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Areas to focus on following Q+A period

I. abortion

Q when does life begin? in moral view: response: experts still determining & don't know. Then makes distinction between biological beginning of life ^{-there is a biological & a legal & don't know answer.} beginning of human life

Q morally do you believe it is a "killing" when an abortion occurs.

Q legislative vote record

* - what was actual ruling of Orig Ct on challenge to Stedman bond issue

* - identify 3 votes or recorded events she made anti-abortion

Q her discussion w/ President - what can she reveal

Q: moral issues w/ other positions: homosexual activities: resp: morally opposed, it is a valid area of state legislation; no position on merits; emphasizing distinction between ^{the} moral view and actions on the court.

II. JUDICIAL PHILOSOPHY

- is she a strict constructionist? resp: I cannot label myself.

III. Crime in America

Bail reform: ability of legislature to get involved in this area. She wants more info.

IV. Civil Rights

Busing: more preparation

• ABORTION

1. Personal views -- abortion as a moral issue; when can it be justified?

- (a) If opposed to abortion, why support it in Arizona legislature?
- (b) Have you ever indicated to anyone that you are not opposed to abortion?
- (c) Is abortion a killing?
- (d) Is abortion an appropriate subject for state regulation? In what respect?
- (e) Do you personally favor a constit. amendment to prohibit abortion? Favor Sen. East's bill defining when life begins?
- (f) Do you as a personal matter favor financing abortions with fed. funds?

2. Roe v. Wade

- (a) Was it properly decided? Could it have been decided more narrowly?
- (b) Aware of criticisms of Roe v. Wade? What are they?
- (c) If abortion is appropriate for state regul., then isn't Roe v. Wade inconsistent with your own personal views?
- (d) Are you willing to consider overruling Roe v. Wade?
- (e) Is a constit. amendment an appropriate vehicle for overruling a decision that the people find abhorrent?
- (f) Is a "fetus" a "person" under the 14th Amendment?
- (g) Do you think the American people want Roe v. Wade to be overruled?
- (h) When a Supr. Ct. opinion generates so much scholarly & public criticism, then doesn't the Court have a duty to take a second look at it?
- (i) What did you think of Roe v. Wade when it was handed down?
- (j) Is there a right of privacy? What basis in the Constit.

3. Arizona legislative record

a)

1970 - H.B. 20. Reasons for supporting it? Would it

have eliminated all criminal prohibitions against abortion? Wasn't it in effect an abortion on demand statute? How could you have supported it if you were morally opposed to abortion? Would you support it now if you were still in the legislature?

→ Did you tell the President that you supported this bill? Did you tell the A.G. or other DOJ representatives?

→ Ask Timmons's column -- why couldn't you remember this vote? Why didn't you remember disputes & controversies with Dr. Carolyn Genter?

→ How can you square your entire legislative record with your statements to the President on abortion?

(1) Did he tell you that he was satisfied with your legislative record, (2) Did he ask you about it? What did he ask you?

b)

1973 - S.B. 1190 -- family planning methods and information. Reasons for supporting it? Would it in effect have permitted abortion to minors without parental consent? Weren't you aware of this effect -- what about the Arizona Republic editorial on March 5, 1973, referring to this bill as reflecting an "energetic state promotion of abortion"? How then could you tell Justice Dept. officials that you didn't think of this bill as an abortion bill?

c) 1974 - Abortion of hospitals -- was the only reason you voted against this the non-germaneness issue? Were you just wrong on that score since the court. was upheld by

Judicial philosophy -- describe it. Activist? Strict constructionist?

Stare decisis -- importance of precedent

- (a) Distinction between statutory + constitutional rulings
- (b) Do you feel fully bound by Warren Court decisions -- did the Warren Court go too far?

Constitution -- how do you go about interpreting it? Evolving document, to change with the times? What is relevance of views of Founding Fathers? Conclusive or precatory?

Collegiality & the divided Court -- should there be an effort at consensus? Should Justices try to write separately? What efforts will you make to achieve a more harmonious relationship on the Court? Lobbying Justices -- O.K.?
→ Was The Brethren a good thing for the Court?

→ Should conferences and communications be confidential? Doesn't the public have a right to know about the activities of the judicial branch?

→ Should FOIA apply to the judiciary?

→ Should Justices hold press conferences, or grant interviews with the press?

Purpose of confirmation hearings

- (a) Is Senate entitled to know your views on a case that has already been decided? Deed Scott v. Brown v. Board -- why not on Roe v. Wade?

- (b) Isn't the distinction that the Senate is not entitled to a commitment on how you would ~~have~~ voted, rather than on your present views of a past case

Gen. philosophy as to amending the Constitution?

Role of Court vs. Role of Congress

Imperial judiciary -- how do we constrain the judiciary to remain within rightful limits?

What Justice do you admire most & why (of those not sitting on the Court)

Misc.

Constitutional Convention -- under Art. V, can a constit. convention be limited in purpose? Advantages & disadvantages? Should the country opt for congressional resolution, rather than by constit. convention?

Dividing Supreme Court of jurisdiction -- can Congress do it? Should it? Inferior courts?

25th Amendment issues

noted as legislator for vol. prayer
do not have (contra vol. req.
on memorial convention)

- Voluntary prayer -- should it be permitted? Does the case law forbid genuinely vol. prayer?
- Tuition tax credits -- are they constitutional? Are they good policy.
- Pornography -- is it protected under 1st Amend.? Is it subject to state regulation?
- Aid to parochial schools -- permissible? Should it be permissible?
- Free press vs. fair trial -- how do you strike the balance? Should courtrooms be closed?

→ Rule in Ariz. Senate re pornography.

→ Statement in Phoenix magazine on constit. of aid to private schools.

ERA - Ratification

- Present view of ERA?
- What would legal effects be?
- Why hasn't it been ratified?

Gender discrimination

- What do you feel is the nature & extent of the problem of sex discrimination today?
- The present state of the law in this area is confusing -- views on this?
- Women in the military -- should women be subject to registration and to any draft?
(1) Serve in combat?

→ Role on Advisory Committee on Women in Military

Rate of reversal by Ariz. Supreme Ct and Ariz Ct of App.

Conflict of interest

- a) Standards of disqualification
- b) Husband's law practice
- c) Describe all outside income since you've been on the bench?
- d) Wall St. J. of 8/4/81 suggested that Justices were too quick to recuse themselves, thus affecting the Court's decisions? Views?

Court + Jurisdiction issues

- (a) National Court of Appeals -- good idea? Necessary?
- (b) Diversity jurisd. -- should it be eliminated?
- (c) Federal court caseload -- are there ways to reduce the amt of litigation in the ct's? Eliminating mandatory jurisd of Supr. Ct.?
- (d) Habeas corpus + finality --
 - (i) Are there ways to reduce all these habeas petitions?
 - (ii) Are the federal judges really crying wolf... does it impose that much of a burden to protect these precious rights?
- (e) How do we make judges more accountable to the people?

Eighth Amendment

- a) Does death penalty, in your view, constitute cruel & unusual punishment? Are there circumstances where it would e.g. death for armed robbery where no one was harmed?
- b) The Court last Term decided that double celling does not in itself, violate the 8th Amend. Do you agree with that?
 - (1) Does solitary confinement violate 8th?
 - (2) Would permitting hunger strikers to die violate?
 - (3) Under what kinds of circumstances could state prison conditions violate 8th?
- c) As a general matter, have courts been too quick to take over the running of state prison facilities? What can be done to restore the rightful prerogatives of the States in this area?
- d) Does the death penalty deter crime?
- e) Can the death penalty be equitably administered? Why are the majority of death row inmates in Southern prisons? Why blacks disproportionately high?

Crime in America

a) Why is there so much crime in this country?

b) How can we reduce the crime rate?

(1) Hard gun laws?

(2) Determinate sentences?

(3) Bail reform? - needs more info

c) Abolish the insanity defense?

d) " or modify the exclusionary rule?

(1) Is this appropriate for Congress to do?

e) From your standpoint as a former state legislator & now a state judge, what can Congress & the SC of the Fed. Govt. do in this area?

f) Do we need more prisons? Should Fed Govt pay the full part of it?

g) Is plea bargaining a problem in the state system? Is this system in need of reform?

h) Grand juries -- should a witness have the right to counsel in the grand jury room?

i) Is grand jury system abused by prosecutors?

j) Has the balance in the crim. justice system been struck in favor of criminal defendants?

k) Has Miranda been an impediment to law enforcement? Was it rightly decided?

Public employees - right to strike

a) Should public employees have the right to strike?

b) " They have the right to organize? If so, what the point without the " strike?

c) Should jail terms be imposed on illegal strikes?

d) Should the govt. be held liable in event of any disaster in the air?

Civil Rights

- a) What are your views on busing? Has it worked? Should it continue to be used? Do the courts require busing to be used as a matter of law, or is this just a matter of discretion?
- (i) What remedies other than busing should be used?

- b) Affirmative action -- what does it mean to you?
- Should govt, as a policy matter, grant preferential treatment on grounds of race? Must govt be absolutely color-blind?
- (i) As a general matter, when would you permit race-conscious remedies?

- c) Do you think that black Americans and other minorities have actually overcome the legal disabilities of the past? Is discrimination still a problem in this

- d) What activities in your professional career show a commitment to equal justice under law for all women

- e) Do you think that States can be treated unequally by the fed govt -- does the application of a law to a State but not to another, raise any constitutional issue in your mind?
- (i) In your view, how well has the Voting Rights Act worked?
- (2) If you were a member of Congress, would you vote for extension of the Act?
- (3) Should it be extended to all 50 States?

- f) Do you think that the Court should continue to have a black member, once Justice Marshall's time is ended?

- g) Should affirmative steps be taken to get more women & minority judges?

- h) Legal Services Corp. -- legal services to poor & federal role?

National security

- a) Does President have power to authorize warrantless electronic surveillance and physical searches for nat'l security purposes?
- b) Is there a "national security" exception to the 4th Amendment? To the 1st Amendment? Should there be? Does it justify a prior restraint? What about the Progressive case?
- c) Did the President act wisely in pardoning Hutter & Felt, who clearly authorized FBI blackbag jobs?
- d) As a policy matter, should the govt punish those who disclose the identities of our intelligence agents?

Separation of powers

a) legislative veto -- any views on it?

(1) Do you think that excessive govt regulation is a problem in this country, as a general matter?

(2) Should Congress try to get control over the bureaucracy? Isn't the legislative veto a good way of doing so?

b) What about the Bumpers Amendment? Do you favor it?

c) As a general matter, do you think that too much power has shifted to the judiciary and away from Congress? How can this shift be redressed?

d) Do you think that Congress has passed laws that are too broad or vague -- has this contributed to judicial activism?

e) Right now, what is the most powerful branch of govt

FACT SHEET

DACOWITS RECOMMENDATIONS ON WOMEN IN COMBAT

I. Background

- A. DACOWITS = Defense Advisory Committee on Women in the Services
- B. Judge O'Connor was appointed for a term beginning January 1, 1974 through December 31, 1976. All DACOWITS members were required to attend 6 meetings during the time of their appointment.

II. DACOWITS Recommendation on Women in Combat

- A. Recommendation: "That laws now preventing women from serving their country in combat and combat related or support positions be repealed." November 14-18, 1976; Recommendation #8.
- B. O'Connor participation:
 - did not attend the November 14-18, 1976 meetings.
 - did not vote on or participate in the formulation of this recommendation.

III. O'Connor Recommendations Relating to Utilization of Women by the Services

- A. April 6-10, 1975 meetings of the DACOWITS Utilization Subcommittee
 - initiated discussion of 10 U.S.C. §6015 relating to the Navy's prohibition against assignment of women to vessels other than hospital or transport vessels.
 - moved: "That the Department of Defense initiate amendment of 10 U.S.C. §6015 to remove the total prohibition against assignment of women to vessels other than hospital or transport vessels thereby allowing assignment of persons (male and female) to vessels and aircraft in accordance with individual qualifications of the person to be assigned and the particular mission to be performed."
 - this motion was agreed to as a recommendation by the Executive Committee in the following form: "That the Department of Defense initiate amendment of 10 U.S.C. §6015 to remove the total prohibition against assignment of women to vessels other than hospital or transport vessels thereby allowing assignment of persons (male and female) to vessels and aircraft in accordance with individual qualifications of the person to be assigned and the particular mission to be performed."
- B. Amendments to Law

In 1978, Pub.L. 95-485 reflected the recommendation of DACOWITS relating to O'Connor's motion by amending 10 U.S.C. §6015 to allow women to be assigned to hospital ships, transports and "vessels of a similar classification not expected to be assigned to combat missions." Previously women were prohibited assignment to duty on any naval vessels other than hospital ships or transports. 10 U.S.C.A. §6015.

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THE WHITE HOUSE
WASHINGTON

OPENING STATEMENT DRAFT

NY TIMES BIO ARTICLE

NOTES ON THURMOND'S RECOMMENDATIONS
FOR OPENING STATEMENT

302-539-3243

THE WHITE HOUSE
WASHINGTON

- when can Powell reach Helms
in morning?
919-755-4444 Raleigh office they'll locate him

- what is feeling of Chmn re
opening statement? how about saying
what she feels she
can't answer
in opening stmt?

803-765-5496 Thurmond S.C.

→ might be good idea

thank Pres

1st woman high expectations
women all over nation

thank Sen & she's seen

- say she'll answer any q's
she can but make it plain that
she cannot answer matters

- emphasize that her responsib
met would not be making law
but interpreting those Cong makes

- she believes in limited govt be
sep of powers between Fed & state should ^{high} ~~not~~

THE WHITE HOUSE
WASHINGTON

She will respect 3 branches of
Govt & Their responsibilities

Clarify air so they won't expect
her to specify about & she
will merely interp laws that
Cong makes. ~~Since Cong has~~
~~acted~~ would suit her if
Cong

ask McConnell about rewrite & tell him

DRAFT

STATEMENT OF SANDRA DAY O'CONNOR

September 9, 1981

Mr. Chairman and Members of the Committee

I would like to begin my brief opening remarks by expressing my gratitude to the President for nominating me to be an associate justice of the United States Supreme Court, and my appreciation and thanks to the Members of this Committee and its distinguished Chairman for your courtesy and for the privilege of meeting with you.

As the first woman to be nominated as a Supreme Court Justice, I am particularly honored. I hope and believe that honor is shared with all the women of this nation. As a citizen, as a lawyer and as a judge, I have, from afar, always regarded the Court with the reverence and the respect to which it is so clearly entitled because of the function it serves. It is the institution which is charged with the final responsibility of insuring that basic constitutional doctrines will be continually honored and enforced. It is the body to which all Americans look for the ultimate protection of their rights. It is to the United States Supreme Court that we all turn when we seek that which we want most from our government: justice.

I suppose that few, if any, of those previously nominated to the Supreme Court ever realistically dreamed or expected that they would sit as a member of our highest Court. I expect those who have preceded me were awed and fascinated, as I am, by the unknown challenges that lie ahead. If confirmed by the Senate, I will apply all my abilities to insure that our government is preserved and that justice under our Constitution and the laws of this land, will always be the foundation of that government.

As my nomination is an awesome challenge to me, it is also an awesome responsibility for this Committee. I am aware of this Committee's duty, and I

intend to be as forthcoming as possible in responding to your questions on my background, my beliefs, and my views on our Constitution and our laws.

Indeed, I have already described to most of you my belief that the proper role of the judiciary is to interpret, not make law. Most of you know my view that our Constitution and laws describe limitations upon our government as well as its citizens. Many of these limitations -- the checks and balances that are the genius of our system -- separate not only the three branches of government but also the state and federal jurisdictions.

There is, however, one limitation on your inquiry that I am compelled to recognize. I do not believe that, as a nominee, I can tell you how I might vote on a particular issue which may come before the Court, or endorse or repudiate specific Supreme Court decisions presenting issues which may well come before the Court again. I believe most people, and probably all lawyers and judges, would understand and agree with that position. The first problem with such a statement is that it would mean I have prejudged the matter or have morally committed myself to a certain position. This, of course, is the opposite of the attitude that a judge should have; namely, to approach each problem and issue with an open mind. Moreover, a statement by me about what I might do in a future court action might make it necessary to disqualify myself on the matter. This would result in my inability to do that which would be my sworn duty, namely, to decide cases that come before the Court. Finally, neither you nor I know today the precise way in which any issue will present itself in the future or what the facts or arguments may be at that time or how the statute being interpreted may read. Until those crucial factors become known, I suggest none of us really know how we would resolve any issue. At the very least, we would reserve judgment until that time.

The observations I have just made are consistent with the recurring statements and positions I have read in the transcripts of the hearings of the presently

sitting members of the United States Supreme Court, men whose personal views and backgrounds are obviously quite diverse.

On a personal note, I would now like to say something to you about my family and to introduce them to you. By way of preamble, I would note that some of the media have reported, correctly, I might add, that I have performed some marriage ceremonies in my capacity as a judge. I would like to read to you an extract from a part of the form of marriage ceremony I prepared. "Marriage is far more than an exchange of vows. It is the foundation of the family, mankind's basic unit of society, the hope of the world and the strength of our country. It is the relationship between ourselves and the generations to follow."

That statement represents not only advice I give to the couples who have stood before me, but my view of all families and the importance of families in our lives and in our country.

My nomination to the Supreme Court has brought my own very close family even closer together.

(Introductions to follow)

Finally, I want to thank you, Mr. Chairman and Members of the Committee, for all the kindnesses and courtesies that you have extended to me.

I would now be happy to respond to your questions.

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I suppose that few, if any, of those previously nominated to the Supreme Court ever realistically dreamed or expected that they would sit as a member of our highest Court. I expect those who have preceded

me were awed and fascinated, as I am, by the unknown challenges that lie ahead. If confirmed by the Senate, I will apply all my abilities to insure that our government is preserved and that justice under our Constitution and the laws of this land, will always be the foundation of that government.

Let me now say something about my views as to what I can and cannot properly discuss with you during the course of this hearing. I do not believe that, as a nominee, I should tell you how I might vote on a particular issue which may come before the Court, or endorse or criticize specific Supreme Court decisions presenting issues which may well come before the Court again. I believe most people, and probably all lawyers and judges, would understand and agree with that position. The first problem with such a statement is that it would mean I have prejudged the matter or have morally committed myself to a certain position. This, of course, is precisely one hundred and eighty degrees from what the attitude of a judge should be; namely, to approach each problem and issue with an open mind. Moreover, such a statement by me as to what I might do in a future court action might make it necessary to disqualify myself on the matter. This would result in my inability to do that which would be my sworn duty, namely, to decide cases that come before the Court. Finally, neither you nor I know today the precise way in which any issue will present itself in the future or what the facts or arguments may be at that time or how the statute being interpreted may read. Until those crucial factors become known, I suggest none of us really know how we would resolve any issue.

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Nominee for High Court: A Record Defying Labels

The following article is based on reporting by John M. Crewdson, Philip Taubman and Pamela G. Hollie and was written by Mr. Crewdson.

Special to The New York Times

PHOENIX, July 11—Like supporters and detractors of her Supreme Court nomination, Sandra Day O'Connor devoted the better part of this week to a review of the state legislation and judicial decisions that constitute the record of much of her public life.

With her office at the Arizona Court of Appeals here overflowing with congratulatory bouquets, her desk cluttered with papers and files, and her law clerk, husband and friends helping with the review, Judge O'Connor looked up at a brief break yesterday morning to sigh. "It's a nightmare."

"Fifty years is a long time," she said, "and it's hard to remember everything you did."

Differences of Temperament

The review is far from complete, but the woman, public and private, who has so far emerged from an examination of of those records, and from conversations with friends, colleagues and adversaries, is by political instinct, judicial philosophy, economic standing and personal temperament both similar to and different from the constituency that elected Ronald Reagan President.

Judge O'Connor emerges as a sometime conservative with a moderate, even progressive streak, a determined woman but not a dogmatic one. She is wealthy but not rich; intellectually curious but not adventuresome; malleable and yet traditional.

President Reagan described Judge O'Connor as a "person for all seasons,"

but she appears to be something less than the advocate that other supporters, including much of the feminist movement, have made her out to be. At the same time she is clearly more complex than her detractors, including Moral Majority and the anti-abortion lobby, have suggested.

In her six years on the bench Judge O'Connor has never had occasion to rule on the subject of abortion. But the record she compiled on that issue and on

the proposed Federal equal rights amendment in the previous six years, which she spent in the Arizona Senate, has generated dismay and even outrage among political conservatives and anti-abortion groups.

The Reagan Administration, seemingly surprised by the swiftness and severity of the criticism, has attempted to minimize the extent of Judge O'Connor's support for legislation allowing abortion in Arizona. But legislative records disclose several occasions on which she voted in favor of making abortions more widely available.

Vote in Committee

In 1970, the year after Mrs. O'Connor was appointed to fill a vacancy in the State Senate, she was a member of the Senate's Judiciary Committee, which considered a bill that would have repealed existing state statutes prohibiting abortions.

Committee votes were not recorded in the Arizona Senate in 1970, but The Phoenix Gazette reported on Feb. 26 that year that Mrs. O'Connor was among six of the nine committee members who voted to approve the bill, which later died in the Senate's Rules Committee.

On Wednesday, the Administration made public a memorandum prepared by Kenneth W. Starr, a counsellor to Attorney General William French Smith, asserting that Judge O'Connor had "no recollection of how she voted" on the bill.

Agents of the Federal Bureau of Investigation, who this week began a standard background examination of Judge O'Connor, were said to have interviewed Dr. Carolyn Gerster, a Phoenix internist and past president of the National Right to Life organization, who has said she is "dismayed" by Judge O'Connor's nomination. Dr. Gerster said she had been asked about the nominee's views on abortion, but she declined to disclose the precise nature of the questions.

Continued on Page 22, Column 1

The New York Times
Sunday, July 12, 1981
A-1

Nominee for Supreme Court: A Record and Temperament That Defy Labels



Associated Press

Judge Sandra Day O'Connor in her chambers at Appeals Court in Phoenix

Direction From White House
Judge O'Connor, according to a close friend, believes that the White House has oversimplified her position on abortion. In a brief conversation, Judge O'Connor said that while she badly wanted to clear up the confusion surrounding her voting record, she had been asked by the White House not to discuss abortion or other matters of substance until her appearance before the Senate Judiciary Committee.

In 1974 Mrs. O'Connor, then the Senate majority leader, voted against a measure to prohibit the use of public funds for abortion. The same year she opposed a bill prohibiting abortions at the University of Arizona hospital.

The Starr memorandum asserted that Mrs. O'Connor opposed the latter bill because it was attached as a rider to another measure permitting the university to issue bonds to expand sports facilities, and therefore a nongermane amendment that she believed violated the State Constitution. The memorandum says that "her reasons for so voting are nowhere stated on the record."

According to newspaper accounts, in 1974 Mrs. O'Connor also voted against a resolution asking Congress to amend the United States Constitution to legally recognize the "right-to-life" of the fetus. The year before, she was one of 10 senators who co-sponsored a bill requiring that all medically acceptable birth control methods be made available to anyone, regardless of age. She also voted that year for a bill permitting doctors and other hospital employees to refuse to perform abortions.

Can't Explain Protests

Some of those who served with her in the legislature dismiss the suggestion that Judge O'Connor supports abortion. "I don't know what they're upset about," said Donna G. West, a Republican Senator here who calls herself "a pro-life legislator."

"I have known her for 15 years, and I've never seen anything that would lead me to believe she's pro-abortion," Mrs. West said. "I have never considered her an anti-life person. Those votes that Sandra cast were a number of years ago. I know from personal conversations that she is personally opposed to abortion."

When the proposed equal rights amendment to the Federal Constitution came before the Arizona Senate for ratification in the early 1970's, Mrs. O'Connor voted for it twice, once in the Judiciary Committee and again on the Senate floor, where the measure failed by a single vote. In 1974, Mrs. O'Connor was co-author of the Judiciary Committee, urging that the question of ratification be put to a popular vote.

Mrs. O'Connor also took the lead in revising several Arizona statutes that discriminated against women in such areas as the number of hours they were permitted to work, parental consent and child custody.

Less Than Ardent Feminist

It is those votes that have prompted conservative and fundamentalist religious groups to label Judge O'Connor a feminist, even a radical one, an idea that makes those who know her scoff. "She certainly believes that a woman ought to be educated and have equal opportunities, that a woman can make a fine lawyer or a doctor," said a Phoenix lawyer who is close friend.

But the lawyer, who asked that his name not be used, recalled that the Paradise Valley Country Club, to which she and her husband belong, had a men's grill where women were not permitted at lunch. Judge O'Connor, he said, "has often kidded about how foolish it is that some women get so provoked about how they can't sit down with the boys and have a beer and a hamburger."

Susan Freeman, another lawyer who knows Judge O'Connor, described her as "concerned about women and she is concerned about people generally, but she's certainly not a radical feminist."

Several of those who served with Mrs. O'Connor in the Senate praised her dedication to legislative process, suggesting at the same time that she might be better suited by temperament to the law and the bench. "Because she is so intense, she really does not suffer fools gladly," said one longtime observer of

the legislature, "and in the Legislature, you have to suffer fools constantly."

Colleagues and friends characterize Judge O'Connor with the same words and phrases: smart but not brilliant, hard working, intense, meticulous, no-nonsense, demanding, dedicated and ambitious. The first woman to serve as majority leader of any state senate in the nation, Mrs. O'Connor won that job in 1972 because of what several former colleagues said was a general admiration for her intelligence and insistence on precision rather than her personal popularity — a case, as one put it, of "talent winning out."

Bill Jacquin, who was president of the Arizona Senate at the time, said he had backed Mrs. O'Connor against "fairly stiff competition" because "Sandra possessed all the attributes — she does her homework, she knows how to get the proper things out of her staff. She has a very precise and concise mind and was able to do that very well."

"She does not have the charisma, in the sense of stirring speeches, that kind of thing," said Mr. Jacquin, who now heads the Arizona Chamber of Commerce. "She does have the ability to make an articulate speech that is founded on fact, and that's what I was looking for."

Judge O'Connor was first elected to the Senate in 1970, four years after a group of young Republicans took control of the Legislature after decades of domination by rural Democrats. The Republicans, Mrs. O'Connor, among them, passed a Medicaid bill, a no-fault divorce statute, a strong antipollution law and legislation requiring public bodies to conduct open meetings.

'Conservative to Moderate'

Despite her stance on such issues, however, Mr. Jacquin asserted that Mrs. O'Connor was "no more liberal than the man in the moon."

"She's conservative to moderate," Mr. Jacquin said. Another colleague called her "not liberal or conservative — she's just what she is."

Though active in Republican Party politics — Mrs. O'Connor was an alternate delegate to the 1972 Republican National Convention and co-chairman of the Arizona Committee to Re-Elect the President — one friend, a liberal Democrat, described her as "very decent in her dealings with people of different points of view."

Her record seems to show more atten-

tion to issues than to ideology. She voiced strong objections to an anti-pornography bill she considered too vague and too broad, for example, but also supported measures to limit state spending, to restore the death penalty and to ban compulsory school busing to achieve racial balance.

Not Many Clues in Record

Her record as a legislator does not provide many clues, however, to Mrs. O'Connor's positions on some of the most important questions likely to come before the Supreme Court. She has never been required to render judicial interpretations of the Federal civil rights laws. In Mrs. O'Connor's tenure on the state senate she opposed gun control and public aid to parochial and private schools, but the Legislature did not consider other important topics, such as tougher sentencing of criminals and school prayer.

Nor have her six years as a judge, first in State Superior Court and for the last 18 months on the Arizona Court of Appeals, where her opinions concerned such matters as workers' compensation, landlord-tenant disputes and criminal matters, given her much opportunity to confront, decide questions that surround such larger social issues.

They have, however, earned her a nearly unanimous reputation among Phoenix lawyers as a thorough and well-prepared judge. "She frequently knew more about a case from having reviewed the file than the lawyers did," said Barry Silverman, a Maricopa County Commissioner and lawyer who has appeared often before Judge O'Connor.

Every other year the Arizona Bar Association asks its members to rate the judges before whom they practice, and despite the praise now being offered in her behalf Judge O'Connor has not scored high marks in those polls.

As a Superior Court judge in 1976 she received the same rating as two other judges, while the other three got higher ones. In 1978, Judge O'Connor received the lowest score of the eight judges rated. In 1980, her first year on the appellate bench, she placed eighth among the 10 judges rated.

One Phoenix lawyer called Judge O'Connor "a good lawyer, not a perfect lawyer, a good trial judge and a better appellate judge." Among other things, he said, she was one of the few Arizona

judges who insisted that all hearings in her courtroom be opened to the public, rather than conducted in chambers.

"She's pretty independent," said Paul Eckstein, an acquaintance who is also a lawyer. "Those people who are supporting her may be surprised by her, and those people who are opposing her may come to like her." Another lawyer who knows Judge O'Connor predicted that she "will not be a quick study, but she will be a thorough study."

Andy Hurwitz, an aide to Gov. Bruce Babbitt of Arizona and a former clerk to Potter Stewart, the Justice whose place on the High Court Judge O'Connor has been nominated to fill, noted that at the age of 51, she is younger than any of the eight sitting justices and would have "time to grow into the job."

"A Real Learning Curve"

"There's a real learning curve up there for anybody," Mr. Hurwitz said. He added that her lack of Federal judicial experience would not be a serious detriment because civil and criminal procedure in the Arizona were nearly identical with those in the Federal courts.

Judge O'Connor was born Sandra Day on March 26, 1930, in El Paso, Tex., but she spent her earliest years on her family's 162,000-acre ranch, the Lazy B, which her grandfather founded a century ago near Duncan in southeastern Arizona.

Because there were no schools in Duncan that suited her parents, Harry and Ada Mae Day, as a young girl Mrs. O'Connor was sent to live with her maternal grandmother in El Paso and to attend school there.

She did well, graduating from high school at the age of 16. She then entered Stanford University, with which she has maintained a lifelong affiliation, most recently as a trustee. At a time when most women at Stanford were majoring in education, she won a bachelor's degree in economics, awarded with great distinction, and a law degree, obtaining both in six years.

Her sophomore roommate, Marilyn Brown, remembered her as a "very shy" young woman who spoke with the soft accents of west Texas but who seemed more than equal to university life. "Even though she was younger than us, she always seemed to handle it," Mrs. Brown said. "She never got upset. She never went into a panic about anything. She was easy to get along with and she was fun."

After her graduation in 1952 from law school, where she ranked in the top 10 percent of her class, Sandra Day married a classmate, John Jay O'Connor 3d, now a successful corporate attorney here and, like his wife, heavily involved in civic affairs.

One close friend described the couple as "partygoers," especially Mrs. O'Connor, who also has a reputation as an excellent cook and a lover of fine wines. "Sandra likes to socialize, likes to see people," the friend said. Though Mrs. O'Connor's biography lists her as an Episcopalian, the friend said that nei-

ther she nor her husband were active churchgoers.

Despite her many charitable and civic activities, including the past presidency of the Phoenix Junior League, another friend, a local lawyer, described Judge O'Connor as "a very stiff, formal person." Other acquaintances said that her lack of conviviality and campaigning skills had probably cost her the Republican gubernatorial nomination three years ago.

Income, status and background — Mr. O'Connor is the son of a prominent San Francisco doctor — have limited the O'Connors' exposure to people much like themselves, the sort of upwardly mobile Arizonans who belong to the Paradise Valley Country Club, one of the most exclusive in town, where memberships sell for \$15,000.

The club has an open membership policy but no black members. Joe Brem, the general manager, said none had been proposed for membership in the club in the 11 years that he has been there. Mr. O'Connor also belongs to the even more exclusive Valley Field, Riding and Polo Club, a group of 100 people who meet for monthly dinner parties.

Mr. O'Connor's law firm, Fennemore, Craig, von Ammon & Udall, counts among its clients the Kennecott Copper Company, the Santa Fe Railroad and Mountain Bell. Lawyers who know Mr. O'Connor estimated that he earned at least \$300,000 a year but an individual familiar with the family's finances said the sum was substantially less, although still in six figures.

If Judge O'Connor is confirmed by the Senate she will become one of the wealthier justices on the Supreme Court. According to a source familiar with the family's finances, she and her husband have a net worth of at least \$500,000 and possibly more.

As a legislator and judge in Arizona, Mrs. O'Connor has filed annual financial disclosure statements that provide a limited but still illuminating view of the family's holdings and investments. A review of these statements, along with other public documents and interviews with those knowledgeable about the O'Connors' finances, suggests that they manage their money cautiously.

Their portfolio of investments is relatively small and conservative, with modest holdings in real estate, ranching, chemical and transportation companies and oil exploration ventures that apparently serve as tax shelters.

The O'Connors' largest asset is their home in Paradise Valley, the most exclusive suburb of Phoenix. Set on an acre-and-a-half lot off a cul-de-sac in the shadow of Camelback Mountain, the adobe house has an assessed value of \$201,000 and an unpaid mortgage of \$40,000. Realtors here said it might sell today for close to half a million dollars.

The O'Connors' next largest asset, source said, is Mr. O'Connor's partnership share of his law firm, one of the largest and most successful in the Southwest. Friends said that if he left the firm, as he may decide to do should his wife be confirmed, the sale of his

partnership might bring him \$150,000.

Another major financial and sentimental holding is Judge O'Connor's share of her family's business, the Lazy B Cattle Company, which grazes perhaps 2,000 head of cattle on more than 160,000 acres near the Arizona-New Mexico border, most of it leased from the state or Federal Government. Harry Day, Mrs. O'Connor's 83-year-old father, is president of the company. Judge O'Connor is a director and H. Alan Day, her younger brother, manages the ranch.

Although its earnings are not made public, in recent years the Lazy B has become involved less in ranching and more in other activities. A decade ago, cattle accounted for nearly one-seventh of the company's reported assets of \$555,573. Last year, however, less than 5 percent of the company's \$746,016 in assets was cattle, according to reports filed with the Arizona Corporation Commission.

The O'Connors' stock holdings are limited, according to her most recent financial statement, which lists stock in only five publicly traded companies: Gorman Rupp, a manufacturer of water pumps, Eastman Kodak, Nalco Chemicals, Apple Computer and Southwest Forest Industries. Sources said that the O'Connors sold their holdings in Southwest Forest earlier this year.

The sources said that the O'Connors' stake in each of these companies ranged from \$5,000 to \$25,000.

Over the last two decades, the O'Connors have joined in limited partnership real estate development ventures, records show, including investments in 80 acres in west Phoenix and in an apartment complex, both of which were later sold.

Other O'Connor investments include interests in shopping centers here; two energy-exploration concerns that serve as tax shelters and a leasing company that operates jet helicopters to ferry technicians to and from offshore oil platforms in the Gulf of Mexico.

Mr. O'Connor told friends this week that, given the suddenness of his wife's nomination, he had not had time to consider what steps he might take to place his holdings in trust if Mrs. O'Connor is confirmed.

In her years as a State Senator, Mrs. O'Connor did not always recuse herself when legislation that might bear on her or her family's investments was presented for a vote. Though she did excuse herself from voting on one major banking bill in 1973, when she was a director of the First National Bank of Arizona, she voted in favor of at least four other bills that could have had an impact on her family's cattle business.

While her husband was serving as a director of two Phoenix automobile dealerships, Mrs. O'Connor voted in favor of legislation containing provisions that gave existing dealers the power to keep potential competitors out of their market areas.

Judge O'Connor, who is spending the weekend away from Phoenix, could not be reached for comment on those votes.

ABORTION

1. Personal views -- abortion as a moral issue; when can it be justified?

- (a) If opposed to abortion, why support it in Arizona legislature?
- (b) Have you ever indicated to anyone that you are not opposed to abortion?
- (c) Is abortion a killing?
- (d) Is abortion an appropriate subject for state regulation? In what respect?
- (e) Do you personally favor a constit. amendment to prohibit abortion? Favor Sen. East's bill defining when life begins?
- (f) As you as a personal matter favor financing abortions with fed. funds?

2. Roe v. Wade

- (a) Was it properly decided? Could it have been decided more narrowly?
- (b) Aware of criticisms of Roe v. Wade? What are they?
- (c) If abortion is appropriate for state regul., then isn't Roe v. Wade inconsistent with your own personal views?
- (d) Are you willing to consider overruling Roe v. Wade?
- (e) Is a constit. amendment an appropriate vehicle for overruling a decision that the people find abhorrent?
- (f) Is a "fetus" a "person" under the 14th Amendment?
- (g) Do you think the American people want Roe v. Wade to be overruled?
- (h) When a Supr. Ct opinion generates so much scholarly & public criticism, then doesn't the Court have a duty to take a second look at it?
- (i) What did you think of Roe v. Wade when it was handed down?
- (j) Is there a right of privacy? What basis in the Constit.

3. Arizona legislative record

a) 1970 - H.B. 20. Reasons for supporting it? Wouldn't it have eliminated all criminal prohibitions agst abortion? Wasn't it in effect an abortion on demand statute? How could you have supported it if you were morally opposed to abortion? Would you support it now if you were still in the legislature?

→ Did you tell the President that you supported this bill? Did you tell the A.G. or other DOJ representatives?

→ Nick Thimmon's column -- why couldn't you remember this vote? Why didn't you remember disputes & controversies with Dr. Carolyn Gerster?

→ How can you square your entire legislative record with your statements to the President on abortion?

(1) Did he tell you that he was satisfied with your legislative record?

(2) Did he ask you about it? What did he ask you?

b) 1973 - S.B. 1140 -- family planning methods and information. Reasons for supporting it? Wouldn't it in effect have permitted abortion to minors without parental consent? Weren't you aware of this effect -- what about the Arizona Republic editorial on March 5, 1973, referring to this bill as reflecting an "energetic state promotion of abortion?" How then could you tell Justice Dept. officials that you didn't think of this bill as an abortion bill?

c) 1974 - Abortions at hospitals -- was the only reason you voted against this the non-germaneness issue? Were you just wrong on that score since the const. was upheld by

Onion Sup. Ct?

- d) April 1974 -- House approved right to life memorial. Reasons for voting against it? Isn't your real view that, while you don't personally approve of abortions, and you don't think doctors should be required to perform them, the govt should not prohibit them? Don't you at bottom agree with the publ policy reflected in Roe v. Wade?
- e) Population growth -- are you concerned about birth rates in developing countries? Do you approve as a personal matter of providing birth control methods and information to such countries?
- f) Should the State or fed. govt legislate in the area of morality -- such as homosexual activities statutes? Is there a right to privacy? Where is that right found?
- g) What do you say to the millions of Americans who are horrified by the carnage of 10 million babies who have been killed since Roe v. Wade? Should govt be empowered to prevent this carnage? What should these Americans do who want to protect the unborn? Is this an area of legitimate civil rights concerns?

4) Due diligence issues

- a) Were you asked your views on abortion prior to meeting w/ the President?
- b) Asked about the Republican platform? Do you personally subscribe to " " " ?
- c) Are you prepared to tell this Committee, under oath, that you find abortion morally repugnant? If so, why did you support 4 legislative initiatives that permitted abortion?

Judicial philosophy -- describe it. Activist? Strict constructionist?

Stare decisis -- importance of precedent

(a) Distinction between statutory & constitutional rulings. Do you feel fully bound by Warren Court decisions -- did the Warren Court go too far?

Constitution -- how do you go about interpreting it? Evolving document, to change with the times? What is relevance of views of Founding Fathers? Inclusive or prescriptive?

Collegiality v the divided Court -- should there be an effort at consensus? Should Justices try to write separately?

What efforts will you make to achieve a more harmonious relationship on the Court? Killing Justices -- o.k.? Court?

→ Was The Brethren a good thing for the Court?

→ Should conferences and communications be confidential? Doesn't the public have a right to know about the activities of the judicial branch?

→ Should FOIA apply to the judiciary?

→ Should Justices hold press conferences, or grant interviews with the press?

Range of confirmation hearings

(a) Is Senate entitled to know your views on

a case that has already been decided? Or

Scott v Brown v. Board -- why not on Free v. Wade?

(b) Isn't the distinction that the Senate is not entitled to a commitment on how you would be voted, rather than on your present views of a past case

Con. philosophy as to amending the Constitution?

Role of Court vs. Role of Congress

Imperial judiciary -- how do we constrain the judiciary to remain within rightful limits?

What Justice do you admire most & why (of those not sitting on the Cu

Misc.

Constitutional Convention -- under Art. V, can a consti. convention be limited in purpose? Advantages & disadvantages? Should the country opt for congressional resolution, rather than by consti. convention?

Dividing Supreme Court of jurisdiction -- can Congress do it? Should it? Inferior courts?

1st Amendment issues

- a) Voluntary prayer -- should it be permitted? Does the case law forbid genuinely vol. prayer? Are they good policy?
- b) *not as legislative prayer*
do not have (central prayer)
ceremonial (institution)
Tuition tax credits -- are they constitutional?

- c) Borneography -- is it protected under 1st Amend. Is it subject to state regulation?
- d) Aid to parochial schools -- permissible? Should it be permissible?
- e) Free Press vs. fair trial -- how do you strike the balance? Should courtrooms be closed?

→ Role in Agric. Senate re Geography.

→ Statement in Phoenix magazine on consti. of aid to private schools.

ERA - Ratification

- a) Present view of ERA?
b) What would legal effects be?
c) Why hasn't it been ratified?

Gender discrimination

- a) What do you feel is the nature & extent of the problem of sex discrimination today?
b) The present state of the law in this area is confusing -- views on this?
c) Women in the military -- should women be subject to registration and to any draft?
ii) Serve in combat?

→ Role on Advisory Committee on Women in Military
Rate of reversal by H.R. Supreme Ct and Price Ct of App.

Conflict of interest

a) Standards of disqualification

b) Husband's law practice

c) Describe all outside income since you've been on the bench?

d) Wall St. J. of 8/14/81 suggested that Justices were too quick to recuse themselves, thus affecting the Court's decisions? Views?

Court + Jurisdiction issues

(a) National Court of Appeals -- good idea? Necessary?

(b) Diversity jurisdiction -- should it be eliminated?

(c) Federal court caseload -- are there ways to reduce the amt of litigation in the ct? Eliminating mandatory joinder of Supr. Ct.?

(d) Habeas corpus + finality --

(1) Are there ways to reduce all these habeas petitions?
(2) Are the federal judges really crying wolf... doesn't impose that much of a burden to protect these precious rights?

(e) How do we make judges more accountable to the people?

Eighth Amendment

a) Does death penalty, in your view, constitute cruel &

unusual punishment? Are there circumstances where it would be, e.g., death for armed robbery where no one was harmed?

6) The Court last Term decided that double jeopardy does not in itself violate the 8th Amend. Do you agree with that?

(1) Does solitary confinement violate 8th?

(2) Would permitting hunger strikes to die violate 8th?

(3) Under what kinds of circumstances could state prison conditions violate 8th?

c) As a general matter, have courts been too quick to take over the running of state prison facilities?

What can be done to restore the rightful prerogatives of the states in this area?

d) Does the death penalty deter crime?

e) Can the death penalty be equitably administered?

Why are the majority of death row inmates in

Southern prisons? Why blacks disproportionately high?

Public employees - right to strike

- a) Should public employees have the right to strike?
- b) " they have the right to unionize? If so, what the point without the " " strike?
- c) Should jail terms be imposed on illegal strikers?
- d) Should the govt. be held liable in event of any disaster in the air?

Crime in America

- a) Why is there so much crime in this country?
- b) How can we reduce the crime rate?
 - (1) Hard gun laws?
 - (2) Determinate sentences?
 - (3) Bail reform? - needs more info
- c) Abolish the insanity defense?
- d) " or modify the exclusionary rule?
 - (1) Is this appropriate for Congress to do?
- e) From your standpoint as a former state legislator & now as a state judge, what can Congress & the Fed. Govt. do in this area?
- f) Do we need more prisons? Should Fed Govt pay the tab -- part of it?
- g) Is plea bargaining a problem in the state system? Is this system in need of reforms?
- h) Grand juries -- should a witness have the right to counsel in the grand jury room?
 - (1) Is grand jury system abused by prosecutors?
- i) Has the balance in the crim. justice system been struck in favor of criminal defendants?
- j) Has Miranda been an impediment to law enforcement? Was it rightly decided?

argued that states ok + govt
not within trial lawyers Fed.

Civil Rights

- a) What are your views on busing? Has it worked? Should it continue to be used? Do the courts require busing to be used as a matter of law, or is this just a matter of discretion?
- (i) What remedies other than busing should be used?

- b) Affirmative action -- what does it mean to you?
- Should govt, as a policy matter, grant preferential treatment on grounds of race? Must govt be absolutely color-blind?
- (i) As a general matter, when would you permit race-conscious remedies?

- c) Do you think that black Americans and other minorities have actually overcome the legal disabilities of the past? Is discrimination still a problem in the US?

- d) What activities in your professional career show a commitment to equal justice under law for all Americans?

- e) Do you think that States can be treated unequally by the fed govt -- does the application of a law to a State but not to another, raise any constitutional issue in your mind?
- (i) In your view, how well has the Voting Rights Act worked?
- (2) If you were a member of Congress, would you vote for extension of the Act?
- (3) Should it be extended to all 50 States?

- f) Do you think that the Court should continue to have a black member, once Justice Marshall's time is ended?
- g) Should affirmative steps be taken to get more women & minority judges?

- h) Legal Services Corp. -- legal services to poor & federal role?

National security

- a) Does President have power to authorize warrantless electronic surveillance and physical searches for nat'l security purposes?
- b) Is there a "national security" exception to the 4th Amendment? To the 1st Amendment? Should there be? Does it justify a prior restraint? What about the Progressive case?
- c) Did the President act wisely in pardoning Miller & Felt, who clearly authorized FBI blackbag jobs?
- d) As a policy matter, should the govt punish those who disclose the identities of our intelligence agents?

Separation of powers

a) Legislative veto -- any views on it?

(i) Do you think that excessive govt regulation is a problem in this country, as a general matter?

(ii) Should Congress try to get control over the bureaucracy? Isn't the legislative veto a good way of doing so?

b) What about the Bumpers Amendment? Do you favor it?

c) As a general matter, do you think that too much power has shifted to the judiciary and away from Congress? How can this shift be redressed?

d) Do you think that Congress has passed laws that are too broad or vague -- has this contributed to judicial activism?

e) Right now, what is the most powerful branch of govt?

The personal views and philosophy of a Supreme Court justice should be set aside, insofar as it is possible to do so, and matters before the Court should be decided based on the record of facts before the Court and on the applicable constitutional and legal principles. If confirmed, I would strive to disregard my personal opinions and views in resolving matter before the Court. Having explained that, I will attempt to articulate my personal views on several issues, as you have requested.

ABORTION:

I am opposed to abortion as a means of birth control or otherwise. The subject of abortion is a valid one for legislative action, subject only to any constitutional limitations.

My opposition to abortion has strengthened with the increase in public knowledge and awareness concerning the improved medical ability to keep premature infants alive, and to transplant and implant embryos, and to treat successfully certain ailments and deficiencies of the fetus before birth.

Much has been written concerning my record as a state legislator on the subject of abortion. My review of the record indicates that in 1970, during my first session as a State senator, I had occasion to vote in the Judiciary Committee on House Bill 20, a bill which had been co-sponsored by two Republican members of the Arizona House of Representatives, and which had passed the Republican controlled House and been sent to the Senate. The bill, as it came to the Senate, would have repealed Arizona's felony statutes relating to abortion. The subject and the bill were not then the focus of public concern and awareness that would be the case today. The minutes of the Senate Judiciary Committee do not reflect the individual votes of committee members, and reflect only that the bill was returned to the full Senate with a "do pass" recommendation by a majority of the committee. I had no independent recollection of the vote, but have reviewed contemporary newspapers and have read an article in "The Arizona Republic" indicating I voted with the majority. The bill was subsequently held in the Republican caucus and Rules Committee and it never went to the full Senate for a vote on its merits.

Arizona's statutes made it a felony, punishable by from two to five year's in prison, for anyone providing any substance or means to procure a miscarriage unless it was necessary to save the life of the mother. No other exception was provided. At that time I believed some change in the statute was appropriate. Had a bill been presented which was less sweeping, I would have supported that. My own knowledge and awareness of the issues and concerns about the question of abortion have increased since those days. I would not have voted for a simple repealer thereafter.

In 1973 I requested the Legislative Council to prepare Senate Bill 1333, which gave hospitals the right not to admit patients for abortions, and gave physicians and hospital and clinic employees the right to refuse to participate in or contribute to an abortion if they stated in writing that they objected to the abortion on moral or religious grounds. I voted for the bill in the Senate, and it also was passed by the House and became law.

In the same year, 1973, I was one of ten senators who signed as co-sponsors Senate Bill 1190, a family planning bill. The bill did not refer to abortions and it was not my understanding or belief that the term "family planning methods and information" included abortions. Inasmuch as several other co-sponsors of the bill were publically opposed to abortions, I assume their understanding of the bill was the same as my own. It was my understanding and belief that the bill was intended to provide for availability of information and techniques for contraception and prevention of pregnancies. The bill did allow family planning information to be given to minors by physicians without parental consent. The only provision for surgical procedures contained

in the bill was the following:

A physican may perform appropriate surgical procedures for the prevention of conception upon any adult who requests such procedure in writing. (emphasis added).

The bill was poorly drafted and I can appreciate that there could be some misunderstanding about it. It is not unusual in the Arizona Legislature for bills to be introduced in a form requiring substantial changes in committee hearings to improve the language. In this instance, the bill was held in the Republican caucus and Rules committee and I had no occasion to vote on the bill on the floor.

In 1974, after the Roe v. Wade decision by the United States Supreme Court in 1973, a House Concurrent Memorial 2002 was introduced in the House urging Congress to amend the Constitution to provide that the word "person" in the 5th and 14th Amendments applies to the unborn at every stage of development except in an emergency where there is a reasonable medical certainty that continuation of the pregnancy would cause the death of the mother. The memorial was amended in the Senate Judiciary Committee to exclude also pregnancies caused by rape, incest, or other criminal action.

I voted against the memorial in the Judiciary Committee, and in the caucus and Rules Committee. I believe that an amendment should be made to the Constitution only rarely and after sufficient study to determine the necessity for it and the form it should take. I was not persuaded in 1974 that a Constitutional amendment was necessary, or, if it was, what form it should take. Time has shown how difficult the question is because Congress is still wrestling with the question in 1981.

In 1974, I voted in the full Senate in favor of Senate Bill 1165, which provided for a medical assistance program for the medically needy. The bill contained a provision that no benefits would be provided for abortions except when deemed medically necessary to save the life of a mother or where pregnancy resulted from rape, incest or criminal action. The bill passed and became law.

Also in 1974, the senate originated a bill to authorize the University of Arizona to issue bonds to finance construction of an addition to its football stadium. I voted for the bill and it passed the Senate. It was amended in the house to add a non-germane rider prohibiting abortions to be performed at institutions under the jurisdiction of the Board of Regents except to save the mother's life. I voted against concurring in the amendment on its return to the Senate. As majority leader, I believed that Arizona's Constitution, Art. 4, pt.2, § 13 prohibited bills on more than one subject and I wanted to discourage the practice in the House of Representatives. The amended bill passed and became law. Although the amendment was upheld by the Arizona Supreme Court in *Roe v. Arizona Board of Regents*, 113 Ariz. 178, 549 P.2d 150 (1976), the briefs did not raise the question of the germaneness of the amendment under Art. 4, pt.2, § 13 and the opinion did not address the issue. The invalidity of non-germane amendments was subsequently addressed by the Arizona Court of Appeals in *Litchfield Elementary School District No. 79 et al. v. Babbitt et al*, 125 Ariz. 215, 608 P.2d 792 (1977) which held invalid a bill which contained non-germane amendments.

PORNOGRAPHY:

As a citizen and as a State legislator I have expressed concern with the extent of availability and distribution of pornographic material, especially that which is available to minors. Again, however, my personal views and opinions are not relevant to the process of reaching a decision as a judge in any particular case involving 1st Amendment protections for freedom of speech.

As a legislator I favored enactment of those measures designed to extend and provide appropriate curbs and restrictions on sale and distribution of pornographic material which I believed would withstand challenges in court if passed into law. I opposed certain measures which I believed were improperly or inadequately drafted or submitted.

As a legislator I voted in 1974 for Senate Bill 1227, which amended Arizona's obscenity laws in a manner consistent with the requirements set forth in Miller v. California, 413 U.S. 15 (1973). In 1972 I voted for Senate Bill 1320 which increased the penalty for certain obscenity related offenses where the defendant had previously been convicted of similar offenses. In 1971 I voted for House Bill 301 which made it unlawful to publicly display explicit sexual material. In 1970 I co-sponsored Senate Bill 42 which provided for restrictions on the sale and distribution of pornographic literature to minors. I also voted in 1970 for a virtually identical House Bill 21.

As a judge, I am no longer in a position of deciding what is the best approach to regulating obscenity as a matter of public policy, but, rather, whether the approach taken by a state or locality complies with the Constitution's protection of free speech.

PROSTITUTION:

I am morally opposed to prostitution. It is a demeaning and immoral practice which is inconsistent with family values. It is in my view an appropriate subject for state regulations.

GUN CONTROL:

As a state legislator I did not support measures to limit the right of law abiding citizens to acquire or to own guns for sport and self defense. I did support, however, laws to prevent the carrying of concealed weapons, and to define a concealed weapon, as well as laws increasing criminal penalties for criminal offenses committed with the use of a gun or deadly weapon.

In 1974 and 1973 I voted in the state legislature for memorials to Congress and the President asking that certain federal firearms control legislation be opposed. In 1971 I co-sponsored and voted for a bill, Senate Bill 7, to permit residents of Arizona to purchase firearms in other states in accordance with the Federal Gun Control Act of 1968

As a judge I have had occasion to preside over a number of criminal trials and cases involving offenses committed by the use of guns, and have imposed sentences on those found guilty of such offenses.

ERA:

When the Congress of the United States passed the ERA in 1972 and submitted it to the states for consideration, I was serving as an Arizona State Senator. I requested and obtained approval of the Judiciary Committee of the Arizona State Senate to introduce a resolution of ratification as a majority of the committee measure. The measure never passed out of the committee. Hearings on a ratification resolution were held each year thereafter while I served in the Legislature, with the same results. As time passed, public concern and opposition to the amendment increased. I co-sponsored in 1974 a measure to submit the question of ratification of the ERA to the voters of Arizona for an advisory opinion. I believe that legislators should be adequately informed about the views of their constituents on a constitutional amendment of such public controversy before taking legislative action on the issue. That measure was also held in Committee. Since going on the bench in 1975, I have taken no public position or action concerning the ERA.

BAR POLL RESULTS:

In Arizona, a poll is taken by random selection among attorneys within the state for the purpose of rating judges prior to general elections. A copy of my rating on the 1980 bar poll is attached. The poll was taken in less than one year after I had become an appellate court judge. A total of twelve appellate court judges were rated. 90% of those polled believed I should be retained in office, which percentage ranked 8th among those rated. In the rankings of those judges who were rated "excellent" on the categories of knowledge of the law, quality of written opinions, and consideration of briefs and authorities, I ranked second.