wisdom, and sensitivity. We of the National Women's Political Caucus wish her well, and we urge the Senate to accord her a speedy confirmation.

Thank you.

The CHAIRMAN. Any questions by any member of the committee?

[No response.]

The CHAIRMAN. If not, Ms. Wilson, we thank you for your appearance here today.

Our next witnesses are a panel of two: Dr. Jack Willke and Dr. Carolyn F. Gerster of the National Right to Life Committee. We will ask these two witnesses to come forward.

Will you hold up your hands and be sworn?

Do you swear that the evidence you give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Dr. WILLKE. I do.

Dr. GERSTER. I do.

The CHAIRMAN. Have seats, and we will be pleased to hear from you.

TESTIMONY OF DR. CAROLYN F. GERSTER, VICE PRESIDENT IN CHARGE OF INTERNATIONAL AFFAIRS, NATIONAL RIGHT TO LIFE COMMITTEE, INC.

Dr. GERSTER. I would like to thank Senator Strom Thurmond and the members of the Senate Judiciary Committee for this opportunity to testify at the confirmation hearing.

I am an Arizona physician, cofounder, and first president of the Arizona Right to Life. I have served as director from Arizona to the national board since its formation in 1973. I was immediate past president and am currently vice president in charge of international affairs.

I would like to preface my written remarks by saying that, as a woman in a profession that is still dominated by men, I believe that the nomination of a woman Justice to the U.S. Supreme Court is about 200 years overdue, and I wish with all my heart that I could support the nomination of this fellow Arizonan.

I would like to comment on the Justice Department memorandum that has been mentioned by Senator Denton, a memorandum from Kenneth W. Starr dated July 7, 1981, summarizing his July 6 telephone investigation of Judge Sandra O'Connor's voting record in family-related issues during the period that she served in the Arizona State Senate. The memo reads in part:

> Judge O'Connor indicated, in response to my questions, that she had never been a leader or outspoken advocate on behalf of either pro-life or abortion rights organizations. She knows well the Arizona leader of the right-to-life movement, a prominent female physician in Phoenix, and has never had any disputes or controversies with her.

I was not contacted by the Justice Department for a verification. This statement has been understandably misunderstood by members of the legislature and the media to imply that Judge O'Connor and I share similar beliefs on the abortion issue.

I have known Sandra Day O'Connor since 1972. Our children were members of the same Indian Guide group. We attend the

same church; we have the same friends. She is a very gracious and a very gifted lady.

Quite apart from our social contact, however, we were in an absolute adversary position during 1973 and 1974 due to Senator O'Connor's position on abortion-related legislation when she served as senate majority leader. The Justice Department memorandum is misleading and incomplete regarding Senator O'Connor's voting record from 1970 through 1974.

All of the votes cast on abortion-related bills during this period have been consistently supportive of legalized abortion, with the possible exception of senate bill 1333, which actually is interpreted as a conscience clause allowing physicians and hospital personnel the right to object on moral or religious grounds. What the Starr memorandum fails to mention is that this passed 30 to 0, supported by those on both sides of the abortion question.

In 1970, house bill 20 proposed to remove all restrictions from abortions done by a licensed physician without regard to indication or duration of pregnancy. This bill, which predated the infamous 1973 U.S. Supreme Court decision by 3 years, if passed would have allowed abortion on demand to term. This was a radical concept when compared to existing State laws at that time.

The Justice Department memorandum states that "There is no record of how Senator O'Connor voted, and she indicated that she has no recollection of how she voted." Judge O'Connor has so stated in her testimony. As a reason she gives "the literally thousands of bills" that were presented during her 4 years.

This bill was controversial. It was news in Arizona. It was opposed by the Catholic bishop. It was the subject of editorials. She voted for it twice, in judiciary and again in the majority caucus.

Despite the testimony given earlier, as indicated by Senator Denton there was a choice. There was a bill sponsored by Senator McNulty which was a more moderate bill. Judge O'Connor has said that it was too complicated a mechanism. The bill would have required parental consent for minors, cut off the abortion at 4½ months gestation except for life of the mother, and allowed for informed consent of the girl.

The Justice Department memo states in reference to the 1973 Family Planning Act, "The bill made no express mention of abortion and was not viewed as an abortion measure."

Rather than go on with my testimony which details the errors and omissions page by page of the Starr memorandum, paragraph by paragraph, as my time is growing short I will submit the manuscript. I can say that I came here prepared to tear up my testimony and to enthusiastically support Judge O'Connor's nomination. I believed that, as she had promised, that she would speak on substantive issues, primarily abortion, before this committee. We have not had that assurance.

I am aware that despite the commitment given by the present administration and reiterated in the Republican Party platform that "We will work for the appointment of judges at all levels of the judiciary who respect traditional family values and the sanctity of innocent human life," that there are members sitting here that do not agree with that. However, I think that all members of this committee agree that misrepresentation, evasion, and distortion of

fact have no place in the selection of a Justice to the U.S. Supreme Court.

Thank you.

The CHAIRMAN. Dr. Willke, we will be glad to hear from you.

TESTIMONY OF DR. JOHN C. WILLKE, PRESIDENT, NATIONAL RIGHT TO LIFE COMMITTEE, INC.

Dr. WILLKE. Thank you, Mr. Chairman.

I am John Willke, physician and current president of the National Right to Life Committee. I speak here for that committee, which is composed of the 50 State right-to-life organizations which contain almost 2,000 active chapters and an estimated millions of membership.

We are concerned. We exist as a movement because of the 1973 *Roe* v. *Wade* decision of the U.S. Supreme Court. Just as the *Dred Scott* decision of 1857 was a civil rights outrage in that century, so we see *Roe* v. *Wade* as a similar blot upon our Nation in this century. In *Dred Scott* the Supreme Court ruled that an entire class of living humans were chattel. This decision denied black Americans civil rights and equal protection by law.

Accordingly, let us flash back in time, if you please, to the post-Civil War era, and ask a question. Suppose a nominee to the U.S. Supreme Court at that time was being questioned and his qualifications examined. Suppose that that person as a legislator had previously voted for the continuation of slavery, not once but twice. Suppose also that he had voted on a memorial resolution asking the Congress to pass a constitutional amendment to abolish slavery, and that that nominee had voted against that resolution and for discrimination, not once but twice.

Would not then it be a proper question to that nominee to inquire whether that nominee still held those proslavery convictions? We believe so. We also believe that if such earlier actions were not totally repudiated by that nominee, that such person would be disqualified from sitting on the U.S. Supreme Court.

A century has passed. Another Supreme Court by a similar 7-to-2 decision—*Roe* v. *Wade*—has ruled that another entire class of living humans were to be reduced to the status of property of the owner—the mother; further, that the mother was given the newly created right to privacy, a right that allowed her to have her property—her unborn child—destroyed if she wished. Because of this ruling and because of the Court's interpretation of the word "health," we have a body count today of 1.5 million a year.

There are indeed some single issues which are so fundamental that they ought to be weighed very heavily in considering any lifetime appointment to the Federal bench, among these, racial justice. In 1948, G. Harold Carswell gave a speech in which he said, "I believe that segregation of the races is the proper and only practical and correct way of life in our States." During Senate consideration of his nomination 22 years later, he completely repudiated that position, and yet the matter weighed heavily upon the minds of many Senators, and quite properly so. Concern over that earlier commitment to racial injustice perhaps played an important role in the rejection of his nomination.