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January 7, 1988

Honorable Joseph Biden
Senate Judiciary Committee
246 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Senate Judiciary Committee Hearings on
Nomination of Judge Anthony M. Kennedy

Dear Senator Biden:

The National Association of Women Judges (NAWJ) is desirous of being on record at the hearings of the Senate Judiciary Committee to determine whether the Senate will consent to President Reagan's nomination of Judge Anthony M. Kennedy to the United States Supreme Court.

Over two-thirds of all women judges sitting in courts of record in the United States are affiliated with the NAWJ and subscribe to its stated purposes.

One such purpose, to which the Association is deeply committed, is the promotion of the fair administration of justice.

National Judicial Education Program

In that regard, the Association and individual members thereof have been involved on the state and national level with certain projects. One such project is the National Education Program to Promote Equality for Women and Men in the

Courts, directed by Lynn Hecht Schafran, Esq. These Programs enable judges to understand how stereotypes, myths and biases about the nature and role of women and men affect fact-finding and decision-making and courtroom interaction. They were the catalysts for the establishment of about 15 task forces by state chief justices throughout the nation to document gender bias in their own court systems and to recommend ways to eliminate it.

NAWJ is very proud of its involvement with this Project from the Project's inception, supporting it with funds from the Women Judges Fund for Justice, and with the personal participation of members.

American Bar Association (ABA) Judicial Canons

Another project to which many members have devoted time and energy, is the effort to get the ABA to amend its code of judicial conduct relating to membership in clubs with discriminatory membership policies. This long, tedious, on-going struggle to date has resulted in the ABA's adoption of only a Commentary to its judicial Canon 2.

Canon 2 proclaims "A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS [SIC] ACTIVITIES." The Commentary thereto states:

"It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired. . . ."

The NAWJ strongly believes the ABA should embrace a canon similar to the one adopted by the California judiciary in 1986.

Modification of California Judicial Canons

California has some 1400 judges, almost all of whom belong to the California Judges Association. Its judiciary boasts a substantial and growing contingent of women judges, the majority of whom are members of the NAWJ. These persons, in cooperation with like-minded male judges, finally were able at the annual conference in 1986 to convince the California Judges Association membership to adopt the following canon:

"C. It is inappropriate for a judge to hold membership in any organization, excluding religious

organizations, that practices invidious discrimination on the basis of race, sex, religion or national origin."

Judge Kennedy's Position

Because of the NAWJ's commitment to the fair administration of justice and because of its leadership role, it is incumbent on the Association to express its concerns with Judge Kennedy's recent, albeit past, membership in at least one all-male club in California.

He was a member of long standing in the Olympic Club, which refuses to admit women members, until shortly after his name was circulated for the Supreme Court vacancy. Such lengthy membership raises questions as to his sensitivity in the area of gender bias.

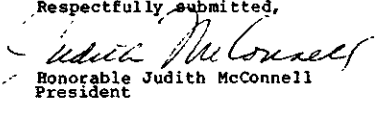
The NAWJ fervently hopes this Honorable Committee will make a thorough and complete inquiry of Judge Kennedy on this subject and satisfy itself in the premises.

Indeed, the Association would urge similar inquiries on the matter of gender bias to be put to all federal judicial nominees coming before this Committee.

Conclusion

The NAWJ appreciates the opportunity to express these views to this Committee. The Association further looks forward to continuing its pursuit of a bias-free judiciary, and its efforts to increase the numbers of women in the federal judiciary, hopefully, with the assistance of this Honorable Committee.

Respectfully submitted,


Honorable Judith McConnell
President

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