as you, Judge Hufstedler. I know you both well, and it is a compliment to the nominee that you two are here, as well as the other two of your colleagues are here.

Senator HEFLIN. I will take exception at your omission of Chesterfield Smith. I don't know Mr. Millstein as well, but he——

The CHAIRMAN. Mr. Millstein, you are qualified as well to be on the Court, but I mean it. I think the Nation would have been served extremely well had William T. Coleman been a Supreme Court Justice.

But having said that, enough of my advertising for future nominees for the Court. Let me——

Senator SPECTER. It may be yet, Mr. Chairman.

The CHAIRMAN. I know. I said that. That is why I don't want to continue to advertise, because I learned one lesson, at least as it related to my children in the colleges and universities they attend. Whatever university you want your child to attend, do not mention it. Whoever you would like to see appointed to the Supreme Court, don't tell the President.

But, at any rate, Mr. Coleman, why don't you begin.

PANEL CONSISTING OF WILLIAM T. COLEMAN, JR., O'MELVENY AND MYERS, WASHINGTON, DC; CHESTERFIELD SMITH, HOLLAND & KNIGHT, MIAMI, FL; SHIRLEY M. HUFSTEDLER, HUFSTEDLER, KAUS, AND ETTINGER, LOS ANGELES, CA; AND IRA M. MILLSTEIN, WEIL, GOTSHAL AND MANGES, NEW YORK, NY

STATEMENT OF WILLIAM T. COLEMAN, JR.

Mr. COLEMAN. Mr. Chairman, members of the committee, I have submitted a seven-page statement, but then there are attached some memoranda because I either read or had people read and then explain to me most of the judge's cases. I certainly think that with her background and everything she certainly should be considered well qualified.

But I would like just to indicate to you why in my judgment this is a superb appointment, because I think that you have to look to the character of the person, for in the end, particularly in constitutional matters, the only sense on a Justice's exercise of power is his or her own sense of self-restraint.

Now, the factors that I think that you ought to consider, first, is what she has been exposed to and done with her life in the last 60 years: a great education, a superior mind, great intellect and intelligence, her seizing of every opportunity, and her just being able to discharge both the responsibilities in the profession, but also as a wife and mother.

She certainly has made an outstanding record as a jurist. I think if you would look at her readings and just walk through her library and just watch the diversity of things that she has read, in addition you often will see her at the opera, the theater, the symphony, the ballet, the art museum, the Council on Foreign Relations. And she has, as you already know, a very wide range of friends. And, believe me, as quiet as she is, she will discuss and argue almost any issue with them. She has written in a lot of different fields.

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With it all, however, we still know the great Justices had to have something that touched them with fire. Holmes had his Civil War. Frankfurter had his battles as an immigrant coming to this country at age 12, not speaking a word of English, and, as once he said, "belong[ing] to the most vilified and persecuted minority in history." Chief Justice Marshall had his battles to make this country a Nation, and Thurgood Marshall his battles to end racial segregation and all the deleterious effects thereof.

In Ruth Bader Ginsburg, I have confidence that the fire was set by the discrimination Ruth Bader Ginsburg encountered when she first came to the bar and by the challenges she met in developing legal theories which ended some of such discrimination and unfairness. But even more important, that fire rests in her disciplined desire that she excel as a judge, as a legal scholar, as an American, and as a human being.

So I urge this committee to advise and consent favorably for this nomination. I also want to congratulate the country, the legal profession, President Clinton, our great educational and cultural institutions, and the Ginsburg family that in this case the process and system worked, and worked quite well.

I would like to conclude by adding something which may create a slight controversy. That is, on the first day when Judge Ginsburg was introduced, the senior Senator from New York indicated that Justice Frankfurter would not even interview her. I speak as a former Justice Frankfurter law clerk. I would ask that be checked and not be made a part of history. I became his law clerk in 1948. I know that in 1953 when a lady whose last name was Holmes and was the first one to make the Harvard Law Review, that he at that time indicated that, gee, she would be a great law clerk.

In addition, because the statement was made that he would not interview her, the fact is that Justice Frankfurter would interview no one. I was not interviewed by him. His law clerks were selected by Henry Hart, Paul Freund, and, later on, Al Sachs. I say that only to try to keep the record straight. In my heart, I just feel that Felix Frankfurter had the judgment and wisdom that I know Judge Ginsburg has to have the vision that in this country we have the ability to recognize those of great ability.

Thank you.

[The prepared statement of Mr. Coleman follows:]

PREPARED STATEMENT OF WILLIAM T. COLEMAN, Jr.

The country is fortunate that the end result of the Presidential selection process to fill the vacancy on the Supreme Court of the United States arising from the retirement of the Honorable Justice Byron Raymond White was the nomination of someone with the talent of Judge Ruth Bader Ginsburg who with her heart, character, determination and background gives promise that she will be a worthy addition to the highest Court.

Among the bar and in the academic community, there is no doubt that Judge Ginsburg ranks among the best jurists who presently sit on the various Courts of Appeals in the United States.[1]

[1] I have read or caused to be read and explained to me all of the cases that Judge Ginsburg has written that could be classified as civil rights cases, all cases dealing with the standing to raise such issues, including personal constitutional issues, and all cases dealing with constitutional issues involving individuals rights. Attached hereto are three interesting and excellent memoranda that were of great aid in this task.

She brought to the Court of Appeals bench a mind well honed by training at two of the nation's best law schools—Harvard and Columbia—served on the law review of each of these schools and had a magna cum laude performance. Previously thereto she was a stellar student at Cornell University. Thereafter she became a law professor, teaching conflict of laws, civil procedures, both national and international, constitutional law and also acquired learning in the law of Sweden. So as not to be completely cloistered in the life of academia, she got involved in litigation that helped women greatly on their road to equality. All who have been exposed to her recognize that she is bright, able, sincere and apparently (so much of a jurist's and scholar's work is done in solitude) a hard worker. Moreover, she is committed to being an excellent jurist and is a better writer than many of her colleagues. She graces the bench on which she presently serves with style and understanding and the confidence of one with a well trained mind and a sense of herself.

But initiates know that excellent technical skill as a federal Court of Appeals or district court judge or as a judge on any state court, does not necessarily mean that that person will do well on the Supreme Court. For as Justice Flex Frankfurter reminded us:

". . . One is entitled to say without qualification that the correlation between prior judicial experience and fitness for the functions of the Supreme Court is zero. The significance of the greatest among the Justices who had such experience, Holmes and Cardozo, derived not from that judicial experience but from the fact that they were Holmes and Cardozo. They were thinkers, and most particularly legal philosophers. The seminal ideas of Holmes, by which to so large an extent he changed the whole atmosphere of legal thinking, are formulated by him before he ever was a judge in Massachusetts. And while the court of appeals gave Cardozo an opportunity to express his ideas in opinions, Cardozo was Cardozo before he became a judge. On the other side, Bradley and Brandeis had the preeminent qualities they had and brought to the Court, without any training that judicial experience could have given them." 105 U. of Penn. L. Rev. 781 (1957).

Thus for me and more particularly for you we must find elsewhere the indicia to predict success on the Supreme Court of the United States. Such search requires some informed judgment as to the possible issues that will come before the Court during the nominee's tenure. For the issues before the Supreme Court are usually difficult, novel and few judges on the courts below have come to grips with them on a regular basis. The great issues other than the few that involve war and peace, international relations, basic business relationships, and the reach of statutes enacted to benefit the general welfare, deal with how to balance the existence of a democratic society based upon majority rule with the fact that minorities, women and other discrete groups have rights and concerns that often are not properly recognized (or indeed sometimes are denigrated) by the majority. This grows in part out of the fact that two groups not present at the Constitutional Convention in 1789 were blacks and women. And the poor in this country, though not small in number, often have no champions in the federal and state legislative chambers despite Mr. Lincoln's statement that God must have loved the poor because he made so many of them.

Each of us can pick the issues that will likely come before the Court that we hope a resilient, acute and understanding mind can resolve correctly. Abortion is and will be with us for a long time. Church and state, free speech, and privacy are always recurring issues; the important issues of the rights of a criminal defendant in a civilized society, including the recurring issues of habeas corpus and search and seizure and the right to adequate counsel. Questions surrounding sexual orientation and complicated voting rights issues have an increasing call on the Court docket. And though we have become one nation, federalism for many of us is thought to be a strength and calls upon the Court to revisit the issues of state sovereignty every so often. If we would ask civil rights lawyers to describe some of the challenges before the Court they would include:

(1) how to overrule *Croson* or distinguish it so that state and local set aside programs are still valid; (2) how to preserve the provisions of the Voting Rights Acts of 1965 and 1982 designed to ensure election of more representatives who are responsive to minority voters (in other words, to overrule or limit greatly the effect of Justice O'Connor's decision in *Shaw* v. *Reno*, 61 U.S.L.W. 4818 (June 28, 1993) (5–4 decision)); (3) how to make effective the provisions of the 1991 Civil Rights Act concerning burdens of proof in employment discrimination cases (including to limit or overrule *St. Mary's Honor Center* v. *Hicks*, 61 U.S.L.W. 4782 (June 25, 1993) (5–5 decision); and (4) how to overrule or minimize the effect of *San Antonio Indep. Sch. Dist.* v. *Rodriguez*, 411 U.S. 1 (1973) (5–4 decision), which refused to upset a Texas school finance system which permitted poor, mostly minority, children living

in poor school districts to study in much lower quality schools than children living in affluent, mostly white school districts.

And, if the political process with respect to eliminating poverty continues to fail the society as it did on race and sexual issues until 1960, the Court may be asked to take bold steps to address that problem.

What is there in Judge Ginsburg's record and background that would give you confidence that, if given the opportunity, she will approach each of the difficult issues properly, even though you may or may not agree with the result? For so much of the confidence and acceptance of Court decisions in difficult social and political issues depend upon the integrity of the opinions written and the character of the Court's members. For in the end, particularly in constitutional matters, the only check on a Justice's exercise of power is his or her own sense of self-restraint. First is what she has been exposed to and done with herself over the last 60 years—a great education, a superior mind, great intellect and intelligence, her seizing and taking advantage of opportunities in both the academic and professional worlds and mixing with great success her professional life and responsibilities as a mother and a wife. Second, she has acquitted herself extremely well as a jurist recognized by the bar and greatly appreciated by her colleagues. Third, her reading and experiences are far beyond the law. She is as familiar with Locke, Rousseau, Keynes, Nietzsche, Santayana, Voltaire, Longfellow, Montesquieu and de Tocqueville, to name a few of her reading companions, as she is with Holmes' Common Law, Cardozo's The Nature of the Judicial Process and Blackstone. (A visit to her well used library at home would be a treat and a challenge to us all.) You will often see her at the opera, the theater, the symphony, the ballet, art museums, the Council on Foreign Relations. Next she has a wide range of friends and will discuss just about any subject. She has written books and law review articles, given talks in many diverse fields and traveled extensively.

With it all, however, we still know that the great justices had something that "touched them with fire." Holmes had his Civil War battles, Frankfurter had his battles as an immigrant coming to this country at 12, not speaking a word of English and, as he once said, "belong[ing] to the most vilified and persecuted minority in history."[2] Chief Justice Marshall his battles to make this country a nation and Thurgood Marshall his battles to end racial segregation and all the deleterious effects thereof.

In Judge Ruth Bader Ginsburg I have confidence that that fire was set by the discrimination Ruth Bader Ginsburg encountered when she first came to the bar and by the challenges she met in developing legal theories which ended some of such discrimination and unfairness. That fire also rests in her disciplined desire that she excel as a judge, as a legal scholar, as an American, and as a human being.

I thus urge that your Committee recommend that the Senate favorably advises and consents to the President's nomination of Judge Ruth Bader Ginsburg as an Associate Justice of the Supreme Court of the United States. And I congratulate the country, the legal profession, President Clinton, our great educational and cultural institutions, and the Ginsburg family that in this case the process and system worked and worked quite well.

The CHAIRMAN. Thank you very much.

Mr. Chesterfield Smith, former president, but once a president, always a president. Mr. President.

STATEMENT OF CHESTERFIELD SMITH

Mr. SMITH. Forever.

The greatest interest of my life as a trial lawyer has been the justice system, the quality of justices and judges. I have worked at it. I have cared about it. I have been right and wrong in my positions. I have changed and modified. But in an unyielding and unceasing way, I have been devoted to it.

Without reservation, Circuit Judge Ruth Bader Ginsburg in my opinion will, if confirmed, be an absolutely magnificent Supreme Court Justice. As both a lawyer and a person, I know her quite well, perhaps extremely well. I believe that she possesses the temperament, the character, and the professional skills and abilities

[2] *Board of Education* v. *Barnette*, 319 U.S. 624, 646 (1943).

necessary to go up to my standard of an absolutely superior member of the U.S. Supreme Court.

She is scholarly, reflective, judicious, and humane. She knows when to act with vigor, but equally important, she knows when not to act. And she has the wisdom and experience to know in those actions the value of judicial restraint.

As both a lawyer and a judge, she is extremely experienced in appellate practice and procedure at all levels. As a lawyer, she herself has both briefed and orally argued with great skill multiple cases in the U.S. Supreme Court. And as an appellate judge, her industry and skill have been recognized nationwide for more than a dozen years.

However, she is not limited to just appellate skills. She is a person well versed and experienced in all aspects of the law as it will be presented from time to time for decision by the U.S. Supreme Court.

While I recognize it to be a very broad statement, I firmly believe—and I have a large acquaintance in the American law establishment because I was a bar politician for so many years. I firmly believe that there is no single lawyer in America, male or female, better qualified to be a Supreme Court Justice. Truly she is exceptional. Certainly I personally like Ruth Ginsburg. I have served and participated through the years with her in multiple activities. But I fervently assert that my endorsement of her to you for confirmation is based solely on my idea of merit. Over the years I have become convinced that she has one of the superior legal minds that I have ever been around, talked to, argued with, discussed or debated.

Her legal writing suits me. It is succinct, pithy, concise, scholarly, and absolutely on target. She conserves energy and words. While her experience and intent perhaps have been focused primarily on procedure and constitutional law, I find that she has a broad and roving interest in all aspects of law and justice. She truly loves the law, and she represents it as its best.

Additionally, she is a completely well-rounded person who has the professional and personal capacity to bring to her judicial duties wisdom, moderation, compassion, and justice in the myriad areas of the law routinely a part of the Supreme Court docket.

As a citizen, I strongly urge that you speedily confirm her appointment to the Court. As a trial lawyer, I tell you that she is the kind of judge that I want to go before and advocate causes because I believe that she will consider the facts and the law of that case and make a right and proper decision under the law.

Thank you very much.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF CHESTERFIELD SMITH

Without reservation, Circuit Judge Ruth Bader Ginsburg in my opinion will if confirmed be a magnificent Supreme Court Justice. As both a lawyer and a person, I know her quite well—extremely well. I believe that she possesses the temperament, the character and the professional skills and abilities necessary to be an absolutely superior member of the United States Supreme Court. She is scholarly, reflective, judicious and humane. She knows when to act with vigor, equally important she knows when not to act, and she has the wisdom and experience to know in those actions the value of judicial restraint. As both lawyer and judge, she is extremely experienced in appellate practice and procedure at all levels. As a lawyer, she her-

self has both briefed and orally argued with great skill multiple cases in the United States Supreme Court; as an appellate judge, her industry and skill have been recognized nationwide for more than a dozen years. However, she is not limited to just appellate skills; instead, she is a person well versed and experienced in all aspects of the law as it will be presented from time to time for decision to the United States Supreme Court.

While I recognize it to be a very broad statement, I firmly believe that there is no lawyer in America, male or female, better qualified to be a Supreme Court Justice. Truly, she is exceptional. I do personally like Ruth Bader Ginsburg (I have served and participated throughout the years with her in multiple organized bar activities) but I fervently assert that my endorsement of her to you for confirmation is based solely on merit. Over the years I have become convinced that she has one of the superior legal minds that I have known.

Her legal writing is succinct, pithy, concise, scholarly, and absolutely on target. While her experience and intent have perhaps focused primarily on procedure and constitutional law, I find that legally she has a broad and roving interest in all aspects of justice. She truly loves the law and she represents it at its best. Additionally, she is a completely well-rounded person who has the professional capacity to bring to her judicial duties wisdom, moderation, compassion and justice in the myriad areas of the law routinely a part of the Supreme Court docket.

As a citizen and lawyer, I strongly urge that you speedily confirm her appointment to the Supreme Court.

The CHAIRMAN. High praise, Mr. Smith. Thank you.

Judge, welcome.

STATEMENT OF JUDGE HUFSTEDLER

Judge HUFSTEDLER. Thank you very much, Mr. Chairman.

Because I was admitted to the bar 43 years ago when the number of women who went into law were very, very few, in my enthusiastic endorsement of Ruth Bader Ginsburg for the U.S. Supreme Court I thought it might be useful to place what Ruth has accomplished in a somewhat broader historical framework.

When President Johnson appointed me to the U.S. Court of Appeals for the Ninth Circuit in 1968, I was the second woman in the history of the United States ever to be appointed to a Federal appellate court. The honor of being the first went to Florence Allen, and the President who appointed her was Franklin Delano Roosevelt in 1934. When she was appointed, she was then a justice of the Supreme Court of Ohio, a position to which she was elected by the women who had worked with her to obtain passage and ratification of the amendment to the U.S. Constitution permitting women to vote. Judge Allen had died before I was appointed, and it was to be many years before another woman was to have that honor.

I resigned from the bench in 1979 when President Carter asked me to become Secretary of Education of the United States. The U.S. Supreme Court, however, has been a matter of intense scholarly scrutiny and more than slight interest to me during my entire professional life.

The Court has been called upon, as each of you are aware, to interpret and apply the Constitution under circumstances of more than 200 years of history. That great charter of government is also the Nation's great charter of freedom in the Bill of Rights. The Supreme Court has been repeatedly required to decide the issues that most deeply divide our citizens one from the other, invoking that great Bill of Rights. Those rights include not only the right to worship as one pleases, to own property, to have the right to petition for grievances, but also the right to equal protection of the laws,

no matter what may be the color of skin or previous condition of servitude, our Nation of origin, our race, our ethnicity, or our gender.

When the membership of the Supreme Court has been equal to that awesome task, the results have been great. When the membership of the Court sometimes has not, the results have been tragic. No one here needs to be reminded of the impact of the tragic decision of the *Dred Scott* case when that Court could not face the challenge of human slavery under the Constitution of the United States. But when the majority of the Court has had depth of understanding to interpret the Constitution to meet the vast needs of this country, the results have been not only fine, but ofttimes brilliant.

The Warren Court knew that this Nation could not long endure with legalized apartheid any more than it could have endured half slave and half free. The Warren Court, after that decision and immediately before it, created decision after decision which made it possible to start stripping away the elements and remnants of slavery and the change of bigotry that affected black men.

Unfortunately, the Court was much slower to recognize that the only persons subject to invidious discrimination were not limited to black men. That discrimination was affecting adversely half the population of the United States—women.

Even the gifted group of colonial gentlemen who drafted the Constitution were unable to escape the dictates of custom, the dicta of St. Paul, and centuries of dominance by men that had systematically reduced women to second-class citizenship.

Until nearly the end of the 19th century, women were denied the basic rights of citizenship. Not one of them could vote. With trivial exceptions, women could not own property, or even their own wages. Single women were slightly better off, however, than were their married sisters because, under the eyes of the law, when a woman married the personalities of the husband and wife merged, and the wife's disappeared altogether.

Women who were married were classified by the law as were infants and idiots. The traditional excuse for that blatant discrimination was expressed by Justice Bradley in a deservedly famous, or perhaps infamous, opinion to which Senator Feinstein adverted during her commentary earlier. Every member will recall that the issue was whether Myra Bradwell had had her privileges and immunities rights under the Constitution violated by the law of the State of Illinois, which refused to permit her entrance into the practice of law. And Justice Bradley explained in his special concurring opinion the reason why, explaining that that sex was not entitled to the privileges and immunities granted to males. He said, "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life * * *. The paramount destiny and mission of women is to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

Now, Justice Bradley knew perfectly well that tens of thousands of women were performing hard physical labor under conditions anything but dainty. And he also knew that other thousands of pioneer women were fighting side by side with their husbands under

conditions that were downright perilous. Then why in the world did he say that? Because he had persuaded himself that God, not man, had prescribed women's roles, and those who did not follow those assignments were either biological curiosities or victims of humankind's inexcusable rebellion against God's will. Justice Bradley and those who shared his views confused the signs of a dominant culture with the signs of the Creator, and he mistook the laws of man for the laws of nature.

It took decades of struggle for suffragettes, like Florence Allen, and the men who could be enlisted into their cause to amend the Constitution to give women even the right to vote. It took decades of more work for the Supreme Court of the United States to realize that women, as well as men, were entitled to equal protection of the laws.

As late as 1948, Justice Frankfurter, bless him, wrote the majority opinion upholding a State statute that forbade women to obtain licenses as bartenders unless the women were wives or daughters of the male owner of the establishment. To uphold the statutory classification, Justice Frankfurter harked back to Shakespeare's ribald ale wife and stated that the 14th amendment "did not tear history up by the roots." And then he said, re-echoing much of what Justice Bradley's sentiment had earlier revealed,

> The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in the vices that men have long practices, does not preclude the States from drawing a sharp line between the sexes * * *. [T]he oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protecting oversight * * *. [W]e cannot give ear to the suggestion that the real impulse behind this legislation was the unchivalrous desire of male bartenders to try to monopolize the calling.

A majority of men perhaps in this country may have applauded that decision, but the women did not. Like every campaign that has been successful in constitutional law, there has to have been an architect. One of the major architects to change the Supreme Court's collective mind about the place of women in the Constitution of the United States is Ruth Bader Ginsburg. Then Professor Ginsburg knew very well, and she still remembers extremely well, that in constitutional adjudication the Supreme Court does not make major progress in miles, but in millimeters.

The particular case that was chosen for making her points in constitutional law, like so many others that have seemed to be trivial, was the case called *Reed* v. *Reed*. And what was the issue? The question was the constitutionality of a State law which granted automatic preference to men over women when both were equally qualified to administer decedents' estates. She argued that that law giving mandatory preference to men over women without any regard to their individual qualifications violated the equal protection clause of the 14th amendment.

Now, in making that argument, Ms. Ginsburg was after larger constitutional game than the right of women to administer dead men's estates. The point she succeeded in establishing was that the statutory classification based on sex, like that based on race, is constitutionally suspect, thereby requiring strict scrutiny. The result is that a statute cannot be upheld constitutionally merely on that basis that a legislature could have had some rational reason for en-

acting it. And that was the standard that Mr. Justice Frankfurter adverted to in the case I earlier described, along with the traditional deference paid to any legislation that bans liquor.

The importance of the principle decided in *Reed* became apparent to less sophisticated scholars in the *Frontiero* case where the question was the validity of a Federal statute which gave special privileges and perks to servicemen with respect to their wives, but denied exactly those perks to servicewomen.

Writing for the majority of the Court, Justice Brennan relied heavily on *Reed's* holding and observed that the Nation's unfortunate history of sex discrimination had been rationalized on bases of "romantic paternalism." And he said, and I quote, "the practical effect put women, not on a pedestal, but in a cage."

She won that case, and with it she succeeded in building the equal protection platform upon which not only she, but many others, representing both men and women, were able to establish gender as a subject of deep concern under the equal protection clause.

Long before I knew Judge Bader Ginsburg personally, I had admired her work very much as a legal scholar and as an extraordinarily able constitutional advocate. Since she has been appointed U.S. circuit judge for the District of Columbia Circuit, Ruth Bader Ginsburg has performed her judicial role as successfully as she did her earlier roles—as a professor, as a scholar, as a constitutional advocate. She has been obliged to follow the law as laid down by the U.S. Supreme Court whether she agreed with it or not, and she has faithfully done so.

Her judicial writings, like her briefs and also like her scholarly writings as a professor, are concise, tightly reasoned, and persuasive. She has also proved herself to be a healer of rifts that always exist in any close structure such as the judiciary. She is an excellent negotiator. She is a moderator who has, nevertheless, managed to maintain her intellectual integrity and her dedication to her ideals of equality for all Americans under the law.

Perhaps it would not unduly disturb Justice Bradley's ghost to know that she well performs, very well performs the only roles he would have permitted her to have: As wife, mother, and as loyal, marvelous friend.

This committee has had very few nominees come before it who begin to have the qualities of distinction that Ruth Bader Ginsburg has. She deserves your votes for swift confirmation. Her appointment is a credit to the President. Her swift confirmation will be a credit to you, and as Justice of the Supreme Court of the United States, she will be a credit to the Nation.

Thank you.

[The prepared statement of Judge Hufstedler follows:]

PREPARED STATEMENT OF SHIRLEY M. HUFSTEDLER

My name is Shirley M. Hufstedler. I was admitted to the Bar 43 years ago. Half of my professional life has been devoted to private law practice and half to public service. I was a judge on state and federal courts, trail and appellate. When President Lyndon B. Johnson appointed me United States Circuit Judge for the United States Court of Appeal for the Ninth Circuit in 1968, I became the second woman in the history of the United States to be appointed to a federal appellate court.

The first was Florence Allen who was appointed by President Franklin Roosevelt to the United States Court of Appeals for the Sixth Circuit in 1934. At the time of her appointment she was a Justice of the Ohio Supreme Court, a position to

which she had been elected by the woman of Ohio who had worked with her to obtain ratification of the Constitutional Amendment giving women the right to vote. Judge Allen had died when I was appointed, and thereafter it was many years before another woman was appointed to the federal appellate bench.

I resigned from the bench in 1979 when the Senate confirmed President Jimmy Carter's nomination of me as the Nation's first Secretary of Education. When I returned to private life in 1981, I became a partner in the law firm in which I continue to practice, Hufstedler, Kaus & Ettinger, with time out to teach as Phleger Professor of Law at Stanford Law School and to lecture in other universities and colleges throughout the United States and abroad.

The United States Supreme Court has the awesome task of interpreting and applying the United States Constitution. That great charter of our government is also, in the Bill of Rights, our great charter of freedom. The Supreme Court has been repeatedly been called upon to interpret the Bill of Rights in deciding the issues that most deeply divide our Nation. Those issues include not only the rights to speak, to follow our own religions, to vote, to own property, to enjoy privacy, but also the right to equal protection of the law no matter what may be the colors of our skins, our previous condition of servitude, our race, our ethnicity, or our gender.

When the membership of the Supreme Court has proved unequal to their task, the results have been tragic. We remember the *Dred Scott* case in which the Court's failure to resolve the issue of Black slavery was one of the causes of the country's tearing itself apart in the Civil War. When the majority of the Justices in the 1930's were unable to accommodate their Nineteenth Century views of the Constitution to the urgent demands of the country, the majority imperiled the Court itself.

When the Justices have been equal to their task, the Court has succeeded admirably—often brilliantly. Thus, the Warren Court decided that the Nation could no more long endure with legalized apartheid than it could with human slavery. The Court unanimously decided *Brown* v. *Board of Education* to strike down racial segregation in the public schools. The Warren Court produced decision after decision carefully dismantling the remnants of slavery and diminishing invidious discrimination against Black men.

The Court was much slower to recognize that invidious discrimination was not limited to Black men, but extended to all women. Even that gifted group of Colonial gentlemen who drafted the noble words of the Constitution were unable to escape the dictates of custom, the dicta of St. Paul, and centuries of dominance by men that had systematically locked women into second class citizenship. Although human slavery was recognized, women were conspicuously missing in the Constitution.

Until nearly the end of the Nineteenth Century, women were denied basic rights of citizenship. None could vote. With trivial exceptions, they could not own or dispose of their property, even their own wages. Single women were slightly better off than their married sisters because, in the eyes of the law, the personalities of the husband and wife merged on marriage, and the wife's disappeared.

The traditional excuse for that blatant discrimination was expressed by Justice Bradley in his famous concurring opinion in *Bradwell* v. *Illinois* in which a majority of the Supreme Court held that, in barring Ms. Bradwell from admission to practice law, the State of Illinois did not violate the Privileges and Immunities Clause of the Constitution.[1] Justice Bradley explained: "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. * * * The paramount destiny and mission of a women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."[2]

Justice Bradley knew perfectly well that tens of thousands of women were performing hard physical labor and that frontier women worked side by side with their husbands under grueling and often perilous circumstances. He nevertheless persuaded himself that God, not man, had prescribed womens' destinies, and those who did not follow their assignments were either biological curiosities or the victims of humankind's inexcusable rebellion against God's will. Justice Bradley and those who shared his views confused the signs of a dominant culture with the signs of the Creator, and he mistook man's laws for the laws of nature.

It took decades of struggle by the suffragettes, like Florence Allen, and the men who would be enlisted in the cause, to amend the Constitution to give women the right to vote. It took decades of more work before the Supreme Court would realize that women, as well as men, were entitled the equal protection of the laws.

As late as 1948, Justice Frankfurter wrote the majority opinion upholding a state statute forbidding a woman to obtain a license as a bartender unless she was "the wife or daughter of the male owner" of the establishment, To uphold the statutory

[1] 83 U.S. (16 Wall.) 130 (Bradley, J., concurring) (1873).
[2] 83 U.S. at 141–42.

classification, Frankfurter harked back to Shakespeare's sprightly and ribald ale wife and stated that the Fourteenth Amendment "did not tear history up by the roots." He then reechoed Justice Bradley's sentiments: "The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes. * * * [T]he oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protection oversight. * * * [W]e cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling."[3]

A majority of men undoubtedly applauded, but women did not. One of the major architects of the campaign that changed the Supreme Court's collective mind about women is Ruth Bader Ginsburg. Like every sophisticated constitutional advocate, Ruth Bader Ginsburg knew that Supreme Court's constitutional interpretations, with very rare exceptions, move forward by millimeters, not miles.

The particular case that the Supreme Court chooses for each nudge may at first seem almost trivial. The case that Ms. Ginsburg argued, *Reed* v. *Reed*,[4] was just such a case. The issue was the constitutionality of a state statute providing that, when two individuals are otherwise equally entitled to appointment as an administrator of a decedent's estate, the male applicant must be preferred to the female. She argued that the statutes giving mandatory preference to men over women without regard to their individual qualifications violated the Equal Protection Clause of the Fourteenth Amendment.

In making that argument, Ms. Ginsburg was after larger constitutional game than the right of women to administer decedents' estates. The point she succeeded in establishing was that statutory classifications based on sex, like those based on race, were constitutionally suspect, thereby requiring strict scrutiny. The result is that a statute cannot be upheld constitutionally merely on the basis that the legislature could have had some rational basis for creating it—the standard invoked by Justice Frankfurter in the women bartenders' case.

The importance of the principle decided in *Reed* became apparent to less sophisticated lawyers when she won *Frontiero* v. *Richardson* in 1973.[5] In that case, the question was the validity of a federal statute that gave servicemen the right to claim medical and other benefits on behalf of their wives who were dependents, but denied the same rights to servicewomen on behalf of their husbands.

Writing for the majority of the Court, Justice Brennan relied heavily on *Reed's* holding that classification based on sex are inherently suspect and must be subjected to close judicial scrutiny. Justice Brennan observed that the Nation's unfortunate history of sex discrimination "was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage." Citing Justice Bradley's opinion as an example of such stereotypical notions, he concluded that "statutory distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual members."[6]

After she had successfully built the equal protection platform for women, she was able to argue case after case dismantling the legal cages in which women had been so long enclosed.[7] Other advocates used the same platform to carry on her work in extirpating gender discrimination.

Long before I knew Ruth Bader Ginsburg personally, I admired her work as a legal scholar and as an outstanding constitutional advocate.

When those qualities came to the attention of President Carter, she was appointed United States Circuit Judge for the Untied States Court of Appeals for the District of Columbia Circuit. She has performed her judicial role as successfully as she did her earlier roles as a professor of law and a constitutional advocate. As a Circuit Judge, she is required to follow the law as laid down by a majority of the Supreme Court, whether she agrees with it or not. She has done so. Her opinions have nevertheless expressed her conspicuous concern for civil rights for all Americans. Like her scholarly writings as a law teacher and her briefs as an advocate, her judicial opinions are concise, tightly reasoned, and persuasive. She has also

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[3] *Goesaert* v. *Cleary*, 335 U.S. 464, 465–66 (1948).

[4] 404 U.S. 71 (1971).

[5] 411 U.S. 677 (1973).

[6] *Id.* at 686–87.

[7] Time does not permit my even mentioning them all. Here are a few: *Califano* v. *Westcott*, 443 U.S. 76 (1979); *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975); *Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702 (1978); *Duren* v. *Missouri*, 439 U.S. 3057 (1979); *Nashville Gas Co.* v. *Satty*, 434 U.S. 136 (1977); *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977); *Califano* v. *Goldfarb*, 430 U.S. 199 (1977).

proved herself to be a healer of rifts among judges, as excellent negotiator, and a judicial moderate who has nonetheless maintained her intellectual integrity and her dedication to the ideals of equality before the law for all our people.

Perhaps it would not disturb the shade of Justice Bradley too much to know that Judge Ginsburg has also admirably fulfilled the only roles he would have permitted her to play: She is a devoted wife and mother and a treasured friend of all those who have come to know her.

This Committee has had few nominees for appointment as Associate Justice of the Supreme Court of the United States who as richly deserve your votes for swift confirmation. Her appointment is a credit to the President. Her confirmation will be a credit to you, and she will be a credit to the Nation as Justice Ginsburg.

The CHAIRMAN. Thank you very much, Judge.

Mr. Millstein.

STATEMENT OF IRA M. MILLSTEIN

Mr. MILLSTEIN. Thank you. Mr. Chairman, I submitted a statement which I hope will be incorporated in the record, and I will try to be brief.

The CHAIRMAN. It will be.

Mr. MILLSTEIN. I have known Ruth and Martin Ginsburg since the summer of 1957 when Martin joined our firm as a summer associate. We were then about 20 lawyers located on 42nd Street in New York. And we are now about 650 in the same city, and in about nine different locations.

I have been their friend since 1957, even though we lost Marty as our partner in 1980, when Ruth came down to become a circuit court judge—a moment I remember as sort of bittersweet: sweet in being able to help her on that task, and a real loss to the firm in losing one of the very best tax lawyers in the United States when Martin's geography caused him to separate from the firm.

Ruth Ginsburg's moderate views on the interstitial role of the judiciary and the need for collegiality on the appellate benches has been demonstrated well in the last few days, and I don't intend to replicate or duplicate. You don't need to hear any more from me on that subject.

I think something else of importance is happening for the bench and the bar, and I don't think we ought to let that moment pass without comment.

Having chosen as a candidate a lawyer/judge from a pool, a very small pool of very highly qualified people, I would like to think that President Clinton and soon you in the Senate have chosen with gender-blindness a person who just happens to be a woman. If perhaps that is an overstatement this time, maybe it won't be the next time.

I have practiced law now for about 45 years, and I have watched the bench and the bar become populated with women, but ever so slowly and with a great deal of room for improvement.

Martin, Ruth, my wife Diane, also a professional woman, and I were friends when our children were small in the 1960's and 1970's. We saw each other and our children quite often. I watched with growing concern over the unfairness and indignities which were met by both of them, Ruth and Diane, and by the women lawyers whom we had begun to hire in our firm.

In those years, a person with Ruth's qualifications should have been fought over and sought for by law firms on graduation. It didn't happen. She should have had no trouble securing tenure on

a faculty like Harvard, Yale, or Columbia, and that didn't happen either. And it is no wonder that in the 1970's Ruth turned her quality mind to gender issues under the Constitution of the United States and began to focus the whole profession's conscience on what we had been ignoring for such a long time.

The legal profession had not been great in making room for women and racial minorities. It is getting better, but we are not there yet.

Now, how does our profession overcome this? Only by training and learning ourselves, sensitizing ourselves to the need to deal with gender and race in a diverse workplace, and then actually making progress.

Now, the workplace for most of us is our partnership and the courtrooms. We lawyers normally behave ourselves in courtrooms, and sometimes we take that good behavior with us out of the courtroom. When it becomes commonplace for us to appear before highly qualified, diverse judges, gender and racial distinctions in our law firms will disappear further, especially as it becomes obvious, as it is here today, that a highly qualified person is being chosen who just happens to be a woman, not because she is a woman. Happily, this is becoming easier for most of us now because there are pools of highly qualified lawyers of diversity, so the choosing can be gender-blind. And maybe today, in Ruth, marks a beginning of gender-blindness for both the bench and the bar.

Senator Hatch deserves a very honorable mention in this respect, which I would like to talk about for just a minute. When President Carter nominated Ruth to the District of Columbia Circuit toward the end of his 4-year term, it seemed to us as though the appointment would languish until after the November 1980 election. In that event, the likelihood of Ruth's confirmation, we now know, would have been slim or none. Opposition to Ruth was largely based on the assertion that she was a single-issue lawyer—women's rights.

I knew Senator Hatch from some prior dealings; I have forgotten now about what, Senator. I personally knew him to be open-minded. We didn't often agree on substance, but I was always treated courteously, and he heard me out.

I called the Senator and asked for an audience for Ruth, urging him to listen and make up his mind on the evidence, not on gossip and rumor. He agreed. We three met somewhere for lunch and talked for quite some time. I don't even remember the total substance.

When we were done, the Senator apparently concluded that Ruth Ginsburg was, indeed, a legal scholar from no ideological school, who quite certainly had some strong ideas on the laws relating to gender. But Ruth Ginsburg also demonstrated that she clearly had the makings of a judge before whom lawyers of all ideologies and persuasions would like to appear and have cases decided. The opposition thereafter seemed to have melted away.

And Ruth was confirmed and on her way to today. Senator Hatch and I recently reminisced about that day, as two proud colleagues. Coming as we do from our respective political philosophies, this is true diversity in action.

So, to repeat and conclude, the candidate is well qualified, exceptionally well qualified. That the candidate is a woman truly is incidental. When she is confirmed, President Clinton and the Senate will have taken a large step in demonstrating that gender should be and is irrelevant. The eminently well-qualified Justice O'Connor was the first woman on the Court. There had to be a first. There always has to be a first. But now, hopefully, we may be over "firsts," and into quality without regard to gender. To me it is a major event for the bar and the country. And I think we ought to pause for just one moment and acknowledge it.

Thank you.

[The prepared statement of Mr. Millstein follows:]

PREPARED STATEMENT OF IRA M. MILLSTEIN

I've known Ruth and Martin Ginsburg since the summer of 1957 when Martin joined our firm as a summer associate. We were then about 20 lawyers—all male—in smallish quarters on 42nd Street in New York City; we are now 650-plus lawyers in about nine geographic locations, at last count. I've been their friend throughout, even though we lost Marty as our partner in 1980 when Ruth became a Judge on the District of Columbia Circuit Court—a moment I recall with some bitter-sweetness. Sweetness at Ruth's appointment, her confirmation, and at being able to assist Ruth in that process; disappointment at losing from my firm the best tax lawyer in the United States, when they moved to Washington, away from our home base in New York City.

You've heard, and this morning no doubt will continue to hear, from Supreme Court scholars and practitioners about Ruth's talents and potential for being one of the great, not just good, Supreme Court Justices; surely you don't need still another exegesis on that subject. What may not have been emphasized enough is what I (and others such as Stanford Law School's outstanding Constitutional Scholar—Professor Gerald Gunther who is here today) perceive to be her greatest qualification—her non-ideological scholarship. She will be a Justice who applies the law carefully, analytically and with integrity in a clear and lean manner. She will not, however, operate in a vacuum, but, because she is who she is and has been, she will be ever mindful of the world she lives in and the men and women who inhabit it.

One recent decision, *Roosevelt* v. *DuPont*, 958 F.2d 416 (D.C. Cir. 1992), exemplifies my view of her judicial approach about as well as any decision of her's that I've read. It's meaningful to me because it deals with my practice area—business-related issues.

There, Judge Ginsburg flexibly entertained an issue first raised on appeal—because the Supreme Court had earlier suggested that appellate courts not by-pass, on technicalities, "issues of importance to the administration of federal law." She concluded that in "exceptional circumstances" Courts of Appeal "are not rigidly limited" solely to issues raised below. Moving to the merits of an important proxy issue, her reasoning followed a model process of clarity and precision. Dealing with a federal statute—she first looked to Congressional intent, and found a delegation of authority to the SEC, with very modest guidance from Congress as to how that delegated authority should be exercised. She next turned to the SEC action at issue to see if it coincided with Congress' intent. She obviously considered relevant judicial precedents, and importantly looked to expectations built upon a rather consistent interpretation of the law. Again, showing regard for not wasting litigator and judicial time with remands, she accepted a public statement of facts not strictly within the record below, but necessary to the outcome. Her decision was widely acclaimed—but, to me, the key was her flexibility, the scope of her inquiry and reasoning, and the concise nature of an opinion that said a great deal in a very short compass. You are dealing with a quiet person who possesses a legal mind of enormous scope, who recognizes the role of the Judiciary as one branch of government that, while working with co-equal branches, must be ever mindful of individual rights. And, by now, you must know that.

Her moderate views on the interstitial role of the Judiciary, and the need for collegiality on the Appellate Benches, are nowhere better stated than in her own "Madison Lecture" of March 9, 1993.

So, let's pass her obvious talents and non-ideological—rather ideal—approach to judicial decision-making. You have in Judge Ginsburg a Judge—and soon I hope a Justice—who practitioners would conclude will not only give them a fair shake, but

will do so with care and erudition. One can't ask for more from any Bench, or for any less from the Country's most important Bench.

But something even more important may be happening, and we shouldn't let the moment pass without comment. Having chosen as a candidate a lawyer/judge from a small pool of the very best quality available, I would like to think that President Clinton, and soon you and the Senate, have chosen, with gender-blindness, a person who happens to be a woman. If perhaps that is an overstatement this time, the day will soon come when it won't be.

Practicing now for almost 45 years I've watched the Bench and Bar become populated with women, but ever so slowly, and with a good deal of room for improvement. I serve with Cy Vance and others on a New York City Bar Association Committee on Diversity, which is a nice way of describing a Committee that is asking ourselves how we're doing with gender and race. The answer is: we're trying—but probably not hard enough—and there are ways we can improve.

Judge Ginsburg and my wife (also a professional woman) are among the reasons for my concern about diversity. Through both, and though the women who have become my partners at my firm, I've seen the indignities and unfairness which still exist; less than Ruth and my wife Diane grew up with—but far more than should still exist.

Marty, Ruth, Diane and I were friends when our children were small in the 60's and 70's. We saw each other and each other's children often. But then we all became busy on respective career paths in the 80's and 90's, and geography intervened. When we talk though—it's as if no time at all has passed.

In those early years, a person with Ruth's qualifications should have been fought over and sought by the law firms upon her graduation. It didn't happen. She should have had no trouble securing tenure on a Harvard, Yale or Columbia faculty. It didn't happen. I remember Marty's frustration and anger when Ruth was turned down for a professorship at a law school where we all thought we could help. I'm convinced that the only issue was gender on the faculty; and gender was still an issue in law partnerships around the country. It is no wonder that in the 70's Ruth Ginsburg turned her quality mind to gender issues under the United States Constitution and focused the profession's conscience on an issue the majority had been ignoring. The profession wasn't great in making room for women and racial minorities. I recall early on inviting a woman associate—our firm's first—to accompany me to a Bar Association lecture and reception—and being roundly ribbed and jabbed for doing so. I was embarrassed for us all. It's not so great—even now. I witnessed, just within the year, a small example. One of my women partners and I met a male who welcomed me warmly, and then invited us into his office—turning to my partner and saying, "C'mon honey, this way." I'm sure, it was said without thought or to denigrate, but nonetheless it was indicative of an attitude that hasn't died easily in our profession. My partner didn't flinch.

How does our profession overcome this? Only by training ourselves actively, and sensitizing ourselves to dealing with gender and race in a diverse workplace.

But actually making progress is even more important. And gender and racial diversity in our workplace becoming commonplace, is the single most important proof of progress in our profession. The workplaces for most of us are our partnerships, and the courtrooms. We lawyers normally behave ourselves in courtrooms, and sometimes take our good behavior with us out of the courtroom. When it becomes commonplace to appear before diverse judges, gender and racial distinctions will disppear further. The Bar's task is to make diversity acceptable and commonplace in our firms; the Executive and Legislative Branches should do likewise for the Judiciary. Happily, this is now becoming much easier for all of us. None of us can hide behind the old shibboleth that said: show me a dedicated and qualified woman and she'll make partner (or Judge, or Commissioner, or whatever). Of course, for years we defined "dedicated and qualified" to exclude 99 percent of those who applied. After a long struggle however, definitions have been clarified and there are now pools of highly qualified lawyers of diversity—so that choosing can be gender blind—and perhaps this day (and Ruth) should mark a beginning of gender blindness—for both the Bench and the Bar.

Senator Hatch deserves a very honorable mention in this process. When President Carter nominated Ruth to the D.C. Circuit towards the end of his four year term, it seemed as though the appointment would languish until after the election of November 1980. In that event, the likelihood of Ruth's confirmation, we now know, would have been slim to none. Opposition to Ruth was largely based on the assertion that she was a single issue lawyer—"women's rights".

I knew Senator Hatch from some prior dealings, the substance of which I now forget. But, of all the Republicans on this Committee, I thought I had the best relationship with him. I, personally, knew him to be open-minded. We didn't often agree

on substance—but I was always treated courteously and he heard me out. I called the Senator and asked for an audience for Ruth—urging him to just listen and make up his mind on the evidence—not gossip and rumor. He agreed. We three met somewhere for lunch and then talked for quite some time. The talk ranged over cabbages and kings and lawyers and judges, and I can't recall specifically.

When we were done, the Senator apparently concluded that Ruth Ginsburg was a legal scholar from no ideological school—who indeed had strong ideas on the law relating to gender issues. As she recently pointed out to this Committee, her gender work in the 70's was toward * * * "the advancement of equal opportunity and responsibility for women and men in all fields of human endeavor." Ruth Ginsburg also demonstrated that she clearly had the makings of a judge before whom lawyers of all ideologies and persuasions would like to appear and have cases decided. The opposition melted away.

And Ruth was confirmed and on her way to today. Senator Hatch and I recently reminisced about that day, as two proud colleagues. Coming, as we do, from our respective political philosophies—that is true diversity in action.

So to repeat and conclude: This candidate is qualified—exceptionally qualified. That the candidate is a woman truly is incidental. When she is confirmed—President Clinton and the Senate will have taken a large step in demonstrating that gender should be, and is, irrelevant. The eminently well-qualified Justice O'Connor was the first woman on the Court—there had to be a first—there always has to be a first. But now, hopefully, we may be over "firsts" and into quality without any regard to gender. It's a major event for the Bar and the Country. Let's pause for one moment and acknowledge it.

The CHAIRMAN. Thank you very much. I thank you all. Your words were eloquent. They obviously speak for themselves. I have no questions.

Senator Hatch.

Senator HATCH. I just want to welcome all of you here and thank you all for appearing. I think you made very good statements that everybody should be listening to.

The CHAIRMAN. Senator Feinstein.

Senator FEINSTEIN. Just a small observation. As one who has usually in my prior life seen lawyers through the lens of an individual case, it is wonderful to see the breadth and the macro picture of the law. And I think it would lead every American to have a very great respect for the law. So I want to very sincerely thank you for coming, particularly Judge Hufstedler, whom I know. And I think we are going to see the glass ceiling shattered, and I must say I concur with your views 100 percent.

Thank you very much.

The CHAIRMAN. I thank you all.

Mr. COLEMAN. Mr. Chairman, since I am the only one that observed the 5 minutes, if I——[laughter].

The CHAIRMAN. No, Mr. Millstein observed the 5 minutes. Mr. Smith was close, and the judge, because she is a judge, is not bound by any rules. [Laughter.]

Judge HUFSTEDLER. Thank you.

Mr. COLEMAN. I just want to add my thanks to this committee that you would spend the three or four days airing this, although I am pretty sure after the first day everybody felt that in this case the nomination would be reported favorably. I think you have greatly educated the American people as to what the law is about, what this country is about, and how responsible politicians and judges try to meet the demands of the American people. And I thank you very much for taking the time and effort and providing the brains and brilliance in the way you conducted yourself.

The CHAIRMAN. Thank you very much, Mr. Secretary. Nice comment. I thank you all.

Senator HATCH. Thank you.

The CHAIRMAN. Our third panel is comprised of two very prominent members of the legal academic community. I might add that we could have had 150 members of the legal academic community who were willing and anxious to come and testify. But there was such unanimity that we responded to two in particular. The first is Prof. Gerald Gunther, the William Nelson Cromwell Professor of Law at Stanford Law School. Professor Gunther served as a law clerk for Chief Justice Earl Warren, and prior to his appointment at Stanford was a member of the faculty at Columbia University School of Law. Welcome, Professor. It is nice to have you back. And thank you, I might add parenthetically, for always being available to this committee for any information we ask and any input we have asked of you.

Next we have Herma Hill Kay, who is a dean of the University of California at Berkeley, Boalt Hall, School of Law. It is nice to see you again, Dean. Again, I thank you, every time I have asked for your input, you have provided it. She is a coauthor with the nominee of a casebook on sex-based discrimination and was among the first full-time women law professors in this country.

I welcome you both, and I will yield to you in the order you have been recognized.

PANEL CONSISTING OF GERALD GUNTHER, WILLIAM NELSON CROMWELL PROFESSOR OF LAW, STANFORD UNIVERSITY, STANFORD, CA; AND HERMA HILL KAY, DEAN, SCHOOL OF LAW, UNIVERSITY OF CALIFORNIA, BERKELEY, CA

STATEMENT OF GERALD GUNTHER

Mr. GUNTHER. Thank you, Mr. Chairman, members of the committee; that is, Senator Feinstein, my own Senator, a Stanford alumna, our last, most recent commencement speaker. I am really personally overjoyed and proud as well as professionally heartened that this committee is considering the nomination of Ruth Bader Ginsburg for a seat on the Supreme Court.

I speak as a teacher of constitutional law for more than 35 years, and as someone who has known Ruth Ginsburg well for almost as long a time. I am entirely confident that she possesses all of the qualities you should cherish in a Supreme Court Justice.

Ruth Ginsburg was my student at Columbia Law School. She was a brilliant student. She demonstrated extraordinary intellectual capacities, as she has in everything she has undertaken all her life. In the 1950's, I set up a program at Columbia to place our graduates as judicial law clerks, and I assisted her selection by a fine, originally recalcitrant, Federal judge.

I have followed her work closely in the years since. I admired her scholarly capacity as a faculty member at Rutgers and then at Columbia, and especially her historic work on behalf of women's rights, as a brief-writer and oral advocate before the Supreme Court.

In 1980, Ruth was named, as you know, to the Court of Appeals for the District of Columbia Circuit. I was asked then to speak at