

of that tree that Charles described, and the leaves, exactly what to do.

Chairman SPECTER. Thank you very much, Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Chairman SPECTER. We are going to adjourn for a—

Senator COBURN. Senator Specter, I will defer my questions so that we will not have to have the panel come back, if that would be OK, and I will submit some questions.

Chairman SPECTER. You are entitled to your round.

Senator COBURN. But I think in all courtesy to our distinguished panel, this would release them, and I will be happy to submit some questions for the record.

Chairman SPECTER. All right. We will proceed in that manner at your suggestion.

As I had said earlier, New York Times reporter, David Rosenbaum, a memorial service is being held for him. He was brutally murdered on the streets of Washington very recently. We will recess for just a few moments. I would like the next panel to be ready and the Senators to be ready.

[Recess at 10:05 a.m. to 10:40 a.m.]

Chairman SPECTER. The hearing will resume.

The first witness on our next panel, Panel 5, is Mr. Fred Gray, senior partner at Gray, Langford, Sapp, McGowan, Gray & Nathanson, a veteran civil rights attorney with an extraordinary record of representation. At the age of 24, he represented Ms. Rosa Parks, whose involvement in the historic refusal to give up her seat on the bus to a white man is so well known. That action initiated the Montgomery bus boycott. He was Dr. Martin Luther King, Jr.'s first civil rights lawyer. In 2004, Mr. Gray received the ABA Thurgood Marshall Award for his contributions to civil rights. A graduate of National Christian Institute, Alabama State University, and Case Western Reserve. Thank you for joining us, Mr. Gray.

I haven't had an indication from Senator Leahy about whom they would like to give extra time to, but my sense is that you would be on the list, so we are going to set the clock at 10 minutes for you. You may proceed.

STATEMENT OF FRED D. GRAY, SENIOR PARTNER, GRAY, LANGFORD, SAPP, MCGOWAN, GRAY & NATHANSON, TUSKEGEE, ALABAMA

Mr. GRAY. Thank you very much, Mr. Chairman.

Chairman SPECTER. By way of explanation, the judges talked longer yesterday, and I thought it appropriate not to interrupt them, and I want to give the extra time to this panel. If Senator Leahy comes in and cuts you off, Mr. Gray, just remember I gave you 10 minutes.

[Laughter.]

Mr. GRAY. Thank you very much, Mr. Chairman. And to my Senator, Senator Sessions, who represents us well in the Senate, to the other members of the Committee, of course, I am Fred Gray. I live in Tuskegee, Alabama, with offices there and in Montgomery. I appreciate this Committee inviting me to appear. I consider it an honor.

For over 50 years, I have filed almost every imaginable type civil rights case in Alabama. Many of those cases have resulted in Supreme Court rulings and many of them precedent-setting cases in which the Court declared unconstitutional certain State and city ordinances, including in the field of registration and reapportionment.

As one who has been in the trenches and still is in the trenches, I appear today to attest to the tremendous importance of the reapportionment cases, those cases decided by the Warren Court, one of which I actually litigated and was my brainchild, the case of *Gomillion v. Lightfoot*.

I am still troubled, extremely troubled by Judge Alito's comments made in his application, notwithstanding the testimony before this Committee. The reapportionment cases decided by the Warren Court made certain that the Federal courts had the power to ensure that voting rights were meaningfully protected. These rights had been violated by many of our States since Reconstruction. The cases illuminate the inequities of malapportionment which deprived African-Americans of voting strength across the Nation. In my view, there is no more important body of law than that generated in the field of voter registration and in civil and human rights.

African-Americans in Alabama and other Southern States for years, even before *Browder v. Gayle*, which is the case that integrated the buses and which was a unanimous case of the Warren Court, were actively working toward obtaining the right to vote. For example, in my hometown now, Tuskegee, Alabama, the home of Tuskegee University where Booker T. Washington was its first president, where George Washington Carver made many of his scientific discoveries, and the home of the Tuskegee Airmen, African-Americans in that county filed lawsuits as far back as 1945 in order to obtain the right to vote.

After years of litigation, when we were finally able to get approximately 400 African-Americans registered for an upcoming municipal election, in 1957 the Alabama Legislature passed a law which changed the city limits of the city of Tuskegee from a square to a 26-side figure, excluding all but three or four African-Americans and leaving all the whites in the city. And then the State said, "We are not denying you the right to vote. We are simply changing the political boundaries of the city of Tuskegee, and you cannot vote now in the city elections because you are no longer there." I thought that was wrong, and so did the Supreme Court. We filed the case of *Gomillion v. Lightfoot*. That case substantially strengthened the law in securing the right to vote for African-Americans.

The *Gomillion* case was the first significant reapportionment case decided by the Warren Court. In a unanimous decision, the Court held that the boundary change violated the 15th Amendment. Just as importantly, the Court rejected the argument that impairment of voting rights could not be challenged in the face of a State's unrestricted power to realign its political subdivisions. The Court stated: "When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the 15th Amendment....Apart from all else, these considerations lift this controversy out of the so-called 'polit-

ical arena' and into the conventional sphere of constitutional litigation."

There is no question in my mind that it gave rise—*Gomillion v. Lightfoot* did—to the other subsequent cases you have heard about, great reapportionment cases, *Baker v. Carr*, *Gray v. Sanders*, *Reynolds v. Sims*.

I cannot overstate to this Committee the importance of these cases, for they laid the foundation for our democracy. The reapportionment cases enshrining the principle that every citizen has a right to an equally effective vote, rather than the right to simply cast a ballot. State legislatures could not dilute the votes of racial minorities by perpetuating unequal voting districts. And, most importantly, the reapportionment cases also established principles for challenges "at-large" and "multi-member" electoral systems enacted by many of the Southern States after the passage of the Voting Rights Act.

When I filed the *Gomillion* case, we had very few African-Americans registered to vote and had no legislators. I was one of the first two in 1970. Now Alabama has—and across the Nation there are over 9,000 registered—9,800 appointed and elected officials, and they are there because of the result of the Warren Court's decisions in *Gomillion*, *Baker*, *Gray*, *Reynolds*, and these other cases enacted by legislation since that time. So we have these persons serving with honor and distinction, from city council to the Congress.

However, we still need a strong Supreme Court to continue to enforce these laws. I have seen in my home State, as fast as we get one law stricken, they will enact another. Now that we have a proportionate number of African-Americans in the legislature, we want to be sure that we have a strong Supreme Court that will not permit that to be changed.

I respectfully submit and suggest that this Committee carefully scrutinize Judge Alito's disagreement with these cases. A nominee to the Supreme Court who has a judicial philosophy that is set against the Warren Court and against the reapportionment cases is, in effect, saying that he would turn the clock back. If this occurred, not only would African-Americans lose, the entire Nation would lose the great richness of their contributions as we are currently enjoying. In my opinion, a Supreme Court Justice with these views would impede instead of protecting the right to vote.

In conclusion, I submit that the next appointee to the Supreme Court should favor the protection of voting rights and should strengthen, and not weaken, the voting rights case law as developed by the Warren Court.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Gray appears as a submission for the record.]

Chairman SPECTER. Thank you, Mr. Gray, and thank you for your remarkable service on civil rights and voting rights. Your listing of cases and listing of clients is enormously impressive, and it has been a great contribution to America.

Mr. GRAY. Thank you very much, Mr. Chairman.

Chairman SPECTER. We turn now to Ms. Kate Michelman, who for 18 years, up until 2004, was president of the National Abortion and Reproductive Rights Action League, more properly known as

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*.