

your story is quite literally history, the history of modern gender discrimination law.

As the founder and director of the ACLU women's rights project, you brought virtually every major sex discrimination case before the Supreme Court in the 1970's. From the very first case that you argued and won, as was spoken by Senator Leahy, *Frontiero v. Richardson*, your work has changed the constitutional rules of the road forever.

In *Frontiero*, the Court struck down as "inherently suspect" a law based on gender, and, for the first time in history, established a new and tough test to which all future gender-based statutes would be subjected.

As I know from my colleague, Senator Moseley-Braun, and I know she will appreciate it, *Frontiero* fittingly was decided precisely 100 years after the Supreme Court upheld in *Bradwell v. Illinois* that State's refusal to admit a woman to the practice of law.

In *Bradwell*, the Supreme Court wrote: "Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life." Accordingly, the Court concluded, "The harmony \* \* \* of interests and views which belong, or should belong to the family institution, is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband." What a long way we have come in this Nation.

It took a century, though, to extract from the Court in *Frontiero* a new test of constitutionality for statutes based on gender, and it took an extraordinary woman to do it.

Incredibly, you prevailed, as has been said, in five of the six cases that you personally argued before the Court, winning in the process equal treatment under the law for both women and men in the administration of estates, receipt of Social Security benefits, availability of tax exemptions, and jury service. In the process, you improved the lives of virtually millions of Americans.

In conclusion, for the intellect and dedication to thrive in hostile academic environments, laying the groundwork for thousands of women, including your daughter and mine, who is today a lawyer, to follow; for the courage to persevere, with your husband's active participation, in pursuit of a life in the law, and perhaps most of all, for the fruits of that life as a litigator and a jurist.

I want to thank you, Judge Ginsburg, both for all that you have done, and as a member of the U.S. Supreme Court, for all that you have yet to do.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Another distinguished new member of the committee, Senator Moseley-Braun.

#### OPENING STATEMENT OF SENATOR MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. Judge Ginsburg and to your family, welcome.

Mr. Chairman, I am truly honored to have the opportunity to participate in these hearings. One of a Senator's most solemn responsibilities is the duty to offer advice and consent on the nomination of a Justice to the U.S. Supreme Court. One of the most pre-

cious privileges an American citizen can have is to play a role in that process.

Indira Gandhi once said that if you study history, you will find that where women have risen, that country attained a high position, and whenever they remained dormant, that country slipped back.

Regrettably, history teaches us that many obstacles have been placed in the way of progress for women in this country. Judge Ginsburg's own personal history, including being rejected for employment by leading law firms and by the very Court to which she is nominated today, demonstrated vividly the nature of gender discrimination in this country's very recent past. Now, in 1993, thanks in no small part to Judge Ginsburg's efforts as an advocate for women, many—but not all—of the formal legal obstacles to the advancement of women have been eliminated by legislative action and by judicial decisions.

As has been pointed out before, today marks only the second time in our Nation's history that a woman has appeared before the Senate Judiciary Committee as a nominee to the Supreme Court. It is also the first time that any woman, let alone two, has sat as a member of this all-important body.

Two years ago, I watched Senate confirmation hearings on the television from back home in Illinois with a sense of helplessness and exclusion. Our democracy once again responded and the people of Illinois and of California, I might add, have given us the unique privilege of participating here today.

This is the greatest country in the world, and I believe the U.S. Constitution to be the finest exposition of democratic principles ever written.

I make these statements, Mr. Chairman, fully aware of the fact that, in its original form, the Constitution included neither this Senator as an American of African descent, nor our distinguished nominee as a woman in its vision of a democratic society.

But the greatness of the Constitution lies in the fact that it is a living document. Or, as Dr. Martin Luther King, Jr., once said, a declaration of intent regarding America's unlimited potential, a document that, through an often painful process of amendment and interpretation, has broadened its reach to extend to the previously excluded its promise of equality and justice for all.

Over the years, the Supreme Court played a glorious role in that process. It was the Justices of our Supreme Court in their bold, independent, and faithful interpretations of our living Constitution, who outlawed racial segregation in our schools, guaranteed indigent criminal defendants the right to counsel, brought wiretapping within the restrictions of the fourth amendment, demanded freedom of speech, and recognized a woman's fundamental right to control her reproductive destiny.

In some of the most difficult areas of our history, the Supreme Court has shown the courage to give life to the promise of the Constitution. It seems to me that a central issue of our time is whether that courage has been lost to timidity and partisan politics.

It is troubling to me, Mr. Chairman, that the Court's general approach to constitutional interpretation—the willingness of some recent nominees to embrace the jurisprudence of so-called strict con-

struction and original intent—all too often has resulted in a narrow reading of the Constitution that has curtailed, rather than expanded, individual rights and has left those who are not rich or powerful or privileged with fewer and fewer rights and less and less liberty. Regular working men and women, ordinary people, can no longer be sure that the Supreme Court will be their champion of last resort.

All of the conversations that we have heard today about judicial philosophy boil down to this: Can the people be secure that this nominee will be a champion of their liberties, a jurist committed to the rule of law in the service of society, someone willing to see our living Constitution as a declaration of intent?

Over the next few days, this committee will have the opportunity to explore some of the most complicated doctrines of constitutional law with this nominee, a brilliant jurist and legal scholar. These discussions are designed to illuminate Judge Ginsburg's judicial philosophy and temperament.

But even as we engage in what sometimes becomes a highly technical dialog, Mr. Chairman, let us never forget that the Supreme Court does not belong to the Senate Judiciary Committee, nor to this country's 800,000 lawyers, nor even to the 9 distinguished Justices themselves.

Mr. Chairman, the Court belongs to the American people, and the Court belongs to the American people for one very simple, yet profound reason, because the Constitution belongs to the American people.

Judge Ginsburg, in your very eloquent remarks in accepting the President's nomination, you said that you hoped to work "to the best of my ability for the advancement of law in the service of society."

I salute your aspirations, but I also hope that you will bring more than just your ability, and it is prodigious, based on all of your work and writings so far, but bring more than just your ability to the High Court. I hope you will also bring your heart, your history, and your humanity. Because on this historic occasion, I can't help but recall the words of one distinguished American jurist who I believe is personally known to you, who said: "I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts. These are false hopes. Believe me, these are false hopes. Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, and no court can save it." You know that was Judge Learned Hand who said that.

This great Nation is about to entrust its Constitution, its laws, and its highest court to you, Judge Ginsburg, and I say that without prejudging the outcome of this nomination—kind of. [Laughter.]

So I hope that liberty and equality and opportunity lie within your heart, because the hopes of millions of Americans depend on it. And if liberty and equality and the love of the law live in your heart, then the President and this committee and the American people will have made the right choice.

It is my hope, Judge Ginsburg, that you will pick up the mantle of Justices Brennan and Marshall, and that you will once again

give voice within the Court to the aspirations and hopes of the forgotten members of our society.

As a member of the Supreme Court, you will have a historic chance to nurture our living Constitution, and I use that word deliberately. In so doing, you will serve the people of this great Nation. Your rise to this position will, therefore, be our country's gain and we will all be the better for it.

I again would like to extend my congratulations to you. I look forward to the substantive part of the hearings and very much welcome you and your family to this hearing today.

[The prepared statement of Senator Moseley-Braun follows:]

#### PREPARED STATEMENT OF SENATOR MOSELEY-BRAUN

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It is troubling that the court's general approach to constitutional interpretation—the willingness of some recent nominees to embrace the jurisprudence of so-called "strict construction" and "original intent"—all too often has resulted in a narrow reading of the Constitution that has curtailed, rather than expanded, individual rights and has left those who are not rich, powerful or privileged with fewer rights under our precious Constitution. Regular working men and women can no longer be sure that the Supreme Court will be their champion of last resort.

It is time for the Court to embark upon a bold new era, Judge Ginsburg. It is time for a new vision.