

In recent years the Supreme Court has begun a significant departure from those principles, at least when they are applied to Tribes. For example, about six years ago, in the *Cabazon* decision, the dissenting opinion argued that the Tribes did not possess certain regulatory jurisdiction unless it was first granted to them by Congress or the States, an argument in direct contravention to the logic of the McKenna quote. Fortunately for the Tribes, the majority in *Cabazon* was compelled to respond to the dissent by saying, and I quote, "That is simply not the law."

Unfortunately, due to changes on the Court, the *Cabazon* dissent has since garnered a majority on the Court, and the logic of our treaties has been subverted in a way that cannot be reconciled with this Nation's principles of federal republican democracy. As a result, the Tribes and their people have suffered. We are reminded of what American philosopher Felix Cohen once wrote: "Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith."

In conclusion, Mr. Chairman, every term the Supreme Court deals with numerous cases affecting all Tribes, at times hearing more Indian law cases than any other kind. We believe it is imperative that nominees express their views on these matters and bear an understanding of how this field of the law comports with our constitutional jurisprudence. The Native American Bar Association requests the Committee to solicit the nominee's views and to insist upon answers that comport with the principles for which America stands.

Thank you for the opportunity to share our views.

Senator KENNEDY. Thank you very much.  
Wilfredo Caraballo.

#### STATEMENT OF WILFREDO CARABALLO

Mr. CARABALLO. Thank you very much. Good afternoon. The Hispanic National Bar Association appreciates the longstanding relationship that our organization has had with many of the members of this committee and with a lot of its staff. We hope to continue that relationship into the future.

In particular, I would like to publicly thank two members of this committee who have gone out of their way in the past to make statements publicly concerning the need for an Hispanic on the Supreme Court, and those are Senators Biden and Senator Hatch. On behalf of our organization, we would like to thank both of them.

I know that there might not be many Senators here, and I notice, however, that there are staff. I hope that when the testimony is looked at, one fact comes out. We have come together as four organizations in an unprecedented way. We want the members of this committee, and we would like the administration and this Nation to understand and listen to the words that we have used.

We have not called ourselves minority bars. We don't consider ourselves minorities. We are people of color representing over 60 million people in this country, and in the very near future we are going to be the majority in this country and we ask that as you listen to our pleas, you understand that part of that plea is for the generations to come. We are asking that we be treated today the way we hope you will want our children and our grandchildren to treat your children and your grandchildren.

When Justice Blackmun announced his resignation, the Hispanic National Bar Association received many calls from Hispanics around the country. It was universally believed by the members of our organization and others that the 108th Justice to the Supreme Court of the United States was going to be an Hispanic. We believed the promise that the face of justice was finally going to include ours.

We believed this not because there exists some numerical imperative for sitting on the Supreme Court, but because there exists a moral imperative that all who are among the judged have the right to expect that they may be represented in the faces of those who judge. The members of the Hispanic National Bar Association believed that I would be sitting here today testifying about the qualifications of an Hispanic nominee, a prospect which was personally awe-inspiring.

We relate this to you so that you may sense the difficulty our organization has had in coming to grips with this latest disappointment. Nevertheless, as lawyers, we believe that we cannot abdicate our responsibility to consider and evaluate the credentials of the person who was ultimately nominated. As lawyers from the Hispanic community, we must represent our community before you. As Americans, we owe the Nation the benefits of our thoughts.

In fairness to a nominee who is not responsible for our disappointment and who has worked hard to earn the nomination in his own right, we come before this committee prepared to testify on the nomination of Judge Stephen Breyer.

Having worked with him, many on this committee know better than most about the intellect and compassion that Judge Breyer takes to the Supreme Court. His achievements thus far are truly remarkable. Our organization has looked hard at his ample record. We have discovered in his work a judge who is forthright and who accomplishes something in his opinions which very few judges even try. He is readable. People can actually understand what he writes.

As you know, Judge Breyer is the chief judge of the circuit which encompasses the Federal courts of Puerto Rico. As such, many of our members from Puerto Rico have appeared before him. Our members in Puerto Rico speak very highly of Judge Breyer, as do many of our members in Massachusetts. Many of them have indicated their belief that he is someone who understands the need to make justice a reality for all Americans.

The presidents of the Puerto Rico region of the Hispanic National Bar Association and the Puerto Rico Federal Bar Association are effusive in communicating their colleagues' opinion regarding Judge Breyer's intellect and his appreciation of the fact that the justice system was created to be just. Our evaluation of Judge Breyer's credentials, coupled with firsthand knowledge on the part of many of our members, convinces us that Judge Breyer will make an excellent addition to the Supreme Court. We hope that the words of our members in Puerto Rico will be echoed by our members throughout the country in the years to come.

We further hope that our high regard for our duty is not misunderstood. As we praise the obvious credentials of Judge Breyer, we remind the Nation of the need to have the face of justice reflect all of the people in this country. We should never ration justice or judicial positions. This would demean the importance of selecting the best and the brightest, but it is important to remember that the best and the brightest come from all races and ethnic groups. It is time for the Nation to see an Hispanic as among the best and the brightest on the U.S. Supreme Court.

Thank you.

[The prepared statement of Mr. Caraballo follows:]