

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 a 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.