

Senator Amy Klobuchar
Kavanaugh Confirmation Hearing Opening Statement
September 4, 2018

Welcome, Judge Kavanaugh. We welcome your family as well.

On its face, this may look like a normal confirmation hearing. It has all the trappings. All of us up here. All of the cameras out there. The statements. The questions. All of it looks normal.

But this is not a normal confirmation hearing. First, as we have debated this morning, we are being asked to give advice and consent when the Administration has not consented to give us over 100,000 documents, all of which detail a critical part of the Judge's career – the time he spent in the White House.

And—in addition—the majority party has not consented to make 189,000 of the documents we do have public.

As a former prosecutor, I know that no lawyer goes to court without reviewing the evidence and record. I know—and I know you know Judge Kavanaugh—that a good judge would not decide a case with only 7 percent of the key documents. A good judge would not allow a case to move forward if one side dropped 42,000 pages of documents on the other side the night before a case started. And yet, that is where we are today.

This isn't normal. It's an abdication of the role of the Senate and a disservice to the American people. And it is our duty to speak out.

Secondly, this nomination comes before us at a time when we are witnessing seismic shifts in our democracy. Foundational elements of our government – including the rule of law – have been challenged and undermined. Today, our democracy faces threats that would have seemed unbelievable not long ago.

Our intelligence agencies agree that a foreign adversary attempted to interfere in our most recent election, and it's happening again. In the words of our Director of National Intelligence, “the lights are blinking red.”

There is an extensive ongoing investigation by a special counsel. The President's private lawyer and campaign chairman have been found guilty of multiple federal crimes.

The man appointed as special counsel in this investigation – a man who has served with distinction under presidents from both parties – has been under siege. The dedicated public servants who work in our Justice Department, including the Attorney General and the FBI, have been subjected to repeated threats and have had their work politicized and their motives questioned.

In fact, just this past weekend, federal law enforcement was rebuked—was called out—by the President of the United States for simply doing their jobs—for prosecuting two white collar

defendants for two significant crimes—one, insider trading and one, campaign theft. Why? Because the defendants were friends and campaign supporters of the President.

As a former prosecutor, as someone who has seen federal law enforcement do their jobs, this is abhorrent to me.

And the last branch, the third branch of government – our courts and individual judges – have been under assault, not just by a solitary disappointed litigant, but by the President of the United States.

Our democracy is on trial. And for the pillars of our democracy and our Constitution to weather this storm, our nation’s highest Court must serve as a ballast in these turbulent times.

Our very institutions—and those nominated to protect these institutions—must be fair, impartial and unwavering in their commitment to truth and justice.

So today we will begin a hearing in which it is our duty to carry on the American constitutional tradition that John Adams stood up for many centuries ago—and that is to be, quote, “a government of laws and not of men.”

To me that means figuring out what your views are Judge on whether a President is above the law. It is a simple concept, something that we all learned in grade school, that no one is above the law. So I think it is a good place to start.

There were many highly credentialed nominees like yourself that could have been sitting before us today, but—to my colleagues—what concerns me is that during this critical juncture in history, the President has hand-picked a nominee to the Court with the most expansive view of Presidential power possible... a nominee who has actually written that a President—on his own—can declare laws unconstitutional.

Of course we are very pleased when a Judge submits an article to the University of Minnesota Law Review and even more so when that article receives so much national attention.

But the article you wrote that I’m referring to, Judge, raises so many troubling questions. Should a sitting President really never be the subject of an investigation? Should a sitting President never be questioned by a Special Counsel? Should a President really be given total authority to remove a special counsel?

In addition to the article, there are other pieces of this puzzle which demonstrate that the nominee before us has an incredibly broad view of a President’s executive power. Judge Kavanaugh you wrote, for instance, in *Seven Sky v. Holder* that a President can disregard a law passed by Congress if he deems it to be unconstitutional, even if a court has upheld it.

What would that mean when it comes to laws protecting the Special Counsel? What would that mean when it comes to women’s healthcare? The days of the divine right of kings ended with the

Magna Carta in 1215 and centuries later in the wake of the American Revolution, a check on the executive was a major foundation of our U.S. Constitution.

For it was James Madison—who may not have had a musical named after him but was a top scholar of his time—who wrote in Federalist 47: “The accumulation of all powers, legislative, executive, and judiciary, in the same hands... may justly be pronounced the very definition of tyranny.”

So what does that warning mean in real life terms today?

Here’s one example: it means whether people like Kelly Gregory—an Air Force veteran, mother, and business owner who is here from Tennessee, and who is living with stage four breast cancer—can afford medical treatment. At a time when the Administration is arguing that protections to ensure people with pre-existing conditions can’t be kicked off their health insurance are unconstitutional, we cannot—and should not—confirm a Justice who believes the President’s views alone carry the day.

One opinion I plan to ask about? When Judges appointed by presidents of both parties joined in upholding the Consumer Financial Protection Bureau, you Judge dissented. Your dissent concluded that the Bureau – an agency which has served us well in bringing back over 12 billion dollars to consumers for fraud from credit cards and loans to mortgages – was unconstitutional.

Or in another case, you wrote a dissent against the rules that protect net neutrality – rules that help all citizens and small businesses have an even playing field when it comes to accessing the internet.

Another example that seems mired in legalese but is critical for Americans? Antitrust law. In recent years a conservative majority on the Supreme Court has made it harder and harder to enforce the nation’s antitrust laws ruling in favor of consolidation and market dominance. Yet two of Judge Kavanaugh’s major antitrust opinions suggest that he would push the Court even further down this pro-merger path. We should have more competition and not less.

Now to go from my specific concerns and end on a higher plane: All the attacks on the rule of law and our justice system over the past year have made me—and I would guess some of my other colleagues on this committee—pause and think many times about why I decided to come to the Senate and get on this committee and why, much further back, I even decided to go into law in the first place.

Now I will tell you that not many girls in my high school class said they dreamed of being a lawyer. We had no lawyers in our family and my parents were both the first in their families to go to college.

But somehow my dad convinced me to spend a morning sitting in a courtroom watching a state court district judge handle a routine calendar of criminal cases. The judge took pleas, listened to arguments, and handed out misdemeanor sentences. It was certainly nothing glamorous like the work for the job you are nominated for Judge, but it was important just the same.

I realized that morning that behind each and every case—no matter how small—there was a story, a person. Each and every decision that judge made that day affected someone’s life. And I noticed how often he had to make gut decisions and try his best to take account of what his decisions would mean to that person.

This week I remembered that day and I remembered I had written an essay about it at the ripe old age of 17. I went back and looked at what I had said. It is something that I still believe today and....that is that “to be part of an imperfect system, to have a chance to better that system” was and is a cause worth fighting for...a job worth doing.

Our government is far from perfect Judge... nor is our legal system. But we are at a crossroads in our nation’s history where we must make a choice: are we going to dedicate ourselves to improving our democracy, improving our justice system or not?

The question we are being asked to address in this hearing is whether this judge ...at this time in our history...will administer the law “with equal justice” as it applies to all citizens—regardless of if they live in a poor neighborhood or a rich one, in a small house or the White House.

Our Country needs a Supreme Court Justice who will better our legal system—a Justice who will serve as a check and balance against the other branches ... who will stand up for the rule of law without consideration of politics or partisanship ... who will uphold our Constitution without fear or favor ... and who will work for the betterment of the great American experiment of democracy.

That’s what this hearing is about. Thank you.

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