ANSWERS TO QUESTIONS FROM SENATOR LEVIN

1. Before the President announced his intention to nominate you, did any member of the White House staff or the Justice Department ask you any questions relating to, or did you comment on your views relative to, the following: abortion, affirmative action, capital punishment, school prayer, independent counsel, the standing of Congress to bring suit against the Executive Branch, separation of church and state, and the rights of defendants in criminal cases? If so, please describe to the best of your recollection the content of all such questions, and your comments, including an indication of who was present.

As I testified to the Committee on the Judiciary, Transcript of Hearings, December 14, 1987, Afternoon Session, no member of the White House staff or the Justice Department asked me any questions which directly or indirectly solicited my views on the subjects listed in your inquiry or on any other subject that might come before the Supreme Court for consideration. Further, I have not commented on, offered, or volunteered those views to any member of the White House staff, the Justice Department, or any other part of the administration.

2. Please set forth, in as much detail as you remember, specifically what you said to Senator Helms about your personal views, opinions, feelings, etc., relative to abortion.

As I testified to the Committee on the Judiciary, Transcript of Hearings, December 14, 1987, Afternoon Session, I did not say anything to Senator Helms concerning my personal views, opinions, or feelings about abortion or any other subject that might come before the Supreme Court for consideration. In all my discussions with members of the Senate, including my meeting with Senator Helms, I have taken the position that my religion may be of some relevance as to character and temperament, but that my religious beliefs, or any views on the subject of abortion, are a private matter that I will not consult in making a judicial decision. I also told Senator Helms that I obviously was aware of the depth of feeling that he has on this subject, but further indicated that as a judge I maintain a fair and open mind on the issue, so that I can resolve any particular case consistently with the law and the Constitution. Our pluralistic society allows us to admire persons with views and opinions based on a moral code, but such views are not, and should not, be an indication how a judge will rule when interpreting the law in any particular case.

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3. In the Senate Judiciary Committee's questionnaire, you responded to several questions concerning your membership in business clubs, social clubs, or fraternal organizations. One of these questions asked for your opinion as to whether any of the clubs or organizations you have belonged to practices invidious discrimination and other forms of discrimination. In the questionnaire, you defined the term "invidious discrimination" by explaining that it "suggests that the exclusion of particular individuals on the basis of their sex, race, religion or national origin is intended to impose a stigma on such persons." (p. 50, emphasis added). In a response to Senator Kennedy, you further explained that "discrimination comes from several sources. Sometimes it's active hostility, and some sometimes it's just insensitivity and indifference." (transcript, December 14, 1987, p. 137).

Can you give some real life examples of when discrimination against women and blacks would not be invidious? In your opinion, was the discrimination against women and blacks by the Olympic Club, during your membership, invidious?

I undertook in my response to the Judiciary Committee's Questionnaire, at page 50, to define the phrase "invidious discrimination" because the question to which I was responding specifically referred to the 1984 amendments to the ABA Code of Judicial Conduct which use that phrase. However, I did not say or imply that such legalistic interpretations provide an appropriate basis for individuals or organizations to justify their conduct. I believe that discrimination against women, blacks, or other minorities imposes real injury and is wrong whether it arises from intentional, active bias or from indifference and insensitivity. While I believe that the membership practices of the Olympic Club were not invidious in the sense intended by the ABA Code because they were not animated by ill-will, I disagreed with those practices, and when my efforts to change them were unavailing, I resigned.

Please refer also to my answers to Senator Simon's written questions on this point.