

The CHAIRMAN. Now, the next panel is No. 4: Ms. Eleanor Smeal, National Organization for Women; Ms. Althea Simmons, NAACP; Ms. Judith L. Litchman, executive director, Women's Legal Defense Fund; Ms. Elaine Jones, associate legal counsel, Legal Defense Fund; and Mr. Benjamin Hooks, chairman of the Leadership Conference on Civil Rights.

Senator Biden I believe has asked these to come in tomorrow out of the 4 hours allotted to the minority. And so we will excuse them now and have them come tomorrow.

Panel No. 5: I will ask them to come around, please. Mr. Jack Clayton, Christian Legal Defense Foundation. Is he here? I do not believe he is here. Mr. Gerald Gilbert, president, Federal Bar Association. Mr. Gerald Ringer, Family Research Council of America. Mr. Bruce Fein, United Families Foundation. Mr. McCotter, Americans for Biblical Government.

Mr. Fein, I believe you are the only one here. If you will hold up your hand and be sworn.

Will the testimony you give in this hearing be the truth, the whole truth and nothing but the truth, so help you God?

Mr. FEIN. Yes.

The CHAIRMAN. Have a seat. Now the others who are not here will have the privilege of putting their statements in the record.

TESTIMONY OF BRUCE FEIN, UNITED FAMILIES FOUNDATION, WASHINGTON, DC

The CHAIRMAN. Mr. Fein, you may go ahead and make a statement here of 3 minutes.

Mr. FEIN. Thank you. My name is Bruce Fein, and I am speaking on behalf of United Families of America. United Families strongly supports President Reagan's nomination of Associate Justice William Rehnquist to be Chief Justice of the United States.

The nomination is a fitting occasion for examining the proper role of the Supreme Court in expounding the Constitution. Next year marks the bicentennial of the Constitution and its profound political wisdom that has enabled our Nation to grow and prosper.

The original Constitution provided a mechanism to alter its mandates consistent with the norm of self government, namely, by constitutional amendment. The Bill of Rights, the Civil War Amendments, the amendments prohibiting discrimination in the franchise based gender or age all testify to the capacity of the people to change the Constitution to accord with perceived contemporary needs.

The U.S. Supreme Court was not envisioned by our Founding Fathers as empowered to effectuate changes in the policies of the Constitution through creative interpretation. That was the major reason why Alexander Hamilton characterized the Federal judiciary as the least dangerous branch of government.

If the electorate is not to lose control over its destiny, it must be alert to the interpretive doctrines employed by Justices of the Supreme Court in addressing constitutional questions.

The contemporary Supreme Court is routinely asked to decide issues concerning abortion, church-state relations, reapportionment, liable of public officials, affirmative action, and discrimina-

tion on the basis of gender or handicap with enormous consequences for national public policy.

If the Justices are not constrained by the intent of our constitutional architects in deciding cases involving these issues, then they may transform our Constitution without popular approval as is required in the amendment process.

James Madison, the Father of the Constitution, lectured that if the sense in which the Constitution was accepted and ratified by the Nation be not the guide in expounding it there can be no security for a faithful exercise of its powers.

And Thomas Jefferson warned that our peculiar security is in the possession of a written Constitution. "Let us not make it a blank paper by construction," he stated. Experience testifies to the wisdom of Madison and Jefferson.

When original intent has been rejected by the Supreme Court as the foundation for constitutional interpretation, the Nation has suffered and our ideals of self-government have been mocked.

One thinks, for example, of Supreme Court decisions denouncing child labor laws. Justice Rehnquist deserves applause for his devotion to our constitutional aspirations and deep understanding of the judiciary's constitutional role.

His 14 years on the Supreme Court glitter with both erudition and general attachment to the intent of our Founding Fathers. At time, Justice Rehnquist has spoken in lonely dissent, but Justice Harlan was the sole dissenter from the odious separate but equal doctrine embraced in *Plessy* against Ferguson, and Chief Justice Stone was the sole objector to the decision upholding a compulsory flag salute for Jehovah's Witnesses attending public schools in *Minersville School District* against *Gobitis*.

Both the Harlan and Stone dissents later became the law of the land when a majority of the Supreme Court accepted their views. United Families of America urges the Senate to confirm Associate Justice William Rehnquist as Chief Justice of the United States. Thank you, Mr. Chairman.

[Statement follows:].