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I speak today not only as an academic observer of Judge Ginsburg's works, but also as her co-author and friend. I have had the privilege of working with her on our casebook on "Sex-Based Discrimination," published in 1974. She and I are both among the first 20 full-time women law professors in the country. We continue to serve together on the Council of the American Law Institute. From those vantage points, I can say that hers is a courageous intellect, and that she is as steadfast and loyal a colleague and friend as anyone could wish. Her standards are exacting. She produces the best and most precise work, and she expects the same from others.

As this confirmation process has shown the Nation, she thinks deeply and chooses her words with care. But I can tell you that her compassion is as deep as her mind is brilliant. In Ruth Bader Ginsburg, the President has offered the country a Justice worthy of the title. I urge this committee to recommend that the Senate give its enthusiastic consent to her appointment to the U.S. Supreme Court.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Kay follows:]

PREPARED STATEMENT OF HERMA HILL KAY

Senator Biden, Members of the Judiciary Committee, it gives me great pleasure to be here and participate in your deliberations as you prepare to recommend to the Senate the advice it should give President Clinton on his nomination of Judge Ruth Bader Ginsburg to the United States Supreme Court.

President Clinton's choice of Judge Ginsburg is wise and inspired, sound and practical. In Judge Ginsburg, the President has found a constitutional scholar who knows from her own experience what it means to be excluded despite outstanding credentials solely because of sex. In the early 1970s, she brought that experience—and her flawless logic—to the bar of the United States Supreme Court, where she will soon take her seat. In case after case, she hammered home the point that for the law to assign pre-existing roles to women and men is limiting to both sexes and forbidden by the equal protection clause. It is a point that—at present, twenty years later—many regard as self-evident. But the High Court seemed unable to grasp that point before Ginsburg's advocacy, instead taking as its starting position the belief that a legislative distinction drawn on the basis of sex was a rational classification that passed constitutional muster.

Ruth Bader Ginsburg's strategy of written and oral advocacy to help the nine men then sitting on the Supreme Court understand the irrationality of sex-based distinctions was one of patient instruction. She chose cases in which the law's unequal treatment of men and women was evident and the consequent need for a broader interpretation of the equal protection clause clearly established and readily accepted. The result is that her cases are now constitutional classics: *Reed v. Reed*, 1971: A mother can administer a deceased child's estate as capably as a father. *Frontiero v. Richardson*, 1973: A servicewoman's Air Force pay earns the same fringe benefits for her "dependent" spouse that a serviceman's pay provides for his "dependent" spouse. *Weinberger v. Wiesenfeld*, 1975: A widowed father is entitled to the same insurance benefits available to a widowed mother to help him care for his infant son after his wife's death. *Califano v. Goldfarb*, 1977: A deceased wife's earned income provides the same survivor's benefits to her widowed husband that a deceased husband's widow would receive.

These are some of the legal propositions that Judge Ginsburg established as an advocate, and she used them to help the Court forge a new understanding of the equal protection of the laws. It was Ruth Bader Ginsburg's voice, raised in oral argument before the United States Supreme Court, that opened new opportunities for the women of this country. She was in the forefront of the creation of legal precedents that advocates who followed her have used, time and time again, to build a strong edifice against discrimination that now protects many groups. She left her enduring mark on the Constitution even before taking her place on the Supreme Court.

I speak today not only as an academic observer of Judge Ginsburg's work, but also as her co-author and friend. I have had the privilege of working with her on our casebook on *Sex-Based Discrimination*, published in 1974. She and I are both among the first 20 full-time women law professors in the country. We continue to serve together on the Council of the American Law Institute. From those vantage-points, I can say that hers is a courageous intellect, and that she is as steadfast and loyal a colleague and friend as anyone could wish. Her standards are exacting: she produces the best and most precise work and she expects the same from others. As this confirmation process has shown the nation, she thinks deeply and chooses her words with care. But I can tell you that her compassion is as deep as her mind is brilliant. In Ruth Bader Ginsburg, the President has offered the country a Justice worthy of the title. I urge this Committee to recommend that the Senate give its enthusiastic consent to her appointment to the United States Supreme Court.

The CHAIRMAN. Thank you, Dean.

I have been in the Senate 20 years, and I have sat through a lot of nomination hearings for the court generally, and the Supreme Court in particular. I must say I have never heard higher praise for a nominee than I have heard from those who have testified today. I thank you for adding your insight to these deliberations. And your reputations individually precede you, and it means a great deal that you think so highly of this nominee, and it reinforces in my mind, and the minds of the committee as a whole, that our initial judgment about Judge Ginsburg was correct, and that the wisdom of the President was demonstrated in his choice. But I thank you both. I have no questions.

I will yield to my friend from Utah.

Senator HATCH. Well, we are happy to welcome both of you here, and we appreciate the excellent testimony you have given. I had to listen to a degree while I was meeting with some people in the back room here, but I don't know that Judge Ginsburg could have had two better law professors come in and speak for her and on her behalf.

Don't you forget, Professor Gunther, when that book on the judge comes out, *Learned Hand*—

Mr. GUNTHER. Will you make clear, Senator, that we don't have an agreement? That gives me the opening to say it will be published in February 1994 by Knopf.

Senator HATCH. He is going to publish a wonderful book on *Learned Hand*. February of 1994, you say?

Mr. GUNTHER. Yes.

Senator HATCH. Knopf. I expect an autographed copy, is all I can say.

Mr. GUNTHER. It is yours.

Senator HATCH. I appreciate it, and we are happy to have both of you here. Thank you for coming.

The CHAIRMAN. Senator Feinstein?

Senator FEINSTEIN. Nothing other than to say, Mr. Chairman, you have before you, as you well know, two of—

The CHAIRMAN. I beg your pardon.

Senator FEINSTEIN. I was addressing my comments to you. You have two of California's finest representatives, I think, from two of the greatest universities in the world. And my observation would be, after sitting through these hearings, Dean Kay and Professor Gunther, that if Mrs. Ginsburg were of another religion, she might even be canonized at the end of this.

The CHAIRMAN. I imagine we will work that out before it is over. [Laughter.]

I thank you both, and thank you for taking the time to make the trip. We appreciate it.

The CHAIRMAN. We are going to move out of order here a little bit because the next panel was under the impression, understandably, that we were going to break for lunch. But it is not my intention to break for lunch, and they are presently in the cafeteria on their way back. But our fifth panel is a panel comprised of a former law clerk, former client, and former ACLU colleague of Judge Ginsburg.

Edith Roberts was a law clerk to Judge Ginsburg from 1989 to 1990, and she is presently a staff attorney at the Environmental Law Institute.

I understand Stephen Wiesenfeld is the litigant Judge Ginsburg represented in the landmark gender discrimination case, and he is not here. We will add him to the sixth panel.

Kathleen Peratis was a colleague of Judge Ginsburg while she was head of the American Civil Liberties Union, Women's Rights Project, during the 1970's. Today she is a lawyer in private practice in New York City.

I welcome you both and invite you, starting with you, Ms. Roberts, to give your testimony within 5 minutes, if you would, please.

**PANEL CONSISTING OF EDITH LAMPSON ROBERTS,
WASHINGTON, DC, AND KATHLEEN PERATIS, NEW YORK, NY**

STATEMENT OF EDITH LAMPSON ROBERTS

Ms. ROBERTS. Mr. Chairman and members of the committee, it is an honor for me to be here today to speak in support of the nomination of Judge Ruth Bader Ginsburg to the Supreme Court of the United States. I have had the privilege of knowing Judge Ginsburg in a variety of contexts. She has been my employer, when I served as her law clerk from 1989 to 1990; my mentor, discussing career choices with me after my clerkship ended; my friend, holding a surprise wedding shower for me at her apartment; and the officiator at my marriage to another of her clerks, my husband Matt.

In all these roles, Judge Ginsburg's influence and example have been an inspiration. As her law clerk, I was granted a close-up view of the way Judge Ginsburg approaches her work on the bench. Her thorough knowledge of the letter of the law is matched only by her deep respect for its spirit. Even in the District of Columbia Circuit, with its high proportion of administrative law cases that some might characterize as abstruse and unexciting, Judge Ginsburg comes to each case with fresh enthusiasm, interest, and a commitment to reaching the result the law requires. This commitment manifests itself in her extraordinarily thorough and careful work habits. Long after her clerks have departed each night, and

despite persistent phone calls from a husband requesting her presence at the dinner table, Judge Ginsburg stays in her chambers reading the briefs and pondering the arguments in every case. The precision of the reasoning by which she arrives at a decision is reflected in the conciseness and clarity of her opinions, written and edited with an exact sense of when something is "just right."

This is not the deliberation of an ivory-tower perfectionist. Judge Ginsburg's devotion to reaching the right conclusion, and to explaining it in the clearest possible manner, stems from her keen awareness of the importance of the judge's role in our society. Every day judges make decisions that have real-world effects on individuals and groups. Such decisions cannot be made casually, but require careful and thorough consideration. Judge Ginsburg's sensitivity to those real-world effects has led her to take her law clerks on a tour of Lorton Reformatory on several occasions in order to see a side of the criminal justice system that cannot be conveyed in legal citations or through oral argument.

The precision that marks Judge Ginsburg's approach to judging also reflects her appreciation of the delicate balance by which order is maintained in our system of government. Preserving that balance—between the various branches of government as well as within the judiciary itself, between trial and appellate courts—demands a delicate touch. Judge Ginsburg's command of that touch motivates one of the conventions of her opinion writing. Unlike many appellate court judges, Judge Ginsburg scrupulously avoids referring to the authors of decisions under review in a District of Columbia Circuit as "the lower court" or "the court below." Referring to the "trial court" or the "district court" instead, she instructed us early in our clerkship, conveys appropriate respect for the crucial role played by the judiciary's front line.

All of these hallmarks of Judge Ginsburg's style as a lawyer and a jurist began to influence my own approach to the work of a lawyer during my clerkship. Judge Ginsburg taught me not only how to reason through a case, and to convey the result clearly and concisely, but also how to do so without being divisive or harsh. Her example demonstrated that persuasion, the lawyer's hallmark, does not need to be shrill or strident. Calm assurance can win the day as effectively, and perhaps more enduringly, than grandstanding.

These lessons learned during my clerkship shaped my own approach to the practice of law. But it was not until the clerkship had ended and I entered the professional world, got married, and began to contemplate raising a family, that I recognized the true force of Judge Ginsburg's example. Her ability to attain the summit of professional accomplishments, while still raising a family and building a rich and fruitful marriage, make her a prime role model for a young woman lawyer—or, for that matter, for a young male lawyer—seeking to reconcile the conflicting demands of career and family.

Judge Ginsburg is much more than a role model for professional women. A role model often leads only by example and remains removed from those who seek to emulate her. One as accomplished and as disciplined as Judge Ginsburg might easily have climbed as high as she has, and then have remained content merely to inspire others by her stature. But Judge Ginsburg was not satisfied with

attaining success for herself and her own family alone. She vowed to change the system so that others, perhaps less determined than she or endowed with fewer intellectual gifts, not only could follow in her path, but could find their own, quite different paths. She wanted not just to set an example, but to enable others actually to benefit from what she had achieved, in whatever way they chose. By succeeding in that effort, Judge Ginsburg has become much more than a one-dimensional prototype for professional women. She has helped to engineer changes in our society that enable all individuals to look beyond static social expectations and to fulfill their goals and ideals on their own terms. It is this compassionate commitment to equality without stereotypes that characterizes Judge Ginsburg as a jurist and as a person.

I look forward with confidence and hope to Judge Ginsburg's accession to the Supreme Court. If she is confirmed, I know that she will serve as a thoughtful and caring custodian of what is best in our society for all our children. Thank you.

[The prepared statement of Ms. Roberts follows:]

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¹Edith Lampson Roberts worked as a law clerk to Judge Ruth Bader Ginsburg from 1989 to 1990. She is now a staff attorney at the Environmental Law Institute.