

At the request of the White House, our committee investigated the professional competence, judicial temperament, and integrity of Judge Ginsburg. Our work included discussions with more than 625 persons, including Justices of the Supreme Court, Federal and State judges, a national cross-section of practicing lawyers, and law school deans and faculty members, some of whom are specialists in constitutional law, as well as experts on Supreme Court practice. In addition, Judge Ginsburg's opinions were independently reviewed by three reading groups—a reading team of lawyers who have practiced actively in the Supreme Court, chaired by Rex E. Lee, former Solicitor General of the United States and currently president of Brigham Young University; and two panels of law professors, one chaired by Professor Ronald J. Allen at Northwestern University Law School and one chaired by Dean Mark G. Yudof of the University of Texas Law School. And finally, Judge Ginsburg was interviewed personally by three members of this committee.

Our committee began its investigation of Judge Ginsburg on June 14, 1993, and concluded on July 13, 1993. Based upon our evaluation, we reported to the White House and to this committee that the Standing Committee is unanimously of the opinion that Judge Ginsburg is entitled to the committee's highest evaluation for a nominee to the Supreme Court of the United States: well qualified. That evaluation is reserved for those who are at the top of the legal profession, have outstanding legal ability and wide experience, meet the highest standards of professional competence, judicial temperament and integrity, and merit the committee's strongest affirmative endorsement.

I have filed with the Judiciary Committee a letter describing the results of our investigation and shall not repeat those results in detail here. I request that the letter be included in the record of these proceedings.

The CHAIRMAN. We will make it a part of the record.

Mr. WILLIS. Thank you.

[The letter follows:]

AMERICAN BAR ASSOCIATION,
STANDING COMMITTEE ON FEDERAL JUDICIARY,
Washington, DC, July 19, 1993.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
Dirksen Senate Office Bldg., Washington, DC.

Re: Honorable Ruth Bader Ginsburg.

DEAR MR. CHAIRMAN: This letter is submitted in response to the invitation from the Senate Committee on the Judiciary to the Standing Committee on Federal Judiciary of the American Bar Association (the "Committee") to present its report regarding the nomination of the Honorable Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court of the United States.

The Committee's evaluation of Judge Ginsburg is based on its investigation of her professional qualifications, that is, her integrity, judicial temperament and professional competence. Consistent with the Committee's long standing policy it did not undertake any examination or consideration of Judge Ginsburg's political ideology or her views on any issues that might come before the Supreme Court.

To merit the Committee's evaluation of *Qualified* or *Well Qualified* the Supreme Court nominee must be at the top of the legal profession, have outstanding legal ability and wide experience and meet the highest standards of integrity, professional competence and judicial temperament. The evaluation of *Well Qualified* is reserved for those found to merit the Committee's strongest affirmative endorsement.

I am pleased to report that the Committee finds Judge Ginsburg to be *Well Qualified* for appointment as an Associate Justice of the Supreme Court of the United States. This determination was unanimous.

THE PROCESS

The investigation of Judge Ginsburg began on June 14, 1993 and ended on July 13, 1994. Judge Ginsburg was interviewed personally by members of the Committee.

In conducting the investigation members of the Committee personally interviewed over 400 federal judges, including present and retired members of the Supreme Court of the United States, members of the Federal Court of Appeals, members of the Federal District Courts, Federal Magistrate Judges, Federal Bankruptcy Judges, and members of State Courts. The investigation included colleagues of Judge Ginsburg from the United States Court of Appeals for the District of Columbia Circuit.

Members of the Committee personally questioned approximately 225 others, including practicing lawyers throughout the United States, former law clerks and lawyers who have appeared before Judge Ginsburg. Committee members inquired of law school deans, faculty members of law schools and constitutional scholars throughout the United States, including professors at Rutgers University and Columbia University Law School, where Judge Ginsburg served as a member of the faculty.

The Committee also had at its disposal the report prepared in 1980 by the Committee in connection with the investigation of Judge Ginsburg for appointment to the United States Court of Appeals for the District of Columbia Circuit. She was at that time found by a majority of the Committee to be *Exceptionally Well Qualified* and by a minority *Well Qualified* for appointment to that court.¹

It has been the practice of the Committee to ask groups of distinguished legal scholars and Supreme Court practitioners to review independently all of the opinions of nominees for the Supreme Court. This practice was followed again here and Judge Ginsburg's opinions were reviewed by: (1) a Reading Group of distinguished lawyers chaired by Rex E. Lee, formerly Solicitor General of the United States and presently President of Brigham Young University. This group consisted of 11 lawyers, all of whom have practiced and argued cases in the Supreme Court; (2) a Reading Group chaired by Professor Ronald J. Allen of the Northwestern University School of Law, consisting of 21 members of that law school's faculty; and (3) a Reading Group composed of 12 professors from the University of Texas Law School, chaired by its Dean, Mark G. Yudof.²

The three Reading Groups reported to the Committee their independent analyses of Judge Ginsburg's opinions. These reports were evaluated by the members of our Committee, each of whom also read opinions of Judge Ginsburg and her published writings on a variety of legal subjects.

EVALUATION

Integrity

Judge Ginsburg has earned and enjoys an excellent general reputation for her integrity and her character. No one interviewed by the Committee had any question or doubt in this respect.

Temperament

Judge Ginsburg's judicial temperament also meets the high standards set by the Committee for appointment to the Supreme Court.

A very few who were interviewed commented on what they perceived as her tendency to be a "loner" and questioned her ability to be collegial. Such reservations were wholly dispelled by comments from her colleagues who have known and worked closely with her over the years who uniformly found her to be collegial and to be a consensus builder.

The Committee also investigated a published comment claiming that Judge Ginsburg had bad relationships with her law clerks. Our investigation, including interviews with virtually all of her former clerks now living throughout the country, found such claim to be without foundation. From our interviews with her former law clerks it is apparent that she enjoys a group of fiercely loyal former clerks who regard her with admiration and respect and who enthusiastically support her appointment. Moreover, she and her clerks have remained in close personal contact over

¹In 1980 the Committee's highest rating for lower court judges was *Exceptionally Well Qualified*. This rating was subsequently discontinued. The highest rating is now *Well Qualified* for all courts.

²Members of the three Reading Groups who participated are listed on Exhibit A to this letter.

the years, and she has regularly followed and supported the family and professional development of many of them. The training received by the clerks in Judge Ginsburg's chambers resulted in many being selected as law clerks by several Supreme Court Justices.

There were isolated comments from several lawyers who had practiced in her court that she could on occasion be impatient in questioning at oral argument. Such comments were carefully investigated. Judge Ginsburg is a judge who prepares thoroughly for every oral argument by reading the briefs, defining the issues and formulating questions to present to counsel. The overwhelming majority of counsel respect this preparation, welcome the judge's questions, and find no basis for any complaint as to her questioning during oral argument.

Judge Ginsburg clearly possesses and exhibits the highest level of judicial temperament.

Professional Competence

Judge Ginsburg's educational background amply prepared her for Supreme Court service. She graduated at the top of her class at Cornell University, attended Harvard Law School for two years and served with its top students on its Law Review and completed her legal training at Columbia Law School where she also was at the top of the class and served as an editor of its Law Review.

Her scholarship led to an academic career which began at Rutgers University Law School, where she served for 9 years and was named Professor of Law, and continued at Columbia Law School, where she served with distinction as Professor of Law for 8 years.

She also comes with extensive experience as an appellate advocate, including six cases in which she was counsel of record and argued in the Supreme Court. She has not had trial experience, but she served for two years as law clerk to one of New York's most distinguished district judges.

She has developed and maintained broad interests. Throughout her career she has participated actively in bar association work, serving in leadership capacities in several organizations, is an active member of the American Law Institute, serving on its Council, has participated actively in the work of the American Bar Association, and since ascendancy to the Bench has been active in court administration and the preparation of a history of the District of Columbia Circuit.

Her extensive scholarly writings cover wide-ranging subjects. She has, for example, written extensively on the law of Sweden, civil rights, the rights of women, private international law, constitutional law issues and even the confirmation process for Supreme Court Justices. These writings not only reflect the high level of her scholarship but the breadth of her interests, qualities that will contribute to her effective service as a Justice of the Supreme Court.

The comprehensive reports submitted to us by the three Reading Groups of scholars and Supreme Court practitioners confirm the Committee's own conclusions concerning the scholarship and writing ability of Judge Ginsburg.

One group used such words in describing her opinions as "lawyerly" "thoughtful" "careful" "measured, clear, precise and judicious."

The report of another of the three Reading Groups summarized Judge Ginsburg's writings as follows: Judge Ginsburg has an unmistakable and deeply ingrained style of decision. She invariably lays out the case with remarkable clarity, informing the reader of the relevant procedural background and precisely what is to be decided. She then proceeds to explain the decision the court has reached with great care and attention to detail in direct and accessible prose. She has no rhetorical or literary flair that we observe, but what her opinions lack in inspiration they compensate for in lucidity. She obviously strives hard to be fair, even-handed, and open-minded, and she adequately addresses all relevant arguments in the cases she decides.

The third group commented with respect to her opinions that they "are uniformly well crafted" and that their "greatest virtue . . . is their clarity." "The reader comes away convinced that no stone has been left unturned in rehearsing the state of the record, the parties' contentions or the applicable doctrines." The report noted that after recognizing and identifying critical issues "she sets forth facts pertaining to the issues and then deals with the cases and other apposite authority in a scholarly fashion." There were also favorable comments on the brevity and conciseness of her opinions. One of the Reading Group members noted: "She is bright, able, sincere, and apparently 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 with style and understanding and the confidence of one with a well-trained mind and a sense of herself."

This group also specifically commented on her concern with the institutional needs of the court and the necessity for maintaining collegiality. A member noted

that "few of [her] opinions have an edge or sting to them," and that her comments "are usually relatively mild in dismissing an argument that she finds unpersuasive or unfounded." The report noted that from the tone of her opinions "she genuinely cares about the collegial dimension of appellate judging."

Our Committee is fully satisfied that Judge Ginsburg meets the highest standard of professional competence required for a seat on the Supreme Court. Her academic training, her work as an appellate advocate, her service on the faculties of distinguished law schools, her scholarly writings and her distinguished service for thirteen years on the Court of Appeals dealing with many of the same kind of matters that will come before the Supreme Court fully establish her professional competence.

CONCLUSION

Based on the information available to it, the Committee is of the unanimous opinion that Judge Ginsburg is *Well Qualified* for appointment to the Supreme Court of the United States. This is the Committee's highest rating for a Supreme Court nominee.

The Committee will review its report at the conclusion of the public hearings and notify you if any circumstances have developed that would require a modification of these views.

On behalf of our Committee, we wish to thank you and the members of the Judiciary Committee for the invitation to participate in the confirmation hearings on the nomination of Honorable Ruth Bader Ginsburg to the Supreme Court of the United States.

Respectfully submitted,

WILLIAM E. WILLIS, *Chair*.

EXHIBIT A

LAWYERS READING GROUP

Rex E. Lee, Chair

Hon. Arlin M. Adams, Schnader, Harrison, Segal & Lewis (former Federal Court of Appeals judge)

Professor Sara Sun Beale, Duke University School of Law

William T. Coleman, Jr., O'Melveny & Myers

Professor John H. Garvey, University of Kentucky Law School

Philip A. Lacovara, Mayer, Brown & Platt

Kathryn A. Oberly, Associate General Counsel, Ernst & Young

Benna Ruth Solomon, Chief Assistant Corporation Counsel City of Chicago

Hon. Philip W. Tone, Jenner & Block (former Federal Court of Appeals judge)

Professor Richard G. Wilkins, Brigham Young University Law School

Professor Charles Alan Wright, University of Texas Law School at Austin

NORTHWESTERN UNIVERSITY SCHOOL OF LAW

Professor Ronald J. Allen, Chair

Professor Kenneth W. Abbott

Professor Steven Calabresi

Professor Charlotte Crane

Professor John Donohue

Professor Meade Emory

Professor Thomas L. Eovaldi

Professor Mayer G. Freed

Professor Thomas Geraghty

Professor Stephen B. Goldberg

Professor John P. Heinz

Professor Keith Hylton

Professor Gary Lawson

Professor Thomas Merrill

Professor Michael Perry

Professor Daniel Polsby

Professor Philip Postlewaite

Professor Stephen Presser

Professor Paul Robinson

Professor Victor Rosenblum

Professor David VanZandt

UNIVERSITY OF TEXAS SCHOOL OF LAW

Dean, Mark G. Yudof, Chair

Professor David A. Anderson
 Professor George E. Dix
 Professor Mark Gergen
 Professor Julius G. Getman
 Professor Steven J. Goode
 Professor Douglas Laycock
 Professor Thomas O. McGarity
 Professor L.A. (Scot) Powe, Jr.
 Professor David M. Rabban
 Professor John J. Sampson
 Professor Jordan Steiker

Mr. WILLIS. To summarize our findings, the committee is fully satisfied that, by virtue of her academic training, her work as an appellate advocate, her academic service, her scholarly writings, and her distinguished service for 13 years on the court of appeals, Judge Ginsburg meets the highest standards of professional competence required for a seat on the Supreme Court. She enjoys the admiration and respect of her colleagues on and off the bench, and her integrity is above reproach.

We are pleased to have the opportunity to appear here today to present the committee's findings and would be happy to respond to any questions about our evaluation.

The CHAIRMAN. Thank you very much.

I only have one question. Was there any dissenting vote on the committee at all?

Mr. WILLIS. There was no dissenting vote whatsoever, Mr. Chairman.

The CHAIRMAN. So it was unanimous that the highest rating that the American Bar Association gives in this circumstance was unanimous; each individual, no one abstaining, voted for that rating?

Mr. WILLIS. No abstentions. Every member of the committee voted for the rating of well qualified.

The CHAIRMAN. I have no further questions. I only want to thank you again because I think people vastly underrate the incredible amount of work that you all undertake. We in this committee know because our staffs read every one of the opinions. We know what it is like.

You are in active practice at the time while you are doing it. We appreciate it, and I would like to publicly extend my thanks to you, both of you, and to the Bar Association generally for being willing to perform this function.

I yield now to my friend from Utah.

Senator HATCH. I want to join in that praise because I think the changes that have been made at the ABA and the renewed look at the committee and the restructuring of the committee have been very excellent. And I know that it takes a lot of time. It is a lot of effort. You folks are doing a tremendous job for the benefit of the legal community at large, but really for the public at large. And I just want to personally compliment you. I am glad to see that the committee has approached this in an apolitical way, as it should, and I just want to personally acknowledge that in front of everybody here today.

So thank you for the efforts you have put forth, the testimony you have given, and the work that you all have done.

The CHAIRMAN. Thank you very much.

Mr. WILLIS. Thank you, Senator.

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. I want to join my colleagues in thanking you for your efforts, but I sort of think that my good friend from Utah's comment was a little bit negatively pregnant with the fact that you have suddenly gotten religion and now you are doing a good job. And I have the feeling that you have done a good job over the years. I haven't always agreed with your conclusions. Most of the time I have. But I thought I was really bemused when sometimes in the past the ABA was accused of being too liberal. I was a practicing lawyer, and I have been a member of the ABA for a long time. And I never thought it was a liberal organization. Quite the opposite, I thought it was too damn conservative.

But having said that—

Senator HATCH. Of course, he thinks everything is too damn conservative. [Laughter.]

Senator METZENBAUM. Especially you, Orrin. [Laughter.]

Senator HATCH. Well, I think I probably am.

The CHAIRMAN. So far things are going well. Senator, do you have any further comment?

Senator METZENBAUM. With that said, thanks very much for all your efforts.

The CHAIRMAN. The Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman.

I would like to take just a moment or two to discuss the one question which really concerns me about the confirmation proceedings, and I join in expressing appreciation for the work that your organization has done. Your work, of course, was completed before these hearings started. I have already expressed my concerns about how much information we got on judicial ideology and judicial philosophy.

I was concerned, illustratively, that on a question about whether the Korean military engagement was a war raising the constitutional issue about the authority of the Congress to declare war. Judge Ginsburg wanted to have it briefed and argued before she would make a statement. Certainly the Korean conflict is not going to come before the Court, and I think many of the other questions which were asked on ideology and philosophy come into the same line.

When we had Justice Scalia, then Judge Scalia, for confirmation and I asked him about *Marbury v. Madison* as a pillar of constitutional interpretation that the Supreme Court is the final word, he wouldn't answer the question because it was an issue which he thought might come before the Court. At that time I expressed the sentiment, as I did with Judge Ginsburg, that so far as I am concerned that issue is rockbed; and if someone is not going to uphold *Marbury v. Madison*, I don't think that person is fit to serve on the Supreme Court.

I think Justice Scalia would uphold *Marbury v. Madison*, which was my conclusion, and I voted for him. But he wouldn't say. The question about whether the Congress has the power to take away jurisdiction of the Court on constitutional issues, I think, is also rockbed. I don't think that is subject to being litigated.