self has both briefed and orally argued with great skill multiple cases in the United States Supreme Court; as an appellate judge, her industry and skill have been recognized nationwide for more than a dozen years. However, she is not limited to just appellate skills; instead, she is a person well versed and experienced in all aspects of the law as it will be presented from time to time for decision to the United States Supreme Court.

While I recognize it to be a very broad statement, I firmly believe that there is no lawyer in America, male or female, better qualified to be a Supreme Court Justice. Truly, she is exceptional. I do personally like Ruth Bader Ginsburg (I have served and participated throughout the years with her in multiple organized bar activities) but I fervently assert that my endorsement of her to you for confirmation is based solely on merit. Over the years I have become convinced that she has one of the superior legal minds that I have known.

Her legal writing is succinct, pithy, concise, scholarly, and absolutely on target. While her experience and intent have perhaps focused primarily on procedure and constitutional law, I find that legally she has a broad and roving interest in all aspects of justice. She truly loves the law and she represents it at its best. Additionally, she is a completely well-rounded person who has the professional capacity to bring to her judicial duties wisdom, moderation, compassion and justice in the myriad areas of the law routinely a part of the Supreme Court docket.

As a citizen and lawyer, I strongly urge that you speedily confirm her appointment to the Supreme Court.

The CHAIRMAN. High praise, Mr. Smith. Thank you.

Judge, welcome.

STATEMENT OF JUDGE HUFSTEDLER

Judge HUFSTEDLER. Thank you very much, Mr. Chairman.

Because I was admitted to the bar 43 years ago when the number of women who went into law were very, very few, in my enthusiastic endorsement of Ruth Bader Ginsburg for the U.S. Supreme Court I thought it might be useful to place what Ruth has accomplished in a somewhat broader historical framework.

When President Johnson appointed me to the U.S. Court of Appeals for the Ninth Circuit in 1968, I was the second woman in the history of the United States ever to be appointed to a Federal appellate court. The honor of being the first went to Florence Allen, and the President who appointed her was Franklin Delano Roosevelt in 1934. When she was appointed, she was then a justice of the Supreme Court of Ohio, a position to which she was elected by the women who had worked with her to obtain passage and ratification of the amendment to the U.S. Constitution permitting women to vote. Judge Allen had died before I was appointed, and it was to be many years before another woman was to have that honor.

I resigned from the bench in 1979 when President Carter asked me to become Secretary of Education of the United States. The U.S. Supreme Court, however, has been a matter of intense scholarly scrutiny and more than slight interest to me during my entire professional life.

The Court has been called upon, as each of you are aware, to interpret and apply the Constitution under circumstances of more than 200 years of history. That great charter of government is also the Nation's great charter of freedom in the Bill of Rights. The Supreme Court has been repeatedly required to decide the issues that most deeply divide our citizens one from the other, invoking that great Bill of Rights. Those rights include not only the right to worship as one pleases, to own property, to have the right to petition for grievances, but also the right to equal protection of the laws,

no matter what may be the color of skin or previous condition of servitude, our Nation of origin, our race, our ethnicity, or our gender.

When the membership of the Supreme Court has been equal to that awesome task, the results have been great. When the membership of the Court sometimes has not, the results have been tragic. No one here needs to be reminded of the impact of the tragic decision of the *Dred Scott* case when that Court could not face the challenge of human slavery under the Constitution of the United States. But when the majority of the Court has had depth of understanding to interpret the Constitution to meet the vast needs of this country, the results have been not only fine, but ofttimes brilliant.

The Warren Court knew that this Nation could not long endure with legalized apartheid any more than it could have endured half slave and half free. The Warren Court, after that decision and immediately before it, created decision after decision which made it possible to start stripping away the elements and remnants of slavery and the change of bigotry that affected black men.

Unfortunately, the Court was much slower to recognize that the only persons subject to invidious discrimination were not limited to black men. That discrimination was affecting adversely half the population of the United States—women.

Even the gifted group of colonial gentlemen who drafted the Constitution were unable to escape the dictates of custom, the dicta of St. Paul, and centuries of dominance by men that had systematically reduced women to second-class citizenship.

Until nearly the end of the 19th century, women were denied the basic rights of citizenship. Not one of them could vote. With trivial exceptions, women could not own property, or even their own wages. Single women were slightly better off, however, than were their married sisters because, under the eyes of the law, when a woman married the personalities of the husband and wife merged, and the wife's disappeared altogether.

Women who were married were classified by the law as were infants and idiots. The traditional excuse for that blatant discrimination was expressed by Justice Bradley in a deservedly famous, or perhaps infamous, opinion to which Senator Feinstein adverted during her commentary earlier. Every member will recall that the issue was whether Myra Bradwell had had her privileges and immunities rights under the Constitution violated by the law of the State of Illinois, which refused to permit her entrance into the practice of law. And Justice Bradley explained in his special concurring opinion the reason why, explaining that that sex was not entitled to the privileges and immunities granted to males. He said, "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life * * *. The paramount destiny and mission of women is to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

Now, Justice Bradley knew perfectly well that tens of thousands of women were performing hard physical labor under conditions anything but dainty. And he also knew that other thousands of pioneer women were fighting side by side with their husbands under

conditions that were downright perilous. Then why in the world did he say that? Because he had persuaded himself that God, not man, had prescribed women's roles, and those who did not follow those assignments were either biological curiosities or victims of humankind's inexcusable rebellion against God's will. Justice Bradley and those who shared his views confused the signs of a dominant culture with the signs of the Creator, and he mistook the laws of man for the laws of nature.

It took decades of struggle for suffragettes, like Florence Allen, and the men who could be enlisted into their cause to amend the Constitution to give women even the right to vote. It took decades of more work for the Supreme Court of the United States to realize that women, as well as men, were entitled to equal protection of the laws.

As late as 1948, Justice Frankfurter, bless him, wrote the majority opinion upholding a State statute that forbade women to obtain licenses as bartenders unless the women were wives or daughters of the male owner of the establishment. To uphold the statutory classification, Justice Frankfurter harked back to Shakespeare's ribald ale wife and stated that the 14th amendment "did not tear history up by the roots." And then he said, re-echoing much of what Justice Bradley's sentiment had earlier revealed,

> The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in the vices that men have long practices, does not preclude the States from drawing a sharp line between the sexes * * *. [T]he oversight assured through ownership of a bar by a barmaid's husband or father minimizes hazards that may confront a barmaid without such protecting oversight * * *. [W]e cannot give ear to the suggestion that the real impulse behind this legislation was the unchivalrous desire of male bartenders to try to monopolize the calling.

A majority of men perhaps in this country may have applauded that decision, but the women did not. Like every campaign that has been successful in constitutional law, there has to have been an architect. One of the major architects to change the Supreme Court's collective mind about the place of women in the Constitution of the United States is Ruth Bader Ginsburg. Then Professor Ginsburg knew very well, and she still remembers extremely well, that in constitutional adjudication the Supreme Court does not make major progress in miles, but in millimeters.

The particular case that was chosen for making her points in constitutional law, like so many others that have seemed to be trivial, was the case called *Reed* v. *Reed*. And what was the issue? The question was the constitutionality of a State law which granted automatic preference to men over women when both were equally qualified to administer decedents' estates. She argued that that law giving mandatory preference to men over women without any regard to their individual qualifications violated the equal protection clause of the 14th amendment.

Now, in making that argument, Ms. Ginsburg was after larger constitutional game than the right of women to administer dead men's estates. The point she succeeded in establishing was that the statutory classification based on sex, like that based on race, is constitutionally suspect, thereby requiring strict scrutiny. The result is that a statute cannot be upheld constitutionally merely on that basis that a legislature could have had some rational reason for en-

acting it. And that was the standard that Mr. Justice Frankfurter adverted to in the case I earlier described, along with the traditional deference paid to any legislation that bans liquor.

The importance of the principle decided in *Reed* became apparent to less sophisticated scholars in the *Frontiero* case where the question was the validity of a Federal statute which gave special privileges and perks to servicemen with respect to their wives, but denied exactly those perks to servicewomen.

Writing for the majority of the Court, Justice Brennan relied heavily on *Reed's* holding and observed that the Nation's unfortunate history of sex discrimination had been rationalized on bases of "romantic paternalism." And he said, and I quote, "the practical effect put women, not on a pedestal, but in a cage."

She won that case, and with it she succeeded in building the equal protection platform upon which not only she, but many others, representing both men and women, were able to establish gender as a subject of deep concern under the equal protection clause.

Long before I knew Judge Bader Ginsburg personally, I had admired her work very much as a legal scholar and as an extraordinarily able constitutional advocate. Since she has been appointed U.S. circuit judge for the District of Columbia Circuit, Ruth Bader Ginsburg has performed her judicial role as successfully as she did her earlier roles—as a professor, as a scholar, as a constitutional advocate. She has been obliged to follow the law as laid down by the U.S. Supreme Court whether she agreed with it or not, and she has faithfully done so.

Her judicial writings, like her briefs and also like her scholarly writings as a professor, are concise, tightly reasoned, and persuasive. She has also proved herself to be a healer of rifts that always exist in any close structure such as the judiciary. She is an excellent negotiator. She is a moderator who has, nevertheless, managed to maintain her intellectual integrity and her dedication to her ideals of equality for all Americans under the law.

Perhaps it would not unduly disturb Justice Bradley's ghost to know that she well performs, very well performs the only roles he would have permitted her to have: As wife, mother, and as loyal, marvelous friend.

This committee has had very few nominees come before it who begin to have the qualities of distinction that Ruth Bader Ginsburg has. She deserves your votes for swift confirmation. Her appointment is a credit to the President. Her swift confirmation will be a credit to you, and as Justice of the Supreme Court of the United States, she will be a credit to the Nation.

Thank you.

[The prepared statement of Judge Hufstedler follows:]

PREPARED STATEMENT OF SHIRLEY M. HUFSTEDLER

My name is Shirley M. Hufstedler. I was admitted to the Bar 43 years ago. Half of my professional life has been devoted to private law practice and half to public service. I was a judge on state and federal courts, trail and appellate. When President Lyndon B. Johnson appointed me United States Circuit Judge for the United States Court of Appeal for the Ninth Circuit in 1968, I became the second woman in the history of the United States to be appointed to a federal appellate court.

The first was Florence Allen who was appointed by President Franklin Roosevelt to the United States Court of Appeals for the Sixth Circuit in 1934. At the time of her appointment she was a Justice of the Ohio Supreme Court, a position to