Mr. FEIN. I think it is. I think one can say one is qualified for an office but not be an enthusiastic supporter of that particular candidate.

Senator BIDEN. Now you are sounding like a politician, but thank you.

Mr. FEIN. I think you recognize that distinction all the time. You may vote to confirm someone to be Secretary of State because you think they are qualified. You may not be an enthusiastic supporter of them, but you think that an appropriate decision that someone has to make.

Senator BIDEN. Good. I look forward to seeing you. I really do.

The CHAIRMAN. I want to thank you very much. You have proved to be very articulate, and we appreciate your presence.

Mr. FEIN. Thank you, Mr. Chairman and the committee.

The CHAIRMAN. Now, panel 6 is Ms. Estelle Rogers, N.O.W. Legal Defense and Education Fund; Ms. Susan Nicholas, Women's Law Project; Ms. Nancy Broff, Judicial Selection Project; Ms. Irene Natividad, national chair, National Women's Political Caucus. The distinguished ranking member has asked that these be heard tomorrow so we will carry that panel over.

The next panel is panel No. 7, and I will ask them to come around. Ms. Barbara Dudley, executive director, National Lawyers Guild; Mr. William Kunstler, Center for Constitutional Rights; Ms. Nancy Ross, executive director, Rainbow Lobby; Mr. Dennis Balske, legal director of The Southern Poverty Center; and Ms. Beverly Treumann, executive director, NICA—Nuevo Instituto de Centro-America.

Mr. Kunstler is the only one here.

Senator BIDEN. Let the record show that they are not waving to one another.

The CHAIRMAN. Do you swear that the testimony that you give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KUNSTLER. I do.

The CHAIRMAN. I want to announce that the other members—Ms. Dudley or Ms. Ross or Mr. Balske or Ms. Treuman—if they care to place statements in the record, we will be glad to have them do so.

TESTIMONY OF WILLIAM KUNSTLER, CENTER FOR CONSTITUTIONAL RIGHTS, NEW YORK, NY

Mr. KUNSTLER. May I proceed, Mr. Chairman?

The CHAIRMAN. You may proceed, for 3 minutes.

Mr. KUNSTLER. Mr. Chairman, my statement I have already submitted for the record, and I am not going to repeat. I am going to break up the cascade of plaudits that have come, as you probably expected.

I am a founder and vice president of the Center for Constitutional Rights in New York City, and without belaboring the point, its 20 years have been spent in trying to further the Constitution.

In relation to my association with that organization, I was one of the lawyers in *United States* v. *United States District Court.* I argued it in the District Court, and I argued it in the Circuit Court,

and I argued the brief in the Supreme Court. That was the case involving the Mitchell doctrine, which was authored by Justice Rehnquist when he was an assistant attorney general, and this may be the reason executive privilege has been asserted. But while he was Assistant Attorney General, Office of Legal Counsel, he advised the President that it was perfectly all right to wiretap without a warrant whenever the President decided to do so; that he had the inherent power to violate the fourth amendment. This was the power to wiretap domestic groups and individuals. Nothing could be more unconstitutional than what was urged and what Mr. Rehnquist both formulated and advocated.

In the Court of Appeals, Circuit Judge Edwards—and I will quote this portion when the Circuit Court voted to invalidate this strange rule—he said,

> It is strange, indeed, that in this case the traditional powers of sovereigns like King George III should be invoked on behalf of an American President to defeat one of the fundamental freedoms which the founders of this country overthrew King George's reign.

The Supreme Court by a vote of 8 to zero—Justice Rehnquist did abstain in that case because he was the author of the very doctrine which was being invalidated—8 to zero, voted on June 19, 1972, 2 days after Watergate, to invalidate that claim of inherent power.

Justice Douglas called it an awesome, terrible, horrendous claim, using words like that. If a Justice of the Supreme Court was willing to violate the Constitution, one of its most sacred tenets, the fourth amendment, which as you know from the Declaration of Independence was one of the causes of the American Revolution, the writs of assistance which were urged by the King. The same type of power that Justice Rehnquist urged upon the President which the President adopted as his own private law and which was used, as Senator Kennedy said, for surveillance and wiretapping.

I wish that Senator Byrd had gone further and asked him whether he was the one who authored the opinion that it was perfectly all right to violate the fourth amendment to President Nixon.

I think that you have a Justice here who does not understand the Constitution and will destroy, if he can, the written Constitution. That is what that decision amounted to.

A man who will tell the President of the United States that he has the power to tap anybody's phone without a warrant, without judicial authority, is not fit to sit as an Associate Justice, much less the Chief Justice of the U.S. Supreme Court.

I have quoted from the opinions in the *United States* v. the *United States District Court,* when this outlandish opinion was first voiced, called the Mitchell doctrine. It was the foundation of the Houston plan; it was the very heart of it, and I think that the assertion of executive privilege here, much the same as was asserted during the Nixon days—and you must remember that one of the men who made the decision and recommended it was Mr. Cooper who was Mr. Justice Rehnquist's law clerk some years ago in the Supreme Court—that this aspect of his life and the assertion of executive privilege, and of course, he was the author of that legal memorandum as well as the efficacy of executive privilege to President Nixon, that such a man is not fit to sit upon this Court and violate this Constitution.

I think that the committee ought to subpoena and fight this issue of executive privilege on those documents. They are being hidden. I think Senator Kennedy is absolutely right. They are being hidden, as they were hidden in the Nixon days. They are being hidden because they do not want you to see the memoranda as to the use of the Mitchell doctrine, the wiretapping without a warrant of American citizens and American organizations.

I think if we are going to have a full investigation, this committee ought to have that material. And to say, as Senator Thurmond says, that ends the matter, I hope that there will be a majority of the committee, though my hopes are not very great; but I do have hopes, as I live long enough, they grow longer than I am. But I have hopes that there will be consideration of a subpoena in challenging this assertion of executive privilege on a matter that is 15 years old, or more than that. It probably goes back 17 or 18 years old, and cannot fulfill any part of the President's directive on the assertion of executive privilege.

The CHAIRMAN. I believe your time is up.

Mr. KUNSTLER. I just ended. Perfect.

[Statement follows:]