

I would also say that I am not in the position of being a member of the Ethics Committee that this matter would come before, so at this time I do not have any response one way or the other because I do not know. Otherwise I might be in a conflict of interest between two committees.

But I would say that if there has been any violation, certainly from the Ethics Committee's viewpoint, they would want it thoroughly investigated and thoroughly explored. And if any person has violated any agreement or anything else, I think that they would certainly want to look into it and take appropriate action.

The CHAIRMAN. Any more questions of this panel?

[No response.]

The CHAIRMAN. I again want to express my deep appreciation to the able and distinguished members of this panel who have come and testified. We appreciate your presence and you are now excused.

And we are going to recess now until 1:30. Panel 2 will be on at 1:30.

[Whereupon, at 12:33 p.m., a luncheon recess was taken.]

[Whereupon, at 1:40 p.m., the committee reconvened, Hon. Charles McC. Mathias, Jr., presiding.]

Senator MATHIAS [presiding]. The committee will come to order.

The first panel this afternoon will be Ms. Eleanor Smeal, of the National Organization for Women; Mr. Lawrence Gold, general counsel of the American Federation of Labor and Congress of Industrial Organizations; and Mr. Joseph Rauh, who will appear for the Americans for Democratic Action.

Joe, before you sit down, if you all will rise to be sworn. Raise your right hands. Do you swear the testimony you will give in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. SMEAL. I do.

Mr. GOLD. I do.

Mr. RAUH. I do.

Senator MATHIAS. You did not know how Southern I was when I said "you all." [Laughter.]

Ms. Smeal, do you want to begin the panel's discussion? We will observe the 3-minute rule. The lights will indicate the time.

TESTIMONY OF A PANEL, INCLUDING: ELEANOR CUTRI SMEAL, PRESIDENT, NATIONAL ORGANIZATION FOR WOMEN; LAWRENCE GOLD, GENERAL COUNSEL, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS; AND JOSEPH L. RAUH, JR., ON BEHALF OF AMERICANS FOR DEMOCRATIC ACTION AND LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Ms. SMEAL. Thank you, Senator.

I am delivering this testimony on behalf of the National Organization for Women and the National Women's Political Caucus. As the president of the National Organization for Women, I am representing the largest feminist organization in the United States, that is interested in eliminating sex discrimination in many different areas.

The National Women's Political Caucus is the largest organization of its kind. It is a bipartisan organization, determined to eliminate sex discrimination in the political arena.

Our testimony is based upon a review of some 120 law cases that Judge Scalia wrote at the circuit court level. Of course, the bulk of these cases are in the area of administrative law, so we have to only review those cases that cover, on point, those issues that we are very, very concerned with.

Because the court record was very brief—he has only been on that court 4 years—we would also turn to his writings and journals, and we also turned to his speeches for his opinions in the areas of constitutional law.

There are three significant areas that concern us, and for the reason that we stand today to oppose his nomination as Associate Justice of the U.S. Supreme Court. Those three areas are affirmative action; his hostility toward the enforcement of the remedial antidiscrimination laws passed by Congress; and his philosophy on individual constitutional rights.

Let me move quickly to the areas—and, of course, 3 minutes will not give me adequate time to review his writings and his work. But let me move quickly to the area of affirmative action.

He has been quite clear in what he thinks of affirmative action. To quote: "I have grave doubts about the wisdom of where we are going in affirmative action and in equal protection generally."

He goes on to say: "I frankly find this area an embarrassment to teach."

He says that, "There are examples abound to support my suggestion that this area is full of pretense or self-delusion."

He essentially takes the position of being a foe of affirmative action. I do not think an objective person could read his writings and come up with any other conclusion. In fact, he has a concept that as the son of Sicilian immigrants, he shares no burden to repay a debt to a group his ancestors, he believed, never wronged.

I wanted to call attention to his quotes in this area because at a personal level I find it very difficult to sit here in opposition to the nomination of the first Italian-American. I am a person who believes in breaking down barriers and am the daughter of Italian-American immigrants. But my experience has led me to the exact opposite conclusion. I believe it is necessary to have affirmative action.

I am also very, very concerned with his use of the law and the cases. He seeks to strike down or to most limitedly interpret both race and sex discrimination laws, and he seeks to give the most narrow interpretation on remedies.

For example, on the 9-to-0 decision in sexual harassment that was just handed down, he would have been the lone voice against it, saying sexual harassment does not fall under the sex discrimination restraints laws of title VII.

Senator MATHIAS. I am afraid I have to enforce the 3-minute rule. However, the committee will have an opportunity to ask some questions and get back to some of the examples you are interested in.

[Prepared statement follows:]