

TESTIMONY OF HON. STEPHEN G. BREYER, OF MASSACHUSETTS, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The CHAIRMAN. With that, I would like to invite my colleagues who are members of the committee to come and take their seats, and I thank our colleagues from Massachusetts and California who are not members of the committee.

Judge while our colleagues are assuming their seats, would you be kind enough to introduce your remarkable family, and they are remarkable, to us and to the Nation.

Judge BREYER. I would like to introduce, Senator, my wife Joanna, who, as Senator Kennedy said, worked at the Dana Farmer Cancer Institute in Cambridge City Hospital.

The CHAIRMAN. Joanna, welcome.

Judge BREYER. Now, Michael, next to her, is a first-year student at Stanford, and he is going to lead a trek into the mountains of Wyoming this summer.

The CHAIRMAN. Well, he needs Simpson with him, then, and we can work something out. You do not want to wander into Wyoming without Simpson's permission, I just want you to know that.

Senator HATCH. I am not sure you want to wander in with Simpson. [Laughter.]

Judge BREYER. Nell is a recent graduate of Yale, and she is going back up to New Haven this summer. She is teaching dance to children up there in a special program.

The CHAIRMAN. Welcome.

Judge BREYER. Chloe, as you heard, has graduated from Harvard and she is down here with two young women, and the three of them are putting out a new magazine called Who Cares for public service. Now, she will give you many copies, if you want, and order blanks, probably.

The CHAIRMAN. Well, we have a tradition here of holding up documents to make people famous, so we will be delighted to hold up a copy of Who Cares before this is over.

Your brother, let us get to your brother. I mean, this guy has done you a big deal.

Judge BREYER. My brother-in-law, who is a lawyer, and, as you say, I guess he is extremely good on television. And my sister-in-law, who has run a program called City Arts, which puts on public lectures and performances in San Francisco.

The CHAIRMAN. I welcome you all.

Now the part that makes me the ogre with the women and men of the press, who do not like me doing this. I would ask the photographers to please clear the well, so that we can have the nominee make his statement and answer questions without the feeling that we are all looking at him through the lens of a camera.

Judge while we are clearing, a little bit of business here. After your statement, time permitting, and I think it will, we will ask three rounds of questioning. Three Senators will have before we break for lunch. And for the press, who are making their decisions in terms of timing, I expect we would break around 1 o'clock, and that we will resume after the cloture vote on the floor of the Senate at 2:45 p.m., with questions to resume at that period. So, roughly from 1 p.m. to 2:45 p.m., we will stand in recess.

Judge again, welcome. The floor is yours.

Judge BREYER. Thank you.

At the outset, Mr. Chairman, I would like to thank this committee really for the serious attention that you all have paid to my nomination. I appreciate the members taking the time out of enormously busy schedules to meet with me personally. And I recognize that you and your staffs have really prepared thoroughly for these hearings, and you have read the books and articles and the opinions and these things I have written. It seems to me that is some kind of new form of cruel and unusual punishment, quite a few.

Now, there are many, many other people I would like to thank today. I am obviously very much deeply grateful to Senator Kennedy, who has given me so much over the years. I have learned and continue to learn lessons of great value from him.

I really want to thank very much Senator Kerry and Senator Boxer for having come and taken the time to come here, along with Senator Feinstein, for supporting my nomination.

I am especially grateful to President Clinton for nominating me to a position that I said, and I do find humbling to think about. If I am confirmed, I will try to become a Justice whose work will justify the confidence that he and you have placed in me.

Now, I would like to begin by telling you a little bit about myself—although you have heard quite a lot—maybe, though, a few of the experience that I think have had an important effect on my life, how I think, and what I am.

I was born, as you heard, and I grew up in San Francisco. I attended public schools, Grant Grammar School and Lowell High School. My mother was from St. Paul, MN. Her parents were immigrants from East Prussia, which is now part of Poland.

My mother was a very intelligent, very practical, public-spirited kind of person, and she, like many mothers, had an enormous influence on me. She was the one who made absolutely clear to me, in no uncertain terms, that whatever intellectual ability I might have means nothing and will not mean anything, unless I can work with other people and use whatever talents I have to help them.

So, I joined the Boy Scouts, I did work as a delivery boy, I did dig ditches for the Pacific Gas & Electric Co., and I mixed salads up in the city's summer camp. It was nice, Camp Mather, because at that time you had policemen and firemen and lawyers and doctors and businessmen and their families, and they were all there together at the city camp for 2 weeks in the summer. It was great.

My mother really did not want me to spend too much time with my books. And she was right. I mean my ideas about people do not come from libraries.

My father was born in San Francisco. He worked as a lawyer and as an administrator in the San Francisco Public School System for 40 years. I have his watch, as you said, Senator. He was a very kind, very astute and very considerate man. He and San Francisco helped me develop something I would call a trust in, almost a love for the possibilities of a democracy.

My father always took me. As a child, he would take me with him into the voting booth. I would pull down the lever, and he would always say, "We're exercising our prerogative." He would take me to candidates' nights. Our school used to go up to Sac-

ramento to see the legislature in session. It was Youth in Government Day. There was Boys' State. All this led me to believe, not just that government can help people, but that government is the people. It is created through their active participation. And that is really why, despite the increased cynicism about basic government—and we have really seen vast improvement in the fairness of government—I still believe that, with trust and cooperation and participation, people can work through their government to improve their lives.

In 1957, as you said, I served in the Army for a little while. I studied in England, I returned to Harvard Law School, and then I clerked for Justice Arthur Goldberg, who became a wonderful lifelong friend. After 2 years in the Antitrust Division of the Justice Department, I went back to Harvard to teach and to Massachusetts to live. And for the last 27 years, I have been privileged to live in Cambridge and work in Boston.

I loved teaching. I loved my students. But if I were to pick out one feature of the academic side of my life that really influenced me especially, I think it would be this: The opportunity to study law as a whole helped me understand that everything in the law is related to every other thing, and always, as Holmes pointed out, that whole law reflects not so much logic, as history and experience.

Academic lawyers, practicing lawyers, government lawyers, and judges, in my opinion, have a special responsibility to try to understand how different parts of that seamless web of the law interact with each other, and how legal decisions will actually work in practice to affect people and to help them.

Working here on this committee in the 1970's, I learned a great deal about Congress, about government and about political life. There were disagreements to resolve, but everyone shared the same ground rules—basic assumptions about democracy, freedom, fairness, and the need to help others. These vast areas of widely shared beliefs are what has shaped the law of America and the lives of all Americans.

Since 1980, I have been a judge on the U.S. Court of Appeals for the First Circuit, and that is Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island. Because of my colleagues and the work itself, this job is a great honor, a great privilege, and it has been a great pleasure to have.

I have tried to minimize what I think of as the less desirable aspects of the job, one that Justice Goldberg really felt strongly about—that judges can become isolated from the people whose lives their decisions affect. I have continued to teach and to participate in the community and in other activities, which are important in connecting me to the world outside the courtroom. I have been helped in this task by my wife and her work at Dana Farber and at Cambridge Hospital, which shows me and others some of the sadness in this world, as well as its hopes and its joys.

I believe that the law must work for people. The vast array of Constitution, statutes, rules, regulations, practices and procedures, that huge vast web, has a single basic purpose. That purpose is to help the many different individuals who make up America—from so many different backgrounds and circumstances, with so many

different needs and hopes—its purpose is to help them live together productively, harmoniously, and in freedom.

Keeping that ultimate purpose in mind helps guide a judge through the labyrinth of rules and regulations that the law too often becomes, to reach what is there at bottom, the very human goals that underlie Constitution and the statutes that Congress writes.

I believe, too, in the importance of listening to other points of view. As a teacher, I discovered I could learn as much from students as from books. On the staff of this committee, it was easy to see how much Senators and staff alike learn from each other, from constituents, and from hearings. I think the system works that way. It works better than any other system. And our task is to keep trying to improve it.

My law school diploma refers to law simply as those wise restraints that make men free—women, too, all of us. I believe that, too.

I felt the particular importance of all this when 2 years ago, I had the good fortune to attend a meeting of 500 judges in the new Russia. Those judges wanted to know what words might they write in a constitution, what words would guarantee democracy and freedom. That is what they were asking over a 2-day meeting. They asked me. I mean they were interesting discussions, very interesting.

My own reply was that words alone are not sufficient, that the words of our Constitution work because of the traditions of our people, because the vast majority of Americans believe in democracy. They try to be tolerant and fair to others, and to respect the liberty of each other, even those who are unpopular, because their protection is our protection, too.

You are now considering my appointment to the Supreme Court of the United States. That Court works within a grand tradition that has made meaningful, in practice, the guarantees of fairness and of freedom that the Constitution provides. Justice Blackmun has certainly served that tradition well. Indeed, so have all of those who have served in the recent past, Justice White, Justice Brennan and Justice Marshall. They leave an inspiring legacy that I have correctly called humbling to consider.

I promise you, and I promise the American people, that if I am confirmed to be a member of the Supreme Court, I will try to be worthy of that great tradition. I will work hard. I will listen. I will try to interpret the law carefully, in accordance with its basic purposes.

Above all, I will remember that the decisions I help to make will have an effect upon the lives of many, many Americans, and that fact means that I must do my absolute utmost to see that those decisions reflect both the letter and the spirit of a law that is meant to help them.

Thank you, Mr. Chairman.

I might add one thing, if I might, on a slightly different subject. I want to add this, if I may, and that is recently I know—and this is important to me—that in recent weeks there have been questions raised about the ethical standard that I applied in sitting on

certain environmental cases in the first circuit at a time when I had an investment, an insurance investment in Lloyd's.

I recognize that this question has been raised by people of good faith, and there is nothing more important to me than my integrity and my reputation for impartiality. It is obviously a most important thing to preserve public confidence and integrity in the judicial branch of government.

I have reviewed those cases again and the judicial recusal statute, and I personally am confident that my sitting in those cases did not present any conflict of interest. Of course, my investment was disclosed to the public. There has been absolutely no suggestion that Lloyd's was involved as a named party in any of the cases on which I saw. I know of no such involvement.

The judicial recusal statute does recusal, as well, if you have one case that has some kind of direct and predictable financial impact on some investment, that is to say if it is not a speculative or remote or contingent impact. The cases on which I sat did not violate this standard, either. That issue has been carefully looked into by independent ethics experts who share my view.

Mr. Chairman, as I said, I recognize the importance of avoiding conflicts of interest or even the appearance of such conflicts, and that standard is essential for all judges, and especially essential for judges of the Nation's highest court.

So I certainly promise I will do all I can to meet it, including what I shall immediately do, is ask the people who handle my investments to divest any holdings in insurance companies as soon as possible, and with respect to Lloyd's itself, I resigned in 1988. Though, because of one syndicate that remains open, I have been advised that I can leave altogether by the end of 1995, but I intend to ask the people involved to expedite my complete termination of any Lloyd's relationship. I will be out of that as soon as I possibly can be.

Finally, as I go forward, I certainly will keep in mind the discussion that has arisen over the last few days, and I will take it into account in reviewing any possible conflict whatsoever.

[The initial questionnaire of Judge Breyer follows:]