

motion to partnership at another firm. Neither of those considerations mattered to Judge Roberts or to my firm. What mattered to Judge Roberts was that I was a good lawyer. And so with his strong support, I became a partner at Hogan and Hartson at the end of that year.

Now, by the time the Judge left for the D.C. Circuit bench, we had worked on many matters together, issues as diverse and arcane as patent appeals, ERISA briefs, energy cases, preemption issues. The issues that we dealt with varied widely from week to week and from case to case, but a few things were constant—the Judge’s keen intellect, prodigious beyond description, his depth of preparation for every case, his kind and quiet sense of humor, and his devotion to the law.

No one is more dedicated and more devoted to the law than Judge Roberts. It was my honor to work for him for several years and it is my honor to appear before you today to speak on his behalf. Thank you.

Chairman SPECTER. Thank you very much, Ms. Stetson.

[The prepared statement of Ms. Stetson appears as a submission for the record.]

Chairman SPECTER. Our next witness is Ms. Marcia Greenberger, founder and Co-President of the National Women’s Law Center, a graduate of the University of Pennsylvania, both Bachelor’s and law degree. She practiced with the Washington firm Kaplan and Drysdale, had been Director of the Women’s Rights Project of the Center for Law and Social Policy, which became the National Women’s Law Center. She is also on the Executive Committee of the Leadership Conference on Civil Rights.

Thank you for being with us today, Ms. Greenberger, and we look forward to your testimony.

**STATEMENT OF MARCIA GREENBERGER, CO-PRESIDENT,  
NATIONAL WOMEN’S LAW CENTER, WASHINGTON, D.C.**

Ms. GREENBERGER. Thank you, Mr. Chairman. Thank you. I am Marcia Greenberger, Co-President of the National Women’s Law Center, which since 1972 has been involved in virtually every major effort to secure and defend women’s legal rights in this country. We were directly involved, as a result, in many of the battles to save women’s rights that Judge Roberts worked to undermine.

I thank you for your invitation to testify and ask that my written statement and attached report be made a part of the record.

Some have claimed that because Judge Roberts has been so supportive of women family members and friends and wonderful colleagues that he must also support women’s legal rights. But Judge Roberts’s record consists of document after document detailing his past work to undermine women’s legal rights on the job, in schools, and in government programs.

This week, Judge Roberts told Senator Feinstein he could not identify anything he would change in his writings and memoranda except the tone he used in support for limiting life tenure for judges. Judge Roberts provided a clear explanation for this seeming contradiction. He testified that he forms his legal views without regard to his life experiences, and this is his quote, “a father, husband, or anything else,” end quote. Unfortunately, John Roberts’s

view of the law is entirely divorced from its real-world consequences on women's lives.

In contrast to Justice Oliver Wendell Holmes, who said that, quote, "The life of the law is not logic but experience," for Judge Roberts, the law is pure logic, untempered by life experience.

The Christine Franklin case discussed again this morning demonstrates why his judicial philosophy is so harmful. As a high school student, her teacher and coach sexually harassed and ultimately raped her. Judge Roberts said he did not condone the behavior, and I am sure he did not, but that is not the point. As the political Deputy Solicitor General, he argued that Title IX should be interpreted to preclude her, and indeed any student, from recovering even one cent of damages, no matter how severe her injuries or how egregious the discrimination.

He said students could still recover back pay or get the court to order the sexual abuse to stop in the future, but high school students aren't paid by their schools, and by the time their cases get through the courts, they have often graduated, as had Christine Franklin, so they can't benefit from a court order that a school protect its students in the future.

His argument on the law would have let schools off scot free and left students without effective protection or any remedy for the serious injuries they suffer. The Supreme Court rejected this extreme limitation on Title IX nine-to-nothing, and pressed repeatedly by Senator Leahy today to say the legal positions he argued were wrong now in retrospect, Judge Roberts repeatedly refused to do so. At most, he said he had, quote, "no cause or agenda to revisit it or any quarrel with it," end quote.

Of course, a nine-to-nothing decision is not one likely to be revisited. As for having no quarrel with it, that is a careful formulation we have heard time and again in past confirmation hearings. Justice Thomas used it, for example, in discussing the Establishment Clause under the *Lemon* test, which he attacked once on the Court. He explained, in answer to a question at his hearing, that having no quarrel with a ruling does not mean that he agrees with it.

On women's constitutional rights and equal protection of the law, Judge Roberts testified that he now believes courts must give heightened scrutiny to government practices that discriminate on the basis of sex. But Judge Roberts gave no guidance as to which version of heightened scrutiny he would apply, one that gives meaningful protection to women against sex discrimination, as Justice O'Connor and the majority of the Court have applied to date, or the Thomas-Scalia version that provides little real protection to women. His written record reinforces our concern on this point.

The very same concern applies to the right to privacy and the future of *Roe v. Wade*. Like Justice Thomas during his confirmation hearing, Judge Roberts said that there is a right to privacy and it applies to the marital relationship and the use of contraceptives in that context, but he refused to say how much further its protection would go. For Justice Thomas, we know the answer is not very far. In his first year on the court, he said *Roe v. Wade* should be overturned and later said there is no general right to privacy at all. John Roberts refused to say he disagreed with Justice Thomas in any way.

Judge Roberts has refused to disavow his past record. We don't have the Solicitor General records on the *Franklin* case or others. He said many times he believes in judicial restraint, but unfortunately, what we see from the record and from his testimony is that he has been restrained in protecting individual rights and freedoms but unrestrained when he has been seeking to narrow them and that is what led the National Women's Law Center to oppose his confirmation, because we so fear turning back the clock for all Americans and most especially women and the risks are simply too high. Thank you.

Chairman SPECTER. Thank you very much.

[The prepared statement of Ms. Greenberger appears as a submission for the record.]

Chairman SPECTER. Thank you very much, Mrs. Greenberger.

Our next witness is Mayor Bruce Botelho, Mayor of Juneau, Alaska. He has served as State's Attorney General. He has been a distinguished Chairman of many of the Commissions on Criminal Justice and Youth; undergrad and law degrees from Willamette University. Thanks for joining us, Mr. Mayor, and we look forward to your testimony.

**STATEMENT OF HON. BRUCE BOTELHO, MAYOR OF JUNEAU, ALASKA AND FORMER ATTORNEY GENERAL, STATE OF ALASKA, JUNEAU, ALASKA**

Mayor BOTELHO. Thank you, Mr. Chairman.

It is a distinct honor to appear before this Committee to support Judge Roberts's confirmation to be Chief Justice of the Supreme Court, that is, his nomination. I do so not only as a public official who has observed his work up close, but also as a liberal Democrat whose views on several social issues are likely at odds with the majority of this Committee.

I came to know Judge Roberts while serving as Alaska's Attorney General. In January of 1997 I first hired John to represent the State in an Indian law case that we had lost before the Ninth Circuit Court of Appeals. Mr. Roberts prepared our petition for cert, which was granted. He subsequently briefed and successfully argued the case before the U.S. Supreme Court. We ultimately retained him on 8 appellate matters over the course of the following 7 years.

I had the opportunity to work closely with Judge Roberts on these cases of immense importance to my State, and it is on the basis of this working relationship that I urge confirmation of Judge Roberts.

Mr. Chairman, I was struck by the eloquence, without exception, of the opening statements offered by members of this Committee on Monday, but it was Senator Kohl's personal test for confirmation that particularly resonated with me. Aside from candor, Senator Kohl said that he would look for a person who is competent, has strong character and judicial temperament, someone who knows the law and can explain it to the common person. He would look for a person who has compassion for real people who are affected by the Court's decisions, and he said he would look for a person who understands the fundamental values of this Nation.