

the District Court with television. You're replacing Justice Souter, who said that if TV cameras were to come to court they'd have to roll over his dead body. If you're confirmed, they won't have to roll over his dead body.

[Laughter].

Senator SPECTER. But the court decides all the cutting-edge questions of the day. The Senate is televised, the House is televised. A lot of people are fascinated by this hearing. I'd like to see the court televised; you can guess that.

Thank you very much, Judge Sotomayor.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you, Senator Specter.

I understand, the next statement will be by Senator Franken, and then we'll call forward the two people who are going to introduce you, and you, then, Judge, have a chance to say something.

Senator Franken has been waiting patiently all day, and I appreciate having you here. Please go ahead.

**STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM  
THE STATE OF MINNESOTA**

Senator FRANKEN. Thank you, Mr. Chairman. It's an incredible honor to be here, less than week into my term as a United States Senator. My first major responsibility is here at this historic confirmation hearing.

I am truly humbled to join the Judiciary Committee, which has played, and will continue to play, such an important role in overseeing our Nation's system of justice. Chairman Leahy, for several years now, I have admired your strength and integrity in leading this Committee. I am grateful for your warm welcome and the consideration that you've given me, sir, and I am honored to serve alongside of you.

Ranking Member Sessions, I want you to know that I plan to follow the example of my good friend and predecessor, Paul Wellstone, who was willing and ready to partner with his colleagues across the aisle to do the work of the American people. I look forward to working over the years with you and my other Republican colleagues in the Senate to improve the lives of all Americans.

To all the members of this Committee, I know that I have a lot to learn from each of you. Like so many private citizens, I have watched at least part of each and every Supreme Court confirmation hearing since they've been televised. And I would note that this is the first confirmation hearing that Senator Kennedy has not attended since 1965.

[Interruption from the audience.]

Chairman LEAHY. The Senate will suspend. Officers, please remove whoever is causing the disturbance.

Again, as Senator Sessions and I have said, this is a meeting of the United States Senate. We'll show respect to everybody who is here.

[Interruption from the audience.]

Chairman LEAHY. We'll show respect to everybody here, and certainly to Judge Sotomayor, to the Senators on both sides of the aisle, and we will have order in this room.

Senator SESSIONS. Thank you, Senator Leahy.

Chairman LEAHY. Thank you.

Senator Franken, please continue.

Senator FRANKEN. Thank you, Mr. Chairman.

What I was saying was, this is the first hearing since 1965 that Senator Kennedy has not been present, and I know he's off the Committee now, but we do miss his presence. These televised hearings over the years have taught Americans a lot about our Constitution and the role that the courts play in upholding and defending it. I look forward to listening to all of your questions and the issues that you and your constituents care about.

To Judge Sotomayor, welcome. Over the next few days I expect to learn from you as well. As has been said, you're the most experienced nominee to the Supreme Court in 100 years. After meeting you in my office last week, I know that you're not just an outstanding jurist, but an exceptional individual. And as others have said, your story is inspirational and one which all Americans should take great pride in, and I welcome your family as well.

As most of you know, this is my fifth day in office. That may mean I'm the most junior Senator, but it also means that I am the Senator who most recently took the oath of office. Last Tuesday, I swore to support and defend the Constitution of the United States and to bear true faith and allegiance to it. I take this oath very seriously as we consider your nomination, Judge Sotomayor.

I may not be a lawyer, but neither are the overwhelming majority of Americans. Yet all of us, regardless of our backgrounds and professions, have a huge stake in who sits on the Supreme Court, and we are profoundly affected by its decisions.

I hope to use my time over the next few days to raise issues that concern the people of Minnesota, and the people of this Nation. This hearing will help folks sitting in living rooms and offices in Winona, Duluth, and the Twin Cities to get a better idea of what the court is, what it does, and what it's supposed to do, and most importantly, how it affects the everyday lives of all Americans.

Justice Souter, whom you will replace if you are confirmed, once said, "The first lesson, simple as it is, is that whatever court we're in, whatever we're doing, at the end of our task some human being is going to be affected, some human life is going to be changed by what we do, and so we had better use every power of our minds and our hearts and our beings to get those rulings right." I believe Justice Souter had it right.

In the past months, I have spent a lot of time thinking about the court's impact on the lives of Americans, and reading and consulting with some of Minnesota's top legal minds. And I believe that the rights of Americans as citizens and voters are facing challenges on two separate fronts.

First, I believe that the position of the Congress, with respect to the courts and the executive, is in jeopardy. Even before I aspired to represent the people of Minnesota in the United States Senate, I believed that the framers made Congress the first branch of government for a reason. It answers most directly to the people and has the legitimacy to speak for the people in crafting laws to be carried out by the executive branch.

I am wary of judicial activism and I believe in judicial restraint. Except under the most exceptional circumstances, the judicial branch is designed to show deep deference to the Congress and not make policy by itself. Yet, looking at recent decisions on voting rights, campaign finance reform, and a number of other topics, it appears that appropriate deference may not have been shown in the past few years and there are ominous signs that judicial activism is on the rise in these areas.

I agree with Senator Feingold and with Senator Whitehouse. We hear a lot about judicial activism when politicians are running for office and when they talk about what kind of judge they want on the Supreme Court, but it seems that their definition of an activist judge is one who votes differently than they would like. For example, during the Rehnquist court, Justice Clarence Thomas voted to overturn Federal laws more than Justice Stevens and Justice Breyer combined.

Second, I am concerned that Americans are facing new barriers to defending their individual rights. The Supreme Court is the last court in the land where an individual is promised a level playing field and can seek to right a wrong: it is the last place an employee can go if he or she is discriminated against because of age, or gender, or color; it is the last place a small business owner can go to ensure free and fair competition in the market; it is the last place an investor can go to try to recover losses from security fraud; it is the last place a person can go to protect the free flow of information on the Internet; it is the last place a citizen can go to protect his or her vote; it is the last place where a woman can go to protect her reproductive health and rights.

Yet, from what I see on each of those fronts, for each of those rights, the past decade has made it a little bit harder for American citizens to defend themselves. As I said before, Judge, I'm here to learn from you. I want to learn what you think is the proper relationship between Congress and the courts, between Congress and the executive, I want to learn how you go about weighing the rights of the individual, the small consumer or business owner and more powerful interests, and I want to hear your views on judicial restraint and activism in the context of important issues like voting rights, open access to the Internet, and campaign finance reform. We're going to have a lot more time together, so I'm just going to start listening.

Thank you, Mr. Chairman.

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

What we're going to do, we're going to move a couple of chairs. Just stay there, please, Judge. We're going to have two people who will speak, each for five minutes, to introduce you. I will then administer the oath of the Committee to you.

[Laughter].

Chairman LEAHY. How about that? I'll administer the oath before the Committee and then we will hear your testimony.

So, going as we do by seniority, Senator Schumer, you are recognized for five minutes, and then Senator Gillibrand, you are recognized for five minutes.