

We just do not have additional determinations by the Court of the meaning of that act. We do know, however, that the States, acting in their police power, have adopted a wide range of statutes regulating the possession and use of firearms.

It is a matter of great concern to many people. In Arizona at least that regulation has been limited by and large to a regulation prohibiting the carrying of concealed weapons and provisions limiting the use of weapons at all in certain inhabited areas, regulations concerning the use of firearms by the very young, and also statutes that impose additional penalties on people who commit crimes involving the use of weapons.

It has been the view, at least in our State, of the legislators at this point that the legislative power if it exists to further limit the use or ownership of firearms by citizens for sport purposes or for self-defense should not be limited. I think that has been a policy decision at the legislative level and not tested under the second amendment that is applicable.

Senator DOLE. Judge O'Connor, the other questions I have you have addressed, I think, directly or indirectly. I yield back the balance of my time, and I want to indicate my strong support for your nomination.

Judge O'CONNOR. Thank you, Senator.

The CHAIRMAN. The distinguished Senator from Arizona, Mr. DeConcini.

PROBLEM OF CRIME

Senator DECONCINI. Mr. Chairman, thank you.

Judge O'Connor, thank you for your fine testimony today. It has been exceptional, as was yesterday's.

I would like to address a couple of general areas with you. If you can labor through them I would be most appreciative.

The problem of organized crime, violent crime, and drug-related crime in this country has surfaced once again as a primary subject and a primary objective of many of us in the Senate; and certainly now the administration has come forward with a, not termed a "war on crime," but some specifics; and I think some of them are very positive. A number of Senators here have suggested specific legislation.

I wonder, Judge O'Connor, if you could just characterize in a general sense what you believe—first of all, if you agree that it is the problem that I believe it is; and, second, what you believe the Court can do and should do to participate in a more active way or passive way, but in some way, to bear some of the burden of improving the safety of the citizens of this country?

Judge O'CONNOR. Senator DeConcini, you have done a tremendous amount of work in this particular area, perhaps because of your background in law enforcement in Pima County and your continued interest thereafter at the State level and this body.

It seems to me that it is a subject of tremendous concern to a tremendous number of people.

We have truly an unacceptably high crime rate in our Nation. We certainly have an unacceptably high crime rate in the State of

Arizona and in the city of Phoenix and surrounding areas. All public officials in our area have exhibited a real concern about it.

It seems to me that there is no avenue, whether it be legislative or judicial, that should not be explored to see how we can improve the situation.

If I had an answer to these problems of how to instantly reduce crime I would be more than happy to give them to you; I do not know.

But we must, I think, within the judicial system itself strive constantly to resolve criminal cases rapidly. I think delay in that area simply promotes a disillusionment of people with the ability of the system to function. So we have to be concerned about the speed with which we handle these matters.

I think we have to be concerned within the judicial branch about at what point we can say that a case has been fairly litigated and fairly reviewed on appeal or on post-conviction review and now it is at an end. There must be some way to more effectively do that. That has to be a concern of people on the bench as well as legislators.

We have to be concerned, I suppose, with the imposition of fair and appropriate remedies. It will always be a concern, I am sure, to judges on the bench that there are appropriate facilities in which to place convicted defendants if an incarcerative sentence is appropriate.

We have to be concerned, I think, with insuring that there is the power at least to order those who are convicted to make restitution in appropriate instances and the means of enforcing that.

Senator DECONCINI. Judge O'Connor, you spell it out well. Obviously, you feel the Court has a responsibility and should be a partner in any effort by any government, whether it is State or Federal, to attempt to improve the quality of life by lessening the crime.

Mr. Chairman, I would like to call to the committee's attention a letter, dated September 9, 1981, from Congressman Bob Stump, the Congressman from the third district of Arizona. I understand the chairman is going to insert it in the record in the proper place.

I want to explain to Judge O'Connor that Congressman Stump has written a very laudatory letter, one that is very explicit about serving with you in the Arizona State Senate when he was minority leader and you were majority leader. I will furnish you a copy of it.

I am very pleased that that will be in the record.

The CHAIRMAN. Without objection, that letter will be placed in the record. I intended to do it at the conclusion of the questions by the Senators, but I can do it now if you wish.¹

Senator DECONCINI. No. That will be fine, Mr. Chairman. I just wanted to call it to the attention of Judge O'Connor.

Judge, in your William and Mary law review article—which I am sure now you probably wish you had published and had a royalty from the sale of those that everyone will be clamoring for—you go into the area of more involvement of the State courts. You com-

¹Letter can be found on page 216.

ment on the expanded jurisdiction that Congress has recently granted to the Federal magistrates and the bankruptcy judges.

Do you feel that there is room for continued expansion of the role of these officials and these courts and others like them that might alleviate the burden on the article 3 courts, providing obviously that it does not diminish quality of justice?

Judge O'CONNOR. Senator DeConcini, I suppose we will want to look at the results of the expanded jurisdiction and the bankruptcy level to see in fact how that works and if it is a satisfactory solution.

I think that it is not inappropriate to consider the establishment of additional tribunals or different tribunals to handle a specific aspect of the workload, and I am sure that lawyers everywhere will be wanting to monitor the work of the new bankruptcy court. I think you had a substantial responsibility in connection with that legislation.

Senator DECONCINI. Do you think it is worth pursuing, whether it is on a trial basis or otherwise, an attempt to broaden the jurisdiction of other than article 3 courts to attempt to relieve and provide some other access to the courts other than just the article 3?

Judge O'CONNOR. It merits consideration. I hope that it is not always at the expense of State participation or involvement.

COURT ADMINISTRATION

Senator DECONCINI. The problem of court administration has greatly increased over the past 15 years or so. On the Federal level Chief Justice Burger has been keenly aware of the problem and has attempted in a very positive manner to deal with it; and though I have not agreed with everything he has said or done certainly it is an improvement, in my opinion.

In addition to your work, assuming you are confirmed—and I am sure that that is going to happen—on specific cases that you will handle as an Associate Justice, do you anticipate that you will be active in a broad sense in court administration? Are you bent in that direction at all? Do you feel it is a proper area for you to delve into, and can you share with us any ideas or what your direction will be?

Judge O'CONNOR. Senator DeConcini, I do have an interest in court administration. It is very important to me because, having been a judge, it has become apparent to me that effective court administration is essential in this day of burgeoning caseloads in both the State and the Federal courts. The numbers are such that unless we do the job more efficiently we are not going to do it well.

I think my greatest concern has been in the area of delay. We have made efforts both at the State and Federal level to handle criminal cases more expeditiously, and mandates have been legislated to require that.

This is at the expense then of the ability of the courts to handle expeditiously general civil litigation. People who have to wait, for example, to go to trial in a civil case are being denied justice, in my view, very dramatically. That simply is not acceptable in our system.

We have to find ways to make the system work so that people can have more rapid access to the courts when access is needed. So court administration is a vital tool in this area.

I participated in an experiment in the trial court in Maricopa County to provide speedier trial practices for civil cases generally. That experiment was very, very successful, thanks largely to the efforts of presiding Judge Bloomfield.

I think there is room for improvement nationwide in this area. I have an interest. Whether I will be encouraged or even allowed by virtue of time pressures to engage in that if I were to be confirmed for the U.S. Supreme Court I cannot say, but time and other circumstances permitting I would be very interested.

Senator DECONCINI. You are not reluctant to get involved in it assuming the time is there?

Judge O'CONNOR. No.

Senator DECONCINI. You mentioned the experiment in Maricopa County. After you are confirmed I do not know if we will be able to ask you over, Judge, to testify and give us a little background on that. Can you just tell us very briefly—because it has been a great interest of mine—how that project did succeed?

Judge O'CONNOR. The project for the civil delay reduction had several components. One was that we required that lawyers be ready for trial much sooner than normally is the case, so it compressed their preparation time substantially.

Senator DECONCINI. What happened if they were not ready?

Judge O'CONNOR. There were always avenues if justice truly required it to extend the time, but we found that in the great bulk of cases it was not required.

Then the lawyers were given a specific date on which the matter would go to trial, and there was a no continuance policy. So the lawyers who came in and had a vacation or had other reasons for continuing the case were simply turned aside, and we went ahead on the trial date that was scheduled. If the particular judge to which it was assigned was already in trial then another courtroom and another judge were found, even if we had to go to the community to find judges pro tempore.

The system had the effect of encouraging a great many settlements, and those that did not settle did go to trial as scheduled, and it was very effective.

Senator DECONCINI. Has Maricopa County adopted that on any larger basis, or has any other jurisdiction in Arizona, to your knowledge?

Judge O'CONNOR. Senator, Maricopa County has greatly expanded the program due to its success.

Senator DECONCINI. I want to compliment you and the court system there for that trial experiment. Obviously, I think it has been successful from what I have heard, even though there has been a little moaning and groaning by members of the trial bar there, but I think that is a good sign.

Judge O'CONNOR, much of the Federal courts' judicial and nonjudicial activities are conducted behind and beyond the public eye. The executive and legislative branches have opened many of their proceedings to public scrutiny under the so-called sunshine laws, particularly in those areas of the Federal court nonjudicial work,

such as meetings of the Judicial Conference of the United States or the council meetings of the various circuits where no cases are discussed or no debate is focused and the decisions are administrative or quasi-legislative matters.

Do you think it would help the process at all if some sort of sunshine laws were applicable in this specific area of the judiciary?

Judge O'CONNOR. Senator DeConcini, you mean concerning only the conference matters, or the rulemaking function, or policymaking functions?

Senator DECONCINI. Yes.

Judge O'CONNOR. I really do not know whether sunshine laws would be helpful in that regard or not. I have not had information as yet on the extent to which opening the meetings has been productive or nonproductive. I can speak only from my experience as a legislator in which I did support open meeting laws in Arizona and operated extensively in the public sector under those laws and have found it satisfactory. I have not had experience at the judicial level with that application.

Senator DECONCINI. Do you think it is worthy of some consideration by the judiciary and some debate within the judiciary?

Judge O'CONNOR. Senator DeConcini, that is not inappropriate at all to expect it to be discussed and considered.

Senator DECONCINI. Judge O'Connor, I want to thank you again for your fine testimony the last 2 days.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. Thank you.

Senator Simpson was next, but he is not here. Senator Leahy, the distinguished Senator from Vermont, is next.

JUDICIAL ACTIVISM

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to be here as I mentioned before.

As I think some of us have mentioned to Judge O'Connor, unlike the chairman, for some of us this is the first time that we have been present at the confirmation hearings of a Supreme Court Justice. That is only one small reason for the good attendance by Senate standards at these hearings. I think Judge O'Connor's personality and abilities are the main reason. I am glad we have had this opportunity.

Judge, I would like to follow up on a point raised earlier this morning by Senator Specter.

In *Brown v. Board of Education* I suppose we go back and forth on the question of whether we were trying to determine judicial activism, whether it is a question of judge-made law or simply further research into the old law—why we have *Brown v. Board of Education* as law today and not *Plessey v. Ferguson*.

I would just read from one part of *Brown v. Board of Education* because I quite frankly had not read it since law school days and went back and reread it. That is the part in the Chief Justice's decision where he says,

* * * in approaching this problem we cannot turn the clock back to 1868 when the amendment was adopted or even to 1896 when *Plessey v. Ferguson* was written. We must consider public education in the light of its full development and its present