely vote to confirm him to the bench.

This body has a crowded legislative calendar in the months ahead, but cases have piled up in the Northern District of Illinois, and every single day more judicial nominees await as vacancies remain unfilled. Even as we consider Mr. Feinerman's confirmation today, another Illinois nominee, Judge Sharon Johnson-Coleman, awaits a similar up-or-down vote. We need to rise to our constitutional duty and vote on these nominees. We must waste no more time in allowing this fine public servant to get to work.

Let's put our judges to work. Let's confirm Mr. Feinerman now.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, first, I wish to thank the Senator from Montana for allowing me to make some brief remarks, and then I will turn to him.

I join my colleague, Senator BURRIS, in asking my colleagues on both sides of the aisle to vote in just a few moments on the nomination of Gary Feinerman to be U.S. district court judge for the Northern District of Illinois.

Gary Feinerman is one of the brightest lights in the Chicago legal community. He is a partner at one of Chicago's oldest and largest law firms, Sidley Austin, where he specializes in litigation and appellate work. Before that, he served as Illinois' solicitor general and represented our State in many very valuable and important appeals. He won five "Best Brief" awards from the National Association of Attorneys General, and he has argued cases before the U.S. Supreme Court and the U.S. Court of Appeals for the Seventh Circuit, as well as the Illinois Supreme Court. Earlier in his career, Mr. Feinerman worked at the Chicago law firm of Mayer Brown and in the Justice Department's Office of Policy Development. He served as law clerk for Supreme Court Justice Anthony Kennedy and for Seventh Circuit Judge Joel Flaum. He is a leader in the Chicago legal community. He is the president of the Appellate Lawyers Association of our State and serves on Chicago's Constitutional Rights Foundation and the Midwest chapter of the Anti-Defamation League. He has also had a very active pro bono practice, which speaks well of his commitment as a professional.

Mr. Feinerman's academic record is also impressive. He graduated from Yale and Stanford Law School, where he finished second in his class. Not surprisingly, he received the highest possible rating of "well-qualified" from the American Bar Association for this commitment.

We currently have six—six—vacancies in the Northern District of Illinois. We need to fill them quickly so that we don't slow down the process of justice. I hope the Senate will confirm Gary Feinerman today and move very quickly to Justice Sharon Coleman, who is also on the calendar. Mr. Feinerman will be an excellent judge, and Judge Coleman will join him, with the blessing of the Senate, to start to fill these important vacancies.

Madam President, I yield the floor and again thank my colleague from Montana.

Mr. TESTER. Madam President, I ask unanimous consent to speak as in morning business for 5 minutes.

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