

The CHAIRMAN. Thanks. Dean, who was that?

Ms. PRAGER. Thomas Kuckel.

The CHAIRMAN. You all have known Judge Kennedy for somewhere between 8 and I guess 30 years.

Can any of you shed any light on how Judge Kennedy felt about the major decisions of the time as they came down, whether it was in the early 1970s, in the *Roe* case, or in any other case.

Can any of you shed any light on how he thought or spoke of or reacted to any of those cases?

Mr. SCHABER. I am sitting here trying to think of that, Senator. Because those cases, of course, were discussed with his students.

And I think that he always played the role of both sides of the issue. And I do not recall particular conversations in which he expressed his approval or disapproval.

The CHAIRMAN. Ms. Perdue, you clerked for the Judge. You hear some fairly straightforward and tough testimony about Judge Kennedy as it relates to gender discrimination.

Tell us what you—you made a concluding comment, not much more than a sentence about it. Tell me, if you will, your experience with Judge Kennedy how did he feel about the insensitivity shown by many to women?

And did he demonstrate any insensitivity or discrimination against women in either his decisions or his utterances or his actions toward you or anyone else?

Ms. PERDUE. During the period that I clerked for him, as far as I can recollect, there were not any cases pending before him involving gender discrimination.

And so it did not come up as an issue before him.

With respect to the private clubs issue, it was something I was completely unaware of. It was not enough a part of his life that it was apparent to a clerk. And I was frankly surprised.

My experiences, I can only respond to the question as to how did he act. How did he conduct himself? My coclerk was a male. We were treated as colleagues.

That in itself, incidentally, I found somewhat surprising, given at that point my youth and inexperience, that a judge of the court of appeals would treat his clerks with the level of respect that he did, and accord our ideas with the level of respect that he did.

But there was never any indication that I saw that he viewed—that he had gender bias. He simply treated us as equals. He sought out our views. He distributed the work equally.

And it simply did not seem to be a part of his life to treat people differently.

The CHAIRMAN. Ms. Prager, is it your testimony then that you do not believe that Judge Kennedy would jeopardize the progress that has been made in reviewing gender discrimination under the equal protection clause? Or that he might—do you have doubts about how he would treat gender discrimination cases under the equal protection clause?

Ms. PRAGER. I have some concern that runs beyond those cases, and that comes out of the voting rights case as well, that Judge Kennedy thus far, I think, places a lot of emphasis on the motives that relate to the discrimination.

And I think in that sense he is not at this point as appreciative as I might like him to be about the subtleties of discrimination in this culture, whether it relates to women or minorities or gays.

But I do think that he is a person who has a deep respect for the advancement of the law thus far in these areas, and I do not think we are going to see any backtracking on where we are.

Now that is a very subjective impression on my part.

The CHAIRMAN. Well, that is what I asked you. I understand that. And I realize that none of us know what another person is going to do.

Ms. PRAGER. And this is where I think I come back in my own thinking about this to his qualities of studiousness and deep interest in the law and genuine, I think, openness.

This is a person who I think is going to keep thinking over time, and reevaluating. And what I came down to in these last 7 months is that that was the quality that I was looking for the most.

Mr. SCHABER. Senator Biden?

The CHAIRMAN. Yes, Dean.

Mr. SCHABER. Might I just add that on December the 3rd of 1987, the Sacramento Bee, certainly a liberal newspaper, stated in an editorial concerning this exact matter the fact that Kennedy's actions in the matter of clubs, and his articulate explanation of the performance by him, reflect, "in our opinion, not dogged chauvinism, but a conscientious attempt to become sensitive to an issue that has recently overtaken a great many people of his age and background.

"On that score, Kennedy is precisely the kind of person the country needs if things are really going to change, both in the community and in the court."

I personally feel that is the case. I think his sensitivity has obviously increased in the time when, as a matter of fact, it is increasing quite appropriately in the minds and the hearts of many of us.

The CHAIRMAN. Would it be fair to say that Judge Kennedy was considered part of the establishment in Sacramento?

Mr. SCHABER. I suppose if the establishment consists of—

The CHAIRMAN. The most important people in the community; the ones with the most money and power.

Ms. PRAGER. That is an easy yes, right, Gordon?

Mr. SCHABER. A, I would say that the answer is, A, the money, no, and the power, no. Coming from a long and distinguished family and having a mother who was known as the Sacramentoan of the year and who was engaged in every kind of social and other good that one could think of, to that extent he was well known; but not the power structure.

The CHAIRMAN. Senator?

Senator HEFLIN. He was a Republican, wasn't he?

Mr. SCHABER. Yes, sir. But that is a difference between some of us.

Senator HEFLIN. I appreciate each of you being here. I appreciate your testimony. It is nice to see my old friend Professor Levin. I think he has a record of having appeared before the Judiciary Committee more than any individual. We have seen him many, many times. We appreciate it.