

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

the point? You want to know particularly and clearly that the person believes in a woman's right to choice? Otherwise, in today's United States of America, that person does not belong on the Supreme Court?

Ms. WATTLETON. That is correct.

Ms. MICHELMAN. That is correct. It is whether he believes or acknowledges, recognizes that there is a fundamental right to choose and that that right is equal in its nature to other fundamental rights, such as freedom of speech, freedom of religion, other fundamental rights.

We don't think that you would confirm someone who might suggest there is not a fundamental right to free speech. This is that kind of right, Senator, and we think the area of law—*Roe v. Wade* is 18 years old now. We think it is as settled an area of law as *Brown v. Board of Education*. And I think Faye and I, last year when we sat here before you with Justice Souter's nomination, said that we believed very strongly that if you had any question that Justice Souter would have any difficulty with the *Brown v. Board of Education* ruling, you would be very concerned about confirming him. We believe that this right is as fundamental and as settled as that case was.

The risk to women's lives is so enormous. It is so enormous. If you take this right away, you take away the very foundation of women's lives and their families' lives. There is nothing left. Everything crumbles around it. It is so fundamental.

And, yes, we think it is absolutely appropriate and fair for him to be judged on this issue, and he has singled out—and Faye again said it very eloquently. He has singled out this one area of law to refuse to talk about. He has talked about other areas of law that are controversial, are before the Court. He has singled out this one. You have to ask why. Is it because if he did speak about it he would not be confirmed?

I mean, he can't—it is no longer acceptable. The Court has moved. The President has really made these nominations based on his commitment to overturn *Roe*, and the last four nominees have shown us that they, indeed, are voting with the others to take away this right.

We have no chance anymore. This may be the last opportunity we have to protect *Roe v. Wade*, that you have, the last opportunity you have in your co-equal role with the President in preserving fundamental rights.

Ms. WATTLETON. I guess I would ask the committee to consider what it would do if a candidate sitting before it held that almost every question that you put to him or her could be found to be constitutional or divisive or in other ways politically laden and decline to give you his or her views on those subjects across the board. It would make a mockery of the whole process of advice and consent. And that is why we do not find it as excusable that he chose this and this question alone, singularly, to decline to comment, but to extend it throughout the process and ask ourselves what would that make of the very process of governance that is set forth by the Framers with respect to the selection and the seeding of the other branch of government at the highest levels people who are selected for the rest of their lives.

Ms. KUNIN. Let me just add, Senator, it is not only the desire to know his views on this question, but the explicit effort he has made to not state his views, that leaves us with a real—we are the only—this is the only question on which you have to live on hope or that you have to have a “maybe yes, maybe no, but most likely no” answer. And I think the fact that this is acceptable or apparently acceptable thus far just seems unfair when, as the other panelists have so eloquently stated, this is as fundamental as other rights.

And it is so easy to take this issue and say, well, you are just interested in a single issue and we shouldn't base this confirmation process on a single issue. And I can understand that. But by calling it a single issue, it diminishes it, and it takes away from its true fundamental worth.

So that is an easy trap, I think, to fall into because we are talking about self-respect here. We are talking about equality under the law. We are really talking about very fundamental principles that are encapsulated in *Roe v. Wade*.

Ms. WEDDINGTON. Senator, just very briefly. I know what we would prefer is not what all the committee members would come out in the same place. But there is a sense in which I think your own constituents hold you accountable for what you know when you cast that vote.

On Souter, I think people could have said he had no record, I looked at the record, I voted based on that, it was a reasonable guess. On Thomas, I think if women—and I don't think it is a conservative or liberal issue. Former Senator Barry Goldwater has said the true conservative position is it is not the Government's business. And no one ever accused him of being liberal. There are certainly a lot of Republican Senators, Republican women, the Young Republicans nationally who have said, “We differ with our official party on that position.” It is not a liberal-conservative, it is not a Democratic-Republican issue. But I think it is an issue that strikes at the heart of who has the right to make certain decisions and that women who feel in jeopardy feel particularly strong about.

And so if they come to you and say you voted for this man and look what he did, what are you going to say back to them?

Ms. MICHELMAN. And his record is more than the Lehrman article that we have been focusing on here, Senator. I know you know that. There is much more to his record. As a public person—and I think Faye and Madeleine, the Governor, would agree—if I were to sign on to a report that I hadn't read, I am not sure how—I would have to be held accountable for that. I just wouldn't.

He has to be held accountable, and his testimony has not been credible in his answers in response to his extensive record. And I said earlier, I think before you came in, he has had many years to comment on many things. And every time he has commented on the right to privacy or the right to choose, it has been derogatory. It has been an assault on the right. It has been hostile to the right. He has never once said anything good.

He has come to the committee now, and he has tried to distance himself somewhat from his record. But I don't think he has done that credibly.

Senator KOHL. Do you want to say something else on this issue?

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