Judge GINSBURG. Thank you.

Senator SIMON. The Chairman is tied up and I am going to——

The CHAIRMAN. Please go right ahead.

Senator SIMON. All right.

Judge, you and your family will be pleased to know in the second round I have only one question.

Judge GINSBURG. Yes, I am pleased. [Laughter.]

Senator SIMON. You will bring to the Court more background in international law than any other member of the Court. You will certainly be the only member of the Court who has ever translated Swedish law into English, I am absolutely positive of that. Though, come to think about it, Chief Justice Rehnquist, that is a very Swedish name, and he may——

Judge GINSBURG. Swedish or Norwegian.

Senator SIMON. He is Norwegian?

Judge GINSBURG. It could be. Swedish or Norwegian, I don't know.

Senator SIMON. It sounds Swedish, but we will have to check that very important question. [Laughter.]

The U.S. Supreme Court, in what I think was a terrible 6-to-3 decision, the *Alvarez* decision, said that the FBI could legally go into another country and kidnap someone, because the kidnaping was not covered by the extradition law. It is the only case I can think of where every country around the world condemned what we did, and Senator Moynihan and I have legislation in to make sure this doesn't happen again.

Article VI of the Constitution, as you know, says treaties made or which shall be made under the authority of the United States shall be the supreme law of the land. I do not want to ask you about the *Alvarez* case, because I am sure you would, understandably, decline to comment on that.

But if you would comment on the general theory that because something is not covered in an extradition treaty—and you have had, at least my staff has discovered at least seven cases where you have been involved in international law on the appeals court, and one, *Ward* v. *Rutherford,* in 1991, involved extradition law—if an extradition treaty does not cover going in and kidnaping someone, or if a country owes us some money, does not cover going in and robbing a bank or any number of illegal activities, what is your opinion about the legality of our doing things that are understood by all the countries of the world to be in violation of international law?

Judge GINSBURG. Senator Simon, I can only tell you the code of conduct I would adopt for myself wherever I am, here or abroad, and that is the Constitution of the United States. I would consider it binding on me.

I can perhaps cite an example. There is a good book called "Judgment in Berlin," written by a former Federal judge, Judge Stern, who was sent to judge a hijacking case in Berlin. It was a sensitive case in the international community. A plane was hijacked from Poland, I believe, to take people who had been in East Germany into West Germany. The hijacking presented a sensitive question within Germany. So a court that had been created in World War

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II, called the United States Court for Berlin, was resurrected, and a U.S. district judge, Judge Stern, was sent there.

He was told by the State Department that the alleged hijackers would have only such rights as the State Department chose to give them. Judge Stern said, I am a Federal judge, the Constitution is my law, and that is the law I am going to apply in any proceeding over which I preside.

He made sure that defendants had very able counsel—there were two defendants—and that they got the full panoply of rights we accord criminal defendants. He did something remarkable in a country that does not use juries. He insisted that there be a jury trial. The case was tried under German law, under German substantive law, but according to U.S. procedures. And that procedural law was largely determined by the rights guaranteed in the U.S. Constitution. It is a wonderful example, I think, of the way any Federal official should behave at home or abroad. The Constitution and the Federal law should be our guide wherever we are.

Senator SIMON. If I could get you to be a little more specific here, if I can ask, not in commenting on the substance of the *Alvarez* case—incidentally, he was tried in the United States and not found guilty—but were you at all startled, when you heard about the results of the *Alvarez* case?

Judge GINSBURG. If I may, Senator, I would not like to comment on my personal reactions to that case. I think I told you what my view is on how U.S. officials should behave, and I would like to leave it at that. You have cited a decision of the U.S. Supreme Court. I have tried religiously to refrain from commenting on a number of Court decisions raised in these last couple of days.

Senator SIMON. I understand. Let me just say that I hope you were startled, and my hope is that this particular case—first, I hope we overturn it in Congress, so that this cannot happen again. But the fact that an extradition treaty doesn't spell out that we can't go in and kidnap people in another country or we can't rob banks or we can't do all kinds of other things doesn't give us the authority to do those things. My hope is that this is one case where, if we don't pass something in Congress, that you will not let precedent stand in the way of what the international community believes is in our best interest.

If I may add one other thing, Mr. Chairman, that has nothing to do with this procedure: I was over on the floor of the Senate, and I believe you were, too, when our colleague Senator Heflin made a speech that took an incredible amount of courage. I just want him to know I have never been prouder to serve in the U.S. Senate than when I heard that speech.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I, too, heard that speech and, for the public listening to this, the Senator made a very moving and eloquent speech, as a son of the Confederacy, acknowledging that it was time to change and yield to a position that Senator Carol Moseley-Braun raised on the Senate floor, not granting a Federal charter to an organization made up of many fine people who continue to display the Confederate flag as a symbol. The charter would have given them the right, the imprimatur of the Federal Government to do that.

It had nothing to do with the first amendment, Judge, so don't worry. But the Senator made a very significant speech rivaled only, in my view, by a private speech given to me personally by a man whose office I now occupy, Senator John Stennis from Mississippi.

Judge, I hope some day you are able to come to my office and see the conference table in my room, which Judge Stennis—he was a judge—Senator Stennis presented to me as he left the Senate. It was a table that he referred to as "the flagship of the confederacy," where he indicated to me that every Wednesday, I believe it was, the Senators from the old Confederate States would meet with the most powerful member of the U.S. Senate, from what I hear, in the last 40 years, Senator Richard Russell of Georgia. They would sit at this table at lunch, and to quote Senator Stennis, beginning in the late fifties through the early sixties, plan the demise of the civil rights legislation in the Senate.

The first time I came to his office, as a young Senator at age 29, just having been elected, he asked me why I ran for public office. And being as impolitic as I am, not stopping to think, I said civil rights, Mr. Chairman. As soon as I said that, I realized who I was speaking to, and I remember the beads of perspiration breaking out on my forehead, and he said, "Remember the first time you came to me see me."

And I hadn't, Judge, and he reminded me it was to pay my respect as a young Senator, and he said, "I wanted to tell you then what I want to tell you now." He said,

> It's appropriate that this table, the flagship of the confederacy, is now yours, for the Nation has changed, and it is good that it has.

I got up to leave, and he said to me, "One more thing." He said, "The civil rights laws in America have done more to free the white man than the black man."

I thought that was an astounding statement for a then 84-year-old man, I believe, who had served in the Senate over 42 years, and in the minds of young activists or semiactivists, like me in the sixties, was one of the symbols of resistance to change.

You have never been a symbol of resistance to change, but you have been a symbol of courage, and today was one of those days. For the Senator from Illinois, Senator Simon, and me to cast the vote we did today, it takes no political courage. But for you it did, and it was moving.

Senator SIMON. Mr. Chairman, if I may just add, I wish you the best, Judge Ginsburg. I think you are going to bring honor to the U.S. Supreme Court. I will cast my vote for you with great pride.

Judge GINSBURG. Thank you so much, Senator Simon.

The CHAIRMAN. I have attempted to survey my colleagues on both sides of the aisle to see who has additional questions, and I understand that Senator Brown and Senator Heflin have some additional questions, and Senator Specter has some additional questions. I have a very few, maybe 5 minutes worth.

I asked the staff now, I put the staff of all the Senators here on notice that it is my intention to excuse the witness this evening at whatever time, so that she need not come back and is able to see a good movie this weekend or whatever she would like to do. So I would ask you to ask your Senators, if you would, please, in the

next 20 minutes or so to let me know if they have a desire to ask additional questions.

I understand you have begun this round, Judge, at about 5 after 5. If it is appropriate, I would yield now to Senator Brown, whose turn it is to ask questions. After his round of questions, depending on how long they go, you can let me know whether you would like to break then or we should continue with Senator Heflin and his questions. But, hopefully, we will get you home at a reasonable hour, and you will be able to do what I am sure you will, watch the remainder of the proceedings on television. I am sure you will be glued to your television. But that is my intention, if that is appropriate, if that is all right with you.

Judge GINSBURG. That is the greatest thing I have heard all day. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Judge Ginsburg, I appreciate the long day that you put in. The only thing I know that is somewhat comparable to this process is the bar exam. The only difference, of course, is this is oral and that is written. In this case, many of the people who grade the test have different answers, so it is more of a challenge.

The CHAIRMAN. And they are not as informed as you, and I include myself in that category.

Senator BROWN. I never thought that was a major impediment for people who took the bar exam.

Judge GINSBURG. That was 2 days, at least when I took it, back in ancient times. The bar exam was 2 days. I don't know what it is now.

Senator BROWN. I guess in the older days when I took it, it was 3.

The CHAIRMAN. It was 3 for me as well, but maybe the Senator and I were slower.

Senator BROWN. Our State was less benign. [Laughter.]

It is really quite an extraordinary treat to have you here. You not only have a distinguished academic record that we have talked about, but really a very excellent record in terms as an adjudicator and as a teacher.

If I were to describe an area of the law where perhaps you have as much or more experience than anyone we have had the pleasure of coming before the committee, it would be on the equal protection clause. We touched on it in our earlier discussions, and I thought I would follow up with questions in this area. And I appreciate the sensitivity with regard to how you would rule, and I would want to direct this more to the pleadings and your writings in this area. I say that because I think people should keep in mind that when you are filing pleadings you are an advocate. That doesn't necessarily mean that it is how you would rule. I think anyone who reviews your record knows that.

But with that in mind, as I review the equal protection clause, I guess my first question is if you feel that that clause suggests, in effect, a sex-blind standard with regard to legislation and programs?