

The CHAIRMAN. Ms. Kiehl, you have just proven that you need not be a lawyer to be eloquent in speaking about the law.

Ms. KIEHL. Thank you.

The CHAIRMAN. The Senator from Alabama.

Senator HEFLIN. Ms. Feinberg, would you give me a little more information on The Nation Institute. I am not familiar with it altogether. Would you give us some information on your membership, and various details about the organization.

Ms. FEINBERG. Well, The Nation Institute is funded solely from private contributions from foundations and individuals who wish to support civil liberties and civil rights.

It is primarily a research and educational organization. It sponsors research and conferences in the civil rights and civil liberties areas. Some of its recent projects include "Justice Watch," a newsletter that looks over Justice Department policies.

Recently there was a conference held for journalists on "The Journal of Critical Opinion." In addition The Nation Institute has the Supreme Court Watch Project which has studied, in a scholarly way, by lawyers, the records of Supreme Court nominees.

So, overall, its policy is to promote education and to inform the public on important issues of civil liberties.

Senator HEFLIN. And what is its membership, primarily? I mean where, in what locations?

Ms. FEINBERG. It is not a membership organization in the sense that we solicit members as opposed to funding. There is a board of directors of The Nation Institute. There is also an advisory board of the Supreme Court Watch Project, and the money that is collected is used to sponsor research.

And there is also a network of volunteers, such as myself, that volunteer our time to help out with these research projects.

Senator HEFLIN. Well, does the funding come from primarily foundations? Where does the funding come from?

Ms. FEINBERG. I know that it is from foundations and from individuals, but it is all private money.

Senator HEFLIN. I believe that is all.

The CHAIRMAN. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman. Thank you very much for your testimony. I would be interested to know if you would care to say how you would vote, if you had to on Judge Bork, if you had to say yes or no. Ms. Kiehl, what do you say?

Ms. KIEHL. Judge Bork? I assume you mean Judge Kennedy. You know how I feel about Judge Bork.

Senator SPECTER. I did mean Judge Kennedy.

Ms. KIEHL. Honestly, as I said I am not a lawyer. The Bork hearings were a real education for me, and it was really clear to me how I felt on that, for the first time we came out on that, for the first time ever.

Are you going to make me say in front of the public how I would vote if I were in your shoes—

Senator SPECTER. You do not have to say. I just ask you if you care to answer?

Ms. KIEHL. I think—

The CHAIRMAN. You can say you do not care to answer.

Ms. KIEHL. I think that I am holding out hope that in fact Judge Kennedy is open to hear about the lives of women, and I trust you to make a really wise decision on that, as you have done in the past.

Senator SPECTER. Ms. Feinberg, would you care to—

Senator HEFLIN. You can say you are undecided, to Senator Specter and myself.

Ms. KIEHL. That way I would get a lot of public attention as well.

Senator SPECTER. Would you care to say? Yes or no?

Ms. FEINBERG. All I can say, really, is that we could not endorse him at this time because of a number of his troubling decisions, and it would be my hope that the Senate through written questions, or other means, would try to probe him on the parts of his record that have not been gone into yet, and I would like to withhold final judgment on him until we have those answers from him.

Senator SPECTER. Mr. Wallace, yes or no? Would you care to say?

Mr. WALLACE. With an explanation. The National Association of Criminal Defense Lawyers has tried studiously not to take a position either for or against the nomination, but, speaking for myself, I think that I have enough faith in his genuine belief in individual rights, and his ability to grow over the next couple of decades on the bench, that I would basically be optimistic that he can be a good Supreme Court Justice, and if I had a vote I would probably vote for him.

Senator SPECTER. Mr. Wallace, you have said that you have some reservations about Judge Kennedy on the *Miranda* decision, and you raise a question, or you make a comment that "Some people need *Miranda* warnings more than others."

Would you say that *Miranda* warnings ought not to be given to people who know their rights, like attorneys general, or sophisticated defendants, or lawyers?

Mr. WALLACE. I certainly do not want to be seen as proposing a needs test for constitutional rights.

Senator SPECTER. Well, how about it? If a person knows their rights, how about the author of the little card with the five warnings?

Mr. WALLACE. Well, that is the point of the waiver process, to determine whether a person knows his rights and can knowingly waive them. But the primary value of the warnings is of course to inform those who do not already know their rights.

Senator SPECTER. Well, I think it is important to note that the *Miranda* warnings have to be given to everyone, whether the person is learned in the law, a chief of police, a district attorney, a Supreme Court Justice. Everyone has to get the *Miranda* warnings, regardless of station in life.

I have just one question on a case, Mr. Wallace, and that is a case that I had referred to earlier, and it is the case of *Burr v. Sullivan*, a criminal case involving Judge Kennedy's upholding a district court reversal of a conviction on the ground that there was insufficient cross-examination of defense witnesses at trial.

Where the clue comes early on in Judge Kennedy's opinion, where he says that there was no physical evidence linking the defendant to the arson. And what he is really saying here in a very

hypertechnical sense, that he reverses the conviction where there had been cross-examination.

One was on a motion to strike, and the other was in a closing speech, and went really far beyond the concern or solicitude that judges characteristically give to defendants' rights.

I discussed the case with him in a private session and asked him why he went so far, and that case seems to me to be a pretty sound indicator of a very sensitive concern for rights of a defendant, and I wonder if you agree with that?

Mr. WALLACE. Yes, I do. You have identified what I think, and what our report concludes is his strongest area in constitutional issues affecting criminal defendants, and that is the confrontation clause.

His cases respecting the confrontation clause are very sensitive, sensitive to the right of cross-examination, and to giving real substance to it, and this is an excellent example of a case where he went further than he had to and expressed more indignation than he had to, and picked the record apart more than was actually called for.

Senator SPECTER. Perhaps too much? Cannot have too much?

Mr. WALLACE. I do not think any level of attention to detail, and to every aspect of an individual's rights can be too much.

Senator SPECTER. How about protection for the State?

Mr. WALLACE. I believe that the State's interests ought to be weighed equally on the scales of justice.

Senator SPECTER. Thank you very much, Mr. Wallace. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you all. I think that I announced at the outset of this hearing, the hearing record will remain open until we reconvene. There will be additional questions submitted by me, personally, and by the committee on behalf of Members of the Senate, from Senator Levin, and others, who have indicated they want to ask questions of the judge.

The full record of those questions and answers will be published.

You have all made a very fine contribution, we appreciate your candor, and quite frankly, the scholarship you brought to this process, and the eloquence.

Thank you all very much. I appreciate it.

Ms. KIEHL. Thank you.

Ms. FEINBERG. Thank you.

Mr. WALLACE. Thank you.

The CHAIRMAN. We have two more panels and we appreciate the patience of such distinguished people.

Our next panel consists of several witnesses. Carolyn Kuhl is a partner in the Los Angeles law firm of Munger, Tolles and Olson.

Forrest A. Plant is a partner in the Sacramento law firm of Diepenbrock, Wulff, Plant and Hannegan.

Nathaniel S. Colley is a partner in the Sacramento law firm of Colley, Lindsey and Colley, and an adjunct professor at McGeorge Law School, and maybe one of the most distinguished members of the bar anywhere, and also, quite a race fan, and I believe was former commissioner of racing, if I am not mistaken, under the Brown administration. Maybe I have that title incorrect.