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Schedule for Judge O'Connor

Tuesday, July 14, 1981

- 8:30 a.m. Judge O'Connor is picked up at her quarters by Powell Moore.
- 9:00 a.m. Meeting in the Attorney General's conference room. Participants:
 - Judge O'Connor
 - The Attorney General
 - Ed Schmults
 - Fred Fielding
 - Bob McConnell
 - Powell Moore
 - Ken Starr
 - Jon Rose

Purpose: Development of strategy for courtesy call.
- 12:00 Noon Lunch in the Attorney General's dining room. Participants same as above except Powell Moore.
- 1:15 p.m. Attorney General, Judge O'Connor and Bob McConnell leave for Chairman Thurmond's office (209 RSOB).
- 1:30 p.m. Attorney General, Judge O'Connor joined at Chairman Thurmond's by Max Friedersdorf and Powell Moore and courtesy call to Chairman.
- 2:00 p.m. Attorney General, Judge O'Connor, Max Friedersdorf, Powell Moore walk to Senator Goldwater's office and join the Senator, Senator DeConcini and Bob McConnell, and proceed to Capitol. (Carriage Driveway, met by Hon. Levensgood, Sgt. at Arms, U.S. Senate, go to S.230
- 2:15 p.m. Arrive at the Capitol. Proceed to the Majority Leader's office. (S.230)
- 3:00
- ~~3:15~~ p.m. Judge O'Connor proceeds to Senator Byrd's office for meeting with Senators Byrd and Biden. (Escorted by Hon. Levensgood)
- 3:15
- ~~3:00~~ p.m. Proceed to Office of the Speaker. Escorted by Hon. Levensgood
- 3:25 to Rotunda, met by Hon. Guthrie, St. of Arms, House.
- ~~3:15~~ p.m. Meeting in the Speaker's office. Participants:
 - Judge O'Connor
 - The Speaker
 - The Attorney General
 - Max Friedersdorf
 - Congressman Wright
 - Congressman Foley
 - Congressman Rodino
- 3:45
- ~~3:30~~ p.m. Depart the Speaker's office for the Minority Leader's office. (Escorted by Hon. Guthrie)

3:50

~~3:35~~ p.m.

Meeting in the Minority Leader's office.

Participants:

Judge O'Connor
The Attorney General
Max Friedersdorf
Congressman Bob Michel
Congressman Eldon Rudd
Congressman John Rhodes
Congressman Robert McClory

Approx.

4:15 Escorted to Document Door out of building by Hon. Guthrie to cars.
(Will need two cars for return to DOJ and/or
White House (Attorney General, Judge O'Connor,
Max Friedersdorf, Powell Moore, Bob McConnell)

4:30 p.m.

Meeting in Powell Moore's office. Participants:

Judge O'Connor
Powell Moore
Bob McConnell

Purpose: Review.

In responding to your question, I would like to begin by saying that as a judge my judicial philosophy is:

- One of believing strongly in the concept of a judicial restraint;
- That I have not -- and will not -- substitute my beliefs as to desirable public policy for the judgment of the political branches of government;
- That a judge should interpret the law, not make it;
- To recognize the importance of limited government generally and of the institutional restraints upon the judiciary in particular.

One other point -- I do not believe at these hearings that I should endorse or criticize any particular decisions of the Supreme Court or say how I would have voted in a case. Difficult questions frequently come before the Court again. Similarly, there are various proposals for constitutional amendments or legislation which are intended to overturn decisions of the Court. For the reasons I have just mentioned, I do not believe that I can appropriately comment on the desirability of any such proposals.



7.7.

Washington, D.C. 20530

July 14, 1981

Attorney General -

Sgt. Henderson of the U. S. Capitol called concerning arrival at the Capitol today and escorts.

At 1:30 you will be met by Hon. Liebengood, Sgt. at Arms, U.S. Senate, or his designee, at Delaware Door of Russell Bldg, who will stay with you. At approximately 2:10 P.M. you will enter the Carriage Driveway to the Senate door steps. You will be met by the Honorable Levengood, Sgt. at Arms, U. S. Senate, who will escort you to Senator Howard Baker's office (S-230)

At approximately 3:00 P.M. you will meet with Senator Byrd in S-208.

At approximately 3:15 you will be escorted by Hon. Liebengood to the Rotunda and will be met by the Honorable Benjamin Guthrie, Sgt. at Arms of the House; he will escort you to Speaker O'Neil's office (H-209).

At approximately 3:45 you will be escorted to Cong. Michel's office (H-232).

You will be escorted at approximately 4:15 out of the Capitol through the Document Door by Hon. Guthrie to your cars.

Myra Tankersley

A G E N D A

1. Description of process (Attorney General, Bob McConnell)
2. Ground rules to govern responses to individual questions
(Tabs A/B)
 - a. Review of past responses of past and present Justices (Ken Starr) (Tab A)
 - b. Description of ground rules (Ken Starr) (Tab B)
3. Areas of questions likely to be asked (Jon Rose) (Tab C)
4. Application of ground rules to areas of questions
5. Review of Arizona press clippings (Tab D)

A

Memorandum Collecting Statements Made During Senate
Confirmation Hearings Explaining the Impropriety
of Commenting on Decided Cases or Issues that
may Confront the Supreme Court

- (1) On January 12, 1939, Felix Frankfurter delivered the following opening statement before the Senate Judiciary Committee:

"I am very glad to accede to this committee's desire to have me appear before it. I, of course, do not wish to testify in support of my own nomination. Except only in one instance, involving a charge against a nominee concerning his official act as Attorney General, the entire history of this committee and of the Court does not disclose that a nominee to the Supreme Court has appeared and testified before the Judiciary Committee. While I believe that a nominee's record should be thoroughly scrutinized by this committee, I hope you will not think it presumptuous on my part to suggest that neither such examination nor the best interests of the Supreme Court will be helped by the personal participation of the nominee himself. I should think it improper for a nominee no less than for a member of the Court to express his personal views on controversial political issues affecting the Court. My attitude and outlook on relevant matters have been fully expressed over a period of years and are easily accessible. I should think it not only bad taste but inconsistent with the duties of the office for which I have been nominated for me to attempt to supplement my past record by present declarations.

That is all I have to say."

- (2) Senator Albert Gore of Tennessee, in presenting Abe Fortas to the Senate Judiciary Committee as President Johnson's nominee for Chief Justice, maintained that:

"...A judge is under the greatest and most compelling necessity to avoid construing or explaining opinions of the Court lest he may appear to be adding to or subtracting from what has been decided, or may perchance be prejudging future cases."

- (3) During his confirmation hearings as a candidate for Chief Justice, Associate Justice Abe Fortas and Senator Strom Thurmond engaged in the following exchange:

SENATOR THURMOND:

"Under the reasoning of the majority in the Morgan case, are not the states prevented from exercising an otherwise constitutional legislative prerogative, such as the requirement of literacy in the English language, merely because the Congress declares otherwise?"

JUSTICE FORTAS:

"Senator, with all deference, I must ask you to understand and to excuse me from addressing myself to that question. I do so only because of my conception of the constitutional limitations upon me. As a person, as a lawyer, as a judge, I should enjoy the opportunity - I always do - of discussing a problem of this sort. But as a Justice of the Supreme Court, I am under the constitutional limitation that has been referred to during these past two days, and must respectfully ask to be excused from answering."

...SENATOR THURMOND:

"Here we are asking you about the participation, your participation in decisions on the Court, decisions that affect every citizen in the United States - every American today who is going to read the paper tomorrow is going to see that you refused today, that you failed today, to answer questions of vital importance to them, and they are going to get an impression and maybe rightly so, that you are using this as a screen or an excuse not to go into these matters. The public wants these matters gone into. And a great many people feel that you are withholding your real true views, if you do not enter into the discussion of these matters as members of the Senate committee prefer to do."

JUSTICE FORTAS:

"Senator, all I can say is that I hope and trust that the American people will realize that I am acting out of a sense of constitutional duty and responsibility."

SENATOR THURMOND:

"Well, I am disappointed, even more so, in you, Mr. Justice Fortas."

Memorandum Collecting Statements of Supreme Court
Justices Explaining the Irrelevance of Personal
Beliefs to Constitutional Adjudication

- (1) Justice Potter Stewart, the author of the opinion in Harris v. McCrae upholding the constitutionality of denying federal funds to subsidize the costs of abortions for indigents, explained that:

"It is not the mission of this Court or any other to decide whether the balance of competing interests reflected in the Hyde Amendment is wise social policy. If that were our mission, not every Justice who has subscribed to the judgment of the Court today could have done so." (448 U.S. at 326)

- (2) Justice Harry Blackmun, in dissenting from the ruling in Furman v. Georgia, that invalidated the death penalty when imposed at the complete discretion of the sentencing authority, declared:

"I yield to no one in the depth of my distaste, antipathy, and indeed abhorrence, for the death penalty, with all its aspects of physical distress and fear and of moral judgment exercised by finite minds...Were I a legislator, I would vote against the death penalty....

Were I the chief executive of a sovereign State, I would be sorely tempted to exercise executive clemency as Governor Rockefeller of Arkansas did recently just before he departed from office.

I do not sit on these cases, however, as a legislator, responsive, at least in part, to the will of constituents...We should not allow our personal preferences as to the wisdom of legislative and congressional action, or our distaste for such actions, to guide our judicial decisions in cases such as these." (408 U.S. at 405-411)

- (3) Justice Felix Frankfurter in dissenting from the ruling in West Virginia Board of Education v. Barnette, that validated a flag salute requirement as applied to Jehovah's Witnesses,

insisted that personal attitudes were irrelevant to constitutional interpretation:

"One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and action of a lifetime. But as judges we are neither Jew or Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard. The duty of a judge who must decide which of two claims before the Court shall prevail, that of a State to enact and enforce laws within its general competence or that of an individual to refuse obedience because of the demands of his conscience, is not that of the ordinary person. It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench."
(319 U.S. at 646-647).

- (4) Justice Oliver Wendell Holmes, in dissenting from the holding in Lochner v. New York that overturned a state statute limiting the work hours of bakers, declared:

"This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law....

[The Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not

to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States." (198 U.S. at 75-76)

- (5) If asked about opinions that have changed over the years, the following observation of Justice Joseph Story might provide an appropriate response:

"He who lives a long life and never changes his opinions may value himself upon his consistency; but rarely can be complimented for his wisdom. Experience cures us of many of our theories."

CONFIRMATION HEARINGS OF JUSTICE HARRY A. BLACKMUN

The following areas of inquiry were touched upon during Justice Blackmun's confirmation hearings:

1. In response to questions as to the role of personal philosophy of a Justice in adjudication, then-Judge Blackmun stated, "I would do my best not to have my decision affected by my personal ideas and philosophy, but would attempt to construe that instrument in the light of what I feel is its definite and determined meaning. Of course, many times this is obscure."

2. In response to Senator Kennedy's quoting of a speech as to the dangers of the post-Warren Court era, Blackmun stated:

"I like to feel . . . that my record and the opinions that I have written . . . will show, particularly in the civil rights area and in the labor area and in the treatment of little people, what I hope is a sensitivity to their problems." (p. 37)

3. Senator Kennedy also asked:

"I have asked past nominees about . . . their view about some of the chief challenges facing society today, because I think, as all of us know, there are completely discretionary matters which come before the court, for example, in extending certiorari to particular cases, or sitting on emergency petitions . . ."

4. Senator Bayh asked:

[D]o you feel irrevocably bound to past Supreme Court precedents? In the cases that I mentioned . . . you stressed precedent and stressed the role of the Supreme Court, but now as a prospective Supreme Court Justice yourself, you will be in a different role."

A. "Precedent, I think, is a very valuable thing in the law. A lawyer has to say, however, that it is not absolute, * * * I have made statements before that the overruling by the Supreme Court of a prior precedent is not a matter always of great alarm."

5. Senator Fong asked questions as to Justice Blackmun's view on capital punishment. Judge Blackmun said:

"[I]n Maxwell v. Bishop, I made the gratuitous observation which has caused so much furor, that it [capital punishment] was particularly excruciating for one who is not convinced of the rightness of capital punishment as a deterrent in crime. That . . . is a personal conclusion on my part. It is a part of personal philosophy. I think the other question of the rightness of legislation . . . to impose the death penalty is an entirely different question. * * *

[O]rdinarily the imposition of the death penalty is a matter for the discretion of the legislature. I firmly believe this. One of course can imagine if a

legislature were to impose the death penalty on a pedestrian for crossing the street against a red light this might be something else again." Pp. 59-60

Q. And if the legislature says that capital punishment should be imposed you would follow that?

A. Certainly, with an exception perhaps in my pedestrian illustration.

CONFIRMATION HEARINGS OF JUSTICE JOHN PAUL STEVENS

1. Senator Kennedy asked questions as to sex discrimination and on the ERA:

Q. "As a private citizen, what are your views on the ERA?"

A. "Well, I don't really know, Senator. I must confess that, other than the symbolic value of the amendment, I am not entirely clear how much it will accomplish beyond the equal protection clause of the Fourteenth Amendment itself." p. 15

* * *

Q. "Do you feel that equal rights of women would definitely fall within the Fourteenth Amendment?"

A. "Certainly, in certain situations." p. 16

* * *

Q. "Is it your position that rights and interests of women are achieved through an equal rights amendment or expansion of the 14th amendment? Should equal rights for women be achieved?"

A. "Well, Senator, I must be very careful about what we say when we say they should be achieved. I think women should have exactly the same rights under law as men. I think they should have the same economic opportunities. But I do not think they should win every case they file." Id.

* * *

- Q. * * * Would you say that you have been more disturbed by discrimination against blacks rather than women? Or are you equally disturbed about that.
- A. "Well, I am certainly concerned, and I agree that the American people are and should be concerned. * * * I suppose, if I am asked to do so, I would be more concerned about the racial discrimination because I think they are a more disadvantaged group in the history of our country than the half the population that is female."

Q. "* * * I am just wondering whether . . . you feel that you would support [the ERA]?"

A. "I really wonder if it is appropriate for me to support or oppose the amendment. * * * I just have not, frankly, taken a position on the equal rights amendment, and I am not in the habit of expressing opinions about something that I have not really thought through. I think it has symbolic importance; but as far as its legal importance, I am just not really sure of its significance." p. 17

Senator Kennedy also asked questions about the causes of crime. After demurring on the ground that it "would be presumptuous of me to try to speak as an expert on really a sociological question," Judge Stevens stated:

"Well, I think certainly one rather obvious cause is the extent of unemployment in the country. * * *

I really do not know why we have as much crime as we do. It is a very sad social situation."

Q. "Do you think the bottleneck in the courts has been a factor?"

A. "I think the failure of Congress to give adequate numbers of Federal judges is a contributing factor in the failure of the judges to deal with the criminal litigation as promptly as they could * * * I personally think that one of the most unfortunate phases of our overall judicial system is the practice of electing State judges. I think that if that were changed, the whole system might change." p. 25.

At pp. 26-27, Judge Stevens refused to answer Senator Kennedy's question as to the death penalty. "As I understand it, that is a matter that will be before the Supreme Court, and I think it would be inappropriate to comment on that."

Senator Kennedy said: "I am not asking at this time, nor would I at any time, for you to give us a judgment as to the constitutionality of it." He also said: "Well, I can appreciate the question about the implications in terms of the constitutionality of a particular issue, but I think that giving us your own general views about this issue is appropriate for inquiry. Justice Blackmun talked at some length about this issue before the committee at the time of his nomination. He talked at some length about his own views on capital punishment." p. 27

On crime, Senator Kennedy asked:

Q. "To what extent do you believe that the decisions of the Warren Court . . . have contributed to the rise in crime?"

A. "Well, the only thing I can say is that . . . there is more crime than there was before, but I do not think that necessarily proves a causal connection."

p. 28

Judge Stevens also stated: "I do not favor continuing expansion of Federal criminal jurisdiction." p. 29

* * *

Q. How serious do you think the conflict is between a defendant's right to a fair trial and the press's right to report criminal cases?"

A. "Very serious, Senator . . ." p. 31

On philosophy, Senator Kennedy asked:

Q. "Would you label yourself a strict constructionist?"

A. "I would not label myself, Senator, and that is not a contrived position by any means."

Senator Scott asked the following questions:

Q. "Would you attempt to make laws from the bench?"

A. "Now . . . I think we must recognize that there are statutes which have somewhat ambiguous portions in them that must be flushed out by judicial decision . . . but the basic framework, as you described it, is certainly one with which I would agree." p. 35

* * *

Q. "[I]s it your intention to exercise judicial restraint?"

A. "Yes . . . I think it is the business of a judge to decide cases that come before him. * * * But it has always been my philosophy to decide cases on the narrowest ground possible and not to reach out for constitutional questions. [T]hat is in the finest tradition of the work of the Supreme Court and I think the Court is most effective when it does its own business the best." p. 36

Senator Hart asked the following question:

Q. "Do you believe that the Robinson-Patman Act continues to serve a useful purpose?"

A. "I have grave doubts, Senator."

Senator Byrd asked the following questions:

Q. "How did you as a circuit judge view the doctrine of stare decisis?"

A. I think it is an important part of our jurisprudence because it is an aspect of the development of law which tends to give certainty and predictability to the law.

There have been occasions, I should frankly concede, however, Senator, where we have felt that there had been an earlier decision in our circuit which had misconstrued the statute, and we have felt obliged to overrule it. I think that happened a few times in my recollection.

Our practice, when that was done, was, in advance

of the publication of the opinion, to circulate the proposed opinion to the entire Court so that the entire Court would have an opportunity to decide whether or not the desirability of reaching the result different from one in the past outweighed the factor of stare decisis and the consideration of certainty and predictability that we all recognize as having importance."

Q. "How would you view the rule of stare decisis as a member of the Supreme Court of the United States?"

A. "I think in much the same way."

I think there would be times when the Court might be called upon to reexamine earlier decisions which might have been incorrectly decided. But I think it is still an important value and perhaps particularly so at the national level because there is so much more reliance on past decisions in the Federal system when it is a decision of the U.S. Supreme Court.

So I would think your basic considerations are much the same, that there is important value in a system of law which is largely developed on a case-by-case basis to give appropriate respect to that which has been decided before, but yet there are occasions when the desirability of certainty and predictability is outweighed by other factors."

Q. "How much would you feel bound by the precedents that the Supreme Court has established on constitutional questions?"

A. "Well, Senator, the word bound is a little difficult for me to apply accurately. I would say that I certainly would weigh very carefully any decision that had already been reached by a prior Court and I would be most reluctant to depart from prior precedent without a clear showing that departure was warranted.

I would feel bound, but not absolutely 100-percent bound; I think I could not, in good conscience, say that. I think there are occasions, particularly in constitutional adjudication, where it is necessary to recognize that a prior decision may have been erroneous and should be reexamined."

B

M E M O R A N D U M

A more comprehensive memorandum follows as to the points that can appropriately be made during the course of courtesy calls. The basic points are as follows:

-- Statements of personal views as a private citizen are appropriate in response to questions (e.g., personal views on abortion, ERA, capital punishment, school busing, affirmative action, state aid to parochial schools, gun control).

-- At the same time, it should be made clear that no comment is appropriate as to how a particular case or issue should be decided, or what one's views are as to the constitutionality of a statute or practice. For example, she may feel that the law should be color blind, but note that Congress has passed specific statutes (e.g., the minority set-aside program at issue in Fullilove v. Klutznick) that embody racially conscious line-drawing. Constitutional judgment as to these statutes or regulations must emphatically be reserved.

-- Statements of judicial philosophy are particularly appropriate, such as:

-- The importance of the virtue of judicial restraint in the work of the judiciary.

-- One aspect of judicial restraint is to avoid substituting the judge's notions as to sound public policy for the judgment of the political branches of government. (See quotes in Tab A) Justice Holmes expressed this point well: "I strongly believe that my agreement or disagreement with a particular economic philosophy has nothing to do with the right of a

majority to embody their opinions in law . . ."

-- Justice Holmes' admonition boils down to: The role of judges is to interpret the law, not to make it.

-- The importance of stare decisis, even in constitutional adjudication.

-- The importance of federalism principles in our system of government, as illustrated by her William & Mary Law Review points, e.g., federal courts should be willing to defer more readily to state adjudications of federal constitutional issues.

-- The importance of limited government generally and recognition specifically of the institutional restraints upon the judiciary, such as the judiciary's inability to run or restructure effectively state institutions, such as schools or prisons.

-- The importance of working toward greater consensus or unanimity within the Court, so as to give clear guidance to the lower federal courts.

* * * *

A principal purpose of courtesy calls is to show the Senators exactly who the candidate is and why she is qualified to assume this high position. Thus, the exercise should not be viewed simply as replying to specific questions with responsive answers; rather, the courtesy calls permit the designee to take the

initiative and convince Senators of the merits of the President's selection.

In this process, the following points can be made so as to demonstrate those qualities that the President deemed important in the context of addressing specific concerns or areas of senatorial interest. They can be made either as a framework for an answer or as a statement of belief.

-- I have had to face the people directly and answer to them on very hard issues, and then to hear from them at the ballot box. That is the essence of a republican form of government -- having to answer at election time to the people who sent you to the capital. It is because I have been through that process that I fully understand the difference between a legislator and a judge. I know from first-hand experience when I'm making law. I also know from first-hand experience when I'm deciding cases and controversies that come before me as a judge. Some people do not have the benefit in drawing these lines of first-hand experience as an elected representative. Fortunately, I do.

-- As a lifelong Republican, I understand fully the concerns with governmental intrusions in the lives of the people. I believe that limited government is the best government.

-- There is no magic formula as to what background a Justice should have. Some members of the Court, such as Justice Frankfurter and Justice Rehnquist, had never been judges before. Some members, such as Justice Holmes and Justice Cardozo, had only served on a state court. Some members, such as Justice Black,

had almost exclusively a legislative background. I have been very fortunate to have served in all three branches of the state government -- I have had to defend the state in federal court against constitutional challenges to the state welfare system. I have had to work together with my fellow legislators to draft and push through legislation for the good of the people, and to keep bad legislation from getting enacted. The legislative choices have frequently been hot ones, such as drafting, as I did, the Arizona death penalty statute. Finally, I have served in the third branch of government, after having served in the other two branches. I think that gives me not only a useful perspective, but also a perspective shaped by having first been on the firing line in the other two branches. I think I know first-hand the limitations of the judiciary, and what the other two branches are better equipped to accomplish.

-- Judicial restraint is a very important concept to me. Having served as Republican leader of the State Senate and as an Assistant Attorney General who has litigated on behalf of the State before federal judges, I know from first-hand experience that the courts cannot be the branch that rules society. Judicial restraint means having a sense -- a judgment -- based on experience as to when the courts should not intrude on the prerogatives of the Legislative and Executive Branches.

-- I am not unaccustomed to making the hard decisions. I had to turn down twice opportunities to run for Governor as the Republican candidate, but I didn't agonize over it. As a state trial judge, I imposed the death penalty, and I didn't flinch

from it. Within the limits of judicial restraint, the Court needs people who are willing to make the hard choices. I think I am prepared to do just that.

-- Many of the questions that I will hear in this process will relate to what I think about a subject. That's fine -- the Senate is entitled to know my personal views on a broad range of subjects. While I could not and I'm sure you would not want me to address how I would rule on a specific case or a specific issue as a judge -- after all, I'm a sitting judge right now -- you are entitled to know my outlook, my philosophy. But ultimately, my own personal views about a subject are not to govern what I would do in a specific case involving that very subject. It is the basic duty of judges to set aside their own personal preferences or ideas and to interpret the law. No one will have elected me to a position on the Court, and they should not have my notions of policy imposed upon them.

-- Crime is a disease in our society, and government must be more effective. Society after all must protect itself in order to have the domestic tranquility that is vital to an organized society. While a Supreme Court Justice is not in a position to set the nation's crime policy, I wholeheartedly approve of the Chief Justice's initiatives in this area. And I agree with him. Unless our entire government -- all three branches -- get concerned about crime, we will not be responsive to what is bothering all Americans.

M E M O R A N D U M

In the course of courtesy calls, several specific objectives appear appropriate:

-- To set forth clearly the factual record with respect to her prior record as a State Senator as to abortion and the ERA;

-- To identify or describe her judicial philosophy as to the role of courts in our tripartite system of government; the role of the States in our federal system; and the role of the Supreme Court with respect to the review of legislation or actions of the Congress, the President and the States;

-- To set forth her background and activities in the Republican Party of Arizona prior to going on the bench in response to questions;

-- To avoid scrupulously making any statement or comment on a particular case, a specific issue (e.g., is the Right to Life statute constitutional?), or the way in which she would vote as a Justice.

Given those specific objectives, the following points can be made in the sessions:

-- As a State Senator, she drafted, sponsored and secured the passage of legislation conferring the right on hospitals and medical personnel not to participate in abortions.

-- In one vote reported in the press, she voted against an anti-abortion rider to a bill, but she did so because the rider violated the germaneness clause of the Arizona Constitution.

-- She was never a leader or activist in abortion issues, one way or another, as Senator Goldwater has noted.

-- Her personal view is that abortion is morally repugnant. However, as a Justice, it would not be her role to impose her personal views as to moral issues on litigants or the country as a whole. It is the Justice's role to separate as best he or she can personal moral views or the personal views as to what sound policy is from interpreting the law. That is the essence of judicial restraint.

-- While it would be highly inappropriate to comment on a particular case, much of the legal criticism of decisions (such as Roe v. Wade) is that the judicial branch exceeded the bounds of its appropriate province by imposing the personal views of the judiciary as to policy upon society as a whole. Her personal view is that judicial restraint by the courts is a vital quality. Her philosophy is that the elected representatives must be the fashioners of social policy, not the courts.

-- As indicated above, she cannot comment on how she would have voted on a particular case such as Roe v. Wade, or how she would vote should the issue in Roe v. Wade come before the Court

again. A sitting judge, which she is, cannot be carrying out the essence of the judicial function -- deciding specific cases and announcing that decision -- outside the judicial system. Such advisory opinions would tend to bring the courts into disrepute and disrespect.

-- Instead of commenting on specific cases, or how she would vote on a specific case, it is appropriate to discuss judicial philosophy. Her philosophy is entirely compatible with that of the President, namely that courts should play a limited and restrained role in our system of government and that the States should play an important part in our federal system. The Founding Fathers meant it when they reserved the powers to the States in the Tenth Amendment that had not been expressly granted to the Federal Government. This is the essence of the President's and the judge's philosophy.

-- She knows this philosophy because she has lived with it all of her life. She comes from the West, with a strong sense of federalism and of the limited role that government should play in the lives of the people.

-- As to the ERA, her record as a State Senator is equally clear. She was not an activist or campaigner on behalf of the ERA. She did, however, consider the measure -- which the U.S. Congress passed by a two-thirds vote -- to be an important

one. After all, it had been proposed by the Congress and submitted to the States for consideration. The measure was of sufficient public moment as to merit full and fair consideration. Her activities as a State Senator were directed at securing the full consideration of the ERA. Thus, she sponsored a resolution in the Senate to bring it to the Senate's attention for consideration, she voted to bring the ERA out of Committee and onto the full floor, and she voted to submit the ERA to the people of Arizona for an advisory referendum.

-- The record shows that, consistent with her concerns about securing equal pay for equal work, she did make favorable comments about the ERA and at one time favored its passage. But she never voted one way or the other on the merits of ERA. And she never went out on the hustings to work for the passage of ERA.

-- She cannot comment, as a sitting judge, as to whether she favors passage of the ERA now. A number of legal issues have been raised, such as the legality of extension of the period for ratification by the States, making it especially inappropriate to express a view on the Amendment itself now.

-- She did work hard as a state legislator to rid state statutes of provisions that discriminated against women. That was how she spent her time, not out giving pro-ERA speeches. In sum, her specific record is as stated above, and she has not worked on it or commented on it in any official capacity since going on the state trial bench in 1975.

C

AREAS OF QUESTIONS

1. Abortion

- a. Personal moral views -- past and present
- b. Activities as a State Senator (see attached article)
- c. View of Roe v. Wade
- d. Human Life Amendment
- e. Statute as to when life begins

2. ERA

- a. Personal views -- past and present (see attached articles)
- b. Activities as a State Senator (see attached articles)
- c. Legal effect of the ERA; legal effect if ERA is not ratified
- d. Commitment to women's issues generally, e.g. actively work to end discrimination (see attached articles)

3. Aid to parochial schools

- a. Personal views -- past and present
- b. Views as to constitutionality (see attached articles)

4. Pornography

- a. Personal views -- past and present -- as to right of society to regulate
- b. Activities as a State Senator (see attached article)

5. Gun control

- a. Personal views -- past and present (see attached article)
- b. Activities as a State Senator
- c. Relationship between gun control and causes of crime

6. Busing

- a. Personal views -- past and present -- as to need and effectiveness (see attached article)
- b. Views as to constitutional necessity of busing
- c. Views as to busing rider presently under debate

7. Criminal law matters generally (see attached articles)

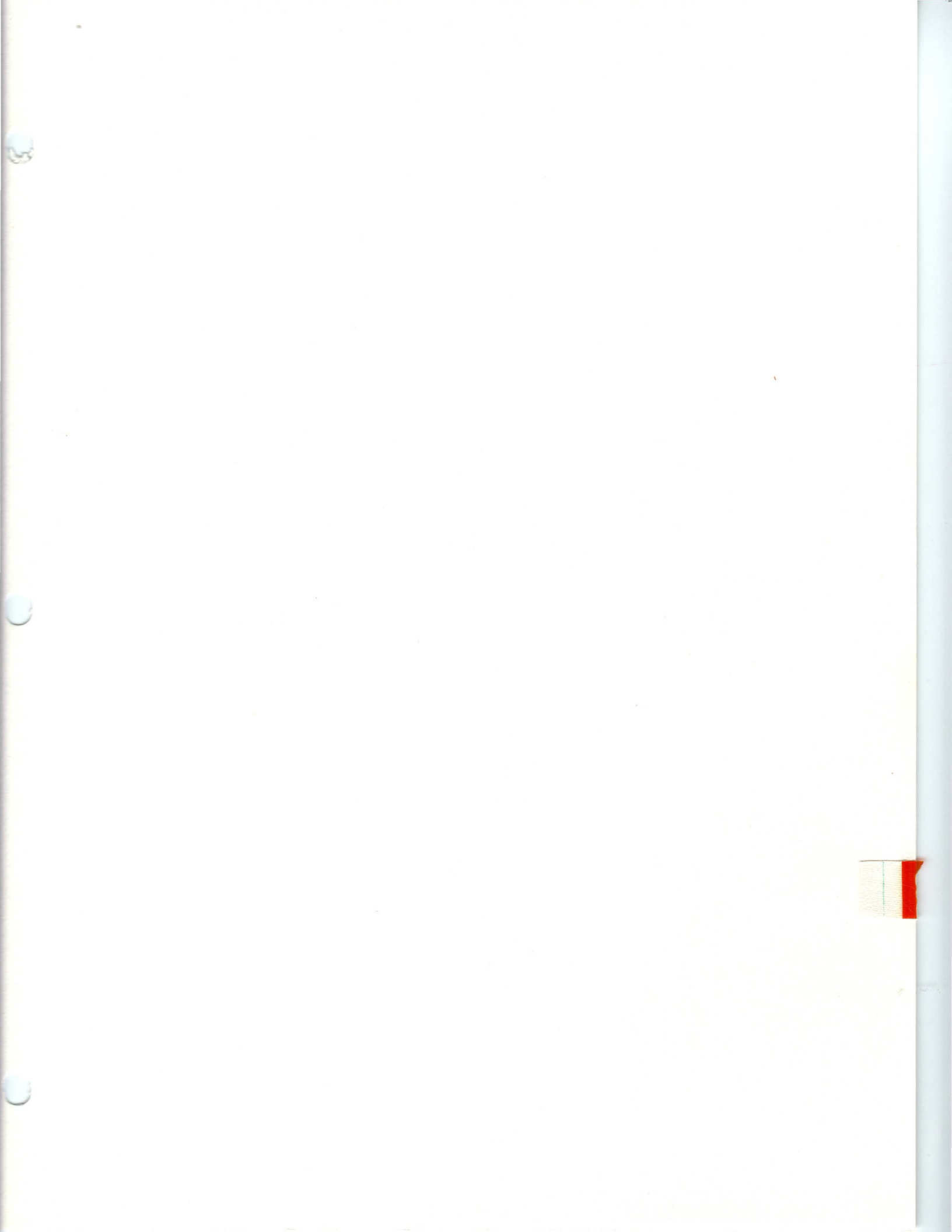
- a. Death penalty
- b. Exclusionary rule

8. Federal-State relations

- a. Activities in Senate as to Medicaid
- b. Commitment rights of mentally retarded (Pennhurst-type litigation)
- c. Activities in State Senate as to spending limitations (see attached articles)
- d. Federal courts' control of prisons, schools and other State institutions

9. Divesting Supreme Court of jurisdiction

- a. Views as to wisdom of such bills
- b. Views as to constitutionality of such bills



A B O R T I O N

Abortion
clears Se
judiciary

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BY HOWARD E. BOYCE JR.

A long-dormant bill to legalize abortions passed the Senate Judiciary Committee over the objections of its chairman yesterday and moved to Rules Committee, where it could be voted on today.

The bill, which passed the House Feb. 26, would remove all legal sanctions against abortions performed by licensed physicians.

It was the first time the measure appeared on the Judiciary Committee agenda. It passed by a 6 to 3 vote.

Chairman John Conlan, R-Maricopa and Sens. Dan Halacy, R-Maricopa and James F. McNulty, D-Cochise, voted against the bill.

Sens. Chris Johnson, R-Maricopa, Harold C. Giss, D-Yuma, Michael Fanen, R-Maricopa, Sandra O'Connor, R-Maricopa, David B. Kret, R-Maricopa, James F. Holley, R-Maricopa, voted in favor of the measure.

The Judiciary Committee also approved bills to establish division of children's services in the State Welfare Department, to permit courts to remove a felony conviction from the record of a defendant believed to have been rehabilitated, to overhaul initiative and referendum procedures and to stop the prosecution of persons now subject to criminal charges for acts of self-defense.

TUCSON CITIZEN

February 9, 1971

SEX NO BARRIER

Although she says she would support an amendment to the state's abortion law, Sen. O'Connor's main concern is governmental reorganization.



Sen. Sandra O'Connor

Sex No Barrier Trying To Stop

BY SHERYL KORNMAN
Citizen Staff Writer

PHOENIX — There is a good tendency for people to respect you for the kind of job you do whether you are male or female," says Sen. Sandra O'Connor, R-Paradise Valley.

Chairman of the Arizona Senate State, County and Municipal Affairs Committee, Sen. O'Connor works mostly with men but sex hasn't been a factor in her work.

An attorney married to an attorney, Sen. O'Connor is serving her second term in the Senate. She was named last month to the board of directors of the First National Bank of Arizona, making her the first woman to serve on the board in the bank's history.

Although she says she would support an amendment to the state's abortion law, Sen. O'Connor's main concern is governmental reorganization.

"Arizona has 169 existing state agencies and I don't believe that's compatible with efficiency in government," she said in an interview in her office at the capital.

"Having various agencies makes it virtually impossible for a citizen to know what one is dealing with a problem and makes it impossible for government to have any control over financial aspects," she said.

"We have various bills on the hopper relating to this problem," the senator said.

One of her committee's bills is to reorganize the Arizona Court of Appeals. She would make it a three-judge commission.

"It's time to take a look at the funds and the money in the job well, something has never done under past statutes," she said.

Another bill that would increase government efficiency was introduced in the Senate yesterday. This measure calls for a Department of Adminis-

30 DEC 72 23 B
 Ruling Extends
 Regent's Term
 One More Year

FLAGSTAFF (AP) — The retiring chairman of the Arizona Board of Regents, Norman Sharber of Flagstaff, will not be leaving the board as soon as he thought.

His term originally was thought to expire Jan. 1. But Atty. Gen. Gary Nelson ruled Friday that Sharber's term extended to January, 1974.

Nelson said his ruling also would affect other appointed members of state boards and commissions.

The opinion had been requested by Sen. Sandra O'Connor, R-Phoenix, several months ago. The opinion handed down Friday conflicts with the 1971-72 Arizona bluebook listing of officials and appointees and their terms. The publication said the terms would expire this Jan. 1.

More than 160,000 tourists visit Rockefeller Center in New York on an average day.

22 MAR 73 144
 Senator Hits State Bureaucracy

By NANN NOVINSKI
 Assistant Women's Editor

Too much authority in the hands of too many people leads to very little getting done in state government, a state senator told members of the League of Women Voters yesterday.

"Diffusion of authority leads to confusion," said State Sen. Sandra O'Connor, a strong advocate of streamlining state government. "The tendency in Arizona is to solve problems by creating a special board or agency to solve that problem." The state now has 109 different units, departments and agencies, many of which duplicate work, she explained.

Sen. O'Connor, luncheon speaker at the Arizona League

of Women Voters' convention, is herself a league member and aware of the league's support for centralization of executive branch authority.

She pointed out that during the legislative session that just ended "no significant legislation in the area of state government" had been passed.

As reasons for this failure, she cited the fact that House and Senate members did not meet before the legislature convened to decide what was needed, many of the new legislators were unfamiliar with problems and the resistance to change by those affected by reorganization.

She also feels that there is little citizen interest and support for reorganization. "It

just doesn't have the political sex appeal that air pollution or pornography has."

Sen. O'Connor urged league members as individuals to lobby for legislation by appearing at the legislature and writing letters, "but not form letters."

"Letters can be effective," she said, pointing to the bill to establish state-supported kindergartens as a time "when mail did work."

She does not feel, however, that letters will work on the abortion issue. Legislators make that decision "on personal feelings" that "tons of mail" would not change.

Because of this, she feels that abortion "should be placed on the ballot and decided by initiative."



State Sen. Sandra O'Connor

Tax Panel Set

In Sierra Vista

26 MAR 73 1B

Two state legislators will discuss a proposed 25 per cent property tax credit for homeowners at a forum in Sierra Vista.

EQUAL RIGHTS AMENDMENT
AND RELATED LEGISLATION



Sen. Sandra O'Connor

Arizona - R. O'Connor, Sandra
'Several years' before majority of states ratify

By BARBARA SHUMWAY

State Sen. Sandra O'Connor, R-Maricopa, said yesterday she expects it will be "several years" until three-fourths of the states approve the constitutional amendment passed yesterday by the House of Representatives giving equal rights to women under the law.

Chances are good, she added, that cases already pending in federal courts will solve questions of equal pay and hiring practices before the amendment goes into effect.

"It seems to me that if the due process clause and the 14th Amendment were applied as they have been in other situations, we would achieve the same results," Sen. O'Connor said.

If ratification of the amendment does precede

resolution of the current litigation, however, "I would expect the first effects of the amendment to be in employment—that's where the first enforcement would take place," she said.

"Maybe this is a step in the right direction in the cause of securing equal rights for women," said Sen. O'Connor. "I would certainly support the measure for approval by the State of Arizona."

Passage of the amendment by the Senate and ratification by the states "doesn't mean that everything is going to be turned over just like that," said Mrs. William S. Gutwillig of Paradise Valley, chairman of the national "Citizen's Advisory Council on the Status of Women."

"It will be another legal tool that will strengthen the cause," she said.

"It definitely will have a tangible effect—in property rights alone in some states," said Mrs. Gutwillig. "In some states, a woman can't own her own property."

"Jury duty will be equal for men and women, and so, too, with military service."

Mrs. Gutwillig is sure that when the amendment is ratified, "states will correct their ways to be in line." She explained that the amendment automatically would take precedence over conflicting state laws.

"This will be another sound, good tool, so that people will not be discriminated against because of sex. I would think there would be very few states that wouldn't ratify it. I really think the time has come."

Arizona - Legis. - O'Connor, Sandra Private industry is biased in employment of women

Sen. Sandra O'Connor advocates politics

By APRIL DAIEN

One of Arizona's two women state senators yesterday echoed Margaret Mead's view that "If women want real power and change, they must run for public office and use the vote more intelligently."

Sen. Sandra O'Connor (R-District 8-E), told women who gathered at Manganita Hall for the windup banquet of Arizona State University's Women's Week, that this is a propitious time for Arizona women with political aspirations.

"The cold, hard fact," she said, "is that the overwhelming percentage of men who would be desirable public officers or members of the legislature are unable to do so because it would be disastrous for their family finances or their normal careers."

Mrs. O'Connor, the mother of three, was an honors law graduate of Stanford University and is a former assistant attorney general for Arizona.

"When I attended Stanford ... I experienced a feeling of

equality of opportunity in terms of scholastic achievement," Sen. O'Connor said. "After graduation from law school, I sought job opportunities with various law firms in California. Many declined to interview me and those which did expressed no interest in putting a woman on their staff, even though my class standing was very high. My first employment was in government service..."

She told her audience that discrimination is more prevalent in the private sector than it is in the public one, and cited statistics favoring changes in both areas.

"According to the U.S. Department of Labor," she said, "there are approximately 30 million women in the labor force in this country. They represent 37 per cent of the nation's labor force and 42 per cent of all women of working age."

And, for every dollar a man is paid, a woman gets only 58 cents.

"A woman with four years of college earns typically \$6,694 a year, while her male counterpart earns \$11,795," she continued. "The gap is widening, and the more education a woman has, the greater the gap between her and her male counterpart."

Female graduates from universities this June, she said, will be offered lower median starting salaries than male graduates with identical educational qualification.

The reason, according to the senator who quoted the Women's Bureau of the Department of Labor, is not that women are usually paid less than men for the same work but that "through discrimination, as well as choice and custom" women tend to have lower paying jobs—jobs as clerks, cosmetologists typists or low paid technicians. They seldom work as painters, carpenters, truck drivers and engineers."

The percentage of women on college faculties has been declining, she added.

"There are fewer women in Congress than 10 years ago. The number of women in state elective offices in Arizona, other than judges, has declined from two to zero, and from a total of nine in the legislature to eight in 1968."

In addition, she said, many states still excuse women from sitting on juries solely because they are women and many, including Arizona don't give women equal rights with their husbands to manage and dispose of their community property.



Sen. Sandra O'Connor

The acknowledgement of such second-class citizenship, she said, has "rekindled" interest in a new equal rights amendment to the U.S. Constitution.

First proposed in 1923, it is only now scheduled for hearing before a Senate Judiciary Committee. The amendment would provide that "equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

Mrs. O'Connor, who sponsored legislation doing away with the injunction against overtime work and pay for women in Arizona, said such an extreme measure would not probably be necessary — if "a few well chosen cases" were brought before the federal courts (to) establish in a meaningful way the equality of women under the equal protection clause of the 14th Amendment and the Civil Rights Act.

She urged women toward this end through political involvement and commitment to specific goals such as adequate day care facilities for the children of women who want to or who must work; changing of the tax laws to allow as a deductible business expense the cost of child care incurred as a result of employment; and persuading employers to recognize "the value to themselves of providing part-time job opportunities for women at all levels of skill and responsibility."

"My work on the Arizona State Personnel Commission convinced me that a woman can often be fully as productive on a part-time basis as other employees are on a full-time basis," Sen. O'Connor said.