

they couldn't attain electorally. So Ginsburg, in that sense, may look less vulnerable than Bork.

Do you think the conflict of interest in the cable television case is a strong enough issue to refuse confirmation?

In itself, I don't think it's a strong enough issue to do Ginsburg in. But he doesn't have much on the plus side going for him. So that standing by itself, the cable case might be more powerful in terms of weighing in against him than it would if he had a strong, substantive public record. . . . But at this point you and I and all the rest are grasping and grabbing at political straws.

There's not enough substance out there about the guy, his background, to really put your hand out and say, "I've got this thing." Even a guy like Dole is refusing to comment because it's too chancy, you just don't know.

You have a candidate who you thought looked good and almost immediately he's in a conflict of interest situation. So even the Doles — Republicans who wouldn't mind having this judge — aren't coming out for him because Ginsburg, if he has this one thing going against him so soon, may have three or five or six items in his closet that come out when you pry it open.

But it's too early to tell. . . . We're just beginning the "ordeal" of Douglas Ginsburg, and he's just begun his run through the crucible to the United States Supreme Court. And the Democrats in the Senate Judiciary Committee are not going to make it easy for Ginsburg because they are not about to put someone on the Court who could turn the Court's direction far rightward for the next 30 to 40 years.

So they're going to — in a nice way — do their best to "get" Ginsburg, if they can get him on the record. They won't

deny him because of inconsequential considerations.

Do you have anything else you would like to add?

I would say the appointment of Ginsburg, given my own bias, would serve the country badly. The country has cycled back to the center. Lou Harris recently wrote a book called "Inside America" and in it he demonstrates. . . . that the country has moved back towards the Democrats. That doesn't mean the Democrats will elect a president next year. They could if they had their thing together, but they don't.

Still, the Democrats have a duty to themselves and the country as a whole to make certain that yesterday's Reagan right-wing revolution is not secured in place on the Supreme Court by the appointment of Judge Ginsburg. . . . I do think the appointment of Robert Bork or someone like Bork or Ginsburg would have been much more probable and possible in 1981 or 1982. But in 1987 the politics of the country is not the politics of Bork and probably not the politics of Ginsburg. . . .

The Democrats want a moderate, and the country deserves a moderate on the Supreme Court because I don't think that the radical-right point of view commands great support in this country — if it ever did.

Do you think the Democrats will try to delay another nominee until possibly a Democratic president is elected or until Reagan nominates a moderate?

When Abe Fortas was going to be appointed chief justice by Lyndon Johnson — he was an associate justice at that time — the Republicans dug up some "dirt" on Fortas just before the '68 election. The Republicans just made sure that Abe Fortas did not become the chief justice of the Supreme Court because

Johnson was going out and Nixon or someone like him had a shot at the presidency. So they stalled that appointment.

How long can the Democrats prolong this if Ginsburg is not a satisfactory nominee? Well obviously well into November, maybe December, before a judgment is reached. Then if there is a negative judgment, off we go probably into the 1988 political election campaign. Then anything is possible.

On the other hand, you and I as good citizens of the United States — and the Democrats in the United States Senate — know that the Supreme Court should have nine justices sitting. The court should have a chance to do its job and do it properly. As good Americans the Democrats and Republicans in the Senate and you and I want to see the Court at full strength so it can do its job properly.

Right now the court is being stalled by 4-4 decisions. . . . The fact is that a divided court really creates a problem. Even if it isn't 4-4 opinions, . . . the court is made up of nine people. You should have nine people sitting so the body can function properly as people think it should.

That's a larger consideration of good citizenship and political and constitutional propriety. Such a consideration weigh heavily in everyone's calculus.

On the other hand, 1988 is a presidential election year. A hell of a lot hinges on what happens politically in 1988 and just about as much hinges on that appointment — way beyond the 1988 election. My bottom judgment at this time on Ginsburg is that we are not far enough along to know or feel anything for sure. There are too few straws in the wind right now. It's mostly conjecture. Your guess is as good as anyone's. But if you like political drama, we don't lack for excitement.

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