MEMORANDUM

THE WHITE HOUSE

WASHINGTON

August 28, 1981

TO: CAROLYN KUHL
SPECIAL ASSISTANT TO THE ATTORNEY GENERAL

FROM: SHERRIE M. COOKSEY
SPECIAL ASSISTANT FOR LEGISLATIVE AFFAIRS

SUBJECT: DACOWITS

Attached is the following information relating to Judge O'Connor's activities as a member of DACOWITS:

1. Phyllis Schlafly newsletter suggesting that O'Connor promoted sending women into combat.

2. Minutes of the April 6-10, 1975 meeting of the DACOWITS Utilization Subcommittee.

3. Minutes of the November 14-18, 1976 DACOWITS meeting and the recommendations discussed during the meeting (See Tabs R, S, and T.)

Upon review of this information I have concluded that Judge O'Connor was not present, nor did she participate, in the November 1976 DACOWITS recommendation "that laws now preventing women from serving their country in combat and combat related or support positions be repealed". However, I would appreciate it if you would review this material and advise as to your analysis of the situation.

Thank you.

(Please note that you are now in possession of the only copy of the minutes of the November 1976 meetings. These must be returned to the Defense Department following the confirmation hearings.)

THE WHITE HOUSE
WASHINGTON

Letters to
Judge
O'Connor

THE WHITE HOUSE

WASHINGTON

July 18, 1981

Dear Sandra:

Attached are some draft letters with lists of Senators for your consideration. I have also attached a roster that contains their full names, in case you need it. In addition, Ken Duberstein has provided me with a list of House members with whom you visited.

As you know, handwritten notes are preferable, but time consuming. If you need some typing assistance, I will arrange for it through the Justice Department. I feel assured the U.S. Attorney's office or the F.B.I. office in Phoenix could provide you with clerical support.

I did not include drafts for Susan and Dennis DeConcini and Barry Goldwater, since I feel assured you want to make their letters very personal ones. The same may be true for Bob Stump, Mo Udall, John Rhodes, and Eldon Rudd.

Here are some additional thoughts for your letters:

(a) For Domenici, refer to the death of his mother last Wednesday evening in New Mexico and to your New Mexico connection;

(b) For Schmitt, refer to your New Mexico connection;

(c) For Warner, refer to our unsuccessful attempt to follow-up our brief hallway encounter with a more detailed meeting on Friday;

(d) For Tower and Bentsen, refer to your El Paso roots;

(e) For Leahy and Stafford, refer to your Vermont ancestors; and

(f) For Simpson, refer to the Colorado College connection.

With cordial regards,

Sincerely,

Powell

Powell A. Moore
Deputy Assistant to the President
for Legislative Affairs (Senate)

Judge Sandra Day O'Connor
Arizona Court of Appeals
State Capitol
Phoenix, Arizona 85007

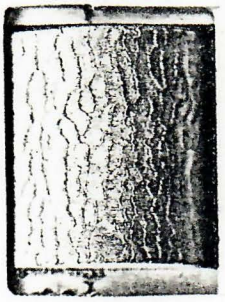
THE WHITE HOUSE
WASHINGTON

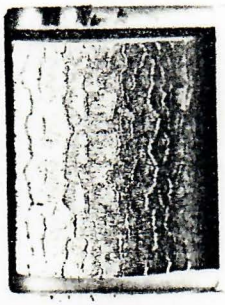
Dear Senator :

I had hoped for the privilege of meeting with you while I was in Washington last week. Unfortunately for me, my schedule was more than full, and it could not be arranged. Perhaps an opportunity to visit with you in the near future will develop.

With cordial regards,

Sincerely,





Date: _____

Issue: _____

YEAS		NAYS	YEAS		NAYS	YEAS		NAYS
	Abdnor		✓	Glenn		✓	Moynihan	
✓	Andrews			Goldwater		✓	Murkowski	
✓	Armstrong		✓	Gorton		✓	Nickles	
	Baker			Grassley		✓	Nunn	
	Baucus		✓	Hart			Packwood	
✓	Bentsen			Hatch		✓	Pell	
	Biden		✓	Hatfield		✓	Percy	
✓	Boren			Hawkins		✓	Pressler	
	Boschwitz		✓	Hayakawa		✓	Proxmire	
✓	Bradley			Heflin			Pryor	
✓	Bumpers		✓	Heinz		✓	Quayle	
✓	Burdick			Helms		✓	Randolph	
✓	Byrd, Harry F		✓	Hollings		✓	Riegle	
	Byrd, Robert C		✓	Huddleston		✓	Roth	
✓	Cannon			Humphrey		✓	Rudman	
	Chafee		✓	Inouye		✓	Sarbanes	
✓	Chiles		✓	Jackson		✓	Sasser	
✓	Cochran			Jepsen			Schmitt	
✓	Cohen		✓	Johnston			Simpson	
✓	Cranston			Kassebaum			Specter	
✓	D'Amato		✓	Kasten		✓	Stafford	
✓	Danforth			Kennedy			Stennis	
	DeConcini			Laxalt			Stevens	
	Denton			Leahy		✓	Symms	
✓	Dixon			Levin			Thurmond	
✓	Dodd		✓	Long			Tower	
	Dole		✓	Lugar		✓	Tsongas	
	Domenici			Mathias		✓	Wallop	
✓	Durenberger			Matsunaga			Warner	
✓	Eagleton		✓	Mattingly			Weicker	
	East			McClure		✓	Williams	
✓	Exon		✓	Melcher		✓	Zorinsky	
✓	Ford			Metzenbaum				
	Garn		✓	Mitchell				

U.S. GOVERNMENT PRINTING OFFICE 81—71186-1pp

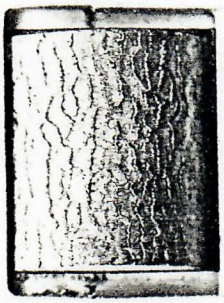
THE WHITE HOUSE
WASHINGTON

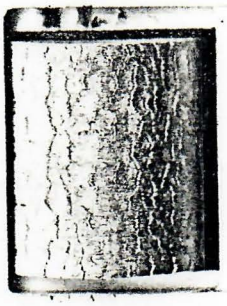
Dear Senator :

Thank you for allowing me to visit with you last week while I was in Washington. It was a privilege to get acquainted with you after having heard so much about you. Our meeting was productive for me, and I look forward to seeing you again when I return to Washington for the hearing of the Senate Judicary Committee.

With cordial regards,

Sincerely,





Date: _____

Issue: _____

YEAS		NAYS	YEAS		NAYS	YEAS		NAYS
	Abdnor			Glenn			Moynihan	
	Andrews			Goldwater			Murkowski	
	Armstrong			Gorton			Nickles	
✓	Baker			Grassley			Nunn	
✓	Baucus			Hart		✓	Packwood	
	Bentsen		✓	Hatch			Pell	
✓	Biden			Hatfield			Percy	
	Boren		✓	Hawkins			Pressler	
✓	Boschwitz			Hayakawa			Proxmire	
	Bradley			Heflin			Pryor	
	Bumpers			Heinz			Quayle	
	Burdick		✓	Helms			Randolph	
	Byrd, Harry F			Hollings			Riegle	
✓	Byrd, Robert C			Huddleston			Roth	
	Cannon		✓	Humphrey			Rudman	
	Chafee			Inouye			Sarbanes	
	Chiles			Jackson			Sasser	
	Cochran		✓	Jepsen			Schmitt	
	Cohen			Johnston		✓	Simpson	
	Cranston		✓	Kassebaum		✓	Specter	
	D'Amato			Kasten			Stafford	
	Danforth		✓	Kennedy		✓	Stennis	
✓	DeConcini		✓	Laxalt		✓	Stevens	
✓	Denton		✓	Leahy			Symms	
	Dixon			Levin			Thurmond	
	Dodd			Long		✓	Tower	
	Dole			Lugar			Tsongas	
✓	Domenici		✓	Mathias			Wallop	
	Durenberger			Matsunaga			Warner	
	Eagleton			Mattingly		✓	Weicker	
✓	East		✓	McClure			Williams	
	Exon			Melcher			Zorinsky	
	Ford		✓	Metzenbaum				
✓	Garn			Mitchell				

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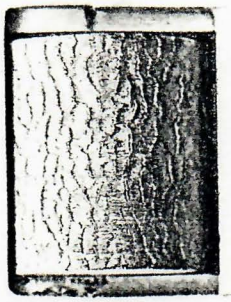
THE WHITE HOUSE
WASHINGTON

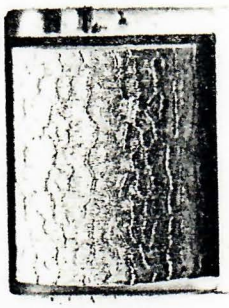
Dear Senator :

Although our encounter was brief, it was a privilege for me to meet you while I was in Washington last week. I look forward to seeing you again when I return to Washington for the hearing of the Senate Judiciary Committee.

With cordial regards,

Sincerely,





Date: .....

Issue: .....

YEAS		NAYS	YEAS		NAYS	YEAS		NAYS
✓	Abdnor			Glenn			Moynihan	
	Andrews			Goldwater			Murkowski	
	Armstrong			Gorton			Nickles	
	Baker			Grassley			Nunn	
	Baucus			Hart			Packwood	
	Bentsen			Hatch			Pell	
	Biden			Hatfield			Percy	
	Boren			Hawkins			Pressler	
	Boschwitz			Hayakawa			Proxmire	
	Bradley			Heflin		✓	Pryor	
	Bumpers			Heinz			Quayle	
	Burdick			Helms			Randolph	
	Byrd, Harry F			Hollings			Riegle	
	Byrd, Robert C			Huddleston			Roth	
	Cannon			Humphrey			Rudman	
✓	Chafee			Inouye			Sarbanes	
	Chiles			Jackson			Sasser	
	Cochran			Jepsen		✓	Schmitt	
	Cohen			Johnston			Simpson	
	Cranston			Kassebaum			Specter	
	D'Amato			Kasten			Stafford	
	Danforth			Kennedy			Stennis	
	DeConcini			Laxalt			Stevens	
	Denton			Leahy			Symms	
	Dixon		✓	Levin			Thurmond	
	Dodd			Long			Tower	
	Dole			Lugar			Tsongas	
	Domenici			Mathias			Wallop	
	Durenberger		✓	Matsunaga		✓	Warner	
	Eagleton			Mattingly			Weicker	
	East			McClure			Williams	
	Exon			Melcher			Zorinsky	
	Ford			Metzenbaum				
	Garn			Mitchell				

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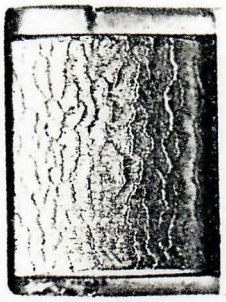
THE WHITE HOUSE
WASHINGTON

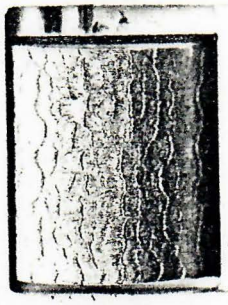
Dear Howell:

Thank you for joining me for breakfast last Friday. The advice and counsel of an old friend is always useful, and I appreciate your kindness and encouragement. I look forward to seeing you when I return to Washington for the hearing of the Senate Judiciary Committee.

With cordial regards,

Sincerely,





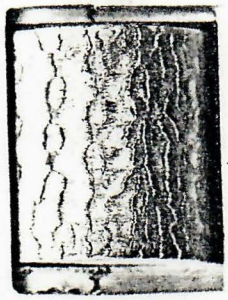
THE WHITE HOUSE
WASHINGTON

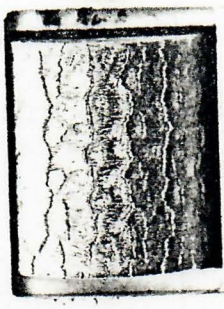
Dear Mr. Chairman:

Many, many thanks for your kindness and courtesy to me while I was in Washington last week. It is reassuring to know that you will be guiding the proceedings as the President's nomination of me is considered in the Senate, and I look forward to your advice and counsel in the weeks ahead.

With respect and good wishes,

Sincerely,





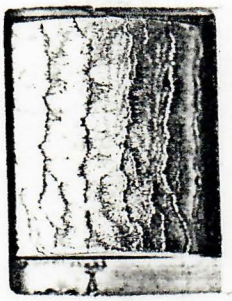
THE WHITE HOUSE
WASHINGTON

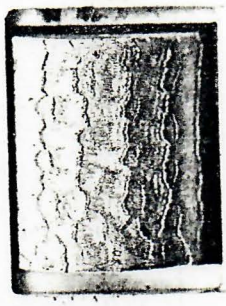
Dear Senator Dole:

I regret that I did not have the privilege of visiting with you while I was in Washington last week, but I know nothing could be placed ahead of your duties as Chairman of the Senate Finance Committee while the tax bill was being debated on the Senate floor. I did, however, have the privilege of visiting briefly with your lovely wife, and I look forward to seeing both of you when I return to Washington for the hearing of the Senate Judiciary Committee.

With cordial regards,

Sincerely,





THE WHITE HOUSE

WASHINGTON

Thomas P. O'Neill, Jr.	Speaker of the House
Jim Wright	Majority Leader of the House
Thomas S. Foley	Majority Whip
Peter Rodino, Jr.	Chairman, House Judiciary Committee
James R. Jones	Chairman, House Budget Committee
Robert H. Michel	Republican Leader
Trent Lott	Republican Whip
Eldon Rudd	Member, House of Representatives (Arizona)
John J. Rhodes	Member, House of Representatives (Arizona)
Robert McClory	Ranking Republican, Judicial Committee

The United States Senate

NINETY-SEVENTH CONGRESS, FIRST SESSION

GEORGE H. W. BUSH, VICE PRESIDENT
STROM THURMOND, PRESIDENT PRO TEMPORE

WILLIAM F. HILDENBRAND, SECRETARY
HOWARD S. LIEBENGOOD, SERGEANT AT ARMS
WILLIAM A. RIDGELY, ASSISTANT SECRETARY

HOWARD O. GREENE, JR., SECRETARY FOR THE MAJORITY
WALTER J. STEWART, SECRETARY FOR THE MINORITY
CHAPLAIN

NAME	RESIDENCE	SERVICE FROM	TERM EXPIRES
James Abdnor	Kennebec, S. Dak	Jan. 3, 1981	Jan. 2, 1987
Mark Andrews	Mapleton, N. Dak	Jan. 3, 1981	Jan. 2, 1987
William L. Armstrong	Aurora, Colo	Jan. 3, 1979	Jan. 2, 1985
Howard H. Baker, Jr.	Huntsville, Tenn	Jan. 3, 1967	Jan. 2, 1985
Max Baucus	Missoula, Mont	Dec. 15, 1978	Jan. 2, 1985
Lloyd Bentsen	Brazoria, Tex	Jan. 3, 1971	Jan. 2, 1983
Joseph R. Biden, Jr.	Hockessin, Del	Jan. 3, 1973	Jan. 2, 1985
David L. Boren	Oklahoma City, Okla.	Jan. 3, 1979	Jan. 2, 1985
Rudy Boschwitz	Minneapolis, Minn	Dec. 30, 1978	Jan. 2, 1985
Bill Bradley	Denville, N.J	Jan. 3, 1979	Jan. 2, 1985
Dale Bumpers	Charleston, Ark	Jan. 3, 1975	Jan. 2, 1987
Quentin N. Burdick	Fargo, N. Dak	Aug. 8, 1960	Jan. 2, 1983
HARRY F. BYRD, Jr.†	Winchester, Va	Nov. 12, 1965	Jan. 2, 1983
Robert C. Byrd	Sophia, W. Va	Jan. 3, 1959	Jan. 2, 1983
Howard W. Cannon	Las Vegas, Nev	Jan. 3, 1959	Jan. 2, 1983
John H. Chafee	Warwick, R.I	Dec. 29, 1976	Jan. 2, 1983
Lawton Chiles	Lakeland, Fla	Jan. 3, 1971	Jan. 2, 1983
Thad Cochran	Jackson, Miss	Dec. 27, 1978	Jan. 2, 1985
William S. Cohen	Bangor, Maine	Jan. 3, 1979	Jan. 2, 1985
Alan Cranston	Los Angeles, Calif	Jan. 3, 1969	Jan. 2, 1987
Alfonse M. D'Amato	Island Park, N.Y	Jan. 3, 1981	Jan. 2, 1987
John C. Danforth	Newburg, Mo	Dec. 27, 1976	Jan. 2, 1983
Dennis DeConcini	Tucson, Ariz	Jan. 3, 1977	Jan. 2, 1983
Jeremiah Denton	Mobile, Ala	Jan. 3, 1981	Jan. 2, 1987
Alan J. Dixon	Belleville, Ill	Jan. 3, 1981	Jan. 2, 1987
Christopher J. Dodd	Norwich, Conn	Jan. 3, 1981	Jan. 2, 1987
Robert Dole	Russell, Kans	Jan. 3, 1969	Jan. 2, 1987
Pete V. Domenici	Albuquerque, N. Mex	Jan. 3, 1973	Jan. 2, 1985
David Durenberger[1]	Minneapolis, Minn	Nov. 8, 1978	Jan. 2, 1983
Thomas F. Eagleton	St. Louis, Mo	Dec. 28, 1968	Jan. 2, 1987
John P. East	Greenville, N.C	Jan. 3, 1981	Jan. 2, 1987
J. James Exon	Lincoln, Nebr	Jan. 3, 1979	Jan. 2, 1985
Wendell H. Ford	Owensboro, Ky	Dec. 28, 1974	Jan. 2, 1987
Jake Garn	Salt Lake City, Utah	Dec. 21, 1974	Jan. 2, 1987
John Glenn	Columbus, Ohio	Dec. 24, 1974	Jan. 2, 1987
Barry Goldwater	Scottsdale, Ariz	Jan. 3, 1969	Jan. 2, 1987
Slade Gorton	Olympia, Wash	Jan. 3, 1981	Jan. 2, 1987
Charles E. Grassley	New Hartford, Iowa	Jan. 3, 1981	Jan. 2, 1987
Gary Hart	Denver, Colo	Jan. 3, 1975	Jan. 2, 1987
Orrin G. Hatch	Salt Lake City, Utah	Jan. 3, 1977	Jan. 2, 1983
Mark O. Hatfield	Salem, Oreg	Jan. 10, 1967	Jan. 2, 1985
Paula Hawkins	Altamonte Springs, Fla.	Jan. 1, 1981	Jan. 2, 1987
S. I. Hayakawa	Mill Valley, Calif	Jan. 2, 1977	Jan. 2, 1983
Howell Heflin	Tuscumbia, Ala	Jan. 3, 1979	Jan. 2, 1985
John Heinz	Pittsburgh, Pa	Jan. 3, 1977	Jan. 2, 1983
Jesse Helms	Raleigh, N.C	Jan. 3, 1973	Jan. 2, 1985
Ernest F. Hollings	Charleston, S.C	Nov. 9, 1966	Jan. 2, 1987
Walter D. Huddleston	Elizabethtown, Ky	Jan. 3, 1973	Jan. 2, 1985
Gordon J. Humphrey	Sunapee, N.H	Jan. 3, 1979	Jan. 2, 1985
Daniel K. Inouye	Honolulu, Hawaii	Jan. 3, 1963	Jan. 2, 1987
Henry M. Jackson	Everett, Wash	Jan. 3, 1953	Jan. 2, 1983
Roger W. Jepsen	Davenport, Iowa	Jan. 3, 1979	Jan. 2, 1985
J. Bennett Johnston	Shreveport, La	Nov. 14, 1972	Jan. 2, 1985
Nancy Landon Kassebaum	Wichita, Kans	Dec. 23, 1978	Jan. 2, 1985
Robert W. Kasten, Jr.	Milwaukee, Wis	Jan. 3, 1981	Jan. 2, 1987
Edward M. Kennedy	Boston, Mass	Nov. 7, 1962	Jan. 2, 1983
Paul Laxalt	Carson City, Nev	Dec. 18, 1974	Jan. 2, 1987
Patrick J. Leahy	Burlington, Vt	Jan. 3, 1975	Jan. 2, 1987
Carl Levin	Detroit, Mich	Jan. 3, 1979	Jan. 2, 1985
Russell B. Long	Baton Rouge, La	Dec. 31, 1948	Jan. 2, 1987
Richard G. Lugar	Indianapolis, Ind	Jan. 3, 1977	Jan. 2, 1983
Charles McC. Mathias, Jr.	Frederick, Md	Jan. 3, 1969	Jan. 2, 1987
Spark M. Matsunaga	Honolulu, Hawaii	Jan. 3, 1977	Jan. 2, 1983
Mack Mattingly	Brunswick, Ga	Jan. 3, 1981	Jan. 2, 1987
James A. McClure	Payette, Idaho	Jan. 3, 1973	Jan. 2, 1985
John Melcher	Forsyth, Mont	Jan. 3, 1977	Jan. 2, 1983
Howard M. Metzenbaum	Shaker Heights, Ohio	Dec. 29, 1976	Jan. 2, 1983
George J. Mitchell[2]	South Portland, Maine	May 19, 1980	Jan. 2, 1983
Daniel Patrick Moynihan	Oneonta, N.Y	Jan. 3, 1977	Jan. 2, 1983
Frank T. Murkowski	Fairbanks, Alaska	Jan. 3, 1981	Jan. 2, 1987
Don Nickles	Ponca City, Okla	Jan. 3, 1981	Jan. 2, 1987
Sam Nunn	Perry, Ga	Nov. 8, 1972	Jan. 2, 1985
Bob Packwood	Portland, Oreg	Jan. 3, 1969	Jan. 2, 1987
Claiborne Pell	Newport, R.I	Jan. 3, 1961	Jan. 2, 1985
Charles H. Percy	Wilmette, Ill	Jan. 3, 1967	Jan. 2, 1985
Larry Pressler	Humboldt, S. Dak	Jan. 3, 1979	Jan. 2, 1985
William Proxmire	Madison, Wis	Aug. 28, 1957	Jan. 2, 1983
David Pryor	Camden, Ark	Jan. 3, 1979	Jan. 2, 1985
Dan Quayle	Huntington, Ind	Jan. 3, 1981	Jan. 2, 1987
Jennings Randolph	Elkins, W. Va	Nov. 5, 1958	Jan. 2, 1985
Donald W. Riegle, Jr.	Flint, Mich	Dec. 30, 1976	Jan. 2, 1983
William V. Roth, Jr.	Wilmington, Del	Jan. 1, 1971	Jan. 2, 1983
Warren Rudman	Nashua, N.H	Dec. 29, 1980	Jan. 2, 1987
Paul S. Sarbanes	Baltimore, Md	Jan. 3, 1977	Jan. 2, 1983
Jim Sasser	Nashville, Tenn	Jan. 3, 1977	Jan. 2, 1983
Harrison H. Schmitt	Silver City, N. Mex	Jan. 3, 1977	Jan. 2, 1983
Alan K. Simpson	Cody, Wyo	Jan. 1, 1979	Jan. 2, 1985
Arlen Specter	Philadelphia, Pa	Jan. 3, 1981	Jan. 2, 1987
Robert T. Stafford	Rutland, Vt	Sept. 16, 1971	Jan. 2, 1983
John C. Stennis	De Kalb, Miss	Nov. 5, 1947	Jan. 2, 1983
Ted Stevens	Anchorage, Alaska	Dec. 24, 1968	Jan. 2, 1985
Steven D. Symms	Caldwell, Idaho	Jan. 3, 1981	Jan. 2, 1987
Strom Thurmond	Aiken, S.C	Nov. 7, 1956	Jan. 2, 1985
John Tower	Wichita Falls, Tex	June 15, 1961	Jan. 2, 1985
Paul E. Tsongas	Lowell, Mass	Jan. 3, 1979	Jan. 2, 1985
Malcolm Wallop	Big Horn, Wyo	Jan. 3, 1977	Jan. 2, 1983
John W. Warner	Middleburg, Va	Jan. 2, 1979	Jan. 2, 1985
Lowell P. Weicker, Jr.	Greenwich, Conn	Jan. 3, 1971	Jan. 2, 1983
Harrison A. Williams, Jr.	Bedminster, N.J	Jan. 3, 1959	Jan. 2, 1983
Edward Zorinsky	Omaha, Nebr	Dec. 28, 1976	Jan. 2, 1983

See other side for footnotes.

†Independent-Democrat.

Democrats in roman—Republicans in *italics*.

January 5, 1981

CHARLES McC. MATHIAS, JR.
MARYLAND

REPLY TO:
358 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510

United States Senate

WASHINGTON, D.C. 20510

July 29, 1981

The Honorable Sandra Day O'Connor
Arizona Court of Appeals
State Capitol
Phoenix, Arizona 85007

Dear Judge O'Connor:

When you were in my office, I was derelict in not showing you my relics of Margaret Brent, the first woman in America to demand the right to vote in 1647. She was unsuccessful at the time, but her aspirations will finally be fulfilled when you take your seat on the bench of the Supreme Court. I have some tiles from the roof of the house where she made her plea. They will be there, however, for your next visit.

I was astonished by the Associated Press account of our meeting, reports of which were apparently given coverage by Arizona's two major dailies. So there would be no doubt, either expressed or implied, about my statements to the press following our meeting, my press secretary telephoned the following statement to the Phoenix Republic and Gazette:

> Senator Mathias confirms the Washington Post story on the meeting which quoted him as saying that their discussion was general and covered a wide variety of issues, including civil rights, civil liberties, the rights of criminal defendants, jurisdiction of the courts, the rules of evidence, and the whole range of matters in which Justices of the Supreme Court are involved. He further said that his conversation with Judge O'Connor did not concern any specific rulings of the Supreme Court.

Both newspapers indicated they would use the statement in stories having to do with our meeting, or with further reports of the confirmation process.

With best wishes,

Sincerely,

Charles McC. Mathias, Jr.

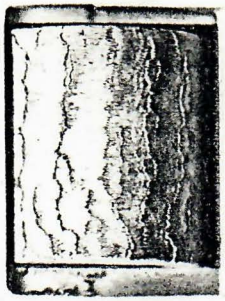
CM:ls

cc: Powell Moore

THE WHITE HOUSE

WASHINGTON

July 28, 1981



Dear Sandra:

Enclosed are two photographs that were taken in the White House Mess during your meeting with Senator Howell Heflin.

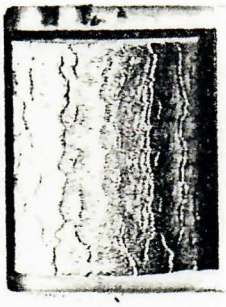
I recommend that you consider autographing one of these pictures to Senator Heflin and returning it to me for delivery.

With cordial regards,

Sincerely,

Powell A. Moore
Deputy Assistant to the
President for Legislative
Affairs (Senate)

The Honorable Sandra Day O'Connor
Judge
Arizona Court of Appeals
State Capitol
Phoenix, Arizona 85007



THE WHITE HOUSE

WASHINGTON

July 27, 1981

Dear Sandra:

In looking at the Senate from the standpoint of your confirmation, I thought it would be useful to review the legal background of all of the members of the Senate. I have asked that this information be assembled and I thought you might be interested in the outcome.

With cordial regards,

Sincerely,

Powell A. Moore
Deputy Assistant to the President
for Legislative Affairs (Senate)

The Honorable Sandra Day O'Connor
Judge
Arizona Court of Appeals
State Capitol
Phoenix, Arizona 85007

PAM:jld

97th Congress -- 1st Session
(Attorneys)

ALABAMA

Heflin -- Attorney; Chief Justice, Alabama Supreme Court ('71-'77)
Denton -- no

ALASKA

Stevens -- Attorney; U.S. Attorney, Fairbanks ('53-'56),
Solicitor of the Department of Interior ('60)
Murkowski -- no

ARIZONA

Goldwater -- no
DeConcini -- Attorney; Pima County Attorney ('73-'76)

ARKANSAS

Bumpers -- Attorney
Pryor -- Attorney

CALIFORNIA

Cranston -- no
Hayakawa -- no

COLORADO

Hart -- Attorney
Armstrong -- no

CONNECTICUT

Weicker -- Attorney
Dodd -- Attorney

DELAWARE

Roth -- Attorney
Biden -- Attorney

FLORIDA

Chiles -- Attorney
Hawkins -- no

GEORGIA

Nunn -- Attorney
Mattingly -- no

HAWAII

Inouye -- Attorney
Matsunaga -- Attorney; assistant public prosecutor, Honolulu ('52-'54)

IDAHO

McClure -- Attorney; former city attorney, Payette, Idaho; prosecuting attorney, Payette County, Idaho
Symms -- no

ILLINOIS

Percy -- no
Dixon -- Attorney; police magistrate ('50)

INDIANA

Lugar -- no
Quayle -- Attorney

IOWA

Jepsen -- no
Grassley -- no

KANSAS

Dole -- Attorney; 4 terms Russell County Attorney ('53-'61)
Kassebaum -- no

KENTUCKY

Huddleston -- no
Ford -- no

LOUISIANA

Long -- Attorney
Johnston -- Attorney

MAINE

Cohen -- Attorney; assistant county attorney, Penobscot County ('68-'70
Mitchell -- Attorney; assistant county attorney, Cumberland County ('71 U.S. Attorney for Maine ('77-'79), U.S. District Judge for Maine ('79)

MARYLAND

Mathias -- Attorney, Assistant Attorney General ('53-'54) for Maryland
Sarbanes -- Attorney

MASSACHUSETTS

Kennedy -- Attorney; assistant district attorney, Suffolk County
Tsongas -- Attorney; deputy assistant attorney general

MICHIGAN

Riegle -- no
Levin -- Attorney; assistant attorney general and general counsel for Michigan Civil Rights Commission; chief appellate defender for city of Detroit ('68-'69)

MINNESOTA

Durenberger -- Attorney
Boschwitz -- Attorney

MISSISSIPPI

Stennis -- Attorney; district prosecuting attorney, 16th Judicial District ('31,'35); circuit judge ('37-'47)
Cochran -- Attorney

MISSOURI

Eagleton -- Attorney; Attorney General of Missouri ('60)
Danforth -- Attorney; Missouri Attorney General ('69-'76)

MONTANA

Melcher -- no
Baucus -- Attorney

NEBRASKA

Zorinsky -- no
Exon -- no

NEVADA

Cannon -- Attorney
Laxalt -- Attorney; district attorney, Ormsby County ('51-'54)

NEW HAMPSHIRE

Humphrey -- no
Rudman -- Attorney; Attorney General of New Hampshire ('70-'76)

NEW JERSEY

Williams -- Attorney
Bradley -- no

NEW MEXICO

Domenici -- Attorney
Schmitt -- no

NEW YORK

Moynihan -- Attorney
D'Amato -- Attorney

NORTH CAROLINA

Helms -- no
East -- Attorney

NORTH DAKOTA

Burdick -- Attorney
Andrews -- no

OHIO

Glenn -- no
Metzenbaum -- Attorney

OKLAHOMA

Boren -- Attorney
Nickles -- no

OREGON

Hatfield -- no
Packwood -- Attorney

PENNSYLVANIA

Heinz -- no
Specter -- Attorney; two terms as district attorney of Philadelphia ('66-'74)

RHODE ISLAND

Pell -- no
Chafee -- Attorney

SOUTH CAROLINA

Thurmond -- Attorney; city attorney and county attorney, circuit court judge
Hollings -- Attorney

SOUTH DAKOTA

Pressler -- Attorney
Abdnor -- no

TENNESSEE

Baker -- Attorney
Sasser -- Attorney

TEXAS

Tower -- no
Bentsen -- Attorney; county judge of Hidalgo County, Texas ('45) for one term

UTAH

Garn -- no
Hatch -- Attorney

VERMONT

Stafford -- Attorney; Rutland County State's Attorney ('47-'51), deputy attorney general of Vermont ('53-'55), attorney general of Vermont ('55-'57)
Leahy -- Attorney, State's Attorney, Chittenden County ('66-'74)

VIRGINIA

Byrd, H. -- no
Warner -- Attorney; assistant U.S. attorney ('56-'60)

WASHINGTON

Jackson -- Attorney; elected prosecuting attorney of Snohomish County ('38)
Gorton -- Attorney; Washington State Attorney General (elected '68, '72, '76)

WEST VIRGINIA

Randolph -- no
Byrd, R. -- Attorney

WISCONSIN

Proxmire -- no
Kasten -- no

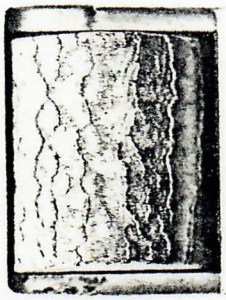
WYOMING

Wallop -- no
Simpson -- Attorney; assistant attorney general of Wyoming ('58-'59)

THE WHITE HOUSE

WASHINGTON

July 22, 1981



Dear Sandra:

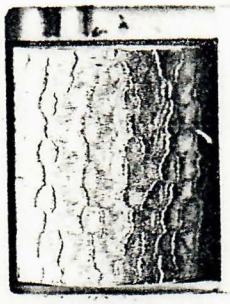
Enclosed are some photographs of your recent visit with the President at the White House. Please select the ones that you would like to have inscribed and autographed and return them to me. I will be glad to contact the Offices of the President, the Vice President and the Attorney General in this connection.

With best regards,

Sincerely,

Powell A. Moore
Deputy Assistant to the
President for Legislative
Affairs (Senate)

The Honorable Sandra Day O'Connor
Judge
Arizona Court of Appeals
State Capitol
Phoenix, Arizona 85007



D R A F T
7/17/81

The Honorable Jesse Helms
United States Senate
Washington, D.C. 20510

Dear Senator Helms:

I appreciate very much your courtesy and hospitality during our visit in your offices on Thursday, July 16. At that time, you furnished me with a letter asking me to address two questions concerning specific constitutional issues raised by the Roe v. Wade decision and concerning my views as to the applicability of the doctrine of stare decisis in constitutional law.

In your letter, you treat the memorandum opinion of Justice Rehnquist in the case of Laird v. Tatum, 408 U.S. 1, and in light of that opinion you suggest that there is no reason for a prospective Justice not to make statements concerning his or her views as to specific issues which might come before the Court. I am pleased to have the opportunity to set forth at greater length than time permitted in our visit the reasons for my refraining from making specific comments on issues that may subsequently come before the Court for decision.

Justice Rehnquist did indeed observe in his memorandum opinion that it is not a ground for disqualification that a judge has, prior to nomination, expressed his ~~then~~ understanding of the meaning of some particular provision of the Constitution. But his opinion in that case, which expressed his own views

rather than the views of the Court, drew a clear line between statements made by an individual prior to being named by the President for judicial appointment and statements made by a designee or nominee of the President. No one comes to the Court, as Justice Rehnquist aptly stated, with a mind that is "completely tabula rasa." Records of past activities or statements by a nominee do not, without more, serve to disqualify a Justice from later sitting in judgment on a particular case, as the illustrations set forth in Justice Rehnquist's opinion suggest. However, a vital distinction exists, and Justice Rehnquist recognized that distinction, as to when such statements can be made.

As Justice Rehnquist clearly stated in the Laird case:

> "In terms of propriety, rather than disqualification, I would distinguish quite sharply between a public statement made prior to nomination for the bench, on the one hand, and a public statement made by a nominee to the bench. For the latter to express any but the most general observation about the law would suggest that, in order to obtain favorable consideration of his nomination, he deliberately was announcing in advance, without benefit of judicial oath, briefs, or argument, how he would decide a particular question that might come before him as a judge." 409 U.S. at 837n.5 (Emphasis added)

These considerations are even more compelling in the instance of a sitting judge who is called upon to rule upon issues in a dispassionate and fair way, setting aside personal viewpoints and preferences. Sitting judges, and certainly one who has been designated by the President as his choice for

appointment to the Supreme Court, must avoid the appearance of deciding issues in advance of a case actually coming before the court. Judges should, in sum, decide legal issues or questions only within the judicial process, not outside of it and unconstrained by the oath of office.

In my judgment, Justice Rehnquist, as a nominee before the United States Senate, adhered to the line identified in his Laird opinion. While acknowledging the Senate's rightful role in defining a nominee's judicial philosophy, Justice Rehnquist stated:

> ". . .The nominee is in an extraordinarily difficult position. He cannot answer a question which would try to engage him in predictions as to what he would do on a specific fact situation or a particular doctrine after it reaches the Court." Hearings at 26.

Similarly, in response to questions from one Senator, Justice Rehnquist stated: "I know you realize, as well as I do, Senator Hart, my obligation to keep my response on the general level rather than trying to address specific questions. . . ." Id., at 30. Other nominees to the Supreme Court have scrupulously drawn the same line as did Justice Rehnquist, and the traditions of the Judiciary Committee, as evidenced by the colloquies of so many of its members in passing upon the qualifications of other nominees to the high Court, attest eloquently to the necessity of rectitude and propriety in a nominee's responses to questions.

In my confirmation hearings, I will, of course, seek to be fully responsive to the questions of the Committee members, subject to the limitations of appropriateness and propriety that must mark all nominees to the Court. The traditions of the Senate and of the Court demand nothing less.

Again, my sincerest thanks for your graciousness and courtesy.

JESSE HELMS
NORTH CAROLINA

United States Senate

WASHINGTON, D.C. 20510

July 16, 1981

The Honorable Sandra Day O'Connor
The United States Supreme Court
Washington, D.C.

Dear Judge O'Connor:

When a person of impeccable credentials and outstanding ability is nominated to a position on the highest court of the land, this nation has reason to be grateful to the President who makes such a nomination. In the case of your nomination, that expectation has been fulfilled.

However, as a Senator with a Constitutional obligation to engage in the giving of advise and consent, I am deeply concerned with the public controversy which has arisen over your legislative record in the Arizona Senate on the issue of abortion. The President has assured me that you are personally opposed to abortion, and that you have observed a conservative judicial philosophy in your tenure on the Arizona court. What is important, however, is not your personal philosophy now or in the past, but rather how your judicial philosophy might affect future rulings as a U.S. Supreme Court Justice. Therefore I am writing to you to give you the opportunity to make a written reply on a matter which is of fundamental importance to millions of Americans, born and unborn.

There has been some suggestion that it would be improper for you to make public statements on issues which might later come up before the Supreme Court. There is, in fact, no legal reason why it would be improper for a prospective Justice to make such statements. That issue was disposed of by Justice Rehnquist in his memorandum on Laird v. Tatum (408 U.S. 1), in which he denies a motion to recuse himself on the grounds of previous public statements. As the Justice said:

> Since most Justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses

> of the Constitution and their interaction with one another. It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers. Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of Constitutional adjudication would be evidence of lack of qualification, not lack of bias.

Indeed, as Justice Rehnquist concluded:

> It is not a ground for disqualification that a judge has prior to his nomination expressed his then understanding of the meaning of some particular provision of the Constitution.

. I believe that this doctrine is sound. Therefore I address to you two questions which could help to relieve the public controversy which has surrounded your nomination:

1. Do you believe that the Supreme Court's decision in Roe v. Wade; 410 U.S. 113 (1973), was a proper exercise of judicial authority under the Constitution and a correct interpretation of the Constiution? If not, how do you believe the Case should have been decided?

2. What is the proper application of the doctrine of stare decisis in constitutional law? Specifically, what is the duty of the United States Supreme Court when it is confronted with a case in which one of its own precedents clearly conflicts with the Constitution as the members of the Court believe it ought properly to be construed?

Your reply to these questions will be gratefully expected.

Sincerely,

Jesse Helms

JESSE HELMS:pd

No. 71-288. LAIRD, SECRETARY OF DEFENSE, ET AL. *v.* TATUM ET AL., 408 U. S. 1. Motion to withdraw opinion of this Court denied. Motion to recuse, *nunc pro tunc*, presented to MR. JUSTICE REHNQUIST, by him denied.*

Memorandum of MR. JUSTICE REHNQUIST.

Respondents in this case have moved that I disqualify myself from participation. While neither the Court nor any Justice individually appears ever to have done so, I have determined that it would be appropriate for me to state the reasons which have led to my decision with respect to respondents' motion. In so doing, I do not wish to suggest that I believe such a course would be desirable or even appropriate in any but the peculiar circumstances present here.[1]

Respondents contend that because of testimony that I gave on behalf of the Department of Justice before the Subcommittee on Constitutional Rights of the Judiciary Committee of the United States Senate at its hearings during the 92d Cong., 1st Sess., on Federal Data Banks, Computers and the Bill of Rights (hereinafter Hearings), and because of other statements I made in speeches related to this general subject, I should have

*[REPORTER'S NOTE: See also *post*, p. 901.]

[1] In a motion of this kind, there is not apt to be anything akin to the "record" that supplies the factual basis for adjudication in most litigated matters. The judge will presumably know more about the factual background of his involvement in matters that form the basis of the motion than do the movants, but with the passage of any time at all his recollection will fade except to the extent it is refreshed by transcripts such as those available here. If the motion before me turned only on disputed factual inferences, no purpose would be served by my detailing my own recollection of the relevant facts. Since, however, the main thrust of respondents' motion is based on what seems to me an incorrect interpretation of the applicable statute, I believe that this is the exceptional case where an opinion is warranted.

disqualified myself from participating in the Court's consideration or decision of this case. The governing statute is 28 U. S. C. § 455, which provides:

> "Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

Respondents also cite various draft provisions of Standards of Judicial Conduct prepared by a distinguished committee of the American Bar Association, and adopted by that body at its recent annual meeting. Since I do not read these particular provisions as being materially different from the standards enunciated in the statute, there is no occasion for me to give them separate consideration.[2]

Respondents in their motion summarize their factual contentions as follows:

> "Under the circumstances of the instant case, MR. JUSTICE REHNQUIST's impartiality is clearly questionable because of his appearance as an expert witness for the Justice Department in Senate hearings inquiring into the subject matter of the case, because of his intimate knowledge of the evidence underlying the respondents' allegations, and because of his public statements about the lack of merit in respondents' claims."

Respondents are substantially correct in characterizing my appearance before the Ervin Subcommittee as an "expert witness for the Justice Department" on the sub-

[2] See S. Exec. Rep. No. 91-12, Nomination of Clement Haynsworth, Jr., 10-11.

ject of statutory and constitutional law dealing with the authority of the Executive Branch to gather information. They are also correct in stating that during the course of my testimony at that hearing, and on other occasions, I expressed an understanding of the law, as established by decided cases of this Court and of other courts, which was contrary to the contentions of respondents in this case.

Respondents' reference, however, to my "intimate knowledge of the evidence underlying the respondents' allegations" seems to me to make a great deal of very little. When one of the Cabinet departments of the Executive Branch is requested to supply a witness for the congressional committee hearing devoted to a particular subject, it is generally confronted with a minor dilemma. If it is to send a witness with personal knowledge of every phase of the inquiry, there will be not one spokesman but a dozen. If it is to send one spokesman to testify as to the department's position with respect to the matter under inquiry, that spokesman will frequently be called upon to deal not only with matters within his own particular bailiwick in the department, but with those in other areas of the department with respect to which his familiarity may be slight. I commented on this fact in my testimony before Senator Ervin's Subcommittee:

> "As you might imagine, the Justice Department, in selecting a witness to respond to your inquiries, had to pick someone who did not have personal knowledge in every field. So I can simply give you my understanding . . . ." Hearings 619.

There is one reference to the case of *Tatum* v. *Laird* in my prepared statement to the Subcommittee, and one reference to it in my subsequent appearance during a

colloquy with Senator Ervin. The former appears as follows in the reported hearings:

> "However, in connection with the case of *Tatum* v. *Laird*, now pending in the U. S. Court of Appeals for the District of Columbia Circuit, one printout from the Army computer has been retained for the inspection of the court. It will thereafter be destroyed." Hearings 601.

The second comment respecting the case was in a discussion of the applicable law with Senator Ervin, the chairman of the Subcommittee, during my second appearance.

My recollection is that the first time I learned of the existence of the case of *Laird* v. *Tatum*, other than having probably seen press accounts of it, was at the time I was preparing to testify as a witness before the Subcommittee in March 1971. I believe the case was then being appealed to the Court of Appeals by respondents. The Office of the Deputy Attorney General, which is customarily responsible for collecting material from the various divisions to be used in preparing the Department's statement, advised me or one of my staff as to the arrangement with respect to the computer print-out from the Army Data Bank, and it was incorporated into the prepared statement that I read to the Subcommittee. I had then and have now no personal knowledge of the arrangement, nor so far as I know have I ever seen or been apprised of the contents of this particular print-out. Since the print-out had been lodged with the Justice Department by the Department of the Army, I later authorized its transmittal to the staff of the Subcommittee at the request of the latter.

At the request of Senator Hruska, one of the members of the Subcommittee, I supervised the preparation of a memorandum of law, which the record of the hearings indicates was filed on September 20, 1971. Respondents refer to it in their petition, but no copy is attached, and the hearing records do not contain a copy. I would expect such a memorandum to have commented on the decision of the Court of Appeals in *Laird* v. *Tatum*, treating it along with other applicable precedents in attempting to state what the Department thought the law to be in this general area.

Finally, I never participated, either of record or in any advisory capacity, in the District Court, in the Court of Appeals, or in this Court, in the Government's conduct of the case of *Laird* v. *Tatum*.

Respondents in their motion do not explicitly relate their factual contentions to the applicable provisions of 28 U. S. C. § 455. The so-called "mandatory" provisions of that section require disqualification of a Justice or judge "in any case in which he has a substantial interest, has been of counsel, is or has been a material witness . . . ."

Since I have neither been of counsel nor have I been a material witness in *Laird* v. *Tatum*, these provisions are not applicable. Respondents refer to a memorandum prepared in the Office of Legal Counsel for the benefit of MR. JUSTICE WHITE shortly before he came on the Court, relating to disqualification. I reviewed it at the time of my confirmation hearings and found myself in substantial agreement with it. Its principal thrust is that a Justice Department official is disqualified if he either signs a pleading or brief or "if he actively participated in any case even though he did not sign a pleading or brief." I agree. In both *United States* v. *United States District Court*, 407 U. S. 297 (1972), for which I was not officially responsible in the Department

but with respect to which I assisted in drafting the brief, and in *S&E Contractors* v. *United States*, 406 U. S. 1 (1972), in which I had only an advisory role which terminated immediately prior to the commencement of the litigation, I disqualified myself. Since I did not have even an advisory role in the conduct of the case of *Laird* v. *Tatum*, the application of such a rule would not require or authorize disqualification here.

This leaves remaining the so-called discretionary portion of the section, requiring disqualification where the judge "is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein." The interpretation and application of this section by the various Justices who have sat on this Court seem to have varied widely. The leading commentator on the subject is John P. Frank, whose two articles, Disqualification of Judges, 56 Yale L. J. 605 (1947), and Disqualification of Judges: In Support of the Bayh Bill, 35 Law & Contemp. Prob. 43 (1970), contain the principal commentary on the subject. For a Justice of this Court who has come from the Justice Department, Mr. Frank explains disqualification practices as follows:

> "Other relationships between the Court and the Department of Justice, however, might well be different. The Department's problem is special because it is the largest law office in the world and has cases by the hundreds of thousands and lawyers by the thousands. For the most part, the relationship of the Attorney General to most of those matters is purely formal. As between the Assistant Attorneys General for the various Departmental divisions, there is almost no connection." *Supra*, 35 Law & Contemp. Prob., at 47.

Indeed, different Justices who have come from the Department of Justice have treated the same or very

similar situations differently. In *Schneiderman* v. *United States*, 320 U. S. 118 (1943), a case brought and tried during the time Mr. Justice Murphy was Attorney General, but defended on appeal during the time that Mr. Justice Jackson was Attorney General, the latter disqualified himself but the former did not. 320 U. S., at 207.

I have no hesitation in concluding that my total lack of connection while in the Department of Justice with the defense of the case of *Laird* v. *Tatum* does not suggest discretionary disqualification here because of my previous relationship with the Justice Department.

However, respondents also contend that I should disqualify myself because I have previously expressed in public an understanding of the law on the question of the constitutionality of governmental surveillance. While no provision of the statute sets out such a provision for disqualification in so many words, it could conceivably be embraced within the general language of the discretionary clause. Such a contention raises rather squarely the question of whether a member of this Court, who prior to his taking that office has expressed a public view as to what the law is or ought to be, should later sit as a judge in a case raising that particular question. The present disqualification statute applying to Justices of the Supreme Court has been on the books only since 1948, but its predecessor, applying by its terms only to district court judges, was enacted in 1911. Mr. Chief Justice Stone, testifying before the Judiciary Committee in 1943, stated:

> "And it has always seemed to the Court that when a district judge could not sit in a case because of his previous association with it, or a circuit court of appeals judge, it was our manifest duty to take the same position." Hearings Before Committee on the Judiciary on H. R. 2808, 78th Cong., 1st Sess.,

> 24 (1943), quoted in Frank, *supra*, 56 Yale L. J., at 612 n. 26.

My impression is that none of the former Justices of this Court since 1911 have followed a practice of disqualifying themselves in cases involving points of law with respect to which they had expressed an opinion or formulated policy prior to ascending to the bench.

Mr. Justice Black while in the Senate was one of the principal authors of the Fair Labor Standards Act; indeed, it is cited in the popular-name index of the 1970 edition of the United States Code as the "Black-Connery Fair Labor Standards Act." Not only did he introduce one of the early versions of the Act, but as Chairman of the Senate Labor and Education Committee he presided over lengthy hearings on the subject of the bill and presented the favorable report of that Committee to the Senate. See S. Rep. No. 884, 75th Cong., 1st Sess. (1937). Nonetheless, he sat in the case that upheld the constitutionality of that Act, *United States* v. *Darby*, 312 U. S. 100 (1941), and in later cases construing it, including *Jewell Ridge Coal Corp.* v. *Local 6167, UMW*, 325 U. S. 161 (1945). In the latter case, a petition for rehearing requested that he disqualify himself because one of his former law partners argued the case, and Justices Jackson and Frankfurter may be said to have implicitly criticized him for failing to do so.[3] But to my knowledge his Senate role with respect to the Act was never a source of criticism for his participation in the above cases.

Mr. Justice Frankfurter had, prior to coming to this Court, written extensively in the field of labor law. The Labor Injunction which he and Nathan Green wrote was considered a classic critique of the abuses by the fed-

[3] See denial of petition for rehearing in *Jewell Ridge Coal Corp.* v. *Local 6167, UMW*, 325 U. S. 897 (1945) (Jackson, J., concurring).

eral courts of their equitable jurisdiction in the area of labor relations. Professor Sanford H. Kadish has stated:

> "The book was in no sense a disinterested inquiry. Its authors' commitment to the judgment that the labor injunction should be neutralized as a legal weapon against unions gives the book its energy and direction. It is, then, a brief, even a 'downright brief' as a critical reviewer would have it." Labor and the Law, in Felix Frankfurter The Judge 153, 165 (W. Mendelson ed. 1964).

Justice Frankfurter had not only publicly expressed his views, but had when a law professor played an important, perhaps dominant, part in the drafting of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §§ 101–115. This Act was designed by its proponents to correct the abusive use by the federal courts of their injunctive powers in labor disputes. Yet, in addition to sitting in one of the leading cases interpreting the scope of the Act, *United States* v. *Hutcheson*, 312 U. S. 219 (1941), Justice Frankfurter wrote the Court's opinion.

Mr. Justice Jackson in *McGrath* v. *Kristensen*, 340 U. S. 162 (1950), participated in a case raising exactly the same issue that he had decided as Attorney General (in a way opposite to that in which the Court decided it). 340 U. S., at 176. Mr. Frank notes that Mr. Chief Justice Vinson, who had been active in drafting and preparing tax legislation while a member of the House of Representatives, never hesitated to sit in cases involving that legislation when he was Chief Justice.

Two years before he was appointed Chief Justice of this Court, Charles Evans Hughes wrote a book entitled The Supreme Court of the United States (Columbia University Press, 1928). In a chapter entitled Liberty, Property, and Social Justice he discussed at some length the doctrine expounded in the case of *Adkins* v. *Children's Hospital*, 261 U. S. 525 (1923). I think that one

would be warranted in saying that he implied some reservations about the holding of that case. See pp. 205, 209–211. Nine years later, Mr. Chief Justice Hughes wrote the Court's opinion in *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379 (1937), in which a closely divided Court overruled *Adkins*. I have never heard any suggestion that because of his discussion of the subject in his book he should have recused himself.

Mr. Frank summarizes his view of Supreme Court practice as to disqualification in the following words:

> "In short, Supreme Court Justices disqualify when they have a dollar interest; when they are related to a party and, more recently, when they are related to counsel; and when the particular matter was in one of their former law offices during their association; or, when in the government, they dealt with the precise matter and particularly with the precise case; otherwise, generally no." *Supra*, 35 Law & Contemp. Prob., at 50.

Not only is the sort of public-statement disqualification upon which respondents rely not covered by the terms of the applicable statute, then, but it does not appear to me to be supported by the practice of previous Justices of this Court. Since there is little controlling authority on the subject, and since under the existing practice of the Court disqualification has been a matter of individual decision, I suppose that one who felt very strongly that public-statement disqualification is a highly desirable thing might find a way to read it into the discretionary portion of the statute by implication. I find little to commend the concept on its merits however, and I am, therefore, not disposed to construe the statutory language to embrace it.

I do not doubt that a litigant in th[illegible]n of respondents would much prefer to argue [illegible]

fore a Court none of whose members had expressed the views that I expressed about the relationship between surveillance and First Amendment rights while serving as an Assistant Attorney General. I would think it likewise true that counsel for Darby would have preferred not to have to argue before Mr. Justice Black; that counsel for Kristensen would have preferred not to argue before Mr. Justice Jackson;[4] that counsel for the United States would have preferred not to argue before Mr. Justice Frankfurter; and that counsel for West Coast Hotel Co. would have preferred a Court which did not include Mr. Chief Justice Hughes.

The Term of this Court just past bears eloquent witness to the fact that the Justices of this Court, each seeking to resolve close and difficult questions of constitutional interpretation, do not reach identical results. The differences must be at least in some part due to differing jurisprudential or philosophical propensities.

MR. JUSTICE DOUGLAS' statement about federal district judges in his dissenting opinion in *Chandler* v. *Judicial Council*, 398 U. S. 74, 137 (1970), strikes me as being equally true of the Justices of this Court:

> "Judges are not fungible; they cover the constitutional spectrum; and a particular judge's emphasis may make a world of difference when it comes to rulings on evidence, the temper of the courtroom, the tolerance for the proffered defense, and the like. Lawyers recognize this when they talk about 'shopping' for a judge; Senators recognize this when they are asked to give their 'advice and consent' to judicial appointments; laymen recognize this

[4] The fact that Mr. Justice Jackson reversed his earlier opinion after sitting in *Kristensen* does not seem to me to bear on the disqualification issue. A judge will usually be required to make any decision as to disqualification before reaching any determination as to how he will vote if he does sit.

> when they appraise the quality and image of the judiciary in their own community."

Since most Justices come to this bench no earlier than their middle years, it would be unusual if they had not by that time formulated at least some tentative notions that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual, but extraordinary, if they had not at least given opinions as to constitutional issues in their previous legal careers. Proof that a Justice's mind at the time he joined the Court was a complete *tabula rasa* in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.

Yet whether these opinions have become at all widely known may depend entirely on happenstance. With respect to those who come here directly from private life, such comments or opinions may never have been publicly uttered. But it would be unusual if those coming from policymaking divisions in the Executive Branch, from the Senate or House of Representatives, or from positions in state government had not divulged at least some hint of their general approach to public affairs, if not as to particular issues of law. Indeed, the clearest case of all is that of a Justice who comes to this Court from a lower court, and has, while sitting as a judge of the lower court, had occasion to pass on an issue that later comes before this Court. No more compelling example could be found of a situation in which a Justice had previously committed himself. Yet it is not and could not rationally be suggested that, so long as the cases be different, a Justice of this Court should disqualify himself for that reason. See, *e. g.*, the statement of Mr. Justice Harlan, joining in *Lewis* v. *Manufacturers National Bank*, 364 U. S. 603, 610 (1961). Indeed, there is weighty authority for this proposition even when the

the same. Mr. Justice Holmes, after his appointment to this Court, sat in several cases which reviewed decisions of the Supreme Judicial Court of Massachusetts rendered, with his participation, while he was Chief Justice of that court. See *Worcester* v. *Street R. Co.*, 196 U. S. 539 (1905), reviewing 182 Mass. 49 (1902); *Dunbar* v. *Dunbar*, 190 U. S. 340 (1903), reviewing 180 Mass. 170 (1901); *Glidden* v. *Harrington*, 189 U. S. 255 (1903), reviewing 179 Mass. 486 (1901); and *Williams* v. *Parker*, 188 U. S. 491 (1903), reviewing 174 Mass. 476 (1899).

Mr. Frank sums the matter up this way:

> "Supreme Court Justices are strong-minded men, and on the general subject matters which come before them, they do have propensities; the course of decision cannot be accounted for in any other way." *Supra*, 35 Law & Contemp. Prob., at 48.

The fact that some aspect of these propensities may have been publicly articulated prior to coming to this Court cannot, in my opinion, be regarded as anything more than a random circumstance that should not by itself form a basis for disqualification.[5]

Based upon the foregoing analysis, I conclude that the applicable statute does not warrant my disqualification in this case. Having so said, I would certainly concede that fair-minded judges might disagree about the matter. If all doubts were to be resolved in favor of disqualification, it may be that I should disqualify myself

[5] In terms of propriety, rather than disqualification, I would distinguish quite sharply between a public statement made prior to nomination for the bench, on the one hand, and a public statement made by a nominee to the bench. For the latter to express any but the most general observation about the law would suggest that, in order to obtain favorable consideration of his nomination, he deliberately was announcing in advance, without benefit of judicial oath, briefs, or argument, how he would decide a particular question that might come before him as a judge.

simply because I do regard the question as a fairly debatable one, even though upon analysis I would resolve it in favor of sitting.

Here again, one's course of action may well depend upon the view he takes of the process of disqualification. Those federal courts of appeals that have considered the matter have unanimously concluded that a federal judge has a duty to *sit* where *not disqualified* which is equally as strong as the duty to *not sit* where *disqualified*. *Edwards* v. *United States*, 334 F. 2d 360, 362 n. 2 (CA5 1964); *Tynan* v. *United States*, 126 U. S. App. D. C. 206, 376 F. 2d 761 (1967); *In re Union Leader Corp.*, 292 F. 2d 381 (CA1 1961); *Wolfson* v. *Palmieri*, 396 F. 2d 121 (CA2 1968); *Simmons* v. *United States*, 302 F. 2d 71 (CA3 1962); *United States* v. *Hoffa*, 382 F. 2d 856 (CA6 1967); *Tucker* v. *Kerner*, 186 F. 2d 79 (CA7 1950); *Walker* v. *Bishop*, 408 F. 2d 1378 (CA8 1969). These cases dealt with disqualification on the part of judges of the district courts and of the courts of appeals. I think that the policy in favor of the "equal duty" concept is even stronger in the case of a Justice of the Supreme Court of the United States. There is no way of substituting Justices on this Court as one judge may be substituted for another in the district courts. There is no higher court of appeal that may review an equally divided decision of this Court and thereby establish the law for our jurisdiction. See, *e. g.*, *Tinker* v. *Des Moines School District*, 258 F. Supp. 971 (SD Iowa 1966), affirmed by an equally divided court, 383 F. 2d 988 (CA8 1967), certiorari granted and judgment reversed, 393 U. S. 503 (1969). While it can seldom be predicted with confidence at the time that a Justice addresses himself to the issue of disqualification whether or not the Court in a particular case will be closely divided, the disqualification of one Justice of this Court raises the possibility of an affirmance of the judgment below by an

equally divided Court. The consequence attending such a result is, of course, that the principle of law presented by the case is left unsettled. The undesirability of such a disposition is obviously not a reason for refusing to disqualify oneself where in fact one deems himself disqualified, but I believe it is a reason for not "bending over backwards" in order to deem oneself disqualified.

The prospect of affirmance by an equally divided Court, unsatisfactory enough in a single case, presents even more serious problems where companion cases reaching opposite results are heard together here. During the six months in which I have sat as a Justice of this Court, there were at least three such instances.[6] Since one of the stated reasons for granting certiorari is to resolve a conflict between federal courts of appeals, the frequency of such instances is not surprising. Yet affirmance of each of such conflicting results by an equally divided Court would lay down "one rule in Athens, and another rule in Rome" with a vengeance. And since the notion of "public statement" disqualification that I understand respondents to advance appears to have no ascertainable time limit, it is questionable when or if such an unsettled state of the law could be resolved.

The oath prescribed by 28 U. S. C. § 453 that is taken by each person upon becoming a member of the federal judiciary requires that he "administer justice without respect to persons, and do equal right to the poor and to the rich," that he "faithfully and impartially discharge and perform all the duties incumbent upon [him] . . . agreeably to the Constitution and laws of the United States." Every litigant is entitled to have his case heard by a judge mindful of this oath. But neither the oath, the disqualification statute, nor the

[6] *Branzburg* v. *Hayes*, 408 U. S. 665 (1972); *Gelbard* v. *United States*, 408 U. S. 41 (1972); *Evansville Airport* v. *Delta Airlines Inc.*, 405 U. S. 707 (1972).

practice of the former Justices of this Court guarantees a litigant that each judge will start off from dead center in his willingness or ability to reconcile the opposing arguments of counsel with his understanding of the Constitution and the law. That being the case, it is not a ground for disqualification that a judge has prior to his nomination expressed his then understanding of the meaning of some particular provision of the Constitution.

Based on the foregoing considerations, I conclude that respondents' motion that I disqualify myself in this case should be, and it hereby is, denied.[7]

Probable Jurisdiction Noted or Postponed

No. 71–1476. GAFFNEY *v.* CUMMINGS ET AL. Appeal from D. C. Conn. Probable jurisdiction noted. Reported below: 341 F. Supp. 139.

No. 72–77. NORWOOD ET AL. *v.* HARRISON ET AL. Appeal from D. C. N. D. Miss. Probable jurisdiction noted. Reported below: 340 F. Supp. 1003.

[7] Petitioners in *Gravel* v. *United States*, 408 U. S. 606 (1972), have filed a petition for rehearing which asserts as one of the grounds that I should have disqualified myself in that case.* Because respondents' motion in *Laird* was addressed to me, and because it seemed to me to be seriously and responsibly urged, I have dealt with my reasons for denying it at some length. Because I believe that the petition for rehearing in *Gravel*, insofar as it deals with disqualification, possesses none of these characteristics, there is no occasion for me to treat it in a similar manner. Since such motions have in the past been treated by the Court as being addressed to the individual Justice involved, however, I do venture the observation that in my opinion the petition insofar as it relates to disqualification verges on the frivolous. While my peripheral advisory role in *New York Times Co.* v. *United States* 403 U. S. 713 (1971), would have warranted disqualification had I been on the Court when that case was heard, it could not conceivably warrant disqualification in *Gravel*, a different case raising entirely different constitutional issues.

*[REPORTER'S NOTE: See *post*, p. 902.]

The Communists Are Out To Rule the World by Destroying U. S.

COME, TOO!

MARCH FOR VICTORY

BE THERE!

A Great Anti-Communist Pro-American Rally in Our Nation's Capital

October 3, 1981 ★ Pennsylvania Ave. ★ Washington Monument 12 to 5 p.m.

A Watching World Is Waiting Your Answer — Our Enemies, Our Friends, Our Country

U.S. *vs.* U.S.S.R.

A numerical comparison of 1976 and ***1981***

	U.S.	U.S.S.R.
Strategic nuclear warheads	6,842 ***7,192***	2,943 ***6,302***
Strategic nuclear launchers	1,710 ***1,628***	2,375 ***2,384***
Submarines	115 ***121***	329 ***370***
Large warships	210 ***223***	257 ***268***
Tanks	9,181 ***11,560***	42,000 ***48,000***
Artillery	4,955 ***5,140***	13,900 ***19,300***
Combat aircraft	3,665 ***3,988***	4,740 ***4,885***
Manpower in millions	2.13 ***2.09***	4.88 ***4.84***

Source: John M. Collins, Congressional Research Service — TIME Chart by Renee Klein

- Save America From Communism and Socialism
- Win the Ideological Warfare With Communism
- Back the Pentagon — Be Number One
- The Vietnam Syndrome Is With Us Again
- Stop Everything That Will Weaken This Country for a Communist Takeover
- Identify the KGB in the United Nations, Washington, and the World Council of Churches
- Topple Castro
- Expose Communism — Support Capitalism
- Rally the Anti-Communists of Our Country
- Back South Korea, Free China, The Philippines and All Free People of Southeast Asia
- No Aid to Nicaragua
- Support the Anti-Communists in Africa and Latin America
- Save Central America
- No Guns for the Communists
- Do Not Let Marxism Fill the Vacuum
- Repudiate Pornography
- Stop Financing Abortion and Destroying the Family
- Defend First Amendment Rights, Free Speech of Radio Broadcaster, Oppose the FCC
- Restore the Monroe Doctrine
- Reject Liberation Theology, Maryknoll Marxists and the National Council of Churches

All are welcome with banners and flags. Fifty state banners will be carried. The March will convene at Fourth Street and Constitution Avenue. The March will proceed down Pennsylvania Avenue to Sixteenth Street and then on to the Washington Monument.

Numerous church delegations, many Christian schools, Fundamental mission groups, refugee groups from the iron curtain countries, Vietnam veterans, and representatives of the American Legion, Veterans of Foreign Wars and other veterans' organizations will all be present. You can count.

Any and every religious, patriotic, and educational group is welcome to come and be a part of a great pro-American, Anti-Communist declaration of faith in the Constitution and the liberty which the world must have.

All who in any way have ever opposed the Communists are invited to participate. Deceptions have to be exposed. Without strength, military, moral and religious, America cannot survive. Increase the moral majority.

Send a message to our allies and friends that we will not betray them any longer. Let the Communist world tremble. "The right of the people peaceably to assemble shall not be denied." Get to Washington any way you can — by car, bus, train, plane. The agitators, pro-Communists, leftists, and socialists are setting themselves against America. See and hear leaders who have stirred the country for decency and our heritage.

Prior to the March a prayer meeting will be held on the steps of the Lincoln Memorial at 7.30 p.m. on Friday, October 2. Also, delegations will call at the Pentagon and the embassies of the anti-Communist countries in Washington.

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1002 National Press Club Building, Washington, D.C. 20004

In God we trust

Telephones: 202-737-1133 — 609-858-0700

Chairman: Carl McIntire and associated leaders in fifty states

"For if the TRUMPET give an uncertain sound, who shall prepare himself to the battle?" — 1 Corinthians 14:8

O'Connor

756 Haddon Avenue
Collingswood, N.J. 08108
Phone: 609-858-0700

FOR RELEASE: August 12, 1981

Dr. Carl McIntire has called on the President to withdraw the nomination of Judge Sandra Day O'Connor.

His action is based upon a resolution of the State of Arizona calling upon the President and the Congress to immediately secure legislation which would protect the full First Amendment rights of broadcasters, particularly in relationship to all programming and all news.

This was brought to light by Mr. Jim Nicholls, in an independent investigation he made in Phoenix, representing the International Council of Christian Churches.

He presented the resolution at a National Press Club luncheon, Monday, August 10, in a report of his findings concerning the Judge.

Following this, Dr. McIntire addressed the accompanying letter to the President which reviews the conflict over this question which has involved the radio world, including religious broadcasters, and in particular the removal of radio station WXUR from the air July 5, 1973, because it was alleged its programming had not been fully made known to the FCC for their consideration in the renewal of a station's license.

Judge O'Connor led the opposition to the resolution and was successful in having it withheld from the President and the Congress.

Her position in this matter has become a central issue. It is believed that the White House was unaware of her opposition at the time of the President's nomination.

# # #

ELEVENTH WORLD CONGRESS OF THE I.C.C.C. CAPE MAY, NEW JERSEY • JUNE 17—30, 1983

Victory by Faith — Hebrews 12:2

Dr. Carl McIntire, President

Dr. J. C. Maris, General Secretary

International Council of Christian Churches

756 Haddon Avenue, Collingswood, N.J. 08108 U.S.A. Telephone 609 8580700 Cable- Intcouncil Collingswood

August 11, 1981

President Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

Your nomination of Judge Sandra Day O'Connor to the Supreme Court has projected afresh the question of broadcasters' First Amendment rights into the entire religious broadcasting world. The First Amendment guarantees, or it should, the protection of all religious activity and the free speech of all radio broadcasters. This Amendment reads, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech . . . "

No judge, who will take an oath to support the Constitution, should ever sit on the Supreme Court of the United States who has not been in favor of, and who does not have an unbroken record of full support of the rights of radio broadcasters in their free exercise of religion, including their programming.

This Judge O'Connor has been guilty of, tragically guilty, at a moment when the whole question of broadcasters' rights to the full protection of their speech and religious activity has been before the country. In presenting this judge for the high bench, you have invaded an area of religious life and free speech in our country which has caused untold controversy, suffering and loss, and even the right of the people to know has been limited.

I am enclosing a copy of a Memorial to the President and Congress of April, 1973. This passed the lower house in Arizona and it was Judge O'Connor's leadership that defeated it in the Arizona Senate. The committee to which it was referred for approval and recommendation, voted 4 against it, 3 for it, and one abstained. She led the opposition to this, and was one of the four. Had her vote been in the affirmative, this resolution would have been approved. You will see it is actually headed "House Concurrent Memorial 2003. A concurrent Memorial relating to American broadcasting; urging Congress to enact legislation extending First Amendment freedoms of the Constitution to broadcasting." Its request is: "1. That the President and the Congress give their most earnest consideration to the prompt enactment of legislation prohibiting government or any of its agencies from dictating, influencing or regulating in any way programming or content of news broadcasts on radio and television stations licensed to operate in the United States."

The controversy that stirred the radio world at that time was the decision of the FCC to remove from the air radio station WXUR, owned by Faith Theological Seminary, of which I am the president. There was not a radio station in this country that was not aware of what was happening. My broadcast, the 20th Century Reformation Hour, heard over 600 stations, was dropped by stations all over the

land. This controversy began in 1965 when area groups under the leadership of the Greater Philadelphia Council of Churches, the New Jersey Council of Churches, a part of the National Council of Churches, sought to have the station's license denied. The battle went up through an examiner of the FCC, who gave the license to the station declaring that the charges against it by the religious leaders and the Broadcast Bureau itself could not be sustained.

Mr. President, the House of Representatives of the State of Pennsylvania passed Resolution 160, December 14, 1965. The House was controlled by the Democrats. The Resolution referred specifically to the 1964 Goldwater campaign, saying that his ideas had been repudiated by the country and specific reference was made to my ideas which they equated to Goldwater's, saying that they were dangerous to the country.

The FCC under Dean Burch, chairman appointed by Mr. Nixon, reversed their examiner's decision on July 1, 1970. This was in the midst of all the conflict over the Vietnam War, and I had led the first March for Victory on April 4, and we were building for the second March on October 3, which Vice-President Ky had agreed to address. At the height of all this, when I was using my stations over the nation attacking Hanoi and exposing the yippies' and hippies' support of the Communist cause to the division of our country, this move was made by Dean Burch, Robert Lee, who wrote their decision, and Benjamin Hooks, who represented the NAACP and who has been so active recently against your program.

We then went to the United States Circuit Court of Appeals in Washington. This court threw out the major claims of the opponents of the station and the FCC itself. All that was left was the question of programming, that the station in its original application did not fully reveal its program so that the FCC could determine whether the station could be licensed or not. David Bazelon, the chief justice, claimed that there was violation of the First Amendment in requiring these program stipulations, and he declared that the station and the broadcasters had been denied their First Amendment rights. He wrote a magnificent decision in support of the First Amendment, specifically stating: "In this case I am faced with a Prima facie violation of the First Amendment. The Federal Communications Commission has subjected Brandywine to the supreme penalty: it may no longer operate as a radio broadcast station. In silencing WXUR, the Commission has dealt a death blow to the licensee's freedom of speech and press. Furthermore, it has denied the listening public access to the expression of many controversial views."

This was specifically over the FCC's requirement in its application of the knowledge of the program of the station. The Arizona Memorial to the President and Congress specifically identified the question of programming, with the request that it be protected and kept free. O'Connor's opposition was against the exact issue and almost the same language as the WXUR case — the FCC had to approve programming before a license could be renewed.

The Supreme Court, Mr. President, refused to review the case and on July 5, 1973, the station died. The whole radio world was shaken. Our defenders in the Senate were Sam Ervin, who gave a 6,000-word speech, Jesse Helms, Strom Thurmond. They all declared that the First Amendment rights of the station were denied in their speeches recorded in the Congressional Record. See Congressional Record, November 14, 1973, for Ervin; March 12, 1974, for Thurmond; and February 21, 1974, for Helms.

Letters immediately reached me from all over the country from radio stations cancelling my broadcasts. In Washington, D.C., I was heard every morning at 8 a.m. on WFAX, Falls Church, Va. The owner, Mr. Lamar Newcomb, immediately removed my program, though he had supported my position. He said he could not take the risk of losing his station or becoming involved in expensive litigation. The WXUR litigation took 7 years.

It was station WFAX that so many in high places in Washington listened to, including the State Department and the Defense Department, and it was this one station that L. Mendel Rivers, chairman of the House Armed Services Committee, listened to.

He personally contributed to the broadcast. He was the one who called me to organize the marches for victory in the war in Vietnam. This I did with the help of thousands in the country.

I was broadcasting every day in Phoenix, Arizona, and other stations in the state. It was out of this conflict in Arizona that I spoke in Phoenix a number of times, and here there arose this very resolution from the state legislature. The Pennsylvania legislature had taken its stand against the First Amendment rights. Arizona was taking its stand for First Amendment rights for broadcasters.

I can assure you that this issue was so acute in the State of Arizona that, at the hands of the fundamental preachers, there were very few people who were unaware of the issues involved. Judge O'Connor was in the State Senate at this time. This was before she went into the court. There she was the leading opponent and fought the enclosed Memorial to the President and the Congress of the United States that the First Amendment rights be guaranteed to us broadcasters. This pertained directly to religious broadcasters such as myself. With me was Mr. Jim Nicholls, of KAYE of Puyallup, Washington. The same religious groups that led the fight against me and the Faith Seminary station led the fight against him. He, too, lost everything.

It has been my custom to attend every meeting of the National Council of Churches since the days when it was the Federal Council of Churches back in the early 30's. The chief spokesman for the NCC in this whole area is and has been the United Church of Christ Office of Communications, Dr. Everett Parker in charge. Dr. Parker has prepared the studies, distributed the literature throughout the churches of the country concerning how they can have objectionable broadcasts removed, intimidate stations, threatening them with even the loss of their license, using the death of WXUR as their costly exhibit. Dr. Parker maintained a booth at the Detroit meeting of the NCC and we were out there with a counter rally opposing their Modernism and socialism. At their booth they were distributing their literature and telling the people that this was the way they could have Dr. McIntire's broadcast removed from their local stations.

Thus here comes Judge O'Connor, if confirmed to the Supreme Court, who also lived through those tumultuous days of battling for First Amendment rights for broadcasters. The denial of freedom became a routing matter and a formula was devised by the FCC and its liberal companions to destroy speech and to inhibit the free exercise of religion for the Fundamentalists. Congress cannot make a law, but it can make bureaus, and the bureaus' regulations have the force of law.

The Supreme Court is the last bulwark of freedom in the protection of the First Amendment rights of religious minorities. Mr. President, a minority can

never become a majority unless it can speak and promote its position. The condition of our country as far as speech on the radio is concerned is that it is not possible to expose the National Council of Churches for what it is doing in this area of socialism, its aid to the Communists and its misrepresentation of Christianity

H. Gifford Irion, the original hearing examiner for the FCC, who after nine months of hearings wrote a 116-page opinion, predicted what would happen. In favoring the station, he said that WXUR-AM and WXUR-FM "performed what would normally be considered a wholesome service in providing an outlet for contrasting viewpoints on a wide variety of subjects. To impose the fell judgment of removing WXUR from the air . . . could only have the consequence of admonishing broadcasters everywhere that they would act at their peril in allowing robust discussing because penalties would be meted out in rigid compliance with the exactions of the rules."

For eight years the station has been preserved with its four towers lighted. We have been praying and believing that this great injustice to speech and to a religious minority would be reversed and the station returned to the air. Sam Ervin said outside political pressures did it. The prayers of thousands is that some day God will bring to life, perhaps on the Nixon tapes, what these pressures were from the highest level of government. God knows it all. God is also a protector of liberty for His people.

This generation of fear did exactly that to my broadcast, and others dared not enter this field to enlighten the American people. As the prophet Hosea said, "My people are destroyed for lack of knowledge."

Men like myself who have come up out of the Christian churches and have a duty before God to preach what the Bible says and expose what we believe is evil, not only in the country but in the churches, find it cannot be done. I am here in Collingswood, New Jersey, and I have been pastor of this one church for 48 years. My record is clean. I am of the opinion that this country cannot be saved unless we are free to expose what we believe are forces inimical and destructive not only to Christianity but to liberty.

You are placing a judge on the Supreme Court who opposed a beautiful, clean resolution. You, yourself, could not have written a better one. None can mistake the "Whereases" that are here.

The fight for freedom of speech and free exercise of religion on radio is still the major battle under the Constitution today, and you are having placed on the Supreme Court a judge who in this particular field has made clear where she stood and the FCC still has a canopy of control over programming today. With these views the FCC will have a judge on the court to their liking, and so will Dr. Everett C. Parker and the National Council of Churches.

Mr. President, you have come up the hard and difficult road to see this nation turned about, but to place one of the nine judges on the court, in a day when the court itself is ideologically divided as you yourself recognize, who did not support the First Amendment rights of broadcasters in this nation, requires that we request that you withdraw this nomination. I am confident that you are unaware of this question concerning her attitude which has come to light as a result of the special investigation Mr. Nicholls made in Phoenix, Arizona.

If we had had our First Amendment rights, free exercise of religion, and could

have used it to warn and instruct this country by radio and television, the country could have been turned about a number of years back. The failure to have this freedom has contributed to the havoc that the liberals have wrought in our national life in the economic sphere, the military sphere, and in the whole realm of our spiritual and moral standards and necessities.

This fight for our First Amendment rights has taken a terrific toll. The tragedy is that men in political life, too few of them, are willing to get up and fight for the rights of a religious minority and even for those with whom they differ but whose rights are the same as theirs under that blessed Constitution.

I cannot believe that you yourself are unaware of this major battle for free speech and religious liberty that has been raging in this country over radio programming since the early 60's, but I am confident that you were unaware of her opposition and her part in defeating this Memorial calling for the First Amendment rights of broadcasters. It was headed, "House Concurrent Memorial 2003." It is interesting that the Congressional Record, July 31, contains the statement by Senator Barry Goldwater, introducing "House Concurrent Memorial 2001 to the President and Senate of the United States of America. Your memorialist respectfully re represents. . ." This Memorial, which was adopted, commends Judge O'Conner. The one dealing with First Amendment rights was never fully approved. The Senator maintains that since 2001 was adopted in the Arizona House on July 23, with 51 ayes, only 2 nays and on July 24th in the Senate, there were 29 ayes and 1 nay, that here is an indication "that the single-issue opposition to Mrs. O'Connor's nomination has virtually disappeared."

The "single-issue" refers to the abortion issue. Aside from the fact that this has not disappeared in the country, the issue that I am raising here is new, is real, and indeed is of such weighty importance that as a single issue alone it should disqualify her from a lifetime position on the Supreme Court of the United States.

Now you, Mr. President, in your inauguration January 20, took the oath of office required by the Constitution to maintain and defend it. Here comes the question of the opposition of Judge O'Connor to the full First Amendment rights of broadcasters, and you are in the position of not knowing that she led the battle against a resolution calling for full First Amendment rights for all broadcasters. This is not right. Surely I am bringing to your attention a situation that calls for action before the conscience of the entire nation.

Last Saturday Senator Strom Thurmond, who has spoken for us over the years at our Bible Conference in Cape May, N. J., addressed around 500 people. In the question-and-answer period, he was asked concerning Judge O'Connor's confirmation. He announced that they would begin on September 9 and said that there were 20 men on his committee and that she would be confronted with every conceivable relative question. He told the congregation that he would personally see that Dr. McIntire would have the opportunity to appear before the committee. I had previously filed my request to be there as a representative of the International Council of Christian Churches. I will, of course, raise this very question and expect to make it known to the Senate.

I poured out my life over a period of 16 years fighting for our religious liberty on the radio as a broadcaster. At the time of the death of station WXUR I went out on the Atlantic Ocean, beyond our territorial limits, opposite our Bible Conference in Cape May, and erected a 10,000 watt transmitter on a ship on a wave length not used by American stations and broadcast from Maine to North Carolina.

I called the station Radio Free America on the ship "Columbia." The story made the front pages of papers all over this country. We wanted the world to know that the most precious rights a human being has were being denied by the FCC and the Supreme Court. We made the mistake of not securing a ship under foreign registry. We obtained a former mine sweeper from Florida and brought it up the east coast. Because of its U.S. registry, the FCC took us to the federal court in Camden, N. J., and had the judge issue an injunction against me.

This country cannot survive without free speech, and we are losing the battle today because men like myself cannot talk as we believe God wants us to speak as His chosen servants to preach the whole counsel of God as found in the Holy Bible.

Speeches made by the prophets Jeremiah, Amos, Isaiah, Hosea, and even our blessed Lord would have brought them before the FCC of Jerusalem and the license of their radio broadcasts would have been denied.

I was in addition to this issue also hoping that in the appointments that you make, especially in the FCC, that these matters could be taken into consideration. I am certain now that they were not, since we have received a present pronouncement of the Federal Communications Commission on WXUR.

I propose to write you another letter dealing with the FCC setup. Mr. President, we have to have the Constitution honored by the United States Government, by every official, every representative, every agency, including the FCC. The Constitution is the supreme law of this land. It is the greatest possession of the American people, and the most important part of it is the First Amendment. The most important of that has to do with religion and with speech which is outside the domain of government, the executive, the legislative, and the judicial branches.

It is in this area that Judge O'Connor's actions in dealing with the Memorial from Arizona invaded and transgressed. Again I request that by God's grace you may withdraw her nomination.

You have our earnest prayers.

Very truly yours,

Carl McIntire

Carl McIntire
President, International
Council of Christian Churches

cm.gh

Nonetheless, the recent trial of Feliks Serebrov brings to 47 the number of individuals in the Soviet Union tried and imprisoned for attempting to monitor the Soviet Union's performance in meeting its human rights obligations under the Helsinki accords.

Although it has been tragic to see the hopes of Helsinki obliterated by the Soviet Union's crackdown on human rights spokesmen and the invasion of Afghanistan, the time and effort that went into formulating the Helsinki accords was anything but wasted. As the New York Times points out, the agreement gave all the participating nations the undeniable right to inquire into each other's performance in the area of human rights. Thus, at the various review conferences after Helsinki, the Soviet's disgraceful record in this field has been a legitimate topic for discussion, and the Soviet's cruel and repressive treatment of their own citizens has been bared for all the world to see.

The spirit of Helsinki will remain alive as long as we in the West remember those like Feliks Serebrov who are fighting for human rights behind the Iron Curtain.

Mr. President, I ask that the editorial from this morning's New York Times entitled "Helsinki Rights, Soviet Wrongs" be printed in the RECORD.

The editorial follows:

HELSINKI RIGHTS, SOVIET WRONGS

A circle has been cruelly closed in Moscow with the recent furtive trial of Feliks Serebrov. A 50-year-old factory worker, he is the last active member of a group that monitored the grotesque abuse of Soviet psychiatry for political purposes. Mr. Serebrov was charged with "anti-Soviet agitation" and now faces four years of hard labor and five more of internal exile. That brings to 47 the number of Helsinki monitors imprisoned by the Soviet Union. In Czechoslovakia, the most slavish of satellites, 16 monitors are in jail and 10 more await trial.

So much for the good faith of President Brezhnev's signature on the Helsinki accords six years ago this week. They promised to guarantee "the right of the individual to know and act upon his rights." But in perverse practice, it has become a criminal act for a Soviet (or Czechoslovak) citizen to ask the state to comply with the law. How dare these monitors intervene in the internal affairs of their own countries!

But these brazen violations discredit the Soviet Union, not the impulse that shaped the Helsinki agreements. Signed by 35 European and North American nations, they amounted to a calculated swap. In the absence of peace treaties, the Soviet Union wanted some formal Western acceptance of its expanded postwar boundaries and of the partition of Germany. For its part, the West obtained a Soviet pledge to open its empire to the somewhat freer movement of people and ideas.

The Helsinki Final Act did spur some cultural and commercial exchanges. But that would probably have happened without agreement. At the heart of the accord was a generous vision: that a less threatened Soviet leadership would deal more confidently with the world and less harshly with its internal critics. Those hopes were quickly dashed by the Kremlin's crackdown on Polish dissidents and all but buried in the East-West chill that followed Afghanistan.

Was the effort then worthless? Not quite. For the accords gave all participating nations the undeniable right to inquire into each other's performance on human rights. Of itself, that was a modest advance in the history of international accountability. It also encouraged agitation for greater freedom in Communist countries.

At successive Helsinki review conferences the disgraceful record of Soviet tyranny has been held up to view and Soviet spokesmen have had to struggle to explain why it is an offense for their citizens to take Mr. Brezhnev at his word. No real explanation was offered at the just-adjourned conference in Madrid. But when it reconvenes in October, the matter of the imprisoned Soviet monitors is sure to be raised again and again.

What would truly nullify the promise of Helsinki is Western indifference to the courageous few who have been branded as psychotics and criminals for finding inspiration in the accord. The ordeal of Feliks Serebrov will have no meaning if he is not defended in the only court still open to him.

On this human rights issue, at least, the Reagan Administration has not wobbled. It needs only to keep clear that it speaks not for diplomatic advantage but for universal principle and conscience.●

ARIZONA STATE LEGISLATURE ENDORSEMENT OF SANDRA O'CONNOR NOMINATION

● Mr. GOLDWATER. Mr. President, it is my great pleasure to announce that the Arizona State Legislature has given its official and overwhelming endorsement of the nomination of Sandra O'Connor to the U.S. Supreme Court. I have just today received from Rose Mofford, secretary of state of Arizona, the text of the concurrent resolution urging our body to swiftly confirm Sandra O'Connor's nomination.

The resolution passed the Arizona House on July 23 by 51 ayes and only 2 nays and passed the Arizona Senate on July 24 by 29 ayes and only 1 nay, indicating that the single-issue opposition to Mrs. O'Connor's nomination has virtually disappeared.

I ask that the text of the resolution and the certification of the resolution may appear in the RECORD.

The resolution and certification follows:

STATE OF ARIZONA

DEPARTMENT OF STATE

I, Rose Mofford, Secretary of State, State of Arizona, do hereby certify that the annexed document is a true, correct, and complete copy of House Concurrent Memorial 2001, Thirty-Fifth Legislature, Second Special Session, 1981; that I am the official of the State of Arizona in custody and control of the original of said document and the legal keeper thereof.

In witness whereof I have hereunto set my hand and affixed the great seal of the State of Arizona. Done at Phoenix, the Capital, his 27th day of July, 1981.

ROSE MOFFORD,
Secretary of State.

HOUSE CONCURRENT MEMORIAL 2001

To the President and the Senate of the United States of America:

Your memorialist respectfully represents:

Whereas, President Reagan has displayed great wisdom and foresight in the laudable nomination of the Honorable Sandra Day O'Connor to the United States Supreme Court; and

Whereas, Judge O'Connor is an eminently qualified jurist, having served as a trial court judge and presently serving as an appellate court judge; and

Whereas, Judge O'Connor has obtained extensive experience in many areas of the law as a Deputy County Attorney of San Mateo County in California, as a civilian attorney for the Quartermaster Market Center in Frankfurt/M, West Germany, as an Assistant Attorney General of Arizona and as a private practitioner of law; and

Whereas Judge O'Connor first distinguished herself as a legal scholar at Stanford University where she served on the Board of Editors of the Stanford Law Review and from which she graduated in the Order of the Coif; and

Whereas, Judge O'Connor served with great distinction in the Legislature of the State of Arizona as a Senator and demonstrated her inherent leadership capabilities as Majority Leader of the Arizona State Senate; and

Whereas, Judge O'Connor has an outstanding record of service and experience in each of the executive, legislative and judicial branches of state government; and

Whereas, Judge O'Connor has willingly and with great devotion and fervor given of herself in the service of her nation and community for which she was greatly honored as the Phoenix Advertising Club "Woman of the Year" in 1972, the recipient of the National Conference of Christians and Jews Annual Award in 1975 and the recipient of the Arizona State University Distinguished Achievement Award in 1980; and

Whereas, Judge O'Connor also possesses the attributes of an outstanding wife and mother; and

Whereas, Judge O'Connor would take to the United States Supreme Court all of the admirable qualities mentioned above.

Wherefore your memorialist, the House of Representatives of the State of Arizona, the Senate concurring, prays:

1. That President Reagan will take pride in his sensational nomination of the Honorable Sandra Day O'Connor to the United States Supreme Court.

2. That the United States Senate will act swiftly to confirm the nomination of the Honorable Sandra Day O'Connor to the United States Supreme Court.

3. That the Secretary of State of the State of Arizona transmit copies of this Memorial to the President of the United States, the President of the United States Senate, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, the Chairman of the Judiciary Committee of the United States Senate, the members of the Judiciary Commitee of the United States Senate and to each Member of the Arizona Congressional Delegation.●

SOVIET INVASION OF CZECHOSLOVAKIA

● Mr. PELL. Mr. President, August 21 marks the 13th anniversary of the Soviet Union's brutal invasion of Czechoslovakia. On that Soviet "Day of Shame," August 21, 1968, Soviet-led tanks and troops extinguished the flames of freedom and liberty which had begun to burn so brightly in Prague that spring.

During 1968, the Czech and the Slovak peoples tried to humanize the Communist system under which they had lived for 20 years. This was a purely internal matter which threatened no other nation; it was clearly within their rights as a sovereign nation. Yet the Soviet Union, in clear violation of the United Nations Charter, took it upon itself to send 600,000 Warsaw Pact troops into Czechoslovakia under the banner of

State of Arizona
House of Representatives
Thirty-first Legislature
First Regular Session
House Concurrent Memorial 2003

A concurrent Memorial relating to American broadcasting; urging Congress to enact legislation extending First Amendment freedoms of the Constitution to broadcasting.

To the Congress of the United States:

Your memorialist respectfully represents:

Whereas, the citizens' right to know requires the free and uninhibited flow of information from the broadcasters as well as from the printed news media to the public; and

Whereas, the First Amendment of the United States Constitution provides that the Congress shall make no law abridging the freedom of speech, or of the press; and

Whereas, American free broadcasting has become in its fifty-year history the practical enlargement of the free American press; and

Whereas, legislation now pending before the Congress would provide needed stability to the broadcasting industry in programming, and technological investment, in turn creating added broadcast services to the citizens.

Wherefore your memorialists, the House of Representatives of the State of Arizona, the Senate concurring, prays:

1. That the President and the Congress give their most earnest consideration to the prompt enactment of legislation prohibiting government or any of its agencies from dictating, influencing or regulating in any way programming or content of news broadcasts on radio and television stations licensed to operate in the United States.

2. The Honorable Wesley Bolin, Secretary of State of the State of Arizona, transmit copies of this memorial to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives of the United States, and to each member of the Arizona Congressional delegation.