

continuing to do what has brought him to this special point: crafting judicial opinions that support the rule of law.

While I do not agree with all of his opinions, I take considerable comfort from Judge Breyer's overall record that he will resist the siren calls of judicial activism. Judge Breyer has not displayed his sentiments on the sleeve of his judicial robe, nor has he pursued an ideological or political agenda. He has not strained to invent hypertechnical rules that benefit criminals at the expense of honest, law-abiding citizens. Instead, he has called into question what he has termed the right creation problem—that is, the misguided view that society's problems can best be resolved by recasting competing interests as rights or entitlements.

There are, undoubtedly, areas where Judge Breyer and I will disagree in our reading of the law. I do not expect to agree with any nominee, especially one chosen by a President of the other party, on every issue that will come before the judicial branch. But it has been my consistent belief that a President—and this President—is entitled to significant deference in selecting a Supreme Court Justice, and in this case he has made an excellent selection.

President Clinton and I are unlikely ever to agree on the person who ought to be nominated. But so long as a nominee is experienced in the law, is intelligent, has good character and temperament, and gives clear and convincing evidence of understanding the proper role of the judiciary in our system of Government, I can support that nominee. In this case, I have a great deal of regard and affection and experience and understanding of Judge Breyer, and I think a great deal of him, and I intend to support him. It is my hope and my firm expectation that this hearing will satisfy this committee that Judge Breyer meets the test of understanding the role of the judiciary in the constitutional processes of this Government.

Judge Breyer, we welcome you here. We compliment you for being selected. We have high expectations of your service on the Court, and I hope you will enjoy these proceedings.

The CHAIRMAN. The hearing is adjourned. [Laughter.]

Judge, I said earlier that one of the most difficult questions faced today is from what State you hail, and I have decided how to resolve that: to disregard the States and go by a time-honored tradition of the Senate, seniority.

Senator Kennedy.

**OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S.
SENATOR FROM THE STATE OF MASSACHUSETTS**

Senator KENNEDY. Mr. Chairman, Senator Hatch, members of the committee, it is a great honor to introduce Judge Stephen Breyer, President Clinton's nominee to be Associate Justice of the U.S. Supreme Court.

We all know the fundamental role of the Supreme Court in our society. Our Nation celebrated its 218th birthday last week, proud of the fact that more Americans than ever can enjoy the fundamental rights to life, liberty, and the pursuit of happiness pledged in the Declaration of Independence.

The Constitution is designed to guarantee those rights, and it is the nine Justices of the Supreme Court who have the last word on

the meaning of that charter of our liberties. Their decisions affect the lives of all Americans today, and for years to come.

Judge Stephen Breyer is superbly qualified to serve on our highest Court. Throughout his long and brilliant career, Judge Breyer has committed himself to public service, to excellence in the law, and to the pursuit of justice for all Americans.

After graduating with honors from Stanford University, he attended Oxford as a Marshall scholar. At Harvard Law School, he was an editor of the Law Review. He served as a law clerk for Supreme Court Justice Arthur Goldberg, a renowned defender of civil liberties and one of Judge Breyer's proudest mentors and admirers in later years.

Judge Breyer next served in the Antitrust Division of the Department of Justice where he sought to enforce the antitrust laws to protect consumers from practices that drive up prices, hurt competition, or involve discrimination. In one important case, he developed the successful argument that the antitrust laws bar real estate agents from agreeing not to show homes in white neighborhoods to black families.

Judge Breyer then returned to Harvard Law School as a member of the faculty, where he earned an outstanding reputation for his scholarship in the areas of antitrust law and administrative law, focusing on the profoundly important work of improving our free enterprise system and our system of government.

In 1973, he took a leave of absence at the request of Watergate Special Prosecutor Archibald Cox to help in that historic investigation.

In 1974, he became special counsel to the Administrative Practice and Procedure Subcommittee of this committee. I was chairman of the subcommittee at the time, and I have known Judge Breyer well ever since. His competence and creativity, his leadership ability and skill at working productively with Senators, interest groups, and constituents of widely different views were evident from the start.

He was indispensable to our bipartisan effort in those years to deregulate the airline industry and the trucking industry. Judge Breyer dedicated himself to assuring that all Americans would have safe and efficient air travel at the lowest possible prices for the public, and that shippers and consumers alike would reap the benefits of lower prices in the trucking industry. Those two laws were among the most important achievements of Congress in that decade. I might add that we would have much more competition in the health care industry today if we had given Judge Breyer that assignment, too.

I asked Judge Breyer to serve as chief counsel of this committee when I became chairman in 1979. His intelligence, fairness, and his commitment to unifying common ground instead of polarizing narrow ground earned him the admiration and respect and often the affection of every member of this committee, Democrats and Republicans. Those qualities were evident in December 1980 when Judge Breyer was the only judicial nominee confirmed by the Senate after President Reagan's election.

Since then, as a member of the Court of Appeals for the First Circuit, Judge Breyer has earned a reputation as a brilliant and

fair-minded jurist. As chief judge of that court, he is well known and respected for his efforts to develop consensus and minimize dissent. His opinions are models of clarity, written, as the judge has said, so that the real people who are the parties in the cases, not just the lawyers, can understand the court rulings, too.

In his decisions, he has construed the Constitution to defend the basic rights of all Americans.

He has protected the right of women seeking family planning advice to hear about their right to choose to terminate a pregnancy.

He has protected the right of Government employees to engage in political activity and advocacy.

He has protected the right of students belonging to a church group to be recognized by a State university.

He has protected the right of every citizen to rent or buy housing, free from the threat of discrimination.

His opinions on environmental laws have been praised by environmentalists.

His opinions in criminal law cases seek to assure public safety while protecting the constitutional rights of defendants.

As one of the first members of the Sentencing Commission, he is widely credited with developing the guidelines to reduce the disparities in sentences given to defendants committing similar crimes.

As a judge, he has also continued his dedication to teaching and legal scholarship. In addition to his administrative and judicial duties, he has continued to teach courses at Harvard Law School, and he has also continued to write and publish articles and books analyzing important issues of law and Government.

Judge Breyer ranks among the country's most thoughtful scholars of the regulatory process, and his knowledge and experience in this complex area of the law will be a major asset to all the members of the Supreme Court from the day he takes his seat.

His most recent book on regulation drew praise from leading experts on all sides of the debate. He has sought to assure that the public health and safety are protected, while avoiding needless inefficiency and waste in government. Not everyone agrees with all of his views, but I suspect that everyone will agree that his views have contributed immensely to our understanding of these complex issues in our modern society.

In addition, perhaps because of his service to the Senate, Judge Breyer has emerged as one of the leading exponents of the view that laws should be construed in the manner that Congress intended. If confirmed, he will add a needed and well-informed perspective to the many important questions of statutory interpretation that come before the Supreme Court.

Finally, I want to mention Judge Breyer's extraordinary family. His wife Joanna is widely respected in Massachusetts as a psychologist at the Dana Farber Cancer Institute, where she counsels children with terminal cancer and their families.

Steve and Joanna's older daughter, Chloe, recently graduated from Harvard and now edits the magazine *Who Cares?*, which promotes public service by young adults. Obviously, the apple did not fall far from the tree.

Their younger daughter Nell recently graduated from Yale, and their son Michael has just completed his freshman year at Stanford.

In an address about the legal profession, another outstanding Massachusetts jurist, Oliver Wendell Holmes, wrote that "every calling is great when greatly pursued." Throughout his career, Judge Breyer has shown that the pursuit of justice can be a great calling, and I am confident that he will be a great Justice on the Supreme Court.

I commend President Clinton for this excellent nomination, and I look forward to these hearings.

The CHAIRMAN. Thank you very much, Senator Kennedy. Senator Kerry.

STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KERRY. Thank you very much, Mr. Chairman. It is my privilege to join with my colleague, Senator Kennedy, and with the Senators from California in formally introducing Judge Breyer both to the committee and to the proceedings.

You and members of the committee know him personally and very well, and now with these hearings, the country will get to know him, too. I am confident that our fellow citizens will very quickly appreciate and respect the qualities which were at the center of the President's decision to nominate Stephen Breyer.

As this committee knows better than any entity in the country, the confirmation of a Justice of the Supreme Court is always important. It is serious business. It is the exercise of one of the Senate's most important responsibilities, with enormous transfer of power to one individual for a lifetime. So, as always, I know the committee will ask a broad set of tough questions, as Senator Hatch has said.

I also know that Judge Breyer will reconfirm the belief in those of you who hold it and convince those of you who do not, as well as convince the country, that he brings great legal skills and personal commitment to this task and a great potential to move and to help shape the Court itself.

He brings special qualities to this job, if I can add to those things that Senator Kennedy has talked about of his record. He has worked for all three branches of Government. He has taught. He has published, and he has handed down, as Senator Kennedy said, major opinions in multiple areas of the law.

He has shown himself to be an individual of extraordinary range. He is trilingual. He serves on a Federal judicial study committee that contemplates the relationship between law and the science. He reads Proust in the original French, and he has even studied architecture to help make judgments about Federal construction.

But mostly, Mr. Chairman, those who know him well have come to know that Judge Breyer is a person who remembers on a daily basis what it means to serve the people and to serve the Constitution, and he has worked hard to stay close to the reality of life in America. You will be pleased to know that that grounding in reality was even demonstrated in a statement about his alma mater, Harvard, when he said that life there is important but it does not