

Senator BAUCUS. Yes, that was the comment I was going to make. It is possible that the error was made by the author of the memorandum.

Dr. GERSTER. I would hope that is true. I was a little disturbed by the first few questions regarding the lack of memory of the vote, those two votes, in so radical a bill. We have no choice but to accept that but it is astounding that that could be forgotten.

Senator BAUCUS. Well, I must say in the short time I have been in the Senate, I would be hard pressed to remember some of the votes that I have cast in the past year or two. Thank you very much for your testimony.

Dr. GERSTER. Thank you.

Senator BAUCUS. Thank you, Mr. Chairman.

The CHAIRMAN. We have a witness who has to catch a plane right away. Dr. Wilke and Dr. Gerster, would you mind keeping your seats, and we shall bring the other witness up for a minute or two?

The Honorable Joan Dempsey Klein, would you come forward. We understand you are with the National Association of Women Judges, and I understand you have to catch a plane right away.

Would you hold up your hand and be sworn?

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

Judge KLEIN. I do.

The CHAIRMAN. Have a seat, and you may proceed for 5 minutes.

**TESTIMONY OF HON. JOAN DEMPSEY KLEIN, PRESIDING JUSTICE, CALIFORNIA COURT OF APPEALS, AND PRESIDENT, NATIONAL ASSOCIATION OF WOMEN JUDGES**

Judge KLEIN. Thank you.

I understand my comments in their entirety will be made a part of the record, and so I shall summarize my remarks before this honorable committee.

The CHAIRMAN. Without objection, that will be done.

Judge KLEIN. Thank you.

It is with extreme pleasure that I appear before this committee to speak on behalf of the confirmation of the first woman nominee to the Supreme Court. I am before you in my capacity as president of the National Association of Women Judges, which is an association with which over half of the Nation's Federal and State female judges have affiliated, along with a number of male judges.

The purposes of the association include the discussion of legal, educational, social, and ethical problems mutually encountered by Women Judges and the formulation of solutions, and of course, efforts to increase the number of women judges so that the judiciary more appropriately reflects the role of women in a democratic society.

As you might well imagine, the appointment of a woman to assume a place on the highest court has had top priority on our agenda. It seems to have been such a long time coming but, when considered in a historical perspective, perhaps the 191 years is an understandable period of time.

The legal roots of this Nation are in the English common law, which law classified women in the same category as chattels, chil-

dren, and incompetents. As a consequence, women's activities outside the home were extremely restricted, including the opportunity to gain an education.

Even so, the now-famous lady, Myra Bradwell, qualified herself to practice law but denying her the right to do so, the Supreme Court in 1873 said, "The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."

From the beginning, women have had to wage a constant struggle to participate in that civil life. A constitutional amendment was required just 61 years ago to allow women to engage in the most basic and sacred right in a democracy, the right to vote, and although adopted in 1868, the much-heralded clause in the 14th amendment guaranteeing all persons the equal protection of the law did not protect women from laws that discriminate on the basis of sex. As you have been advised and know, of course, it was not until 1971 that the Supreme Court for the first time declared unconstitutional a blatantly sexually discriminatory State law because it violated the 14th amendment.

Societal changes in the lives of American women have come about slowly but surely. Compared to our mean beginnings, the changes are of staggering proportion. Women now constitute over 42 percent of the Nation's work force and over 50 percent of all women are gainfully employed outside the home. Women are seeking professional training in law and are participating in political decisionmaking in ever-increasing numbers. Today's factual knowledge of women indicates that indeed they are engaged in all aspects of civil life.

However, as timely as we consider this appointment to be and as eager as we are to have such an appointment become a reality, we are emphatic that the woman selected be of the highest caliber. By virtue of the fact that so many of us have been the "first woman judge" or the "only woman judge" in any number of situations, we are keenly aware of the spotlight focused on our every act and the scrutiny to which we are continually subjected. Such attention will be greatly magnified in the case of the first woman Justice on the Supreme Court. Her performance will reflect on all of us lesser judicial luminaries, and we want to be assured that she has the capacity to succeed.

For these reasons and more, I am pleased to report that the national association finds the nominee to be exceptionally well qualified. Certain of our members participated in an evaluation of her and made the customary inquiries relating to professional competency, judicial temperament, and integrity. In addition, all of our 14 district directors were contacted and enthusiastically supported my appearance before this committee in her behalf.

Her integrity and morality we believe are above reproach. She is a stable, moderate, gracious, well-adjusted woman.

In conclusion, please allow me to reiterate my pleasure at participating in this historical event on behalf of the National Association of Women Judges. We urge the immediate confirmation of Judge O'Connor so that she can be in place and ready to proceed on the first Monday in October.

The CHAIRMAN. Judge, would you tell us the position you hold?

Judge KLEIN. I am a presiding justice of the California Court of Appeals, sir, and president of this national association.

The CHAIRMAN. Thank you very much.

Are there any questions of this witness?

Judge KLEIN. It doesn't look like there is anybody here to ask.

[Laughter.]

The CHAIRMAN. If there are no questions from this witness, we thank you very much, Judge Klein, for appearing.

Judge KLEIN. Thank you, sir.

[Material follows:]