

Senator Metzenbaum said, "Frankly, I am terrified that if we turn the clock back on legal abortion services women will once again be forced to resort to brutal and illegal abortions, the kind of abortions where coat hangers are substitutes for surgical instruments."

In response, at least in part, Judge Thomas said, "It would, of course—if a woman is subject to the agony of an environment like that, on a personal level certainly I am very pained by that. I think any of us would be. I would not want to see people subject to torture of that nature." And he goes on.

I must say I agree with you the record is less than clear and is of concern, and I think your testimony is very helpful in bringing it out.

Mr. Chairman, you were, I think, kind enough to share with us an observation as a practicing Catholic that Catholics should not be prejudged on this issue; that, indeed, a significant portion of the Catholics that are members of this committee are pro-choice. And I think that is a relevant and a fair observation. I just wanted to assure you that as a practicing Republican the same is true. It is true that our platform is not perfect.

The CHAIRMAN. You are pro-choice? Is that what you are saying?

Senator BROWN. Yes.

The CHAIRMAN. I was not being facetious. I did not know what you meant.

Senator BROWN. But the vast majority of Republicans are pro-choice as well, as I read the polls.

Ms. MICHELMAN. If you could move your President, it would be wonderful. [Laughter.]

Senator BROWN. We are working on it.

I yield back.

The CHAIRMAN. Thank you. I am about to yield to my friend from Wisconsin, not only for the opportunity to question but to chair because he has been kind enough to suggest he would sit in for an hour while I go up and attempt to meet some of my duties as chairman of the European Affairs Subcommittee of the Foreign Relations Committee. I will be back shortly.

Let me, with his permission, before I yield to him for both the opportunity to question and to chair, just make one observation. I think if one were to just read about these hearings and observe the cartoons and others about the hearings, one might think that I understood the Governor's comments to possibly not be accurate as it relates to the requirement, the role, the expectation and the function of this committee. I was interested to see—and I do not know enough about this polling organization, but there is a thing called the Polling Report that is published here in this city, and subscribers pay a certain amount of money for it every year, like other newsletters.

In the CBS-New York Times poll conducted, it reports the poll conducted from September 3 to September 5—and I do not know whether it has changed since then. But when asked "Who do you trust to make the right decision about who should sit on the U.S. Supreme Court, the President or the United States Senate?" All people answering, 55 percent of the people said the Senate and 31 percent said the President.

When asked, when the Senate votes on a Supreme Court nominee—I raise these only because these are issues raised by witnesses as well, and we will hear it later today as well. When the Senate votes on a Supreme Court nominee, should it consider only the person's legal qualifications and background, or along with legal background should the Senate also consider how the nominee might vote on a major issue the Supreme Court decides? On legal only, 39 percent of the American people; issues as well, 49 percent. Roughly half the American people think we should consider the nominee's views on the major issues of the day.

That is my quote. To be more precise, "Consider the nominee might vote on major issues the Supreme Court decides." Lastly, the same poll, CBS-New York Times Poll, when the Senate votes on a Supreme Court nominee, should it consider, along with the nominee's legal qualifications, the person's personal history and character? Seventy-three percent of the Americans said it should, and 21 percent of the American people say it should not.

I think the American people have it pretty right, pretty on the mark across the board on these things, and I think not for the reasons they think Senators are any better qualified to pick a nominee, but I suspect because they understand that it is more likely to be representative of what the American people are thinking about.

I just raise that, and I have one question. The Philadelphia Inquirer, a first-rate newspaper in this country, in my view and I think in everyone else's view, not known for its being a conservative newspaper or a radical newspaper, left or right, in its editorial today, endorsed Judge Thomas, and it says in two of the last three paragraphs, and I would like you to comment on this, if you would:

But our support for his elevation to the Supreme Court doesn't spring from an analysis of his resume or from an awareness that his rejection would be followed by a nomination of another conservative Republican. In part, it is a leap of faith, but we believe Judge Thomas can rise to the occasion. We recommend the Senate go with their hopes and confirm him.

Now, as I ask you to comment on it, keep in mind, I have heard several of you say something I have not found in the record, and I think I sat here for almost every word that Judge Thomas uttered. If I was not here, I walked to the back to go to the restroom or to get a cup of coffee and could watch it on television in the room in there while getting the coffee. I doubt whether there are very many Americans who have been more attentive to what he said than me.

The phrase has been used a number of times that he has extreme views and that he has explicitly endorsed the Lehrman conclusion, when he mentioned the Lehrman article. I, like my friend from Colorado, find his position on this area ambiguous, at best, but I did not find anywhere in the record, and I spent a hundred hours on this, researching every word he ever wrote that I could find before the hearing and listening to every word he said afterwards, where he did anything that remotely approached endorsing the Lehrman article.

I agree, you could go to the issue of whether or not he was being candid, whether or not one should believe him or not believe him, but I did not find anywhere in the record on that issue where he

evidenced extreme views, where, on the face of what he said, was anything extreme or an explicit endorsement.

The only thing I could find was what appeared to be the closest thing to an explicit rejection of the conclusion, and I am trying to find that part of the record I had here a moment ago, with regard to a long discussion about the Lehrman article, which was raised a number of times.

In response to Senator Leahy, on the 13th, on Friday, he said, the last sentence, Senator Leahy, "Do you agree with his"—meaning Lehrman—"his conclusion that all abortion is unconstitutional?"

"Judge THOMAS. The point that I am making is that I have not, nor have I ever, endorsed this conclusion or supported this conclusion."

Ms. WATTLETON. Mr. Biden, the facts do not substantiate his statement, because he did in fact acknowledge the wisdom of Mr. Lehrman's conclusions in his speech.

The CHAIRMAN. Now, let's be precise.

Ms. WATTLETON. Now, we have not—

The CHAIRMAN. Let me interrupt you, now, because this is very important.

Ms. WATTLETON. I know it is, and I will clarify what I have got to say.

The CHAIRMAN. Well, he did not—what he specifically said was, "It was a splendid application of the principle of natural law."

Ms. WATTLETON. But that "splendid application" was that the fetus has an inalienable right to life from the moment of conception, and if that is not at odds or in contradiction to the concept of the woman to make the right and to have the right to make the decision, I fail to understand what is. What I am saying is that he did say that "it was a splendid application." If he did not think that the fetus had an inalienable right to law, then why didn't he select another example in which to build the conservative coalition for civil rights?

We find it highly curious that he would select this particular issue, one that is so contentious in this country, that is so central to women's integrity, to expand on the virtues of Mr. Lehrman's vision of natural law, that in the face of his refusing to answer this committee's questions, not our questions, but your questions about whether he believed that the constitutional protections extended to the right not to procreate can leave us with no other conclusion. He had an opportunity before you to clarify that.

I find no comfort in his desire not to see a woman go through the torture of illegal abortion, because he may believe that she doesn't have to face illegal abortion, but to carry a pregnancy against her will to term, so that was not expounded upon, either.

So, I think that all of these things together force us to reach the conclusions that we have expressed here today.

The CHAIRMAN. I am not questioning your right to make the judgment or your judgment.

Ms. WATTLETON. No, I am not saying that you are.

The CHAIRMAN. I am saying that you are raising the issue of how you arrive at that—

Ms. WATTLETON. I am just giving you the reasoning for why.

Ms. WEDDINGTON. Senator Biden, let me call to your attention the Heritage Lectures publication, "Why Black Americans Should Look to Conservative Policies," and I am reading exactly from it. Mr. Thomas said, "But the Heritage Foundation Trustee Lewis Lehrman's recent essay in the American Spectator, on the Declaration of Independence and the meaning of the right to life, is a splendid example of applying natural law."

The CHAIRMAN. That is exactly "a splendid example"—I mean if it didn't have the sentence "a splendid example of applying the right to life," I would acknowledge—

Ms. WEDDINGTON. But it does, it says "and the meaning of"—

Ms. WATTLETON. No, that is what he is saying, he is saying—

The CHAIRMAN [continuing]. "Of the meaning of the right to life is a splendid example of applying the"—just to make the point, let's assume he explicitly rejected the notion of natural law, which he has not, in my view, but let's assume he had. I could make the same exact statement he made and it be completely consistent with my support of *Roe*. I could say I oppose natural law, it's a bad way to use the Constitution, to interpret the Constitution, but Mr. Lehrman's article expounding on the right to life, it occurring at the moment of conception, it being et cetera, et cetera, et cetera, is a splendid example of applying natural law, and you would, nor no reasonable person could possibly or would possibly draw the conclusion that that meant I supported Lehrman's position.

Ms. MICHELMAN. But you would, Senator—

Ms. WATTLETON. I would?

The CHAIRMAN. You would?

Ms. WATTLETON. Because the adjective "splendid" places a value on the wisdom of that application.

The CHAIRMAN. I see.

Ms. WATTLETON. I think we are not taking issue with the doctrine of natural law, it is how that doctrine is applied that is at issue here.

The CHAIRMAN. I understand that. I don't want to belabor this.

Ms. WATTLETON. It is a splendid example and I think it can only be viewed as very complimentary and supportive.

The CHAIRMAN. I see. If I were trying to make a point that communism is a perfect formula for implementing totalitarian dictatorships, and I said in a lecture, "And Joseph Stalin's application of Marxist-Leninist theories was a splendid example of how they result in totalitarian government," would that be an endorsement?

Ms. WATTLETON. That would be a recognition of the wisdom of Mr. Stalin's application of that theory for that particular outcome.

The CHAIRMAN. I want to make it clear. I don't—

Ms. WATTLETON. And there is no way that we can avoid the word "splendid" is what it means—

The CHAIRMAN. I completely, fundamentally—

Ms. WATTLETON [continuing]. Is that it is an excellent example.

The CHAIRMAN [continuing]. Totally use the word we use here, I disagree with that, I think that is a failure in logic, but I will not pursue it, because I think it comes down to the credibility—

Ms. MICHELMAN. Could I—

The CHAIRMAN [continuing]. Not to whether or not one could say that.