

OPENING STATEMENT OF SENATOR KOHL

Senator KOHL. All right. Thank you, Mr. Chairman.

Judge Ginsburg, as we all know, last month President Clinton announced that he would nominate you to serve on the Supreme Court. At that Rose Garden ceremony, you told the President that you look forward to stimulating weeks this summer. I assume that you were referring to this confirmation process, and I hope very much that we don't disappoint you.

Although the Constitution is silent on what standard to apply in evaluating a nominee, you have provided some useful guidance. You have noted that in an appointment to the Supreme Court the Senate comes second, but is not secondary. And I agree. As a member of this committee, I have developed my own criteria for judgment.

First, I look for a nominee of exceptional character, competence, and integrity. That you clearly have, as an honored student, an effective advocate, and also as a very distinguished appellate judge. But I am struck by more than your professional honors. I am impressed by your dedication to principles that you have not only talked about but lived.

For example, you didn't just resign from discriminatory clubs; you refused to join them in the first place. You didn't just talk about gender equality; you fought for it. And we all admire that.

Second, I seek a Justice who understands and accepts both the basic principles of the Constitution and its core values implanted in our society. We do not elect Justices. They are given lifetime tenure precisely because we want to insulate the Court from the pull and the tug of partisan politics. That insulation makes it critical that we be certain that a nominee will protect the civil rights and the liberties of all Americans.

Third, I want a Justice with a sense of compassion. Behind every abstract legal principle, there are real people with real problems. It is the Court that must be their sanctuary and their shelter. Justice Black put it best when he said, "Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement."

In other words, Judge Ginsburg, the courts are places for doing justice, and not just giving logic to the law.

Judge you are not a stealth nominee. Your record is clear, and there is little opposition to your confirmation. In fact, conventional wisdom has you all but confirmed. But, even so, the Senate should not act as a rubber stamp.

The President is asking us to entrust you with an immense amount of power, and before we decide to give it to you, we need to know what is in your heart and what is in your mind. We don't have a right to know in advance how you will rule on cases which will come before you, but we do need and we deserve to know what you think about the fundamental issues that surround these cases.

So today we begin a public discussion which is the only opportunity we will have on behalf of the American people to engage you in a conversation about the core concepts of our society. And I hope, Judge, that you will discuss these matters with us more in

terms of principles and precedents, and more in terms of desires and doctrine.

The American people care about these concepts. They are not just debated in law journals. For example, as television brings violence into our homes, we agonize over the impact it has on our children, the damage it does to their values and to their view of reality, and wonder how we can reduce it without threatening the constitutional promises of free speech.

As gangs roam our streets and create fear in our communities, we debate balancing the rights of individuals with the responsibility of the police to protect civil order. As new civil and voting rights laws are proposed, we struggle to correct discrimination of the past without creating a newly disenfranchised class.

These and other issues invite all Americans to struggle with the dilemmas of democracy, and if we can discuss these issues today with candor, then I believe we will have a conversation the American people will profit from—and perhaps, Judge Ginsburg, the type of stimulating conversation that you spoke of in the Rose Garden. And so we welcome you before this committee, and we look forward to our discussion with you.

[The prepared statement of Senator Kohl follows:]

PREPARED STATEMENT OF SENATOR KOHL

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“Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement.”

In other words, the courts are places for “doing justice,” not just giving logic to the law.

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