



AMERICAN BAR ASSOCIATION Standing Committee on
Federal Judiciary

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July 19, 1993

Honorable Joseph R. Biden, Jr., Chairman
Committee on the Judiciary
224 Dirksen Senate Office Bldg.
Washington, D.C. 20510-6275

RE: Honorable Ruth Bader Ginsburg

Dear Mr. Chairman:

This letter is submitted in response to the invitation from the Senate Committee on the Judiciary to the Standing Committee on Federal Judiciary of the American Bar Association (the "Committee") to present its report regarding the nomination of the Honorable Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court of the United States.

The Committee's evaluation of Judge Ginsburg is based on its investigation of her professional qualifications, that is, her integrity, judicial temperament and professional competence. Consistent with the Committee's long standing policy it did not undertake any examination or consideration of Judge Ginsburg's political ideology or her views on any issues that might come before the Supreme Court.

To merit the Committee's evaluation of Qualified or Well Qualified the Supreme Court nominee must be at the top of the legal profession, have outstanding legal ability and wide experience and meet the highest standards of integrity, professional competence and judicial temperament. The evaluation of

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THIRD CIRCUIT
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FOURTH CIRCUIT
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FIFTH CIRCUIT
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Well Qualified is reserved for those found to merit the Committee's strongest affirmative endorsement.

I am pleased to report that the Committee finds Judge Ginsburg to be Well Qualified for appointment as an Associate Justice of the Supreme Court of the United States. This determination was unanimous.

THE PROCESS

The investigation of Judge Ginsburg began on June 14, 1993 and ended on July 13, 1993. Judge Ginsburg was interviewed personally by members of the Committee.

In conducting the investigation members of the Committee personally interviewed over 400 federal judges, including present and retired members of the Supreme Court of the United States, members of the Federal Courts of Appeals, members of the Federal District Courts, Federal Magistrate Judges, Federal Bankruptcy Judges, and members of State Courts. The investigation included colleagues of Judge Ginsburg from the United States Court of Appeals for the District of Columbia Circuit.

Members of the Committee personally questioned approximately 225 others, including practicing lawyers throughout the United States, former law clerks and lawyers who have appeared before Judge Ginsburg. Committee members inquired of law school deans, faculty members of law schools and constitutional scholars throughout the United States, including professors at Rutgers University and Columbia University Law School, where Judge Ginsburg served as a member of the faculty.

The Committee also had at its disposal the report prepared in 1980 by the Committee in connection with the investigation of Judge Ginsburg for appointment to the United States Court of Appeals for the District of Columbia Circuit. She was at that time found by a majority of the Committee to be Exceptionally Well Qualified and by a minority Well Qualified for appointment to that court.*

It has been the practice of the Committee to ask groups of distinguished legal scholars and Supreme Court practitioners to review independently all of the opinions of nominees for the Supreme Court. This practice was followed again here and Judge Ginsburg's opinions were reviewed by: (1) a Reading Group of distinguished lawyers chaired by Rex E. Lee, formerly Solicitor General of the United States and presently President of Brigham Young University. This group consisted of 11 lawyers, all of whom have practiced and argued cases in the Supreme Court; (2) a Reading Group chaired by Professor Ronald J. Allen of the Northwestern University School of Law, consisting of 21 members of that law school's faculty; and (3) a Reading Group composed of 12 professors from the University of Texas Law School, chaired by its Dean, Mark G. Yudof.**

* In 1980 the Committee's highest rating for lower court judges was Exceptionally Well Qualified. This rating was subsequently discontinued. The highest rating is now Well Qualified for all courts.

** Members of the three Reading Groups who participated are listed on Exhibit A to this letter.

The three Reading Groups reported to the Committee their independent analyses of Judge Ginsburg's opinions. These reports were evaluated by the members of our Committee, each of whom also read opinions of Judge Ginsburg and her published writings on a variety of legal subjects.

EVALUATION

Integrity

Judge Ginsburg has earned and enjoys an excellent general reputation for her integrity and her character. No one interviewed by the Committee had any question or doubt in this respect.

Temperament

Judge Ginsburg's judicial temperament also meets the high standards set by the Committee for appointment to the Supreme Court.

A very few who were interviewed commented on what they perceived as her tendency to be a "loner" and questioned her ability to be collegial. Such reservations were wholly dispelled by comments from her colleagues who have known and worked closely with her over the years who uniformly found her to be collegial and to be a consensus builder.

The Committee also investigated a published comment claiming that Judge Ginsburg had bad relationships with her law clerks. Our investigation, including interviews with virtually all of her former clerks now living throughout the country, found such claim to be without foundation. From our interviews with her former law clerks it is apparent that she enjoys a group of fiercely loyal former clerks who

regard her with admiration and respect and who enthusiastically support her appointment. Moreover, she and her clerks have remained in close personal contact over the years, and she has regularly followed and supported the family and professional development of many of them. The training received by the clerks in Judge Ginsburg's chambers resulted in many being selected as law clerks by several Supreme Court Justices.

There were isolated comments from several lawyers who had practiced in her court that she could on occasion be impatient in questioning at oral argument. Such comments were carefully investigated. Judge Ginsburg is a judge who prepares thoroughly for every oral argument by reading the briefs, defining the issues and formulating questions to present to counsel. The overwhelming majority of counsel respect this preparation, welcome the judge's questions, and find no basis for any complaint as to her questioning during oral argument.

Judge Ginsburg clearly possesses and exhibits the highest level of judicial temperament.

Professional Competence

Judge Ginsburg's educational background amply prepared her for Supreme Court service. She graduated at the top of her class at Cornell University, attended Harvard Law School for two years and served with its top students on its Law Review and completed her legal training at Columbia Law School where she also was at the top of the class and served as an editor of its Law Review.

Her scholarship led to an academic career which began at Rutgers University Law School, where she served for 9 years and was named Professor of Law, and continued at Columbia Law School, where she served with distinction as Professor of Law for 8 years.

She also comes with extensive experience as an appellate advocate, including six cases in which she was counsel of record and argued in the Supreme Court. She has not had trial experience, but she served for two years as law clerk to one of New York's most distinguished district judges.

She has developed and maintained broad interests. Throughout her career she has participated actively in bar association work, serving in leadership capacities in several organizations, is an active member of the American Law Institute, serving on its Council, has participated actively in the work of the American Bar Association, and since ascendancy to the Bench has been active in court administration and the preparation of a history of the District of Columbia Circuit.

Her extensive scholarly writings cover wide-ranging subjects. She has, for example, written extensively on the law of Sweden, civil rights, the rights of women, private international law, constitutional law issues and even the confirmation process for Supreme Court Justices. These writings not only reflect the high level of her scholarship but the breadth of her interests, qualities that will contribute to her effective service as a Justice of the Supreme Court.

The comprehensive reports submitted to us by the three Reading Groups of scholars and Supreme Court practitioners confirm the Committee's own conclusions concerning the scholarship and writing ability of Judge Ginsburg.

One group used such words in describing her opinions as "lawyerly" "thoughtful" "careful" "measured, clear, precise and judicious."

The report of another of the three Reading Groups summarized Judge Ginsburg's writings as follows:

Judge Ginsburg has an unmistakable and deeply ingrained style of decision. She invariably lays out the case with remarkable clarity, informing the reader of the relevant procedural background and precisely what is to be decided. She then proceeds to explain the decision the court has reached with great care and attention to detail in direct and accessible prose. She has no rhetorical or literary flair that we observe, but what her opinions lack in inspiration they compensate for in lucidity. She obviously strives hard to be fair, even-handed, and open-minded, and she adequately addresses all relevant arguments in the cases she decides.

The third group commented with respect to her opinions that they "are uniformly well crafted" and that their "greatest virtue...is their clarity." "The reader comes away convinced that no stone has been left unturned in rehearsing the state of the record, the parties' contentions or the applicable doctrines." The report noted that after recognizing and identifying critical issues "she sets forth facts pertaining to the issues and then deals with the cases and other apposite authority in a scholarly fashion." There were also

favorable comments on the brevity and conciseness of her opinions. One of the Reading Group members noted:

"She is bright, able, sincere, and apparently a hard worker. Moreover, she is committed to being an excellent jurist and is a better writer than many of her colleagues. She graces the bench with style and understanding and the confidence of one with a well-trained mind and a sense of herself."

This group also specifically commented on her concern with the institutional needs of the court and the necessity for maintaining collegiality. A member noted that "few of [her] opinions have an edge or sting to them," and that her comments "are usually relatively mild in dismissing an argument that she finds unpersuasive or unfounded." The report noted that from the tone of her opinions "she genuinely cares about the collegial dimension of appellate judging."

Our Committee is fully satisfied that Judge Ginsburg meets the highest standard of professional competence required for a seat on the Supreme Court. Her academic training, her work as an appellate advocate, her service on the faculties of distinguished law schools, her scholarly writings and her distinguished service for thirteen years on the Court of Appeals dealing with many of the same kind of matters that will come before the Supreme Court fully establish her professional competence.

CONCLUSION

Based on the information available to it, the Committee is of the unanimous opinion that Judge Ginsburg is Well Qualified for appointment to the

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Supreme Court of the United States. This is the Committee's highest rating for a Supreme Court nominee.

The Committee will review its report at the conclusion of the public hearings and notify you if any circumstances have developed that would require a modification of these views.

On behalf of our Committee, we wish to thank you and the members of the Judiciary Committee for the invitation to participate in the confirmation hearings on the nomination of Honorable Ruth Bader Ginsburg to the Supreme Court of the United States.

Respectfully submitted,

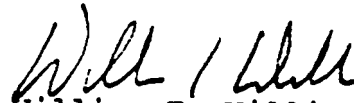

William E. Willis
Chair

EXHIBIT A

LAWYERS READING GROUP

Rex E. Lee, Chair

Hon. Arlin M. Adams, Schnader, Harrison, Segal & Lewis
(former Federal Court of Appeals judge)
Professor Sara Sun Beale, Duke University School of Law
William T. Coleman, Jr., O'Melveny & Myers
Professor John H. Garvey, University of Kentucky Law School
Philip A. Lacovara, Mayer, Brown & Platt
Kathryn A. Oberly, Associate General Counsel, Ernst & Young
Benna Ruth Solomon, Chief Assistant Corporation Counsel City
of Chicago
Hon. Philip W. Tone, Jenner & Block (former Federal Court of
Appeals judge)
Professor Richard G. Wilkins, Brigham Young University Law
School
Professor Charles Alan Wright, University of Texas Law
School at Austin

NORTHWESTERN UNIVERSITY SCHOOL OF LAW

Professor Ronald J. Allen, Chair

Professor Kenneth W. Abbott	Professor Keith Hylton
Professor Steven Calabresi	Professor Gary Lawson
Professor Charlotte Crane	Professor Thomas Merrill
Professor John Donohue	Professor Michael Perry
Professor Meade Emory	Professor Daniel Polsby
Professor Thomas L. Eovaldi	Professor Philip Postlewaite
Professor Mayer G. Freed	Professor Stephen Presser
Professor Thomas Geraghty	Professor Paul Robinson
Professor Stephen B. Goldberg	Professor Victor Rosenblum
Professor John P. Heinz	Professor David VanZandt

UNIVERSITY OF TEXAS SCHOOL OF LAW

Dean, Mark G. Yudof, Chair

Professor David A. Anderson	Professor Thomas O. McGarity
Professor George E. Dix	Professor L.A. (Scot) Powe, Jr.
Professor Mark Gergen	Professor David M. Rabban
Professor Julius G. Getman	Professor John J. Sampson
Professor Steven J. Goode	Professor Jordan Steiker
Professor Douglas Laycock	

