

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?

Judge BREYER. I haven't thought about that, I haven't thought about that.

The CHAIRMAN. Well, at some point, unrelated to this hearing, when you are confirmed—because I am sure you will still take phone calls—when you are confirmed, I would like to talk to you about that because that is an area of some discussion right now.

Well, Judge, thank you, and I thank your family for your cooperation this first day. We have a number of patient and very knowledgeable members of this committee, like Senator Moseley-Braun, who have been here the whole time and will be, because of our seniority system, down the line some time tomorrow.

If we convene at 10 tomorrow and each Senator takes his or her half hour, which I assume and hope they will, to explore areas of their concern, that is 4½ hours to finish one round. I imagine there may be additional questions. I will confer with you and with the ranking member tomorrow, mid-afternoon, to determine whether or not we attempt to finish up your public testimony tomorrow or go into the next day.

As you have observed, there is no desire to rush this. There is no desire to keep people here late. There is no urgency to get it done. We are talking about a matter of 24 hours one way or another, finishing this. But if we could finish your testimony, if that is the will of the committee, and it means you stay another hour or so, I would like you to begin to think tonight whether you would rather do that than come back.

Senator LEAHY. Mr. Chairman.

Senator DECONCINI. Mr. Chairman.

The CHAIRMAN. Yes, gentlemen.

Senator DECONCINI. Mr. Chairman, there is a vote tomorrow at 10. We will meet after that vote?

The CHAIRMAN. There is a vote at 10?

Senator DECONCINI. I believe so.

The CHAIRMAN. I was unaware of that.

Senator DECONCINI. I believe it is a cloture vote.

The CHAIRMAN. I was under the impression that that might be vitiated.

Senator DECONCINI. OK.

The CHAIRMAN. I will be here by 10:10 to start the hearings if the vote is at 10. We will vote at the front end and we will begin then. I understand from Senator Metzenbaum in the discussion I had with him today that it is another cloture vote. There is a possibility that that vote may not take place, so let us keep it at 10 and if there is a vote at 10 we will start as shortly after that vote as we can, no later than 10:15.

Yes, Senator.

Senator LEAHY. Mr. Chairman, by a previous unanimous consent agreement, I am going to be managing a bill on the floor starting tomorrow.

The CHAIRMAN. Yes.

Senator LEAHY. Unfortunately, this was done before we knew about this. I just would like the Chairman to know that there are some followup questions, especially on a couple of the answers in my earlier questions. I will want a second round. I will try to keep it as short as possible.

The CHAIRMAN. Yes; I am confident that other members will, and I know you have the Foreign Operations—

Senator LEAHY. Yes, Foreign Operations, so I will not be here during part of this, but I will come back at an appropriate time to ask those questions.

The CHAIRMAN. So I am confident we can accommodate everyone, but we want to accommodate your physical constitution as well, and I just want you to begin to think about if it is possible—I am not pressing to do that tomorrow—if it is possible to finish up tomorrow night. When I said that, your whole family went like this behind you, except for your wife. She likes seeing you on the hot seat, I think, here. All kidding aside, we will make that judgment tomorrow afternoon.

We will reconvene at 10 unless there is a cloture vote. If that is the case, it will be as close to 10 as we can make it. Thank you for your cooperation. We are adjourned until tomorrow at 10.

Judge BREYER. Thank you, Mr. Chairman.

[Whereupon, at 6:23 p.m., the committee was adjourned.]