

cialized courts by taking all of the judges on the courts of appeals through some random rotation. And there is a lot of—

Senator DEWINE. The FISA Court, for example, is appointed by the Chief—

Ms. RESNIK. There is a colleague, another law professor named Theodore Ruger at the University of Pennsylvania who has analyzed the appointments on that court and has a law review article detailing it. He actually reports that the Chief Justice has—who is the one who has the count of about 50 appointments of other judges to specialized panels or courts.

The Congress also could, for example, the Judicial Conference of the United States, which is the major policymaking body, that could be chaired by, again, a rotating group of court of appeals judges. The many committees that are being appointed—many other judiciaries around the world are dealing with this question. How do we provide all the justice we need to for all of our citizens, have it organized, be sure that there is a voice that comes to tell the world about its need, and then not develop a kind of bureaucracy that means that judges are losing their role as adjudicators as they seek to set agendas and set future agendas.

It is a hard problem that everyone is facing because we need lots of judges. If you go back at the turn of the century, the 1900's, fewer than 100 judges around the United States, life-tenured. Fast forward, between magistrate and bankruptcy judges, we have got 2,000. They need organization, they need equipment, they need staffs. They need all these things. But at the same time, we also need to cherish the role of open, visible, accessible courts, and that is the challenge and I think that the Congress and the courts could work together, as they have over the last century to create this great system, in rethinking the allocation of authority.

Senator DEWINE. That is very helpful. Thank you.

Chairman SPECTER. Thank you very much, Senator DeWine.

Thank you very much. You have been a very enlightening panel, lights of brain power, six professors in a row. It is a tribute even to this hallowed room. Thank you.

Chairman SPECTER. On to panel six. Ms. Diana Furchtgott-Roth from the Hudson Institute, Secretary Reich, Rabbi Polakoff, et cetera, if you will all take your seats.

Our first witness is Ms. Diana Furchtgott-Roth, a Senior Fellow and Director of the Hudson Centers for Employment Policy, had been the Chief Economist at the Department of Labor. She previously served as Chief of Staff of the President's Council of Economic Advisors and 2 years as Deputy Executive Director of the Domestic Policy Council. She has a Bachelor of Arts in economics from Swarthmore and a Master's from Oxford.

Thank you for joining us, Ms. Furchtgott-Roth and we look forward to your testimony.

**STATEMENT OF DIANA FURCHTGOTT-ROTH, SENIOR FELLOW,  
HUDSON INSTITUTE, WASHINGTON, D.C.**

Ms. FURCHTGOTT-ROTH. Thank you very much.

Chairman SPECTER. Is this going to be a Power presentation?

Ms. FURCHTGOTT-ROTH. No. No, it isn't.

Chairman SPECTER. Power Point presentation? The floor is yours.

Ms. FURCHTGOTT-ROTH. Mr. Chairman and members of the Committee, I am honored to be invited to testify before your Committee today on the subject of Judge John Roberts and his record on women's economic issues.

I have followed and written about these issues for many years, and with your permission, I would like to submit my written testimony for the record.

Chairman SPECTER. Without objection, it will be made a part of the record in full.

Ms. FURCHTGOTT-ROTH. Some observers are concerned about Judge Roberts's attitudes towards women. I believe his record is supportive of women and that the policies he advocated are in women's best interests.

Women made extraordinary progress during Ronald Reagan's Presidency. President Reagan's goals of spurring growth by lowering taxes were extremely popular. After Congress enacted his tax cuts during his first term, he was reelected in 1984 with over 60 percent of the vote. Congress then enacted further tax cuts proposed by President Reagan, and by the end of his Presidency, the tax rate for the median family had fallen from 24 to 15 percent. As taxes were reduced, the economy expanded and women were some of the main beneficiaries of that economic growth.

In the 1980's, women moved rapidly into the workforce. At the same time, their unemployment rates fell. Women's earnings compared to men's grew faster in the 1980's under President Reagan than in any other decade in U.S. history.

Women also progressed in education in the 1980's. By 1990, women were earning over half of all B.A. and M.A. degrees. That is still true today. More women got M.B.A. and law degrees and more became doctors and lawyers.

Now the United States leads the industrialized world in job creation and unemployment rates of 4.9 percent are among the lowest. Unemployment rates for women in many other countries are double our rate.

Even though women were so successful in the 1980's, some are concerned about Judge Roberts's views on comparable worth. Some believe that if comparable worth had been implemented, women would have made even more progress. But that concern is misguided. Comparable worth doesn't mean equal pay for equal work, which is already the law and which is the principle that President Reagan and Judge Roberts supported. Instead, comparable worth means equal pay for entirely different categories of jobs based on categories of workers as determined by government officials.

Comparable worth supporters claim that it is unfair that some mostly male occupations, such as sewer workers, are paid more than some mostly female occupations, such as clerical specialists. But for better or for worse, our economic system rewards American workers on the basis of how much the public values their service and is actually willing to pay for their services, not based on how much an official says that it is worth.

Some jobs have higher earnings than others because people are willing to pay more for them. Many jobs are dirty and dangerous, such as oil drilling, construction work, mining, and roofing. These jobs are primarily performed by men. Women aren't excluded from

these jobs, but they often choose careers with a more pleasant environment and potentially more flexible schedules, such as teaching, communications, and office work. Many of these jobs pay less.

Proponents of comparable worth cite an example in Oregon. There, female clerical specialists were given raises of over \$7,000 a year to bring them in line with male senior sewer workers. Everyone, given the choice of working in an office or a sewer at the same salary, would choose the office. You just have to pay people more for work about and in sewers.

Women's progress in the 1980's would have been hampered by comparable worth. Comparable worth would have worked against women because artificially high wages would have prevented them from being hired. When wages get too high, employers cut back on numbers of workers. Comparable worth assumes that women cannot ever succeed in certain fields on their own, but need government assistance.

Some observers have criticized Judge Roberts because they disagree with memoranda he wrote on Title IX and college athletics in the early 1980's. In particular, Judge Roberts wrote in 1982 that Title IX only applied to specific programs receiving Federal aid and not to all programs in a particular educational institution, but that was what Title IX required at the time, as corroborated by the Supreme Court in 1984. The Supreme Court ruled that only the program that actually received Federal funds, rather than the entire college or university, need to comply with Title IX. As I wrote in a book in 2001, the six-to-three opinion effectively prevented the Office of Civil Rights at the Department of Education from investigating a college athletic department for Title IX violations unless that department was the direct recipient of Federal funds, which most were not.

In writing about Title IX, Judge Roberts argued persuasively that the executive branch and regulatory agencies should comply with Congress's direction. He correctly wrote in a 1982 memo—

Chairman SPECTER. Ms. Roth, could you summarize your testimony at this point?

Ms. FURCHTGOTT-ROTH. Yes. Yes. I will summarize my testimony by saying that Congress changed the law in 1987 by passing the Civil Rights Restoration Act of 1987 and that Judge Roberts's comments on Title IX, if the law had been in place in 1982, his comments would have been very, very different.

And in short, I would like to say that wage discrimination laws and Title IX guidelines aren't a decision for judges, but for Members of Congress. It is Members of Congress who decide on the laws and give the executive branch the authority to design and implement these regulations. Therefore, it would be up to you, Senators, to evaluate the costs and the benefits of the issues. And should he be confirmed as Chief Justice, Judge Roberts's role will be to interpret the laws and adjudicate disputes containing the laws that you were going to pass. Thank you very much.

Chairman SPECTER. Thank you.

[The prepared statement of Ms. Furchtgott-Roth appears as a submission for the record.]

Chairman SPECTER. Our next witness is Professor Robert Reich, who had been Professor of Social and Economic Policy at Brandeis

until he recently joined the Goldwin School of Public Policy at the University of California. He served as Secretary of Labor during President Clinton's first administration and subsequently published a book entitled, *Locked in the Cabinet*. Before taking office during the Clinton administration, he was a member of the faculty of Harvard's Kennedy School of Government. He has a B.A. from Dartmouth, a Master's from Oxford University, where he was a Rhodes Scholar with President Clinton, and a law degree from the Yale Law School.

I am pleased to see you again, Professor Reich, Secretary Reich. I have some questions left over which you did not answer when I questioned you when you were Secretary of Health and Human Services, which we will get to promptly.

Mr. REICH. That is because I was Secretary of Labor, Mr. Chairman.

[Laughter.]

Chairman SPECTER. Well, no wonder I couldn't understand what you were doing.

[Laughter.]

**STATEMENT OF ROBERT B. REICH, FORMER SECRETARY OF LABOR AND UNIVERSITY PROFESSOR AND MAURICE B. HEXTER PROFESSOR OF SOCIAL AND ECONOMIC POLICY, BRANDEIS UNIVERSITY, WALTHAM, MASSACHUSETTS**

Mr. REICH. Mr. Chairman and members of the Committee, I have prepared testimony and with your permission I will submit it for the record.

There has been much discussion in these hearings about social values, and I want to put on the table something that maybe has not received quite the attention it should, and that is economic values. And I don't think I have to tell the Committee what almost everybody knows, and that is that wealth and income and the power that come from wealth and income are more concentrated in fewer hands as a proportion of the population today than we have seen since the 1920s, and by some measures since the gilded age of the 1890s.

Now, if this doesn't present issues of economic morality, I don't know what does, and it comes to the fore with regard to Congress and the Supreme Court in a whole series of protections, some of them very old, some of them going back to the 1920s and 1930s and 1940s, having to do with workplace protections, unemployment insurance, interpretations of Social Security, interpretations of minimum wage, the ways in which we treat our working people in this country.

Now, I heard Judge Roberts, at least to the best of my memory, in the last couple of days tell this Committee that he would rule on the side of the little guy when the Constitution told him to and he would rule on the side of the big guy when the Constitution was on the side of the big guy. Now, I assume that he is talking about little guy and big guy in figurative terms, in terms of economic power and wealth and status in society. But last time I looked at my Constitution, it doesn't say anything about average working people or big guys or little guys at all.