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I speak today not only as an academic observer of Judge Ginsburg's works, but also as her co-author and friend. I have had the privilege of working with her on our casebook on "Sex-Based Discrimination," published in 1974. She and I are both among the first 20 full-time women law professors in the country. We continue to serve together on the Council of the American Law Institute. From those vantage points, I can say that hers is a courageous intellect, and that she is as steadfast and loyal a colleague and friend as anyone could wish. Her standards are exacting. She produces the best and most precise work, and she expects the same from others.

As this confirmation process has shown the Nation, she thinks deeply and chooses her words with care. But I can tell you that her compassion is as deep as her mind is brilliant. In Ruth Bader Ginsburg, the President has offered the country a Justice worthy of the title. I urge this committee to recommend that the Senate give its enthusiastic consent to her appointment to the U.S. Supreme Court.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Kay follows:]

PREPARED STATEMENT OF HERMA HILL KAY

Senator Biden, Members of the Judiciary Committee, it gives me great pleasure to be here and participate in your deliberations as you prepare to recommend to the Senate the advice it should give President Clinton on his nomination of Judge Ruth Bader Ginsburg to the United States Supreme Court.

President Clinton's choice of Judge Ginsburg is wise and inspired, sound and practical. In Judge Ginsburg, the President has found a constitutional scholar who knows from her own experience what it means to be excluded despite outstanding credentials solely because of sex. In the early 1970s, she brought that experience—and her flawless logic—to the bar of the United States Supreme Court, where she will soon take her seat. In case after case, she hammered home the point that for the law to assign pre-existing roles to women and men is limiting to both sexes and forbidden by the equal protection clause. It is a point that—at present, twenty years later—many regard as self-evident. But the High Court seemed unable to grasp that point before Ginsburg's advocacy, instead taking as its starting position the belief that a legislative distinction drawn on the basis of sex was a rational classification that passed constitutional muster.

Ruth Bader Ginsburg's strategy of written and oral advocacy to help the nine men then sitting on the Supreme Court understand the irrationality of sex-based distinctions was one of patient instruction. She chose cases in which the law's unequal treatment of men and women was evident and the consequent need for a broader interpretation of the equal protection clause clearly established and readily accepted. The result is that her cases are now constitutional classics: *Reed v. Reed*, 1971: A mother can administer a deceased child's estate as capably as a father. *Frontiero v. Richardson*, 1973: A servicewoman's Air Force pay earns the same fringe benefits for her "dependent" spouse that a serviceman's pay provides for his "dependent" spouse. *Weinberger v. Wiesenfeld*, 1975: A widowed father is entitled to the same insurance benefits available to a widowed mother to help him care for his infant son after his wife's death. *Califano v. Goldfarb*, 1977: A deceased wife's earned income provides the same survivor's benefits to her widowed husband that a deceased husband's widow would receive.

These are some of the legal propositions that Judge Ginsburg established as an advocate, and she used them to help the Court forge a new understanding of the equal protection of the laws. It was Ruth Bader Ginsburg's voice, raised in oral argument before the United States Supreme Court, that opened new opportunities for the women of this country. She was in the forefront of the creation of legal precedents that advocates who followed her have used, time and time again, to build a strong edifice against discrimination that now protects many groups. She left her enduring mark on the Constitution even before taking her place on the Supreme Court.

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The CHAIRMAN. Thank you, Dean.

I have been in the Senate 20 years, and I have sat through a lot of nomination hearings for the court generally, and the Supreme Court in particular. I must say I have never heard higher praise for a nominee than I have heard from those who have testified today. I thank you for adding your insight to these deliberations. And your reputations individually precede you, and it means a great deal that you think so highly of this nominee, and it reinforces in my mind, and the minds of the committee as a whole, that our initial judgment about Judge Ginsburg was correct, and that the wisdom of the President was demonstrated in his choice. But I thank you both. I have no questions.

I will yield to my friend from Utah.

Senator HATCH. Well, we are happy to welcome both of you here, and we appreciate the excellent testimony you have given. I had to listen to a degree while I was meeting with some people in the back room here, but I don't know that Judge Ginsburg could have had two better law professors come in and speak for her and on her behalf.

Don't you forget, Professor Gunther, when that book on the judge comes out, *Learned Hand*—

Mr. GUNTHER. Will you make clear, Senator, that we don't have an agreement? That gives me the opening to say it will be published in February 1994 by Knopf.

Senator HATCH. He is going to publish a wonderful book on *Learned Hand*. February of 1994, you say?

Mr. GUNTHER. Yes.

Senator HATCH. Knopf. I expect an autographed copy, is all I can say.

Mr. GUNTHER. It is yours.

Senator HATCH. I appreciate it, and we are happy to have both of you here. Thank you for coming.

The CHAIRMAN. Senator Feinstein?

Senator FEINSTEIN. Nothing other than to say, Mr. Chairman, you have before you, as you well know, two of—

The CHAIRMAN. I beg your pardon.