

The CHAIRMAN. Our next witness is Lynn Schafran, representing the Federation of Women Lawyers' Judicial Screening Panel.

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

Ms. SCHAFRAN. I do.

The CHAIRMAN. Have a seat, Ms. Schafran.

I understand you are one of the most astute lawyers in New York, so we will be glad to hear from you.

TESTIMONY OF LYNN HECHT SCHAFRAN, ESQ., NATIONAL DIRECTOR, FEDERATION OF WOMEN LAWYERS' JUDICIAL SCREENING PANEL

Ms. SCHAFRAN. That is very kind.

I am a lawyer from New York, and I am here in my capacity as national director of the Federation of Women Lawyers' Judicial Screening Panel.

The Federation was organized in 1979 to evaluate the demonstrated commitment to equal justice under law of all individuals, women and men, under consideration for appointment to the Federal bench. It is not our task to duplicate the efforts of the ABA's Standing Committee on the Federal Judiciary. Rather, we are concerned that in addition to demonstrating ability, integrity, and judicial temperament, a nominee also have given tangible evidence of commitment to equal justice for those groups which historically have been legally disadvantaged. To date, this organization has provided the Senate Judiciary Committee with evaluations for more than 120 judicial nominees.

In evaluating Judge O'Connor, we were particularly impressed with her record as a legislator. Her practice on the bench was such that she was not dealing with civil rights and other issues which are usually taken to indicate a judge's position on equal justice matters. We note that as a legislator she took a strong leadership position in areas that addressed the questions of inequity under the law for women, minorities, the disabled, and the poor.

With respect to women's rights, she revised community property laws, labor laws, and many other statutes which were clearly discriminatory. She also took the leadership role in completely revising the Arizona mental health statutes to provide protection for individuals undergoing both voluntary and involuntary treatment for mental disorders, to protect their civil rights, and to bar discrimination against them in housing and employment. Because of her efforts, the Arizona mental health law is now looked on as a leading model for State commitment codes.

Judge O'Connor's concern for the problems of minorities and the poor were further demonstrated by her support for bilingual education and workers' compensation for migrant farm workers, a State supplement to Federal SSI, and the establishment of medicaid in Arizona. This is certainly an outstanding legislative record demonstrating commitment to equal justice.

We would like to note one area of strong concern to us, and that is the area that was addressed extensively by Senator Metzenbaum in the previous 2 days of hearings. It concerns the views expressed by Judge O'Connor in her now infamous and endlessly discussed

Law Review article pertaining to the litigation in Federal courts of civil rights suits brought against State officials under 42 U.S.C. 1983.

As you have all heard by now, Judge O'Connor has suggested that Congress cut back on this kind of litigation in the Federal courts by limiting or disallowing recovery of attorneys' fees. What has not received as much attention is the fact that she believes that there should be a requirement of exhaustion of State remedies as a prerequisite to bringing a Federal action under section 1983.

I would remind this committee that in its own report on the Civil Rights Attorneys' Fees Awards Act in 1976, as well as in the report of the House Judiciary Committee, there was a great stress on the fact that the vast majority of victims of civil rights violations cannot afford legal counsel, and that absent attorneys' fees these civil rights would become, I quote, "hollow pronouncements."

What Judge O'Connor proposes is that we have a massive shift of section 1983 litigation into the State courts by making it possible to recover attorneys' fees only in State courts. I would suggest, without wishing to cast any aspersions on the very many fine State court judges in this country, that this ignores litigants' historically valid reluctance to pursue their remedies in State courts, and that it ignores completely the history of the enactment of section 1983 which shows a clear policy preference for Federal enforcement of federally guaranteed rights.

Now this is an area that it is up to Congress to act in and, although I know that Congress will take Judge O'Connor's words and her suggestions very seriously, we are perhaps even more concerned with the question of exhaustion because as a Supreme Court Justice, if confirmed, she will have an opportunity to speak on exhaustion.

Exhaustion is a well-chosen word. If you have to work your way through State administrative and State court processes before you can get to the Federal courts, you will be exhausted. Requiring exhaustion will dissuade individuals from seeking the relief that section 1983 has promised.

However, we recognize that Judge O'Connor made these suggestions and wrote this article from the perspective of an extremely able and independent State court judge. We trust that as a Supreme Court Justice with a national perspective, she will realize that regrettably not all State court judges are as capable and independent as she, and that vindication of constitutional rights requires that section 1983 plaintiffs be able to choose their own forums and proceed to a swift resolution of their claims.

Despite this concern, I would reiterate that the Federation of Women Lawyers' Judicial Screening Panel believes that Judge O'Connor's legislative record and organizational activities clearly demonstrate her commitment to equal justice and her awareness of many of the problems confronting those segments of our society for whom the struggle for equal justice has been most difficult. These are attributes we seek in every judge but they are essential in a Justice of the Supreme Court, to whom we look for the ultimate protection and vindication of our constitutional rights.

The Federation of Women Lawyers' Judicial Screening Panel supports the confirmation of Judge O'Connor, and we trust that

she will continue to demonstrate this commitment and awareness during what we expect will be many long years of distinguished service as an Associate Justice of the U.S. Supreme Court.

Senator Thurmond, I thank you, and I would ask that the full text of my statement be inserted in the record.

The CHAIRMAN. We want to thank you, Ms. Schafran, for your appearance here and the testimony you have given on this occasion.

[Material follows:]