years to not only this committee but to major news and talk shows in America making the position of Planned Parenthood known.

And Ms. Sarah Weddington, an attorney in private practice in Austin, TX, who has done a number of very significant things, but one of the things that maybe is most poignant for the purposes of this hearing is that she was the attorney in *Roe* v. *Wade*.

With that, let me begin with you, Ms. Weddington. I am told the panel would like to move that way. Then we are going to move across, and we will go to Ms. Michelman, Ms. Wattleton, and the Governor will conclude.

Welcome, again, and please, if you can help us, try to keep your comments to 5 minutes. There will be questions. You will have more than 5 minutes to speak, I assure you. Any longer statement that you may have, we will at your request be delighted and anxious to put it in the record for the record.

Good morning, welcome, and the floor is yours.

STATEMENTS OF A PANEL CONSISTING OF SARAH WEDDINGTON, ATTORNEY, AUSTIN, TX; KATE MICHELMAN, EXECUTIVE DIRECTOR, NATIONAL ABORTION RIGHTS ACTION LEAGUE; FAYE WATTLETON, PRESIDENT, PLANNED PARENTHOOD FEDERATION OF AMERICA; AND MADELEINE MAY KUNIN, FORMER GOVERNOR, STATE OF VERMONT, AND DISTINGUISHED VISITOR FOR PUBLIC POLICY, BUNTING INSTITUTE, RADCLIFFE COLLEGE, CAMBRIDGE, MA, AND PRESIDENT, INSTITUTE FOR SUSTAINABLE COMMUNITIES, VERMONT LAW SCHOOL, SOUTH ROYALTON, VT

Ms. WEDDINGTON. Thank you. Mr. Chairman, Senator Thurmond, I want to express appreciation for the opportunity to be part of this distinguished panel and to contribute, even if only for a few minutes, to the importance of this deliberation. My name is Sarah Weddington. I am the attorney who litigated and won *Roe* v. *Wade*.

In 1969, abortion was illegal in my home State of Texas and, in fact, outlawed except to save the life of the woman. However, women did find a way to get abortions—those with money who flew to California and New York, those without resources who often went to Mexico, where it was illegal, or back alleys. And the result was women who died or were seriously injured. It is not a day I ever want to go back to.

A group of women then were trying to provide information about the safest places to go and were afraid they would be prosecuted as accomplices to the crime of abortion. They asked me to look it up. I was the only woman lawyer they knew, and they needed someone who would do it for free. And so I ended up being the person whose research led to *Roe* v. *Wade*.

It will soon now be 20 years since that decision, and yet I am fearful for its health and well-being because I believe, if the Senate confirms Judge Thomas, that he will vote to overturn *Roe* v. *Wade* and that laws as extreme as those in Texas will once again be enforced in this land.

I have tried to watch these hearings very carefully. They have been frustrating, not very enlightening, and I tried to find a way to express my frustration. In the attorney general's office in Texas,

there are posters in our child support and paternity section whose caption is, "Would you be more careful if it was you that got pregnant?" The headlines in the Austin paper said Judge Thomas had a sense of humor, and so I thought he would not mind if I altered the poster a little bit to ask if he wouldn't have been more careful about what he has been saying if he were the one who could have gotten pregnant.

Saying things like, "Oh, I just wrote that about Lehrman's article, it was a throw-away line"; or "I have never really thought about this issue. I have never discussed it with anyone although I was in law school when *Roe* v. *Wade* was decided"; "I really don't have an opinion"—you see, I find that very hard to believe, and I think you should, too.

In fact, his record provides clear indication of the opposite. I think, for example, that when he talked about Lehrman's article, the "right to life" of the fetus as a "splendid example of applying natural law," and other things that the article said that were so extreme that it would require abortion to be outlawed in every State, we have to take that seriously.

I think if he had said something like that about a Supreme Court opinion, *Plessy* v. *Ferguson,* separate but equal, we would not accept it. And so right now all I can see is he has had wonderful coaching from that great Texan over in the White House. I think he has learned to say very little. Newsweek this week said he has been "a master of evasion." But I am worried about that because I believe that the women of this country deserve a fundamental right. I think there is a constitutional right of privacy. I do not want to see it endangered.

He has avoided saying even that an individual has a fundamental right to privacy based on the Due Process Clause of the 14th amendment. I ask you to say no to his nomination.

[The prepared statement of Ms. Weddington follows:]

Testimony of Sarah Weddington
Attorney, Austin, Texas
Before the Senate Judiciary Committee
On the Nomination of Judge Clarence Thomas to be an
Associate Justice of the United States Supreme Court
September 19, 1991

Mr. Chairman, Members of the Committee, thank you for the opportunity to address you today. My name is Sarah Weddington and I am the attorney who litigated Roe v. Wade.

In 1969, abortion was illegal in Texas, my home state. But that did not change the determination of women in Texas -- like women all across the nation -- to choose for themselves the appropriate response to a pregnancy. Some chose abortion. Those who could somehow get together the necessary money went to states like California or New York for legal abortions. Those who could not had illegal abortions, often in Mexico. Many women died because of that Texas law, and more suffered permanent physical injury.

That year a group of women formed to provide free information about the safest places to go. They were concerned about whether they could be charged as accomplices to the crime of abortion. They asked me, the only woman lawyer they knew, for advice. My offer to do some research led to the case of Roe v. Wade.

Soon it will be twenty years since we celebrated the Roe v. Wade decision, January 22, 1973. Now I fear that Roe will not survive

-- even in its currently weakened state -- until that twentieth anniversary.

I believe that if the Senate confirms Judge Thomas he will vote to overrule Roe and uphold laws as extreme as the Texas law that the Supreme Court struck down in 1973.

I have followed these hearings with great interest, but Judge Thomas's testimony here has been frustrating and unenlightening. What we have learned is that he had wonderful, careful coaching about how to avoid political pitfalls. What we have seen is a nominee who was willing to answer questions only on issues that are politically safe and who was deliberately evasive on the critical issue of a woman's fundamental right to privacy.

Judge Thomas' record, however, does provide clear indications of the views he was unwilling to share during these hearings. I know that this Committee is very familiar with Judge Thomas' record, but I wish to address two specific concerns that I believe members of this Committee have expressed.

First, I would like to address the attempts during the last few days to dismiss concerns about Judge Thomas' record as unfairly based on a single sentence. Of course, I am referring to Judge Thomas' startling praise of an article by Lewis Lehrman on the "right to life" of the fetus as a "splendid example of applying

natural law." One line can be of enormous importance. Few would dispute that the phrase "All men are created equal" in the Declaration of Independence is significant. The true issue is the content of the sentence. The terrifying significance of Thomas' praise for Lehrman's article lies in the extreme position the article takes: the article compares abortion to a "holocaust" and argues that the Constitutution requires abortion to be outlawed in every state, under all circumstances.

Imagine if Lehrman had taken a different extreme position in opposition to a basic constitutional principle. What if, for example, Lehrman had said that natural law required the "separate but equal" ruling in Plessy v. Ferguson, and Judge Thomas had praised Lehrman's article calling for racial segregation as "a splendid example of applying natural law." Would anyone on this panel even consider confirming a nominee who had made such a statement unless he had established with both certainty and clarity that he would find unconstitutional a law that would force school children to go to segregated schools? This panel should demand the same certainty and clarity of Judge Thomas given his endorsement of an extreme position that would abolish the fundamental right to choose. To vote to confirm Judge Thomas when he has responded with only evasion would be to treat the right to choose abortion as a second-class right.

Moreover, the endorsement of the Lehrman article is not an anomaly, but is part of a pattern that appears throughout Judge Thomas' speeches and writings. For example, Judge Thomas criticized Roe v. Wade in an article in the Harvard Journal of Law and Public Policy. In the context of exhorting his "conservative allies" to embrace natural law as a tool against "judicial activism," Judge Thomas identified Roe v. Wade as the case "provoking the most protest from conservatives." In another article, Judge Thomas criticized protection of the right to privacy under the Ninth Amendment as an "invention." Judge Thomas also participated on a White House Working Group that called for the overruling of Roe v. Wade. Never, until these confirmation hearings, did Judge Thomas seek to clarify his views or to distance himself from that highly publicized, controversial report. Judge Thomas also referred to the Republican Party's opposition to abortion as likely to attract African Americans to the Republican Party.

Every sign from his record points in one direction -- Judge Thomas, if confirmed, would vote to overturn Roe v. Wade. Judge Thomas' repeated references to the issue of abortion at a minimum undercuts the credibility of his statement, that he has no opinion on Roe v. Wade and has never debated the contents.

Second, I would like to respond to the suggestion by some that Judge Thomas' testimony somehow addressed the grave concerns raised by this record. Far from being reassuring, Judge Thomas' carefully crafted and evasive answers raised new, very serious issues of credibility.

In particular, a careful reading of the transcript reveals that in his responses to Senator Biden's deliberate and repeated questions, Judge Thomas avoided saying even that an individual has any fundamental right to privacy including the right to use contraception, that is based on the liberty/due process clause of the Fourteenth Amendment. Judge Thomas struggled to give the same answer that Justice Souter gave last year, by referring to the Equal Protection Clause basis for the Court's holding in Eisenstadt v. Baird. In response to a question by Senator Heflin, Judge Thomas summarized his responses to Senator Biden's first round of questions concerning Eisenstadt as follows: "the right of privacy that applied to non-married individuals in the intimate relationship was established using equal protection analysis under Eisenstadt v. Baird." Even during Senator Biden's second round of questioning on this point, when pressed hard for a simple yes or no answer, Judge Thomas qualified his affirmative response by saying, "I have expressed on what I base that, and I would leave it at that." I do not believe that Judge Thomas' responses can fairly be interpreted to provide any meaningful reassurance that he recognizes a fundamental right of individual

privacy independent of the equal protection analysis in Eisenstadt.

At a minimum, Judge Thomas' testimony provides absolutely no reassurance on the one aspect of the right to privacy which he repeatedly refused to discuss: the fundamental right to choose abortion. Moreover, although his testimony in many respects echoes the testimony given by Judge David Souter, Judge Thomas' record is strikingly different and clearly indicates his hostility to the right to choose. While some Senators may have given Judge Souter the benefit of every doubt, Judge Thomas' record leaves no room for ambiguity.

I was not a likely candidate to be the lawyer in a very controversial case. I am the daughter of a Methodist preacher; was raised in small Texas towns like Munday, Canyon and Vernon; and in high school was President of our Future Homemakers of America chapter.

But I, like most women of my generation, questioned the limits placed on women and reacted with conviction when faced by discrimination. I played high school basketball at a time women were allowed only two dribbles and had to stop at half court. I did my practice teaching at a time pregnant teachers had to quit work. My college dean told me I shouldn't consider law school because no woman from McMurry College ever had and it would be

too difficult. After law school, I had a similar experience to that of now-Justice Sandra Day O'Connor and was unable to get a legal job with a law firm. When I applied for credit, the store manager told me I had to get my husband's signature even though I was putting him through law school. I discovered just before I argued Roe that there were no restroom facilities for women in the lawyer's lounge in the Supreme Court building.

As we worked to end blatant discrimination against women based on out-dated and false stereotypes, we realized that women could not truly make the decisions that most affect their lives -- about education, employment, family size, finances, and physical and emotional health -- unless they were able to decide when and under what circumstances to bear a child.

We did not fight anti-abortion laws because we were "for" abortion. We did so because we believed it was individuals -- and not the government -- who should make the most fundamental decisions of their lives.

We all know that if the Supreme Court overturns Roe, the affluent and people like us will find the money to travel and be able to obtain safe procedures. The poor and women of color will be those most adversely affected, just as was true pre-Roe as my University of Texas colleague Professor Mark Graber points out in his paper, "The Ghost of Abortion Past."

I would like to see the diversity of Americans reflected by those who serve as Justices, but how sad and ironic it would be if Justice Marshall, a champion for all who suffered unequal treatment, were to be replaced by a man whose presence on the Court helped to end the principles for which Justice Marshall fought.

The CHAIRMAN. I thank you very much. I must tell you it is obvious you argued before the Supreme Court. You are the only one in the last 74 days that came in under the 5 minutes. Thank you very, very much.

Ms. Michelman.

STATEMENT OF KATE MICHELMAN

Ms. MICHELMAN. Thank you, Mr. Chairman, Senator Thurmond. I very much appreciate the opportunity to talk with you today.

Senator THURMOND. Speak into your machine, if you could, just a little bit louder.

Ms. MICHELMAN. My machine. I always have an aversion to machines.

I thought very long and hard about the focus of my testimony today. During this process, I think we must remember a very simple truth: What is decided here will profoundly affect the lives of millions of Americans outside this hearing room—Americans who depend on you to protect their most cherished rights and liberties. Among them are the countless desperate women who, prior to *Roe* v. *Wade,* were deprived of their privacy, their dignity, and even their health and their lives. Millions of Americans know firsthand that when we get past constitutional theory, legal precedent, and Court rulings, this confirmation process will determine whether millions of women will be forced, terrified and alone, to face one of the most difficult crises of their lives.

Mr. Chairman, today I must tell you that I was one of those women. I was relatively lucky. I was able to avoid resorting to the back alleys. But I suffered the shame, degradation, and humiliation of being deprived of my right to make one of the most important decisions of my life.

Like most women in this Nation, I never expected to need an abortion. Most women do not. But before *Roe,* I faced the trauma of a crisis pregnancy. I was raised Catholic, married young, and as a young woman I had three wonderful daughters in 3 years. But in 1970, my husband suddenly announced that he was leaving me and the children.

I was devastated. Without money, a job, or a car, I was even unable to get a charge account at the local five-and-dime because I was not married any longer. I was also very ill at the time. My self-esteem was destroyed. My entire world was shattered, and my family was forced onto welfare.

Almost immediately after my husband left me, I learned that I was pregnant. With three children under the age of six, I alone had to meet their every need—financial, emotional, and physical. The very survival of my family was at stake. Indeed, my family was at risk of being split apart.

Because abortion was largely illegal at the time, I had to struggle with this decision all by myself, all alone. Deciding whether or not to have this abortion was probably one of the most difficult and complex decisions of my life. It challenged every religious, moral, and ethical belief I had. But I looked into the eyes of my three daughters and made what I think was one of the most moral decisions I have ever made.

It was at this point that I became painfully aware that having another child would have made it absolutely impossible to cope with an already desperate situation. I am certain that my family would not have survived intact.

But in 1970, you know, the Government did not allow me to make this decision for myself. I was forced to appear before a hospital-appointed panel of four men. These complete strangers cross-examined me about the most intimate and personal details of my life. It was humiliating. I was an adult woman, a mother of three, and yet I had to win their permission to make a decision about my family, my life, and my future. And I alone would have to live with the consequences of their decision.

But, finally, they granted me their permission. I was admitted to the hospital. Yet as I awaited the procedure, I was told by a nurse that they had forgotten one more legal requirement.

I would not be able to have the abortion without written permission from the man who had just deserted me and my children. I literally had to leave the hospital and find the man who had rejected me and ask his permission. It was a degrading, dehumanizing experience, an assault to my integrity, my dignity, and my very sense of self.

At all times during this process, I carried with me the phone number of an illegal abortionist. And if at any juncture I was thwarted in my attempt to have a hospital abortion, I was prepared to break the law and risk my life because my family's survival depended on it.

Mr. Chairman, Senators, perhaps now you can begin to understand the pain and anger I feel when I hear the right to choose dismissed as a mere single issue. This right is absolutely fundamental—fundamental to our dignity, to our power to shape our own lives, to our ability to act in the best interests of our families. No issue—none—has a greater impact on the lives and futures of American women and their families.

The record shows that, if confirmed, Judge Thomas would indeed vote to take away this fundamental right—to take this Nation back to the days when women had no alternative but the back alleys for health care. What happens in the halls of Congress must reflect what is in the hearts of the American people. This may be one of the last opportunities you have to stand up for a woman's fundamental right to choose before *Roe* v. *Wade* is ultimately overturned. I urge you to refuse to confirm Judge Thomas.

[The prepared statement of Ms. Michelman follows:]

NARAL

TESTIMONY OF KATE MICHELMAN
EXECUTIVE DIRECTOR, NATIONAL ABORTION RIGHTS ACTION LEAGUE
BEFORE THE SENATE JUDICIARY COMMITTEE
ON THE NOMINATION OF JUDGE CLARENCE THOMAS
September 19, 1991

Mr. Chairman, Members of the Committee, I thought long and hard about what the focus of my testimony should be. During this process, we must remember a very simple truth: What is decided here will profoundly effect the lives of the millions of Americans outside this hearing room -- Americans who depend upon you to protect their most cherished rights and liberties. Among them are countless desperate women who, prior to Roe v. Wade, were deprived of their privacy, their dignity, and even their health and lives. Millions of Americans know firsthand that when we get past constitutional theory, precedent and Court rulings, this confirmation process will determine whether millions of women will be forced, terrified and alone, to face one of the most devastating crises of their lives.

Mr. Chairman, today I must tell you that I was one of those women. I was relatively lucky. I was able to avoid resorting to the back alleys. But I suffered the shame, degradation and humiliation of being deprived of my right to make one of the most important decisions of my life.

Like most women, I never expected to need an abortion. But, before Roe, I faced the trauma of a crisis pregnancy. I was raised Catholic and, as a young woman, I had three wonderful daughters in three years. But in 1970, my husband suddenly announced that he was leaving me and the children.

National
Abortion Rights
Action League

1101 14th Street, N W , 5th Floor
Washington, D C 20005
202-408-4600

I was devastated. Without money, a job or a car, I was even unable to get a charge account at the local five and dime. I was also very ill at the time. My self-esteem was destroyed, my entire world was shattered, and my family was forced onto welfare.

Almost immediately after my husband left me, I discovered that I was pregnant. With three children under the age of six, I alone had to meet their every need -- financial, emotional and physical. The very survival of my family was at stake.

Because abortion largely was illegal, I had to struggle with this decision alone. Deciding whether or not to have an abortion was one of the most difficult and complex decisions of my life. It challenged every religious, moral, ethical and philosophical belief I had. I looked into the eyes of my three daughters and made what I think was one of the most moral decisions I have ever made.

But, in 1970, the government would not allow me to make this decision for myself. I was forced to appear before a hospital-appointed panel of four men. These complete strangers cross-examined me about the most intimate and personal details of my life. It was humiliating. I was an adult woman, a mother of three, and yet I had to win their permission to make a decision about my family, my life, my future.

Finally, they granted me their permission. I was admitted to the hospital. Yet as I awaited the procedure, I was told that they had forgotten one more legal requirement.

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Mr. Chairman, Senators, perhaps now you can begin to understand the pain and anger I feel when I hear the right to choose dismissed as a mere single issue. This right is absolutely fundamental: Fundamental to our dignity, to our power to shape our own lives, to our ability to act in the best interests of our families. No issue has a greater impact on the lives and futures of American women and their families.

The record shows that, if confirmed, Judge Thomas would vote to take away this fundamental right -- to take this nation back to the days when women had no alternative but the back alleys for health care. What happens in the halls of Congress must reflect what is in the hearts of the American people. This may be one of the last opportunities you have to stand up for a woman's fundamental right to choose before Roe v. Wade is overturned. I urge you to refuse to confirm Judge Thomas.

The CHAIRMAN. Thank you very much, Ms. Michelman.
Ms. Wattleton.

STATEMENT OF FAYE WATTLETON

Ms. WATTLETON. Mr. Chairman and members of the Judiciary Committee, I am indeed honored and I appreciate the opportunity to appear before you today in my role as president of Planned Parenthood Federation of America and the Planned Parenthood Action Fund. For 75 years, as advocates and providers of reproductive health care, Planned Parenthood has empowered tens of millions of men, women, and their families to have control of their lives—enabling individuals to make informed decisions about reproduction and to obtain quality medical services to prevent unwanted pregnancies.

Precisely 1 year ago, this committee heard Kate Michelman and I ask you solemnly to reject now-Justice David H. Souter, and we heard him in the introduction to his appearance before you indicate that he believed in making the "promises of the Constitution a reality for our time, and to preserve that Constitution for the generations that will follow us." We too believe that such a living document as the Constitution must be nurtured and preserved. And yet with Mr. Souter's ascension to the Court, we do stand at the precipice of the reversal of one of the most important rights that American women have attained and have had recognized in this century.

Mr. Souter refused to answer questions on the substance of the right to privacy in the Supreme Court rulings that have flowed from the right to privacy. In his first opportunity on the Court, he expressed himself in a way that many of us thought unimaginable. In *Rust* v. *Sullivan,* he voted with the majority in upholding the Federal bureaucracy's power to enforce speech censorship between a woman and her doctor.

In permitting the Government to prohibit any discussion of abortion in family clinics, the Court in *Rust* struck at one of the most sacred tenets of our liberties—the right to free speech.

The Senate, like the American public, has responded with outrage to the *Rust* decision and has acted boldly to overturn it. But I must say that had the Senate been as bold in insisting that Judge Souter explain his philosophy on reproductive rights, it might have rejected his candidacy instead of leaving American women to hope for the best, and we might not have had the gag rule today.

This year, Americans watched and listened to learn of Judge Thomas' views on the right to privacy. The committee did not hesitate to press him on other "unsettled" doctrinal questions, nor did he refuse to express his philosophy on those matters. He did not even refuse to answer questions on the full range of privacy. What he did refuse to acknowledge, however, was that privacy extends to my right as a woman to terminate an unwanted pregnancy.

There are those who argue that Judge Thomas should not be forced to answer questions about abortion because other candidates have not been required to do so. But the fact that this committee did not press other candidates on this issue is not a reason to fail to press this candidate on this issue.

A high Court nominees's views on the constitutional right to choose abortion have never been more critical than they are today. The Supreme Court is now heavily weighted toward rightwing extremism, and an upcoming reconsideration of *Roe* v. *Wade* is virtually guaranteed. If Judge Thomas fully accepts the natural law doctrine as regards fetuses, it would make him more strongly antiabortion than any other sitting Justice because that doctrine holds that abortion is constitutionally outlawed rather than subject to State regulation.

We fear that if Mr. Thomas is confirmed he will join the others on the Court who have signaled their willingness to dismantle *Roe.* This is the first time in constitutional history that a fundamental right recognized is in danger of being denied.

Prior to these hearings, much has been written about the clear objections that Mr. Thomas spoke on with respect to *Roe* v. *Wade,* and with his failure to answer the questions on this matter, we have to ask ourselves why.

Mr. Thomas also signed a report that you questioned him about, and he has given his excuse as one that he did not read the report carefully. Well, he had an opportunity to comment on that report, and why did he fail to comment on whether he supported *Roe* v. *Wade* or the doctrine underlying *Roe* v. *Wade*?

But even if we give Mr. Thomas the benefit of the doubt, there is absolutely nothing in his record that indicates that he supports *Griswold,* which gave the Americans the right to practice contraception.

Finally, it strains logic that this man who has boldly spoken out on controversial issues also claims that he has never read or thought about the historical *Roe* v. *Wade* decision, even though he was in law school when it was handed down. His testimony leaves all of us as Americans in a difficult position, both in evaluating his disposition toward the constitutional privacy protection and in evaluating his overall credibility and integrity.

Any Supreme Court nominee who fails to reveal his or her judicial philosophy in this area of established constitutional law or who rejects the fundamental nature of Americans' reproductive rights must likewise be rejected by those who represent us. We urge you to refuse to confirm Clarence Thomas.

[The prepared statement of Ms. Wattleton follows:]

Testimony

by

Faye Wattleton, President

Planned Parenthood Federation of America

and

Planned Parenthood Action Fund

before the Senate Judiciary Committee
on the nomination of Clarence Thomas
to the United States Supreme Court

September 19, 1991

Mr. Chairman:

I appreciate the opportunity to appear today in my role as president of Planned Parenthood Federation of America and the Planned Parenthood Action Fund. For 75 years, as advocates and providers of reproductive health care, Planned Parenthood has promoted greater liberty in individual decision making about pregnancy and childbearing. Planned Parenthood has empowered tens of millions of women and their families to take control of their -- lives -- enabling individuals to make informed decisions about reproduction and to obtain quality medical services to prevent unwanted pregnancies. Each year more than 2.4 million Americans -- mostly young, mostly low income -- come to our 911 clinics nationwide for the information and support they need to make the most basic and private decisions about their reproductive lives.

Precisely one year ago this committee heard Judge David H. Souter solemnly proclaim that a Supreme Court justice holds the responsibility "to make the promises of the Constitution a reality for our time, and to preserve that Constitution for the generations that will follow us." We too believe in the Constitution as a living document that must be nurtured and preserved through each generation. Such is its enduring quality. Yet the reality of our generation is that the process of nurturing and preserving our rights and freedoms is being abandoned. For the first time,

established constitutional rights -- specifically reproductive rights -- are in danger of being reversed at the hands of the highest constitutional arbiters of our nation.

It is the constitutional vision and methodology of those potential arbiters that this committee is charged with discerning -- as well as ensuring that the court retains a meaningful diversity of judicial philosophy. There are no guarantees that what a nominee says will govern how he or she will rule on the court; but that in no way obviates the Senate's obligation to determine the candidate's position.

While Mr. Souter last year acknowledged that the Constitution protects marital privacy, he stubbornly refused to answer questions on the substance of that right and the landmark Supreme Court rulings that have flowed from it. Reproductive rights was the only area of questioning in which Mr. Souter demurred.

In Justice Souter's first opportunity to express himself on the issue of reproductive rights as a member of the Supreme Court, he became the fifth vote forming a majority in Rust v. Sullivan, holding that the federal bureaucracy can enforce speech censorship between a woman and her doctor. Rust v. Sullivan upheld the right of the Bush administration to direct what a medical professional can say in a family planning clinic for low-income women. In permitting the government to prohibit any discussion of abortion,

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the court struck at one of the sacred tenets of our liberties -- freedom of speech.

The Senate, like the American people it represents, has responded - with shock and outrage to the Rust decision, and has acted boldly to overturn it. But I must say to you that had the Senate been as bold in insisting that Judge Souter come forward with more candor in explaining his philosophy on the right to reproductive control, it might have rejected his candidacy instead of leaving American women to hope and pray for the best.

I refer to last year's confirmation hearing to underscore the real-life consequences that flow out of this process. A nominee who systematically evades questions on this fundamental issue arrives at the court as a blank slate on an issue of profound importance to women. If he conducted himself similarly on other issues of constitutional law, Americans would be compelled to ask what is the meaning of the confirmation process.

Americans watched and listened to learn of Judge Thomas's views about the constitutional right to privacy. The committee did not hesitate to press Mr. Thomas on other "unsettled" doctrinal questions that are likely to be brought before the Supreme Court, ranging from discrimination law to capital punishment. Nor has he refused to express his philosophy on these matters. He didn't even refuse to answer all questions on privacy. What he did refuse to

acknowledge was that the right to privacy extends to the right of a woman to terminate a pregnancy. What we have seen is another Souter-type performance.

There are those who argue that Judge Thomas should not be forced to answer questions about abortion because to do so would alienate one side or another in Congress -- and that other candidates for the court have not been required to do so. We believe that the committee should have pressed those other candidates to answer --or should have rejected them for failing to do so.

But the fact that it did not take those actions does not justify excusing Judge Thomas from responding, and the reason should be obvious: A high court nominee's views on the constitutional right to choose abortion have never been more critical than they are today. The Supreme Court is now heavily weighted toward right-wing extremism, as evidenced by numerous recent rulings, and an upcoming reconsideration of Roe v. Wade is virtually guaranteed. If Judge Thomas fully accepts the "natural law" doctrine as regards fetuses, it would make him more strongly anti-abortion than any of the sitting justices, because that doctrine holds that abortion is constitutionally outlawed rather than a subject for each state to regulate. We fear that if Mr. Thomas is confirmed, he will join the ranks of others on the court who have signaled their willingness to dismantle Roe v. Wade. This process began with the Webster decision in 1989 and moved forward last May with Rust. This

is the first time in constitutional history that a right recognized as fundamental is in danger of being denied. Women's lives hang in the balance.

Mr. Thomas has acknowledged a general right to marital privacy. But Justice Souter and Justice Kennedy embraced that same vague view. Before these hearings began, however, it seemed very clear that this nominee had very clear objections to Roe v. Wade and the constitutional principles underpinning it. Why else would he have praised Lewis Lehrman's essay, titled "The Declaration of Independence and the Right to Life," with its references to "the struggle for the inalienable right to life of the child-in-the-womb..." and "the conjured right to abortion in Roe v. Wade"? His explanation to the committee about political coalition-building is insufficient, particularly when such coalition-building takes the form of condemning a decision that has done more than any other of the 20th century to improve the condition of women's lives.

Mr. Thomas went on to sign a report on the family to President Reagan, which sharply attacks a series of Supreme Court decisions - that -- according to the report -- "abruptly strip the family of its legal protections." The decisions specifically cited in this report, in addition to Roe, were Planned Parenthood of Central Missouri v. Danforth -- which struck down a state law giving husbands and parents veto powers over their wives' and daughters'

abortions, and Eisenstadt v. Baird -- which held that unmarried people have a right to use contraceptives. Judge Thomas has stated that he signed that report without reading it. So be it. Many of us have been guilty of signing documents without paying sufficient attention to them. But when we discover a mistake or a public misstatement, a correction or clarifying statement is the minimal norm. Judge Thomas insists, several years later, that he never got around to reading the report, even though it was highly controversial and well-publicized at the time.

Although he seems to have positioned himself otherwise for this hearing by his general embrace of Griswold v. Connecticut, Judge Thomas has previously criticized Justice Goldberg's use of the Ninth Amendment in reaching that decision. This seeming contradiction -- taken in light of his praise for the Lehrman article -- should be fully explained before this body. But even if we give Mr. Thomas the benefit of the doubt, there is absolutely nothing in his record -- in his writings and speeches and court cases -- to indicate support for Griswold. Neither is there anything anywhere, prior to his statements before this committee, to indicate that he is sensitive to, concerned about, or respectful of the privacy right for all individuals to make reproductive decisions, including the choice of abortion.

Finally, it strains logic and stretches the imagination when this man -- who has boldly spoken out on many controversial, cutting-

edge issues -- also claims that he has never read about, discussed, or thought about the historic Roe decision -- even when he has spoken and written about it. Judge Thomas was studying at Yale University Law School when Roe was decided. Is it possible that such a distinguished law school would have failed to foster discussion and broad debate among its students on a major constitutional landmark? His testimony leaves the American people in a difficult position, both in evaluating Judge Thomas' disposition toward the constitutional privacy protection and in evaluating his overall credibility and integrity.

There is no doubt in my mind that if this committee had reason to suspect that a nominee were prepared to overrule Brown v. Board of Education, or New York Times v. Sullivan, it would insist upon answers to clarify the nominee's beliefs and intentions. As an African-American, I fully appreciate the significance that you and the American people attach to the court's decision in Brown. As an American who cherishes the right to free speech, I appreciate as well the significance attached to New York Times v. Sullivan. As a woman, Griswold and Roe are no less important. The right to reproductive privacy -- to determine whether and when to bear children -- is as fundamentally important to the wellbeing of American women and families as we enter the 21st century, as Brown or Sullivan were at the mid-point of the 20th century. All Americans, regardless of gender or race, are beneficiaries of these landmark decisions that have recognized inalienable human rights.

It is unfortunate that he is unwilling to acknowledge their universality, their constitutional soundness, and the rights and freedoms that emanate from them.

Planned Parenthood opposes Judge Thomas's confirmation for the same reasons that we opposed that of Judge Souter. As I testified to this committee last year, our fundamental reproductive rights, as well as the health and wellbeing of American women, are on the line. Any Supreme Court nominee who fails to reveal his or her judicial philosophy in this area of established constitutional law, or who rejects the fundamental nature of Americans' reproductive rights, must likewise be rejected by those who represent us. We urge you to refuse to confirm Clarence Thomas.

The CHAIRMAN. Thank you very much.
Governor.

STATEMENT OF MADELEINE MAY KUNIN

Ms. KUNIN. Mr. Chairman and members of the committee, I thank you very much for giving me the opportunity to join this panel and testify in regard to the confirmation of Judge Thomas as an Associate Justice of the Supreme Court.

My political experience has taught me that in our quest to make just laws, we must constantly remind ourselves of the nexus between the orderly world of public policy and the real world of human beings. It is their faces, as we have just heard from Kate Michelman, and their circumstances which we must bear in mind.

This is particularly true in regard to the ability of a woman to make a personal moral decision on the difficult question of whether to continue or terminate a pregnancy. It is essential to humanize this question, to visualize the anguish, the confusion, the inequity that will result if we continue to erode *Roe* v. *Wade*.

As a former Governor, I am acutely aware of the unequal burdens that would be born by States if this fundamental right is determined on a State-by-State basis, and I am equally cognizant of the unequal rights that would be meted out to women, dependent on where they happen to live, their access to information, money, and transportation.

It is Judge Thomas' silence on this question that causes such anxiety for so many women, who fear that his ascendancy to the Court will inaugurate a most painful era for American families, in contrast to the post-*Roe* v. *Wade* era where each has made a decision according to her conscience.

Judge Thomas has indicated that he is sensitive to the effect that the law can have on individual lives when he movingly described the impact of Jim Crow laws on his grandmother and on his grandfather.

What many Americans are asking is: Can he bring this same sensitivity to the contemporary question of reproductive freedom?

Can he understand the humiliation, embarrassment, and fear felt today by a woman who is escorted into a health clinic, past a yelling and threatening mob? Can he understand what it means to be patronized, to be dependent on charity and chance, instead of the equal protection of the law?

As a former elected official, I know that my constituency—you know this as well—would not tolerate any candidate for public office who would not make his or her position clear on this question.

We acknowledge the judiciary is different. We need not exact a pledge on how a judge would vote on a specific case. But neither should we absolve him of all accountability.

I cannot accept the premise that underlies what I have heard, that there is some objective legal truth that will naturally reveal itself, that the answers to the most divisive social questions of our time will emerge if our judges purge themselves of all ambiguity, opinion, and feeling, and focus, without blinking, on the facts.

Frankly, if that were the case, these cases would have been decided long ago.

There are many judges who have a knowledge of the law. That is the easy part. It is the contradictions within the human condition, the agony of ambiguous moral choices, the pain of weighing one truth against another. That is what is hard. And those are the heavy burdens that we ask the highest judges of our land to carry.

I must tell you the very fact that Judge Thomas has succeeded in not clarifying his philosophy on this issue creates a quiet fury in many women. Once again, when it comes to our issues, we find ourselves repeating the ancient cycle of helplessness that women have experienced throughout history. The sense of powerlessness is painful. It is apparent right here in this room where women are not equally represented in the decisionmaking process of this country. We are put in the position of pleaders, asking you to ask our questions for us, to be our standins, to intercede on our behalf.

Once again, our question, central to our lives, the one that women all over this country are asking is not being answered. We have to take our chances. We have to live on hope. We have to believe that silence equals fairness when, in fact, we fear that silence equals just the opposite.

I believe I speak for many women when I say we have a right to a forthright answer on this most wrenching moral issue. And the American people, regardless of their view on this issue, have a right to expect any nominee to the Supreme Court of the United States to describe his or her record and philosophy.

In a democracy, it is a sad day, indeed, when silence assures victory.

I respect that each Senator, after a great deal of thought, will reach his decision on whether or not Judge Thomas has met the basic standard for the Supreme Court.

My conclusion is that Judge Thomas has not provided sufficient information to earn confirmation.

After 2 weeks of hearings, the question remains unanswered: Who is Judge Thomas?

Any nominee to the Supreme Court has the obligation to give that answer to the American people.

Thank you kindly for permitting me to share my views.

[The prepared statement of Ms. Kunin follows:]

TESTIMONY OF MADELEINE MAY KUNIN, FORMER GOVERNOR OF THE STATE OF VERMONT, DISTINGUISHED VISITOR FOR PUBLIC POLICY, BUNTING INSTITUTE, RADCLIFFE COLLEGE, CAMBRIDGE, MASSACHUSETTS AND PRESIDENT, INSTITUTE FOR SUSTAINABLE COMMUNITIES, VERMONT LAW SCHOOL, SOUTH ROYALTON, VERMONT.

BEFORE THE UNITED STATES SENATE JUDICIARY COMMITTEE, SENATOR JOSEPH BIDEN, CHAIRMAN, REGARDING THE CONFIRMATION OF JUDGE CLARENCE THOMAS.

SEPTEMBER 19, 1991

Mr. Chairman, and members of the committee. I thank you for giving me the opportunity to testify regarding the confirmation of Judge Clarence Thomas as an Associate Justice of the Supreme Court.

You have spent months pouring over his record, marshaled squadrons of researchers, and he in turn, engaged his supporters to help him edit that record. You have each done your job exceedingly well, but something has been overlooked.

It is we, the people, who have lost out.

The message is that there is a direct correlation between the amount of information a nominee reveals and the likelihood of his confirmation. Less, in fact, is more.

By stripping himself of past opinions and emotion, particularly in the area of privacy, Judge Thomas hopes to be impartial.

I do not believe it can work.

It is our emotions which give us our humanity, which enable us to empathize with others. That is the essential quality of justice.

I cannot accept the premise that there is some objective legal truth which all naturally reveal itself; that the answers to the most divisive social questions of our time now before the court, will emerge if our Judges purge themselves of all ambiguity, opinion, and feeling, and focus, without blinking, on the facts.

If that were the case, these questions would have been decided long ago. There are many competent Judge who could determine questions of law. That is the easy part.

If is the contradictions within the human condition, the agony of ambiguous moral choices, the pain of weighing one truth against another, that is what is hard and those are the heavy burdens that we ask the highest Judges of our land to carry.

My political experience has taught me that in our quest to make just laws, we must constantly remind ourselves of the nexus between the orderly world of public policy and the real world of human beings. It is their faces, their circumstances which we

must bear in mind.

This is particularly true in regard to the ability of a woman to make a personal moral decision on the difficult question of whether to continue or terminate a pregnancy. It is essential to humanize this question, to visualize the anguish, the confusion, the inequity that will result if we continue to erode Roe v. Wade.

As a former Governor I am acutely aware of the unequal burdens that would be born by states, if this fundamental right is determine on a state by state basis, and I am equally cognizant of the unequal rights that would be meted out to women, heavily dependent on which state they resided in, their access to information, money, and transportation.

It is Judge Thomas' silence on this question that causes anxiety for so many women, who fear that his ascendancy to the Court will inaugurate a most painful era for American families, in contrast to the post Roe v. Wade period, when women have made this decision, each according to her own conscience.

Judge Thomas has indicated that he is sensitive to the effect that the law can have on individual lives when he movingly described the impact of Jim Crow Laws on his grandmother, and the effect of those laws, on the humiliating reference to his grandfather as "boy."

What many Americans are asking is, can he bring the same sensitivity to the contemporary question of reproductive freedom?

Can he understand the humiliation, embarrassment, and fear felt today by a woman escorted into a health clinic, past a yelling, threatening mob? Can he understand what it means to be patronized, to be dependent on charity and chance, instead of the equal protection of the law?

I do not ask Judge Thomas to tell the American people how he would rule on a particular case. I do, however, ask that Judge Thomas share with us his general outlook criteria and approach to this divisive American dilemma.

As a former elected official, like you, I know that my constituency would not tolerate any candidate for public office who would not make her or his position clear on this question.

The Judiciary is different. We need not exact a pledge on how he would vote on a specific case. But neither should we absolve him of all accountability.

I must tell you, the very fact that he has succeeded in not clarifying his views on this issue which is of such great importance to all Americans, creates a quiet fury in many women.

Once again, when it comes to our issues, we find ourselves

repeating the ancient cycle of helplessness that women have experienced throughout history.

This sense of powerlessness is painful. It is apparent, right here in this room, where women are not equally represented in the decision making process of this country.

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The American people--regardless of their view of this issue--have a right to expect any nominee to the Supreme Court of the United States to describe his or her record and philosophy.

In a democracy, it is a sad day indeed, when silence assures victory.

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After two weeks of hearings, the question remains unanswered, who is Judge Thomas?

Any nominee to the Supreme Court has the obligation to give that answer to the American people.

Thank you most kindly for permitting me to share my views.

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The CHAIRMAN. Thank you, Governor. Every time I hear you speak, I am reminded why you were the Governor and why I wish you still were Governor or Senator. I keep trying to convince Leahy of that, but I have not worked it out yet. But, seriously, I am always impressed when I hear you speak.

Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

I want to join in welcoming an extraordinary, distinguished panel of witnesses and to commend them for brief, but very moving and compelling testimony. It really says something, I think, when we have distinguished individuals who have lives of accomplishment and achievement have to come before the committee and talk about very personal aspects of their lives. People do not do that very willingly, because privacy is something which is highly regarded and protected. In order to make a point to have to describe that, I think all of us are very moved by that presentation.

Now, Judge Thomas had indicated that he had no agenda, that he was going to be openminded, that he had a regard for precedent. I think when he was being pressed on, I think it was probably on the *Griggs* case, indicated that something that was in law for 17 or 18 years had a very important precedent in his own mind, that he was reluctant to see unsettled law.

I would think that perhaps people that were not looking for the overruling of *Roe* could find different wisps during the course of the period of his testimony to get some degree of belief that maybe he would not, and yet there are a series of both the Lehrman speech that he made in reference to Lehrman's presentation and other comments that he made prior to these hearings on privacy and other issues that would lead people to believe that he would. So, as was pointed out by virtually all the panelists, it really is very much an open question.

Tell me, just to the extent that you can—I think probably a few people could do a better job—if that decision is overturned, what really does that mean in terms of the lives of women and families in this country?

Ms. WEDDINGTON. There is an article by one of my colleagues at the University of Texas, Mark Graver, called "The Ghost of Abortion Past," and what he really tries to do is point out what it was like before *Roe* v. *Wade* was decided, in terms of its impact, particularly on the poor and women of color.

I think if *Roe* v. *Wade* was overturned or seriously damaged, that what you end up with is a situation much like those days of old, where women of means will be able to travel to States or countries where it is legal, but those who are younger, those who are poor, those who are less sophisticated are going to return to some of the illegal and very unsafe methods of abortion. It does not solve the abortion issue.

The second thing is I think it does away with the right of privacy. I think that is important to many Americans, because of the developing nature of intrusion, not just by government, but by other methods, as well, through computers and a lot of other things. We want a sense that we are safe in making those decisions most fundamental to us.

If the right of privacy is overturned, I think that basic sense of safety and who we are in our homes and our own lives in our decisionmaking ability is threatened.

Ms. MICHELMAN. Well, Senator, I think it is difficult for most people to really envision a world without *Roe.* I think most people do not understand what havoc is going to come into play, when or if *Roe* is overturned. It is, as I said in my testimony, the right to choose is so profoundly fundamental to every other aspect of a woman's life, her family's life, that if it is destroyed, her life is destroyed. And I am not trying to be overly dramatic here.

It is just hard to describe how it feels to be utterly powerless to make a decision that has such a profoundly all-encompassing effect ont not only the woman's life itself, whether she is able to have a job, whether she is able to continue her education, whether she is able to support the children she already has, but that decision affects her economic well-being, her physical and emotional well-being, her family's privacy.

One of the untold stories prior to *Roe* is the story of the numbers of children who were left motherless, because of the deaths of women from illegal abortions or self-induced abortions. It is a world that we do not want to contemplate, honestly.

People say sometimes to me, oh, you are exaggerating, there won't be a back alley abortion industry like there was before *Roe.* Well, they are wrong. The same people who push drugs on our children and our society are the same people who are going to try and take advantage of the desperation of women who face crisis pregnancies.

I think that there will be nothing but chaos in this Nation, when *Roe* is overturned, and I think that is why this right is so fundamental and we must require that Judge Thomas acknowledge that right, or he should not sit on the highest Court of the land.

Ms. WATTLETON. I am a nurse and I am, by profession, a nurse midwife and I was trained in the years when abortions were illegal in this country. I can never forget the desperate faces of healthy young women who suffered from the injury of illegal abortion. I can never forget the odor of infection as these women entered the hospital as a result of various objects being inserted into their vaginas and into their uteri to effect an abortion.

It is for that reason that I do not want to see women face that kind of degradation again. Mostly, I know that those were poor women and that those were my sisters, African-American women, and so I have a very personal and passionate interest in preserving the right for women to have safe, legal abortions that do not kill them.

There is much that is given to romancing the notion that abortion, if given to the States, will not be illegal, and that, anyway, States are involved in a reform process that the Supreme Court decision in 1973 took away from them.

A closer reading of the history will reveal no such evidence. In fact, after a few States in the early 1970's legalized their repressive legals, no other States were able to move, repeal, or reform legislation, and even in those States where there had been some reform, the rules for a woman to get through in order to have a legal abortion were formidable.

So, the notion that States will somehow allow women to have reasonable access to safe abortion is really fantasy and is not reflected by the evidence of history. I think it will once again be a time in which abortion will largely be unavailable to women and that the first to suffer will be poor women and minority women, and affluent women will face the humiliation of engaging in underground and illegal activities, but perhaps they will escape with their lives and their bodies intact.

Ms. KUNIN. Senator, as I try to envision a post-*Roe* v. *Wade* world, I think the clock would not just go back to pre-*Roe* v. *Wade*, because before *Roe* v. *Wade*, while there were many courageous people who had to seek abortions by whatever ways they could, basically, the law of the land did not permit it.

What we have had for the last almost 20 years is that the law within the limited guidelines of *Roe* v. *Wade* make abortion legal and safe, so you have really had to see change in our society that is very, very profound and has affected women's lives in every possible way, with a true ability to decide when and how many children to have. Women could make other decisions as to their economic standing, their equality as human beings in general, and by eroding or reversing *Roe* v. *Wade*, I think it will create a kind of tension, a kind of anger, a kind of explosion that we do not fully appreciate.

I do not think this country has in the past taken away rights that it has once previously granted, and to push the clock back I think will create an internal battlefield that will be very, very painful.

Now, in addition to that, I believe the practical impact from the States level will be that you will probably have violence of opportunity to have illegal abortion and you will have islands where it is impossible to have an abortion.

Vermont, I am quite confident, would maintain that right. In fact, we had a case even before *Roe* v. *Wade*, that Senator Leahy is very familiar with, that made abortion within certain limitations legal.

Louisiana we certainly know today would not. Massachusetts might or might not. Pennsylvania will not, as indicated by the laws they have passed. So, you are going to have tremendous confusion, you are going to have a tremendous distraction in this country from some of the other issues that we should be dealing with, the poverty issues, the housing issues, the other domestic issues. I think there will be a very wrenching and unfair time.

Senator KENNEDY. Thank you very much, Mr. Chairman. My time is up.

The CHAIRMAN. Thank you.

Senator Thurmond.

Senator THURMOND. I welcome the distinguished ladies here today. I have no questions.

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

I was not here when the testimony began. I was at another matter involving Senate duties and was unable to be here, but I listened to every word of the testimony right up to seconds of the time I came through the door, and I was quite moved by it.

Ms. Weddington and Ms. Wattleton, you spoke of the various answers Judge Thomas gave, and I believe you referred to a couple of answers he gave to questions of mine, including his incredible answer, when I asked him whether he had ever discussed the landmark case of *Roe* v. *Wade*, and he said he had no recollection of ever discussing it. I reminded him that this came down when he was a law student, and he said, as a married, working law student, he did not have time to hang around after class and discuss things.

I reminded him that I, like most members of my class at Georgetown, were also married, working, holding down several jobs, in fact, but at least between classes we discussed cases. But be that as it may, I found it even more incredible that he had never discussed it, according to his testimony, in the 17 years since the case came down. He is probably the only lawyer in the whole country that could make that claim.

I then found it even more amazing, because of his statements on the Lehrman article, and that bothered me, but he talked in his testimony about the hushed whispers of illegal abortions that he heard as a child.

Ms. Michelman, that brings me to your testimony, which was among the most powerful testimony we have heard before this committee, I suspect not testimony that you gave easily or without some significant emotion and consideration, both for yourself and for your daughters.

It reminds me of the days before either Governor Kunin or I were really involved in politics, when I was a prosecutor in Vermont, and at that time it was before the case of *Bartlett* v. *Leahy* and *Roe* v. *Wade*—not *Bartlett* v. *Leahy*, but *Beechan* v. *Leahy* and *Roe* v. *Wade*, which made clear that it would be a woman's choice in this most difficult choice, and not a legislative body or prosecutors or anything else.

I had occasion to prosecute, as I have told some of you before, in fact, mentioned at Judge Souter's hearing, occasion to prosecute abortion. There was a case where I got called in the middle of the night to come to a medical center then called the Mary Fletcher Hospital, where a young woman had nearly died. She was in the emergency room hemorrhaging from a botched abortion. The abortion had been performed by a woman in Montreal. She had learned how to perform these abortions while working as a nurse for the S.S. at the Auschwitz Prison Camp in World War II.

But she was brought there by a man in Burlington who would arrange these abortions, then blackmail the women subsequently, either for money or for sex. This was the first time that we had been able to get a witness who would testify about him, testify to what some of us had heard as rumors before. I successfully prosecuted him and he went to prison. I do not remember what his prison term was. Whatever it was, it was not enough, as far as I was concerned. There is no prison term that would be long enough.

I wonder sometimes—and this is not a question for any of you, because I know the answer and all four of you have stated eloquently your feelings—I wonder, as I sit here this morning, we talk about this being a single issue thing, and it has been said it is not, it is an overriding, very major issue to all the women of this country—I wonder if sometimes when we are here, we deal with this as

such an abstraction, you on this side or you on that side, which banner do you march under.

That is why I was concerned with Judge Thomas' answers. I told him in my opening statement and during this hearing that he could decide whether to answer or not answer, that is his decision, but that it would be my decision on the advise and consent powers that I have.

I do not expect someone to agree with me on every issue, by any means, but an issue like this, I cannot imagine any man or woman in this country that would not have serious and deep-felt concerns, and I cannot imagine any lawyer or anybody with an understanding of the law who would not realize the consequences of going back to the days of the backroom artist.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

The Senator from Iowa, Senator Grassley.

Senator GRASSLEY. I have no questions of this panel.

The CHAIRMAN. The Senator from Illinois.

Senator SIMON. Thank you, Mr. Chairman. First, I was not able to be here for Ms. Michelman's testimony. I have read it and it is powerful. I do not mean any disrespect to the statements of the other three, but it is a personal experience and it says where we may be going back to.

As all of you have testified, the nominee has been evasive on this question, but when we put the Lehrman testimony there and the fact that he has been nominated by a President who has made a pledge in this regard, when you take the tone of the writings—and I think it is not unfair not that a conclusion can be drawn on this basis, but just as one small piece of the mosaic, the Episcopal Church generally has taken a pro-choice stand. He attends an Episcopal church that has made a crusade out of the opposite stand.

And yet I ran into a woman in the hallway coming down here. She said, "you are going to the hearings." And I said, "Yes." I said, "How would you vote?" and she said, "I would vote for him unless I thought he would be against *Roe* v. *Wade*, but I think he will support *Roe* v. *Wade.*" Obviously, different people are drawing different conclusions.

On a scale of one to ten, ten being you are certain that he would overturn *Roe* v. *Wade*, one being that he would be supportive—and this is, I know, just pulling numbers out of a hat, but where would you put him on a scale of 1 to 10, if I may ask each of you?

Ms. WEDDINGTON. Senator, what bothers me is something he inadvertently said in answer to some of this panel's questions. When he said on the Lehrman article, I simply did it to appeal to the audience, he was willing to mislead them about what his true feelings were in order to appeal to them to do something else he wanted. And so it really bothers me because I think he is trying to mislead the people of this country.

I think of so many criminal trials I have sat in on—I have not tried any myself—where all the evidence led you in one direction and then the defendant gets on the stand and has an entirely different story to tell and it is up to the judge and jury to decide which is true.

All of the evidence before he wanted your confirmation was that he was opposed to abortion. I cannot believe what he says here. He has never said, I believe *Roe* v. *Wade* should be the law; I believe in the right of privacy; it applies to people under the *Roe* v. *Wade* doctrine. He has evaded and skirted.

I say 10; he will not vote to uphold *Roe* v. *Wade.*

Ms. MICHELMAN. I would have to agree with Sarah, Senator. I think the evidence is very clear; his record is clear. In all the years he was a policy official, as he describes himself, and was, he spoke out on many issues, and when he spoke about the right to privacy it was always a critical comment, you know, suggesting that the right was an invented right, criticizing *Roe* v. *Wade,* applying natural law saying it was a splendid example, choosing that one article that is an extreme attack on the right to choose as a splendid example.

He had many opportunities during the years to say something positive. Now, he comes before this committee and he says he has only skimmed the article. He says he signed a report, but he did not read it. He says that, you know, he took an extreme position, but he did not mean it. It is very hard to believe; it just raises serious questions of credibility.

I just do not have any doubt in my mind that if he is on the Court, he will join the others, Rehnquist and Scalia, in moving this Court to overturn *Roe,* and my fear is that he will go much further than any sitting Justice. That Lehrman article suggests that States would have no right to even legislate in the area of abortion; that it would require States to outlaw all abortions even in the cases of life endangerment.

I just do not think he would uphold this fundamental right, and I think this right is so basic and so fundamental, just like the right to free speech, that unless he is acknowledging that right and that it exists in the Constitution—you know, protects that right just like free speech—I just don't think he should sit on this Court.

Senator SIMON. So you give him——

Ms. MICHELMAN. I am a 10.

Senator SIMON. Ten. Ms. Wattleton?

Ms. WATTLETON. I would add to that. My view is that this is not a candidate that would uphold the doctrine that recognized women's rights to the integrity of our bodies. And since Mr. Souter, whom you all expressed your hope would find such privacy residing in the Constitution, has joined the Court and has voted not only to—well, has not been asked to vote on *Roe,* but has voted on something even more extreme, and that is whether Americans' freedom of speech will be restricted by the Government.

And a candidate whom you had high hopes for just a year ago has gone on to say that with respect to Government policy and the intervention of Government, our very thoughts can be controlled and the words that we say can be restricted. It seems to me to leave this in a very unusually charged environment.

So it is within the context of a failure to answer those questions that we are opposing him, and I would add that I believe that he is a 10 and that he would vote with the majority, as he has voted with his political benefactors and has spoken philosophically in their behalf.

I would only ask whether this committee would be willing to trust a candidate if, as Kate has indicated, it was a matter of free speech and he had said one thing before confirmation and left the slate quite blank during confirmation.

One of the points that Mr. Thomas has made which I find very curious is that to decline or to give you some sense of his philosophical views with respect to constitutional protections for reproduction would somehow disqualify him as an unbiased and impartial Justice. If we applied that reasoning, we would have to say that all of the sitting Justices have given us their views on this issue and so therefore they are unqualified to consider future cases in an impartial fashion. It really begs the imagination.

Finally, I would oppose him because he has been so willing to expound on every other subject, including capital punishment, cases that are before the Court right now. So why fail to answer the question on this most important constitutional issue that is so important to my integrity as a woman?

So, as a woman, I would vote against him as a ten, and as representative of an organization that is firmly committed to preserving this right for all women, we would hold that he should not be confirmed.

Senator SIMON. Governor.

Ms. KUNIN. Senator, technically, what we are asked to believe is that silence equals impartiality; that the fact that he has said nothing and declared nothing really asks us to believe that this is a blank slate and that the facts as they appear to him will determine how he will rule.

In effect, that presumes that there is sort of an equal struggle. Both sides are vying to fill up that blank page, but in reality one side has gotten a head start because there is a record and there is evidence of his past beliefs. So what looks like a totally even tug of war for the opinion of this judge really is not. It is already weighted on one side, unless one believes that he totally dismisses everything he has said and written before, and I think few human beings change as much as that.

So in that sense, while one could say, yes, he has not said and we should not presume his conclusion, when we look at the larger picture a conclusion really pushes forth from at least a reasonable perspective.

What bothers me, in addition, is that there is not an acknowledgement that this is a divisive issue that everybody is struggling with on one side or the other, and that the best way to deal with such wrenching issues is to be straightforward with your own views and say, all right, I am going to put them in perspective, but this is generally what I believe, and as a judge I know cannot just act on my beliefs. But at least I think you deal with controversy by acknowledging where you stand to begin with and then try to find an equitable solution.

Senator SIMON. And give me a numerical——

Ms. KUNIN. I guess I would put it at nine; I would give him one line that he might have some other perspective, but all the evidence is certainly weighted the other way.

Senator SIMON. And I see my time is about up, Mr. Chairman. I would like to put into the record an article that appeared in the

New York Times about 4 weeks ago, about the experience in Brazil. Brazil outlaws all abortions. The second leading cause for women coming into the hospitals of Brazil—the second leading cause of anyone coming in, men and women, is botched abortions in Brazil.

And if I had additional time, I would have asked the witnesses if they believe, if we overturn *Roe* v. *Wade,* we are going to reduce the number of abortions in our country. I think the evidence is pretty overwhelming from Brazil, as well as in the United States, prior to *Roe* v. *Wade.* England, Scotland and Wales had much more liberal abortion laws than we did, had far fewer abortions per thousand people.

The evidence is that the culture and other things determine the number of abortions rather than the law, and the question we face in part in this nomination, not the sole question, obviously, is whether abortions will be safe or not safe.

Thank you, Mr. Chairman.

[The aforementional follows:]

July 21, 1991, Sunday, Late Edition - Final

HEADLINE: Brazil Abortions: Illegal in Name Only

BYLINE: By JAMES BROOKE, Special to The New York Times

DATELINE: RIO DE JANEIRO, July 20

BODY:

In a hillside shantytown here, Selma, a 46-year-old cleaner, has a personal reproductive history that seems out of character for Brazil -- three children and 13 abortions.

On paper, abortion is illegal in Brazil, Latin America's most populous country. In March, a Brasilia jury convicted a woman of having an abortion. In June, the Sao Paulo police raided a succession of underground clinics.

Yet in a startling example of a gulf between law and reality, new estimates indicate that Brazilian women have abortions at a rate equal to or greater than women in the United States, where abortion is legal.

Each year, the United States records roughly 3.9 million live births and 1.6 million abortions. Brazil records about four million births annually and somewhere between 1.4 million and 2.4 million abortions, researchers for the Alan Guttmacher Institute say.

"Although abortion is illegal in every Latin American country except Cuba, induced abortion is being widely practiced throughout the region," Susheela Singh and Deirdre Wulf wrote recently in International Family Planning Perspectives, a publication of the New York-based institute. "For every 10 women giving birth, three to four in Colombia and Brazil and two in Peru terminate their pregnancies."

On a recent afternoon at a state hospital serving Rio's shantytowns, a third of the women in the maternity ward were admitted for complications resulting from abortions.

"The poor woman is alone, and she sees herself as without a way to avoid pregnancy," said the director, who asked not to be identified by name. "When she gets pregnant, she resorts to what she sees as the easiest way to solve her problem: abortion."

Even with underreporting of complication casess by hospitals, an estimated 400,000 women are admitted each year to recuperate from abortion attempts. Of these, hundreds die. In contrast, in the United States, about 10,000 women are admitted each year because of abortion complications.

"Complications from abortion are identified as the second largest cause for admission in state hospitals -- and yet society pretends it doesn't happen," said Jose Genoino, a member of the Brazilian Congress from the left-wing Workers Party. Seeking to break the silence, Mr. Genoino has proposed a bill that would allow abortion on request in Brazil during the first 90 days of pregnancy -- the first trimester.

But in a nation that claims to have the world's largest population of Roman Catholics, few politicians are willing to risk the wrath of the church hierarchy by advocating expanded access to abortion.

Technically, abortion is permitted in Brazil in cases of rape or danger to the mother's health.

But judges usually delay issuing orders until it is too late. At the Rainha Silvia Maternity in nearby Itaborai, a 12-year-old who asked to be identified only as Renata recently became a mother. First, she was raped by her stepfather. Then, she was a victim of the slow-moving court system.

In interviews, health professionals here could only recall two legal abortions performed in this city of six million in the last three years.

"Doctors are terrified of performing an abortion without written judicial permission -- no one will do it," said a prosecutor, Branca Moreira Alves.

Jaqueline Pitanguy, a feminist leader, said, "In the case of rape, the great majority of women have clandestine abortions."

Until a recession hit last year, surveys showed that abortions in Brazil were divided roughly evenly between back-alley abortions and clinic procedures.

"Less women are using clinic services now; more are using the dangerous self-induced methods," said Sarah Hawker Costa, who researches women's health issues at the National School of Public Health.

Although there are sporadic crackdowns, like the one in Sao Paulo last month, Rio's affluent beachfront neighborhoods have an estimated 100 full-time abortion clinics.

"There is a silent acceptance of these clinics, and everyone knows where they are located," said Katherine D. LaGuardia, who studied complications from illegal abortions in Rio de Janeiro in 1988.

"It appears that part of the population uses abortion as a means of fertility regulation," said Ms. LaGuardia, who noted that the women she surveyed in the middle-class clinics had had an average of four to five abortions. Presenting a barrier to poor Brazilian women, the cost of clinical abortions is around $150 -- roughly double the nation's minimum monthly salary.

Traditionally, poor women turned to neighborhood midwives who attempted to induce abortions with knitting needles, coat hangers or sticks. Rosangela Novaes dos Santos, the Brasilia woman convicted of having an abortion in March, was admitted to a hospital suffering from a hemmorrhage caused by a piece of wire left in her uterus.

Without any action expected to allow safe, legal abortions, health experts predict that the abortion rate will remain high until birth-control information and supplies are universally accessible.

Surveys show that 90 percent of Brazilian women who use birth-control pills buy them over the counter at pharmacies, with little or no instruction. Ms. Costa's surveys of women recovering from abortion complications found that 40 percent became pregnant while trying to use some form of contraception, largely the pill.

Some Can't Afford Condoms

In addition, condoms sell for 50 cents apiece -- a luxury item for poor people in this country. A new study by the Population Crisis Committee, a private Washington group, says that condoms in Brazil are six times as expensive as in the United States, as a percentage of per-capita income.

A Government family-planning effort, the Program of Integral Assistance to Women's Health, suffers from national budget constraints. Still, Education Minister Carlos Chiarelli recently announced that sex education would start next year in primary schools.

But at the state-run slum clinic where Selma works as a cleaner, neither birth-control devices nor counseling are available.

"Women don't abort because they don't love their children; they do it because of necessity," said Selma, who underwent a sterilization operation after her 13th abortion.

Ms. WATTLETON. Mr. Simon, I would just like to add one piece. I do not know whether that article also mentioned that in all of Latin America illegal abortion is the leading cause of death in women of reproductive age.

Ms. MICHELMAN. One quick addition to Faye's comment. I think the way to reduce abortion is not by taking away the right to choose, but to reduce the need for, to make abortion less necessary through sex education, family planning, contraceptive research. It does not work to take away the right to choose; it just makes women die.

Senator SIMON. And I know my time is up, but we have a million teenage pregnancies each year.

Ms. MICHELMAN. Yes, we do, the highest rate——

Senator SIMON. About 300- or 400,000 of those end up in abortions. We know that if we work on the drop-out rate, we reduce teenage abortions.

Ms. MICHELMAN. That is right.

Senator SIMON. So that there are things that we can do in a constructive way to reduce abortions.

Ms. MICHELMAN. That is right.

Senator SIMON. The difficulty is that many of the people who take the anti-choice stand are the very people who are working against the kind of social programs that would reduce the school drop-outs and that sort of thing.

Ms. MICHELMAN. The need for—that is right.

Senator SIMON. Thank you, Mr. Chairman.

The CHAIRMAN. I think the points that you all raised are valid. I would like to raise another one and then yield. I am not going to ask any questions, but just make a point. I have heard it often mentioned what Judge Thomas' religious beliefs were and are and what church he attends, and whether that sheds any light on his views.

I want to make it abundantly clear, I think that is absolutely, totally, completely irrelevant as a matter of principle, and I also think it is irrelevant as a matter of fact. There are four practicing Roman Catholics on this committee, three of whom support choice. I would hate to be in the position of, because I am practicing Catholic, someone assuming that I was unwilling to sustain *Roe* v. *Wade,* were I on the bench. It would be an unfair argument. I think people should be clear about that. It is totally irrelevant, in my humble opinion.

Now, I will yield to my friend from Philadelphia.

Senator SPECTER. Thank you, Mr. Chairman.

Ms. Michelman, your statement of your own personal experience is very powerful. Let me ask you if you believe that a firm commitment by a nominee to uphold *Roe* v. *Wade* is an indispensable factor for confirmation.

Ms. MICHELMAN. Senator, I think a firm commitment to uphold this fundamental right is as indispensable as a firm commitment to uphold the right to free speech, the right to religious freedom—basic, fundamental rights. And Faye, I think, and I both have said a couple of times that this right is as basic as any of the other fundamental rights that our Founding Fathers elaborated upon, so I do think it is.

Senator SPECTER. I had understood that to be your position. The follow-up question to that is, given the political realities of where the President stands on the issue, and he has had two nominees he has put forward, Judge Souter and Judge Thomas, do you think it is realistic for the President to do more than submit a nominee who, at least on the record, is not committed one way or another? Do you think it is politically realistic to expect the President to submit a nominee who is committed to uphold *Roe* v. *Wade?*

Ms. MICHELMAN. There is no question that the President, the last two Presidents have adhered to the platform which says that judicial nominations will be used to attain the goal of overturning *Roe.* The last four or five nominations I think have showed us that is true.

What I do think, Senator, is this, that if this committee and the Senate as a whole were to deny confirmation to this man, to Judge Thomas, because he, among things—I think it is not the only reason, but, among other things, he does not acknowledge the fundamental right to choose, it would be sending such a powerful message to President Bush, that we could very likely get a nomination that is a much more moderate person.

Remember when President Nixon nominated Carswell and Haynsworth, we got Justice Blackmun. So, I think it is possible that we could get someone who does not hold such extreme views. I mean the question here is—and this is the way I view Judge Thomas—that maybe the difference between having a Justice on the Court who would uphold the Louisiana and Utah laws, which outlaw all abortions, as opposed to someone like Justice O'Connor, who is much more judicious, if I could use that word, in her approach.

I do think there is a degree of how far this Court is going to go in assaulting our rights. For years to come, as you know, Senator, there are many cases on the right to choose, abortion cases working their way through the judicial pipeline as we speak. You know, whether we are going to have laws that require women to get permission from their husbands or whether we are going to have outright bans on abortion, how far the right to privacy will be cut back is really an issue here.

I think we have to stand up, and even if another nominee does come before us who does not acknowledge the right to choose, then we must not confirm that nominee. This right is so fundamental, so we just have to keep at it.

Senator SPECTER. Ms. Wattleton, you have expressed concern over Justice Souter, and he voted with the majority in *Rust* v. *Sullivan,* an opinion that I have already disagreed with on a number of grounds in the course of the hearings, and the Congress is moving to change that in terms of a regulation which existed for 17 years which allowed for freedom of speech and counseling as being consistent with the prohibition against the use of abortion as a method of family planning.

Why do you think that Justice Souter is committed to overturn *Roe* v. *Wade,* because of that decision, in light of the fact that there are many other considerations there, administrative procedure, the regulation process, and so forth?

Ms. WATTLETON. Mr. Specter, I think it does not take a wild imagination to think of a view of a judge who can find no protection in the Constitution for freedom of speech and a family planning clinic on abortion, to not find any protection in the Constitution for the exercise of the decision to have an abortion. It is the extremism with respect to restricting speech that leaves us very concerned, if not doubtful, about that Justice's vote to uphold *Roe* v. *Wade*, when it is once again tested before the Court.

We were hopeful that Mr. Souter would find that, in all matters, the Government must not restrict American speech, must not gag us, must not allow the Government to impose certain propaganda in family planning clinics, and this particular decision was of the most extreme, because it also encroached upon our right to free speech, and that is why we are very concerned about Mr. Souter's position on the continuing recognition of the right to abortion.

Senator SPECTER. Well, you may be right or you may not be right. I would not conclude that he is necessarily on the other side of the issue. I do not know, but in the event he is watching, and I think there is some interest across the street in these hearings, I would like to say that I think the issue is still open there.

One other brief question, Ms. Wattleton. You commented about the special concern of African-Americans and the plight of the poor women. Would you have some expectation, at least, of Judge Thomas, given his own roots and his concern for African-Americans, would have some special sensitivity to that kind of African-American concern among the poor people of this country?

Ms. WATTLETON. I would hope so, but I am not comforted by this candidate's steadfast refusal to acknowledge them. I, as an African-American, have similar roots to Judge Thomas'. Most African-Americans who have achieved and grew up in the 1950's and 1960's of the South know the pain of discrimination. It was not my grandmother who was refused a toilet in a service station, it was I who was refused a toilet and told to go behind the service station and to excuse myself in a hole, because that is what I was expected to do, as a child traveling through the South with my parents.

So, it brings with me a certain level of sensitivity and commitment, that if I were ever to sit before you for confirmation for any purpose, I would not be able to say that I have not thought about this issue, that I do not know about it, one that has divided the country, that has taken over a city in this country in the State of Kansas for several months now. It really does beg reality to suggest that this candidate is sensitive, truly sensitive to what I feel, as an African-American woman, when I see my life threatened.

I come from similar roots. He is not unique. But the ascension to the Supreme Court of the United States should not be on the basis of our roots, but on the philosophy in which we want to keep and see this country moving. That is really what is at issue here.

Senator SPECTER. Governor Kunin, your testimony has been significantly different from the other three women here today, in that you have specifically stated that you would not ask Judge Thomas for a statement as to how he would decide a specific case. I infer from that that you mean that you would not ask him to decide if he would uphold or reject *Roe* v. *Wade*.

Ms. KUNIN. I would ask, if I may interject, Senator, what his general views are, not on a specific case that comes before the Court, because I understand that.

Senator SPECTER. I understood you in your statement to look to his general views, and that was to be my next inquiry, and it is this: He has said that he thinks there is as right of privacy in the Constitution, and he has testified that he agrees with *Eisenstadt* v. *Baird*, that there is a right on unmarried people for contraception, and he has gone some distance, although not as far as some would like, in accepting the right of privacy in contraception for unmarried people. How far would he have to go, short of a commitment to uphold *Roe* v. *Wade*, to satisfy you?

Ms. KUNIN. I think he could go a great distance, without commenting on a specific case. For example, even on the death penalty, he used the words "I don't think I would have trouble deciding or dealing with the death penalty," which even in those few words indicated to some degree what his views were.

I think what is most disturbing is that he claims to have absolutely no opinion in terms of the criteria he would use to judge such a case, in terms of his overall philosophy, his values, and acknowledging that this is a very divisive question in this country. So, I am not satisfied that he has come anywhere near giving us an indication of what his values are, what his general criteria are, and that would give us some indication of which general direction he is moving.

Senator SPECTER. Well, he has not stated what he would do with *Roe* v. *Wade*, and you agree that is acceptable. He has stated that he accepts the right of privacy and he has gone down the road on accepting the right for contraceptives for unmarried people, as well as married people.

The questioning has taken him on quite a number of steps, and, speaking for myself, I would be interested to know just how far, how many of those questions he has to answer to give you the sense of assurance that you are looking for. I understand what the other witnesses have said.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Ms. WEDDINGTON. Mr. Chairman, since I did not use all of my original time, could I make just a few comments?

The CHAIRMAN. Surely.

Ms. WEDDINGTON. First, you see, I think one of the things that is bothering me is that when Thomas was asked what are the most important cases decided by the Supreme Court in the last 20 years, one of them was an employment case and the other was *Roe* v. *Wade*. How does a person nominated for the Supreme Court say the two most important cases of the last 20 years he has no thoughts about, at least one of them?

The second thing is, while he did mention *Eisenstadt*, he did so only in terms of the Due Process Clause, not in terms of——

The CHAIRMAN. That is not true.

Ms. WEDDINGTON. We can go back and look and, Senator, I will bow to your expertise——

The CHAIRMAN. I have it right here.

Ms. WEDDINGTON [continuing]. But I think we can double-check that.

The CHAIRMAN. You can read the record, if you like, but that is not true.

Ms. WEDDINGTON. He did mention right of privacy, but there are people who would say that simply stops with contraception or other kinds of things, and he has not given us any indication. Now, I do not think you should ask him in the Pennsylvania case, here are the specific three provisions and what do you think about those. I do not think you ought to ask him, Louisiana has these provisions and what do you expressly think about that.

But there is an overarching legal framework that he has given no response to, and, meanwhile, I think women in this country are feeling, as Governor Kunin masterfully capsulized, such a feeling of being in limbo, such a feeling of being Murphy Brown-ed. TV sometimes to me expresses the uncertainties, and if you saw her, her friend came to her and said, "Well, if you're pregnant, I will go with you to that back alley, I'll be there when you're butchered." And Murphy Brown said, "Oh, no, you don't understand, abortion is still legal—I haven't seen the paper today." But it is that sense of hanging by such a slender thread and this is the slender thread.

Ms. KUNIN. I would just like to add one final comment. I would not want you to overly distinguish my testimony from the three other women here. My intent—and maybe I did not state this as clearly—was on a specific case, I think it is appropriate that any nominee to the Supreme Court or to any court, for that matter, not be asked his or her specific views, and that is how I dealt with my appointees when I made judicial appointments, but I was very certain to figure out and ask that they tell me what their fundamental values were and what their thoughts were on the most divisive issues facing our State and facing the Nation. And there is as big difference there. I do not think we should make that into a gray area, that if you do not ask about a specific point of law, that then you can be silent on that enormous space between a specific case and knowing who this person is.

Thank you very much, Senator.

The CHAIRMAN. Ms. Weddington, when I said that is not true, I was not questioning your integrity in making the statement. I could understand how anyone would be confused by his answers, but I asked my staff and I personally went back and got every statement he made on the record relative to *Eisenstadt*, and because I was confused by what appeared to be his initial acceptance of the right of privacy, not equal protection, enunciated in *Eisenstadt*, I asked him after he had been asked questions by my friends on my right about the issue, and he said, on page 48 of the testimony on September 12, "That the Court has found such a right of privacy to exist in *Eisenstadt* v. *Baird*, and I do not have a quarrel with that decision."

I then pressed him, because I had read from the explicit paragraph, which I do not have in front of me, enunciated in the majority opinion saying that this was as right of privacy. I said, now, comment on that paragraph. I said, "I'm asking you whether the principle that I read to you, which has, in fact, been pointed to and relied upon in other cases, is a constitutional principle with which

you agree, which is that a single person has a right to privacy, not equal protection, privacy, the same right of privacy as married people on the issue of procreation." Answer, "I think that the Court has so found, and I agree with that."

Ms. WEDDINGTON. The language that I was looking at was on the 13th, where he said, "Senator, I think I answered earlier yes, based on the precedent of *Eisenstadt*, which was an equal protection case." Then he comes back and he says, "The question, then, became was there a right of privacy that applied to non-married individuals, and the point I was making"—I am quoting him—"was that the right of privacy in the intimate relationship was established using equal protection analysis under *Eisenstadt* v. *Baird*," and I think that is where we left it. So, that is what is causing me concern, although I know you have tried very hard and with great dexterity to try to ascertain that.

The CHAIRMAN. If on the Court—if he gets on the Court—he concludes there is no such right, I would have to conclude he is a liar. And they are very strong words. Because I do not know how anyone could read specifically what he just said, what he said to me, as anything else. And I specifically read the quote to Justice Brennan: "A marital couple is not an independent entity with a mind and heart of its own but an association of two individuals, each with a separate intellectual and emotional makeup. If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as a decision whether to bear or beget a child."

Now, what I am going to do is I am going to submit to him a question in writing and ask him to answer me in writing for the record that specific issue once and for all before I vote on his confirmation.

Now I yield to my friend from Alabama who came in.

Senator HEFLIN. I want to ask you maybe just academic questions, but it has been raised and I think some thought should be given to what would be the state of the law, the status of legislative bodies' enforcement, and the general condition of society, under a situation which could arise out of the theory espoused by Lewis Lehrman, in his speech on "The Declaration of Independence and the Right to Life," which has become a part of this issue in answers that Judge Thomas has given pertaining to speeches and positions on this issue. Basically Mr. Lehrman, as I understand it, would advocate that the life of a child about to be born would become an inalienable right under the concept of the right to life. If that were to be constitutionally declared, then what regulations could legislative bodies consider and pass under such a constitutionally declared right by the Supreme Court?

Ms. WATTLETON. Well, I commented on that, and then my colleagues can certainly speak on it. But if you extend Mr. Lehrman's doctrine that Mr. Thomas so enthusiastically supported before his appearance before this committee, Mr. Lehrman's views suggest that there is an inalienable right to life after concept, not just at the time of birth when the Constitution recognizes the protections as such but from the moment of conception. In that case, it would render all State permissibles as unacceptable and unpermissible.

Let me just say that it would not allow any abortions to be performed even at the State level under restricted conditions. So that this doctrine really is the most extreme position with respect to the restriction on the right of a woman to choose abortion and goes far beyond even the current State legislation that places very severe restrictions but does make allowances for certain conditions.

Kate, you may want to comment.

Ms. MICHELMAN. I think Faye said it very well, Senator. That doctrine that is espoused in the Lehrman article goes beyond any holding that any current sitting Justice has articulated. It is, as Faye says, the most extreme view, and it would require that all abortions be outlawed. No State would have any right under that doctrine to even legislate in the area of abortion. It would completely annihilate every woman's right to choose.

It is such an extreme doctrine that it—that is why, by the way—you know, it is not acceptable just to hear him say, well, I just used that article to advance my views on civil rights. That article is nothing but an extreme attack on our right to privacy and our right to choose. And if Lehrman had written that article about natural law to apply to another fundamental right, like freedom of speech, and he had chosen that article as a "splendid example" of the application of natural law, I don't think any of you would allow him to be confirmed unless he were to speak to the issue of the fundamental right to free speech.

You just do not choose an article of such an extreme nature as a throw-away line in a speech and not be held accountable for it. It just does not square. It is really a radical, radical doctrine. It is a very scary doctrine.

Senator HEFLIN. Well, let me ask you this now, just hypothetically: If such a decision were to come down and then legislative bodies did not set forth any punitive sanctions in support of that position, how would it be enforced?

Ms. WATTLETON. It would be enforced because many providers of abortion services would decline to provide them. Doctors would refuse to do them.

Senator HEFLIN. Well, I am assuming that. But, I mean, suppose there was a person that would do it. I think it falls in the sort of a category as school prayer. In effect, in the absence of a legislative body in a State taking any actions to reinforce that position by passing criminal laws or putting some punitive sanction on it, and someone attempted to punish a person who had had an abortion, or punish the doctor or the nurse that are doing it, other than injunctive relief, where would you be? What I am trying to find out is where the status of society and law would be under such a concept.

Ms. KUNIN. Senator, if I may just try to envision such a world, I think you would have the worst of all possible worlds, and that is disrespect for the Constitution itself, because the interpretation of the Constitution would be so out of kilter with the majority view. And to have such a situation where disrespect for the law, disobeying the law, not enforcing the law becomes the law of the land, I think would be a very chaotic period for this country.

Ms. MICHELMAN. Senator, just a quick thought. I am not a lawyer, but I think that this doctrine would say that the Constitution requires treating abortion as murder, under the murder stat-

utes, and that is how the laws would be enforced. If that doctrine is established as law, then abortion would be murder. And murder, then doctors, women, and all who were deemed accomplices would, could be then charged with the crime of murder. Maybe a lawyer here can——

Ms. WATTLETON. I guess the point, however, is that the question raises in my mind, What would it mean in the real-life circumstances of women, and what would it mean for poor women? I think it really begs the imagination to think that there would be States who would not enforce—or legislate restrictions and attempt to enforce them since we now have such activities going on in States even though *Roe* v. *Wade* has not been overturned. And there would be a tremendous amount of pain and suffering for women in this country.

We could debate it, but I respectfully submit to you, Mr. Heflin, that the right to control my body is, indeed, really central and fundamental to my integrity. It is not quite the same as praying in school. It really is more central to my very being than those issues, and I think that is why we are arguing so passionately on behalf of preserving this right this morning.

Senator HEFLIN. Thank you. That is all the questions I have.

The CHAIRMAN. Thank you very much.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

I want to commend this panel. It has been one of the most thoughtful and rational and helpful presentations I think we have had in the course of this hearing. You all have shared not only your knowledge but your personal experiences, and I think, it has been most helpful to all of us.

Ms. Weddington, I particularly appreciated your relating your personal experiences. I think there are a good many Americans who simply are not familiar with the struggles women have had to go through. And your sharing your personal experiences I think is most helpful. My mother had law school professors tell her that she was not welcome in their class and women were not welcome in the legal profession. That has been some years ago, but she has never forgotten it. I think it is helpful for Americans to understand what it was like.

Ms. Michelman, I particularly appreciate your sharing your personal, very personal experience. I think it is helpful because it speaks more clearly than I would ever know how to explain how this issue is really one about individual rights and human liberty, that it really relates to the question of whether or not as citizens of society we have our rights protected, whether the individual's rights are paramount.

That does not address the question of whether you like or dislike abortions. It relates to what our Constitution envisions as individual freedoms and liberties, and I think your sharing that personal example is very helpful to people to understand the issue.

I, as I go through the record, am concerned in this area. Through the chairman and others, I think you have shared some very relevant testimony. One thing that has not been mentioned that I did think was of interest, though, was a question and response by Senator Metzenbaum.

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.

Ms. MICHELMAN. Could I just say one little thought here about this——

The CHAIRMAN. Sure, you can.

Ms. MICHELMAN [continuing]. And then I am going to be quiet. I think the——

The CHAIRMAN. You don't have to be quiet.

Ms. MICHELMAN. The key issue here is how he used it. He used it in the context of urging conservatives to use natural law, and he chose a very specific——

The CHAIRMAN. I don't disagree with that.

Ms. MICHELMAN. Senator, could I ask you a question?

The CHAIRMAN. Sure, you can.

Ms. MICHELMAN. If Lehrman had written an article, and as I suggested earlier, criticizing another fundamental right like the right to free speech, using natural law, and he had said the same thing, trying to use the example of natural law to make an argument to win conservatives——

The CHAIRMAN. Well, he did.

Ms. MICHELMAN. No, but what I am saying is if it were another——

The CHAIRMAN. It didn't help any.

Ms. MICHELMAN [continuing]. If it were another fundamental right, would you dismiss it so easily.

The CHAIRMAN. No, no, no. Look, I just want to make sure we are precise here.

Ms. MICHELMAN. Okay, maybe you're not dismissing it, but——

The CHAIRMAN. You are the most informed panel we have had testify.

Ms. MICHELMAN. I'm not sure about that.

The CHAIRMAN. I am.

Ms. MICHELMAN. I think you have had some wonderful——

The CHAIRMAN. That it, in fact, has been on this specific issue, and I think we are slipping from precision. That is the only point I am making. That is the only point I am making. I am not dismissing it lightly. I would not have spent so much time questioning him on it. I would not have spent so much time going back through the record. I don't dismiss it lightly at all, not at all.

Ms. WEDDINGTON. Senator, what bothered me was when he said, you know, I didn't mean to endorse everything he said, I was just trying to win a point with my audience. It seems to me that he was essentially saying I'm willing to mislead people sometimes or kind of try to nudge them in one direction in a way that isn't really accurate, if it gets me what I want.

So, Senator Heflin, I know you have the article in front of you, what bothers me is that Lehrman comment that says human life endowed by the creator commences in the second or third trimester, not at the very beginning of the child in the womb, saying that is what we adopt. Or on page 2 of his article, where he questions——

The CHAIRMAN. You are talking about Lehrman's article.

Ms. WEDDINGTON. Yes, the Lehrman article—that the right of the sovereign, even if voted by the people to take some other position.

Now, I think your comment, saying what would happen, I do think there will be some States where abortion will remain legal. I think in those States women will have access. But I have difficulty thinking of our country as a place where women, if they live in Louisiana, have much lesser rights than some place else.

I appreciated Senator Brown having read my written comments so carefully, because there were some things in there I wasn't able to say in oral testimony, and what I was trying to point out was the abortion issue was not for abortion. It was an issue that was so integral, it was so inherent in all of the other things we were trying to achieve amidst a background of discrimination, that it was important.

Senator Specter, I do understand his concern about what we think Souter's position will ultimately be. I don't know what he is going to do on the ultimate *Roe* v. *Wade* issue. What bothered me was that when he was in the *Rust* hearing, he asked the Government's attorney, "do you mean if a woman has a medical condition that makes continuing a pregnancy unwise, the doctor can't tell her?" and the Government said, "Yes, that's what it means, he can't tell her."

We thought from reading his expression that he understood how terrible that would be, and so we were shocked when the decision was as it was.

The CHAIRMAN. You know, as a lawyer, and everyone else should know, it is still left open, if *Roe* is overruled, that States like Louisiana may very well pass a law that not only affects—they have passed a law—that not only affects poor women, but the wealthiest of women, because it may very well say, we in the State of Louisiana conclude that anyone domiciled in the State of Louisiana cannot have an abortion anywhere in the world, without breaking the law——

Ms. WEDDINGTON. That is right.

The CHAIRMAN [continuing]. Which I think would be a horrible step. At any rate, let me yield to my friend from Wisconsin, and I am going to yield him the Chair, as well, so after he questions, maybe he could come up here and take the Chair.

Senator KOHL [presiding]. Thank you very much, Mr. Chairman.

I would like to be certain that I understand where you are on this issue in a fairly conclusive manner. Are you all saying that, with respect to this person or somebody coming after this person, if they do not have a clear expressed position on choice which is positive, that person should not be on the Supreme Court; and that it should be the responsibility of this committee to clearly, without ambiguity, ascertain that position and vote—among other things, but vote particularly on that issue?

Ms. MICHELMAN. We are saying that, Senator.

Senator KOHL. Anybody disagreeing on that?

Ms. MICHELMAN. No, because that——

Senator KOHL. So you don't—I respect your position—but you don't take any inconclusiveness as satisfactory?

Ms. WATTLETON. That is correct.

Ms. MICHELMAN. That is correct.

Senator KOHL. So you are saying that trying to figure out what he did or didn't say when he endorsed Lehrman is almost beside

the point? You want to know particularly and clearly that the person believes in a woman's right to choice? Otherwise, in today's United States of America, that person does not belong on the Supreme Court?

Ms. WATTLETON. That is correct.

Ms. MICHELMAN. That is correct. It is whether he believes or acknowledges, recognizes that there is a fundamental right to choose and that that right is equal in its nature to other fundamental rights, such as freedom of speech, freedom of religion, other fundamental rights.

We don't think that you would confirm someone who might suggest there is not a fundamental right to free speech. This is that kind of right, Senator, and we think the area of law—*Roe* v. *Wade* is 18 years old now. We think it is as settled an area of law as *Brown* v. *Board of Education.* And I think Faye and I, last year when we sat here before you with Justice Souter's nomination, said that we believed very strongly that if you had any question that Justice Souter would have any difficulty with the *Brown* v. *Board of Education* ruling, you would be very concerned about confirming him. We believe that this right is as fundamental and as settled as that case was.

The risk to women's lives is so enormous. It is so enormous. If you take this right away, you take away the very foundation of women's lives and their families' lives. There is nothing left. Everything crumbles around it. It is so fundamental.

And, yes, we think it is absolutely appropriate and fair for him to be judged on this issue, and he has singled out—and Faye again said it very eloquently. He has singled out this one area of law to refuse to talk about. He has talked about other areas of law that are controversial, are before the Court. He has singled out this one. You have to ask why. Is it because if he did speak about it he would not be confirmed?

I mean, he can't—it is no longer acceptable. The Court has moved. The President has really made these nominations based on his commitment to overturn *Roe,* and the last four nominees have shown us that they, indeed, are voting with the others to take away this right.

We have no chance anymore. This may be the last opportunity we have to protect *Roe* v. *Wade,* that you have, the last opportunity you have in your co-equal role with the President in preserving fundamental rights.

Ms. WATTLETON. I guess I would ask the committee to consider what it would do if a candidate sitting before it held that almost every question that you put to him or her could be found to be constitutional or divisive or in other ways politically laden and decline to give you his or her views on those subjects across the board. It would make a mockery of the whole process of advice and consent. And that is why we do not find it as excusable that he chose this and this question alone, singularly, to decline to comment, but to extend it throughout the process and ask ourselves what would that make of the very process of governance that is set forth by the Framers with respect to the selection and the seeding of the other branch of government at the highest levels people who are selected for the rest of their lives.

Ms. KUNIN. Let me just add, Senator, it is not only the desire to know his views on this question, but the explicit effort he has made to not state his views, that leaves us with a real—we are the only—this is the only question on which you have to live on hope or that you have to have a "maybe yes, maybe no, but most likely no" answer. And I think the fact that this is acceptable or apparently acceptable thus far just seems unfair when, as the other panelists have so eloquently stated, this is as fundamental as other rights.

And it is so easy to take this issue and say, well, you are just interested in a single issue and we shouldn't base this confirmation process on a single issue. And I can understand that. But by calling it a single issue, it diminishes it, and it takes away from its true fundamental worth.

So that is an easy trap, I think, to fall into because we are talking about self-respect here. We are talking about equality under the law. We are really talking about very fundamental principles that are encapsulated in *Roe* v. *Wade*.

Ms. WEDDINGTON. Senator, just very briefly. I know what we would prefer is not what all the committee members would come out in the same place. But there is a sense in which I think your own constituents hold you accountable for what you know when you cast that vote.

On Souter, I think people could have said he had no record, I looked at the record, I voted based on that, it was a reasonable guess. On Thomas, I think if women—and I don't think it is a conservative or liberal issue. Former Senator Barry Goldwater has said the true conservative position is it is not the Government's business. And no one ever accused him of being liberal. There are certainly a lot of Republican Senators, Republican women, the Young Republicans nationally who have said, "We differ with our official party on that position." It is not a liberal-conservative, it is not a Democratic-Republican issue. But I think it is an issue that strikes at the heart of who has the right to make certain decisions and that women who feel in jeopardy feel particularly strong about.

And so if they come to you and say you voted for this man and look what he did, what are you going to say back to them?

Ms. MICHELMAN. And his record is more than the Lehrman article that we have been focusing on here, Senator. I know you know that. There is much more to his record. As a public person—and I think Faye and Madeleine, the Governor, would agree—if I were to sign on to a report that I hadn't read, I am not sure how—I would have to be held accountable for that. I just wouldn't.

He has to be held accountable, and his testimony has not been credible in his answers in response to his extensive record. And I said earlier, I think before you came in, he has had many years to comment on many things. And every time he has commented on the right to privacy or the right to choose, it has been derogatory. It has been an assault on the right. It has been hostile to the right. He has never once said anything good.

He has come to the committee now, and he has tried to distance himself somewhat from his record. But I don't think he has done that credibly.

Senator KOHL. Do you want to say something else on this issue?

Ms. WATTLETON. No.

Senator KOHL. I would like to ask you about the constitution of the committee and the constitution of our Senate. As you know, the committee is all male, and the Senate is 98-2 male. What would be the result of this deliberation if this committee were 14 women instead of 14 men?

Ms. MICHELMAN. I think obviously we would love to see more women in elective office, and I think women bring a particular sensitivity to and understanding about the issues. But men do also understand how important this issue is, and many of you sitting here before us have been important supporters in preventing the erosion of the right. And we expect you to continue in that mold. We would love to see half women on this panel.

Ms. KUNIN. I would like to see seven and seven.

Ms. MICHELMAN. Right.

Ms. WATTLETON. I think if this panel represented the American people in its diversity, not only among women but also among ethnic groups and African-Americans, we might have a very different conversation with respect to certain insights and understandings about the nexus of a constitutional law with everyday lives of Americans of all persuasions, including gender.

Ms. KUNIN. Let me just say also, Senator, that not all women obviously agree on this issue.

Ms. MICHELMAN. Right. That is right.

Ms. KUNIN. Not all men agree on this issue. I think the particular perspective that women bring is one that Kate Michelman described earlier; that there is still nothing like personal experience. And so I guess my hope would be that someday, regardless of this issue but on all issues, that we can look forward to a U.S. Congress that is truly representative in terms of both minorities and gender of the people of this country. But in the meanwhile, I certainly commend you for your efforts to be sensitive to these concerns.

Ms. WEDDINGTON. When the President said he had nominated "the best man" he could find for the job, I think that is somewhat questionable. But I thought to myself, he certainly didn't take the best person he could, and I hope he will widen his scope of consideration if there is another vacancy.

Senator KOHL. Thank you very much.

Senator SIMPSON. Thank you, Mr. Chairman.

We have 44 witnesses today and bring a light lunch tonight. [Laughter.]

Senator SIMPSON. I thank you. I don't even believe I will take the full time. But I think you know—you who work so hard for the cause of choice—that I agree with you on that issue and have all of my public life. And I vote rather faithfully on your side on most of those issues that arise in this area. Always have, and it has never been formed since I got here and wasn't formed because of political campaigns. It was formed from life.

But it has been interesting. We went back and did some research on all of us on this committee who have asked Court appointees of a different administration questions. And every single one of us has just stepped into the dark and said, Do you mean to tell me you won't answer this question on what you would do? Go look at what Eastland said and Ervin when they were trying desperately

to pry out of Thurgood Marshall what he was going to do with the *Miranda* decision, which they didn't like one whit, and Thurgood Marshall was just exactly the same in his response as Clarence Thomas. He said, "It is not appropriate for me to address that issue. It would undermine my ability to decide it."

I think if we can just get through that part of this and just know that that is the way it is. And no matter how important the issue, I just do not believe an issue as broad in scope as a Supreme Court nominee position, where a man or woman would deal with thousands of issues in their lifetime on the Court, should have this test on a single issue, no matter how important that issue is.

I guess, in short, despite the fact that I am certainly pro-choice, Judge Thomas has told me personally that he is undecided on that issue, and I am ready to believe him. Nothing has come before us to show us he is a liar or that he doesn't have integrity and credibility. And I believe his many other qualifications make him worthy of the confirmation.

I do not doubt one whit the sincerity or the intensity of your concern about the issue of abortion. As a practicing lawyer for 18 years, I attempted to assist women who were involved in that terrible personal decision. And I think I can understand how tragic a choice it is, to the extent that any man can. But he told us he was undecided. He explained to us he was not endorsing Lew Lehrman's contention that natural law would prohibit abortion. I think our chairman described that rather thoroughly. Certainly the nominee did. I believe we should trust him on that question. He is clearly undecided.

But let me direct a question to Ms. Michelman and Ms. Wattleton. Why did you not express, you know—there was recently a leadership election in the House of Representatives, Representative Dave Bonior, a very able man, and Steny Hoyer, an equally able man, and here came the issue of abortion. Every time. And it will never go away. It doesn't matter who you put on the Court. This issue will be there for the end of time in its various nuances, but no one is going to allow it to occur where we go to the back alley abortions. That is not what sensible legislators are going to do.

But anyway, David Bonior was elected majority whip, and he was also very much pro-life. Now, that's a position that has a lot to do with your position, and I noticed you said nothing. Was there any reason for that?

Ms. MICHELMAN. Well, Senator, first of all, I did say something.

Senator SIMPSON. Oh, I see. I'm sorry.

Ms. MICHELMAN. I did. I expressed very serious concern about a leadership position being assumed by someone—a key leadership position—assumed by someone who has an anti-choice record and what that would do to moving legislation that would protect our right to choose.

But also, Senator, I was very sensitive to the fact that leadership elections within a congressional—in Congress—is a process inside the Congress, and I am very sensitive to that, and I don't think we should, short of making our views known—and I did make my views known, and they were publicly known—and talked to some Members, I think there is a respect for the right of Members of Congress to elect one of their one, and you know, there is only so

far one should go but there was no question about my view and the importance of that leadership role in the advancement of legislation that would protect our rights. And I made that view known, but I did it, I thought, within the parameters that I felt were respectful of the process.

I would like to comment, Senator, on one thing that you said about "I have been very pro-choice", and you have been. You have been there for us in the past, and recently, and we appreciate that very much. But Senator, everything that you have voted for over the past years is going to be undone and will be undone, and you can't make light of it when you continually confirm nominees to the court who are selected on the basis of their hostility to *Roe* and those nominees get onto this Court and move deliberately to overturn this right. And every one of the nominees at the last five confirmation hearings have shown that that selection was indeed based on the hostility to *Roe* because they have voted to restrict and to limit the right.

So that if you confirm Judge Thomas, then while this right is hanging by a thread, all the work you have done in voting to uphold the right in Congress is a moot point. I mean, he has a record, and your vote is very critical here. You can't dismiss the Supreme Court from what Congress does, and he is going to move to overturn this right, and——

Senator SIMPSON. Well, you see, here is the problem——

Ms. MICHELMAN [continuing]. And we disagree on that. I realize that you think he has an open mind, and Senator, I submit to you that I don't think he has credibly established that he has an open mind. He has a record. You might have been able to say that more firmly about Justice Souter because he didn't have the record, although Faye and I did——

Ms. WATTLETON. Mr. Simpson, in response to your question to me——

Senator SIMPSON. Yes.

Ms. WATTLETON [continuing]. We also spoke to the leadership about our strong concern and opposition to the appointment of a Member of Congress to a leadership position in the House that was so staunchly anti-choice, but again we respected the prerogatives of the House with respect to our role in that process.

I would only comment on your characterizing our concerns around it being a single issue, this single issue. Well, for us it is more than this single issue. We see this as a fundamental issue to our integrity, and that is why it carries with it a much larger dimension than a single issue. We can't say that no reasonable legislator or respectable legislator is going to legislate women to the back alley. Louisiana has already done it.

Ms. MICHELMAN. That's right.

Ms. WATTLETON. And we have examples waiting in the wings to be implemented. We have the evidence before us. We are not prepared to go on a leap of faith with someone who is undecided about my right as a woman to control my body and my life. That should be decided, and a candidate who is undecided is insufficient to sit at the highest Court of the land.

Senator SIMPSON. Let me say that I do hear that, but I certainly would disagree with the statement that these people were placed

on the Court because of a hostility to *Roe,* and that was your exact quote, and that is just not so. No President is just sitting there to pick a person for a lifetime appointment based on one thing that is going to come before the Court. That's a disservice to any President of any party, of both parties. And I personally think that the House Democrats made the same decision that a lot of us will make here—a good person who is qualified for high Government position should not be rejected simply because his or her views on one topic are not in line with one's own.

I guess the real thing is—do you really want to know what makes it all flop around and not work with this issue? It is because of the high drama on both sides. When will somebody cut the high drama that this is the end of the Earth if this happens one way? I get called "murderer" in town meetings. How perpetually absurd. And then you talk in high drama and almost obsessive conduct of the word "murder". These things do a disservice to the debate. And that is why politicians don't grapple with it very well at all, and Governor Kunin, you are a politician. I know what you do. I know of you. I admire your perseverance. You are the politician on this panel—the only one. And boy, there is a lot of difference between advocacy groups and politicians, I can tell you that. But a September poll, just a week ago, showed us that 85 percent of 1,233 people polled thought abortion should not be a deciding factor in Judge Thomas' nomination—85 percent. Now, we happen to fall prey to those things; polls mean a lot to those of us in this line of work. Another 61 percent felt that Judge Thomas was right not to answer questions on abortion.

I would ask the Governor, the politician, why the American public appears to feel that way about Judge Thomas and the abortion issue itself.

Ms. KUNIN. Well, Senator, let me just, before I answer your question, comment on the question of high drama. I think those of us who have been entrusted with making public policy know that we have to create a rational process and a fair process and that that removes it from some of the drama of life. But I think we cannot for a moment forget that the consequences of our decisions in the public arena are very dramatic and very personal for the people affected—and I am sure you appreciate that yourself in your own views.

But I do not think that this drama has been exaggerated. I think that it is an honest expression of deep apprehension. And I think that women as a group often feel that you can deal with every other issue and give it its full weight, but when it comes to these issues of personal choice over reproductive rights, they are put in a different category. That is why I think you see the debate intensifying on this issue. And the idea that this is only one issue out of many—I agree with you if it were simply a small question, we should not say this is the only thing, and this will determine whether or not you merit our confirmation. But this is a very, very sweeping issue that really addresses women's respect and equality in society as a whole. Whether a woman is treated as a rational, moral person who can make her individual choice, or whether the State has to be the parent and say, "No. We make your choice for

us." On very few issues does the State intervene in an agonizing decision quite in this way.

Why the American public responded in that poll, as you know, it depends how the question is asked. Senator Biden earlier quoted another poll from the Philadelphia Inquirer which indicated, one, which is good news for the Senate, that the country feels by 55 percent that the Senate should have more say than the President over this question, and that issues in fact are important. Now, maybe it was the wording that was different in these polls, but I also think there is a resignation in the American public, and there is a growing cynicism that believes that the process is so orchestrated that their individual voices are not going to count and that both sides are so armed and so skilled in maneuvering this thing that it is already a done deal, and I think some of that is reflected in that answer.

Senator SIMPSON. I think so, and I thank you very much.

Ms. WATTLETON. Senator Simpson, I'd just like to comment on the high drama——

Senator SIMPSON. Yes.

Ms. WATTLETON [continuing]. Because from a personal point of view, when I can forget the high drama of women dying whom I tried to help save and to live, then perhaps I will feel less passionate about this issue. I think that you have had among the most rational discussions and commentary on this issue that have taken place in this country in a long time here this morning, but it is the Court of the land that this committee has selected over the last few years that has opened the political debate of this issue to new heights; the Court that stepped back from *Roe* and *Webster* that has now highly politicized this issue.

Would I prefer to be here talking to you about this today? I'd rather talk to you about how we can get birth control and contraception better organized in this country; how we can get new methods so that women don't have to face unwanted pregnancy—I think that is a more rational discussion—and to leave the moral, ethical and individual situations to American women to try to orchestrate.

Senator SIMPSON. Well, I think that is an extraordinary statement when you leave off those on the other side who talk about the murder of a baby. So there you are. Now, come on, let's be reasonable.

Ms. WATTLETON. Mr. Simpson, I'd very much like to preserve their right not to have an abortion, and the very system that they are fighting against is the system that will destroy their right to practice their religious views as they see fit. And that is the common ground here; we have basic, fundamental disagreements. We are decent, reasonable, American people, and we must be allowed to continue to live in a society in which we can exercise our personal and private morality as we see necessary in our lives.

Senator SIMPSON. Well, everybody gets that right. That's the curious part of it.

Ms. WATTLETON. We want to keep it up.

Ms. MICHELMAN. But we want to keep it, Senator——

Senator SIMPSON. So do they.

Ms. MICHELMAN [continuing]. And I am afraid that this nominee will be the nail in the coffin for this fundamental right.

Senator SIMPSON. Well, I think that's overly dramatic and untrue, based on his testimony.

So I have no further questions.

Senator KOHL. Thank you, and thank you very much. We appreciate your being here this morning.

Senator KOHL. Our next panel is composed of Gail Norton, who is the attorney general of Colorado; Larry Thompson of Atlanta's King and Spaulding; Judge John Kern, representing the Judiciary Leadership Development Council; Barbara K. Bracher of Wilmer, Cutler & Pickering, and Sadako Holmes, of the National Black Nurses Association.

We'd like to have each of you come up here and take a seat at the table. Senator Brown would like to introduce our first panelist this morning.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

I am particularly pleased that Colorado's attorney general has been able to come and testify before us today. Gail Norton is the first woman attorney general in Colorado's 115-year history. She has a distinguished legal background—both her bachelor's and juris doctorate degrees are from the University of Denver. She has extensive years of practice. She was a national fellow for Stanford University's Hoover Institute and in addition has a distinguished career here in Washington in previous years as Assistant to the Deputy Secretary of Agriculture and then later on as Associate Solicitor of the Interior.

She is well-known in Colorado as a person of great integrity and exceptional brilliance, and I particularly appreciate her coming back to share with us her thoughts today.

Senator KOHL. Thank you very much.

Ms. Norton.

STATEMENTS OF A PANEL CONSISTING OF HON. GAIL NORTON, ATTORNEY GENERAL, STATE OF COLORADO; LARRY THOMPSON, KING & SPAULDING, ATLANTA, GA; HON. JOHN W. KERN, III, JUDICIARY LEADERSHIP DEVELOPMENT COUNCIL; BARBARA K. BRACHER, WILMER-CUTLER & PICKERING; AND SADAKO HOLMES, NATIONAL BLACK NURSES ASSOCIATION

Ms. NORTON. Thank you.

Mr. Chairman and members of the Committee, and Senator Brown, it is an honor to be here today and personally urge you to confirm Judge Clarence Thomas to the Supreme Court of the United States.

State attorneys general like myself have a vital interest in who sits upon the U.S. Supreme Court because we are involved in almost one-third of the cases that are handled in front of that Court. We litigate issues as diverse as taxation, antitrust, superfund hazardous waste cleanups, and business regulation.

Furthermore, my office is responsible for most of the criminal appeals handled in the State of Colorado, and it is from that perspective that I wish to comment on today's nomination.

Perhaps this is somewhat surprising, but as a prosecutor, I do not desire a pro-prosecution judge. I would like to see a fair one. I