The CHAIRMAN. I thank you very much for your testimony, and I have no questions. It seems very clear that your statements are crisp and self-explanatory, as were the previous panels', and I have no questions.

I yield to my friend from Utah.

Senator HATCH. Well, I want to welcome all of you here. I appreciate having your testimony. I have to say that your point, Ms. Cunningham, that through all those Reagan–Bush years both of those Presidents were accused of using the litmus test on abortion for the selection of their Supreme Court nominees—it is pretty apparent that they did not, and having known who did the vetting down there, who used to be a staff member of mine, I know they didn't. Yet, in this particular case there is no question that there was an abortion test.

But then again, this President won the election and, frankly, he has picked a Supreme Court nominee and I have to say that I personally disagree with her on this issue, but she is an excellent person and a fine judicial scholar, and I have said other things as well. But I appreciate having your testimony. I think it takes courage to come in and to express your viewpoints and the viewpoints of millions of people out there with regard to some of the problems surrounding this very important issue, and we appreciate having the testimony.

The CHAIRMAN. Senator Heflin.

Senator HEFLIN. I have no questions.

The CHAIRMAN. Senator Feinstein.

Senator FEINSTEIN. I have no questions other than to say I appreciate your point of view. I managed to hear most of the testimony and appreciate it very much.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. I have no questions. I join my colleagues in thanking you for coming in. I think it is very important that this committee hear your views and consider them. Thank you all very much.

The CHAIRMAN. Let me state one thing, if I may, before I dismiss the panel. It is true that during the nomination, if my recollection serves me correctly, the President did say he would, in fact, look for and appoint someone who holds the view that they are, quote, "pro-choice," I think was the phrase he used.

At the time, I publicly criticized that view because I don't think there should be any test. But with regard to the more narrow issue of whether or not this nominee was, to use the phrase the Senator from Utah used, vetted, which is sort of a term of art used up here—you remember those days, Kay—that question was specifically asked of the nominee and answered.

The question was—and I would ask that this be entered in the record, the whole question. I will read part of it:

> Has anyone involved in the process of selecting you as a judicial nominee (including but not limited to a member of the White House staff, the Justice Department, or the Senate or its staff) discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question.

and it goes on from there.

The answer to the question by the nominee is,

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I repeated on June 14, 1993, just after the President announced his nomination for the Supreme Court vacancy, that a judge is bound to decide each case fairly, in accord with the relevant facts and the applicable law.

It goes on to say,

No such person discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

During the six months prior to the announcement of my nomination, I had no communication with any member of the White House staff, the Justice Department or the Senate or its staff referring or relating to my views on any case, issue or subject that could come before the United States Supreme Court.

[The question and answer referred to follow:]

Question. Has anyone involved in the process of selecting you as a judicial nominee (including but not limited to a member of the White House staff, the Justice Department, or the Senate or its staff) discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully. Please identify each communication you had during the 6 months prior to the announcement of your nomination with any member of the White House staff, the Justice Department, or the Senate or its staff referring or relating to your views on any case, issue or subject that could come before the United States Supreme Court, state who was present or participated in such communication, and describe briefly what transpired.

Answer. I repeated on June 14, 1993, just after the President announced his nomination for the Supreme Court vacancy, that a judge is bound to decide each case fairly, in accord with the relevant facts and the applicable law. The day a judge is tempted to be guided, instead, by what "the home crowd wants" is the day that judge should resign and pursue other work. It is inappropriate, in my judgment, to seek from any nominee for judicial office assurance on how that individual would rule in a future case. That judgment was shared by those involved in the process of selecting me. No such person discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

During the six months prior to the annoucement of my nomination, I had no communication with any member of the White Hous staff, the Justice Department or the Senate or its staff referring or relating to my views on any case, issue or subject that could come before the United States Supreme Court.

The CHAIRMAN. Now, that may be a distinction in practical effect without a difference, but it is not a distinction without a difference as it relates to whether or not the issue that was before us in the past, and will be before us with every nominee while it is included as far as anyone, when asked and nominated or considered or being vetted, is asked a specific position on a specific issue. That is in the record.

I will ask, since the nominee is still under oath for purposes of questions that are submitted to her in writing—although this is the same effect, but for precision reasons and for strict legal reasons, I will ask this question to be submitted, along with the others that are being submitted on other matters, to the nominee so we have on the record from the nominee under oath whether or not the assertion made by her in this questionnaire is precisely accurate.

I thank you all.

Senator HATCH. Could I just add one other thing? I was interested in the Washington Post's editorial—I believe it was today—on litmus tests. The point that needs to be made is that this Senator rejects the concept that any single litmus test should stop somebody from serving on the Supreme Court because if we start deciding who serves there purely on political grounds, then we will politicize that institution which I think means so much to all of us.

It is precisely that position that I think rebuts that editorial because we have had Senators on this committee say that they will not vote for somebody who does not support *Roe* v. *Wade*, and I think that is wrong. I think that no single issue rises to the dignity of foreclosing the right of people to serve on the Supreme Court, as important as all of you believe this to be and as important as I believe it to be.

Mr. PHILLIPS. Senator, may I respectfully say that while you may choose to vote for or against on any other basis, it is in that same spirit clear from the Constitution that every Senator may, for any reason, choose to confirm or any reason choose to reject.

Senator HATCH. Oh, sure.

Mr. PHILLIPS. And I would argue that the question of equal protection of innocent life, the defense of the unborn, is more important than the color of our hair or the neckties we choose to wear, and that the Supreme Court has, in effect, been permitted to become a supreme legislature.

We are kidding ourselves if we believe that the Supreme Court is not a political body. As Charles Evans Hughes said very eloquently in *Riley* at an early point, the Constitution is what the members of the Supreme Court say it is. I don't happen to agree with that, but that is the prevailing situation.

Senator HATCH. I have made some of those same arguments, but my point is that it is one thing to criticize for litmus tests when people hold candidates or nominees liable for them, and it is another thing to criticize for litmus tests when they don't. Frankly, I don't think that there should be a single litmus test.

Sure, the Supreme Court has its political aspects, but it is the least politicized institution in our society, and I would like to keep it that way as much as I can. I think there is a difference, and it is a significant difference, and personally I felt that the editorial was somewhat anti-intellectual.

Mr. PHILLIPS. The American people have manifested growing dissatisfaction with their political system, with the accountability of that system, and that is because very often those whom they elect to office, professing to take a particular position on a certain issue, in office do not vote in a manner consistent with that. That is one of the reasons I am trying to build a new political party called the U.S. Taxpayers Party.

Senator HATCH. I understand that.

Mr. PHILLIPS. There are a number of Senators in the Republican Party, in particular, who profess to take a strong prolife position who, in fact, know that in voting for the confirmation of Ms. Ginsburg they are voting to advance the cause of abortion, and I think that is a tragedy and, frankly, I think it is a violation of the good-faith commitments which were made to the electorate by them.

Senator HATCH. Well, I respectfully disagree with you on that because I think that the place to make the change is in the legislature, not in the Supreme Court. I think that the place to make the change is in the elected representatives of the people. As you and I both well know, the vast majority of Members of Congress are not on our side on this issue and we have been losing regularly, except with regard to Federal funding of abortion.

So don't try and change the Supreme Court in the sense of politicizing it and electing people who will be prolife. I think that we have got to do is elect people who—by the way, I think you could have started with the President of the United States last time. We now have a President who believes this way and he has picked a person who believes this way, and he has a right to do so and that is the point.

Well, we could argue about it all day. All I can say is the place to change it is in the Congress of the United States, not the Court.

The CHAIRMAN. Thank you, Senator, and I want reiterate what Senator Feinstein said. It is important that your viewpoint be represented, and it is important that the American people hear a different perspective on this issue, and we thank you for being here to do that, and you have all delivered your point of view concisely and well. So thank you very much for being here.

Mr. PHILLIPS. Thank you for your courtesy. We appreciate it.

The CHAIRMAN. Now, our last, but certainly not our least panel is comprised of the presidents of three additional bar associations: California Women Lawyers, Hispanic National Bar Association, and the Association of the Bar of the City of New York. We all know New York is an independent, standing nation in and of itself. That is kind of a joke.

At any rate, every time I say this to Mr.—is it pronounced Feerick?

Mr. FEERICK. Yes, Senator.

The CHAIRMAN. Mr. Feerick, I am always reminded of that poster of one of the leading political figures in American politics of the day, and probably the most dynamic—Mr. Wiesenfeld is here, too? Would he come forward, too? He was on the last panel, but would he come forward as well?

I am reminded of that poster that they sell in New York, which is my favorite city in the country, a picture of this very significant American politician, one of the dynamic forces in American politics today, standing on Seventh Avenue and astride Seventh Avenue. It is a map of the United States, and Seventh Avenue is in stark relief and California is minuscule as he looks out over the Nation, which has always sort of been my view of how most New Yorkers view the world and the Nation. There is New York and then there is the rest. The New York City Bar Association is one of the only city bar associations that asks to testify, and I know its members are clear that from their perspective, it is more important than the New York State Bar Association.

Thank you for your good humor. It is getting late in the process, and I apologize for my digression here.

Angela M. Bradstreet is the current president of California Women Lawyers, which probably has more members than the constituents in my entire State.

Ms. BRADSTREET. That is correct, Senator.

The CHAIRMAN. How many members, Angela?

Ms. BRADSTREET. 30,000, Senator.

The CHAIRMAN. No; our State is bigger than that.

It is the largest women's bar association in America. She is also a partner at Carroll, Burdick and McDonough in San Francisco. Is that correct?