Judge BREYER. Yes, it was a bit gimmicky, that what you do is it would take effect only if you passed a law confirming it, but you would have a rule that it went right on a fast track, not debatable, and if one House——

Senator GRASSLEY. You wrote about that 11 years ago. Do you think you would still feel the same way today in that Georgetown Law Review article?

Judge BREYER. It is a suggestion and it would be a suggestion that I felt was a little gimmicky, and if people in Congress wanted to do it, it was explained and then it would be entirely be up to you.

Senator GRASSLEY. Well, if Congress could use a provision like that, it seems to me like it would effectively give Congress some control over the regulations of an agency like the EEOC. If you still feel the same way about that now as you did 10 years ago, that helps me to understand where you are coming from. Do you feel like you did?

Judge BREYER. I think it is a possibility.

Senator GRASSLEY. I assume, though, when you say it is a possibility, that if you wrote in the Georgetown Law Review about a possible process of what you call confirmatory law, you had given considerable thought that it was possibly as an appropriate constitutional congressional response to *Chadha*?

Judge BREYER. I would stick by what I said.

Senator GRASSLEY. Thank you, Mr. Chairman.

The CHAIRMAN. I would like to point out for the record, Judge, that Senator Grassley, with each successive hearing, is losing his credibility in the following sense: He always makes the case that he is a nonlawyer. He brags about that at home. He knows a heck of a lot of law, for a nonlawyer, pretty impressive. Soon, no longer are you going to be able to make the claim, Senator, that you are a nonlawyer. You are beginning to sound like a lawyer.

I would also note, before I yield to Senator DeConcini, that I find it somewhat fascinating—and I would like you to keep this in mind for tomorrow—that the very Justices that have been before this committee and are now on the Court who have argued the doctrine of original intent when interpreting the Constitution are the very Justices who are the new textualists who argue, when it comes to a statute, that they do not have to go beyond the words of the statute to seek intent.

I have always found that fascinating, how, when looking at the Constitution, they have concluded that we must go look at the original intent of the drafters and stick to that, but when looking at the statute, they look only at the text of the statute and not the legislative history, which they pore through in order to find constitutional rights, whether they exist or not, but do not pore through when it comes to looking at the text, which leads me to the conclusion that all Justices, liberal and conservative, are result-oriented, whether they know it or not. But that is my prejudice.

I will yield to Senator DeConcini.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, thank you.

Judge thank you for your understanding this process so well. If you want to take a break, I am more than happy to wait around, if necessary. I welcome you here, Judge Breyer, as so many of us do, because we know you well.

I believe your experience crosses so many different areas of government, that it is particularly encouraging to see you nominated by President Clinton for Associate Justice. You have had experience here, you have had experience in the private sector, you have had experience in academia. You have been with the executive branch, you understand accommodation and compromise. You understand the legislative history, because you wrote much of it when you were here. You have been in a policy-making role in the executive branch, which is encouraging, I think.

You served on the court, and you have had an opportunity to develop a philosophy that I think demonstrates judicial restraint during your time on the bench, which I think is very important to this Senator and many others, as you know. You have a well-rounded background, and I think that is probably why the President chose you, as well as being so handsome and articulate and intellectual, et cetera.

I am pleased to have chaired the hearings in 1980 when you were up for confirmation to the first circuit, and you did very well at that time. Judge Breyer, since I have been on this committee, this is the eighth Supreme Court Justice that I will have had an opportunity to have voted on. You will be the eighth one, the first one being the nomination of Sandra O'Connor of Arizona, the first woman to serve on the Supreme Court, as you well know. I believe that nominee was unparalleled in ability and dedication to the Constitution and real understanding, she also was a judge. This will be my last nomination. I am sorry I did not get a full house, I did not get all nine vacancies to vote on, but I am pleased that I am going to be able to support you.

Having said that, there are some questions that I would like to ask primarily for the record, Judge. First of all, I want to turn to the question of the Boston Courthouse. I do not think we can ignore that beautiful edifice, and indeed it is beautiful. For the record, all I want is confirmation, if you remember these facts, Judge.

The total funding for that building is approximately $220 million, and that was appropriated over a 3-year period, $184 million in 1991, $23 million in 1993, and another $18.6 million in 1994. Is that your recollection?

Judge BREYER. Yes, Senator.

Senator DECONCINI. Just for the record, Mr. Chairman, the vote in 1991 was 93 to 6 on the floor of the Senate appropriating, with all but six members, including both Senators from Arizona, casting votes in favor of that appropriation.

Some may wonder why that was raised. Well, it passed by such a unanimous vote or nearly unanimous vote, and this action was taken based on a report of a building project survey prepared by the General Services Administration, during President Bush's term, which was submitted to the Congress on January 22, 1990. If you do not remember that date, I am sure this refreshes your memory, Judge.

There was some discussion at that time of approximately 400,000 occupiable square feet of a building at a cost of $163 million. That was signed off by then Acting Administrator, Mr. Austin, who was later confirmed as the Bush appointee. Subsequently, there were additional designs to add 100,000 square feet, and I think you had something to do with that. That 100,000 square feet, was it not primarily to accommodate the U.S. Attorney, and not for additional court rooms or facilities for the judiciary?

Judge BREYER. That is correct.

Senator DECONCINI. It was for the executive branch, in essence. Research shows us that the Senate Environment and Public Works Committee did authorize the site and design for the project of $51 million in 1990. In fact, Senator Burdick, then chairman of that committee, gave me approval to proceed without full authorization on this courthouse. He was the chairman of the committee, and said that we could proceed, which we did. Of course, there was also a vote on that as well.

The fiscal year 1994 budget prepared by the Bush administration requested an additional $19 million, and that was appropriated at $18.6 million. Do you recall that, Judge Breyer?

Judge BREYER. Yes, sir.

Senator DECONCINI. And what is that status of that courthouse now?

Judge BREYER. I think, Senator, it is just going out for bid. I think it is just going out for bid now.

Senator DECONCINI. And are you aware that it averages approximately $5 less than the average courthouse for construction purposes?

Judge BREYER. I think that is right, Senator.

Senator DECONCINI. Thank you. I think for the record it is important, Judge Breyer, that we understand what these buildings are. Courthouses are built for long duration, not for the normal life of a commercial building, is that not correct?

Judge BREYER. Yes, Senator.

Senator DECONCINI. This building would have a lifetime of well over 50 years or perhaps 100 years.

Judge BREYER. I hope a lot longer.

Senator DECONCINI. And it can accommodate substantial growth, within your judgment of that court.

Judge BREYER. Yes, Senator.

Senator DECONCINI. Judge Breyer, turning to the equal protection clause, I have always had great interest in this subject matter and have had an opportunity to question a number of nominees. The equal protection clause and the related cases have played an integral role in the development of the advancement of women's equality. I have repeatedly asked nominees about their views on gender discrimination under this amendment, and I believe that a nominee must be committed to the principle of gender equality.

I think I know the answer, but I am going to ask you anyway, Judge. Although the 14th amendment states that no State shall "deny to any person within its jurisdiction the equal protection of the laws," it is generally believed that the authors of the 14th amendment were concerned with racial discrimination and did not specifically have women or gender discrimination in mind.

In regard to cases based upon gender, the standard of review is one of intermediate or heightened scrutiny. Under this standard, a classification must serve an important governmental objective and be substantially related to that objective. This standard was developed over time and has been effective in protecting against gender discrimination.

Judge, do you believe that this standard is the proper one for reviewing gender related cases, or do you believe any expansion is necessary at this time?

Judge BREYER. I am hesitating because of the fact that this is likely to be before the Court. But I would like to say something, which is this: It seems to me that it is absolutely established that gender discrimination falls within the scope of the 14th amendment. That is clearly and totally accepted, I think, across the spectrum.

As I think of the 14th amendment, to speak generally, the 14th amendment perfected a Constitution that before it lacked something very important, and that something was a promise of basic fairness. That promise of basic fairness was not carried out, even though it was in the Constitution, for many, many years. And ever since *Brown,* the country in all of its branches of government has been trying to make real that promise of fairness.

It applies to women, too, and to many others. The test that you are talking about, having a sense of substantive part, and they have a communications part. The substantive part I might describe as this: Imagine saying to a minority person there is a rule of law here that harms you through a discrimination. Wouldn't you, as soon as you say that, think but what possible justification could there be? And that I think is what the substance is, when the Supreme Court makes its tough test.

Now think of Chloe or Nell or their equivalents all over the country going into the workplace, and think of some kind of rule that makes their life worse because they are women. Wouldn't you say but what kind of justification for that could there be?

Now, that it seems to me to be the kind of substance that is pretty widely accepted and going on. Now, the exact way in which that is communicated through the vast administrative network which is called the court system through judges to lawyers, to employers, to others, that I think is a matter of words and those words may be the subject of litigation. So it seems to me I have to stop with the statement of general principle.

Senator DECONCINI. Let me ask you this: In the recent case of *J.E.B.* v. *Alabama,* the Supreme Court used the equal protection clause to find that gender-based preemptory challenges were unconstitutional. I realize that you cannot comment on that case, and I am not suggesting that you should.

But it appears very clear to me that the Court seems to be moving closer to applying a strict scrutiny standard in cases of gender discrimination. Do not worry, I am not going to ask you how you would rule on that case or any pending cases. But do you believe in the general sense that the intermediate scrutiny for gender discrimination, do you believe it will always be sufficient to meet potentially hypothetical cases regarding gender discrimination?

Judge BREYER. It may not be, and that will be up for litigation, and I will read the briefs with care and I will listen to the arguments——

Senator DECONCINI. You are not stuck in the intermediate by any means.

Judge BREYER. Certainly not. I think those will be argued.

Senator DECONCINI. You will approach it from each case.

Judge BREYER. Those matters will be argued. They do not seem to me, as I read the cases, to be closed, and there is a communications problem and there is the substantive problem, and I think of Chloe and I think of Nell, and that is more or less the——

Senator DECONCINI. Thank you, Judge Breyer.

Let me turn to another subject. In a recent Supreme Court case, *Liteky* v. *United States,* the Supreme Court held that if the source of a prejudicial remark is a judicial proceeding or ruling, then disqualification is only necessary if the judge displays a deep-seated favoritism or antagonism that would make fair judgment impossible. I was very disturbed by that ruling, just parenthetically.

As you know, current law provides that a judge shall disqualify himself or herself in any proceedings in which his or her impartiality might reasonably be questioned. In *Liteky,* the Court seems to throw out the plain meaning of the statute and creates a very high standard for litigants to meet, if they want to raise concerns about a sitting judge.

This concerns me, Judge Breyer, because the integrity of our entire judicial system rests on the impartiality of our judges, and I believe that judges must do all they can to win the confidence of the American people that our system of justice created and protected by the Constitution is being fairly and objectively administered.

In the *United States* v. *Quesada-Bonilla,* you did not believe that the judge's prejudicial remarks constituted reversible error. What do you believe is the appropriate standard in reviewing potential prejudicial comments from the bench? Did you have a standard in mind, when you made that decision? How did you approach that, without prejudicing any case that you may have to do? I am interested in knowing, quite frankly, what a judge thinks. And I have asked some other judges that same question. They were not under oath and before this committee, obviously.

Judge BREYER. In abstract, you think you do not——

Senator DECONCINI. I will accept it as that.

Judge BREYER. Abstractly, you do not want something that looks to the public as if it is prejudiced. That is very important. That is on the one side of it. Now, in actually carrying out the case, think of the trial judge. The trial judge may have a preliminary proceeding. He may, for example, have to decide probable cause. Well, he will learn something about the case, and he might make some statement in respect to, well, there is a lot of cause here, or whatever.

Now, to administer the system, that same person has to be expected maybe to preside over the trial. Once again, that person learns a lot about it, and he may make various remarks. Then there might be a retrial or a sentence, and he will be there again. So what you are thinking of in trying to decide that case—that is

why I find it hard to find a general principle. It awfully much grows out of the situation. You have to understand the practicalities of administering a judicial system, what is it really like to be a trial judge and a lawyer in that, and then you have to see.

Senator DECONCINI. Let me give you a hypothetical. What if a judge clearly, undisputably makes an arguable prejudicial statement during the course of a trial?

Is it sufficient, in your mind, to instruct the jury to disregard that statement and still sit for the case?

Judge BREYER. The truthful answer is it depends on the statement and it depends on the trial.

Senator DECONCINI. Well, given the fact that there is just no question that this was a——

Judge BREYER. If it really prejudiced the trial, out. That is the end; new trial. If it prejudiced the trial and it is an improper statement——

Senator DECONCINI. So an instruction would not suffice, in your judgment, in such a hypothetical?

Judge BREYER. The reason I am being hesitant is that I think these things are very fact-specific, and sometimes an instruction will cure it and sometimes it won't, and so what you do so often on appeal is you look at that case and you look and see—this is where the judgment comes in and it is tough, often, but you look and see, okay, what was the remark; what was the context; to what extent could it be cured; to what extent, in fact, is a curative instruction impossible.

I have seen cases where it could be cured, I have seen cases where it couldn't be cured. I have seen cases, I think, in the middle where I really find it awfully tough. They come in many shapes and sizes.

Senator DECONCINI. The problem I have with the *Liteky* case is that it appears that the Court says, unless there is a deep-seated favoritism or antagonism that makes a fair judgment impossible, you can't disqualify the judge. So, given my hypothetical, just an arguably prejudicial statement, clearly, without any dispute that it was that—unless it became a deep-seated favoritism or antagonism—an instruction would suffice to the jury and would not be grounds for disqualifying the judge.

I don't expect an answer, but that decision, I think, greatly undermines if, in fact, it is strictly enforced, and is, no question about it, an intimidating factor on members of the bar to raise concerns over a judge's statements during a trial that might be extremely prejudicial, but fail to demonstrate a deep-seated favoritism or antagonism.

Judge, turning to judicial temperament, how do you, with all the experience you have, manage to keep an even keel after you are on the Court, given the successes you have had, the fact that everyone calls you Your Honor and will do just about anything you ask them to do within the confines of your office? What do you do to attempt to keep a balance as an individual so you don't feel that you are somebody other than Steve Breyer, who worked hard and earned his way to the career he has had? Do you ever think about that?

Judge BREYER. Yes, I do. I do think about it.

Senator DECONCINI. What do you do?

Judge BREYER. I find help, of course, from my family in that respect because I wouldn't dare think anything, that I was somehow preferable with this particular family, and they are helpful.

But the other thing, and Joanna actually tells me this sometimes, is remember you are sitting there and people up in front of you are arguing; think of the advantage that you have over them, be careful. When they make an argument—a person makes an argument you don't think is too sound, so what? He is being—he is helping a litigant, he is helping a litigant. That is his job; listen.

And if people are being flattering or whatever, beware, beware, and that is where the robe helps because every time—if somebody is being flattering, you can think to yourself, they are not flattering me, they don't care what I think. It is this robe, it is this robe, and you try pretty hard to keep your own personality out of things and you just do your best to remain connected with the world, to understand that there are men and women and children whom your decisions will affect, to remember who those people are. You think about it. You try to get out of your office, you try to find other contexts. You have your family; you do your best. But I couldn't agree with you more that it is an incredibly important thing to remember.

Senator DECONCINI. Judge, if you don't want to answer this, it is OK. It is not that important, but have you ever just taken a phone call from a citizen since you have been on the bench? Somebody just calls in that is not related to a case and says, I just want to talk to the presiding judge.

Judge BREYER. Yes.

Senator DECONCINI. Have you?

Judge BREYER. Well, of course, because—I mean, you started with the courthouse. I would guess in respect to that courthouse that somewhere between 50 and 100 meetings of the sort that you are so familiar with—you go to a citizen's group, you listen.

Senator DECONCINI. You went yourself?

Judge BREYER. Absolutely, and it was so wonderful for me.

Senator DECONCINI. And you took the criticism that I am sure there was as with any public building?

Judge BREYER. Yes; I mean, you worry about——

Senator DECONCINI. You didn't wear your robe?

Judge BREYER. I don't think it would have made a difference to anyone in any of those groups if I had worn five robes.

Senator DECONCINI. I am sure that is true.

Judge BREYER. And that is a good thing. I will tell you day and night it is a very, very good thing.

Senator DECONCINI. Thank you, Judge. Judge, let me turn to the Sentencing Commission. You are indeed an expert. You have been a very influential voice in the area of criminal law through your service on the U.S. Sentencing Commission which developed the Federal sentencing guidelines. These guidelines have been the subject of some criticism, however. They also have their proponents, you being one of them.

In 1989, you wrote in the American Criminal Law Review that it was too soon after the implementation of the guidelines to evaluate them and determine if they had achieved their goal. You have repeatedly stated that the goals behind these guidelines were to

perpetuate honesty in sentencing and to reduce the unjustifiably wide disparity in sentencing.

Now, 5 years have passed since the 1989 article and you can evaluate the guidelines, I think, far more effectively. In your judgment, have they achieved the two stated goals?

Judge BREYER. The first, yes; honesty in sentencing is there.

Senator DECONCINI. You think it is there?

Judge BREYER. It is there; that is, the sentence given is the sentence served, and I think that that has helped in the Federal system; that is, I think people who understand the differences between the Federal and the State systems have begun to understand that the sentence that is given is the sentence that will be served, with very few—15-percent leeway. That has helped.

The second has also moved in the right direction, but there are many, many rocks on that road. It is bumpy, and I think that it was a very great experiment that the Congress asked to have created. I think there is no one who will say it is perfect. There is no one who will say it has been 100 percent achieved. There is no one in this whole area of criminal sentencing or the criminal law that agrees about everything. I mean, there is lots of disagreement, but I think, in general, if I think about it, it is an experiment that is still worth running.

Senator DECONCINI. Do you think it has been more positive than negative?

Judge BREYER. Of course, I was part of it.

Senator DECONCINI. I understand.

Judge BREYER. But I do think that, still; I do think that, on balance, yes.

Senator DECONCINI. It has improved the system?

Judge BREYER. On balance, yes, and more to come, more to come.

Senator DECONCINI. One of the criticisms of the guidelines, as you know, is that they remove flexibility and require the court to follow a rigid formula in determining sentencing. I know that you disagree with this argument and, in fact, I found your holding in *U.S.* v. *Rivera* to be particularly illustrative of the court's ability to depart from the guidelines when justifiable.

I assume that *Rivera* supports the assumption that you believe that flexibility must be maintained in regard to any sentencing formula or guidelines that are implemented. Is that correct? Is that what that is all about?

Judge BREYER. Yes.

Senator DECONCINI. Well, I am a firm believer that the courts should be vested with a certain amount of discretion, particularly in regard to sentencing. Despite your holding in *Rivera,* one of the criticisms of the sentencing guidelines is that they give too much authority to the prosecutor. When you were on that Sentencing Commission, how did you wrestle with how much authority to give the prosecutor, and, in your opinion, does the prosecutor have too much authority under these sentencing guidelines that are in place today?

Judge BREYER. This has been an awfully big argument. In my own personal opinion, the increased authority of the prosecutor has come primarily because of the existence not of the guidelines, but of mandatory minimum sentences in statutes because that gives

the prosecutor weapons that the prosecutors did not have before. I think that that is the primary source of the contention. I am not positive about that because there are people who disagree with that, but in my personal opinion, that is what it primary is.

Senator DECONCINI. Is that good for the system, or do you think that should be continually reviewed?

Judge BREYER. Well, what I have written on this—and, remember, you are dealing with a person who spent a lot of times on the guidelines, and Judge Wilkins, who was the chairman of the Sentencing Commission, and I and most of the other Commissioners would like to see Congress delegate the authority on sentencing to the Commission so that the Commission can create guidelines which judges can depart from in unusual circumstances.

So it isn't surprising that the Commissioners tend to believe that they would prefer not to have that rigid, absolute mandatory in the statute, but that Congress would say to the Commission, please, we gave you this authority, now carry it out, and we will give you the flexibility necessary to do it; you have tough sentences, your sentences are usually followed; there is a little bit of flexibility in the joints through the power to depart and that is the way we would like you to go. Now, as a former Commissioner, I guess that is the view I have.

Senator DECONCINI. Well, knowing your criticism of mandatory minimums, would it be softened at all by inclusion of a so-called safety valve which would allow a judge to prevent nonviolent first offenders from serving the full sentence?

Judge BREYER. Yes.

Senator DECONCINI. Do you think it should be expanded to anything further than nonviolent first offenders from your standpoint?

Judge BREYER. These are basically decisions for Congress, and you are taking me out of my role as a judge and you would have to understand that in anything I do as a judge I follow, and would follow and intend to follow and have followed the decisions that are made by Congress in these areas which are embodied in statutes.

But putting me back in my role as a former Sentencing Commissioner—and what I have written on this is that the sentencing guidelines are pretty tough, fairly—you know, they are significant sentences. No one has criticized them for being too lenient.

Senator DECONCINI. That is correct.

Judge BREYER. Yet, they do have a bit of flexibility in the joints, and if you look at that flexibility and you say how often is it used, it isn't used that often; it is used sometimes. The Sentencing Commission did a study of mandatory minimums and found there was really more departure, more, whether there should have been or not, and so all those arguments—the Sentencing Commission has written it a lot better than I have, so I would say they have reports on this and I would probably sign on to those reports.

Senator DECONCINI. A safety valve would be beneficial, in your judgment, for nonviolent offenders?

Judge BREYER. Yes.

Senator DECONCINI. Thank you, Mr. Chairman. Thank you, Judge Breyer.

Senator LEAHY. Mr. Chairman, I couldn't help but think, listening to Senator DeConcini's first area of questions on prejudicial

statements, I had for years back when I was practicing law a wonderful New Yorker cartoon which you probably have all seen at one time or another. Twelve members of the jury are sitting there, their hair standing straight on end, the judge blithely saying, the jury will disregard that last remark.

Senator DECONCINI. Mr. Chairman, I would like my full opening statement regarding the Judge put in the record.

The CHAIRMAN. Without objection, it will be done.

[The prepared statement of Senator DeConcini follows:]

PREPARED STATEMENT OF SENATOR DECONCINI

Judge Breyer, I would like to join my colleagues in welcoming you before the Senate Judiciary Committee. While throughout my Senate career I have always afforded great deference to each President's judicial nominations. I was elated when President Clinton chose to nominate you with your keen intellect and vast experience with the law.

I believe that your experience in all three branches of Government provides you with a unique insight into the respective roles of the administration, Congress and the judiciary. Your understanding of these separate and distinct functions of our government—that often overlap and occasionally conflict—provide you with a valuable perspective on the separation of powers that are so essential to our system of democratic government.

Hopefully, your firsthand knowledge of the workings of Congress, particularly this committee, has given you an appreciation for the complexities of the legislative process. As you know, legislation cannot always be drafted to accommodate every potential fact pattern or every possible ambiguity. Therefore, the legislative history of a provision cannot be overlooked. It must be explored to give additional clarity to the drafters' intent.

Your Justice Department experience has given you insight into the policy making role of the executive branch of Government which has hopefully enhanced your understanding of when deference to an agency decision is deserved and when it is not.

Your considerable experience as a judge on the Court of Appeals for the First Circuit has provided you with the opportunity to develop a judicial philosophy that has served you well in your decisions. You have demonstrated judicial restraint during your time on the bench that assures this Senator that you are not coming before us today with a hidden agenda that you intend to bring to the Supreme Court.

As a result of your well-rounded judicial background and your numerous professional accomplishments, you come before us today to be confirmed to the highest court in this Nation. Throughout your life you have repeatedly exhibited the intellect, desire and commitment to excel in each and every endeavor you have undertaken. It is these characteristics which have brought you here today, and it is these characteristics which will enhance your role as Associate Justice of the Supreme Court of the United States—a role that will require you to make difficult decisions that will affect not only the way the Government operates, but more importantly, will profoundly affect the fundamental rights and liberties of individuals.

I have followed your career closely over the years. In fact, I had the opportunity to chair your confirmation hearing before this committee when President Carter appointed you to the First Circuit Court of Appeals. Just as in 1980, these hearings will explore your judicial philosophy, and as required by the advice and consent clause of the Constitution, the Senate will determine whether or not you should be entrusted with this considerable honor and daunting responsibility.

Judge Breyer, at the end of this Congress I will have had the opportunity to participate in the confirmation of eight Supreme Court Justices beginning with the nomination of Sandra Day O'Connor, an Arizonan and the first woman on the Supreme Court. Just as I was honored to participate in the O'Connor hearing because of the nominee's unparalleled abilities and dedication to the Constitution, I take great satisfaction in knowing that your nomination, which may be the last Supreme Court nomination of my Senate career, also exemplifies exceptional legal scholarship. I believe you will be an outstanding addition to the Supreme Court. I look forward to your views on a wide range of topics, and just as in 1980, I know your responses will be thoughtful and informative.

The CHAIRMAN. Judge, before we let you go, let me ask you, is there a correlation between delegating to the Commission and the need to have nonjudges on the Commission?