

I think what you have just explained and articulated is the most significant thing that has been said in 3 days.

I for one believe you are correct. I have grave doubts about Judge Kennedy; grave doubts. And quite frankly if I was certain that he was going to rule on the Bench in the Supreme Court exactly how he has been for the last 52 years of his life, I do not see how I could vote for him, to tell you the truth; it would be awfully tough.

But I know from my own experience of standing for office, I know that all of us up here, what the educational process is.

Most of us, all of us, are a product of our background and our culture. As a matter of fact, you and I had a discussion. I asked for your help.

I come from an area where I think I am as attuned as any white American can be to the problems of black Americans, because it is where I come from; it is what I am part of.

But I did not grow up in an area or a community where there were large Hispanic, or even small Hispanic, populations. I mean it was just nonexistent.

And exposure and education are important. It wasn't until 3 years ago that I realized the extent to which Hispanic Americans have been simply the victims of prejudice in the most extreme way; as extreme as any black American in this country have been, particularly in the Southwest, but also in other parts of the country.

And how many civil rights leaders there are, and great heroes there have been.

And so this has had an impact on me, and I think I started out way ahead of the game. And I suspect that same process of going through this will have the same impact on Judge Kennedy. At least that is my fervent hope.

And I thank you for waiting. And I still think you have time to catch your plane. You have half an hour, and it only takes about 14 minutes with luck; 18 minutes without luck; half hour if you are in trouble. So you better go.

Mr. MARTINEZ. Thank you very much.

The CHAIRMAN. Thank you very, very much.

Now, the rest of the panel and those who are waiting to testify, I thank you very, very much for your indulgence.

But this is in fact, as you can tell by the questions and the interest, this is really the first real opportunity we have had to speak to the concerns of a group of a significantly large majority in America who we have not had an opportunity to—we have not had much chance to question, nor have representatives of the community spoken beforehand.

Having said that, now let us—I forget now even the order we were going in. Who would be next, based on the way I called it?

Ms. Feinberg, you will be next. Then I guess it was Mr. Wallace we called next. And then, Kristina, you will be next.

And then we will ask questions of all three.

Ms. Feinberg, thank you.

Ms. FEINBERG. Mr. Chairman and members of the committee, my name is Audrey Feinberg. I am a New York City attorney, and I am appearing on behalf of the Nation Institute, a private foundation dedicated to protecting civil liberties and civil rights.

Since 1984, the Supreme Court Watch project of the Institute has studied the records of nominees in order to foster a more informed debate about appointments to the high court.

Based on our study, Judge Kennedy's record fails to demonstrate a powerful commitment to key constitutional freedoms.

The Nation Institute believes that there should be no presumption of confirmation for any person named to the Supreme Court. A nominee should have to demonstrate that he or she is qualified for the job. In particular, there should be no presumption now, not only because of the vague record of this nominee, but also because of the unmistakable motivation behind this President's pattern of nominations, and because of the fact that the Justice who replaces Lewis Powell will change the direction of the court.

We have studied Judge Kennedy's record in eight areas including criminal law, privacy, freedom of expression and discrimination in employment, education, housing and voting.

It is on issues such as these that a just and free society measures itself. In the law they are our collective conscience. How a judge embraces these core values says much about their view of the Constitution. Is it a robust, full bodied interpretation, in the grand tradition of the Court's finest Justices? Or is it a more rigid view, tolerating not even the moderate, balanced approach of Justice Powell?

Will Judge Kennedy be the conscience of this court?

Based on our study, Judge Kennedy's record is undistinguished at best. I will mention a few of his more troubling opinions.

In one 1982 case, Judge Kennedy joined a dissent suggesting that an airline may impose strict weight requirements on female flight attendants, based on passengers' perceived preferences for slender women. Does Judge Kennedy still believe this today? If the case actually had gone his way, it would mean that customers' gender biases would trump equal protection of the laws. Fortunately, the majority of Judge Kennedy's court rejected his strained view. The case I refer to is *Gedrom v. Continental Airlines*.

In the area of freedom of speech, Judge Kennedy joined an opinion, since vacated by the Supreme Court, upholding the firing of a homosexual from his federal job. The employee had been active in the Seattle Gay Alliance, displayed homosexual advertisements in his automobile window, and publicly indicated his homosexuality. Judge Kennedy failed to recognize the employee's first amendment rights. This case is *Singer v. U.S. Civil Service Commission*.

Members of this committee tried to elicit statements from the nominee that he was sensitive to constitutional values. Many times, however, his answers were simply unresponsive.

For example, Mr. Chairman, I heard you ask whether it would be constitutional for Congress to require affirmative action as a remedy for intentional employment discrimination. While Judge Kennedy indicated support for voluntary programs, he refused to answer your question. Does he truly doubt Congress' authority to fashion remedies to expunge discrimination from the work place?

After listening to what this nominee has said, or more importantly, what he did not say, we are still uncertain whether he would forcefully protect constitutional values.

For this reason, we believe that the Senate needs to probe more deeply into Judge Kennedy's views.

A year and a half ago I testified before this committee at the confirmation hearings of Judge Antonin Scalia. At that time, the Senate approved the nominee, despite his refusal to answer many questions.

This past fall the committee did itself proud by a rigorous examination of Justice Robert Bork. Judge Kennedy should similarly be made to explain. Better to know what he is about before his ascension to the High Court than after.

Until such time as his views are smoked out, and the questions raised by his record are laid to rest, we cannot endorse Judge Kennedy's nomination.

Thank you.

[The statement of Ms. Feinberg follows:]