

Senator GRASSLEY. Do you feel your attitude toward the State court system has been affected by the fact that you became a State court of appeals judge after having been a State trial judge?

Judge O'CONNOR. Senator Grassley, I do not think that it altered my perceptions of the capacity of the State court system to consider certain questions. I would say it reinforced those views.

Senator GRASSLEY. Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. Thank you.

Senator Denton is next. He had to go to the White House, and so we have agreed on account of that emergency for him to question in the morning on his second go-round.

Senator Specter, we have now reached you.

LENGTHY COURT DELAYS

Senator SPECTER. Thank you, Mr. Chairman.

Judge O'Connor, in light of the hardship on litigants occasioned by lengthy court delays do you believe it would be useful to limit the time that appellate courts could take to decide cases, along the lines of the Federal Speedy Trial Act for criminal cases?

Judge O'CONNOR. Senator Specter, that is a difficult question in a sense. I am extremely concerned about the length of time that it takes to get civil litigation concluded.

Certainly at the appellate level some cases require a great deal more work and study than others. At the appellate level some cases take longer time within which to gain a consensus than do others. This is a natural part of the process, and so a time limit that would be quite suitable for a run-of-the-mill case for which there are no unusual difficulties and no unusual disagreement among the Justices would not pose particular problems. On the other hand, some other cases could pose problems.

State legislatures have occasionally addressed this problem. Indeed, the legislature in Arizona has and has mandated that judges may not receive their paychecks unless work is completed within a certain amount of time, granted certain exceptions however at the appellate level.

Senator SPECTER. What is the result then of withholding pay?

Judge O'CONNOR. I do not recall any checks having been withheld. Whether that is because the work is done or it is not being enforced I could not tell you.

Senator SPECTER. Is there any realistic way that the Congress could act to limit the courts from writing such long opinions?

Judge O'CONNOR. Senator Specter, I wish there were. I think that we can do a good job in general with less verbiage. At least that is my belief. It is my hope that I would be able to do that. Time will tell.

Senator SPECTER. In dealing with the complexities of the cases, the Supreme Court limits the length of briefs and limits the time for litigants to make their arguments. Why would it not be equally possible to limit the length of court opinions or the length of time that the courts could spend? They deal with the same case in terms of complexity.

Judge O'CONNOR. Senator Specter, I am sure that we would hear if we were to consult with others the fact that some cases require more words to explain than others, some issues are more complex, in some cases the court has to address more issues which have been raised by the litigant, and it obviously takes more words and more paper to do that.

Just speaking in broad generalities, I tend to favor, if you will, brevity but not at the expense of clarity or not at the expense of a failure to analyze or expound on the necessary issues. That is terribly critical.

I am sure litigants would rather have an extra page of paper, if that is what it took, to deal with a specific issue than to have some arbitrary limit on the length.

But just speaking in general terms, I think brevity can be a virtue and dealing with matters expeditiously is clearly a virtue.

Senator SPECTER. Our research has shown that you have not written any dissenting or concurring opinions. Is that accurate?

Judge O'CONNOR. No; Senator Specter, it is not. In the sense of the published opinions it is possible that that is the case, but I have participated on my panels in the court of appeals in many cases, and there have been at least some occasions in which there has been a dissent or a concurring expression by me. Whether it was in a memo decision or decisions I am not sure.

MULTIPLE OFFENDER STATUTES

Senator SPECTER. Judge O'Connor, do you think it wise, as many States have done under multiple offender statutes, to give the trial judge the discretion to impose a life sentence on a person convicted of four major felonies such as robbery, rape, burglary, arson, or drug selling?

Judge O'CONNOR. Do I think that is an appropriate sentence possibility?

Senator SPECTER. Yes; do you think it is wise to give a trial judge the discretion to impose a life sentence for the so-called career criminal defined under many multiple offender statutes as a person who has committed three or perhaps four major felonies among the ones I enumerated?

Judge O'CONNOR. Senator Specter, without expressing any opinion on the eighth amendment implications, if any, I am generally in favor of giving trial judges discretion to impose lengthy sentences if necessary, including up to life sentences, for repeat offenders. That concept seems to me to be generally a valid one.

It has been my observation that a life sentence can be a lot shorter in actuality than a lengthy term of years. Be that as it may, I think discretion is appropriate.

MANDATORY LIFE SENTENCE

Senator SPECTER. When I asked you this morning about the death penalty you commented in addition that you were opposed to mandatory sentences. What would your objection be, if any, to having a mandatory sentence of life in jail for someone who is established as a career criminal—a repeater of violent crimes—by

a standard of having committed three or four major felonies such as rape, robbery, burglary, or drug sales?

Judge O'CONNOR. Senator Specter, this morning in response to your question on the mandatory sentence I indicated that I had voted against a mandatory death penalty statute in Arizona; and that was not intended by me to be an expression of the view that I am opposed to a legislative body mandating certain narrow ranges of sentence for all other crimes. I did not really address that subject, and you now are.

I think that certainly the legislature has a prerogative—a very great prerogative—in the area of determining the range or appropriate sentence for criminal behavior. In fact, I can think of no more frequently exercised topic of discussion and action for State legislative bodies than in that very area.

It is not inappropriate in my view that a legislative body might determine that there are certain very closely defined limits for sentencing of repeat offenders.

Senator SPECTER. Do you agree with the feelings of many of us who have been active in law enforcement that as a generalization judges do not impose sufficiently long sentences for violent criminal repeaters?

Judge O'CONNOR. Senator Specter, it is hard to generalize on that. There is no doubt that the criticism perhaps can be made of some judges with some sentencing patterns.

The public has often been dismayed at the sentencing habits of individual judges. These are very individualized matters, of course, because each defendant in being dealt with by the court at the time of sentencing presents a different set of circumstances as to background, age, and circumstances of the offense, and so forth. It is a very individualized matter.

The expression of the public sentiment and disappointment about judges' sentencing patterns has resulted in some States, such as Arizona, in the adoption of an entirely new sentencing structure in Arizona and in the production of an entirely revised criminal code. The result of that effort was to closely restrict the discretion of judges in sentencing.

To an extent, that effort of the legislature has been frustrated in large measure by the fact that there is not prison space and that the sentences that are mandated and handed down are not served.

So it has been, I am sure, a continuing frustration both to the citizens and the legislators.

FEDERAL AND STATE JUDGE SALARIES

Senator SPECTER. Judge O'Connor, do you believe that there is a real danger to the quality of the Federal bench posed by resignations because of low pay?

Judge O'CONNOR. Senator Specter, this has occurred of course. It has occurred at the Federal level—I have read of instances—and it has occurred at the State level. I am aware of a number of those instances.

I may say that the pay of State judges generally is substantially lower on the average than that of the Federal judges. So if there is a problem at the Federal level it is even more acute at the State

level, and it is and should be a matter of concern to people generally to see that judges receive adequate salaries in my view, sufficient to attract competent people to the bench and hold them.

Senator SPECTER. In a day with so many very deep Federal cuts in so many programs—social programs and perhaps now defense—is it appropriate to raise Federal judges' salaries to offset a significant threat being posed to an inadequate Federal judiciary by current wage levels? This is a question consistently before the Congress.

Judge O'CONNOR. Senator Specter, it seems to me that the Congress has to consider seriously the plight of all officers and employees who are serving at fixed salaries in a period of heavy inflation. It seems to me that that is absolutely crucial that those factors be considered in determining what is appropriate.

Senator SPECTER. Are you familiar with the Supreme Court decision, *United States v. Will*?

Judge O'CONNOR. That is the salary case, Senator Specter?

Senator SPECTER. Yes.

Judge O'CONNOR. Yes—generally I am.

Senator SPECTER. That case posed a situation where for four pay periods the U.S. Supreme Court decided, in favor of judges, to raise the compensation for Associate Justices from \$72,000 to \$88,700, circumventing what is customarily the congressional prerogative to establish compensation for Federal judges and did so on the very narrow ground that where cost-of-living adjustments had been passed by the Congress and in 1 year the President acted to rescind it on September 30, and in another year the President acted to rescind it on the morning of October 1. The Supreme Court of the United States said that where the year had started and the cost-of-living adjustment had gone into effect rescinding it would be a violation of the constitutional prohibition against diminishing the salary of a judge in a term of office.

I think there are many of us who felt that whatever case there was to be made for increases in compensation, including Federal judges, it was a matter that ought to come through the Congress, as with all other Federal employees, as opposed to having the U.S. Supreme Court itself take the bull by the horns, so to speak, and give themselves that kind of a pay raise.

I think that is a case which is not likely to come back, at least in that form, so perhaps that is one where I might appropriately ask if you agree with that specific decision.

Judge O'CONNOR. Senator Specter, I frankly did not study that decision at all. It was not of that great a concern to me because I little expected that I might some day be sitting on that court.

Senator SPECTER. Well, the case may have some extra significance soon.

There has been a fair amount of comment about the desirability of letting the public have a greater understanding of the work of the U.S. Supreme Court, and there has been a popular book written recently, "The Brethren", which perhaps had as sources of information disclosures by employees of the Supreme Court Justices.

Would you consider restricting in anyway your law clerks, your secretaries, or anyone under your direct control from making any such disclosures to journalists?

Judge O'CONNOR. Senator Specter, I do not know whether I would or not. I certainly would instruct employees that they must maintain the strictest confidence concerning pending matters before the Court. That seems to me absolutely crucial and vital. I think little is to be gained by anything less than a very firm policy in that regard.

No doubt other matters such as personalities or the general way in which the business of the Court is conducted are matters which will always be discussed to an extent by those who have knowledge of those aspects.

DIVERSITY IN SUPREME COURT APPOINTMENT

Senator SPECTER. Let me skip quite a number of questions since my time is almost up and ask you one final question, Judge O'Connor. Do you think there is any basis at all for appointing a Supreme Court Justice with a view to diversity on account of sex, race, religion, or geography; or would you think it preferable to appoint the nine most qualified people that could be found for the job, even if they all came from Stanford in the same year and lived in Arizona?

Judge O'CONNOR. Senator Specter, that would undoubtedly guarantee quality if that were to be the case.

[Laughter.]

Senator SPECTER. It might also, in the process, eliminate the potential conflict of interest issue which was raised by Senator Biden with respect to Mr. O'Connor.

Judge O'CONNOR. Very possibly.

Senator SPECTER. Do you think though that there is any realistic basis to look for diversity—more than one woman; perpetuating, if I may say, a black seat on the Supreme Court; or seeking geographical balance in the appointments to the Court?

Judge O'CONNOR. Senator, I think the Court traditionally has reflected some effort to achieve diversity. Anyone who is skilled in the political arena knows that it is often desirable for political reasons to see that diversity in any given body in which the appointment process is being exercised reflect a certain amount of diversity. I would expect the political process to always take that into account to some extent.

At the same time, I think it is quite possible, even though one might want to have diversity, whether it is of geography, race, or sex, to all select people of competence, ability, and quality, because I think people of that capacity abound in all races, in both sexes, and in all parts of the country.

Senator SPECTER. Judge O'Connor, I started this morning by complimenting you on your tour de force of yesterday and I would add to that my compliment for today.

In the interest of hearing the balance of the witnesses who will be coming forward I will refrain from making any commitment as to my own vote, but that is the only reason.

Judge O'CONNOR. Thank you.

Senator SPECTER. Thank you very much, Mr. Chairman.

The CHAIRMAN. I have a letter addressed to me as chairman of the Judiciary Committee, from Congressman Bob Stump of Arizona. It is a very complimentary letter about you, Judge O'Connor. Without objection, we will place this in the record.

Judge O'CONNOR. Thank you, Mr. Chairman.

[Material follows:]