You do have a style that is precise and on occasion seems less expansive when you answer a question, but you have given us some significant substance on issues of privacy and equal protection, freedom of speech, and constitutional methodology.

Still, I have to say, like other recent nominees, you have given us less than I would like. I doubt whether any nominee would ever satisfy me in terms of being as expansive about their views as I would like. But on that score, I want to emphasize that you have, as I have gone back and looked at the record, given us some genuine insight and expansive answers on some of the critical issues, maintaining your distinction between what you think is appropriate and inappropriate for a prospective Justice to comment on.

But, still, I tell you that on my round of questioning I will return to several subjects which I just mentioned—equal protection, freedom of speech, and constitutional methodology—to see if we can engage just a little bit more. I thank you for what you have done so far, but I hope maybe we can pursue these subjects a little more without violating your understandable and self-imposed limitation about getting involved in matters that may come before the Court and in any way compromise you.

But having said that, rather than take my round of questioning now, since the distinguished Senator from Massachusetts is the manager of a bill on the floor on the national service legislation, I will yield my turn to him and then go to Senator Hatch and then back to me.

Senator KENNEDY. Thank you very much, Mr. Chairman.

As the chairman mentioned, we are considering a national service bill on the floor of the Senate, so I missed part of the responses yesterday, but I will look forward to reviewing the record carefully. I appreciate the courtesy of the Chair now.

I am just inquiring really in two areas. During my round on Tuesday, Judge Ginsburg, we talked briefly about the very important role of the Supreme Court in construing civil rights laws, and I would like to return to that topic this morning.

As you well know, the effort to pass legislation banning discrimination in public accommodations, employment, voting, and Federal programs was a long and difficult one. Congress tried for many years during the 1950's, with limited success. And it wasn't until 1964 that the landmark civil rights legislation was passed, and the Voting Rights Act, which Senator Moseley-Braun asked you about yesterday, was passed in 1965.

It is not hard to understand why it is difficult for a popularly elected legislature to pass laws to protect the rights of minorities and women who have been the victims of discrimination. For too long, legislatures were dominated by those who tolerated that discrimination, and that is why it is particularly important to have on the Supreme Court persons who appreciate the significance of the civil rights laws and will construe them to achieve Congress' purpose of eliminating discrimination.

In the 1980's, the Supreme Court turned away from that approach and issued a series of decisions that dramatically cut back on the legal protections against job discrimination: in 1989, in the *Patterson* v. *McLean Credit Union* case; we had the *Ward's Cove*

Packing v. *Antonio* case; and then the *AT&T Technologies* case, the *Lawrence* case. I think you are familiar with those cases.

A bipartisan majority in the Congress joined together to pass the Civil Rights Act of 1991 to overrule those decisions and several others. So now those cases are dead letters because of the 1991 act, so they can't come before you.

My question is: What is your view of the approach to construing civil rights laws taken by the Supreme Court majorities in those cases?

TESTIMONY OF RUTH BADER GINSBURG, TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Judge GINSBURG. My view of the civil rights laws conforms to my views concerning statutory interpretation generally; that is, it is the obligation of judges to construe statutes in the way that Congress meant them to be construed. Some statutes, not simply statutes in the civil rights area but those in the antitrust area, are meant to be broad charters—the Sherman Act, for example. The Civil Rights Act states grand principles representing the highest aspirations of our Nation to be a nation that is open and free where all people will have opportunity. And that spirit imbues that law just as free competition is the spirit of the antitrust laws, and the courts construe statutes in accord with the essential meaning that Congress had for passing them.

Senator KENNEDY. Well, we have overturned those decisions now in the Civil Rights Act of 1991. I am asking you whether you are willing to express an opinion about those cases that were overturned since it won't come back up to you and since now we have legislated in those particular cases.

Judge GINSBURG. I don't want to attempt here a law review commentary on the Supreme Court's performance in different cases. I think the record of the decisions made in the lower courts can be helpful. In some of the cases, the Supreme Court's position was contrary to the position that had been taken in the lower Federal courts. I believe that was true in the *Ward's Cove* (1989) case and in the *Patterson* (1989) case. It is always helpful when Congress responds to a question of statutory interpretation, as it did in this instance, to set the record right about what the legislature meant to convey.

Now, sometimes—I spoke of the Pregnancy Discrimination Act and title VII—Congress is less clear than it could have been the first time around. Maybe the ambiguity wasn't apparent until the specific case came up. Congress reacted rather swiftly in that instance and said, "yes," discrimination on the ground of pregnancy is discrimination on the ground of sex, and title VII henceforth is to be interpreted that way.

It is a very healthy exchange. It is part of what I called the dialog. Particularly on questions of statutory interpretation if the Court is not in tune with the will of Congress, Congress should not let the matter sit but should make the necessary correction. That can occur even on a constitutional question. I referred to the *Simcha Goldman* (1986) case yesterday, a case in which Congress fulfilled the free exercise clause more generously than the Court had.

We live in a democracy that has, through the years, been opened progressively to more and more people. The most vital part of the civil rights legislation in the middle 1960's was the voting rights legislation. The history of our country has been marked by an ever widening participation in our democracy. I expressed on the very first day of these hearings my discomfort with the notion that judges should preempt that process to the extent that the spirit of liberty is lost in the hearts of the men and women of this country. That is why I think the voting rights legislation, more than anything else, is so vital in our democracy.

Senator KENNEDY. In another area, we have certainly made important progress, as you mentioned, in the areas of banning discrimination on the basis of race, we have on gender, we have on religious prejudice, and more recently on disability with the passage of the Americans With Disabilities Act, banning discrimination against persons with disabilities.

One form of discrimination still flourishes without any Federal protection, and that is discrimination against gay men and lesbians. I note that in a 1979 speech at a colloquium on legislation for women's rights, you stated that "rank discrimination based on sexual orientation should be deplored." By rank discrimination, I assume you meant intentional discrimination rather than discrimination on the basis of rank in the military. I share that view, and I think most Americans do.

I would like to ask you whether you still believe, as you did in 1979, that discrimination based on sexual orientation should be deplored.

Judge GINSBURG. 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, and a generous respect for differences. This country is great because of its accommodation of diversity.

The first thing I noticed when I came back to the United States from a prolonged stay in Sweden—and after I was so accustomed to looking at people whose complexion was the same—was the diversity. I took my first ride in several months on a New York subway, and I thought, what a wonderful country we live in; people who are so different in so many ways and yet, for the most part, we get along with each other. The richness of the diversity of this country is a treasure, and it is a constant challenge, too, a challenge to remain tolerant and respectful of one another.

Senator KENNEDY. I think we will leave that one there. Thank you.

The CHAIRMAN. It is not going to get any better, Senator.

Senator KENNEDY. Thank you very much, Mr. Chairman. My time is up.

The CHAIRMAN. Thank you. Now I assume my colleague would like half an hour.

Senator HATCH. Yes, I think I would.

The CHAIRMAN. I yield half an hour to our distinguished friend from Utah.

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

Judge, just a real quick response, if you can. Are you for or against TV coverage of the Court? I had a number of people in the