

This man is openminded he says. He will listen and he impressed me as the kind of man who would change his mind if he felt that something in the past had gone wrong or conditions warranted changing his mind.

In fact, if I recollect correctly, he said he hadn't made up his mind on the abortion question. Didn't he say that?

Ms. WATTLETON. Well, he did say that and that is very disturbing—

Senator THURMOND. Well, if he said that, wouldn't you accept his words on that?

Ms. WATTLETON. Could I just finish? He did say that but after 18 years we find it enormously disturbing that an area of major constitutional law is such that this person, who wants to sit on the Supreme Court, doesn't have a view on it and has not made up his mind on it. Yes, there is no question that courts do change their minds, but I believe this would be the first time that we would see a Supreme Court position in which it has established a right, take it away.

I'm not interested as an African-American and as a woman seeing the rights that I have come to expect as an American be reversed because a court changes its mind, and I believe we have to speak out against any such development.

Senator THURMOND. Well, my time is up. I just want to say, if he is a man of integrity and character and says he hasn't made up his mind, and he will listen, what more could you ask?

That's all. Thank you. My time is up, Mr. Chairman.

Senator LEAHY. Mr. Chairman, if Senator Kennedy could withhold just a moment, I would also like to note something similar to Senator Metzenbaum. We are in the process of putting together the conference committee on the 5-year farm bill and while I was here for all but 4 or 5 minutes of Judge Souter's testimony, I am going to have to miss much of the testimony over the next couple of days. I will follow it fully and my staff is going to brief me on it fully. I do apologize to the witnesses, especially the two here, but that is the reason why I'm not going to be here.

The CHAIRMAN. Thank you, Senator.

Senator Kennedy.

Senator KENNEDY. Thank you.

I want to join in welcoming our witness and our panel this morning. In just listening to the exchange and the presentation to date, I imagine that point you are making, and correct me if I'm wrong, that you believe that this kind of a right is as basic and as fundamental to the Constitution as other rights, which are regularly accepted: the free speech, separation of church and State, the ability to assemble, the basic guarantees of the 14th amendment in terms of the protections of minorities in our country.

As I understand you believe that those are basic and fundamental and the right that you speak of is as basic and fundamental as that.

Ms. MICHELMAN. Absolutely.

Senator KENNEDY. And that if we were at another period in our history we would not be being asked to confirm someone who did not accept those basic and fundamental rights?

Ms. MICHELMAN. That's right.

Senator KENNEDY. Am I correct in understanding your position?

Ms. MICHELMAN. Yes. In fact, it would be like asking African-American people in this country to if *Brown v. Board* were at issue, to consider that they might have to go back and win their rights State by State, legislature by legislature, year after year, they would have to go back and work through all of that to attain their right to equal education and equal protection. That's what we're talking about for women. That we're suggesting that women should go back and win their fundamental rights. Yes, this right should be considered like any other fundamental right.

Senator KENNEDY. And, I think all of us are familiar with what are considered to be special interests. As I understand this is not like whether you are for gun control or not gun control—

Ms. MICHELMAN. No, no.

Senator KENNEDY [continuing]. Single-issue kind of litmus test; it's really basically and fundamentally from your point of view, and I think from millions of Americans' point of view that this is so basic and fundamental as the other established rights?

Ms. WATTLETON. That's correct.

Senator KENNEDY. So, second, as I gather from your testimony, it would be really inconceivable I imagine that if we were here in the post-*Brown v. Board of Education* that we would be considering a nominee who might go back to the separate but equal doctrine?

And, as I understand you believe, just so I do understand, that the decisions that have been made with regards to the rights in the *Roe* are about as basic and fundamental as the decisions on the guarantees and the constitutional protections that were reached under *Brown*?

Ms. MICHELMAN. Absolutely.

Senator KENNEDY. And other, *Marbury v. Madison*, and other major constitutional decisions?

Ms. MICHELMAN. That is correct.

Senator KENNEDY. And as we, as a country, would not consider going back to a separate but equal, you are pressing us to apply a similar kind of a standard with regards to this particular issue, am I correct?

Ms. MICHELMAN. I think you have said our position very, very well.

Senator KENNEDY. I just have a final question. What was your reaction to the question about, to Judge Souter's comments about what the world would be like for women if *Roe* was overturned?

Ms. WATTLETON. I was truly stunned that the Judge immediately reduced it to a Federal/State question, and did not react either immediately or in process to the reality of what it would mean which is that women would suffer the consequences of illegal abortion.

Ms. MICHELMAN. What he did was he completely missed the human, the human element here, and moved right to very—

Senator KENNEDY [continuing]. What is the human element?

Ms. MICHELMAN [continuing]. Well, the fact is that a world without *Roe* would mean death, degradation, shame, injury to women. It would mean women would be robbed of the most vital, important right that they have that affects every aspect. You said it, Senator, it isn't a single issue. This is an issue that literally permeates the entire fabric of a woman and her family's and the community's

life. So it was interesting to me and I share Faye's response, that he immediately focused very technically on what it would mean rather than on the huge dimension of social and human problems that would result.

Ms. WATTLETON. And I think it reflected our worry about his general judicial temperament, if I may, with respect to seeing the impact of the law in people's lives, and seeing the law in a narrow intellectual context and not in a living context. If there is any inspiration that we can gain from constitutional protections it is that it has been enduring, and that in the context of contemporary life it has extended protections to greater numbers and segments of American society.

So to reduce those protections to the simple equation of whether there would be tension between Federal and State jurisdictions, or for that matter, whether illiterate voters would dilute literate voters as a mathematical problem was very distressing to us.

Senator KENNEDY. I have no further questions, Mr. Chairman.

Thank you, very much.

Ms. MICHELMAN. Thank you.

The CHAIRMAN. Thank you, very much, Senator.

Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

How do you do, ladies? Nice to see you today.

I want both of you to know and I think you are aware of my position on this terribly anguishing matter. I think you know that I am in favor of a woman's right to choose. I have held that view, formed within 2 years after *Roe v. Wade* through a legislative debate.

I am also very supportive of most of the objectives of Planned Parenthood. I have stated those things and have provided some of my own personal funds for dues over the years to some of those groups.

But I really believe you are making a big mistake on this one. That's too bad. You know, it's perfectly all right, but I think these things are going to come up again. There are going to be other Supreme Court choices when you are really going to need to be in the trenches. This is not one of those cases. This is my view.

I believe you are seriously in error in demanding that Judge Souter answer specific questions on this issue, because he is a sitting judge. And since we have heard a remarkable array of extremely technical discussions over the last few days, which are like going to law school again, let's not forget Canon 3(a)(6) of the ABA Code of Judicial Ethics. It prohibits a sitting judge, and that is Judge Souter, from comment on a "pending or impending matter" likely to come before the Court. He is prohibited from doing that, absolutely prohibited under the ethics of the ABA, who have given him a rating that is the highest they can give.

Nearly everyone has conceded that abortion will be before the Supreme Court again, and thus, that subject is covered by the ABA Code. You are really asking Judge Souter to violate the rule of judicial ethics in order that your organizations, both of them, can have advance knowledge of his position on the particular issue of abortion.