

The CHAIRMAN. They are worthy reminiscences, and one of the things that is important—it has been clearly established, I think, but you have reinforced it—is his temperament and his concern for the litigants and the way in which he treats those before him. That is an important consideration.

I thank you for your testimony, and, again, I thank Senator Kennedy and apologize to the last panel for not being able to be here, but I appreciate your testimony.

[The prepared statement of Ms. Matthews follows:]

PREPARED STATEMENT OF MARTHA MATTHEWS IN SUPPORT OF THE NOMINATION OF  
JUDGE STEPHEN BREYER TO THE U.S. SUPREME COURT

Thank you for the opportunity to appear and present testimony before this Committee. My name is Martha Matthews; I currently work as a staff attorney at the National Center for Youth Law, a national support center for legal aid attorneys focusing on issues affecting poor children and families.

I believe that I was asked to testify today because, several years ago, I had the rare good fortune to work both for Judge Breyer and for the distinguished Justice he has been nominated to replace. I served as a law clerk for Judge Breyer from 1988 to 1989, and for Justice Blackmun from 1989 to 1990. As a law clerk, I had the opportunity to work closely with Judge Breyer at the First Circuit Court of Appeals, performing legal research, reviewing the case records, and discussing with Judge Breyer the cases argued before that court.

Although I was saddened to hear of Justice Blackmun's retirement, I cannot think of anyone better suited to take his place than Judge Breyer. Like Justice Blackmun, he cannot be easily labeled as a "liberal" or "conservative" judge, because his views on cases are never predetermined by a set political agenda. Nobody could accurately say about him, he always rules for the plaintiff in a civil rights case, or he always rules for the government in criminal cases, or any similar generalization. Judge Breyer shares with Justice Blackmun a profound commitment to judge each case fairly as it comes before him, with rigorous honesty, intellectual clarity, lack of any bias or preconception, and with a deep respect for the limits of judicial authority.

Like Justice Blackmun, Judge Breyer has never forgotten that each case that comes into federal court is of great importance to the parties involved, and to other people who may be affected by it. Each case is treated with the same high standards of thoroughness and clarity—whether it involves a cutting-edge First Amendment issue, or an arcane Social Security regulation. Each litigant receives a judicial opinion written clearly, thoughtfully, and in language he or she can understand (and without any footnotes!), explaining the basis for the decision rendered. Each lawyer who appears at oral argument before Judge Breyer, whether brilliant or stumbling, is treated with respect and courtesy, and is given a fair chance to plead his cause.

Judge Breyer, like Justice Blackmun, habitually works long hours to ensure that he is fully prepared for every case heard by the Court, and that every detail of every opinion is accurate, every sentence clear and well-crafted every legal theory explored. Yet, during the year I worked for him, Judge Breyer somehow also found time to teach, to lecture, to serve on numerous committees, and to keep abreast of developments in legal scholarship in many areas. His dedication to a life of public service has been an inspiration to me in my own work.

Yet despite the rigorous standards to which he holds himself, Judge Breyer was a joy to work for, courteous to his clerks and staff, gracious and engaging in conversation, with a broad range of interests and talents.

I would like to share with you a memory of Judge Breyer that I will always treasure. On a cold winter night in 1989, after a long day of work, Judge Breyer still found the time and energy to attend a Valentine's day party at my house, to sit on the floor with us and make construction-paper valentines for his children. This memory assures me that the application of Judge Breyer's formidable intellect to the cases that come before the Supreme Court will always be tempered with warmth and compassion, with a keen awareness of how the lofty decisions of judges affect the everyday lives of the people of this nation.

It is a privilege to be here, to express my admiration for Judge Breyer and to applaud his nomination to the Supreme Court. Thank you.

## BIOGRAPHICAL SKETCH

Martha Matthews is originally from Tucson, Arizona. She received the National Merit Scholarship and Presidential Scholar awards on graduation from public high school in 1980. She attended Swarthmore College, graduating with high honors in philosophy in 1984.

Ms. Matthews attended Boalt Hall School of Law at the University of California at Berkeley, while concurrently enrolled in a Ph.D. program in Jurisprudence & Social Policy. Upon graduation from law school in 1987, Ms. Matthews received the Order of the Coif and Student Writing awards. Ms. Matthews was admitted to the California Bar in fall 1987.

During 1987-1990, Ms. Matthews served as a law clerk at all three levels of the federal court system, first for Congress [now Chief Judge] Thelton E. Henderson in the U.S. District Court for the Northern District of California, then for Judge [now Chief Judge] Stephen Breyer in the U.S. Court of Appeals for the First Circuit, and finally for Justice Harry A. Blackmun in the U.S. Supreme Court.

In fall 1990, Ms. Matthews returned to California to work as a staff attorney at Legal Services for Children in San Francisco. She represented inner city children in Abuse/Neglect cases, guardianship and emancipation petitions, and other civil cases.

In 1991, Ms. Matthews went to work as a staff attorney at the National Center for Youth Law, a legal services support center focusing on issues affecting low-income families and children.

Ms. Matthews currently specializes in litigation and administrative advocacy to improve child protective services, foster care, and children's mental health systems. She has served as counsel in two major class action cases on behalf of foster children *Angela R. v. Clinton* and *David C. v. Leavitt*. In these cases Ms. Matthews helped to negotiate settlements providing for comprehensive reform of the child welfare systems in Arkansas and Utah. Ms. Matthews also directed the California Children's SSI Campaign, an outreach project to help low-income families with disabled children obtain benefits and health care. Ms. Matthews serves as the training coordinator for NCYL, planning and conducting trainings and conferences on children's advocacy.

Ms. Matthews resides in San Francisco, California.

## EDUCATION

*Legal:* Boalt Hall School of Law (J.D. 1987) University of California at Berkeley.

*Graduate:* Jurisprudence & Social Policy Program (coursework towards Ph.D. 1984-1987), University of California at Berkeley.

*Undergraduate:* Swarthmore College (B.A., high honors in philosophy 1984).

## PROFESSIONAL ASSOCIATIONS

California Bar Association (admitted 1987).

## LEGAL EMPLOYMENT

Staff Attorney, National Center for Youth Law, San Francisco (1990-present).

Staff Attorney, Legal Services for Children, San Francisco (1990).

Law Clerk, Justice Harry A. Blackmun, United States Supreme Court (1989-1990).

Law Clerk, Judge Stephen Breyer, United States Court of Appeals, First Circuit (1988-89).

Law Clerk, Judge Thelton E. Henderson, United States District Court, Northern District of California (1987-1988).

## SELECTED PUBLICATIONS

"Family Preservation Programs May Benefit Legal Services Clients," *Youth Law News* May-June 1993.

"Troubling Report on Care of Children with Emotional Problems," *Youth Law News* May-June 1993.

"Youth with Mental or Emotional Problems May Be Eligible for SSI," *Youth Law News* May-June 1992.

"Major Victory for Arkansas Children," *Youth Law News* March-April 1992.

"Supreme Court Denies Children's Right to Sue for 'Reasonable Efforts,'" *Youth Law News* March-April 1992.

"Supreme Court Rejects Challenge to Child Witness Hearsay," *Youth Law News* Jan.-Feb. 1992.

"Wilderness Programs Offer Promising Alternative for Some Youth; More Regulation Likely," *Youth Law News* Nov.-Dec. 1991.

"Many More Infants Eligible for SSI Under Zebley Regulations," *Youth Law News* Sept.-Oct. 1991.

"Supreme Court Upholds Title X 'Gag Rule,' Major Impact on Adolescents Expected," *Youth Law News* May-June 1991.

Comment, "Suicidal Competence and the Patient's Right to Refuse Life-Saving Treatment," *California Law Review* 75:2 (1987).

The CHAIRMAN. I would yield to Senator Kennedy.

Senator KENNEDY [presiding]. Thank you very much.

That was fascinating insight, Ms. Matthews. I do not think over the time I have been on the committee we have probably had the kinds of recollections both in terms of work habits, personal kinds of insights that you have about Judge Breyer. I would certainly, in the time that I have known him, agree with all the characterizations that you have made. I think the seriousness with which he addresses these matters, the work habits, his consideration of people, his real interest in the impact of the decision on real people. I think you have commented on it, and it is certainly something that I have noted. And I think those of us who have watched him as a judge have certainly seen it as well. I think that will be enormously important in the work on the Court, so we thank you for those insights.

Let me ask just very briefly, Professor Sunstein, could you tell us, with Judge Breyer's legal philosophy, what your sense is about the issues in protecting health and safety that will come to him in different forms and shapes that will come to the Supreme Court? If people were to ask you what in his background, his writings, and his decisions that should give us some satisfaction on those issues relating to health and safety, that he has demonstrated a real commitment to assuring the rights of individuals in those two important areas?

Mr. SUNSTEIN. I will give you a specific answer and then a general answer. The specific answer has to do with the National Environmental Policy Act, which is sometimes thought to be the Magna Carta of the environmental movement. It says that every agency before it takes action that might affect the environment has to prepare a careful environmental impact statement.

Now, Judge Breyer in two cases has said that if the Government fails to do that when it has to, the court will issue an injunction to stop the Government from going forward with its act.

Now, he has been somewhat unusual—not by any means out of the mainstream—but somewhat unusual in allowing the injunction to go forward. The idea that he has spoken for is that the Government has to consider the environmental impact before the action is taken, and that means that we cannot wait for the environmental impact statement to be prepared while the action is taken; he has insisted the injunction will stop the Government from acting until it has considered the environmental impact.

Now, that, I think, is a signal of how seriously he takes environmental issues and a signal of how seriously he takes his understanding of congressional purposes. That is the specific answer.

The more general answer is he is first and foremost dedicated to faithful interpretation of the law. So the key question is what have you, what has Congress, instructed the courts to do, and the agen-