

The Effect on Future Nominations

Finally, I would like to say something about why the line I attempt to draw in this testimony is so critical right now. As I said earlier, we have had 101 Justices in 197 years. This comes to an appointment, on the average, every other year. We have, however, had only one appointment in the last nine years. Five of the current Justices were born between 1906 and 1908. It is not unreasonable to expect that there will be five additional Court seats to fill before this decade is through. Going further, the current President and the next three persons to be elected president can be expected nearly to rename the entire Court.

This speaks to the Senate's institutional role. No one now knows who the president will be four, eight, or 12 years from now. No one now knows which party will control the Senate at any of these times. Precedent established with the current nomination will be invoked when future presidents nominate future men and women to sit on the Supreme Court. It would be extremely unfortunate if that precedent revealed a Senate willing to use the confirmation process to reject a nominee because she refused to adopt a particular position on an emerging constitutional question. Adoption of such a senatorial role would seriously weaken the Court and, eventually, the nation.

Thank you very much.

The CHAIRMAN. Our next witness is Ms. Eleanor Smeal, representing the National Organization for Women.

Ms. Smeal, will you hold up your hand and be sworn?

Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. SMEAL. I do.

The CHAIRMAN. You may proceed, Ms. Smeal. Do you want to submit a statement for the record or do you want to speak off the cuff.

Ms. SMEAL. I want to submit a statement for the record.

The CHAIRMAN. All right. Without objection, that will be included. Then try not to duplicate it because there is no use, if your statement is printed, then we do not want what you say to duplicate that.

Ms. SMEAL. I will try not to duplicate it too much but—

The CHAIRMAN. If you want to summarize it—

**TESTIMONY OF ELEANOR CUTRI SMEAL, PRESIDENT,
NATIONAL ORGANIZATION FOR WOMEN**

Ms. SMEAL [continuing]. Highlight it and summarize it, yes.

As president of the National Organization for Women, I am representing today the largest organization dedicated to the advancement of equal rights for women in the United States. On behalf of our membership I would like to urge this committee to confirm the nomination of Judge Sandra Day O'Connor.

This nomination, of course, is truly historic and is a major victory for women's rights. We believe it is both important symbolically

and important actually. We believe that the long fight for women's rights is why we are here today. When we, the National Organization for Women, joined in this fight just 15 years ago, women were totally tokens in law schools and in participation as lawyers in the courts.

We think that Judge O'Connor's performance and her qualifications are more outstanding when you consider how extraordinary they are for a woman of her time and for the pervasive discrimination in the judiciary, in the law practice, during her whole career.

I would like to call attention, and I do not think anybody else has, not only to her experience in the law but to the fact that she has been a homemaker. We believe that this experience as a homemaker and a community volunteer, which is not unique for a woman, will add a unique and vitally new perspective to the Supreme Court.

There has been much made of her legislative record vis-a-vis social issues. We believe that her record indicates a commitment to equal justice under the law, and we believe that her record of sensitivity to women's rights issues is important. We have studied this record and we believe that it shows accomplishments in her concern for women over her total career.

We do not contend that the National Organization for Women agrees with all of the legal and political views of Judge O'Connor. As a matter of fact, we know that our own State organization, Arizona NOW, did oppose Judge O'Connor in some of her positions in her career as a Senator. However, we do not think that total agreement is necessary and we believe that there has been overall a commitment and an understanding of discrimination.

In fact, we think that it would be preposterous if she did not have such an understanding of discrimination because, as the first woman appointment, she will have a unique burden before the Supreme Court. The first black appointment, we would expect, would have been—and is, as a matter of fact—sensitive to discrimination against blacks. We think there should be no less expectation for the first woman appointment.

We believe, on the basis not only of an understanding of her record but upon interviewing many, many people who have worked with her throughout her lengthy career, that she indeed understands discrimination and that she is sensitive to the whole progress of women and minorities under the law.

By the way, we join in the other statements by professional women's organizations and the legal associations representing women. In fact, we also salute Judge O'Connor for her work through these organizations to eliminate sex discrimination. She has been a charter member of the National Association of Women Judges, the Arizona Women Lawyers, and Charter 100, which is a business and professional women's network group. Such groups work to the advancement of women in the professions.

We believe that Judge O'Connor's appointment is extremely important for the advancement of women, and in establishing the principle that there is no such thing as a "woman's place." We know that the opponents to Judge Sandra Day O'Connor say that they are for women's rights and the advancement of women but we warn that they are not. They have opposed women's rights almost

at every significant turn, and we are not surprised by their opposition to Judge O'Connor.

In fact, we think that their questioning of her family values on one limited issue shows their own myopic views of the family. We firmly believe that the first woman Justice before the Supreme Court must by definition not be a traditional woman. However, we do believe that it is in the finest traditions of equality and justice for all.

Therefore, for all these reasons we urge her appointment. We would like to further urge that this committee look at the other 65 vacancies on the Federal district and appellate courts which to date, of the 46 individuals that have been named or confirmed, only 2 are females. We hope that Judge O'Connor is not to be tokenized but is one of many females, for equal justice under the law demands full representation of females in the Court.

Thank you.

The CHAIRMAN. Thank you for your appearance.

[Material follows:]

Testimony of
Eleanor Cutri Smeal
President, National Organization for Women

As President of the National Organization for Women, I am representing today the largest membership organization in the United States dedicated to the advancement of equal political, legal, and economic rights for women. On behalf of NOW's membership, I would like to urge this Committee to confirm the nomination of Judge Sandra Day O'Connor for the position of Associate Justice to the U.S. Supreme Court.

The nomination of Judge Sandra Day O'Connor to the Supreme Court is truly an historic and a major victory for women's rights. After 191 years and 101 male justices, the appointment of the first woman to the Supreme Court is important both symbolically and actually.

The National Organization for Women has long been fighting for equal opportunity for women in law school and in the judiciary. When we began this fight some 15 years ago, women were outnumbered by men 23 to 1 in law school and less than 3% of the lawyers were female. Today some 32% of law school students are female, and over 7½% of all attorneys are female. In the past decade, the percentage of females in the judiciary has increased from 1% to approximately 7%.

The National Organization for Women has appeared before this committee before to voice our concerns about sex discrimination in the law, in the judiciary, and in appointments. The appointment of Judge Sandra Day O'Connor marks an end to the 191 year exclusion of females from the Supreme Court. Further, it not only opens an important door for women, but it also establishes a landmark in the journey toward full political and legal equality for women.

We believe that the appointment of Judge Sandra Day O'Connor is a result of years of work by women's rights advocates who will not accept the tortured reasoning that equal justice under the

law is possible while women are excluded or have merely token representation in the ranks of the judiciary. We hope that the appointment of Judge Sandra Day O'Connor will be the first among many women to the Supreme Court, so that in the not too distant future the sex of an appointee will not be a consideration. Of course, that day is not here, and today's nominee is meritorious both because of her individual achievement and because she is the first woman appointment.

In fact, Judge Sandra Day O'Connor's achievements are even more remarkable considering the sex discrimination she had to face as a woman. The honors that she achieved in the Stanford law school class of 1952, as a law editor and high honor of the Coif, are impressive in their own right and even more outstanding to have been won by a woman in 1952. Her varied career is nothing short of remarkable considering the pervasive sex discrimination against women in the law profession during the 1950's, '60's, and '70's. As Deputy County Attorney, a civilian lawyer for the Army, a lawyer in private practice, an Assistant Attorney General in Arizona, the Majority Leader of the Arizona Senate (the first woman), as Superior Court Judge, and as an Arizona Court of Appeals Judge, she has a wide range of professional experience, unusual and nearly unobtainable for women at that time. Her experience as a homemaker and community volunteer, although not unique for a woman, will add a unique and vitally needed perspective to the Supreme Court.

Much has been made of the legislative record of Judge O'Connor vis-a-vis social issues. Her record indicates a commitment to equal justice under the law.

Her sensitivity to women's rights, we believe, is particularly noteworthy and important. Surely it would be a mockery of justice if the first female appointment to the Supreme Court -- the first woman to have so fully benefited from the work of those who have fought so hard for women's

rights -- would be a woman who was not concerned with the advancement of women. Our investigation of Judge Sandra Day O'Connor's record clearly shows that she has demonstrated a sensitivity to discrimination against women and that she has worked to advance the legal status of women. Among her legislative accomplishments, many concerned women. For example, she:

- introduced and accomplished major revisions in community property law, e.g., abolishing husband management of the marital property.
- introduced and accomplished "sex-neutralizing" code language; state equal pay act.
- introduced and accomplished repeal of protective labor law limiting hours women could work.
- voted for bill allowing distribution of family planning information to minors without parents' approval (1973, SB 1190).
- introduced and accomplished divorce law reform, allowing no-fault; making child's best interest controlling; establishing conciliation court. Laws 1973, Ch. 139.

The National Organization for Women does not purport to agree as an organization with all of Judge O'Connor's legal and political views. For example, Arizona NOW opposed some of the changes in divorce reform Judge O'Connor sponsored while in the Arizona Senate. We believe, however, that discrimination she suffered, her life experiences, and her understanding of discrimination provide a necessary perspective to the Court. If she did not have such an understanding, it would be a travesty. No one would expect that the first Black appointment would be insensitive to discrimination against Blacks. Nor should one expect less of the first woman appointment.

Judge O'Connor has also demonstrated her concern for women's rights through support of professional associations working to eliminate sex discrimination. She is or has been a charter member of the National Association of Women Judges, the Arizona Women

Lawyers, and Charter 100 (a business and professional women's network group). She has been appointed as one of the few non-academics to serve on a state panel of the American Council on Education, which was organized to identify and promote top women to administrative positions in colleges and universities. And, as a victim of employment discrimination herself, she has deplored such unjust practices. In a 1971 interview, she said:

"A woman with four years of education earns typically \$6,694 a year while her male counterpart earns \$11,795 for the same job. The more education a woman has, the wider the gap between men and women's earnings for the same work."

Judge O'Connor's appointment is extremely important for the advancement of all women and enshrines the principle that there is no such thing as a "woman's place." The opponents of Judge Sandra Day O'Connor's appointment, we warn, are really opposed to women's rights and the advancement of women. They have been opposed to every major proposal that would allow for significantly more opportunity for women. We are not surprised by their opposition to Judge O'Connor. The opposition to Judge Sandra Day O'Connor on the basis that she does not "respect traditional family values" only exposes its own myopic views of the family. We believe that many of those opposing her are doing so precisely because she is a woman who did not know her place. A female judge by definition is not a traditional woman. The first woman appointed to the Supreme Court cannot be and is not a traditional woman. In fact, she represents a wide departure from tradition. We believe, however, she also represents the best of American traditions which for too long has been ignored when it comes to females: Equality and Justice for All.

We urge your confirmation of a most remarkable woman whose record speaks for itself, and because her appointment is a long overdue victory for women's rights. Let no one here forget that it has taken the combined efforts of thousands, beginning with Myra Bradwell, and some 191 years, for a woman to be placed in nomination for Associate Justice of the United States Supreme Court.