

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