

judicial philosophy, how you will think and reason, as you contemplate the pressing legal issues of the day, questions of the day, and we must do that without compromising your judicial independence.

There are, of course, other important considerations and qualifications for a nominee to the Supreme Court. A nominee's recitude and deportment are critical considerations. We must be certain that the nominee has the education, the experience, and the temperament to serve in the highest office in our profession.

I am certainly pleased to say here the record is remarkably clear. Indeed, in these areas you may well be overqualified. That is a serious defect in this community. Think of the ones you know who are.

As one who loves Gilbert and Sullivan, you would compose your own lyrics to the tune of "I've got a little list of society offenders who never would be missed," and you remember the rest of that.

But the record here is not so obvious or apparent on your judicial philosophy. So, indeed, as Senator Metzenbaum has said, what about judicial activism? That will be asked. Some of your writings seem to imply that it is justified at times, perhaps even forced upon the courts by congressional inaction. I have seen that problem. It is very real. No wonder courts enter the fray.

When considering constitutional issues, how persuasive do you find the intent of those who drafted the document. You said some things about that. Your colleagues have or your colleagues-to-be have. What will you do when their intent is unclear or, even more appropriately, more unknowable?

In these hearings, we will try to learn what approach you might take in deciding the critical questions of our day, and yet only you will know the extent and substance of response to those questions. Historical perspective here being an example, the more questions, the less answers will get you home.

So for me, your competence and temperament are beyond question and we look forward to learning more about your thinking and reasoning, as you would wish to share it in whatever depth, and we will know then whether this appointment will serve the national interest, a very broad and remarkable phrase, but I think, indeed, from what I know, that your appointment would indeed serve that interest.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

I might note it is remarkable that 7 years ago the hearing we had here was somewhat more controversial, and I made a speech that mentioned the "p" word, philosophy, that we should examine the philosophy, and most editorial writers of the Nation said that was not appropriate. At least we have crossed that hurdle. No one is arguing that any more.

Senator DeConcini.

OPENING STATEMENT OF SENATOR DeCONCINI

Senator DeCONCINI. Thank you, Mr. Chairman.

Let me join in the praise of you and the ranking member in conducting these hearings and the members of this committee for pro-

ceeding. I think it is very important that we process this nomination as soon as we can.

Judge Ginsburg, I join the accolades here in your nomination and those to President Clinton in sending your name here. Twelve years ago, I helped usher a good friend of mine through the same process which you are now experiencing. Her nomination was historic at that time. If confirmed, you will join my friend as the second woman ever to serve on the Court.

Like Justice O'Connor, despite your outstanding academic achievements, your ability to find employment after law school was deterred by your gender. You are an individual who has suffered firsthand the effects of discrimination.

I think that is most fitting for people who are going to interpret the constitutional rights of individuals who come before them and will, like you, ultimately, I predict, serve on the Supreme Court.

You overcame this rude beginning and proceeded to embark upon a truly remarkable and accomplished professional career. You became a nationally respected law professor. And during that time and throughout your career, you have made a considerable contribution to the written legal commentary on this subject and others.

Before coming to the bench, you dedicated your efforts to the struggle for gender equality. In the 1970's, you were instrumentally involved in the landmark case that ultimately persuaded the Supreme Court to establish a greater scrutiny to laws that classify on the basis of gender.

I thank you for that, Judge, for my two daughters, one a doctor and one a lawyer, who have witnessed job discrimination even today. But their opportunities were enhanced by the fact that you fought that battle early in life and earlier than they when they came along.

For the last 13 years, you have served with distinction on what is considered the second highest court in the land.

One comment that has been repeated often since the President announced your nomination is that you defy the label of liberal or conservative jurist. Indeed, one news account noted that during your tenure, you had "often gone out of your way to mediate between the Court's warring liberal and conservative factions."

Throughout your judicial career, you have shown great respect for the institutional integrity of the Court. Over the last few weeks, I have had a chance to read many of your opinions. To me, they demonstrate deference to precedent and embody judicial restraint. I think that is fundamental and so important.

You have great understanding of the role of a middle-tier appellate court. And as you have written, with that role, a judge must follow the guidance of the Supreme Court.

However, Judge Ginsburg, as a Supreme Court Justice, you will not be constrained by a higher court's interpretation. You will have free rein to interpret our Constitution. And as you have commented yourself, you will have "the last judicial word" on the "constitutional questions of the day."

Our constitutional system endows tremendous responsibility and power to our Supreme Court Justices. Because of that power, I strongly believe that nominees to that Court should be prepared to

tell the committee and the American people how they intend to approach the Constitution and the Bill of Rights.

A few years back, you wrote a law review article that discussed the Supreme Court's confirmation process. You concluded by quoting a law professor who described the Senate's role in the process "as second, but not secondary."

The Senate's constitutional obligation is to examine a nominee's competence, integrity, experience, and, yes, his or her philosophy. For the Supreme Court is undeniably a policymaker.

Our Framers drafted the Constitution in broadly worded principles that were intended to protect an evolving society. Constitutional interpretation requires an exercise of discretionary judgment. Thus, we must carefully choose the Constitution's most important interpreters.

By no means are we here to secure assurances from you on certain cases. No one knows exactly how a case will come before you in the future. But how you approach a constitutional issue and what you consider in resolving that issue are all part of the judicial philosophy and part of the questioning that you will undertake in the next few days.

The process is not foolproof. In the past, we have had Supreme Court nominees come before this committee and tell us they had no agenda—and they did. We have had nominees come before this committee and tell us that they did not have a fully developed judicial philosophy—but they did. We have had nominees come before the committee and evoke an image of moderation—but they were not.

These past performances by nominees obviously concern this Senator. Because I believe that the hearings are an integral part of the confirmation process, honest answers matter greatly in this process to this Senator.

Quite frankly, I do not expect this to be a problem with you, Judge. I am confident that at the conclusion of these hearings, the Senate and the American public will have a clear vision of your constitutional philosophy.

Again, my congratulations, Judge, and also to President Clinton for his outstanding nomination and taking the time and the process in which he went through in choosing you to be the next Supreme Court Justice.

I look forward to learning more about your judicial philosophy and your thoughts regarding the Constitution in the next several days.

Thank you, Mr. Chairman.

[The prepared statement of Senator DeConcini follows:]

PREPARED STATEMENT OF SENATOR DECONCINI

I am pleased to join my colleagues on the committee in welcoming you, Judge Ginsburg, to your confirmation hearings. Over 12 years ago, I helped usher a good friend of mine through the same process, which you are now experiencing. Her nomination was historic. If confirmed, you will join my friend as the second woman ever to serve on the Court.

Like Justice O'Connor, despite your outstanding academic achievements, your ability to find employment after law school was deterred by your gender. You are an individual who has suffered first-hand the effects of discrimination.

But you overcame this rude beginning and proceeded to embark upon a truly remarkable and accomplished professional career.