

Senator METZENBAUM. The Chicago Trib is not making editorial endorsements yet in the Presidential Democratic primaries, are they?

Mr. FULLER. We certainly have not.

Senator METZENBAUM. I was hoping.

Senator MATHIAS. The Chair feels constrained to bring this hearing back to the subject.

Thank you all very much for being with us. We appreciate you being here.

Our fourth panel is Anne Ladky, executive director, Women Employed; Ms. Joan Messing Graff, executive director of the Legal Aid Society of San Francisco; Ms. Audrey Feinberg of the Nation Institute, of NY; Ms. Kate Michelman of the National Abortion Rights Action League.

Ms. FEINBERG. Am I it?

Senator MATHIAS. You are the only one.

Will you please raise your right hand?

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

Ms. FEINBERG. Yes, I do.

Shall I proceed?

Senator MATHIAS. As you know, our rules ask you to make a 3-minute oral presentation. Your full statement will appear in the record.

Senator SIMON. Mr. Chairman, since the other members of the panel are not here, I assume we will enter their statements in the record?

Senator MATHIAS. Their statements will be received in the record if they are received by the committee in a timely fashion.

I might repeat that the record will be open until 4 o'clock on Friday afternoon.

TESTIMONY OF AUDREY FEINBERG, THE NATION INSTITUTE, NEW YORK, NY

Ms. FEINBERG. Members of the committee, I am Audrey Feinberg, an attorney with the New York City law firm of Paul, Weiss, Rifkind, Wharton and Garrison, and I am appearing on behalf of The Nation Institute. It is a foundation dedicated to the protection of civil rights and civil liberties. The Nation Institute is deeply concerned by the record of Judge Scalia for two reasons.

First, a review of Judge Scalia's decisions reveals a record that is far removed from mainstream judicial thought. During his few years on the bench, Judge Scalia's rulings have reflected extreme views, far to the right of even traditional conservative opinions.

Second, Judge Scalia's decisions reveal a remarkably consistent record of failure to support civil rights and civil liberties.

I have examined Judge Scalia's opinions in 14 areas, including sex and race discrimination, freedom of speech and press, privacy, legal representation for the poor, Presidential power in foreign policy, gun control, criminal law, consumer protection, labor law, and other areas. In case after case, Judge Scalia has shown a closed

mind and a relentless insensitivity to the needs of women, minorities, and the poor, and he has slammed the courthouse doors in the faces of the disadvantaged.

Further, Judge Scalia's record raises serious questions about whether he has a political agenda that is incompatible with the impartiality required of Supreme Court Justices. I will offer just a few examples.

On the subject of sex discrimination, Judge Scalia has taken a position that is even farther to the right than the views of Justice Rehnquist. Unlike Justice Rehnquist in the unanimous opinion of the Supreme Court, Judge Scalia's opinion is that sexual harassment in the workplace is not actionable sex discrimination. I refer the committee to the case of *Meritor Savings Bank v. Vinson*.

In addition, Judge Scalia imposes a high burden on all those who sue for race discrimination. The majority of Judge Scalia's court wrote that Judge Scalia's views on race discrimination were "without precedent," and they would "effectively eviscerate" the discrimination laws.

I refer to the case of *Carter v. Ducan-Huggins, Ltd.*

Further, Judge Scalia is firmly opposed to affirmative action, calling it "the most evil fruit of a fundamentally bad seed."

I have merely highlighted the callousness to civil rights that seems to animate Judge Scalia's approach to judging. There must be a conscience in the confirmation process.

We urge the members of this committee to weigh whether an extremist, even one as affable as Judge Scalia, belongs on the Supreme Court for the next generation.

Thank you, and I ask that my full written record be submitted to the committee.

Senator MATHIAS. It will.

[Prepared statement of Ms. Feinberg follows:]