

Senator MOSELEY-BRAUN [presiding]. The Judiciary Committee will reconvene.

Senator COHEN. It is quite a day for you, isn't it?

Senator MOSELEY-BRAUN. Tell me about it.

I understand that Senators Grassley, Specter, and Cohen have questions of the nominee.

Senator GRASSLEY. Madam Chairman, for the benefit of my colleagues, I only have questions that probably will take no more than 5 or 6 minutes.

Senator MOSELEY-BRAUN. And I understand—and perhaps I am wrong about this—that you were going to defer to Senator Specter to go first?

Senator GRASSLEY. Not if he will let me go first.

Senator SPECTER. How can I stop him?

Senator MOSELEY-BRAUN. Senator Grassley.

Senator GRASSLEY. Judge Ginsburg, I would like to discuss something with you that we probably would have discussed at our session tomorrow, but if we discussed it tomorrow, we still probably would have to discuss it again in open session anyway. So for the benefit of time, I would like to go ahead with something I have corresponded with you about. If I could put you at ease, recent correspondence that you have had with me basically satisfies me, but I want to go ahead and bring it out for the record, anyway.

I want to address your membership in the Woodmont Country Club. This committee has looked at the club membership of nominees to determine if the club engaged in any discrimination, and you know about our concern about that on this committee. At least for the last several years it has been a major concern. It is even something we debated as recently as our last two executive meetings.

You belonged to the Woodmont Country Club in Rockville for several years in the 1980's. You said you resigned after the club changed its by-laws and you felt it caused Judge Harry Edwards, the only black member of the club, to resign.

So I would like to explore not that aspect of it, but another aspect of this club membership, and that is the ethical implications of your membership at Woodmont. When you joined the club, you did not pay any initiation fee, is that correct?

Judge GINSBURG. That's correct, Senator. We paid dues, but not initiation for the period from August 1980 when I joined, until April 1983, when I resigned.

Senator GRASSLEY. OK. Then you have answered another question I was going to ask, and that was whether or not you paid dues or fees.

The next point is, do you know the amount of initiation fee that was paid by incoming members at that particular time?

Judge GINSBURG. No, but I do know what the dues were at the time that I resigned, I mean the initiation. The initiation at the time I resigned, which Judge Harry Edwards and I were asked to pay, I believe was \$25,000.

Senator GRASSLEY. I thank you for that very certain answer. There were press reports to the effect that it was somewhere between \$20,000 and \$25,000. It is my understanding today's initi-

ation fees would be about \$65,000. You could buy a good Iowa farm for that.

Anyway, moving on, the ABA Judicial Code of Conduct prohibits the acceptance of gifts, bequests, favor or loan, except in limited circumstances. Canon 4 requires that if a gift or favor meets one of the exemptions and is accepted, and it must be reported like compensation, if its value exceeds \$150. And at the time you joined, it is my understanding that that was \$100.

In addition, the Code of Judicial Conduct of the Judicial Conference contains a similar provision in canon 5. I know that you did not consider the waiver of the initiation fee to be a gift, because you only accepted special membership or at least a membership that was classified as special, as opposed to the regular. As you explained in your written response to me, that category of membership did not entitle you to voting privileges. In addition, you could not pass on your membership to your children.

Other than these two distinctions, were there any other restrictions to your special membership?

Judge GINSBURG. It was terminable at will, as I understand it. My membership was a membership category that was terminable by the club at any time.

Senator GRASSLEY. So that was an additional restriction.

Judge GINSBURG. Those three, as I understand it: no right to vote; no right to obtain any membership for my children; and the membership was terminable by the club at any time.

Senator GRASSLEY. You did have a good reason for resigning, but if there had not been that reason for resigning, and considering the fact that you could expect to be on the Court for life, you could have had membership in the club for the rest of your life, as long as you were still a sitting judge, presumably?

Judge GINSBURG. The membership was terminable by the club at any time, as it in fact was. We were not given notice. We didn't know in advance, because we weren't voting members. Both Judge Edwards and I were informed that our special membership would be terminated, and that is what led to my resignation.

Senator GRASSLEY. I don't argue with that and I am only trying to make the point that, at the time you had it and until they notified you that you would have to pay an initiation fee to stay in, that special membership could have been, by the waiving of the initiation fee, could have been good for the rest of your life.

Judge GINSBURG. It could have been for the term of my Government service.

Senator GRASSLEY. Yes. I think I will go on.

You had full use of club facilities, but a waiver of initiation fees. At the time you received this benefit, you did not consider it a gift or favor. But in a letter you wrote to me dated July 21, and which I received today, you indicated that you should have regarded this as a gift and disclosed it, as required under the code of conduct. I am glad to hear that you acknowledge that the waiver of the initiation fee should have been reported.

I would like to have that letter placed in the record, Madam Chairman.

Senator MOSELEY-BRAUN. Without objection.

[The letter referred to and responses of Judge Ginsburg to questions of committee members follow:]

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, DC 20001

RUTH BADER GINSBURG
UNITED STATES CIRCUIT JUDGE

July 21, 1993

The Honorable Charles E. Grassley
135 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Grassley:

In my July 16 response to your question, did I regard Woodmont Country Club's special government membership category -- in which I participated from August 1980 to April 1983 -- as conveying a gift to me, I said no. My responses to your question pointed out that regular membership, which required the payment of initiation fee as well as annual dues, was voting and permanent and carried with it the significant right to obtain memberships for the member's children. Special membership required payment of dues but not the payment of initiation fee; a special membership was terminable by the Club at any time, terminating automatically when government service ended, and included no right to vote or to obtain any membership for children of the special member.

I did not regard special membership as a gift from Woodmont, because the lower cost of special membership, embodied in the absence of an initiation fee, reflected the lower level of privileges and rights that inhered in the special membership class.

Nonetheless, following preparation of my response to your questions, I inquired through the White House counsel's office of the Administrative Office of the United States Courts concerning applicable Judicial Branch regulation, if any, of a judge's acceptance of a social club special membership. In a response from the Administrative Office General Counsel I have learned these things.

First, neither of the primary sources of such regulation -- the regulations of the Judicial Conference concerning gifts made under Title III of the Ethics in Government Act of 1978 as amended, and the Code of Conduct for United States Judges, as adopted by the Judicial Conference -- expressly addresses the question at hand.

Second, in 1975 in Advisory Opinion No. 47 the Judicial Conference Advisory Committee considered a factual variant of the question at hand. The 1975 case asked the propriety of a judge's accepting a complimentary country club membership under which the judge would not be required to pay either dues or an initiation fee. Assuming, as was also true of Woodmont, that the club would not likely be a litigant in the federal court and that the special membership was not proffered to exploit the judge's position, the Committee concluded:

- The judge's receipt of the membership was permitted under Canon 5C(4)(c).

- The value of the membership, if in excess of \$100, should be reported as a permitted gift on the judge's financial disclosure form.

My 1980-83 special membership in Woodmont is different from the situation in Advisory Opinion No. 47, in that the initiation fee was waived and annual dues were not. Despite that distinction, however, I believe it would be reasonable to conclude that the Woodmont membership should be reported as a gift under Advisory Opinion No. 47 because the money value of the initiation fee waiver exceeded \$100.

Accordingly, applying the conclusions of Advisory Opinion No. 47, I now believe that prior to 1984 I should have disclosed, on my annual financial disclosure form, as a permitted gift the special membership I held in Woodmont Country Club during the period August 1980 to April 1983.

I sincerely regret that I was not in the period 1980-83, and indeed until now, aware of the conclusion embodied in Advisory Opinion No. 47.

Sincerely,



Ruth Bader Ginsburg

**RESPONSES OF JUDGE RUTH BADER GINSBURG
TO JULY 16, 1993 QUESTIONS FROM
THE SENATE JUDICIARY COMMITTEE
CONCERNING HER MEMBERSHIP IN
WOODMONT COUNTRY CLUB**

1(a). When did you join Woodmont Country Club?

I joined Woodmont Country Club in or about August 1980.

1(b). Did you pay an initiation fee upon joining the Club?

No.

1(c). Was the fee you paid the standard fee paid by other individuals joining the Club?

As explained more fully below in the answer to question 3(b), I was a member of Woodmont in a special membership category. Initiation fee was not charged to special members. Individuals joining Woodmont as regular members did pay an initiation fee.

2(a) Did you pay monthly dues and fees during the time you held membership at Woodmont Country Club?

Yes.

- 2(b). Were the dues and fees you paid the standard rates paid by other Club members?

I believe so, but I am not certain. See my answer to question 3(b).

- 3(a). If any answer to 1(b), (c), 2(a), (b) above is no, did you regard your membership at Woodmont Country Club as a gift?

No.

- 3(b). If not, why not?

Woodmont Country Club, in common I understand with other clubs in the Washington metropolitan area, for many years has maintained a special membership category open to Senators, Representatives, higher officers in the Executive branch, and, prior to a 1983 change in Woodmont's by-laws (described below in the answer to question 4(a)), federal judges. Special members do not pay initiation fee, but do pay annual dues and fees. To the best of my knowledge, dues and fees charged special members and regular members were the same.

At Woodmont the privileges of regular membership and the privileges of special membership differed. Regular membership was tenured; provided he or she continued to pay annual dues, a regular member maintained membership in Woodmont for life. The child of a regular member, upon becoming an adult, was permitted to become a regular member of Woodmont in addition to and ultimately in replacement of the parent member.

At Woodmont a special membership was temporary. Special membership was tied to continued government service; termination of government service automatically terminated membership in the Club. In addition, the Board of Governors could terminate a special member at any time. Special members did not vote. The child of a special member, upon becoming an adult, did not become a member of Woodmont either in addition to or in substitution for the parent special member, and instead lost the privilege of using the Club facilities.

The lower cost of special membership, embodied in the absence of an initiation fee, reflected the lower level of privileges and rights that inhered in the special membership class. A regular member, paying initiation fee, was assured permanence of membership and the right to pass membership on to children. A special member, not charged initiation fee, was not able to pass membership on to children, lost membership upon termination of government service, and could at any time be terminated as a special member by action of the Board of Governors.

- 4(a). Please explain in detail the change in Woodmont Country Club by-laws which caused your resignation from the Club.

When I joined Woodmont Country Club in August 1980 as a special member, that category of governmental membership, I was informed, had existed for a great many years and throughout that period had encompassed federal judges as well as other government officials above a certain level on the protocol list. At the time I joined Woodmont, I was told, there were a number of special members from Congress and the Executive, but, while other federal judges had been special members in the past, I was currently the only federal judge special member. In

March 1982 Judge Harry Edwards, a D.C. Circuit colleague and friend, joined Woodmont as a special member. Judge Edwards is black.

In November 1982 Woodmont circulated to the regular members a set of proposed changes in the by-laws of the Club. Among the proposed changes was a revision in the special membership category that would, among other things, eliminate federal judges as special members. Proposed by-law changes were not circulated to special members, because they did not vote, and thus Judge Edwards and I, although we were the only two members of Woodmont directly affected by the proposal, received no notification of it in November 1982.

In March 1983 I received a letter from Woodmont for the first time informing me that a change in the by-laws had been adopted under which federal judges were no longer eligible to be special members. The letter told me that I could remain in the Club until the end of 1984 at which time either my membership would terminate or, upon payment of initiation fee, I could opt to become a regular member. The letter also informed me that, to facilitate that choice, I would be given priority on the waiting list for regular membership in the Club. I correctly assumed that an identical letter was simultaneously sent to Judge Edwards.

This change in the by-laws, in my view, had the practical effect of strongly discouraging Judge Edwards from continuing his membership beyond 1984, and in fact upon receiving the Club's letter Judge Edwards promptly resigned. I can not with certainty say that prompting that resignation was the purpose of the by-law change, but the circumstances were, to me, suggestive of that conclusion.

Immediately upon receiving the letter notifying me of the by-law change, I attempted to initiate a reversal of that action. My spouse, who was our family's active user of the Club facilities, met the following day with members of Woodmont's Board of Governors. The Board, however, was unwilling to reverse the by-law change and, although the president of Woodmont did confer with Judge Edwards in an effort to retain him as a member, that effort did not succeed.

No longer comfortable at Woodmont, like Judge Edwards I promptly resigned my membership.

4(b) How did this change affect you and your judicial colleague who also resigned at the same time you did?

See my answer to question 4(a).

5(a) When did the by-law change become effective?

As explained in my answer to question 4(a), the revised by-laws were adopted sometime after November 1982 and before April 1983. I do not know the exact date because I received no notification of the proposed change until after the change had been adopted. Also as explained in my answer to question 4(a), I was informed that I could retain special membership in Woodmont until the end of 1984. I did not elect to do so.

5(b) When did your resignation become effective?

I do not recall the exact date, but I believe it was in early April 1983, although it may have been on a date toward the end of March 1983.

Senator GRASSLEY. The rule against accepting gifts and favors, I believe, is designed to ensure the impartiality of judges. In fact, the canon that covers gifts states that judges are prohibited from accepting gifts or favors where the donor is a party to a case or other persons who has come or is likely to come or whose interests have come or likely to come before a judge.

Did you give any consideration, in accepting the waiver of the initiation fee, to the possibility of other Woodmont members or their interests would come before you, as a judge, and did you have a recusal policy with respect to the country club?

Judge GINSBURG. I did not think that the membership in that golf club would present a conflict. But, of course, if any affair involving the Woodmont Country Club had come before my court, I would have recused myself. I was hardly the first member of my court to be a special member of that club. A long-time Chief Judge of my court, Judge Bazelon, had been a member, and a few of the district judges, I believe, had been members. But at the time of my membership, the only other Federal judge in the club was Judge Edwards. He took up golfing and came, particularly with my husband, to play at Woodmont; he liked it, and therefore joined the club. At the time of my resignation, only Judge Edwards and I were members of Woodmont, but earlier Judge Bazelon and a couple of district judges held memberships.

Senator GRASSLEY. You may not even be in a position to answer this, I recognize that, and I wouldn't have thought of it, except for the statement you just made. Because of colleagues' membership in the same club, do you know of any recusal by any member because of potential conflict?

Judge GINSBURG. I don't recall any matter having to do with Woodmont Country Club during my tenure on the court having come before the court.

Senator GRASSLEY. Judge, I am satisfied with your answer. From my perspective, this oversight is not necessarily a disqualifier. As I said when the media one time asked me about Clarence Thomas trying marijuana, my answer was that we weren't confirming him for sainthood, we were confirming him for the Supreme Court. We are all human and all fallible, and I am satisfied that we have had an opportunity to discuss this.

I thank you and I yield the floor.

Senator MOSELEY-BRAUN. At this time, I have questions as a member of the committee, but I don't know if it is appropriate. Senator Specter had indicated that he wanted to—

Senator HATCH. It is entirely appropriate for you to go ahead, and then we will go to Senator Specter after. How is that?

Senator MOSELEY-BRAUN. I didn't know whether or not you had a reason for wanting to leave now.

Senator SPECTER. I would be glad to wait my turn, Madam Chairman.

Senator MOSELEY-BRAUN. Fine. Thank you very much, Senator Specter. That is very nice of you.

Judge I would like to talk about the first amendment a little bit, particularly in the area of violence or having to do with violence. Obscene expression is considered by the Court to be unprotected speech, that is longstanding law, and it may, therefore, be prohib-