

tential to disrupt criminal procedures that already give ample protections against the misuse of scientific evidence.

Your old boss, Manhattan District Attorney Robert Morgenthau, called you a fearless and effective prosecutor. This is how he put it once in an interview: “We want people with good judgment because a lot of the job of a prosecutor is making decisions. I also want to see some signs of humility in anybody that I hire. We’re giving young lawyers a lot of power and we want to make sure that they’re going to use that power with good sense and without arrogance.”

These are among the very qualities I’m looking for in a Supreme Court Justice. I, too, am looking for a person with good judgment, someone with intellectual curiosity and independence, but who also understands that her judicial decisions affect real people.

With that, I think, comes the second essential quality: humility. I’m looking for a Justice who appreciates the awesome responsibility that she will be given, if confirmed, a Justice who understands the gravity of the office and who respects the very different roles that the Constitution provides for each of the three branches of government.

Finally, a good prosecutor knows that her job is to enforce the law without fear or favor; likewise, a Supreme Court Justice must interpret the law without fear or favor. And I believe your background and experiences, including your understanding of front-line law enforcement, will help you to always remember that the cases you hear involve real people with real problems who are looking for real remedies.

With excellent justice and excellent judgment, and a sense of humility, I believe you can be a Justice for all of us.

Thank you very much.

Chairman LEAHY. Thank you, Senator Klobuchar.

Next, Senator Kaufman.

**STATEMENT OF HON. EDWARD E. KAUFMAN, A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator KAUFMAN. Thank you, Mr. Chairman.

Welcome, Judge Sotomayor, and welcome to your family and friends. Congratulations on your nomination, and congratulations to your parents, who did such a good job on raising you to get to where you are today.

We are beginning—now beginning the end of an extraordinarily important process, to confirm a Supreme Court Justice of the United States. Short of voting to go to war, the Senate’s constitutional obligation to advise and consent on Supreme Court nominees is probably our most important responsibility.

Supreme Court Justices serve for life, and once the Senate confirms a nominee she is likely to be affecting the law and American lives much longer than many of the Senators who are here to confirm her. The advise-and-consent process for the nomination began after Justice Souter announced his intent to resign and President Obama consulted with members of both parties before making his selection.

It has continued since then with the help from extensive public debate among analysts and commentators, scholars and activists,

both in the traditional press and in the blogosphere. This public vetting process, while not always accurate or temperate, is extremely valuable both to the Senate and to the public.

One of the truly great benefits of a free society is our ability to delve deeply into an extensive public record. We have seen a wide-ranging discussion of the issues in which anyone—literally anyone—can help dissect and debate even the most minute legal issue and personal expressions of opinion.

In another less public part of the process, Judge, you had the wonderful experience of meeting with 90 Senators, over 90 percent—almost 90 percent of the Senate. These meetings are also extremely useful. I know I learned a great deal from my meeting and I'm confident my colleagues did as well.

For me, the critical criteria for judging a Supreme Court nominee are the following: a first-rate intellect; significant experience; unquestioned integrity; absolute commitment to the rule of law; unwavering dedication to being fair and open-minded; the ability to appreciate the impact of court decisions on the lives of ordinary people.

Based on what we've learned so far, you are truly an impressive nominee. I'm confident this hearing will give this Committee, and the rest of the Senate, the information we need to complete our constitutional duty. As Senators, I believe we each owe you a decision based on your record and your answers to our questions. That decision should not turn on empty code words like "judicial activist", or on charges of guilt by association, or on any litmus test. Instead, we should focus on your record and your responses and determine whether you have the qualities that will enable you to well serve all Americans and the rule of law on our Nation's highest court.

As my colleagues have already noted, your rise from humble beginnings to extraordinary academic and legal achievement is an inspiration to us all. I note that you would bring more Federal judicial experience to the Supreme Court than any Justice in over 100 years. You also have incredibly valuable practice experience not only as a prosecutor, but also a commercial litigator.

In terms of your judicial record, you appear to have been careful, thoughtful, and open-minded. In fact, what strikes me most about your record is that it seems to reveal no biases. You appear to take each case as it comes, without predilection, giving full consideration to the arguments of both sides before reaching a decision.

When Justice Souter announced his retirement in May, I suggested the court would benefit from a broader range of experience among its members. My concern at the time wasn't the relative lack of women, or racial, or ethnic minorities on our court, although that deficit is glaring. I was pointing to the fact that most of the current Justices, whether they be black or white, women or men, share roughly the same life experiences. I am heartened by what you bring to the court based on your upbringing, your story of achievement in the face of adversity, your professional experience as a prosecutor and commercial litigator, and yes, the prospect of your being the first Latina to sit on the high court.

Though the Supreme Court is not a representative body, we should hold as an ideal that it broadly reflect the citizens it serves.

Diversity shares many goals. Outside the courtroom, it better equips our institutions to understand more of the viewpoints and backgrounds that comprise our pluralistic society. Moreover, a growing body of social research suggests that groups with diverse experience and backgrounds come to the right outcome more often than do non-diverse groups which may be just as talented. I believe a diverse court will function better as well.

Another concern I have about the current Supreme Court is its handling of business cases. Too often it seems they disregard settled law and congressional policy choices. Based on my education, my experience and my inclination, I am not anti-business, but whether it is preempting State consumer protection laws, striking down punitive damage awards, restricting access to the courts, or overturning 96 years of pro-consumer antitrust law, today's court gives me the impression that in business cases the working majority is outcome-oriented and therefore too one-sided.

Given our current economic crisis and the failures of regulation and enforcement that led to that crisis, that bias is particularly troubling. Congress can, and will, enact a dramatically improved regulatory system. The President can, and will, make sure that relevant enforcement agencies are populated with smart, motivated, and effective agents.

But a Supreme Court, resistant to Federal Government involvement in the regulation of markets, could undermine those efforts. A judge or a court has to call the game the same way for all sides. Fundamental fairness requires that, in the courtroom, everyone comes to the plate with the same count of no balls and no strikes.

One of the aspirations of the American judicial system is that it is a place where the powerless have a chance for justice on a level playing field with the powerful. We need Justices on the Supreme Court who not only understand that aspiration, but also are committed to making it a reality.

Because of the importance of businesses cases before the Supreme Court, I plan to spend some time asking you about your experience as a commercial litigator, your handling of business cases as a trial judge and on the Court of Appeals, and your approach to business cases generally. From what I've seen of your record, you seem to recall these cases right down the middle without any bias or agenda. That is very important to me.

Very soon, those of us up here will be done talking and you will have the chance to testify and answer our questions. I look forward to your testimony. Thank you.

Chairman LEAHY. Thank you. Thank you very much, Mr. Kaufman.

Another former Chairman of this Committee, Senator Specter. I yield to you.

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM
THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman.

I join my colleagues, Judge Sotomayor, in welcoming you and your family here. I compliment the President for nominating an Hispanic woman. I think it was wrong for America to wait until 1967 to have an African-American, Justice Thurgood Marshall, on