

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.