

August 10, 2005

The Honorable Arlen Specter
The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Specter and Senator Leahy:

I am writing to express to you my concern about suggestions that one of John Roberts' Supreme Court arguments reflects an ideology that leads him "to excuse violence against other Americans." This assertion is based upon the role that Roberts played as Deputy Solicitor General in 1991 and 1992 in briefing and arguing on behalf of the United States in *Bray v. Alexandria Clinic*. Such a suggestion is unfair and unwarranted.

The question in *Bray* was whether protests which blocked access to reproductive health clinics and which all agreed violated state civil and criminal trespass laws also violated a provision of the federal Ku Klux Klan Act of 1871. In his briefing and argument before the Supreme Court on behalf of the United States, Roberts argued that a particular provision of the 1871 Act in question only provided remedies against acts directed at a class of people defined by a class characteristic and that did not apply to those motivated by opposition to abortion. I disagreed with the position Roberts argued. But the question was a complex one, prior Supreme Court precedents had taken a narrow view of the provision, and in the end six Justices agreed with Roberts' basic argument. (In response to *Bray*, Congress adopted new legislation – the Freedom of Access to Clinics Act – which, unlike the 1871 law, directly addressed the problem of clinic access and provided a more effective cause of action than would have been possible under the 19th Century law interpreted in *Bray*.)

I also fear that some people will be left with the impression that Roberts is somehow associated with clinic bombers. It is unfair to suggest that John Roberts, in advancing a somewhat narrow interpretation of the 1871 statute, was supporting "violent fringe groups and a convicted clinic bomber" -- as unfair as it would be to suggest that the six Justices who were part of the majority in *Bray* joined a decision supporting violent fringe groups.

As someone who has very strongly and for a very long time joined with both of you in supporting reproductive rights, it is very painful for me to be critical of any organization or group which has done and continues to do so much for this important cause. I believe this to be an isolated mistake. But I also believe that it would be regrettable if the only refutation of these assertions about Roberts came from groups opposed to abortion rights. In order to prevent a downward spiral of our politics, it is incumbent upon those who share a position to object when unfair statements are made to advance that cause.

By its nature the confirmation process is a difficult one for those whose names are submitted to the Senate. We all need to ensure that it is as fair as it can be. It has long been my belief that the Senate has an important and independent role to play in the confirming of judges. Statements that are unfair to a nominee threaten to produce public aversion to the confirmation process and ultimately to undercut the effectiveness of the Senate in carrying out this important responsibility. I am sure you will continue to make sure that any evaluation of a nominee is based on a full – and fair – assessment of his or her record.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter", with a long horizontal stroke extending from the end of the word.

Walter Dellinger