Testimony of

Carolyn Gerster, M.D.

Before the

Senate Judiciary Committee

September 10, 1981

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

I am an Arizona physician and was the co-founder and first president of the Arizona Right to Life Committee in October of 1971. I have served as director from Arizona to the board of directors of the National Right to Life Committee since its formation in 1973 and am the immediate past president of the national organization. My current position is Vice President in charge of International Affairs.

I would like to comment on the Justice Department memorandum from Kenneth W. Starr, dated July 7, 1981, summarizing his July 6th telephone investigation of Judge Sandra D. O'Connor's voting record on family-related issues during the period that she served in the Arizona State Senate. The memo reads in part: "Judge O'Connor further 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 verification. This statement has been understandably misunderstood by members of the legislature and 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. She is a

gracious and a gifted lady. Quite apart from our social contact, however, we were in an adversary position during 1973 and 1974 due to Senator O'Connor's position on abortion-related legislation while 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 her votes cast on abortion-related bills during this period have been consistently supportive of legalized abortion with the possible exception of S.B. 1333 which allows physicians, medical personnel, and hospitals the right to refuse to participate in abortion procedures on moral or religious grounds. The bill was actually more related to freedom of conscience than to abortion, per se. The memo neglects to point out that S.B. 1333 passed unanimously (30 to 0) in the Senate, supported by those on both sides of the abortion debate.

In 1970, H.B. 20 proposed to remove all restrictions from abortions done by licensed physicians without regard to indication or duration of pregnancy. This bill, predating the 1973 Supreme Court decision by three years, would, if enacted, have allowed abortion on request to term, a radical concept even when compared to the most permissive of existing state laws in New York.

The Justice Department memo states that, "There is no record of how Senator O'Connor voted, and she indicated that she has no recollection of how she voted."

An article by Howard E. Boyce, Jr., appearing in the Arizona Republic on April 30, 1970, records the vote of all nine members of the Senate Judiciary Committee. Sen. O'Connor is recorded as casting one of the six votes for the bill, as she did in the Senate Rules Committee where the bill later failed to pass (Arizona Republic, May 1, 1970).

There were no votes cast by Senator O'Connor in 1971, as the two proposed abortion bills, H.B. 51 and S.B. 123, were sent

to the Senate Public Health and Welfare Committee where they failed to pass.

In 1972, no abortion-related legislation was introduced, as the legislative route was abandoned by abortion advocates in favor of the judiciary. (The Arizona abortion law was upheld as constitutional on appeal).

In 1973, Senator O'Connor co-sponsored the Family Planning Act (S.B. 1190) which, as originally worded, would have furnished "all medically acceptable family planning methods and information to anyone regardless of age," without parental consent. A state or county physician could refuse to provide "service" on "medical grounds."

The Justice Department memo states that, "The bill made no express mention of abortion and was not viewed by then Senator O'Connor as an abortion measure.... She recalls no controversy with respect to the bill and is unaware of any hearings on the proposed measure."

In 1973, abortion certainly was regarded by many as a "medically acceptable method of family planning" and was so regarded by several state senators as well as the Arizona Republic (see attached Senate Public Health and Welfare minutes and Arizona Republic editorial of March 5, 1973).

S.B. 1190 passed Public Health and Welfare Committee but was held up in Rules Committee. Contrary to the Justice Department memo, hearings were held and the bill certainly was regarded as controversial.

On May 9, 1974, Senator O'Connor was one of nine senators voting against S.B. 1245 after an amendment had been added in the House "prohibiting certain abortions at educational institutions under jurisdiction of the board of regents." Senator O'Connor's vote is explained in the memo as being "on the ground that the Arizona Constitution forbade enactment of legislation treating unrelated subject matters... Her reasons for so voting are nowhere stated on the record."

In the August 1981 "First Monday," the publication of the Republican National Committee, and in a August 3rd letter from the White House to Mrs. Marie Craven of Chicago, Illinois, S.B. 1245 was cited as the only example of Mrs. O'Connor's voting record on abortion-related subjects. The letter erroneously stated that the bill was "turned down" by the Senate because the amendment was unrelated. Actually, S.B. 1245 passed 20 to 9, with one member absent. The amendment was not ruled to be non-germaine.

The most important piece of pro-life legislation is totally omitted from Mr. Starr's memorandum.

In 1974, after a rally of over 10,000 Arizonans and the submission of 35,000 names of registered voters favoring the measure, House Memorial 2002 passed the Arizona House of Representatives by a 41 to 18 vote. The memorial would have petitioned the U.S. Congress to pass a Human Life Amendment to the Constitution restoring legal protection to the unborn child except where the mother's life was in jeopardy.

H.B. 2002 passed the Senate Judiciary by a 4 to 2 vote. Sandra O'Connor is reported in the April 23, 1974, Phoenix Gazette as voting against it even after amended to include rape and incest in addition to life of the mother.

On May 7, 1974, a Phoenix Gazette article quoted Sandra O'Connor as follows: "I'm working hard to see to it that no matter what the personal views of people are, the measure doesn't get held up in our caucus." On May 15, 1974, H.R. 2002 failed to pass the majority caucus by one vote. Sen. Trudy Camping, a member of the Caucus, has submitted a notarized statement that Sen. O'Connor voted against the memorial.

The President's personal assurance to me on January 17, 1980, at the Hilton Hotel in Rye, New York, was reiterated in the 1980 Republican platform, as "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."

I realize that there are some members of the Senate who do not share our beliefs that abortion is the most basic of all civil rights.

There is, however, general agreement that misrepresentation, evasion, and distortion of fact do a disservice to the selection of a justice to the nation's highest court.

I have every confidence that this committee will make a full investigation of this deeply flawed and seriously misleading Justice Department memorandum.

Testimony of
John C. Willke, M. D.

September 10, 1981
Senate Judiciary Committee

I am here to speak for the National Right to Life Committee. Our organization is composed of the fifty state right-to-life organizations which contain almost 2000 active chapters and an estimated membership in the millions.

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 the civil rights outrage of 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 equal protection by law.

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

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