

NARAL Pro-Choice America. Prior to joining NARAL in 1985, she was Executive Director of Planned Parenthood in Harrisburg, Pennsylvania, where she expanded the range of reproductive health services available in the area. She also trained medical students and residents in child development as clinical assistant professor in the Department of Psychiatry at Pennsylvania State University School of Medicine. And it is worthy of brief comment that we two Pennsylvanians have had many discussions on this issue at the same health club. Remarkable what the health clubs will do.

Ms. MICHELMAN. We miss you.

Chairman SPECTER. What is that?

Ms. MICHELMAN. I said we miss you over there.

Chairman SPECTER. Well, they don't have a squash court.

[Laughter.]

Ms. MICHELMAN. I know that was a big mistake on their part.

Chairman SPECTER. I had to change health clubs except for the Senate gym, where I see Senator Kennedy.

[Laughter.]

Chairman SPECTER. What is your time—

Senator KENNEDY. Can we take you up on that?

Chairman SPECTER. We are going to put your time at 10 minutes, Ms. Michelman, and we look forward to your testimony.

**STATEMENT OF KATE MICHELMAN, FORMER PRESIDENT, NATIONAL ABORTION AND REPRODUCTIVE RIGHTS ACTION LEAGUE (NARAL) PRO-CHOICE AMERICA, WASHINGTON, D.C.**

Ms. MICHELMAN. Thank you, Senator. Mr. Chairman, Senator Leahy, who is not here, and members of the Committee, it is my pleasure to talk with you today, and I must say I am deeply honored to be sitting next to this great man, Mr. Gray.

Certainly for many days we have heard many legal experts and constitutional law theorists, but I think the voices of real people whose lives will be affected by the potential confirmation of Judge Alito have been absent from this discussion. And I am here as one woman among millions whose lives could be indelibly shaped by the confirmation of this judge.

In 1969, I was a young, stay-at-home mother of three little girls, a practicing Catholic who had accepted the church's teachings about birth control and abortion. The notion that abortion might be an issue I would face in my own life never, ever occurred to me until the day my husband suddenly abandoned me and our family. In time, with nothing to live on, we were forced onto welfare. Soon after he left, I discovered I was pregnant. After a very long period of soul searching, of balancing my moral and religious values about the newly developing life, with my responsibility to my three young daughters, I decided to have an abortion.

I might add, Mr. Chairman, that of the countless women I have encountered throughout my life, not one has made a decision about abortion without first contemplating the gravity of that choice. Not one needed the tutelage or supervision of the State to understand her own ethical values much less to be reminded to consult them. And every single one of them deserve the respect and protection afforded by *Roe v. Wade*.

Now, because all of this occurred prior to *Roe*, I was legally prevented from acting privately on my decision. I was compelled to submit to two interrogations before an all-male panel of doctors, who probed every aspect of my private life, from my sex life with my husband, to whether I was capable of dressing my children. Eventually they gave me their permission. I was awaiting the procedure when a nurse arrived to tell me that State law imposed yet another humiliating burden. The Government required me to obtain my husband's consent. I was forced to leave the hospital, find where he was living, and ask him to give me his permission.

Now, this was incredibly humiliating, and an experience that awakened me to a lifetime of activism. I tell you this story not to get your sympathy, I tell this story because this nomination poses a real threat that women will once again face the dreadful choice between the degradation of the Review Board and the danger of the back alley, and this is neither hyperbole nor hype. It is the simple demonstrable reality of the situation.

Predicting how any given judge will decide any given case is a Washington parlor game, in my view, that distracts from the central issue. That issue is whether we any longer will recognize limits on the Government's authority to reach into the most intimate areas of our private lives. There is nothing in Judge Alito's lengthy public record to suggest that he recognizes such limits for anyone, and even less so for women, and there is much in his record that indicates, I think, clearly and beyond the boundaries of reasonable dispute, that he rejects the idea of privacy, personal privacy, as a fundamental American ideal.

A woman's right to choose is a powerful manifestation of privacy, but it is one right among many, and all of them should concern us. There is no sense in Judge Alito's writings or rulings that privacy is a fundamental constitutional right. In his record, not only are individuals often powerless against the prerogatives of the State, individuals are more often than not simply absent all together. In many ways, what Judge Alito has written is less disturbing than what he omits, any sense of how his legal rulings bear on real people whose lives are shaped by his decisions.

When he ruled that a Pennsylvania law requiring women to notify their husbands before obtaining an abortion was not "an undue burden," there was no sense that a woman like me ever existed or even mattered. When he wrote that commonly used methods of birth control could be classified as methods of abortion, there was no indication he considered the women who would be forced into unwanted pregnancies. His writings contain ample veneration for the State, but I think place little value on the individuals whom Government exists to serve, protect and respect.

I have been involved in many Supreme Court nominations, but frankly, none more important than this one, nor as dangerous, for the contrast between Judge Alito and the Justice he would replace is quite stark. As the first woman to serve on the Court, Justice O'Connor brought a very unique perspective to the law that is evident in her opinions, upholding a woman's right to choice, protecting women from discrimination, and defending affirmative action. Quite often—you have talked about this a lot—she has been

the decisive vote in 5–4 cases, whose balance Judge Alito would now tip the other way.

Here, Mr. Chairman, it is important to note that Justice O'Connor is a judicial conservative, who has not always fully protected constitutional rights and liberties, but she crafted opinions that retained meaningful protections for rights that other Justices sought to deny completely.

But the most disturbing difference between these two jurists is not simply the conclusions they reach, but also how they reach them. Justice O'Connor considered each case with careful attention to what the law means and who it affects, for she knows that that is the essence of justice. In Judge Alito's approach to the law, there is neither justice, nor regard for women's human dignity.

Judge Alito has parried challenges to his record by promising an open mind and a respect for precedent. We must ask whether this assurance offered only now, can be allowed to outweigh the totality of this man's record. Millions of American women whose lives, privacy and dignity have a place in this debate would have to conclude no.

Thank you.

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

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

Our next witness is Professor Ronald Sullivan, Associate Clinical Professor of Law at Yale. He is a graduate of Morehouse College in 1989, and a law degree from Harvard in 1994. He served for 1 year in Nairobi, Kenya as a visiting attorney for the Law Society of Kenya, and in that capacity was on a committee charged with drafting a new constitution for Kenya.

We very much appreciate your coming in today, Professor Sullivan, and the floor is yours, and the clock will start at 10 minutes.

**STATEMENT OF RONALD S. SULLIVAN, JR., ASSOCIATE CLINICAL PROFESSOR OF LAW, AND SENIOR FELLOW, JAMESTOWN PROJECT, YALE LAW SCHOOL, NEW HAVEN, CONNECTICUT**

Mr. SULLIVAN. Thank you very much, Senator Specter, and Senator Leahy in his absence, members of the Committee. Thank you for inviting me to testify at this very important expression of our democracy.

I have been asked to comment on Judge Alito's Fourth Amendment jurisprudence. Two broad themes follow from his record. First, Judge Alito's Fourth Amendment opinions reveal a clear pattern of privileging Government power when it comes into conflict with individual liberty. Indeed, in the 17 opinions that the nominee has authored regarding the Fourth Amendment, in his more than 15 years on the bench, Judge Alito has ruled to suppress evidence only once.

The second broad theme is that Judge Alito is a skilled, legal writer with a sharp analytical mind. Almost none of his opinions appears to be a radical departure from accepted jurisprudential conventions. Rather, his constitutional criminal procedure decisions, read together, demonstrate a pattern that cannot be ignored. In over 50 constitutional criminal procedure cases that I have re-