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the committee will apply to clubs which have the perception of discrimination, but which do not intentionally discriminate in their membership policy.

Mr. BIDEN. Thank you very much.

The PRESIDING OFFICER. The Chair will state the following. Pursuant to the following order, the motion to reconsider is laid upon the table and the President will be notified of the Senate's action.

Mr. BIDEN. I thank the Chair, and I thank my Republican colleague.

SUPREME COURT OF THE UNITED STATES

Mr. BIDEN. Mr. President, is it in order at this moment now to proceed to the nomination for discussion of Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court.

The PRESIDING OFFICER. The Senate majority leader has that authority.

Mr. BIDEN. Mr. President, I have been designated by the majority leader to do that, and I now ask unanimous consent to proceed to the consideration of the nomination of Ruth Bader Ginsburg, of New York, to be an Associate Justice.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination will be stated.

The legislative clerk read the nomination of Ruth Bader Ginsburg, of New York, to be an Associate Justice.

Mr. BIDEN. Thank you, Mr. President.

Mr. President, there are several Senators who would like to speak on this nomination. This is one of the real joys of my tenure as chairperson of the Judiciary Committee to have a nominee of such high quality and distinction and one that has received such broad and overwhelming support not only in the Senate but from every quarter of the legal and academic community as well as the citizens at large.

On March 19, 1993, when Justice Byron White announced that he would retire from the U.S. Supreme Court at the end of this term in June, there was a good deal of speculation of what would occur. Into what had already become the supercharged atmosphere of Supreme Court nominations, President Clinton stepped forward as the first Democratic President in 26 years to have an opportunity to name an Associate Justice, or any Justice, including Chief Justice, to the Supreme Court.

But the anticipated storm that the political pundits and, I must admit, the Senator from Delaware, chairman of the committee, and others had suggested might occur never arrived, to our great satisfaction and, I think, to the benefit of the country.

On June 14, 1993, President Clinton nominated Ruth Bader Ginsburg to be the 107th Justice of the U.S. Supreme Court and, as I indicated, to the wide

acclaim of everyone who was in earshot.

In record time, the Judiciary Committee—and I might add in no small part due to the help, cooperation, and honorable way in which the ranking minority member of the committee, the distinguished Senator from Utah, Senator HATCH proceeded—in record time the Judiciary Committee reviewed the nominee's written record—she had over 300 published opinions that she had written and had completed the hearings—and unanimously voted to recommend the confirmation at the end of the hearings. All 18 members of the Senate Judiciary Committee—and I know I need not tell the Presiding Officer that every political spectrum represented in the Senate as a whole is represented on that committee, nonetheless, 18 to 0 we voted to recommend the confirmation of Ruth Bader Ginsburg to the full Senate. The confirmation process from start to finish was less contentious than any in recent history, and the reasons for that, I believe, are fairly simple.

First of all, the process worked because President Clinton respected the constitutional role of the U.S. Senate. He sought the Senate's advice and consent to nominees of the Court; he consulted with the leadership of both parties, and he listened to the advice he received by moderating his choice of a nominee.

That is how it is supposed to work Mr. President, and has not in a while.

Second, the process worked because of the nominee herself. In Ruth Bader Ginsburg we have a nominee whose qualifications and judicial temperament are indisputable. They are evident from her extensive record as a scholar, a Supreme Court advocate, and a Federal appellate judge; Judge Ginsburg is anything but a stealth candidate—widely written, widely discussed, widely known, widely before the Supreme Court as advocate, and also has published many written opinions.

Most important, Judge Ginsburg's judicial record and style mark her as a true consensus candidate. Judge Ginsburg is a nominee who holds a rich vision of what our Constitution's promises of liberty and equality mean, balanced by a measured approach to the job of judging.

This balance is what earned Judge Ginsburg the unanimous support of the Judiciary Committee—and it is what has earned her my support.

As with past Supreme Court nominees, the key inquiry I undertook with respect to Judge Ginsburg was to gain a sense of her judicial philosophy and, in particular, of her approach to interpreting the Constitution, of her understanding of that document and its meaning in the year 1993.

Judge Ginsburg accepts the Constitution as an evolving charter of govern-

ment and liberty—as a limited grant of power from the people to the government—not a narrow list of enumerated rights.

At the same time, she speaks and practices judicial restraint, understanding that a judge must work within our constitutional system, respecting history, precedent, and the respective roles of the other two branches of Government, the executive and legislative branches.

On the first point, Judge Ginsburg has stated unequivocally that she believes our Constitution is a living document that adjusts as society changes, thereby retaining its vitality for over 200 years.

In a 1988 speech, she said:

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.

In testimony before the committee, Judge Ginsburg spoke directly to whether the Constitution protects individual rights and liberties beyond those that are expressly mentioned in that document, and as most Americans know much cherished and protected liberties are not mentioned in that document, such as the right to marry, a whole range of rights we take for granted and are constitutionally protected.

And in clear and unequivocal terms, she expressed support for the concept of unenumerated rights, that is constitutionally protected individual rights that are not specifically listed in the Constitution, such as the right to marry;

Her testimony left no doubt that she supports the Supreme Court's recognition of a broad, unenumerated right to privacy, one that protects such personal decisions as whom to marry, where to live, whether and how to raise one's children.

Judge Ginsburg stated that:

There is a constitutional right to privacy which consists * * * of at least two distinguishable parts.

One is the privacy expressed most vividly in the fourth amendment—that is the Government shall not break into my home or office without a warrant. * * * the Government shall leave me alone.

The other is the notion of personal autonomy; the Government shall not make my decisions for me—I shall make, as an individual, uninhibited, uncontrolled by my Government, the decisions that affect my life's course.

To determine whether an asserted unenumerated right is recognized as being within the broad concept of liberty contained in the 14th amendment's due-process clause, Judge Ginsburg cited the approach articulated by Justice Harlan in *Poe versus Ullman*, as illustrating her methodology.

Justice Harlan's opinion is an eloquent statement of a flexible conception of due process and of liberty, not limited by the specific rights named in the Constitution. In choosing this model, Judge Ginsburg selected a method for identifying unenumerated rights in keeping with the Constitution's majestic and capacious language.

Justice Harlan's approach is also one of measured change and rooted evolution—and in this respect as well he appears to be Judge Ginsburg's model.

Judge Ginsburg's written record and her testimony both attest to her belief that a judge best seeks proper interpretations by being cautious and restrained.

And if anyone communicated caution and restraint in the going on 21 years I have been here, it was Ruth Bader Ginsburg.

A careful adherent to a case-by-case method of slow evolution in the law, she believes courts should move in measured motions.

Judge Ginsburg articulated her view of how judges should go about interpreting our evolving Constitution in her recent Madison lecture, sounding one overarching theme: The Court should generally lay markers along the road to doctrinal change, rather than making abrupt changes that lack secure foundations.

Her style is always cautious and restrained, not ideological and not result-oriented. She is, as she described herself at the hearings, neither conservative nor liberal in her approach to judging.

The balance that Ruth Bader Ginsburg achieves—between her vision of what our society can and should become, and the limits on a judge's ability to hurry that evolution along—will serve her well and will serve us well during her tenure on the Supreme Court.

Based on my review of Judge Ginsburg's entire record—as an advocate, as an appellate judge, and as a nominee to the Supreme Court—I will, as is no surprise, vote to support and vote to have put on the Court, Judge Ruth Bader Ginsburg.

I urge each of my colleagues to do the same when the Senate votes tomorrow on the confirmation of Ruth Bader Ginsburg to be an Associate Justice of the U.S. Supreme Court.

And my wish and hope, Mr. President, as I close, is that if President Clinton has an opportunity and an obligation to nominate anyone else to the Court during his tenure, that he is as wise and as insightful as he has been in choosing Ruth Bader Ginsburg.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened to the comments of my distinguished colleague from Delaware. I appreciate

servicing with him on the Judiciary Committee. He has done a very good job as chairman and he has been very fair and decent to our side. I want him to personally know that I think he did a good job of handling this first nominee in this Congress, Ruth Bader Ginsburg.

Mr. President, I will vote for the confirmation of Judge Ruth Bader Ginsburg to be Associate Justice of the Supreme Court of the United States. Let me briefly outline the reasons why.

President Clinton and I are unlikely ever to agree on the ideal nominee to be a Supreme Court Justice. Indeed, there have been many prominently mentioned potential nominees whom I would in all likelihood vigorously oppose. But I do believe that a President is entitled to some deference in the selection of a Supreme Court Justice. If a nominee is experienced in the law, highly intelligent, of good character and temperament, and—most important—gives clear and convincing evidence that he or she understands and respects the proper role of the judiciary in our system of government, the mere fact that I might have selected a different nominee will not lead me to oppose the President's nominee.

In the case of Judge Ginsburg, her long and distinguished record as a judge on the U.S. Court of Appeals for the District of Columbia circuit is the critical factor that leads me to support her. Her judicial record demonstrates that she is willing and able to issue rulings called for by the Constitution and the Federal statutes, even though Judge Ginsburg, were she a legislator, might personally have preferred different results as a matter of policy. Several examples may illustrate this point:

In *Women's Equity Action League v. Cavazos*, 906 F.2d 742 (D.C. Cir. 1990), Judge Ginsburg wrote an opinion holding that because Congress did not intend to give a cause of action to civil rights groups or anyone else to sue Federal officials to force them to enforce civil rights laws as those groups would have them enforced, the courts had no authority to create such a cause of action for these civil rights groups. Judge Ginsburg declined an opportunity to legislate from the bench, even though from her background as a women's rights lawyer she might have been thought to be sympathetic to the plaintiffs.

In *Coker v. Sullivan*, 902 F.2d 84 (D.C. Cir. 1990), Judge Ginsburg wrote an opinion holding that because Congress did not provide any such cause of action, homeless persons and advocacy groups could not sue to force the Department of Health and Human Services to monitor and enforce State compliance with Federal emergency assistance guidelines. Quite obviously, homeless persons and their advocacy groups are sympathetic.

In *Randall v. Meese*, 854 F.2d 472 (D.C. Cir. 1988), Judge Ginsburg wrote an opinion that was joined by Judge Silberman, a Reagan appointee, and from which Judge Mikva, a Carter appointee, dissented. In that opinion, she ruled that an alien who was present in this country on a visitor's visa, and who was denied adjustment of status to permanent resident alien, had to first exhaust her administrative remedies provided for by law before seeking judicial recourse. This is an elementary principle of administrative law that, when properly adhered to as Judge Ginsburg did in this case, reduces litigation and permits adjudication, if it must finally occur, to be based on a fully developed record.

In *Dronenburg v. Zech*, 746 F.2d 1579 (D.C. Cir. 1984), Judge Ginsburg, alone of the Carter appointees on the D.C. circuit, agreed with Judges Robert Bork and Antonin Scalia that a homosexual sailor's constitutional challenge to the military's homosexual-exclusion policy was precluded by a controlling Supreme Court decision that had summarily affirmed a district court decision upholding a Virginia statute criminalizing homosexual conduct. Her liberal colleagues on the Court wanted to extend the right of privacy announced in other cases to this situation, but she properly, in my view, concluded that the Supreme Court's summary affirmation was controlling, and whatever her own views on the right to privacy, there was no latitude to apply it there. That was the correct decision, regardless of where you are on gay rights.

In *Conair Corp. v. NLRB*, 721 F.2d 1355 (D.C. Cir. 1983), in a significant loss for labor unions, Judge Ginsburg wrote an opinion that was joined by then-Judge Scalia over the dissent of Judge Wald. There, it had been found that an employer had engaged in outrageous and pervasive unfair labor practices in connection with an election to determine whether a union should represent the employees. The union, however, had not shown that it ever had majority support among the employees. Judge Ginsburg ruled that the NLRB therefore could not impose a bargaining order to order on the employer. She reasoned that to do so in the absence of an expression of majority sentiment would violate the National Labor Relations Act principles of freedom of choice and majority rule. In reaching this result, she disagreed with Warren court dictum.

Judge Ginsburg has been anything but a lockstep liberal. As one article noted,

According to a computerized study of the appeals court's 1987 voting patterns published in *Legal Times*, Judge Ginsburg voted more consistently with her Republican-appointed colleagues than with her fellow Democratic-appointed colleagues. For example, in 1987 case that produced a division on the court, she voted with Judge Bork 85 percent of the time and with Judge Patricia M. Wald 38 percent of the time.

That is found in the New York Times, on June 27, 1993, at page 20.

Similarly, according to a study by Judge Harry Edwards of the D.C. circuit, in the 1983-84 year. Judge Ginsburg voted with Judge Bork 100 percent of the time, and with then-Judge Scalia 95 percent of the time. Edwards, "Public Misperceptions Concerning The Politics of Judging," 56 Colo. L. Rev. 619, 644 (1985). The high regard in which Judge Ginsburg is held by her conservative judicial colleagues provides further assurance that she is unlikely to be a liberal judicial activist.

I also take comfort from some of Judge Ginsburg's testimony before the committee. As she explained, "No judge is appointed to apply his or her personal values." Instead,

[T]he spirit of liberty must lie in the hearts of the women and men of this country. It would be really easy, wouldn't it, to appoint platonic guardians who would rule wisely for all of us, but then we wouldn't have a democracy, would we? * * * Judges must be mindful of what their place is in this system and must always remember that we live in a democracy that can be destroyed if judges take it upon themselves to rule as platonic guardians.

Likewise, in testimony that has not received the attention that it deserves, Judge Ginsburg exploded the judicial activist notion that the ninth amendment is somehow a font of unenumerated rights for judges to elaborate. In her words, the ninth amendment is "peculiarly directed to Congress to guard" and is an "instruction first and foremost to Congress itself," not to the courts.

Let me add that there were other aspects of Judge Ginsburg's testimony that I found disturbing. For example, her view that a right to abortion could be based on the equal protection clause is, I believe, ultimately untenable. I am also concerned that some of her jurisprudential musings give insufficient attention to the legitimacy or illegitimacy of certain courses of judicial action.

In addition, I disagree very much with some of Judge Ginsburg's academic and advocacy writings. I believe, however, that Judge Ginsburg recognizes the distinction between her role as an academic and advocate and her role as a judge.

I do not expect to agree with any nominee, especially one chosen by a President of the other party, on every issue that may come before the judicial branch. Because I am opposed to the politicization of the judiciary, I believe that it is improper to apply any single-issue litmus test to Supreme Court nominees. A cumulation of unsound positions by contrast, might warrant the conclusion that a nominee does not understand and respect the proper role of the Supreme Court and is therefore unsuited to serve on that institution, irrespective of his or her other qualifications. Here, Judge Ginsburg's long

record of, on balance, restrained and responsible judging is sufficient to outweigh the genuine concerns that have arisen. I will therefore vote to confirm her nomination.

I might also add that I personally like this judge. I think she is a very fine person. I know she has a great judicial temperament. She is a fine scholar on the law. She is ethical, and I think is a person who will do a good job on the Supreme Court.

I wish we agreed more, but that is not my province. It is the province of the President of the United States. I believe he has made an eminently wise and good choice here that in the coming years will, hopefully, prove to be a judge who will not be a judicial activist on the bench.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, there are several other Senators who have indicated a desire to speak on this nomination and we are checking right now in the cloakroom to see if they are available to come over.

In the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, on the Ginsburg nomination, I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, the hearings on Judge Ginsburg's nomination demonstrated once again that the confirmation process has been unduly politicized. The critics on both the right and left have bemoaned Judge Ginsburg's reticence regarding how she would approach specific areas of the law. I retain my conviction that the advise and consent responsibilities of the U.S. Senate should not involve rating the nominee on a checklist of discrete political issues.

In addition to the obvious criteria that any nominee for the Supreme Court ought to have—I suppose any nominee for any position on the judiciary ought to have—those of intellect, of integrity, and of judicial temperament, it is very appropriate for the Senate to inquire into a nominee's judicial philosophy.

Of course that includes the nominee's fidelity to the Constitution. It involves that nominee's understanding of the limited role of the courts, and it involves what I hope is a commitment to judicial restraint. On that latter point some of my colleagues would obviously disagree on what that might be, judi-

cial restraint. For me, it is being very cautious to make sure you only interpret the law and do not make the law, and that you interpret the Constitution within its original intent.

But this need not include a detailed discussion of the precise reasoning a judge would use in every hypothetical that any individual Senator might propose to a nominee, particularly for the Supreme Court. While Judge Ginsburg rightly declined to answer questions about specific cases, she gave us a thorough understanding of her judicial philosophy. Judge Ginsburg showed us that, while she is a political liberal, she is a judicial moderate.

Judge Ginsburg has the requisite intellect, integrity, and temperament. I have reservations about her judicial philosophy because her record and her testimony indicated a willingness to legislate from the bench on occasion. But let me emphasize: On occasion. Fortunately, this activism is an exception, an exception to her usual moderation. And, on balance, I conclude that Judge Ginsburg should be confirmed by this body.

During the hearing many members of the Judiciary Committee urged the judge to lead society. I will not give any names. It is all on the record. Perhaps some of my more liberal friends in this body believe that a Supreme Court nominee ought to be out in front, in their words, "leading us in a certain direction." I do not happen to agree with that. This is where Judge Ginsburg satisfies those who may have doubts about anyone a Democratic President suggests for the Supreme Court.

She insisted both to conservative members of the Judiciary Committee, as well as more liberal members of the Judiciary Committee, that her job is to follow the dictates of the law. Judge Ginsburg recognized the job of a judge is not pleasing the home crowd or following opinion polls, but instead a very faithful application of the Constitution and of the law, as she explained, and this is a quote that will probably be used many times on this floor as it relates to Judge Ginsburg, but I want to quote what she said:

The Constitution did not create a tricameral system. Judges must be mindful of what their place is in this system and must always remember that we live in a democracy that can be destroyed if judges take it upon themselves to rule as platonic guardians.

Judge Ginsburg then rightly declines the invitation to activism. She rejects the suggestion of some that the general public is incapable of wisely ruling itself without the guidance of a judicial elite that thinks it knows what is good, or maybe what is the very best, for our society.

Adherence to judicial restraint is apparent in Judge Ginsburg's opinions, especially those involving statutory construction. As a general rule, Judge

Ginsburg finds herself limited by the terms of the statute as illuminated by legislative history. She resists the temptation to rewrite statutes, but from time to time, she has seen the role for the Supreme Court in interstitial legislating and, as you lawyers know better than me, the opportunity then to rewrite laws on occasion instead of striking them down and allowing Congress to do the rewriting.

Judge Ginsburg usually exhibits restraint in constitutional matters. She does endorse the Constitution's protection of so-called unenumerated rights, but she recognizes that those rights are very limited and that defining economic and social rights are the job of the legislature.

Judge Ginsburg's record does show an occasional lack of judicial restraint. I suppose most of the time a nominee will be satisfactory to most people—right or left—but there will be some occasions, when they do not quite come up to the personal standards that we would set if we were selecting somebody. So we can all say that there are some differences, and I suppose there is an occasional lack of judicial restraint that gives me some fear that maybe I am feeling too good about this nomination. But then there are Presidents as well—you know, even a President Reagan or a President Bush who nominates somebody to the Supreme Court, I bet those ex-Presidents look back upon those appointments and say, "Well, this person did not do in this particular case exactly what I would have wanted my nominee to do."

But then, you see, we put people on the Supreme Court not running for that office or being elected to it, but selecting them for a place where there is a great deal of protection: They have lifetime appointments and their salaries cannot be reduced while they are in office. These constitutional protections ensure that these people sitting across the street as Supreme Court Justices can make those decisions, not influenced by the political winds that a transient majority might be foisting upon us from day to day. Their job is to look for the long term and to protect our Constitution, protect our processes of decisionmaking.

So, maybe she does not always—as I would want her to do—show judicial restraint.

It seems to me that in one area, the area of granting standing, she often goes out of her way to give people standing where she finds the case compelling. I spoke about this in the Judiciary Committee. I even asked her about this. In *NRC versus Dellums*, she found a plaintiff within the zone of interests protected in the South African sanctions law, based upon the law's statement of what Congress predicted ought to happen. It was a set of predictions that Congress put in the law that was a reason for Congress passing that law.

I take the view that in that particular case, it is not very wise for even us—we hope certain end results come from statutes we pass, but as a practical matter, judges cannot put much basis in what we predict might happen. We have to put it into the language of the statute. So she allowed standing in that particular case.

In another case, it seems to me that she exaggerated constitutional protection, in the DKT case where she argued that the United States cannot constitutionally refuse to fund foreign abortion-related family planning.

Fortunately, though, her activist cases are aberrations in her record of judicial moderation. Only time will tell whether Judge Ginsburg's cautious approach will persist. But even her obvious personal integrity—and given this, because she does have personal integrity—I am hopeful she will resist the temptation to lead society as some sort of judicial philosopher queen.

There is one other thing I want to add and this is probably because at the grassroots, there might be public concern about this nomination that is beginning to pop up, probably from some conservative newsletters that are going out to membership raising some concerns about Judge Ginsburg, without anything very specific in them. I do not know that for a fact. I have not seen those newsletters. But somewhere out at the grassroots, as I go home almost every weekend to keep in touch with grassroots opinion, I am sensing that there is some growing concern about Judge Ginsburg.

Obviously, we are going to confirm this nomination tomorrow. So if there is some concern growing out there, I do not think it is going to be adequately felt within the Congress, and we should not hold up this nomination.

All I can say is that I have a great deal of respect for a lot of conservative groups in this country who are concerned about who is going to be on the Supreme Court. Maybe 5, 10 years from now, I will look back at my speech on Judge Ginsburg and wonder why there was not more concern in my mind. I do not happen to think today I have to worry about that. But as I indicated, there are some Presidents who have appointed people to the Supreme Court who years later wondered why they appointed them or they were not being the Justices they anticipated they would be. In any way, maybe I will look back and see that.

Today, I see there is some concern out there. As kind of a point of political education of my constituents—not just in Iowa but all over the country, because I am saddened to say I do not think we educate our people enough about the processes of Government, and there is a lot of lack of credibility in politicians, a lack of credibility in Congress and our whole decisionmaking process of all three branches of

Government because we do not do a good enough job of teaching it—I will simply say this: That for conservatives who want a so-called conservative on the Supreme Court and probably would expect conservatives in Congress to vote against Judge Ginsburg because maybe she does not fit some litmus test that we have out there—first of all, we have chided liberals in this body because they have tried to foist upon nominees litmus tests from the Reagan and Bush era, and we felt that was wrong.

So if it is wrong for Democrats to put a litmus test on a Republican nominee to the Supreme Court, then it seems to me it has to be wrong for us as Republicans when we have a Democrat President to put some sort of litmus test upon Democratic nominees to the Supreme Court.

The other thing is that we conservatives lost the election and, for the next 4 years, the right to nominate people to the Supreme Court. It does not mean we in this body dig a hole for ourselves and pull it in after us and forget our advise and consent responsibilities. We have that. But it seems to me we as Senators have to look at advise and consent, when we have a Democrat nominee for the Supreme Court, just as we expect Democrats in this body to do when we have a Republican selecting somebody to the Supreme Court.

So that is the second point I would make to my friends at the grassroots who maybe have a growing concern about Judge Ginsburg.

And then lastly, I would point out that she and other people appointed to the Supreme Court are going to be there for a long time. That is the way our system was set up—and we wish them a long, positive life on the Supreme Court—to be a check on our legislative process, the extremes that go on in the congressional branch of Government and in the executive branch of Government. And that whatever might be the political issues of this day, even abortion, for instance, people out there at the grassroots who are conservatives might be concerned about Judge Ginsburg, that she has views we questioned her about or even things we did not question her about. They have concerns about those issues today because those are issues in 1993. But in the year 2003 or 2013 they probably will not be issues for the most part. Judge Ginsburg is going to be adjudicating a lot of questions and interpreting a lot of law, and even our Constitution, in the years in the future that we may not be thinking of today.

So we have to judge what her instinct is—if her instinct is to be very cautious, if her instinct is to interpret law rather than make law and, as she indicated, look for legislative history on laws being made to try to find out congressional intent.

It seems to me that is about all we can hope for in the way of a Supreme Court Justice, if they are otherwise very qualified for the job, if they are people of high integrity and they have judicial temperament.

Every time I vote for a Supreme Court Justice, I might have some concern about all of these things, and I have found some Republicans I have voted for who have not always ruled the way I would like to have them rule on a particular case. But in our system of Government, whatever independence they have, I think has proven the necessity for us supporting and applauding that independence and doing what we can to maintain it even if it does not always work to exactly our approach to Government.

So I support Judge Ginsburg, and I ask people who may have some doubts about her to think in terms of the future, not just the present.

I yield the floor.

Mr. BIDEN. Mr. President, before the Senator from South Dakota speaks—and I will only take a second—I too stand to pay a compliment to my friend from Iowa, a fellow member of the Judiciary Committee, because he has been a man of his word.

I was just saying to my staff I am not at all certain, were the tables turned, there might not be some who would forget their earlier statements about being consistent and conclude it was in their interest not to be consistent because the particular nominee did not meet all of their requirements on the hard right or hard left agenda. But the Senator from Iowa has indicated—and I have no illusions there may be another nominee, where he has a very different view—that he has no illusions about where this nominee is, at least on one important issue, on the conservative agenda. Nonetheless, he has been consistent with his philosophy, which is that the President gets to choose and there should be no litmus test and on balance you have to make a judgment whether or not the nominee is good or bad.

He has been saying that for 12 years. Obviously, in the last 12 years it has been easier for him to say with a Republican President. It is not as easy for him to say and do this time, with a Democrat, and I wish to recognize that he has been consistent. I admire him for it and I thank him for it.

Mr. GRASSLEY. Madam President, if the Senator will yield, I just simply say I thank the Senator very much. I hope I am as consistent as he said. It is my intention to be that consistent.

I thank the Senator. I yield the floor.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator from South Dakota.

Mr. PRESSLER. Madam President, I rise in support of the nomination of Ruth Bader Ginsburg to be Associate Justice of the Supreme Court of the

United States. I believe in the time I have served in the Senate we have confirmed five Supreme Court nominees. I believe the President of the United States basically should get his or her nominee, barring some major ethical problem or competence problem. I feel that Mrs. Ginsburg has been an outstanding judge. I think she will be an outstanding Justice of the Supreme Court.

I did say in the committee that I was disappointed we did not have more answers to some of the Indian Country questions I asked.

The nationwide Indian newspaper, *Indian Country Today*, ran an account of my questions regarding Indian country legal issues. These legal issues vary from questions of gaming to land claims to hunting and fishing rights, asked from both Native Americans' point of view and non-Native Americans' point of view.

Much of the Indian Country law that has come about in the last 20 years has been made in the courts because of either Congressional unwillingness to act or the feeling on the part of the courts for the need to act. For example, the reservation land, fee patent issue—Congress decided that about 100 years ago. Ever since then the courts have been deciding issues relating to this Nation. But they have been doing it in a piecemeal fashion, with district judges in different parts of the country arriving at different decisions.

I did meet with Mrs. Ginsburg early on and told her what questions I would be asking. I also sent her copies of the questions. But as a Senator, I was disappointed she did not answer them, or at least did not answer them very fully. This would not cause me to vote against her because, indeed, Supreme Court nominees do not have to answer all questions asked of them by Senators.

We tried to frame the questions in such a way that they would not address a particular pending case. Both Indians and non-Indians were looking for answers, or some indication from her long career as a teacher and as a jurist, to get some feel for her sensitivity to this large body of law.

I also asked her some questions about the Court's decision in U.S. versus the Sioux Nation of Indians which involved land claims, for which compensation was given.

I must say that I have put a lot of work into these issues in my time in the House and the Senate. I devote one staff member's time to Indian country issues. They are becoming greater with Indian gaming in many States, not just the States west of the Mississippi.

When the attorneys general meet, those west of the Mississippi, Indian country issues are key issues; they also are key issues in States east of the Mississippi. I read in the papers of land claims in Connecticut, of Indian gam-

ing issues in Florida, New York, and other States.

Madam President, I ask unanimous consent to have printed at this point in the RECORD the account of my questioning of Ms. Ginsburg on Indian matters that appeared in *Indian Country Today*.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From *Indian Country Today*, July 28, 1993]

HIGH COURT NOMINEE ASKED TO ADDRESS

SOVEREIGNTY ISSUES

(By Bunty Anquoe)

WASHINGTON.—Judge Ruth Bader Ginsburg, President Clinton's nominee to the Supreme Court, discussed a wide array of legal and political issues last week in her testimony before the Senate Judiciary Committee—including tribal sovereignty and treaty rights.

In a lengthy exchange with Sen. Larry Pressler, R-S.D., Judge Ginsburg demonstrated an understanding of the legal underpinnings of tribal sovereignty and the federal-Indian trust relationship.

As is the standard practice with nominees, she said she could not give her views on specific issues, such as Indian gaming and the Sioux Nation's Black Hills land claim, because they are questions that may come before the court in the future. Other topics, such as Bill of Rights enforcement on Indian lands and tribal civil jurisdiction over non-Indians, she said, are issues under the within of Congress.

"It would be wrong for me to say or preview in this legislative chamber how I would cast my vote on questions the Supreme Court may be called upon to decide," she said. "A judge sworn to impartiality can offer no forecast, no hints, for that would show not only disregard for the specifics of the particular case, it would display disdain for the entire judicial process."

Judge Ginsburg frequently underscored the legal relationship between Congress and Indian tribal governments that is rooted in the Constitution and grounded in federal law, treaties and court decisions over the past 200 years.

The Supreme Court, over the last 15 years, has become increasingly conservative and has handed down opinions adverse to tribal sovereignty, say tribal leaders.

Sen. Pressler asked the nominee whether she has an "expansive or restrictive" view of tribal sovereignty.

"I take whatever view Congress has instructed" Judge Ginsburg replied. "Senator, the Congress has full power over Indian affairs under the Constitution and the Supreme Court has so confirmed most recently in *Morton vs. Mancari* * * * so judges are bound to accord the tribes whatever sovereignty Congress has given them or left them. As a judge, I would be bound to apply whatever policy Congress has set in this very difficult area. But the control is in the hands of Congress and the courts are obliged to faithfully execute such laws as Congress has chosen to enact."

The 1974 Supreme Court decision in *Morton vs. Mancari* upheld the federal Indian hiring preference because, like special health and education benefits derived from the tribal trust relationship, the preference is not based on race. Instead, the court said, the hiring preference is based on a government-to-government relationship between the United States and tribes.

Judge Ginsburg told the 18-member judiciary committee that only Congress can nullify treaties with Indian tribes. If it has not

done so, "the treaties would be binding on the executive." She also applied this principle to the federal-Indian trust relationship.

"I think that ever since the (1832) Cherokee Nation case, it has been the precedent of the Court that when Congress says in a treaty, makes it evident in a treaty or a statute that Congress has accepted, assumed a trust relationship with a recognized tribe, that the court would then apply that policy."

ON JURISDICTION

Senator Pressler told the nominee that law enforcement and jurisdictional disputes between tribal and state authorities are particular problems in South Dakota where much Indian land is "checkerboarded" with non-Indian land.

He pressed the nominee on issues focusing on state and non-Indian rights on Indian land and often phrased his questions from the perspective of non-Indian interests.

After the confirmation hearing, which concluded late last Thursday, Sen. Pressler denied that his questions favored any particular point of views. He told *Indian Country Today* that he was disappointed Judge Ginsburg didn't respond more to his questions.

"I wasn't trying to ask for one side or the other," he said in a telephone interview. "I would have liked to ask a broader range of questions because these are important issues of concern. I also talked to (Sen. Ben Nighthorse Campbell) about what kinds of questions I should ask."

The senator said his staff complied his list of questions.

He specifically asked the nominee for her views on state law enforcement on tribal lands in light of the high court's 1990 *Duro vs. Reina* decision, which created a jurisdictional void by denying tribal authority over non-member Indians on reservation lands.

The senator queried, "Can you envisage a way state authorities might be able to exercise jurisdiction in Indian country in those instances where law enforcement voids appear to exist?" The nominee said Congress, not the courts, could decide that question and said the 1990 court "got it wrong" in its ruling in light of subsequent congressional restoration of tribal authority over all Indians on its lands.

"Congress can certainly give the states such authority," she said. "I think the example that you gave, the *Duro vs. Reina* case, is a case where the courts, in Congress' judgement, got it wrong and Congress corrected that."

Sen. Pressler resurrected the heated issue of whether federal courts should have limited review of tribal court decisions. Several members of Congress are seeking to push such review on tribal governments. Sen. Slade Gorton, R-Wash., attached an amendment to a recent bill designed to strengthen tribal courts. The amendment would study federal court review of tribal court decisions with respect to the 1968 Civil Rights Act.

Judge Ginsburg said Congress, in its plenary authority, can authorize such review, but added "Whether Congress should do that is a question that the Constitution plainly commits to the first branch and not to the third branch of government."

She parried another question from Sen. Pressler focusing on whether tribal governments can impose civil jurisdiction on non-Indians who live on non-trust land within reservation boundaries.

"Again, this seems to be peculiarly a policy question that is committed to the judgment of Congress and it is the function of the judges to apply whatever solution the legislature chooses to enact," she said. Re-

cent Supreme Court decisions have taken a different approach and actively limited tribal authority over non-Indians within a reservation.

The high court's 1978 decision in *Oliphant vs. Suquamish Indian Tribe* held that tribes cannot exercise criminal jurisdiction over non-Indians. The court's 1981 decision in *Montana vs. United States* found that the Crow Tribe cannot regulate hunting and fishing by non-Indians within reservation boundaries, and may exercise general civil jurisdiction over non-Indians only if an important tribal interest is at stake or if the non-Indians enter into consensual or commercial relations with the tribe or its members.

The Supreme Court most recently ruled tribes do not have the authority to regulate non-Indian hunting and fishing on federally owned fee land within reservation boundaries. Sen. Pressler wanted to know what impact the 1993 case, *South Dakota vs. Bourland*, would have in future tribal jurisdiction cases.

Judge Ginsburg answered. "That is a precedent that may require interpretation in cases that may come up, so I feel that it would not be proper for me to comment on how that precedent will be interpreted in the next case when the next case may be before a court on which I serve."

If confirmed by the Senate, the 60-year-old jurist would become the nation's 107th justice and the second woman on the high court. She would join Justice Sandra Day O'Connor, who was named to the court by President Ronald Reagan in 1981. Judge Ginsburg would also be the first justice in 26 years nominated by a Democratic president.

Sen. Carol Moseley-Braun, D-Ill., noted strong civil rights stances the Supreme Court took under Chief Justice Earl Warren in the 1960s. Sen. Moseley called Judge Ginsburg "a brilliant jurist and legal scholar, adding that she hoped the nominee would assume the mantle of retired Justice William Brennan and the late Justice Thurgood Marshall to "give voice within the court to the aspirations and hopes of the forgotten members of our society."

The Senate Judiciary Committee is expected to vote on her nomination Thursday with a full vote of the Senate following soon after.

Mr. PRESSLER. I also ask unanimous consent to have printed in the RECORD my minority view published in the report of the Committee of the Judiciary on the nomination of Ruth Bader Ginsburg. It summarizes my concerns with some of the questions I asked her on this subject and her answers.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR LARRY PRESSLER REGARDING THE CONFIRMATION OF JUDGE RUTH BADER GINSBURG TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT—MINORITY VIEW; REPORT OF THE COMMITTEE ON THE JUDICIARY

This was the first confirmation hearing of a Supreme Court nominee in which I participated. Because of this fact, I have considered carefully my vote on Judge Ginsburg's confirmation. Our vote today is a recommendation to the rest of our colleagues in the Senate whether or not they should confirm Judge Ginsburg. Prior to joining the Committee, I always placed great weight on the Committee's recommendations. I believe other Senators do also.

On one basic point, there is no argument: Judge Ginsburg is exceptionally well-qualified to be an Associate Justice of the U.S. Supreme Court. Her background is impressive. She has authored volumes of law review articles published throughout the world and in several languages. She was one of the first twenty female law professors in this country. She won five of the six cases she personally argued before the Supreme Court, including several landmark cases. For the past thirteen years, she has served with distinction as a federal appellate court judge on the D.C. Circuit. Her legal career clearly deserves our admiration and respect.

However, having said all this, I must express my disappointment with the nominee's responses to my questions during the hearings. Almost exclusively, I used my questioning periods to explore her understanding of Indian Country issues, which routinely come before the Court. My purpose in doing so was not to elicit a promise or commitment from her, or even an idea of how she would decide these issues so crucial to people in my part of the country. Rather, I had hoped to be satisfied that Judge Ginsburg had a good understanding and solid grasp of this complex and murky area of the law. Unfortunately, I was not satisfied.

While not as glamorous as other issues, Indian cases do frequently come before the Court. In the last decade, the Court has accepted approximately forty cases dealing the sovereignty, civil rights, law enforcement, or jurisdiction of American Indians and their tribes. I understand such cases never come before the D.C. Circuit Court of Appeals. Therefore, I did not expect Judge Ginsburg to be an expert on Indian law prior to her nomination. In an attempt to impress upon her the importance of these issues, I told Judge Ginsburg of my intent to inquire into her understanding of Indian Country law when she visited my office the day after her nomination. Additionally, I sent her references to several key Indian law cases a few weeks ago as well as a copy of the questions I intended to ask during the hearings.

Therefore, I was disappointed with Judge Ginsburg's answers to my questions. I felt they were largely non-responsive and somewhat simplistic. She failed to demonstrate a basic or general philosophy toward, or even an interest in, Indian Country issues. To her credit, she did promise to approach these cases in the same thorough, meticulous way she prepares for all cases. I commend her for that. But I disagree with her if she believes a Supreme Court Justice really does not need to possess knowledge of Indian Country issues and the problems of the West prior to taking the bench. It is exactly that lack of an overall philosophy that has led to the patchwork of court decisions which characterizes Indian law today.

As I have stated before, Congress certainly shares equally in the blame for this situation. All too often, this body has failed to act in a responsible and sensible manner regarding the concerns of citizens in Indian Country. But in the absence of congressional action or clear intent, the Supreme Court must make the law that Congress is unwilling or unable to make. Through its decisions, the Supreme Court has the responsibility of providing guidance for lower courts on Indian Country matters. It is therefore easy to see the importance of selecting nominees who have a basic understanding of the complex history of the American Indians and their unique relationship with the United States government.

Though I am not yet convinced that Judge Ginsburg has this understanding, I am voting

for her confirmation. But I also want to put future Supreme Court nominees on notice that I will insist they have an interest and understanding of Indian Country law. After today, I will not vote for a nominee unless I am satisfied that they have demonstrated this concern.

But I am not here to make threats. I do wish Judge Ginsburg all the best. I hope she has a long and productive career on the highest court in the land.

Mr. PRESSLER. Madam Chairman, I thank the Chair. I yield the floor.

Ms. MIKULSKI. Madam President, I rise today to support our newest Supreme Court nominee. There's no doubt in my mind, that Judge Ruth Bader Ginsburg will be an outstanding Supreme Court Justice. I have met with Judge Ginsburg and spoken with her at length.

Judge Ginsburg has had to overcome many barriers to get where she is now—the professional and personal barriers of a grudging establishment. Many would have crumbled against this sort of resistance. But, Judge Ginsburg has always been a person of grace and strength. Instead of crumbling, she has consistently fought to ensure that the fairness that was denied her be denied no other American.

Madam President, each time I am faced with the task of evaluating a Supreme Court nominee—and I have four times before in my Senate career—I apply the same criteria to all Supreme Court nominees.

First, is the nominee competent? Second, does the nominee possess the highest personal and professional integrity? Third, will the nominee protect and preserve the core constitutional values and guarantees that are central to our system of government, specifically freedom of speech and religion, equal protection of the law, and the right to privacy?

On every score, Madam President, Judge Ginsburg qualifies.

First, is Judge Ginsburg competent? Not only is she competent, but she's tough too. Judge Ginsburg has shown herself to have a first-rate mind and character. She's gotten numerous awards and honors to prove it, including a dozen honorary academic degrees from various universities and colleges.

Second, does Judge Ginsburg possess the highest personal and professional integrity? Like so many women of our generation, she had to fight to get ahead. And at that time, women had an especially hard time attending college, much less going to law school—and yet she did both.

Madam President, Judge Ginsburg didn't merely attend college and law school—an achievement in itself for a woman in the 1950's—she achieved great academic distinction while there, graduating Phi Beta Kappa from Cornell University in 1954 and top of her class at Columbia University Law School in 1959.

And in between these two dates, Judge Ginsburg got married, had a

child, and served as an editor for both the Harvard and Columbia law reviews.

Today, you would expect that any young lawyer with such a record would have a certain and secure future. But it was not so easy to Judge Ginsburg.

Unlike her male contemporaries at Harvard and Columbia, she was unable to find a law firm that would hire her—very few would even grant her an interview. As she put it:

To be a woman, a Jew, and mother to boot, that combination was a bit much.

The male-dominated legal establishment just wasn't ready for her. But eventually that hard work and determination got her the job.

Judge Ginsburg has helped to transform the rights of women. The day our President nominated her, she spoke of how things have changed for women and gave tribute to her late mother by saying:

I pray that I may be all that she would have been had she lived in an age when women could aspire and achieve—and daughters are cherished as much as sons.

Madam President, that's a powerful statement. It captures the spirit of Judge Ginsburg.

And finally, Madam President, I ask, will Judge Ginsburg protect and preserve the core constitutional values and guarantees that are central to our system of government? I have no doubt that she will.

Judge Ginsburg is a great supporter of fairness. As a lawyer, she worked hard through the equal protection cases that she argued before the Supreme Court to see that everyone, especially women, are judged by their competence and character.

As a lawyer, she argued several landmark cases before the Supreme Court in which the equal protection of men and women under the law was at stake. She has written decisions on topics from the freedom of religion and the right to privacy to the freedom of speech.

Judge Ginsburg has shown herself as one of the foremost defenders of the twin ideals which lies at the heart of our Nation and our Constitution—fairness and equality.

Her passion for fairness has marked her years on the D.C. Circuit Court. On the bench, she has earned the esteem of her colleagues from across the spectrum of the legal profession for her fairness and competence.

Her writings on the freedom of speech and the right to privacy, give me confidence that she will be a staunch defender of those rights, the rights that all Americans hold dear.

Madam President, in this country we, the people, are dependent upon the Constitution and its interpretation to protect our most basic rights. In that context, the Supreme Court is the final arbiter on decisions that are grave and complicated.

That is why we in the Senate have a great and indeed tremendous respon-

sibility. And that is why I hold all nominees to the same criteria without exception and without bias. They are the standards against which I measured—Justice Kennedy, Judge Bork, Justice Souter, and Justice Thomas. You may recall that I voted against each of these nominees.

But, today Madam President, I will vote for Judge Ginsburg.

Her presence on the Court will mean a great deal. She has said that she hoped her appointment to the Court would contribute:

To the end of the days when women—at least half the talent pool in our society—appear in high places only as one-at-a-time performers.

Madam President, Judge Ginsburg deserves to take a seat on this High Court and I strongly support her nomination.

Mr. KENNEDY. Madam President, I give my strong support of the nomination of Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court.

The Judiciary Committee's recent hearings on her nomination reminded all of us of the genius of the framers of our Constitution and of the central role of the Supreme Court in preserving and protecting our constitutional legacy. The Constitution simultaneously establishes our democracy and protects minorities from occasional excesses by the majority. The framers recognized that an independent judiciary is necessary to enforce the limits on abusive government enshrined in our Constitution, and they entrusted the Supreme Court the solemn power to protect the fundamental rights and liberties of the people.

Ruth Bader Ginsburg's brilliant career as a law professor and advocate for the rights of women, and her distinguished career as a judge on the Federal Court of Appeals, makes it clear that she is extremely well qualified to sit on the Supreme Court.

Her carefully designed and brilliantly executed strategy for securing constitutional protection for the rights of women has made America a better and fairer land. Before 1971, when Judge Ginsburg argued her first case in the Supreme Court, the courts consistently upheld laws that discriminated against women. The most blatant of these measures were outright prohibitions on the entry of women into certain professions, including the legal profession itself. Other laws established more subtle gender classifications that perpetuated harmful and unjust stereotypes about women and their role in society.

Ruth Bader Ginsburg courageously took on these unfair laws. She carefully selected cases that highlighted the arbitrary nature of sex discrimination. By choosing cases where men appeared to be victimized by laws that seemed to favor women, she was able to convince the nine male members of the

Supreme Court that sex discrimination was unfair and unconstitutional. Building case after case, she gradually persuaded the Court to recognize that most gender classifications—even those purporting to protect women—actually worked to relegate women to second-class status.

While on the bench, Judge Ginsburg impressed both liberals and conservatives with her scholarly and careful approach. At the same time, she has demonstrated great sensitivity to the need to afford access to the courts and meaningful relief to victims of discrimination.

Judge Ginsburg is clearly committed to construing the civil rights laws in the manner that Congress intended. She described those laws as "broad charters * * * stat[ing] grand principles representing the highest aspirations of our Nation to be a Nation that is open and free where all people will have opportunity."

Too often in recent years, the Supreme Court has adopted excessively narrow interpretations of these laws, contrary to Congress' intentions, and has placed needless obstacles in the path of victims of discrimination. Justice Ginsburg will reject that destructive trend in the Court's jurisprudence on civil rights, and she will be a strong voice for equal justice for all citizens on the Supreme Court.

Judge Ginsburg's testimony before the committee demonstrated her profound commitment to constitutional protection for the right to privacy, and in particular for a woman's right to choose. She made clear, in no uncertain terms, that the right of a woman to decide whether to terminate her pregnancy is, and must be, protected by the Constitution. As she stated, "This is something central to a woman's life, to her dignity. It is a decision that she must make for herself. And when government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices."

Judge Ginsburg will bring to her work on the Supreme Court an outstanding intellect, excellent judgment, and a deep understanding of the role of that Court in protecting the constitutional rights and liberties of all Americans.

President Clinton has made an outstanding choice, and it is a privilege to vote for her confirmation.

Mr. HARKIN. Madam President, I am pleased to rise in support of the nomination of Judge Ruth Bader Ginsburg to serve as an Associate Justice of the Supreme Court of the United States.

Judge Ginsburg has established a distinguished record as a judge of the D.C. Circuit Court, which is widely considered to be the most influential and important circuit in the Nation. An analysis of her record reveals a deep commitment to individual rights. She is

known as a thoughtful judge who approaches each case individually, and makes an effort to apply the law to the facts. Although I would not endorse her decision in every case, that is not, and should not be, the criteria we should apply to nominees.

However, as I stated nearly 2 years ago during the confirmation of Justice Thomas, I believe it is appropriate for Senators to consider a nominee's overall understanding of the Constitution, and particularly the scope of constitutionally protected rights. I am particularly concerned with the erosion of the right to privacy.

A nominee's view of the right to privacy is indicative of that person's overall judicial philosophy, and their views of protected rights. I believe that the right to privacy is as fundamental as other protected rights, such as the right to free speech. As I stated during the Thomas confirmation, just as I would not vote for a nominee who did not acknowledge the right to free speech as a broadly applicable individual right, I cannot support a nominee who does not believe in the right of privacy. In the instance of Justice Thomas, I was compelled to vote "no." In this instance, application of that same standard allows me to vote in favor of this nominee.

The controversy over Judge Ginsburg's views on this point were raised in a speech she gave at the New York University School of Law, where she suggested that the right to choose could have been guaranteed under the equal protection clause, rather than the due process clause right to privacy.

However, in her testimony before the Judiciary Committee, she unambiguously endorsed the existence of a constitutionally protected right to privacy. Ginsburg endorsed the constitutional right to privacy, which she stated consists of at least two distinguishable parts. One part is the privacy of the fourth amendment, that government shall not break into a person's home or office without a warrant based on probable cause. The other part is personal autonomy, that the government shall not make my decisions for me. These statements satisfy my concerns on this issue.

In addition to this issue, however, I have been impressed by this nominee's personal history. From her repeated experiences with gender discrimination to her landmark argument before the Supreme Court that changed the landscape of civil rights law, she has demonstrated a commitment to defending the rights of individuals. I believe that Judge Ginsburg is well-qualified to serve on the Court, and I am pleased to cast my vote in favor of her nomination.

Mr. HEFLIN. Madam President, I am pleased to support the appointment of Ruth Bader Ginsburg to the Supreme Court. Her record is one of unbroken

success at all levels, and I am confident that the Supreme Court will be a fitting capstone on a career that is already distinguished.

Ruth Bader Ginsburg has already proved to be a genuinely outstanding jurist, and I recommend her confirmation for the Supreme Court with no reservations.

As a scholar, this nominee's brilliance is undisputed. At every turn of her career, she has earned recognition for the quality of her legal mind. As an advocate, her strategies for dismantling gender discrimination won her five victories in six Supreme Court arguments. In reviewing her career and her scholarship, the American Bar Association unanimously honors her with its highest ranking, the label of well-qualified.

At the same time, Madam President, though she has lived a life in the law, Ruth Bader Ginsburg has not been locked in a judicial ivory tower: As I watched the light in Judge Ginsburg's eye when she described her clients, I understood that she shares a knowledge which all great lawyers share—a recognition that when she devised a strategy for winning cases, she was also devising a strategy for making the lives of clients like Sally Reed and Steven Wiesenfeld better.

Just as important, Judge Ginsburg demonstrates the evenhandedness that is a precondition of a sound judging philosophy. Her service on the Nation's most prominent appeals court has won praise from scholars of every political stripe: ELEANOR HOLMES NORTON and Robert Bork are on the same side of this nomination, and that sight at first had my head spinning. While other jurists have been identified in politician's labels, as part of either a right or left leaning bloc, Judge Ginsburg's independence has been her trademark. On the D.C. circuit, the record shows that she has put aside her advocate's stance, and any ideological agenda that might have come with it.

This judge's mind has indeed been an open one. In the field of civil rights she has charted a middle ground between legitimate remedies for past discrimination and so-called remedies that merely divide us. For example, in *O'Donnell Construction versus District of Columbia*, her separate opinion rejects an affirmative action plan that swept too broadly, while still holding the door open for measures that are a reasonable response to our discriminatory history. With regard to the first amendment, Judge Ginsburg has never lost sight of the right to speak and be heard—yet she is no absolutist, writing often of the need to weigh the speaker's rights against legitimate, significant government interests.

In the context of the criminal law, Judge Ginsburg's record acknowledges the needs of our law-enforcement officials while still maintaining a sharp

instinct for the individual's rights. On several occasions, she refused to side with knee-jerk criticisms of drug-courier profiles and the strategy of preventive detention; while some have brought their ideological blinders to the debate over law-enforcement techniques, Judge Ginsburg has been responsive, and not intolerant, to the demands of the war on crime.

At the same time, she has vigilantly protected the proper, established boundaries of the fourth amendment. In *United States versus Ross*, in a landmark opinion for the circuit sitting banc, Judge Ginsburg refused to weaken constitutional safeguards against improper searches of automobiles. She has also consistently overturned convictions marred by improper trial procedures or inadequate jury instructions. By any impartial analysis, her record has been sensitive rather than activist, in securing defendants' rights.

In all three of these ideological fire zones—civil rights, the first amendment, and criminal procedure—Ruth Bader Ginsburg has woven an independent, middle-of-the road path. She has shown an immunity from the polarizations of the left and right. This resistance to ideological dogma is, in my opinion, a trademark of a fair, open mind, and of a willingness to listen without prejudging.

Madam President, I view this nomination as, at the very least, a ceasefire—a pause between the broadsides of politics and ideology. I am deeply hopeful that it can be even more: Judge Ginsburg's selection can mark a renewed emphasis on excellence and judicial accomplishment.

In choosing a nominee of this caliber, a professional who can be described as a lawyer's lawyer and a judge's judge, President Clinton has signaled a high standard. If this standard is indeed a beacon for appointments to come, we will enter an era of jurists who reflect honor on the Constitution and the ideals preserved within it. This will indeed be a Supreme Court that we are confirming, and it will reflect honor on the American people.

Mr. KOHL. Madam President, I join my colleagues in congratulating Chairman BIDEN and Senator HATCH for their work on the Ginsburg nomination. The chairman and the ranking member deserve credit for handling the entire process with dignity and intelligence. All of us on the committee are grateful that, rather than shocking America, this hearing may have instead reassured Americans, and helped to restore their faith in our institutions of Government.

I do have some reservations about the extent to which Judge Ginsburg answered our questions. But I have no reservations about her ability to serve on the Court. Let me tell you why I voted for her.

First, Judge Ginsburg has demonstrated the necessary character,

competence and integrity to sit on our Nation's highest court. As a law student, she achieved honors at a time when few women were even permitted to attend law school. As an advocate, she led the fight to ensure gender equality for women. As an appellate judge, she served with distinction. And at the hearing, she confirmed that she possesses the exceptional intellect required of a Supreme Court Justice.

Second, both on the bench and before this committee, Judge Ginsburg displayed an understanding of, and respect for, the values which form the core of our constitutional system of government. She rejected the doctrine of original intent, which could undermine many of the Court's most important achievements. She accepted an approach to statutory interpretation that relies on legislative history as an anchor for understanding. She spoke forcefully in support of the right to privacy, and, in opposition to all forms of discrimination. In her 13 years on the bench, she has demonstrated an uncommon fidelity to applying precedent, to judicial restraint, and to the Rule of Law.

Most importantly, Judge Ginsburg seemed committed to protecting the civil rights and civil liberties of all Americans. As she told this committee, "the whole thrust of the Constitution is, people have rights and government must be kept from trampling on them." I could not agree more.

Despite my admiration for Judge Ginsburg, I was disappointed by her don't ask, don't tell, don't pursue strategy of responding to questions. And others on the committee—among them Senators SPECTER, COHEN, and MOSELEY-BRAUN—have also expressed disappointment in some of her responses. Of course, Judge Ginsburg did not need to disclose how she would vote on cases that might come before her. But she should have revealed more about how she would approach these cases, what reasoning and methodology she would apply to them, and which factors and materials she would find relevant. Judge Ginsburg was hardly a stealth candidate, but she was—at times—a stealth witness.

We all recognize the movements in the dance of the confirmation: Nominees answer about as many questions as they believe they have to in order to be confirmed. Nevertheless, I would not advise future Supreme Court nominees—with less comprehensive paper trails—to adopt a similarly evasive approach. After all, as Judge Ginsburg herself noted, "In an appointment to the U.S. Supreme Court, the Senate comes second, but is not secondary." I hope that the next nominee will take Judge Ginsburg's own advice to heart.

Still, as I reflect on the confirmation hearing, I keep on returning to how Judge Ginsburg told me she wanted to be remembered, "As someone who

cares about people and does the best she can with the talent she has to make a contribution to a better world."

I believe Judge Ginsburg will be such a Justice, and that is why I voted in favor of her confirmation.

Mr. DODD. Madam President, I rise today in strong support of the nomination of Judge Ruth Bader Ginsburg to be a Justice of the U.S. Supreme Court. Based on my review of her qualifications, including her academic writings, judicial opinions, and testimony before the Senate Judiciary Committee, I am confident that Judge Ginsburg has the requisite skills, character, and commitment to the Constitution for service on our Nation's highest court.

As Senators, we bear an enormous responsibility when fulfilling our constitutional duty to provide advice and consent to the President—and to the American people—on judicial nominations. These decisions are particularly important given the nature of judicial appointments. Nominees to the Federal bench, if confirmed, enjoy life tenure and are charged with the awesome responsibility of interpreting and applying the Constitution. Consequently, Federal judges—particularly Justices of the Supreme Court—have an opportunity to influence the policies of this Nation for years to come.

Although article II of the Constitution gives the Senate the responsibility to provide advice and consent on judicial nominations, it does not delineate the factors by which each Senator should evaluate the fitness of a judicial nominee. Accordingly, each Senator must determine for himself or herself the appropriate criteria for considering the qualifications of a nominee.

I have explained my approach to this responsibility on several occasions in the past. In my view, each Senator must begin and end his or her evaluation of the nominee with one overriding question: Is confirmation of this nominee in the best interest of the United States?

Answering this question in the affirmative first requires that each Senator be satisfied that the nominee possesses the technical and legal skills that we must demand of Federal judges.

Since 1980, Judge Ginsburg has served with distinction on the U.S. Court of Appeals for the District of Columbia. Prior to that, she taught at both Columbia University Law School and Rutgers University Law School. Of course, it was during her tenure at Columbia that Judge Ginsburg briefed and argued a key series of cases before the Supreme Court, which resulted in the invalidation of laws discriminating against women—from *Frontiero versus Richardson* in 1973 to *Duren versus Missouri* in 1979. In light of that exemplary career, it is not surprising that the American Bar Association gave her

its highest rating. Clearly, Judge Ginsburg possesses the appropriate legal skills.

Our next task is to determine whether the nominee is of the highest character and free from any conflicts of interest. Throughout the confirmation process, the Senate has heard nothing but the highest praise for Judge Ginsburg's character and integrity.

Finally, we must carefully consider the nominee's record to determine whether he or she is capable of, and committed to, upholding the Constitution and protecting the individual rights and liberties guaranteed therein. Toward that end, we must ask whether the nominee has the judicial temperament necessary to give a practical meaning to our Constitution's guarantees. We may disagree about the interpretation of various constitutional provisions, but the nominee's views must be within the appropriate range, and his or her approach must reflect a deep commitment to our constitutional ideals.

An analysis of Judge Ginsburg's career and testimony before the Senate Judiciary Committee reveals that she has a deep and abiding commitment to our constitutional ideals. Both her early battles against discrimination and her judicial rulings suggest that she will protect the rights and liberties of all individuals after her elevation to the Supreme Court.

Judge Ginsburg's statements recounting the discrimination she faced, both religious and gender-related, are particularly moving. Recalling her childhood, Judge Ginsburg noted passing a resort in Pennsylvania that had a sign stating, "No dogs or Jews allowed."

When she attended Harvard Law School there were only 8 other women in her class of 400, and the Dean asked her to justify taking a place in the class that otherwise would have gone to a man. Despite that slight and other indignities, she would go on to serve on the Harvard Law Review and, after transferring to Columbia University's Law School for financial and family reasons, graduate near the top of her class.

Despite that impressive academic background, only two law firms in New York City offered her a second interview, and neither of them offered her a job. Additionally, Supreme Court Justice Felix Frankfurter brushed aside her attempt to obtain a clerkship because he did not think that the Court was ready for female clerks.

Despite those injustices, and who knows how many others, Judge Ginsburg battled on. I have already mentioned her groundbreaking work in the area of gender discrimination—an effort that serves as an inspiration to all Americans. But perhaps more important, Judge Ginsburg's judicial decisions indicate that she has not forgot-

ten the lessons of the past. She has repeatedly ruled in favor of individuals challenging discriminatory practices and unreasonable restrictions on basic civil rights.

Additionally, she reaffirmed her commitment to constitutional ideals throughout her testimony before the Senate Judiciary Committee. For example, in response to a question about discrimination based on sexual orientation, she stated that: "Rank discrimination is not a part of our Nation's culture—tolerance is." Her defense of abortion rights was also clear and concise: "[It] is something central to a woman's life, to her dignity. It's a decision that she must make for herself. And when Government controls that decision for her, she's being treated as less than a fully adult human responsible for her own choices."

As invariably happens, some Senators voiced concerns about the extent to which Judge Ginsburg answered certain questions during the confirmation hearings. But when her testimony—which actually covered a fairly wide range of issues—is considered in conjunction with her record, a fairly clear picture of her judicial philosophy emerges. She approaches each case prudently, with a sensitivity to the role of a judge in our democracy, and with an understanding that the Constitution holds basic individual rights inviolate.

In short, confirmation of Judge Ginsburg would be in the best interest of the United States, and when the Senate votes tomorrow on the nomination, I will vote to confirm.

Before concluding my remarks, I would like to commend the chairman of the Judiciary Committee, Senator BIDEN, and ranking minority member, Senator HATCH, on the changes they made in the committee's procedures relating to confirmation hearings—changes that are intended to be standard procedure in the future. From now on, the committee will go into executive session to hear any allegations of wrongdoing against the nominee. If any of the allegations warrant further investigation, the committee will then conduct public hearings on the matter. Additionally, the committee will now open up investigative matters to every Senator.

I understand that there were no allegations against Judge Ginsburg. Nonetheless, it is important to have these procedures in place. After the hearings on the nomination of Clarence Thomas, I noted that the committee's investigation would have been more effective if conducted in executive session and that gavel-to-gavel coverage under television's bright lights was not necessarily the best way to discern the truth. Hopefully, the committee's new procedures will help the Senate carry out its advice and consent duties, while protecting not only the rights of the nominee but also the public's right to know.

Mr. THURMOND. Madam President, we are now considering the nomination of Judge Ruth Bader Ginsburg to become an Associate Justice of the Supreme Court.

For 3 days before the Judiciary Committee, Judge Ginsburg publicly testified and answered questions concerning her qualifications and fitness to serve on the Supreme Court. She responded to inquiries concerning her opinions on the DC Circuit Court of Appeals as well as cases in which she had been involved, articles she had written, and speeches delivered.

There was some encouragement in her testimony particularly where she stated, and I quote, "Judges must be mindful of what their place is in this system and must always remember that we live in a democracy that can be destroyed if judges take it upon themselves to rule as platonic guardians." While that statement gives us optimism, she also stated that she would look beyond the text of the Constitution when determining rights to be protected by the Court.

Additionally, Judge Ginsburg was crystal clear in her support for abortion rights during an exchange with our distinguished colleague, Senator BROWN. Yet, she repeatedly refused to be as forthcoming on the issue of capital punishment, which has been declared constitutional by the Supreme Court. She would only go so far as to acknowledge that the Court has held it constitutional since 1976. To find comfort in that answer on this issue, we must have faith in her adherence to precedents and stare decisis.

In other remarks, Judge Ginsburg suggested that the Court at times has a role to legislate. She stated and I quote, "When political avenues become dead-end streets, judicial intervention in the politics of the people may be essential in order to have effective politics." At other times, she embraced the principle of judicial restraint and appeared determined to decide cases narrowly and on the facts.

During another exchange, Judge Ginsburg found acceptable the broad reach of the Missouri versus Jenkins decision in which the Supreme Court, in my opinion, engaged in judicial activism by authorizing the Federal courts to order tax increases as a judicial remedy. I was disappointed with her answer on this matter.

However, Judge Ginsburg is a woman of integrity. She displayed a depth of knowledge concerning the law and demonstrated her ability to master and articulate complex issues. While Judge Ginsburg chose not to answer responsively a great number of questions, each Member must determine if she otherwise satisfied their standards for serving on the Supreme Court.

Madam President, I am mindful that Judge Ginsburg is President Clinton's nominee, and I did not expect to agree

with her on all of the issues. Based on her lack of specificity in a number of areas, I cannot be certain as to where we disagree. Although I have reservations about this nominee, I like to support the President in choosing his nominees when I can. I shall give her the benefit of any doubts I have and shall support her.

Mrs. BOXER. Madam President, I am very proud to rise today in support of the nomination of Ruth Bader Ginsburg to be an Associate Justice of the U.S. Supreme Court.

During the campaign, President Clinton promised the American people that he would select Justices who possessed outstanding legal minds and big hearts. In nominating Judge Ginsburg, the President made good on his promise.

To the highest court in the land, Judge Ginsburg will bring a special combination of conviction, experience, and skill. She will bring the heart of a passionate advocate, who fought an historic and tireless battle against gender discrimination. She will bring the fine mind of a distinguished legal scholar, who both as a law professor and as a Federal judge, defied those who wanted to pigeonhole her as a liberal or a conservative and earned her reputation for independence.

Judge Ginsburg's work on behalf of the women of America has been heroic. She understands what it means to be discriminated against. Despite having graduated first in her class from Columbia Law School, no law firm would hire her. Even as a law professor, she was forced to hide her pregnancy, fearing that she would lose her job if anyone found out.

She has fought against discrimination by using the Constitution as a tool to challenge laws that limit women's opportunities. By convincing the Supreme Court that these laws violated the Constitution's grand promise of equal opportunity, Judge Ginsburg forced open those doors of equality, doors through which generations of women—including me and my daughter—have been able to walk.

Throughout her career, Judge Ginsburg has insisted that a woman's ability to be equal was dependent upon her right to choose. In a series of writing and speeches, Judge Ginsburg has reminded us that laws restricting a woman's right to choose deny us equal status under the law, keep us from competing equally in the workplace, and block us from being independent and equal participants in our Nation's future.

But, Madam President, despite her zealous advocacy for women's rights, Judge Ginsburg has kept her solemn promise to dispense impartial justice. In her 13 years as a judge on the D.C. Circuit Court of Appeals, she has never let ideology cloud her legal reasoning, she has never, in her own words, bent the rules to please the home crowd.

Finally, I really want to commend President Clinton for making this courageous and historic nomination. President Reagan deserves credit for nominating the first woman—Justice Sandra Day O'Connor—to serve on the Supreme Court. But, President Clinton understands that real equality is about moving beyond and breaking through the ceiling of the first woman, the first African-American, the first Latino. Real equality is about true representation, it is about nominating the second woman, the third, the fourth, and the fifth. It is about the nomination of Ruth Bader Ginsburg.

In her speech accepting President Clinton's nomination, Judge Ginsburg, remarked that she hoped it would mark the end of the days when women were seen as one-at-a-time performers. I could not agree with her more. Madam President, I am so proud to have this historic opportunity to vote in favor of Ruth Bader Ginsburg to become the second woman Justice on the U.S. Supreme Court.

Mr. RIEGLE. Madam President, it is with great pleasure that I rise today in support of the nomination of Judge Ruth Bader Ginsburg as Associate Justice to the U.S. Supreme Court. As his first nomination to the Supreme Court, President Clinton has chosen a jurist with superior academic and judicial credentials who will lend an important perspective to the Court.

On issues ranging from antitrust law to privacy rights, Judge Ginsburg has demonstrated a measured, equitable approach which transcends the simplistic political labels of conservative or progressive, Republican or Democrat. And while no Senator may be in agreement with each decision she has written or article she has published, I believe that all Senators can agree that Judge Ginsburg embodies the kind of reflective wisdom and independent judgment found in very great jurist and Supreme Court Justice in history.

Ruth Bader Ginsburg is responsible for the establishment of an entirely new branch of legal rights and equal protection. In numerous appearances before the Supreme Court in the 1970's, she won several landmark gender discrimination cases, invalidating the structural discrimination pervasive at that time. Through her groundbreaking work and successful litigation before the Court, Judge Ginsburg is personally responsible for launching the equal treatment of women in the workplace now required by law.

And although sex discrimination is still an unfortunate reality in our society, the tremendous legal progress of the past two decades is directly attributable to Judge Ginsburg's tireless efforts in this area. Drawing from her own firsthand experiences with gender discrimination, Judge Ginsburg brings an uncommon insight and perspective to the bench—a perspective that has

been severely underrepresented on the Supreme Court.

As a judge and a law professor, Ruth Bader Ginsburg has received numerous awards and honors. She has been given the highest recommendation possible by the American Bar Association—they unanimously voted her exceptionally well-qualified to be an Associate Justice. Judge Ginsburg has repeatedly been signed out as a top centrist judge by legal journals and judicial observers. And in her years as a professor, she was chosen by her peers as an outstanding law professor and received national recognition for her academic contributions.

I believe that in choosing this highly qualified candidate, President Clinton has shown his solid commitment to bringing the Court closer to the cultural diversity and gender composition of today's society.

I am pleased to support such a worthy candidate for Supreme Court Justice, and I urge my colleagues to confirm Judge Ginsburg unanimously.

Mr. BIDEN. Madam President, although we are not voting until tomorrow, I would like to ask for the yeas and nays on the Ginsburg nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. I thank the Chair.

Madam President, as I understand it, the distinguished Republican leader wishes to speak on this nomination in a few moments. He is at so many things which he is doing right now, I am not sure exactly when he will be down to speak. But other than the distinguished Senator from Kansas, I do not think there are any other Members seeking recognition to speak now or this afternoon.

So what I would like to suggest is to put in a quorum call in the expectation that the Senator from Kansas will be down shortly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BIDEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Madam President, I see the distinguished Senator from New York has arrived. He is the chief sponsor, if you will, in the Senate of Ruth Bader Ginsburg. He is a man who, I might add, Madam President, told me and others about the intellectual prowess and judicial temperament of this fine nominee long before she was named to the Court. He cannot say this, but I can. When asked by the President of the United States who he would consider nominating for the Court if it were his Court, unequivocally and without hesitation he said Ruth Bader Ginsburg.

So I comment him on his being, as usual, way ahead of the curve. And I compliment the President and his staff for listening to the distinguished Senator from New York. I will now yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Thank you, Madam President.

May I thank the distinguished chairman of the committee who so successfully, gracefully brought this high matter of constitutional responsibility to this floor. This could not have happened without his efforts and that of his able, respected associate, Senator HATCH.

Madam President, exercising its constitutional responsibility to advise and consent, the Senate is perhaps most acutely attentive to its duty when it considers a nominee to the Supreme Court. That this is so reflects not only the importance of our Nation's highest tribunal, but also our recognition that while Members of the Congress and Presidents come and go—chief magistrates, as Woodrow Wilson described the Presidency—the tenure of a Supreme Court Justice can span generations.

We in the Senate, together with the President, create the third branch of the National Government; that is the judiciary. We thus owe special care that those charged with watchful vigilance over our constitutional charter be up to that task. So it was that in the past weeks the Committee on the Judiciary, led by Senators BIDEN and ORRIN G. HATCH, engaged in the most searching inquiry of Judge Ruth Bader Ginsburg.

That the committee unanimously determined that Judge Ginsburg should be the 107th Justice of the Supreme Court of the United States is further testament to an extraordinary career of 34 years in the law. Judge Ginsburg is perhaps best known as the lawyer and litigator who raised the issue of equal rights for women, equal protection of women under the Constitution, to the level of constitutional principle. She has also distinguished herself in a wide range of legal studies, and for the last 13 years has been one of our Nation's most respected jurists on the U.S. Court of Appeals for the District of Columbia Circuit.

For some months, I had hoped that the country would have the opportunity, as it has in these past weeks, to discern the qualities which make Judge Ginsburg so right for the job.

Senator BIDEN having mentioned it, I will own to the fact that on May 12, on a flight to New York, President Clinton very generously asked me who I would like to see appointed to the Court, and I replied that I thought there was only one name—Ruth Bader Ginsburg.

Later, as the administration was considering that recommendation, I would

pass on to the White House remarks made in 1985 by Erwin N. Griswold, former Solicitor General of the United States and dean of the Harvard Law School at the time Judge Ginsburg was a student there. Speaking before a special session of the Supreme Court commemorating the 50th anniversary of the opening of the Supreme Court Building—which they moved into in 1935—Dean Griswold made note of the work of attorneys who had appeared before the Court on behalf of special interest groups, as against individual appellants. He said:

I think, for example, of the work done in the early days of the NAACP, which was represented here by one of the country's great lawyers, Charles Hamilton Houston, work which was carried on later with great ability by Thurgood Marshall. And I may mention the work done by lawyers representing groups interested in the rights of women, of whom Ruth Bader Ginsburg was an outstanding example.

I must tell you that we in New York take special pride in her nomination. She was born and raised in Brooklyn. The day after her nomination, the front page of the New York Daily News exclaimed "A Judge Grows in Brooklyn." Judge Ginsburg attended Cornell University where she was elected to Phi Beta Kappa and graduated with high honors in government and distinction in all subjects, and later Columbia Law School, where she tied for the top rank in her class. Indeed, she actually attended two law schools, beginning at Harvard Law School, and finishing at Columbia so that she could be with her husband Martin, who had returned to New York to begin the practice of law. Never before Ruth Bader Ginsburg had anyone been a member of both the Harvard and Columbia Law Reviews.

With such a record, we would not think it surprising that she would be recommended to serve as a law clerk to Supreme Court Justice Felix Frankfurter. But in the world of that day, the legal profession was mostly for men only. That time is not far distant, Madam President; I was here in Washington in the Kennedy administration at the time that Justice Frankfurter stepped down. Arthur Goldberg succeeded him. We can just reach out and touch that time. And Justice Frankfurter was not prepared to hire a woman—it seemed it would not be right and not perhaps even fair. I can imagine him thinking that. And such was also the case with New York law firms, which had no place for her really—only two showing any interest.

She persevered, she triumphed, she transcended along this—working as a law clerk for Judge Edmund L. Palmieri of the U.S. District Court for the Southern District of New York, as an associate director at the Columbia Law School Project on International Procedure, as a professor of law at Rutgers University Law School. She was one of the first tenured female law pro-

fessors, in the country, and the first at Columbia University, where Michael Sovern was pleased to see that she was the first tenured appointment he would make once he became dean.

While at Colombia, then Professor Ginsburg became the moving force behind the Women's Rights Project of the American Civil Liberties Union. The prime architect of the fight to invalidate discriminatory laws or practices against individuals on the basis of gender, her imprint could be found in virtually every gender case which reached the court in the 1970's. She herself argued six cases before the Supreme Court winning five, and in the process fashioning lasting precedent for women's rights. To know something of even a couple of these cases is to understand the fundamental change which she brought about.

In one, *Frontiero versus Richardson*, Ruth Bader Ginsburg secured for women serving in our Armed Forces equal benefits for their dependents. Another case, *Weinberger versus Wiesenfeld*, involved a section of the Social Security Act providing survivor benefits to a widow with minor children, but not to a widower with minor children. Professor Ginsburg prevailed upon the Supreme Court to invalidate this provision as discriminatory, rejecting the gender-based stereotype that women's work is less worthy than men's.

Upon her nomination in 1980 to the U.S. Court of Appeals, the American Bar Association gave her its highest rating. Time has not dampened the ABA's enthusiasm, having offered its highest evaluation to Judge Ginsburg as a nominee to the Supreme Court. As a jurist, she embodies the view she expressed in the Sibley lecture at the University of Georgia School of Law in 1981:

[The] greatest figures [of the American judiciary] * * * have been independent-thinking individuals with open, but not empty minds, individuals willing to listen and to learn. They have been skeptical of party lines and they have exhibited a readiness to reexamine their own premises, liberal or conservative, as thoroughly as those of others.

She believes that all of us, not just judges, have a duty to protect constitutional rights. As she put it in her opening statement before the Committee on the Judiciary, our Constitution "strives for a community where the least shall be heard and considered side by side with the greatest." Her opinions show a respect for the other branches of Government,

Ever mindful of our frailties, Judge Ginsburg put it so well in her statement before the Judiciary Committee when she embraced Judge Learned Hand's view of the spirit of liberty, as "one which is not too sure that it is right, and so seeks to understand the minds of other men and women and to weigh the interests of others alongside its own without bias."

Later, she quoted with approval the words of another New Yorker, Justice Benjamin Nathan Cardozo, who said: "Justice is not to be taken by storm. She is to be wooed by slow advances."

In confirming Ruth Bader Ginsburg as an Associate Justice of the Supreme Court of the United States, we do honor to ourselves and to the most vital traditions of our jurisprudence, which have worked to keep our society both ordered and free.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President. It is a great honor that I rise to express my whole-hearted support for this nomination.

During my service in the Senate, I have developed three fundamental criteria by which I judge a nominee's suitability for service on the Supreme Court: Is the nominee ethical, qualified, and within the philosophical mainstream of modern jurisprudence?

In the case of Judge Ginsburg, the answer on each of these three criteria is a resounding "Yes."

Madam President, I suggest the absence of a quorum.

First, Judge Ginsburg is superbly qualified. Any nominee for the highest court in the land must be in the forefront of the legal profession. This is clearly the case with Judge Ginsburg.

During her years as an advocate, Ruth Bader Ginsburg earned her place as pioneer in the then evolving area of gender discrimination law. And, today, countless women across America are better off because of her efforts.

While serving as counsel to the American Civil Liberties Union, Judge Ginsburg won five landmark cases before the Supreme Court. These cases resulted in a gradual expansion of the Court's interpretation of the equal protection clause as it is applied to gender discrimination cases.

Even with her success as an advocate, there is a absolutely no question about Judge Ginsburg's judicial temperament. She is within the mainstream of American jurisprudence. Although she began her judicial career with the background of a liberal, Judge Ginsburg is a clear and independent thinker. Her opinions show an abiding respect for the rule of law. On a wide range of legal issues she has proven herself to be a thoughtful, deliberate judge. She crafts her opinions narrowly and with deep respect for both precedent and the prerogatives of the two other branches of Government.

Moreover, throughout her career, Judge Ginsburg has observed the highest ethical standards. Beyond merely complying with the law, Judge Ginsburg has gone out of her way to avoid even the appearance of impropriety. For instance, out of protest, she and her husband have resigned from two private clubs that appeared to have dis-

criminatory membership policies. She understands that judges ought to live by the rules they set for the rest of us.

In closing, I congratulate President Clinton for making this fine nomination. I am confident that Judge Ginsburg will make a great Justice of the U.S. Supreme Court.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MATHEWS). The clerk will call the roll. The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I ask unanimous consent to address the Senate as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

BEYOND GOOD INTENTIONS: USING FORCE IN BOSNIA AND SOMALIA

Mr. MCCAIN. Mr. President, today and this week, we are understandably focused on domestic issues. A national debate is raging over the President's proposed deficit-reduction plan and, understandably, the focus of the American people and to some extent, the world is focused on this overriding domestic issue.

But I think it is important to point out that we stand at a defining moment of the post-cold-war era. Once again, we are present at the creation, just as we were at the end of World War II; once again, we must redefine our role in the world.

Mr. President, I am calling today for President Clinton to come to the Congress and the American people and explain what our goals and strategy are in Bosnia and Somalia. Will we commit American military force to Bosnia? If so, under what circumstances? What are the military and strategic goals? How long do we expect the United States to be militarily engaged? And what are the rules of the engagement?

In the media, there are ample reports that the United States intends to use air power in Bosnia. The use of air power may be justified. I think that all Americans would strongly support military action to prevent a massacre of innocent civilians, whether it be in Sarajevo or anyplace else in the world. But, Mr. President, the American people need to know the parameters of this military involvement, what we intend to accomplish in the long term, as well as the short term, and how we intend to do it.

On numerous occasions when the United States has been involved militarily in places throughout the world, Members of this body, especially on the other side of the aisle, have come to this floor and called for the invocation

of the War Powers Act. I am not saying that that is appropriate at this time. But I am saying that consultation with Congress and the American people is critical before we send young men and women into conflict in the region.

I have to tell you, Mr. President, I am deeply disappointed that so far the Clinton administration has not consulted with the American people or with Members on this side of the aisle as to what military action is being contemplated. Those are my constituents in the military whose lives may be at risk, just as they are the President's.

There has been a tradition since World War II that partisanship ends at the water's edge. There has been virtually no consultation between the President of the United States and Members of this body on this side of the aisle. I strongly recommend that he do so before initiating military action.

I want to emphasize Americans are not ready to watch people get massacred if they can prevent it. An open-ended military commitment in the region, such as we are seeing in Somalia, is something that the American people will not support. We have ample proof that unless we have the support of the American people, military enterprises of any duration are doomed to failure.

Mr. President, we must develop a clear and consistent policy for peace enforcement and nation building. We must choose how to reshape American strategy and American forces, and we must choose carefully indeed.

Day by day we are discovering in Bosnia and Somalia that the end of the cold war does not mean the end of history. We are discovering that we still have to deal with 20-30 conflicts and crisis points throughout the world—just as we did every day of every year after World War II. We are discovering that there are sharp limits to the peace dividends we can draw before we risk a level of weakness that will lead to new wars.

We are confronted by a critical dilemma. If we remain indifferent to the world, then the world's problems will inevitably come to visit us in our homeland. They may not be military threats, but they will be threats to our economy, our interests, and our allies. They will threaten our political and moral values, and they will inevitably unleash the use of weapons of mass destruction.

If, however, we commit our prestige and our forces carelessly, we will waste resources we cannot afford. Our good intentions will lead us down the road to military intervention as a substitute for statesmanship and inevitably to political and military failure.

PAVING THE ROAD TO HELL WITH GOOD INTENTIONS

There are many roads to hell that are not paved with good intentions. Good intentions alone, however, are not a

cannot shape our strategy or forces simply by setting an arbitrary budget ceiling, and then try to meet new commitments within that ceiling. We need a clear picture of where we will keep our forces, how we will reshape them for peace enforcement and humanitarian missions, how we will adapt them to work with the U.N. and other nations, and how we will give them the readiness and decisive technical edge to ensure their success.

Mr. President, at the end of this week Congress will go out of session. Members will be scattered to the four corners of this country.

We need to discuss this issue and debate it, and come to a conclusion in Congress if the President intends to dramatically escalate the use of American military force in Bosnia. And we need to do so soon.

Otherwise, we will have scant chance of building a consensus here in the Congress or in the country.

Mr. President, I yield the floor.

SUPREME COURT OF THE UNITED STATES

The nomination of Ruth Bader Ginsburg, of New York, to be an Associate Justice of the Supreme Court of the United States.

The Senate continued with the consideration of the nomination.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, is the Ginsburg nomination the pending business?

The PRESIDING OFFICER. The Senator is correct.

JUDGE RUTH BADER GINSBURG

Mr. DOLE. Mr. President, tomorrow, I will vote to confirm the nomination of Judge Ruth Bader Ginsburg.

A top student at both Harvard and Columbia Law Schools, a law professor at Rutgers University, and a respected judge on the D.C. Court of Appeals for nearly 13 years, Judge Ginsburg certainly has a record of academic and professional achievement that would prepare anyone for service on the Nation's highest Court. By any measure, she is qualified to become the Supreme Court's ninth Justice.

Judge Ginsburg also has the temperament that one would want, and expect, in a Supreme Court Justice. During her hearings before the Senate Judiciary Committee, she displayed both a cool rationality and an open mind, a combination that inspires both respect and confidence.

Now, I do not agree with all of Judge Ginsburg's past judicial decisions, nor do I agree with every position she has taken in her considerable body of academic writings. If a Republican were in the White House, Judge Ginsburg would not have been nominated.

Nevertheless, I am convinced that Judge Ginsburg understands the proper role of a Supreme Court Justice and the function of the judiciary in our three-branch democracy.

Judges must apply the law neutrally to the particular facts of each particular case. They must look to precedent when reaching their decisions. But they must not impose their own personal policy preferences in order to achieve favored outcomes. The job of legislating belongs to Congress and to the State legislatures, not to the Supreme Court.

I believe Judge Ginsburg understands this. During her tenure as a court of appeals judge, she may have shown a streak of judicial activism on occasion, but for the most part her record is that of a moderate, reasoning by precedent and mindful of the importance of restraint and caution. In fact, some have criticized Judge Ginsburg for being more interested in the fine print rather than the big picture, and for being a legal technician rather than an interpretive philosopher—criticisms that Judge Ginsburg should wear as a badge of honor.

Finally, Mr. President, I want to commend Senator BIDEN, the chairman of the Judiciary Committee, and the committee's ranking member, Senator HATCH, for conducting a closed-session hearing as part of their deliberations on the Ginsburg nomination. For future nominees. I hope the committee continues this practice. It is perhaps the only way to protect nominees from the considerable embarrassment that may result when groundless or easily explainable charges of a personal nature are given a public airing. My only regret is that the committee did not resort to a closed session when personal attacks were made against the last Supreme Court nominee, Justice Thomas.

We have learned from that. I think that is probably the reason now.

I think it has already been stated by the chairman of the committee. But I want to reemphasize the record to show again that the Judiciary committee began its hearings on July 20, a mere 36 days after the Ginsburg nomination was formally announced by President Clinton. No Republican nominee to the Court in recent history has been considered so expeditiously.

I wish Judge Ginsburg the very best as she assumes that awesome responsibility of sitting on our Nation's highest Court. Needless to say, I look forward to having a neighbor that I can proudly call Madam Justice.

Mr. BIDEN. Mr. President, I would like to thank the Republican leader for his compliment and acknowledgement. What he said about the speed with which we moved is absolutely accurate. I hope the Democrats do keep that in mind if things change in 3 years. I also point out that however long it may be,

but as long as I am chair of the committee—and I think my view is shared by all members of the committee—we will continue to have a closed hearing. I believe it is a necessary change and innovation for the very reasons the Senator has indicated.

Last, I point out a little known fact—and I mean it sincerely—I did offer to the President of the United States and I did offer to the nominee, who was referred to, an opportunity to have that entire matter in a closed hearing. It was the choice of the nominee, and I do not criticize that choice. I understand it, in light of the fact that the charges were already made public against him. It was almost impossible for him to agree to that. But there was the opportunity offered, under rule XXVI of the Senate, to go in closed session relating to those charges. It was probably beyond anybody's control at that point. I do not say that by way of excuse, only by way of explanation.

I thank the Republican leader for his comments and, hopefully, we can move as expeditiously on Republican nominees as we have on Democratic if and when that time returns.

Mr. DOLE. Mr. President, I thank the distinguished chairman, my friend. There is no doubt about it, they did their job well, and I think that is why it moved so expeditiously.

I would like, if I may, to proceed as in morning business on another matter for about two minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

EISENHOWER NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Mr. DOLE. Mr. President, on July 29, I was honored to participate in a ceremony held here in the Capitol, to honor President Dwight D. Eisenhower and unveil the new Eisenhower Interstate System sign.

I was joined by President Eisenhower's son and granddaughter Susan, the Secretary of Transportation, and several of my colleagues in both the House and the Senate, in honoring the vision of a man who worked tirelessly to see the Interstate Highway System come to reality.

The unveiling of the newly appointed sign, which will be placed throughout the Nation, commemorates Dwight D. Eisenhower's dedication and perseverance. Our colleague, the late Senator John Heinz should also be recognized and honored for being a sponsor of the 1990 legislation which redesignated the National System of Interstate and Defense Highways as the Dwight D. Eisenhower System of Interstate and Defense Highways. President George Bush signed this legislation on October 15, 1990.

In 1991, the Congress enacted legislation requiring the Secretary of Transportation to conduct a study and report to Congress on a recommended

cosponsor of S. 262, a bill to require the Administrator of the Environmental Protection Agency to promulgate guidelines for instituting a non-smoking policy in buildings owned or leased by Federal agencies, and for other purposes.

S. 565

At the request of Mr. WARNER, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of S. 565, a bill to amend the Internal Revenue Code of 1986 to improve disclosure requirements for tax-exempt organizations.

S. 599

At the request of Mr. GRASSLEY, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 599, a bill to amend the Internal Revenue Code of 1986 to provide a permanent extension for the issuance of first-time farmer bonds.

S. 636

At the request of Mr. KENNEDY, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of S. 636, a bill to amend the Public Health Service Act to permit individuals to have freedom of access to certain medical clinics and facilities, and for other purposes.

S. 653

At the request of Mr. METZENBAUM, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 653, a bill to prohibit the transfer or possession of semiautomatic assault weapons, and for other purposes.

S. 1111

At the request of Mr. KERREY, the names of the Senator from Minnesota [Mr. WELLSTONE], the Senator from Alaska [Mr. STEVENS], the Senator from Mississippi [Mr. LOTT], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of S. 1111, a bill to authorize the minting of coins to commemorate the Vietnam Veterans' Memorial in Washington, D.C.

S. 1116

At the request of Mr. BURNS, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 1116, a bill to amend the Internal Revenue Code of 1986 to clarify the deduction for expenses of certain home offices, and for other purposes.

S. 1160

At the request of Mr. HATFIELD, the names of the Senator from Alaska [Mr. STEVENS], the Senator from Illinois [Mr. SIMON], the Senator from Wyoming [Mr. SIMPSON], the Senator from Tennessee [Mr. MATHEWS], and the Senator from Arkansas [Mr. BUMPERS] were added as cosponsors of S. 1160, a bill to amend the Public Health Service Act to provide grants to entities in rural areas that design and implement innovative approaches to improve the

availability and quality of health care in such rural areas, and for other purposes.

S. 1234

At the request of Mr. BAUCUS, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 1234, a bill to authorize the payment of Servicemen's Group Life Insurance in accordance with title 38, United States Code, as amended effective on December 1, 1992, in the case of certain members of the Armed Forces killed in an aircraft accident on November 30, 1992.

SENATE JOINT RESOLUTION 117

At the request of Mr. BIDEN, the names of the Senator from Rhode Island [Mr. PELL], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of Senate Joint Resolution 117, a joint resolution to designate August 1, 1993, as "National Incest and Sexual Abuse Healing Day."

SENATE CONCURRENT RESOLUTION 21

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of Senate Concurrent Resolution 21, a concurrent resolution expressing the sense of the Congress that expert testimony concerning the nature and effect of domestic violence, including descriptions of the experiences of battered women, should be admissible if offered in a State court by a defendant in a criminal case.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on August 2, 1993, at 2:30 p.m. on the nominations of James E. Hall to be a member of the National Transportation Safety Board, Louise Frankel Stoll to be Assistant Secretary of Transportation for Budget and Programs and Frank Eugene Kruesi to be Assistant Secretary of Transportation for Transportation Policy.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, August 2, 1993, at 3 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Monday, August 2, 1993, at 4 p.m. to hold a nomination hearing on Mr. Joe Grandmaison, to be Director of the Trade and Development Agency.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. BIDEN. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources' Subcommittee on Labor be authorized to meet for a hearing on recent court decisions and executive life annuities, during the session of the Senate on Monday, August 2, 1993, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

Mr. BIDEN. Mr. President, I ask unanimous consent that the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, be authorized to meet during the session of the Senate on Monday, August 2, 1993, at 10:30 a.m., to hold a hearing on Manville bankruptcy.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

NOMINATION OF RUTH BADER GINSBURG, OF NEW YORK, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

The Senate continued with the consideration of the nomination.

Mr. ROBB. Mr. President, I rise today to speak in support of the nomination of Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court of the United States.

It has been 26 years since a Democrat has had the opportunity to choose a nominee for the U.S. Supreme Court, and President Clinton has made a superb choice. His nomination of Ruth Bader Ginsburg is one based on her sterling reputation as a talented judge, her role as one of the foremost legal advocates for women's rights during the 1970's, and her potential to build consensus on the Supreme Court.

Not only has Judge Ginsburg received the highest possible rating of the American Bar Association—a unanimous judgment by a 15-member panel that she is well-qualified for the job—but she has also been favorably reported out of the Senate Judiciary Committee by a unanimous vote. She has received bipartisan acclaim from Senators on the Judiciary Committee, who have praised her as an outstanding choice. She has impressed those Senators as serious, intelligent, and confident.

Colleagues of Judge Ginsburg have described her as a restrained, fair-minded, and moderate jurist with a keen intellect.

I am especially impressed with Judge Ginsburg's activism and advocacy regarding women's rights. As founder of the Women's Rights Project of the American Civil Liberties Union, Judge Ginsburg worked hard to make

changes. She skillfully invoked the equal protection clause to combat gender distinctions in the law. This approach was groundbreaking because the U.S. Supreme Court had not previously applied the 14th amendment to gender-based discrimination. Through five victories in six Supreme Court cases, she used the 14th amendment to erase gender lines in areas ranging from military benefits to jury duty to the administration of estates. This series of victories provided the impetus for altering hundreds of laws and regulations across the country. Becoming the second woman on the Supreme Court seems to be the perfect culmination of Judge Ginsburg's lifelong commitment to systematically removing barriers for women in the United States.

While at the ACLU, Judge Ginsburg did something which speaks volumes about why she has received virtually unqualified support from my colleagues. While working on a case to persuade the Supreme Court to reverse its decisions on three major 20th century cases that had sustained sex discrimination, she prepared a brief in which she listed the names of two other attorneys as counsel for the plaintiff.

This in itself was not unusual since attorneys usually list cocounsel as a matter of course. What was unusual, and instructive, in this case was that the two attorneys she listed did not write a word of the brief, but paved the way for its creation. The two attorneys listed by Judge Ginsburg were Dorothy Kenyon and Pauli Murray, true pioneers in the fight for equal treatment for women.

While judges are required to follow the decisions of those who came before them, we as human beings often fail to recognize and give due respect to those who came before us and those whose past sacrifices have made possible the successes we achieve today. Judge Ginsburg not only recognizes stare decisis, which as a judge she is compelled to do, she also recognizes the debt we owe to those who have struggled before us.

This speaks not only to her attributes as a judge, but also to her character as a person. This quality of judicial restraint tempered with human feeling makes her an especially appropriate choice for this seat.

As one article points out, Judge Ginsburg is not

*** interested in the dogmatic pursuit of a political or ideological agenda. Rather, we can expect her to focus on cultivating the evolution of constitutional principles that are firmly grounded in important national values and reflect a mutually respectful relationship with the other branches and levels of government. That perspective may not accord with the fancies of judicial activities

right or left, but it's one well worth strengthening on the Court.

Judge Ginsburg has adopted a moderate approach to judging, following the letter of the law and leaving policy choices to the legislators.

I am convinced Ruth Bader Ginsburg will be able to skillfully integrate her vast wealth of knowledge—acquired from her experiences as a wife, mother, and respected jurist, who has lived through many struggles, both personal and political—into the tough decisions put before her.

It is for these reasons and more that I strongly urge my colleagues to vote to confirm Ruth Bader Ginsburg to the Supreme Court. After having reviewed her background and life experience, I am confident that she will serve with poise, wisdom, and distinction.

Mr. President, I yield the floor.

I thank the Chair and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. BIDEN. Mr. President, I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. BIDEN. Mr. President, I ask unanimous consent that there be a period for morning business, with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. BIDEN. Mr. President, I ask unanimous consent that the votes ordered relative to the nominations considered during today's session occur on Tuesday, August 3, as follows: That upon the disposition of H.R. 2010, the national service bill, the Senate proceed to executive session to vote on the confirmation of Judge Ruth Bader Ginsburg, and that the remaining nominees, Messrs. Payzant and Hackney, be voted on in the order in which they were debated, with all of the above occurring without intervening action or debate; that the first two votes in the voting sequence be the usual duration, that is, 15 minutes plus the extra 5 minutes, if needed, and the remaining two votes in the sequence be 10 minutes in duration; further, that

upon conclusion of the last vote in the sequence, the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BIDEN. Mr. President, I request that Senators, when they cast their vote on the Ginsburg nomination, cast their votes from their desks for that nomination.

ORDERS FOR TUESDAY, AUGUST 3, 1993

Mr. BIDEN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:40 a.m. Tuesday, August 3; that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day; and that immediately following the Chair's announcement, the Senate resume consideration of S. 919, as provided for under the provisions of a previous unanimous consent agreement; that upon disposition of the Hackney nomination and the Senate returning to legislative session, that the Senate then resume consideration of H.R. 2403, the Treasury, Postal Service appropriations bill; that on Tuesday, the Senate stand in recess from 12:30 p.m. to 2:15 p.m., in order to accommodate the respective party conferences.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL TOMORROW AT 9:40 A.M.

Mr. BIDEN. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess, as previously ordered.

There being no objection, the Senate, at 7:23 p.m., recessed until Tuesday, August 3, 1993, at 9:40 a.m.

NOMINATIONS

Executive nominations received by the Senate August 2, 1993:

DEPARTMENT OF STATE

William Green Miller, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Ukraine.

CONFIRMATION

Executive nomination confirmed by the Senate August 2, 1993:

DEPARTMENT OF JUSTICE

ELEANOR ACHEBON, OF MASSACHUSETTS, TO BE AN ASSISTANT ATTORNEY GENERAL.

"(3) Health care, including health care delivery and access as well as health education, prevention and wellness.

"(4) Underperforming school systems and students.

"(5) Problems faced by the elderly and individuals with disabilities in rural settings.

"(6) Problems faced by families and children.

"(7) Campus and community crime prevention, including enhanced security and safety awareness measures as well as coordinated programs addressing the root causes of crime.

"(8) Rural housing.

"(9) Rural infrastructure.

"(10) Economic development.

"(11) Rural farming and environmental concerns.

"(12) Other problem areas which participants in the consortium described in section 1173(a)(2)(B) concur are of high priority in rural areas.

"(13)(A) Problems faced by individuals with disabilities and economically disadvantaged individuals regarding accessibility to institutions of higher education and other public and private community facilities.

"(B) Amelioration of existing attitudinal barriers that prevent full inclusion of individuals with disabilities in their community.

"SEC. 1175. PEER REVIEW.

"The Secretary shall designate a peer review panel to review applications submitted under this part and make recommendations for funding to the Secretary. In selecting the peer review panel, the Secretary may consult with other appropriate Cabinet-level Federal officials and with non-Federal organizations, to ensure that the panel will be geographically balanced and be composed of representatives from public and private institutions of higher education, labor, business, and State and local government, who have expertise in rural community service or in education.

"SEC. 1176. DISBURSEMENT OF FUNDS.

"(a) MULTIYEAR AVAILABILITY.—Subject to the availability of appropriations, grants under this part may be made on a multiyear basis, except that no institution, individually or as a participant in a consortium, may receive a grant for more than 5 years.

"(b) EQUITABLE GEOGRAPHIC DISTRIBUTION.—The Secretary shall award grants under this part in a manner that achieves equitable geographic distribution of such grants.

"(c) MATCHING REQUIREMENT.—An applicant under this part and the local governments associated with its application shall contribute to the conduct of the program supported by the grant an amount from non-Federal funds equal to at least one-fourth of the amount grant, which contribution may be in cash or in kind, fairly evaluated.

"SEC. 1177. DESIGNATION OF RURAL GRANT INSTITUTIONS.

"The Secretary shall publish a list of eligible institutions under this part and shall designate such institutions of higher education as 'Rural Grant Institutions'. The Secretary shall establish a national network of Rural Grant Institutions so that the results of individual projects achieved in 1 rural area can be generalized, disseminated, replicated and applied throughout the Nation.

"SEC. 1178. DEFINITIONS.

"As used in this part:

"(1) RURAL AREA.—The term 'rural area' means any area that is—

"(A) outside an urbanized area, as such term is defined by the Bureau of the Census; and

"(B) outside any place that—

"(i) is incorporated or Bureau of the Census designated; and

"(ii) has a population of 75,000 or more.

"(2) ELIGIBLE INSTITUTION.—The term 'eligible institution' means an institution of higher edu-

cation, or a consortium of such institutions any one of which meets all the requirements of this paragraph, which—

"(A) is located in a rural area;

"(B) draws a substantial portion of its undergraduate students from the rural area in which such institution is located, or from contiguous areas;

"(C) carries out programs to make postsecondary educational opportunities more accessible to residents of such rural areas, or contiguous areas;

"(D) has the present capacity to provide resources responsive to the needs and priorities of such rural areas and contiguous areas;

"(E) offers a range of professional, technical, or graduate programs sufficient to sustain the capacity of such institution to provide such resources; and

"(F) has demonstrated and sustained a sense of responsibility to such rural area and contiguous areas and the people of such areas.

"SEC. 1179. AUTHORIZATION OF APPROPRIATIONS; FUNDING RULE.

"(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary in each fiscal year to carry out the provisions of this part.

"(b) FUNDING RULE.—If in any fiscal year the amount appropriated pursuant to the authority of subsection (a) is less than 50 percent of the funds appropriated to carry out part A in such year, then the Secretary shall make available in such year from funds appropriated to carry out part A an amount equal to the difference between 50 percent of the funds appropriated to carry out part A and the amount appropriated pursuant to the authority of subsection (a)."

"SEC. 502. DEMONSTRATION PROJECT.

"(a) IN GENERAL.—Subtitle H of title I of the National and Community Service Act of 1990 (as added by section 104(c) of this Act) is amended by adding at the end the following:

"SEC. 198D. SPECIAL DEMONSTRATION PROJECT.

"(a) SPECIAL DEMONSTRATION PROJECT FOR THE YUKON-KUSKOKWIM DELTA OF ALASKA.—The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

"(b) APPLICATION.—

"(1) GENERAL REQUIREMENTS.—To be eligible to receive a grant or enter into a contract under subsection (a) with respect to a program, an organization shall submit an application to the President at such time, in such manner, and containing such information as the President may require.

"(2) CONTENTS.—The application submitted by the organization shall, at a minimum—

"(A) include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local not-for-profit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

"(B) take into consideration—

"(i) the primarily noncash economy of the region; and

"(ii) the needs and desires of residents of the local communities in the region; and

"(C) include specific strategies, developed in cooperation with the Yupik speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region."

"(b) TABLE OF CONTENTS.—Section 1(b) of the National and Community Service Act of 1990 (Public Law 101-610; 104 Stat. 3127) is amended by inserting after the item relating to section 198C of such Act the following:

"Sec. 198D. Special demonstration project."

TITLE VI—FEDERAL TORT CLAIMS ACT

SEC. 601. FEDERAL TORT CLAIMS ACT.

Individuals participating in programs receiving funding under this Act shall be covered by the provisions of the Federal Tort Claims Act to the same extent as participants in other federally funded service programs.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, S. 919 is indefinitely postponed.

Under the previous order, the Senate insists upon its amendments and requests a conference with the House on disagreeing votes of the two Houses.

The Chair appoints the following conferees on the part of the Senate: Mr. KENNEDY, Mr. PELL, Mr. METZENBAUM, Mr. DODD, Mr. SIMON, Mr. HARKIN, Ms. MIKULSKI, Mr. BINGAMAN, Mr. WELLSTONE, Mr. WOFFORD, Mrs. KASSEBAUM, Mr. JEFFORDS, Mr. COATS, Mr. GREGG, Mr. HATCH, Mr. THURMOND, and Mr. DURENBERGER; and with respect to those provisions within the jurisdiction of the Committee on Governmental Affairs: Mr. GLENN, Mr. PRYOR, and Mr. ROTH.

The PRESIDING OFFICER. The Chair recognizes the majority leader, Senator MITCHELL.

Mr. MITCHELL. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate is not in order. The Chair requests the Senate to be in order. Senators will please take their seats.

The Chair requests order.

The Chair recognizes the Senator from Maine, the majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, and Members of the Senate, in accordance with past practice and tradition, I ask that all Senators take their seats and remain at their desks during the vote and respond from their desks when the clerk calls the roll.

Mr. President, I repeat my request that all Senators take their seats and remain at their desks and respond from their desks when the roll is called.

EXECUTIVE SESSION

SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to executive session.

The clerk will report the Supreme Court nomination.

The legislative clerk read the nomination of Ruth Bader Ginsburg, of New

York, to be an Associate Justice of the Supreme Court of the United States.

Mr. LAUTENBERG. Mr. President, I am pleased to support the nomination of Ruth Bader Ginsburg to become Associate Justice of the U.S. Supreme Court. She will bring to the Nation's highest court the integrity, commitment, judicial temperament, and caring that is critically important in this position.

Judge Ginsburg's life and career have exemplified the very best values of public service. The story of the obstacles Judge Ginsburg has overcome to reach the position she will soon hold at the pinnacle of the legal profession is well known. What is so startling is how many women identify with her struggles. Someone who has made the journey she has made is a person who will bring to the Court an appreciation of the plight of others who are struggling.

As a teacher, advocate, and jurist, Judge Ginsburg has demonstrated both the passion of her views and the restraint necessary to effectively exercise the awesome powers conferred on a judge. Her advocacy for equal opportunity for women and men has advanced the state of the law in a manner that breaks down barriers erected to support outdated stereotypes. In her 13 years on the U.S. Court of Appeals, Judge Ginsburg has demonstrated that she can make the transition from advocate to judge. Her opinions have demonstrated thoughtfulness and skilled legal reasoning. She has received the very highest rating from the American Bar Association.

I would be remiss in not pointing out that Judge Ginsburg's first faculty position was at Rutgers University Law School where she served on the school's faculty from 1963 to 1972.

As a Senator, I take most seriously my responsibilities to give the President my advice and, if warranted, my consent, on his nominations to the Supreme Court. As with few other appointments, the Supreme Court seat is a position that requires a judgment on how someone will serve in the long term on issues that we cannot always see clearly from our positions today.

In my view, one of the best ways to evaluate how a nominee will do in the long term is to look at how he or she has accorded themselves over the length of their public career. On that criterion, Judge Ginsburg instills in me the greatest confidence. I commend President Clinton on her selection and urge my colleagues to join me in voting in favor of her appointment.

Mr. COATS. Mr. President, the nomination of Judge Ruth Bader Ginsburg to be an Associate Justice on the U.S. Supreme Court will be the third opportunity I have had as a U.S. Senator to participate in the Senate's historical role of advise and consent.

During Senate debate over the nomination of Judge Souter and Clarence

Thomas, I expressed concern that the Senate's constitutional role of advice and consent had lost its way in a thicket of policy debates and partisan agendas. Recent confirmation fights have scarred the process with bitterness and distortion. Senate hearings have become political inquisitions, rehashing the shifting debates of current elections.

In the past I encouraged the Senate to relearn a basic principle—a principle concerning how the Senate should treat the President's Supreme Court appointments. A principle about what the power of nomination means.

With the nomination of Judge Ruth Bader Ginsburg we have yet another opportunity to do this—to learn from past mistakes.

This is not a process we conduct in a vacuum. The doctrine of advice and consent was given considerable attention by the Founders. Alexander Hamilton wrote that the Senate should approve a President's nominee unless there were special and strong reasons for refusal.

A judicial nomination is not properly a political struggle for the direction of the Court between the executive and legislative branches. That decision was made in last November's national election. The criteria for our judgment has to be character, experience, qualifications, and intelligence—not politics. This is especially true for justices to the Supreme Court which was designed specifically not to be a political institution.

With the nomination of Judge Ginsburg, the President has met these criteria. It is an undisputed fact that she is fit for office and that she will bring exceptional talent, temperament, experience, and knowledge to the Court.

However, it is also a fact that if one were to look only at the issues, there would be reason for concern.

We should be concerned that in 1974, in a speech published by Phi Beta Kappa Key Reporter, Ginsburg called for affirmative action hiring quotas for women. Later that year she considered it a setback for women's rights when the Supreme Court, in Kahn versus Shevin upheld a Florida property tax exemption for widows. We should be concerned about her pro-choice position and her belief that taxpayer funding for abortion should be protected as a constitutional right. We should be concerned that her support for gender neutrality leads her to conclude that there should be absolutely no distinctions—legal or otherwise, between men and women; that women should be subject to military draft; that the age of statutory rape should be lowered from 16 to 12; that single-sex schools, colleges and activities, single sex organizations, and single sex fraternities, and sororities should all be sex-integrated.

Is Judge Ginsburg a moderate as the press has attempted to portray her?

Probably not. Do her views fall within the mainstream of liberal philosophy? Probably so. Are there special and strong reasons to deny her the Senate's consent? I don't believe so, and for that reason I will vote for her today.

Yes, I disagree with some of her rulings and many of her positions on issues that I consider fundamental. But as important as Judge Ginsburg's personal positions may be, it is her approach to the law that must concern us. Will she judge the law or will she seek to actively rewrite it? Will she exercise caution in her approach—drawing on legal precedent and the historical role of the Court—or will she use the Court as an instrument to validate radical and controversial views not shared by mainstream America. She has given the Senate her assurance that her approach will not substitute her judgment for the working of political institutions. I accept that assurance.

Judge Ginsburg has earned a distinguished reputation as a litigator, professor, and circuit court judge, and I will not oppose her.

Ms. MOSELEY-BRAUN. Mr. President, it is with pleasure that I speak today in support of the nomination of Judge Ruth Bader Ginsburg to be an Associate Justice of the U.S. Supreme Court. Since President Clinton nominated Judge Ginsburg for this position last June, much has been written and spoken about her pioneering work in the area of gender discrimination. I mention that work here today merely to thank Judge Ginsburg for the difference she made not only in my life, but in the lives of all American women. Beginning with the landmark case of *Frontiero versus Richardson*—decided exactly 100 years after the Supreme Court upheld the State of Illinois' refusal to admit a woman to the practice of law—Judge Ginsburg persuaded the Supreme Court to apply the Constitution's guarantee of equal protection to women. In doing so, she blazed a trail in which thousands of women have followed. I think we can all agree that were it not for Judge Ginsburg's leadership in this area—forcing not only the courts, but society, to reevaluate their outdated notions of a woman's proper place in society—you might not have seven female Senators about to cast their votes on the confirmation of the second female Supreme Court Justice.

I do not, however, want to limit my comments to Judge Ginsburg's work as an advocate for women's rights. To do so would be unfair to Judge Ginsburg, for it would ignore the thoughtfulness and intelligence she has demonstrated as both a legal scholar and a judge. Judge Ginsburg's responses to the committee's questions were not only honest and forthright, but the depth of knowledge of both legal doctrine and American history that they displayed

showed all Americans why President Clinton chose this judge to fill Justice White's shoes on the Supreme Court.

When I made my opening statement at the beginning of her confirmation hearing, I urged Judge Ginsburg to bring not only her intellect, but her heart, her history, and her humanity to the Court. After listening to her testimony before the committee, I am convinced that Judge Ginsburg will do just that. Judge Ginsburg correctly noted that the Constitution must often serve as a check on Government power, noting that "the Framers are short-changed if we view them as having a limited view of rights." She stated that the right of a woman to control her reproductive destiny is central to that woman's life and dignity. And she deplored discrimination of all types, whether with respect to race, religion, gender, or sexual orientation. As Judge Ginsburg so eloquently stated, "Rank discrimination is not a part of our Nation's culture. Tolerance is."

Mr. Chairman, in the wake of these hearings there have been numerous comparisons between the collegiality of this hearing and the bitter, divisive fights that have characterized past nominees. Although I was not present for these past hearings, I think there is one reason for this difference. In selecting the next Supreme Court Justice, President Clinton went beyond ideology and partisan politics. He took his time, consulted with legal scholars, consulted with Congress, and selected the best possible person to do the job. The American people are fortunate to have a President who takes so seriously the task of selecting a Supreme Court Justice.

I believe Judge Ginsburg's dedication to the rule of law and the cause of equal justice, as evidenced by her work with the women's rights project, her tenure at Rutgers and Columbia law schools, and her years on the court of appeals, indicate that she has the potential to be one of the outstanding Justices of our time. I add my voice with enthusiasm to the host of others in support of Judge Ginsburg today, and I look forward to casting my vote for her confirmation.

Mr. FEINGOLD. Mr. President, I rise today to declare my support for the confirmation of Judge Ruth Bader Ginsburg to become the 107th Justice of the U.S. Supreme Court.

The constitutional responsibility to advise and consent on the President's nominee to the Supreme Court is one of the most important responsibilities bestowed upon Members of this body. Through this role, we determine, with the President, which individuals will be interpreting the Constitution for future generations and therefore shaping the quality of justice in our Nation for years to come—perhaps years after many of us are through serving in public office.

Being a new Member adds that much more to this responsibility for me, since Judge Ginsburg's confirmation will be my first opportunity to take part in this process. However, since Judge Ginsburg is renowned for her legal writing skills and her ability to craft short and concise legal opinions, I will uphold her tradition of brevity and keep my remarks brief.

The nomination of Judge Ginsburg is proof that President Clinton's victory last fall meant that we will have the opportunity to see nominations to the Court of this high caliber, representing the diversity of the American people, and a firm commitment to our constitutional values. The unanimous vote of the Judiciary Committee and the positive reactions to her nomination, from a broad range of the political spectrum, indicates that President Clinton has done an excellent job in his initial choice for the Supreme Court.

I followed Judge Ginsburg's testimony before the Judiciary Committee with extreme interest, realizing that she would most likely become the newest member of a Court that would decide on the issues of today and tomorrow—decisions about reproduction and privacy rights, separation between church and State, freedom of speech, and the emergence of new technologies and the necessary balance between their use by law enforcement and the protection of individual freedoms.

I was very encouraged to hear her views on discrimination—whether it be along the lines of race, gender, or sexual orientation. Judge Ginsburg summed up our Nation's credence best when she stated:

I think rank discrimination against anyone, is against the tradition of the United States and is to be deplored. Rank discrimination is not part of our Nation's culture. Tolerance is.

These views did not come as a shock to anyone who knew her or of her. Not only does Judge Ginsburg possess superior academic credentials and distinguished Federal bench experience, but she also has a practitioner's experience of being an advocate and a steady driving force in the quest for making sure that women of all walks of life are guaranteed the same protection and treatment under the eyes of the law.

Through her work at the Women's Rights Project of the American Civil Liberties Union, Judge Ginsburg was able to extend the 14th amendment's equal protection clause to women by achieving a higher standard of scrutiny in gender bias cases through five victories in six Supreme Court cases.

Through the hearing process, the Senate and the American people were allowed to observe an individual with a great understanding of the Constitution and the role of the Court in protecting our individual liberties. Senators BIDEN and HATCH should be commended for all of their work on a job

well done. Chairman BIDEN and his staff should be further commended for instituting a new confirmation process that will hopefully help explore all aspects of a nomination in an orderly and thorough fashion.

In her confirmation hearing before the Senate Judiciary Committee, Judge Ginsburg was able to show us that she is a woman of deep intellectual character, who possesses not only an immense and remarkable working knowledge of the law, but a strong commitment to the Constitution as well.

But perhaps what impressed me the most about Judge Ginsburg's testimony, was her continuing interest in and dedication to the individuals and lives that made up the precedent setting cases which she argued before the Supreme Court. When questioned about these cases, it was clear that *Frontiero versus Richardson*, *Weinberger versus Wiesenfeld*, and *Struck versus Secretary of Defense*, were not only landmark decisions in the struggle for the extension of the constitutional guarantee of equal protection of the law to women, but were foremost to her, cases involving and affecting individuals who were caught up in the legal process and facing inequitable treatment under the law, individuals such as Sharon *Frontiero*, Stephen *Wiesenfeld* and his son, and Captain *Struck*.

Judge Ginsburg's commitment to these individuals and their plights is to be admired and hopefully, Mr. President, shared and followed by others in the legal profession.

I conclude that without hesitation, I support President Clinton's nomination of Judge Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court of the United States.

Mr. LAUTENBERG. Mr. President, I am pleased to support the nomination of Ruth Bader Ginsburg to become Associate Justice of the U.S. Supreme Court. She will bring to the Nation's highest court the integrity, commitment, judicial temperament, and caring that is critically important in this position.

Judge Ginsburg's life and career have exemplified the very best values of public service. The story of the obstacles Judge Ginsburg has overcome to reach the position she will soon hold at the pinnacle of the legal profession is well known. What is so startling is how many women identify with her struggles. Someone who has made the journey she has made is a person who will bring to the Court an appreciation of the plight of others who are struggling.

As a teacher, advocate, and jurist, Judge Ginsburg has demonstrated both the passion of her views and the restraint necessary to effectively exercise the awesome powers conferred on a judge. Her advocacy for equal opportunity for women and men has advanced the state of the law in a manner

that breaks down barriers erected to support outdated stereotypes. In her 13 years on the U.S. Court of Appeals, Judge Ginsburg has demonstrated that she can make the transition from advocate to judge. Her opinions have demonstrated thoughtfulness and skilled legal reasoning. She has received the very highest rating from the American Bar Association.

I would be remiss in not pointing out that Judge Ginsburg's first faculty position was at Rutgers University Law School where she served on the school's faculty from 1963 to 1972.

As a Senator, I take most seriously my responsibilities to give the President my advice and, if warranted, my consent, on his nominations to the Supreme Court. As with few other appointments, the Supreme Court seat is a position that requires a judgment on how someone will serve in the long term on issues that we cannot always see clearly from our positions today.

In my view, one of the best ways to evaluate how a nominee will do in the long term is to look at how he or she has accorded themselves over the length of their public career. On that criterion, Judge Ginsburg instills in me the greatest confidence. I commend President Clinton on her selection and urge my colleagues to join me in voting in favor of her appointment.

Mr. DURENBERGER. Mr. President, I rise today in support of the nomination of Judge Ruth Bader Ginsburg to be Associate Justice of the U.S. Supreme Court.

DISTINGUISHED BACKGROUND

Judge Ginsburg has had a remarkable career, not only as a lawyer, judge, and teacher, but also—as she pointed out during her confirmation hearings 2 weeks ago—as a proud and devoted wife, mother, and grandmother.

Judge Ginsburg has demonstrated during her 13 years on the U.S. Court of Appeals for the District of Columbia Circuit that she is, as my friend and colleague from Ohio, Senator METZENBAUM, has said: "a judge's judge."

Her judicial record demonstrates that she understands and respects the proper role of the judiciary in our tripartite system of Government. As Judge Ginsburg said during her confirmation hearings before the Senate Judiciary Committee: "Judges must be mindful of what their place is in society." She went on to emphasize that a judge is not an advocate, and reminded the committee that, "a judge is not a politician."

I should also point out that Judge Ginsburg received the highest possible rating from the American Bar Association.

In addition to her long and important career on the Federal bench, Judge Ginsburg has distinguished herself as an advocate on behalf of women's rights, arguing—and winning—landmark cases during the 1970's that were

instrumental in extending the constitutional guarantee of equal protection of the law to women.

Judge Ginsburg is a woman of impeccable character, intelligence, and temperament. Moreover, she is a first generation American who has risen on the strength of her own determination and ability to one of the highest offices in America. If confirmed, she will be only the second woman in the history of our country to serve on the Supreme Court.

PRESIDENT CLINTON'S SELECTION OF JUDGE GINSBURG

When Justice Byron White announced that he was retiring after 31 years on the High Court, I did not expect that President Clinton and I would agree on the perfect Associate Judge candidate to succeed him. This is the first time a Democratic President has had the opportunity to make an appointment to the Supreme Court in over a quarter of a century.

The President of the United States is entitled to some deference in his choice of a Supreme Court Justice. I truly believe that Ruth Bader Ginsburg is the best choice we can expect to see from this President. Let me note in this regard, Mr. President, that I am not in absolute philosophical sympathy with this nominee—but I want the Senate to continue in its tradition of being open to nominees who are distinguished and highly qualified. My friends on the other side of the aisle have often voted for conservative nominees to the Supreme Court—resisting the temptation to ideologize this very important decision. I want to encourage this kind of openmindedness and bipartisanship.

JUDGE GINSBURG'S JUDICIAL CAREER SHOULD LAY TO REST ANY FEARS OF JUDICIAL ACTIVISM

Judge Ginsburg's long career on the court of appeals here shows a clear demarcation between Ruth Bader Ginsburg the advocate, and Judge Ruth Bader Ginsburg the jurist committed to rule of law. I have studied Judge Ginsburg's complete record, and I am convinced that, despite her earlier career as an advocate on behalf of the American Civil Liberties Union and some of her academic writings, Judge Ginsburg has not used her position as a Federal judge to advance any personal agenda.

In fact, she has been the model of judicial moderation and restraint. As a rule, she has limited her decisions to the confines of prior precedent, even where those decisions may conflict with her personal, more liberal views. As she explained to the Judiciary Committee, "No judge is appointed to apply his or her personal values. Instead:

Judges must be mindful of what their place is in this system and must always remember that we live in a democracy that can be destroyed if judges take it upon themselves to rule as platonic guardians.

The New York Times noted that:

According to a computerized study of the appeals court's 1987 voting patterns pub-

lished in Legal Times, Judge Ginsburg voted more consistently with her Republican-appointed colleagues than with her fellow Democratic-appointed colleagues. For example, in 1987 cases that produced division on the court, she voted with Judge Bork 85 percent of the time and with Judge Patricia M. Wald 38 percent of the time. [New York Times, 6/27/93, at 20]

According to another study of the D.C. Circuit, in 1983-84 year, Judge Ginsburg voted with Judge Bork 100% of the time, and with then-Judge Scalia 95% of the time. [Edwards, Public Misperceptions Concerning The "Politics" Of Judging, 56 Colo. L. Rev. 619, 644 (1985)]

CONCLUSION

Having said this, there is—of course—no way to predict with certainty what a nominee will do, or how a nominee will vote, once she becomes a member of the Supreme Court. The best we can do is to judge a nominee's character, intelligence, professional background, academic record, judicial experience, and temperament. On all these scores, Judge Ginsburg has acquitted herself well.

So while I do not agree with Judge Ginsburg's personal view that a right to abortion can be based on the equal protection clause, Judge Ginsburg's record on the Federal bench should, in my view, disabuse concerned conservatives of any notion whatsoever that she would allow her personal views to affect her duties and decisions as a judge.

Judge Ginsburg has never allowed her experience as an advocate or her academic speculations to manifest themselves as judicial activism. In fact, her distinguished judicial record demonstrates that she is a restrained, moderate jurist who subjugates her personal views to the rule of law.

As I said earlier, I would never expect to agree with 100 percent of the views of any Supreme Court nominee. That is especially true when that nominee is chosen by a President from the Democratic Party. After studying Judge Ginsburg's record, however, I am satisfied that she is one of the best choices for the High Court that this President could make.

Therefore, I intend to cast my vote in support of Judge Ginsburg, and I urge my colleagues to do the same.

I yield the floor.

Mr. DECONCINI. Mr. President, first of all, I would like to commend the chairman of the Judiciary Committee, Senator BIDEN, for his leadership in this nomination process. As he has done consistently in the past—he conducted the hearings in a fair manner with respect to both parties, the nominee, and the witnesses.

Just 7 weeks ago, when President Clinton announced his intentions to nominate Judge Ginsburg, I commended him for his excellent choice. His announcement drew widespread and bipartisan support. And when

Judge Ginsburg spoke at the Rose Garden, we were given a glimpse of this gifted and special individual.

Today, at the end of the confirmation process, that initial assessment has withstood great scrutiny—reinforcing my belief that Ruth Bader Ginsburg will serve as a distinguished Justice on the Supreme Court.

This nominee's career accomplishments are well known. Indeed, it has been some time since we have seen a Supreme Court nominee with such unquestionable professional achievements.

Judge Ginsburg began impacting Supreme Court opinions over 20 years ago. Over that time, she has produced a considerable body of writings and speeches. She has been a teacher and an advocate and has served for more than a decade on the District of Columbia circuit. She rightfully received the ABA's highest rating for judicial nominees.

Most of us on the committee have participated in several prior Supreme Court nomination hearings. It is a pleasure for this Senator to witness some comity in the confirmation process. This comity is a tribute to the nominee—a nominee who has defied the label of both liberal and conservative.

Throughout the hearings, I personally believed that the nominee was forthcoming in her responses regarding issues that she was at liberty to discuss. During her 3 full days of testimony, Judge Ginsburg was questioned on a wide range of subjects regarding her opinions as a Federal judge, her briefs argued before the Supreme Court, her numerous law review articles, and her views on well-settled constitutional law.

At times, Judge Ginsburg declined to answer questions concerning controversial areas of the law. Pundits may question some of her decisions to refrain from answering. But this Senator was left satisfied with her responses. It was not that long ago when he had a nominee who even refused to discuss his views of *Marbury versus Madison* before this committee.

Predicting how a nominee will perform on the court is a speculative process. We have no assurances how any nominee or sitting Supreme Court Justice will vote. Throughout their careers, Justices face constitutional issues never contemplated at the time of their nomination.

Consequently, the ultimate question we as Senators must ask ourselves is whether we feel secure about entrusting a nominee with the enormous responsibility of interpreting our Constitution. It has been some years since I have been as confident in entrusting that responsibility as I am with Ruth Bader Ginsburg.

President Clinton presented us with a well-qualified nominee. The committee thoroughly examined and questioned

her on the great constitutional issues of our day. And Judge Ginsburg has demonstrated that she is a jurist with a thorough understanding of the Constitution and the role of the Court in protecting our individual rights.

For these reasons, I will vote to support Judge Ginsburg's nomination to the Supreme Court.

Mr. HATFIELD. Mr. President, I would like to take a few minutes today to outline the reasons why I will vote in favor of the confirmation of Judge Ruth Bader Ginsburg to the U.S. Supreme Court.

It is with great pleasure that I join in what has been almost unanimous senatorial support for Judge Ginsburg. This support has come after a thorough investigation and a civilized process that has brought honor to this institution, and is indicative of the quality of this nominee. Her nomination has been marked by a genuinely nonpartisan discussion demonstrating the triumph of capability over ideology, of personality over politics.

As Judge Ginsburg herself noted before the Judiciary Committee, the Framers of the Constitution originally considered giving the Senate sole power to appointment and confirmation, so this is a matter we take quite seriously. But, the President with his appointment power, has made an excellent choice in selecting Judge Ginsburg as the nominee to fill the void left by the retirement of the great Justice Byron White.

As the 107th person, and only the second woman who will be appointed to the Supreme Court, Judge Ginsburg will bring unique qualifications and perspective to the Court. In my 26 years in the Senate, I have had the opportunity to review many appointments, the first of these being the late Justice Thurgood Marshall in August of 1967. Since that time, the Court has strived to understand the problems facing a diverse Nation as they have arisen in the constitutional context.

But, there is no substitute for experience. And Judge Ginsburg's experiences are very telling. She has personally faced discrimination, and has fought for civil rights, especially for women. As a leader and a scholar, she knows, perhaps better than anyone in this Nation, that we must continue to be vigilant in our insistence that women and men be treated equally under the law.

Her academic qualifications are beyond question, excelling from humble beginnings to the top levels of the legal educational community. She was a teacher for many years. And, as a former educator, I can attest to the fact that to teach is to learn. Beyond academic research and writing, to be questioned in class by a fresh set of minds every day can only broaden one's perspective.

In addition to her impressive résumé and personal background, Judge Gins-

burg has demonstrated a cautious and wise judicial demeanor supportive of an independent and restrained judiciary. She has the desire to intensely scrutinize the facts and law surrounding a case under consideration. She has the thirst for a reasoned and logical analysis toward a conclusion, and the heightened awareness not only of the power of the judiciary, but of its limitations. Her intellectual sharpness is complemented by a certain strength and independence of thought. These are extremely valuable characteristics which will serve her well should she be confirmed to the Court.

She has a strong respect for the notion of *stare decisis*, as illustrated by her record as a Federal appeals judge. She has demonstrated respect for the legislative branch and for legislative history. Several times during her confirmation hearings she emphasized the need for broad participation in the democratic process, and for judges to disdain infusion of their personal moral predilections thus preempting this process. As Aristotle wrote in another age, "If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost."

Obviously, I do not agree with Judge Ginsburg's views on every issue that may come before the Court. Although she questioned the scope and reasoning of the *Roe versus Wade* decision, she might argue for abortion rights on other bases which I would question. In addition, I would have liked to see her offer more clarification on issues surrounding the death penalty, in particular the availability of courts to hear new evidence showing that an innocent inmate may be put to death. There is a record from some of her decisions in the area of religious freedom demonstrating a strong respect for this right. Her understanding of that important right may have been shaped in part by her own family's experience with religious and ethnic persecution in Europe.

Regardless of whether I agree or disagree with her thoughts on particular issues, I have never viewed it as the role of the Senate to oppose nominees because they do not hold views identical to our own. A great variety of issues, including some that we can not foresee today, will come before the Court during the time that Judge Ginsburg may serve. As Chief Justice Rehnquist wrote in his book entitled "The Supreme Court,"

We cannot know for certain the sort of issues with which the Court will grapple in the third century of its existence. But there is no reason to doubt that it will continue as a vital and uniquely American institutional participant in the everlasting search of civilized society for the proper balance between liberty and authority, between the state and the individual.

Judge Ginsburg has demonstrated a unique ability and strong desire to

strike these balances. She has an understanding of the role and of the limitations of the judiciary. But more importantly, she possesses the modesty of realization that there is often no immediate balance that can be struck, that the great questions facing our Nation transform and develop over years of struggle.

Finally, the most important point in favor of Judge Ruth Bader Ginsburg's nomination to the Supreme Court is her personal strength of character and sense of purpose. When asked before the Judiciary Committee how she would want the American people to think of her, she responded, "As someone who cares about people and does the best she can with the talent she has to make a contribution to a better world." These are not merely words to Judge Ginsburg, she has already dedicated much of her life to this strongly felt notion of public service. I have no doubt that she will serve on the Supreme Court with the same integrity and view toward the public good that she has exhibited throughout her life thus far.

The PRESIDING OFFICER. The question is on the confirmation of the nomination of Ruth Bader Ginsburg, of New York, to be an Associate Justice of the Supreme Court of the United States.

The yeas and nays have been ordered. Senators are reminded to vote from their seats.

The clerk will now call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Michigan [Mr. RIEGLE] is necessarily absent.

I further announce that, if present and voting, the Senator from Michigan [Mr. RIEGLE] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 96, nays 3, as follows:

[Rollcall Vote No. 232 Ex.]

YEAS—96

Akaka	Dodd	Kennedy
Baucus	Dole	Kerrey
Bennett	Domenici	Kerry
Biden	Dorgan	Kohl
Bingaman	Durenberger	Lautenberg
Bond	Eron	Leahy
Boren	Faircloth	Levin
Boxer	Feingold	Lieberman
Bradley	Feinstein	Lott
Breaux	Ford	Lugar
Brown	Glenn	Mack
Bryan	Gorton	Mathews
Bumpers	Graham	McCain
Burns	Gramm	McConnell
Byrd	Grassley	Metzenbaum
Campbell	Gregg	Mikulski
Chafee	Harkin	Mitchell
Coats	Hatch	Moseley-Braun
Cochran	Hatfield	Moynihhan
Cohen	Heflin	Markowski
Conrad	Hollings	Murray
Coverdell	Hutchison	Nunn
Craig	Inouye	Packwood
D'Amato	Jeffords	Pell
Danforth	Johnston	Pressler
Daschle	Kassebaum	Pryor
DeConcini	Kempthorne	Reid

Robb	Sbelby	Thurmond
Rockefeller	Simon	Wallop
Roth	Simpson	Warner
Sarbanes	Specter	Wellstone
Sasser	Stevens	Wofford

NAYS—3

Helms	Nickles	Smith
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NOT VOTING—1

Riegle

So the nomination was confirmed.

The PRESIDING OFFICER. As previously ordered, the motion to reconsider is laid upon the table and the President will be immediately notified of the Senate's action confirming Judge Ginsburg's nomination.

Under the previous order, the clerk will report the next nomination.

The Senator from Maine.

Mr. MITCHELL. Mr. President, may I have the attention of Senators, please?

The PRESIDING OFFICER. The Senate will be in order.

Mr. MITCHELL. Under the previous order, the next two votes will be 10 minutes each, a total of 10 minutes each. I urge Senators to remain in the Chamber through the first vote and then not leave until after they vote on the second vote. And Senators are responsible for making certain that the clerk has actually recorded their vote.

I encourage all Senators to remain in the Chamber and to make certain the clerk has actually recorded your vote. I thank my colleagues.

DEPARTMENT OF EDUCATION

NOMINATION OF THOMAS W. PAYZANT, OF CALIFORNIA, TO BE ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION.

The bill clerk read the nomination of Thomas W. Payzant, of California, to be Assistant Secretary for Elementary and Secondary Education.

Mr. SIMPSON. Mr. President, I rise today on behalf of the nomination of Dr. Thomas Payzant as Assistant Secretary of Education for Elementary and Secondary Education. I believe that Dr. Payzant has the ability and the will to implement policies that will enable our public schools to rise to the challenge of our national education goals.

It is important for the Federal Government to have an Assistant Secretary of Education for Elementary and Secondary Schools who is adept at building consensus among a variety of groups interested in education and who has hands on experience at the local and State level, as that is where the heart of school innovation occurs.

During his tenure as superintendent of schools in San Diego, Dr. Payzant did not shy away from controversial issues, but instead attempted to address the concerns of his critics head on by attempting to find compromises when possible.

Once again during his nomination hearings, Dr. Payzant showed his willingness to answer the queries of critics and appeared to be amenable to working with those in the minority on a variety of education issues that will face the Congress in the coming year, specifically the reauthorization of the Elementary and Secondary Education Act, which is due for an overhaul during the 103d Congress.

I know that some of my Republican colleagues remain opposed to Dr. Payzant's nomination due to his decision to ban the Boy Scouts from participating in the schools during normal school hours because of their anti-homosexual policies. As I understand it, this decision was based on school board policy that was voted on by members of the elected board of education. After this action was taken, Dr. Payzant assured the Boy Scouts that they could continue to use school facilities after school hours. The students of the San Diego unified district are still free to participate in the Boy Scout Program during their free time. While I do not agree with such a policy, I recognize the fact that this matter is primarily a local issue and that Dr. Payzant was implementing a policy determined by the locally elected officials. Dr. Payzant had no choice but to fulfill that policy. His actions should in no way be interpreted to be anti-Boy Scout. In fact, Dr. Payzant was a Boy Scout as a youngster and his sons are Boy Scouts, as well.

As we face the beginning of the 21st century, we must remain committed to improving the quality of public education. Our children must be able to grow and mature into a work force that is competitive with the rest of the world. We can only accomplish these goals by increasing the participation of parents, by encouraging innovation, by improving standards, and by making educators accountable for the quality of instruction.

I believe that Dr. Payzant has the capability to accomplish such a task. I will vote for his nomination, and I look forward to working with him on education issues that affect all our children.

Mr. CRAIG. Mr. President, before casting my vote on the nomination of Dr. Thomas Payzant for Assistant Secretary for Elementary and Secondary Education, I would like to take a moment to outline some of my concerns about this nominee.

Dr. Payzant has a number of fine qualities, and he has received a number of prestigious honors such as the Harold W. McGraw, Jr., Award. I do not question his abilities, and accomplishments in the area of education. However, I am concerned about his continued use of his position as superintendent of the San Diego School District to further his own social agenda.

In his position as the San Diego schools superintendent, Dr. Payzant