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Mr. WILLIS. To summarize our findings, the committee is fully satisfied that, by virtue of her academic training, her work as an appellate advocate, her academic service, her scholarly writings, and her distinguished service for 13 years on the court of appeals, Judge Ginsburg meets the highest standards of professional competence required for a seat on the Supreme Court. She enjoys the admiration and respect of her colleagues on and off the bench, and her integrity is above reproach.

We are pleased to have the opportunity to appear here today to present the committee's findings and would be happy to respond to any questions about our evaluation.

The CHAIRMAN. Thank you very much.

I only have one question. Was there any dissenting vote on the committee at all?

Mr. WILLIS. There was no dissenting vote whatsoever, Mr. Chairman.

The CHAIRMAN. So it was unanimous that the highest rating that the American Bar Association gives in this circumstance was unanimous; each individual, no one abstaining, voted for that rating?

Mr. WILLIS. No abstentions. Every member of the committee voted for the rating of well qualified.

The CHAIRMAN. I have no further questions. I only want to thank you again because I think people vastly underrate the incredible amount of work that you all undertake. We in this committee know because our staffs read every one of the opinions. We know what it is like.

You are in active practice at the time while you are doing it. We appreciate it, and I would like to publicly extend my thanks to you, both of you, and to the Bar Association generally for being willing to perform this function.

I yield now to my friend from Utah.

Senator HATCH. I want to join in that praise because I think the changes that have been made at the ABA and the renewed look at the committee and the restructuring of the committee have been very excellent. And I know that it takes a lot of time. It is a lot of effort. You folks are doing a tremendous job for the benefit of the legal community at large, but really for the public at large. And I just want to personally compliment you. I am glad to see that the committee has approached this in an apolitical way, as it should, and I just want to personally acknowledge that in front of everybody here today.

So thank you for the efforts you have put forth, the testimony you have given, and the work that you all have done.

The CHAIRMAN. Thank you very much.

Mr. WILLIS. Thank you, Senator.

The CHAIRMAN. Senator Metzenbaum.

Senator METZENBAUM. I want to join my colleagues in thanking you for your efforts, but I sort of think that my good friend from Utah's comment was a little bit negatively pregnant with the fact that you have suddenly gotten religion and now you are doing a good job. And I have the feeling that you have done a good job over the years. I haven't always agreed with your conclusions. Most of the time I have. But I thought I was really bemused when sometimes in the past the ABA was accused of being too liberal. I was a practicing lawyer, and I have been a member of the ABA for a long time. And I never thought it was a liberal organization. Quite the opposite, I thought it was too damn conservative.

But having said that—

Senator HATCH. Of course, he thinks everything is too damn conservative. [Laughter.]

Senator METZENBAUM. Especially you, Orrin. [Laughter.]

Senator HATCH. Well, I think I probably am.

The CHAIRMAN. So far things are going well. Senator, do you have any further comment?

Senator METZENBAUM. With that said, thanks very much for all your efforts.

The CHAIRMAN. The Senator from Pennsylvania.

Senator SPECTER. Thank you, Mr. Chairman.

I would like to take just a moment or two to discuss the one question which really concerns me about the confirmation proceedings, and I join in expressing appreciation for the work that your organization has done. Your work, of course, was completed before these hearings started. I have already expressed my concerns about how much information we got on judicial ideology and judicial philosophy.

I was concerned, illustratively, that on a question about whether the Korean military engagement was a war raising the constitutional issue about the authority of the Congress to declare war. Judge Ginsburg wanted to have it briefed and argued before she would make a statement. Certainly the Korean conflict is not going to come before the Court, and I think many of the other questions which were asked on ideology and philosophy come into the same line.

When we had Justice Scalia, then Judge Scalia, for confirmation and I asked him about *Marbury v. Madison* as a pillar of constitutional interpretation that the Supreme Court is the final word, he wouldn't answer the question because it was an issue which he thought might come before the Court. At that time I expressed the sentiment, as I did with Judge Ginsburg, that so far as I am concerned that issue is rockbed; and if someone is not going to uphold *Marbury v. Madison*, I don't think that person is fit to serve on the Supreme Court.

I think Justice Scalia would uphold *Marbury v. Madison*, which was my conclusion, and I voted for him. But he wouldn't say. The question about whether the Congress has the power to take away jurisdiction of the Court on constitutional issues, I think, is also rockbed. I don't think that is subject to being litigated.

I asked Judge Ginsburg whether she would rule out Congress' authority to take away the jurisdiction of the Court on equal protection, an issue on which she is really a champion. And in my questioning of Judge Scalia, it took all the way to a question of, "Will you let somebody litigate after you are on the Supreme Court the question of whether you have an obligation under your oath to uphold the Constitution?" "Judge Scalia: I think you have finally gone over the edge of certainty so much that I have to say of course not."

But that is what it took to find an answer for Justice Scalia that he wouldn't have litigated before his Court.

Judge Ginsburg wrote an article on the authority of the Senate giving a second opinion after the President gives the first opinion, said it was not a secondary opinion; and at the conclusion of the article, she accepted the language of her former Columbia colleague, Prof. Louis Henken, to this effect: In an appointment to the U.S. Supreme Court, the Senate comes second but is not secondary. The standards the Senate should apply are the same as those that should govern the President, what would serve the national interest, not simply for today's cases but for the long term.

And I would just like your opinion, if you would give it to me, Mr. Willis, Mr. Best. Do you think it is within the purview appropriately of a Senator to vote against a nominee who won't answer questions, say to the extent that Judge Scalia took a question about challenging his oath before he would respond?

Mr. WILLIS. I won't myself pretend to give advice to a Senator on a subject like that. I think the Senator has to use his own conscience and conviction in deciding what action to take.

I should emphasize that the work of our committee is limited to investigating the qualifications of the nominee with respect to integrity, judicial temperament, and professional competence. We do not get into philosophy. We do not get into where the judge, the judicial candidate stands with respect to a particular issue.

Obviously the interest of this body may very well be broader than that, but when it comes to integrity, professional competence, and judicial temperament, Judge Ginsburg has our very strong endorsement.

Senator SPECTER. Mr. Willis, you are a New Yorker?

Mr. WILLIS. Yes, sir.

Senator SPECTER. I hope you run for the Senate so you can give me some advice.

Mr. Best, you are from the District of Columbia. I hope you have a chance to run for the Senate.

Mr. BEST. Well, I would be pleased to have that opportunity sometime, Senator.

Senator SPECTER. What is your view on my question?

Mr. BEST. Well, my view is coincident with Bill Willis. We have a very narrow spectrum of interest, and certainly if I ever decide to run for the Senate, then maybe I could address the issue of whether or not there is discretion in a U.S. Senator on the issue that you have presented.

Senator SPECTER. Thank you very much, Mr. Best. Thank you, Mr. Willis.

The CHAIRMAN. Thank you.

Senator HEFLIN.

Senator HEFLIN. I just got here. Does somebody else want to ask questions?

The CHAIRMAN. All right. Senator Feinstein.

Senator FEINSTEIN. I have no questions. Thank you.

The CHAIRMAN. Senator Hefflin.

Senator HEFLIN. Well, I have always enjoyed listening to you, and I think you all do a very thorough job on this type of work. I always somewhat feel like somehow you ought to have a professional staff. It calls for a tremendous amount of work that is called upon for each individual member, in particular relative to the Circuit Court of Appeals in the District Court. It does call for a tremendous amount of work. I at one time made a speech on the floor advocating that you consider a staff, but you always felt like it was more of a lawyer approach that you wanted.

But, anyway, we appreciate the effort by the American Bar, and I think it does have a great deal of weight pertaining to nominees, in particular the work that you do reading every opinion and researching everything else. It is rather remarkable that you spend as much time as you do.

But as I understand it, you are unanimous in the highest rating here. Is that correct?

Mr. WILLIS. That is correct, Senator. The entire committee reviewed the entire record and concluded unanimously, without any dissent or abstention, that Judge Ginsburg deserved the highest recommendation.

Mr. BEST. And without any hesitation.

Senator HEFLIN. Well, that is remarkable. Without any debate?

Mr. WILLIS. There was obviously discussion. I don't think it got to the level of debate, but I think that every member participated actively in the discussions that followed the completion of the record.

Senator HEFLIN. I believe that is all.

The CHAIRMAN. Thank you very much.

Gentlemen, again, thank you. Please thank the entire committee. I sincerely mean it when I say that on behalf of the whole committee, we appreciate the incredible amount of work you do, and the service you provide.

Mr. WILLIS. I will do that, Senator, and thank you very much.

Senator HATCH. Mr. Chairman, Senator Grassley may have some questions. His staff member was trying to find him. But what we will do, if we can keep the record open to submit those questions in writing, I think that would be fine.

The CHAIRMAN. Without objection, that will be done.

[The prepared statement of Mr. Willis follows:]

PREPARED STATEMENT OF WILLIAM E. WILLIS

Mr. Chairman and Members of the Committee:

My name is William E. Willis. I practice law in New York City, and I am Chair of the American Bar Association's Standing Committee on Federal Judiciary. With me today is Judah Best of Washington, D.C., one of our Committee members who took a principal role in this investigation.

We appear here to present the views of the American Bar Association on the nomination of the Honorable Ruth Bader Ginsburg, Judge of the United States Court of Appeals for the District of Columbia Circuit, to be Associate Justice of the Supreme Court of the United States.

At the request of the White House, our Committee investigated the professional competence, judicial temperament and integrity of Judge Ginsburg. Our work included discussions with more than 625 persons, including Justices of the Supreme Court, federal and state judges, a national cross section of practicing lawyers, and law school deans and faculty members, some of whom are specialists in constitutional law, and experts on Supreme Court Practice. In addition, Judge Ginsburg's opinions were independently reviewed by three reading groups—a reading team of lawyers who have practiced actively in the Supreme Court, chaired by Rex E. Lee, former Solicitor General of the United States and currently President of Brigham Young University, and two panels of law professors, one chaired by Professor Ronald J. Allen at Northwestern University Law School and one chaired by Dean Mark G. Yudof of the University of Texas School of Law. And finally, Judge Ginsburg was interviewed by three members of our Committee.

The Committee began its investigation of Judge Ginsburg on June 14, 1993, and ended on July 13, 1993. Based upon our evaluation, we reported to the White House and to this Committee that the Standing Committee is unanimously of the opinion that Judge Ginsburg is entitled to the Committee's highest evaluation for a nominee to the Supreme Court of the United States: *Well Qualified*. That evaluation is reserved for those who are at the top of the legal profession, have outstanding legal ability and wide experience, meet the highest standards of professional competence, judicial temperament and integrity, and merit the Committee's strongest affirmative endorsement.

I have filed with the Judiciary Committee a letter describing the results of our investigation, and shall not repeat those results in detail here. I request that the letter be included in the record of these proceedings.

To summarize our findings, the Committee is fully satisfied that, by virtue of her academic training, her work as an appellate advocate, her academic service, her scholarly writings, and her distinguished service for thirteen years on the Court of Appeals, Judge Ginsburg meets the highest standards of professional competence required for a seat on the Supreme Court. She enjoys the admiration and respect of her colleagues on and off the bench and her integrity is above reproach.

We are pleased to have the opportunity to appear here today to present to Committee's findings and would be happy to respond to questions about our evaluation.

The CHAIRMAN. Now our next panel is comprised of leading figures in the legal community. The first is William T. Coleman, Jr., of O'Melveny and Myers. Mr. Coleman served as Secretary of Transportation during the Ford administration from 1975 to 1977, and Mr. Coleman stands as one of the Nation's pre-eminent lawyers, particularly civil rights lawyers, having argued many landmark cases with the last Justice Thurgood Marshall. As a matter of fact, I believe he was Thurgood Marshall's attorney as well. He also is presently chairman of the board of the NAACP Legal Defense and Education Fund.

Welcome, Mr. Secretary.

Next is Judge Shirley Hufstедler. She is a former United States Circuit Court of Appeals judge for the Ninth Circuit, and served as Secretary of Education during the Carter administration. She is presently a partner in a leading law firm.

Joining them are Chesterfield Smith of Holland & Knight of Miami, FL, former president of the American Bar Association. Good to see you back, Mr. Smith.

Mr. SMITH. Thank you.

The CHAIRMAN. And Ira Millstein, a senior partner of Weil, Gotshal, and Manges in New York City.

We welcome you all, and I should say, with no reflection on Mr. Millstein and Mr. Smith, were I president two of the four people sitting before me would be my choices for the Supreme Court of the United States, and I say that without reservation. Mr. Coleman, you would make a great Supreme Court Justice. I wish I had had an opportunity to participate in having you on the Court; as well

as you, Judge Hufstедler. I know you both well, and it is a compliment to the nominee that you two are here, as well as the other two of your colleagues are here.

Senator HEFLIN. I will take exception at your omission of Chesterfield Smith. I don't know Mr. Millstein as well, but he—

The CHAIRMAN. Mr. Millstein, you are qualified as well to be on the Court, but I mean it. I think the Nation would have been served extremely well had William T. Coleman been a Supreme Court Justice.

But having said that, enough of my advertising for future nominees for the Court. Let me—

Senator SPECTER. It may be yet, Mr. Chairman.

The CHAIRMAN. I know. I said that. That is why I don't want to continue to advertise, because I learned one lesson, at least as it related to my children in the colleges and universities they attend. Whatever university you want your child to attend, do not mention it. Whoever you would like to see appointed to the Supreme Court, don't tell the President.

But, at any rate, Mr. Coleman, why don't you begin.

PANEL CONSISTING OF WILLIAM T. COLEMAN, JR., O'MELVENY AND MYERS, WASHINGTON, DC; CHESTERFIELD SMITH, HOLLAND & KNIGHT, MIAMI, FL; SHIRLEY M. HUFSTEDLER, HUFSTEDLER, KAUS, AND ETTINGER, LOS ANGELES, CA; AND IRA M. MILLSTEIN, WEIL, GOTSHAL AND MANGES, NEW YORK, NY

STATEMENT OF WILLIAM T. COLEMAN, JR.

Mr. COLEMAN. Mr. Chairman, members of the committee, I have submitted a seven-page statement, but then there are attached some memoranda because I either read or had people read and then explain to me most of the judge's cases. I certainly think that with her background and everything she certainly should be considered well qualified.

But I would like just to indicate to you why in my judgment this is a superb appointment, because I think that you have to look to the character of the person, for in the end, particularly in constitutional matters, the only sense on a Justice's exercise of power is his or her own sense of self-restraint.

Now, the factors that I think that you ought to consider, first, is what she has been exposed to and done with her life in the last 60 years: a great education, a superior mind, great intellect and intelligence, her seizing of every opportunity, and her just being able to discharge both the responsibilities in the profession, but also as a wife and mother.

She certainly has made an outstanding record as a jurist. I think if you would look at her readings and just walk through her library and just watch the diversity of things that she has read, in addition you often will see her at the opera, the theater, the symphony, the ballet, the art museum, the Council on Foreign Relations. And she has, as you already know, a very wide range of friends. And, believe me, as quiet as she is, she will discuss and argue almost any issue with them. She has written in a lot of different fields.