

I repeated on June 14, 1993, just after the President announced his nomination for the Supreme Court vacancy, that a judge is bound to decide each case fairly, in accord with the relevant facts and the applicable law.

It goes on to say,

No such person discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

During the six months prior to the announcement of my nomination, I had no communication with any member of the White House staff, the Justice Department or the Senate or its staff referring or relating to my views on any case, issue or subject that could come before the United States Supreme Court.

[The question and answer referred to follow:]

Question. Has anyone involved in the process of selecting you as a judicial nominee (including but not limited to a member of the White House staff, the Justice Department, or the Senate or its staff) discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, please explain fully. Please identify each communication you had during the 6 months prior to the announcement of your nomination with any member of the White House staff, the Justice Department, or the Senate or its staff referring or relating to your views on any case, issue or subject that could come before the United States Supreme Court, state who was present or participated in such communication, and describe briefly what transpired.

Answer. I repeated on June 14, 1993, just after the President announced his nomination for the Supreme Court vacancy, that a judge is bound to decide each case fairly, in accord with the relevant facts and the applicable law. The day a judge is tempted to be guided, instead, by what "the home crowd wants" is the day that judge should resign and pursue other work. It is inappropriate, in my judgment, to seek from any nominee for judicial office assurance on how that individual would rule in a future case. That judgment was shared by those involved in the process of selecting me. No such person discussed with me any specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning my position on such case, issue, or question.

During the six months prior to the announcement of my nomination, I had no communication with any member of the White House staff, the Justice Department or the Senate or its staff referring or relating to my views on any case, issue or subject that could come before the United States Supreme Court.

The CHAIRMAN. Now, that may be a distinction in practical effect without a difference, but it is not a distinction without a difference as it relates to whether or not the issue that was before us in the past, and will be before us with every nominee while it is included as far as anyone, when asked and nominated or considered or being vetted, is asked a specific position on a specific issue. That is in the record.

I will ask, since the nominee is still under oath for purposes of questions that are submitted to her in writing—although this is the same effect, but for precision reasons and for strict legal reasons, I will ask this question to be submitted, along with the others that are being submitted on other matters, to the nominee so we have on the record from the nominee under oath whether or not the assertion made by her in this questionnaire is precisely accurate.

I thank you all.

Senator HATCH. Could I just add one other thing? I was interested in the Washington Post's editorial—I believe it was today—on litmus tests. The point that needs to be made is that this Senator rejects the concept that any single litmus test should stop somebody from serving on the Supreme Court because if we start deciding who serves there purely on political grounds, then we will politicize that institution which I think means so much to all of us.

It is precisely that position that I think rebuts that editorial because we have had Senators on this committee say that they will not vote for somebody who does not support *Roe v. Wade*, and I think that is wrong. I think that no single issue rises to the dignity of foreclosing the right of people to serve on the Supreme Court, as important as all of you believe this to be and as important as I believe it to be.

Mr. PHILLIPS. Senator, may I respectfully say that while you may choose to vote for or against on any other basis, it is in that same spirit clear from the Constitution that every Senator may, for any reason, choose to confirm or any reason choose to reject.

Senator HATCH. Oh, sure.

Mr. PHILLIPS. And I would argue that the question of equal protection of innocent life, the defense of the unborn, is more important than the color of our hair or the neckties we choose to wear, and that the Supreme Court has, in effect, been permitted to become a supreme legislature.

We are kidding ourselves if we believe that the Supreme Court is not a political body. As Charles Evans Hughes said very eloquently in *Riley* at an early point, the Constitution is what the members of the Supreme Court say it is. I don't happen to agree with that, but that is the prevailing situation.

Senator HATCH. I have made some of those same arguments, but my point is that it is one thing to criticize for litmus tests when people hold candidates or nominees liable for them, and it is another thing to criticize for litmus tests when they don't. Frankly, I don't think that there should be a single litmus test.

Sure, the Supreme Court has its political aspects, but it is the least politicized institution in our society, and I would like to keep it that way as much as I can. I think there is a difference, and it is a significant difference, and personally I felt that the editorial was somewhat anti-intellectual.

Mr. PHILLIPS. The American people have manifested growing dissatisfaction with their political system, with the accountability of that system, and that is because very often those whom they elect to office, professing to take a particular position on a certain issue, in office do not vote in a manner consistent with that. That is one of the reasons I am trying to build a new political party called the U.S. Taxpayers Party.

Senator HATCH. I understand that.

Mr. PHILLIPS. There are a number of Senators in the Republican Party, in particular, who profess to take a strong prolife position who, in fact, know that in voting for the confirmation of Ms. Ginsburg they are voting to advance the cause of abortion, and I think that is a tragedy and, frankly, I think it is a violation of the good-faith commitments which were made to the electorate by them.

Senator HATCH. Well, I respectfully disagree with you on that because I think that the place to make the change is in the legislature, not in the Supreme Court. I think that the place to make the change is in the elected representatives of the people. As you and I both well know, the vast majority of Members of Congress are not on our side on this issue and we have been losing regularly, except with regard to Federal funding of abortion.

So don't try and change the Supreme Court in the sense of politicizing it and electing people who will be prolife. I think that we have got to do is elect people who—by the way, I think you could have started with the President of the United States last time. We now have a President who believes this way and he has picked a person who believes this way, and he has a right to do so and that is the point.

Well, we could argue about it all day. All I can say is the place to change it is in the Congress of the United States, not the Court.

The CHAIRMAN. Thank you, Senator, and I want reiterate what Senator Feinstein said. It is important that your viewpoint be represented, and it is important that the American people hear a different perspective on this issue, and we thank you for being here to do that, and you have all delivered your point of view concisely and well. So thank you very much for being here.

Mr. PHILLIPS. Thank you for your courtesy. We appreciate it.

The CHAIRMAN. Now, our last, but certainly not our least panel is comprised of the presidents of three additional bar associations: California Women Lawyers, Hispanic National Bar Association, and the Association of the Bar of the City of New York. We all know New York is an independent, standing nation in and of itself. That is kind of a joke.

At any rate, every time I say this to Mr.—is it pronounced Feerick?

Mr. FEERICK. Yes, Senator.

The CHAIRMAN. Mr. Feerick, I am always reminded of that poster of one of the leading political figures in American politics of the day, and probably the most dynamic—Mr. Wiesenfeld is here, too? Would he come forward, too? He was on the last panel, but would he come forward as well?

I am reminded of that poster that they sell in New York, which is my favorite city in the country, a picture of this very significant American politician, one of the dynamic forces in American politics today, standing on Seventh Avenue and astride Seventh Avenue. It is a map of the United States, and Seventh Avenue is in stark relief and California is minuscule as he looks out over the Nation, which has always sort of been my view of how most New Yorkers view the world and the Nation. There is New York and then there is the rest. The New York City Bar Association is one of the only city bar associations that asks to testify, and I know its members are clear that from their perspective, it is more important than the New York State Bar Association.

Thank you for your good humor. It is getting late in the process, and I apologize for my digression here.

Angela M. Bradstreet is the current president of California Women Lawyers, which probably has more members than the constituents in my entire State.

Ms. BRADSTREET. That is correct, Senator.

The CHAIRMAN. How many members, Angela?

Ms. BRADSTREET. 30,000, Senator.

The CHAIRMAN. No; our State is bigger than that.

It is the largest women's bar association in America. She is also a partner at Carroll, Burdick and McDonough in San Francisco. Is that correct?

Ms. BRADSTREET. That is correct, Senator.

The CHAIRMAN. Carlos Ortiz is the national president of the Hispanic National Bar and has been before this committee—the bar has been represented here and is one of the premier organizations in the country, and we are delighted to have you here to testify.

John Feerick is the president of the Association of the Bar of the City of New York. He is also the dean of one of the fine law schools in the country, Fordham Law School.

Also from a previous panel—and we apologize if we have confused you, Mr. Wiesenfeld, as to when we were going to ask you to be here, but thank you for being here. I am looking for your bio here as I go through my—anyway, you were a client of the soon-to-be-Justice.

Mr. WIESENFELD. Stephen Wiesenfeld from *Weinberger v. Wiesenfeld*.

The CHAIRMAN. Yes, but we had more information about you as well I was going to read in the record, but if you are satisfied with that description and that introduction we'll let it stand.

Why don't we begin in the order that I have asked you to testify and, Ms. Bradstreet, why don't you begin your testimony. Thank you for coming across the country to be here.

PANEL CONSISTING OF ANGELA M. BRADSTREET, CALIFORNIA WOMEN LAWYERS, SAN FRANCISCO, CA; CARLOS G. ORTIZ, PRESIDENT, HISPANIC NATIONAL BAR ASSOCIATION; JOHN D. FEERICK, PRESIDENT, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK; AND STEPHEN WIESENFELD, FORT LAUDERDALE, FL

STATEMENT OF ANGELA M. BRADSTREET

Ms. BRADSTREET. Thank you, Senator. It has been the thrill of a lifetime.

Chairman Biden, distinguished members of this committee, I am deeply honored to be here on behalf of California Women Lawyers to express our strong support of President Clinton's nomination of Judge Ruth Bader Ginsburg as an Associate Justice of the Supreme Court.

California Women Lawyers is, in fact, the largest women's bar association in the Nation, representing the interests of over 30,000 women attorneys in the State of California.

The CHAIRMAN. Excuse me for interrupting. When you say represent the interests, does that mean there are 30,000 women who are dues-paying members of the bar association?

Ms. BRADSTREET. We have about 10,000 who are actually dues-paying members of our organization, Senator.

The CHAIRMAN. Thank you very much.

Ms. BRADSTREET. By the way, I did get the statistics for your State, if you are interested.

The CHAIRMAN. I am.

Ms. BRADSTREET. Well, I got them from the American Bar Association yesterday, and there are 495 women attorneys out of a total of 2,150.

The CHAIRMAN. Well, 25 percent; we are getting there.

Ms. BRADSTREET. Yes.

Our mission, Senator, is the advancement of women in the legal profession and the complete eradication of gender bias in our society. We are privileged to currently be assisting Senator Feinstein in her tireless work on issues affecting women, and it is a special honor to be appearing before our first senior woman Senator from California.

After a thorough and formal evaluation process involving a review of her legal opinions, cases argued, writings, and interviews with respected peers which examined her intellectual qualifications, judicial temperament, lack of bias, and analytical skills, California Women Lawyers found Judge Ruth Ginsburg to merit the highest rating possible to serve as an Associate Justice.

Judge Ginsburg's contribution as a pioneer of women's rights cannot be overstated, for, as has been noted, she won five of the most important sex discrimination cases that have ever before been argued before the Supreme Court of the United States. Indeed, the case of *Frontiero* has been hailed as a landmark decision in establishing gender parity as a constitutional mandate in the workplace.

When only 20 years ago she persuaded a majority of Justices that a law which, in essence, denied a working woman equal pay to a working man, Judge Ginsburg forged not only a dynamic reinterpretation of the equal protection clause, but also a fundamental positive change in society's previous stereotypical attitudes toward women in the workplace.

Her explicit recognition that, and I quote:

The shape of the law on gender-based classification indicates and influences the opportunity women will have to participate as men's full partners in the Nation's social, political and economic life.

is cause for great optimism that this nominee's presence on the Supreme Court will make a major difference in the achievement of complete gender equality for all.

Her prolific writings also demonstrate that Judge Ginsburg recognizes and will work earnestly to protect a woman's right to choose. Her approach to choice, suggesting that a constitutionally protected sex-equality perspective should also be adopted, in addition to a due process privacy perspective, is a well-reasoned one, for the notion that we as women should be in control of our own destiny is crucial to our attaining an equal place in society.

It is therefore, Mr. Chairman, particularly apt that the appointment of one who has paved the way for women's equality as the second woman Justice on the Supreme Court should symbolize an historic departure from the tokenism that has traditionally existed in the appointment of women to positions of power.

With still only 14.5 percent of circuit court positions and barely 13 percent of district court positions being filled by women today, Judge Ginsburg's appointment to the highest court in the land will take this Nation a giant step forward in shattering the glass ceiling of our legal profession and indeed in other professions, too.

In conclusion, California Women Lawyers most respectfully urges the distinguished members of this committee to vote in favor of the nomination of this outstanding woman to whom all women today owe a great debt.

Thank you so much.

[The prepared statement of Ms. Bradstreet follows:]

PREPARED STATEMENT OF ANGELA M. BRADSTREET

Senator Biden and distinguished Senators: I am deeply honored to be here on behalf of California Women Lawyers to express our strong support of President Clinton's nomination of Judge Ruth Bader Ginsburg as an Associate Justice of the United States Supreme Court.

California Women Lawyers is the largest women's bar association in the nation, representing the interests of over 30,000 women attorneys in the State of California. Our mission is the advancement of women in the legal profession and the eradication of all forms of gender bias in our society generally. We are privileged to currently be assisting Senator Dianne Feinstein in her tireless work on issues affecting women.

After a thorough and formal evaluation process involving a review of her legal opinions, cases argued, writings and interviews with respected peers, which examined her intellectual qualifications, judicial temperament, lack of bias and analytical skills, California Women Lawyers found Judge Ruth Bader Ginsburg to merit the highest legal rating possible to serve as an Associate Justice of the Supreme Court, that is, exceptionally well qualified.

Judge Ginsburg's contribution as a pioneer of women's rights cannot be overstated. For she won five of the most important sex discrimination cases that have ever been argued before the Supreme Court of the United States. Indeed, the case of *Frontiero v. Richardson* has been hailed as a landmark decision in establishing gender parity as a constitutional mandate in the workplace. When twenty years ago she persuaded a majority of the Justices that a law automatically allowing married men in the military, but not married women, medical care benefits for a spouse in essence denied a working woman equal pay to a working man, Judge Ginsburg forged not only a dynamic reinterpretation of the equal protection clause, but also a fundamental change in society's previous stereotypical attitudes towards women in the workplace.

Indeed her explicit recognition that "the shape of the law on gender based classification * * * indicates and influences the opportunity women will have to participate as men's full partners in the nation's social, political and economic life" (*Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, R. Ginsburg, 63 N. Carolina L.R., 375) is cause for great optimism that this nominee's presence on the Supreme Court will make a major difference in the achievement of complete gender equality for all.

Her prolific writings also clearly demonstrate that Judge Ginsburg recognizes, and will work earnestly to protect, a woman's right to choose. Her approach to choice, suggesting that a constitutionally protected sex-equality perspective should be adopted, rather than simply a due process privacy perspective, is a well reasoned one. For, the notion that we as women should be in control of our own destiny is crucial to our attaining an equal place in society.

It is, therefore, particularly apt that the appointment of one who has paved the way for women's equality all of her life as the second woman Justice on the Supreme Court of the United States should symbolize an historic departure from the tokenism that has traditionally existed in the appointment of women to positions of power. With still only 14.5 percent of Circuit Court positions and barely 13 percent of District Court positions filled by women today (U.S. Department of Justice), Judge Ginsburg's appointment to the highest court in the land will take this nation a giant step forward in shattering the legal glass ceiling.

In conclusion, California Women Lawyers applauds President Clinton for his outstanding nomination and I respectfully urge the distinguished members of this Committee to vote in favor of this nomination.

Thank you very much.

The CHAIRMAN. Thank you very much for your testimony.
Mr. President. It has a nice ring to it, doesn't it?

STATEMENT OF CARLOS G. ORTIZ

Mr. ORTIZ. It sounds OK.

Thank you very much, Chairman Biden and members of the Senate Judiciary Committee. I bring you greetings from the many thousands of Hispanic-American attorneys from around the country, many of whom are your constituents in your respective States.

On behalf of the Hispanic National Bar Association, I want to tell you that we are privileged to once again appear before your

committee. We have testified in four of the last five nominations, I believe, now, and we take it very seriously and consider it very important.

The CHAIRMAN. And we take your views very seriously.

Mr. ORTIZ. Thank you. Based upon the HNBA's investigation, Senator, and review of Judge Ginsburg's record, we support her nomination and we find that she is highly qualified to serve on the U.S. Supreme Court.

The HNBA is the only national organization that represents thousands of Hispanic American attorneys throughout this country. The HNBA has supported and opposed judicial nominees across the political spectrum. Therefore, we do not expect nominees to adhere to any particular ideology. Instead, we review a person's overall record, scholarship and philosophy. In each of these areas, Judge Ginsburg has an exceptional record, particularly in her path-breaking litigation on behalf of women victimized by discriminatory policies and practices.

Many Hispanics, including many thousands of Hispanic women across the Nation, have been the beneficiaries of her legal reform efforts, which are in the finest American legal tradition. Judge Ginsburg enjoys a reputation as an extraordinarily intelligent student of the law. Her academic record is excellent, as you have already heard from numerous witnesses. Judge Ginsburg has a stellar record as a law professor and as a prolific scholar on women's rights, comparative law, and civil procedure, again, as you have heard from many speakers that have preceded us.

As an advocate, Judge Ginsburg played a pivotal role in women's causes. Judge Ginsburg has an exemplary record of advocacy for civil rights and equal protection of women in America, and it is therefore our hope that Judge Ginsburg will be equally committed to equal protection and justice for Hispanic Americans and other minorities who continue to suffer the abuses and indignities of racism and discrimination in America.

The discrimination Hispanic Americans experience is widespread and varied. For example, an anti-immigrant sentiment is growing throughout our Nation. It has been caused in part by the slowdown in the economy and threatens the civil rights of all Hispanics, as well as other minorities residing in this country.

Another example of the injustices suffered by Hispanic Americans is the same sort of employment discrimination suffered by Judge Ginsburg herself merely because of her gender when she attempted to enter the job market upon graduation from law school. Employment discrimination is a daily experience for many Hispanic Americans. The unemployment rate for Hispanic Americans nationally and in many of the States you represent, like Illinois, Arizona, California, Massachusetts, is tragically high, and even those Hispanics who have attained a college education are confronted with a glass ceiling barring their promotion and advancement.

To remedy these and other social ills afflicting Hispanics, the Hispanic community will be increasingly turning to the courts and ultimately to the Supreme Court for relief and for enforcement of our civil and constitutional rights.

As a jurist, Judge Ginsburg has had an equally outstanding career. Having carefully reviewed her opinions, the HNBA finds Judge Ginsburg to be fair and conscientious. Her opinions call for the equal treatment and advancement of all those who live within our country's boundaries. Judge Ginsburg has responded sensitively to the needs of our country's women and minorities. She has been on the side of change—change toward shared participation by all members of our society in our Nation's economic and social life. Her work has been devoted to a broad vision of participatory democracy.

The HNBA knows that Judge Ginsburg will bring to the Supreme Court her unique and sensitive life experiences. We hope that she is able to project her life experiences of gender and religious discrimination to the plight of discrimination against Hispanic-Americans in many forms, including education, employment, housing, voting rights, immigration, health, social services, et cetera, and the list goes on and on.

Other victims of discrimination share our high hopes for Judge Ginsburg as Justice Ginsburg also. They believe that, given her outstanding leadership in fighting gender discrimination, Judge Ginsburg would likely be sensitive to discrimination across-the-board.

On a related and important note, we urge you, the members of this committee, to remember that the Hispanic community today faces the same formidable barriers of neglect and opposition that Judge Ginsburg encountered in her early career. In your own judicial recommendations, nominations and confirmations, we encourage you to draw from among the talented pool of Hispanic-Americans throughout our country's legal communities.

We also ask you to pay particular attention to the pressing need for Hispanic-Americans to sit and serve with distinction on the Nation's Federal courts, especially in such States as Illinois and Massachusetts where significant populations of Hispanic-Americans have never had an Hispanic Federal judge. We hope you will continue to view the HNBA as a resource in helping to make our Nation a better place for all Americans.

Before concluding our statement, we must express our sincere hope that the next nominee to the U.S. Supreme Court who comes before the Senate Judiciary Committee will be an Hispanic-American. Just as we believe the Nation will benefit from the appointment of Judge Ginsburg, we also strongly believe that our Nation needs and would greatly benefit from an Hispanic American—actually, the first ever Hispanic-American Supreme Court Justice.

In closing, the HNBA finds Judge Ginsburg highly qualified to serve on the United States Supreme Court and we look forward to her distinguished service.

Thank you.

[The prepared statement of Mr. Ortiz follows:]

PREPARED STATEMENT OF THE HISPANIC NATIONAL BAR ASSOCIATION

Chairman Biden, members of the Senate Judiciary Committee:

The Hispanic National Bar Association (HNBA) is privileged to present testimony to this Committee. Based upon the HNBA's investigation and review of Judge Ruth Bader Ginsburg, we support her nomination and find that she is highly qualified to serve on the United States Supreme Court.

The HNBA is the only national organization that represents thousands of Hispanic American attorneys throughout this country. The HNBA is a nonpartisan organization, and has supported and opposed judicial nominees across the political spectrum. Therefore, we do not expect nominees to adhere to any particular ideology, instead, we review a person's overall record, scholarship, and philosophy. In each of these areas, Judge Ginsburg has an exceptional record, particularly in her pathbreaking litigation on behalf of women victimized by discriminatory policies and practices. Many Hispanics have been the beneficiaries of her legal reform efforts, which are in the finest American legal tradition.

One of Judge Ginsburg's former classmates (now a state Supreme Court Justice in New Jersey) has described her as an extraordinarily intelligent student who was never arrogant about her intelligence. Her academic record is excellent. This is reflected in her graduation with honors from Cornell University and from Harvard and Columbia Law Schools.

Judge Ginsburg has a stellar record as a law professor, and as a prolific scholar in women's rights, comparative law, and civil procedure. She enjoyed a reputation for devotion to her students and to her scholarship. As a professor, Judge Ginsburg was a pioneer, becoming the first woman in the history of Columbia Law School to become a full professor and only the second woman to be hired by Rutgers Law School-Newark. Her publications are significant, reflecting insight and expertise in many areas.

As an advocate, Judge Ginsburg played a pivotal role in women's causes. While serving as counsel to the American Civil Liberties Union, she won five of six gender bias cases argued before the United States Supreme Court. She saw the need for action against gender discrimination and fashioned an incremental strategy to fight it. Judge Ginsburg has an exemplary record of advocacy for the civil rights and equal protection of women in America, and it is therefore our hope that Judge Ginsburg will be equally committed to equal protection and justice for Hispanic Americans, who continue to suffer the abuses and indignities of racism and discrimination in America.

The discrimination Hispanic Americans experience is widespread and varied. For example, an anti-immigrant sentiment is growing throughout our nation. This anti-immigrant sentiment has been caused in part by the slow-down of the economy and threatens the civil rights of all Hispanics as well as other minorities residing in this country. Moreover, Hispanics continue to be disproportionately represented in our jails and prisons for many reasons rooted in discrimination, while largely under-represented in our colleges, universities, and institutions of higher education for those same reasons. This has prompted the suggestion that we have dual systems of justice and of education in America.

Another example of the injustices suffered by Hispanic Americans is the sort of employment discrimination Judge Ginsburg herself faced when she attempted to enter the job market upon graduation from law school. Despite her sterling academic record, Judge Ginsburg was denied a United States Supreme Court clerkship and was turned away from numerous New York law firms because of her gender. Employment Discrimination is a daily experience for many Hispanic Americans. The unemployment rate for Hispanics in America is tragically high and even those Hispanics who have attained a college education are confronted with a "glass ceiling", barring their promotion and advancement. To remedy these and other social ills afflicting Hispanics, we will be turning increasingly to the courts, and ultimately to the Supreme Court, for relief and for enforcement of our civil and constitutional rights.

As a jurist, Judge Ginsburg has had an equally outstanding career. As a D.C. Circuit Court judge, Judge Ginsburg has addressed issues involving federal law on a daily basis. Because of the unique subject matter jurisdiction of the District of Columbia Circuit Court, Judge Ginsburg's current judgeship provides her with an excellent background for dealing with issues that will come before the United States Supreme Court. Judge Ginsburg is described as one who can bring people together and is committed to a collegial attitude. Former colleagues describe Judge Ginsburg as a healer who takes a very thoughtful, measured approach to problems. They have stated that she can bring people together because of her ability to listen and be fair. They believe she will have the ability to build consensus on the High Court.

Having carefully reviewed her options, the HNBA finds Judge Ginsburg to be a fair and conscientious judge. Her opinions call for the equal treatment and advancement of all those who live within our country's boundaries. Judge Ginsburg has responded sensitively to the needs of our country's women and minorities. She has been on the side of change—change toward shared participation by all members of our society in our nation's economic and social life.

Judge Ginsburg lectured on the role of women and the Constitution at the 1987 Eighth Circuit Judicial Conference in Colorado Springs, Colorado. There, she noted that the Constitution, as written in 1787, was a document for white, propertied adult males and she therefore rejected strict interpretation of the Framers' original intent as an unworkable form of Constitutional interpretation. She stated, "We still have, cherish and live under our eighteenth century Constitution because, through a combination of three factors or forces—change in society's practices, constitutional amendment, and judicial interpretation—a broadened system of participatory democracy has evolved, one in which we take just pride." Her life's work has been devoted to a broad vision of participatory democracy.

The HNBA knows that Judge Ginsburg will bring to the Supreme Court her unique life's experiences and sensitivity. We hope that she is able to project her life's experience of gender and religious discrimination to the plights of discrimination against Hispanic Americans in many forms, including education, employment, housing, voting, immigration, health, and social services, etc. Indeed, the HNBA hopes that Judge Ginsburg lives up to the 1987 speech that she gave in Colorado Springs. Specifically, we applaud her perspective that judicial interpretation can broaden the system of participatory democracy to include Hispanics to a greater degree than has occurred in this country's past history.

Other victims of discrimination share our high hopes for Judge Ginsburg as Justice Ginsburg. Anne H. Franke, counsel for the American Association of University Professors said of Judge Ginsburg, "We are very impressed by her dedication to discrimination cases. Having that kind of history of being a leader in the gender-discrimination area means she would likely be sensitive to discrimination across the board." Kenneth S. Tollett, an expert on desegregation law and a professor of higher education at Howard University, predicts that Judge Ginsburg's experience with sex discrimination would make her sensitive to problems facing African American students and historically African American colleges and is optimistic about her judicial perspective.

Judge Ginsburg has often been mentioned as a prospect for the Supreme Court, but that has neither prevented her from publicly addressing politically difficult and complex issues nor from making her views known. This is the type of courage that we expect of a United States Supreme Court Justice. The HNBA believes Justice Ginsburg will be as courageous and insightful as a member of our nation's highest court as she has been as an advocate for women, and as a judge on the Court of Appeals.

On a related and important note, we urge you to remember that the Hispanic community today faces the same combination of neglect and opposition Judge Ginsburg encountered in her early career. In your own judicial nominations, recommendations, and confirmations we encourage you to draw from among the talented pool of Hispanic Americans throughout our country's legal communities. The formal and informal barriers we face are as formidable as those Judge Ginsburg once encountered.

It must be noted that while we are pleased with the nomination of Judge Ginsburg, we are deeply disappointed that a Hispanic American has never been named to the United States Supreme Court. The HNBA persists in urging that a voice be given to the approximately 25 million Hispanic-Americans who now constitute the second largest and the fastest growing minority group in our nation. If our nation's highest court is to adequately reflect our nation's population and avoid the risk of losing its legitimacy, a Hispanic American must be appointed to the Court. Just as we believe the nation will benefit from the appointment of Judge Ginsburg, we also strongly believe that our nation needs—and would greatly benefit from—the appointment of a Hispanic American Supreme Court Justice.

We also ask you to pay particular attention to the pressing need for more Hispanics to sit and to serve with distinction on the lower federal courts. Hispanic-Americans are grossly under-represented in the judiciary in many regions of our nation. Houston, Texas, for example, a city with a significant Hispanic population, has no Hispanic federal judges. The state of Illinois has never had an Hispanic on any of its federal courts. In our nation's capital, the District of Columbia Circuit Court of Appeals, which will have a vacancy when Judge Ginsburg is elevated, has never had an Hispanic appointment. Moreover, there is no active Hispanic American judge today on any of our Circuit Courts of Appeals appointed by a Democratic President. The HNBA stands ready to assist you in locating Hispanic American talent. The HNBA has identified many highly qualified Hispanic American potential nominees.

In closing, the HNBA finds Judge Ginsburg highly qualified to serve on the United States Supreme Court and we look forward to her distinguished service.

Thank you for the opportunity to testify. I am willing to use the rest of my time to respond to any questions or comments the Committee may have of the HNBA.

The CHAIRMAN. Thank you very much.
Mr. Feerick.

STATEMENT OF JOHN D. FEERICK

Mr. FEERICK. Senator Biden and members of the committee, my name is John Feerick and I am the current president of the Association of the Bar of the City of New York. I appreciate very much the opportunity to testify today regarding the nomination of Judge Ginsburg.

I am joined by Helene Barnett, who sits immediately behind me, who chaired the subcommittee of the governing body of our association that conducted the evaluation on behalf of our association.

The CHAIRMAN. Welcome, Ms. Barnett.

Mr. FEERICK. As this committee is aware, the Association of the Bar of the City of New York is one of the oldest bar associations in the country and, since its founding in 1870, has given priority to the evaluations of candidates for judicial office. As far back as 1874, the association has reviewed and commented on the qualifications of candidates for the U.S. Supreme Court. It is a particular honor to participate in this confirmation process for this particular nominee, who is also a member of our association and served on our executive committee from 1974 to 1978.

In May 1987, our association adopted a policy that directs the executive committee, our governing body, to evaluate all candidates for appointment to the U.S. Supreme Court. The executive committee has developed an extensive procedure for evaluating Supreme Court nominees, including a process for conducting research, seeking views of persons with knowledge of the candidate and of our membership of more than 19,000 dues-paying members of the New York and other bars. As well, we evaluate the information received and express a judgment on the qualifications of a person for the U.S. Supreme Court.

Judge Ginsburg is the first nominee to be evaluated under our recently adopted set of guidelines. The association's effort, as I have already noted, was undertaken by a subcommittee of our executive committee and our committee on the judiciary, which joint committee was chaired by Helene Barnett.

In examining the qualifications of Judge Ginsburg, the following materials were reviewed by our association: all of her more than 300 written opinions, concurrences and dissents while sitting on the U.S. Court of Appeals for the District of Columbia; her published articles and lectures; information relating to Judge Ginsburg's 1980 D.C. Circuit nomination and confirmation; comments solicited from association members presented in writing and at a forum held at our association; and news articles, commentaries and other materials with regard to the nomination.

Members of the executive committee also interviewed Judge Ginsburg. In addition, dozens of interviews were conducted with her judicial colleagues, academic colleagues, and former law clerks, and lawyers who litigated with and against or argued before Judge Ginsburg.

Our executive committee, upon evaluating the qualifications of Judge Ginsburg, passed a resolution at its meeting of July 14, 1993, finding her qualified to be a Justice of the U.S. Supreme

Court based on our committee's affirmative finding that she possesses to a substantial degree all of the qualifications enumerated in the association's guidelines for evaluations of nominees to the U.S. Supreme Court—exceptional legal ability, extensive experience and knowledge of the law, outstanding intellectual and analytical talents, maturity of judgment, unquestionable integrity and independence, a temperament reflecting a willingness to search for a fair resolution of each case before the Court, a sympathetic understanding of the Court's role under the Constitution in the protection of the personal rights of individuals, and an appreciation of the historic role of the U.S. Supreme Court as the final arbiter of the meaning of the United States Constitution, including a sensitivity to the respective powers and reciprocal responsibility of the Congress and the Executive.

The association's guidelines do not provide for gradations of ratings, and thus only permit a rating of qualified or unqualified. These guidelines do, however, establish a very high standard, a standard which, in our opinion, Judge Ginsburg clearly meets.

We look forward to a long and exceptional career on the Supreme Court for Judge Ginsburg, and I am once again very grateful to you and this committee for the opportunity to share those views with you.

[The prepared statement of Mr. Feerick follows:]

PREPARED STATEMENT OF JOHN D. FEERICK

My name is John D. Feerick and I am President of the Association of the Bar of the City of New York. Thank you very much for the opportunity to testify before the Senate Judiciary Committee today regarding the nomination of Judge Ruth Bader Ginsburg to the United States Supreme Court.

The Association of the Bar of the City of New York is one of the oldest bar associations in the country, and since its founding in 1870 has given priority to the evaluation of candidates for judicial office. Our Committee on the Judiciary was one of the four committees formed at the Association's inception. As far back as 1874, the Association has reviewed and commented on the qualifications of candidates for the United States Supreme Court. We have also studied the Senate Confirmation process, and last year submitted to this Committee a report and recommendations with regard to the process. It is thus a particular honor to participate in the confirmation process for this highly distinguished nominee, who is also a member of our Association and served on our Executive Committee from 1974 to 1978.

In May 1987, the Association adopted a policy that directs the Executive Committee, our governing body, to evaluate all candidates for appointment to the United States Supreme Court. The Executive Committee has developed an extensive procedure for evaluating Supreme Court nominees, including a process for conducting research, seeking views of persons with knowledge of the candidate and of our membership, and evaluating the information received. The Committee then applies what it learns about a candidate to a rigorous set of guidelines comprising qualifications we believe are essential in a Supreme Court Justice. Indeed, Judge Ginsburg is the first nominee to be evaluated under this set of guidelines. The Association's effort was largely undertaken by the work of a joint subcommittee of our Executive Committee and our Committee on the Judiciary.

In examining the qualifications of Judge Ginsburg, the following materials were reviewed:

- all of Judge Ginsburg's more than 300 written opinions, concurrences and dissents while sitting on the U.S. Court of Appeals for the D.C. Circuit;

- published articles and lectures by Judge Ginsburg;
- information relating to Judge Ginsburg's 1980 D.C. Circuit nomination and confirmation;
- comments solicited from Association members, presented in writing and at a forum held at the Association; and
- news articles, commentaries and other materials with regard to the nomination.

Members of the Executive Committee also interviewed Judge Ginsburg. In addition, dozens of interviews were conducted with her judicial colleagues, academic colleagues and former law clerks, and lawyers who litigated with and against or argued before Judge Ginsburg.

The Executive Committee, upon evaluating the qualifications of Judge Ginsburg, passed the following resolution at its meeting of July 14, 1983:

The Association of the Bar of the City of New York finds that Judge Ruth Bader Ginsburg is qualified to be a Justice of the United States Supreme Court based on the Executive Committee's affirmative finding that she possesses to a substantial degree all of the qualifications enumerated in the Association's Guidelines for evaluation of nominees to the United States Supreme Court:

- exceptional legal ability
- extensive experience and knowledge of the law
- outstanding intellectual and analytical talents
- maturity of judgment
- unquestionable integrity and independence
- a temperament reflecting a willingness to search for a fair resolution of each case before the Court
- a sympathetic understanding of the Court's role under the Constitution in the protection of the personal rights of individuals
- an appreciation of the historic role of the Supreme Court as the final arbiter of the meaning of the United States Constitution, including a sensitivity to the respective powers and reciprocal responsibility of Congress and the Executive.

The Association's Guidelines do not provide for gradations of ratings, and thus only permit a rating of qualified or unqualified. These guidelines do, however, establish a very high standard, a standard which Judge Ginsburg clearly meets.

We look forward to a long and exceptional career on the Supreme Court for Judge Ginsburg.

I will be pleased to answer your questions.

The CHAIRMAN. Well, we are very grateful that you would take such time and with such thoroughness examine the record of nominees. One of the reasons why we do, in fact, ask your association to be here is because of its over 100-year practice of being involved.

I have often wanted to ask you, and I will reserve it now for maybe over a cup of coffee, what you all did during the Tammany Hall days. I would like to know more about that.

Mr. FEERICK. I have to research that myself.

The CHAIRMAN. I am serious. It would be a fascinating thing to look at. I have often wondered whether or not the origins of the practice of the bar of New York City of looking into judicial nominations was a response to the patronage system and concern about it that existed in the days of the late 19th century. It has just been an historical curiosity on my part. Maybe if the historian of the association knows the answer to that, I would appreciate being dropped a note for my own edification, no other reason.

Mr. FEERICK. You are certainly correct in pointing to corruption in New York as being a precipitating cause of the founding of our bar association, which is exactly right.

The CHAIRMAN. I thank you for your testimony.

Mr. FEERICK. Thank you.

The CHAIRMAN. Now, Mr. Wiesenfeld, it is a pleasure to have you here. You have been immortalized by your being a participant, and a named participant, in one of the most significant Supreme Court cases of the last 20 years, and maybe longer, and it is a pleasure to have you here. The floor is yours for 5 minutes.

STATEMENT OF STEPHEN WIESENFELD

Mr. WIESENFELD. Thank you, Chairman Biden. Senators, I would like to thank you for inviting me here, and I would also like to thank my very special friend, Jane DeFalco, sitting behind me, for accompanying me here today.

The CHAIRMAN. Welcome, Ms. DeFalco.

Mr. WIESENFELD. My wife, Paula, and I were married in 1970. Not unlike Martin Ginsburg and his wife, Ruth Bader Ginsburg, we were among the pioneers of alternative family lifestyles. Paula was a high school math teacher at Edison High School in Edison, NJ, and she was completing studies for her Ph.D. She wanted her career in school administration.

I, having already received several graduate degrees, and having already seen big business, decided to be a self-employed consultant. It was our plan that I would take on the primary household chores, including those related to the raising of our son, Jason.

In 1972, my wife, Paula, passed away. She worked right up to the last day. With each paycheck, she made the maximum contribution to the Social Security system. When she died, I approached the Social Security office in New Brunswick, NJ, and applied for the insured benefits for myself and our son, Jason. I was denied widow's benefits.

At that time, the law allowed that both men and women alike would contribute to the Social Security insurance system based upon their earnings. If the male died, his Social Security insurance would then accrue to pay benefits to the family he left behind. If the woman died, even though her contribution was equal to that

of the male, no such insurance benefit would accrue to her surviving spouse.

The contributions that my wife, Paula, had made to be insured under the Social Security system essentially got lost in the system. Women not only earned less money than men for the same work, they were also forced to contribute to a Social Security system that did not insure them with equal protection.

Some months later after reading a story in the New Brunswick Home News about widowed men, I wrote a letter to the editor detailing this inequity. I was then contacted by Phyllis Boring, a professor at Rutgers University, who inquired if I would like to pursue this matter legally. She then introduced me to Ruth Bader Ginsburg.

Ruth Bader Ginsburg, a clear-thinking person endowed with insight and forethought, a person already painfully aware of gender-based discrimination, saw immediately the gains, the consequences, and the long-range effects and the logistics of revising this inequity in the Social Security system. Ruth Bader Ginsburg proceeded to file suit against Casper Weinberger, then Secretary of Health, Education and Welfare.

First, in a three-judge Federal district court in Trenton, NJ, then Columbia law professor Ruth Bader Ginsburg forcefully argued her position on gender-based discrimination in the Social Security system. Using clear, concise arguments, she won a unanimous 3-0 decision allowing that the Social Security laws were in violation of the equal protection clauses of the 5th and 14th amendments.

Casper Weinberger and the Department of Health, Education and Welfare appealed this decision to the U.S. Supreme Court. In January 1975, Ruth Bader Ginsburg appeared before the U.S. Supreme Court expecting a mere minimum decision affirming the three-judge Federal district court's decision.

In *Weinberger v. Wiesenfeld*, Ruth Bader Ginsburg again produced compelling arguments that gender-based discrimination as part of the Social Security laws was a clear violation of the equal protections clauses of the 5th and 14th amendments to the Constitution of the United States of America. On March 19, 1975, the Supreme Court astounded everyone by handing down a unanimous decision upholding the decision of the three-judge Federal district court, proving that the visions of Ruth Bader Ginsburg were clearly correct.

Weinberger v. Wiesenfeld was a landmark decision in the quest for equal rights for men and women. It remains still the strongest stand the Supreme Court has ever taken to strike down gender-based discrimination. This is one of the many accomplishments of Judge Ruth Bader Ginsburg. I am proud to appear before this esteemed committee today and to add my voice to the many who stand with and wish to see this committee confirm Judge Ruth Bader Ginsburg to the U.S. Supreme Court.

Thank you.

[The prepared statement of Mr. Wiesenfeld follows:]

PREPARED STATEMENT OF STEPHEN WIESENFELD

My wife Paula and I were married in 1970. Not unlike Martin Ginsburg and his wife Ruth Bader Ginsburg, we were among the pioneers of alternate family life styles. Paula was a high school math teacher at Edison High School in Edison, New

Jersey, and was completing studies for her Ph.D. She wanted her career in school administration. I, having already received several graduate degrees and having already seen big business, decided to be a self-employed consultant. It was our plan that I would take on the primary household choices including those related to the raising of our son, Jason.

In 1972, my wife, Paula, passed away. She worked right up to the day she died. With each pay check, she made the maximum contribution to the Social Security system. When she died, I approached the Social Security office in New Brunswick, New Jersey, and applied for the insured benefits for myself and our son, Jason. I was denied widow's benefits.

At that time, the law allowed that both men and women, alike, would contribute to the Social Security insurance system based upon their earnings. If the male died, his Social Security insurance would then accrue to pay benefits to the family he left behind. If the woman died, even though her contribution was equal to that of a male, no such insurance benefit would accrue to her surviving spouse. The contributions that my wife, Paula, had made to be insured under the Social Security system essentially got lost in the system. Women not only earned less money than men for the same work, they were also forced to contribute to a Social Security system that did not insure with equal protection.

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Weinberger vs. Wiesenfeld was a landmark decision in the quest for equal rights for men and women. It remains, still, the strongest stand the Supreme Court has ever taken to strike down gender-based discrimination.

This is one of the many accomplishments of Judge Ruth Bader Ginsburg. I am proud to appear before this esteemed committee today and to add my voice to the many who stand with, and wish to see, this committee confirm Judge Ruth Bader Ginsburg to the United States Supreme Court.

The CHAIRMAN. Well, I thank you very much for your testimony. A little known fact—as we say, a point of personal privilege—is that I shared a similar fate that you did in 1972 and raised two children with a professional wife who had passed away, and it is amazing how much has changed.

I thank you all for taking the time and the effort, and I must say again that I have been impressed with how concise and thoughtful and how full in their support and opposition to Judge Ruth Bader Ginsburg the panels have been. Each of the six panels has served their position well, and each has served us by being here. I thank you very, very much.

Mr. Ortiz, I don't think we are going to have to wait much longer. At least, that is my hope and my expectation.

Senator do you have any comments?

Senator HATCH. Well, we are happy to have all of you here, and I have to say that, Mr. Ortiz, it was very close this time.

Mr. ORTIZ. Very close.

Senator HATCH. And I want to tell you that there are very few opportunities to fill these positions, and I want to commend the President for making an excellent choice here. We really appreciate the testimony of each of you, as we have all of the witnesses, including those who have testified in opposition. Everybody has been respectful and, I think, very considerate in their testimony, and you, in particular, have been.

Mr. Wiesenfeld, I have to tell you that your name, of course, goes down in history and has gone down in history as a very, very important name in the field of civil rights and human rights, and we appreciate you being here and taking the time to come after all these years.

Mr. WIESENFELD. A pleasure; I really enjoyed myself.

Senator HATCH. Well, thank you. Thanks, Mr. Chairman.

The CHAIRMAN. Speaking of being gracious and concise, running the risk that it could hurt him politically, I want to thank my friend from Utah. He has been, as the saying goes in this circumstance, a gentleman and a scholar. He has been extremely thoughtful and considerate, and the way in which my Republican colleagues have approached this nomination, I think, is a standard that I hope everyone will remember if and when the perilous day comes that a Republican is once again naming Supreme Court nominees.

I thank you, Senator, for the way in which you have not only cooperated, but the way in which you have led this committee.

Senator HATCH. Well, thank you, Mr. Chairman. I appreciate it.

CLOSING STATEMENT

The CHAIRMAN. There is nothing more, God willing, to come before this committee and this hearing, and I know the press will ask this question, so I will state it at the outset. It is my hope and expectation that next Thursday, which is in the normal course of proceeding within this committee, we will have before us in an executive session, which merely means with no business before us in terms of witnesses, but considering the nominations of individuals—it is my hope, with the permission of my Republican friends, to convene in executive session at 10:30 on Thursday morning next in order to consider the nomination of Ruth Bader Ginsburg to the Supreme Court, and for this committee to fulfill its internal Senate responsibilities of making a recommendation to the Senate as a whole as to whether or not she should be confirmed.

I want to end where I began. This committee and this hearing is and should only be one part of the process of examining whether or not someone should sit on the Supreme Court of the United States. Our job is to, as thoroughly as we can, look into the background and qualifications of a nominee, and then make a recommendation to the Senate as a whole.