well know, one of the issues in every plebiscite that has been discussed is whether or not the courts should be Spanish speaking. Federal courts are not; State courts are. It is a big deal, it is a big issue. So the Federal courts do not in the eyes of most Puerto Ricans meet the needs of Puerto Rico in the sense that they do not take into consideration the Spanish culture, which the rest of the Government of Puerto Rico and the rest of the court system does. And it is always used as one of the red herrings in the debate that takes place on statehood.

And it is nice to hear that you have joined the Republican Party, because only the Republican Party has suggested statehood for Puerto Rico. The Democratic Party has not. I happen to think you are probably right. But it is a very convoluted and controversial and emotional debate, and the plebiscite last time was perilously close, depending on how you view it. But the Federal courts are a main source of contention in terms of whether or not they are Spanish speaking. They would be the only Spanish-speaking courts in the Federal system were they allowed to be, and as you know, they are not.

I yield to my friend from Maine.

OPENING STATEMENT OF HON. WILLIAM S. COHEN, A U.S. SENATOR FROM THE STATE OF MAINE

Senator COHEN. On that note, perhaps I should begin by saying, "Como esta usted, Mr. Chairman." [Laughter.]

Yesterday you indicated that you were leery of flattery, so I will dispense with allowing any to flow from this side of the bench, but I might say that I found you to be enormously forthcoming, in stark contrast to some of the nominees who have come before this committee in the past.

On my first day of law school, at the conclusion of the day, my law professor said that any connection between law and justice is purely coincidental. I thought he was engaging in some sort of professorial cleverness at the time, until I went out to practice law, and I found, as I started to lose all my cases, that I had justice on my side, and my opponents had the law on their side.

I raise this in connection with Judge Hand, of whom you are a great fan. I was looking through his book, "The Spirit of Liberty," and he was talking about his relationship with Holmes, whom you are also a great devotee of, in terms of his writings and decisions. And Holmes used to frequently say, "I hate justice." Of course, Hand would go on to say he really did not mean that, but he tried to make the point that on one occasion when they were driving in an automobile past the Supreme Court, when Holmes was going to a weekly conference, Hand tried to pique him a little bit, and he said, "Well, sir, goodbye. Do justice."

Holmes turned around and snapped at him and said, "That is not my job. My job is to play the game according to the rules."

I listened to your opening statement about the need for the Justices, the court system, to strike some sort of a harmonious balance in the lives of such a diverse population, to preserve liberty for as many as possible, all if possible. At no time did you say that you intended to do justice. I take it that your reluctance to do that was the same for Holmes as well, of not seeking to do justice in the

sense of intervening into an area that was properly before that of the Congress or the State legislature. Is that how you would interpret Holmes' statement that, "My job is not to do justice, but to play the game according to the rules"?

Judge BREYER. In part, yes, but I think that Holmes means more than that. I think Holmes—and it is another reason I do admire him—I think that he sees the rules from the time he wrote the common law up through his Supreme Court career, I think he sees all this vast set of rules as interrelated. And I suspect, although I am not positive, that he sees ultimately the vast object of this vast interrelated set of rules including rules that say whose job is what as working out for society in a way that is better for people rather than worse.

I suppose when you say "Do justice," or you say, "No, no; I am just following the rules," what you worry about is someone trying to decide an individual case without thinking out the effect of that decision on a lot of other cases. That is why I always think law requires both a heart and a head. If you do not have a heart, it becomes a sterile set of rules, removed from human problems, and it will not help. If you do not have a head, there is the risk that in trying to decide a particular person's problem in a case that may look fine for that person, you cause trouble for a lot of other people, making their lives yet worse.

So it is a question of balance, and I would say both.

Senator COHEN. Judge, yesterday, you indicated that the black robe had great symbolic significance, that when you placed that robe around your shoulders, you were no longer speaking as an individual, and that you would convey to the litigants that the decisions that were reached or rendered were done so irrespective of personality, the personality of the judge. And then I think you quoted Hand's speech about Cardozo in describing a judge as a runner who is stripped for the race.

I was interested in that, because Hand himself has written, in this wonderful biography of Gerald Gunthers—he says, "A man does not get to be a Justice of the Supreme Court chiefly because he can detach himself from the convictions and prejudices of his class or his time." Furthermore, Justice Cardozo, in his wonderful book, "The Nature of the Judicial Process," also said, "In the long run, there is no guarantee of justice except for the personality of the judge."

So both Hand and Cardozo would seem to contradict the notion that once you put on the black robe, you in fact are one of these blind oracles that simply dispassionately rule upon the law.

I mention this in connection with who you are as a person. I think that one of the goals of this type of hearing is to try to gauge you as a person. In that connection, again I would turn to Hand, because you have turned to him so many times during the course of these proceedings. Hand said,

> I venture to believe that it is as important to a judge called upon to pass upon a question of constitutional law to have at least a bowing acquaintance with Acton and Maitland, with Thucydides and Gibbon and Carlyle and Homer and Dante, Shakespeare, Milton, Machiavelli, Montaigne, Rabelais, Plato, Bacon, Hume, Kant, as with the books that have been so specifically written on the subject, for

and the key words

in such matters, everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will.

I think that is a terribly important statement that Hand made, and I have listened to the introductions that were given yesterday on your behalf, and I know that you are a learned individual who has studied Spanish and is fluent in French and apparently reads about architecture in his spare time and quotes from John Donne.

If I went into your library and asked you to point at the 10 most important books that you have there, what would you point to?

Judge BREYER. Oh, my goodness.

Senator COHEN. By the way, Holmes had 14,000 books in his library at the time he died.

Judge BREYER. My goodness. My reading—people may exaggerate this a little bit in respect to me—my reading is not like the list you just read.

Senator COHEN. But the point that I make——

Judge BREYER. Where do you start? I mean, tell me your favorite books—where do people start? They start with Shakespeare. They say, "Why Shakespeare?" This is what I tell students. A lot of them come from some different school, and they will come from someplace, and they ask, "What is in Shakespeare for me?" You say, well, if you are willing to put in the time, it is a little bit archaic, the language, but if you put in the time, what you see there is you see every different person, you see every different kind of person, you see every situation there is in the world. You see people saying things that they would say if only they had that ability to say them, and you see the whole thing in poetry. That is why people turn to that, and they turn to that a little bit in literature to get some of the things that Senator Simon was talking about, I think, which is what is in the heart of that person who is leading that different kind of life. And sometimes you can find some of that in literature.

I like Conrad very much. Why? I think because I am moved often by the way in which he talks about the need for people—all of us—to learn from the past and then to give something to the future, whether that is through our families or whether that is through our careers. We do learn from our parents. We do learn from the past. We do try to transmit things of value. And I think he finds value in human communities. I think he finds human communities to be, ultimately, the source of obligations and values toward each other.

I read something that moved me a lot not very long ago. I was reading something by Chesterton, and he was talking about one of the Brontes, Emily Bronte, I think, or "Jane Eyre" that she wrote. He said if you want to know what that is like, you go and you look out at the city, he said—I think he was looking at London—and he said, you know, you see all those houses now, even at the end of the 19th century, and they look all as if they are the same. And you think all of those people are out there, going to work, and they are all the same. But, he says, what Emily Bronte tells you is they are not the same. Each one of those persons and each one of those houses and each one of those families is different, and they each have a story to tell. Each of those stories involves something about

human passion. Each of those stories involves a man, a woman, children, families, work, lives. And you get that sense out of the book.

So sometimes, I have found literature very helpful as a way out of the tower.

Senator COHEN. Judge, the reason I have taken the time to at least touch on this however briefly is that I think that the people who serve on the Supreme Court should be more than those who are simply adept at a sort of mechanistic application of formulas and rules, but who bring to that Bench a breadth of not only experience but of intellect and scope and depth, so that when they render those decisions, they will carry that much more in the way of impact and consequence.

I would like to now turn to something more specific in terms of issues that have been raised with you. You indicated before that the death penalty, under certain circumstances, is not cruel or unusual. The Court has ruled that, and you accept that as settled law.

Judge BREYER. I do.

Senator COHEN. The question I wanted to ask you, however, is whether you believe the death penalty to be cruel under any circumstances, or only under some.

Judge BREYER. Oh, I would say it is equally settled that there are some circumstances where it is cruel and unusual; for example——

Senator COHEN. No, no, that is not what I am asking.

Judge BREYER. You want my personal view.

Senator COHEN. I want your personal view, not whether it is settled or not, but what you believe.

Judge BREYER. The reason that I hesitate to say what I think as a person as opposed to a judge is because down that road are a whole host of subjective beliefs, many of which I would try to abstract from, because as you have had and I have had from Learned Hand and other great judges, there are some to both sides of this. I was pointing out those things where he says try to be dispassionate. And you must remember that the law that you are trying to find as a judge in your own mind, think that what you have found, you must be satisfied that other people would find the same—not every other person, but lots of other people.

Where the subjective belief may come in, and that happens sometimes where it is either relevant to the law, or it is not. If it is relevant to the law, decide it as a matter of law. If you know it is not relevant to the law, then the only time at which it enters is if you think the law is one way, and you think your own subjective belief is the other way, and you feel that you cannot follow what you believe the law to be because of your subjective belief, then do not try; then do not try. You can remove yourself from the case.

Senator COHEN. Well, the other option, however, is to overturn the prior decision.

Judge BREYER. No, but you see——

Senator COHEN. I am going to come to this in a moment. We will talk about stare decisis, and I will quote from Holmes about rules that are laid down at the time of Henry IV, and that we ought to have something more substantive than the fact that it was laid

down years in the past, so that you do not have the dead hand of the past controlling, and that type of line of argument.

But I would like to know your personal view, because that becomes important. You may find yourself somewhere down the line in which this kind of an issue may come up. And the question is are you going to subordinate your personal views in terms of what you believe, what you in your heart—you talked about the mind and the heart—believe to be the right thing to do under the circumstances, whether it amounts to cruel punishment under any circumstances. The fact is you have a choice. You can either, if you feel so passionately about it, remove yourself from the case, or say I think the Court that decided such-and-such a case was wrong, and I am now voting to overturn that. That is another option you can pursue, and a lot will depend upon how you view stare decisis, whether it is a decision that was reached 50 years ago, or 5 years ago, or 5 days ago.

But I think that you cannot simply say that, well, I would always apply the rule as established by the Court in 1850, or 1950.

Judge BREYER. Yes, that is right.

Senator COHEN. So I think your personal view is relevant in this case, and I do not think you have stated it yet.

Judge BREYER. That is true, and I think that the law itself provides ways of departing from past law. There are circumstances in which it is appropriate according to the law to depart from the prior decision. Those have been listed by the Supreme Court recently. You look to the earlier decision and you ask how wrong was that decision. You look to see the ways and the extent to which the law has changed in other related ways. You look to see the extent to which facts have changed. You look to see how much difficulty and trouble that old rule of law that seems badly reasoned has created as the courts have tried to apply it. And then, going the other way, you look to see the extent to which there has been reliance on that old past law.

The reason I say this is because I think the law has ways of overcoming prior decisions, and those ways, too, permit a judge to abstract from a belief that he would think is highly personal and not relevant.

Sometimes, of course, the belief is totally relevant. After all, if you think there is some terrible injustice, maybe there is. And that is not just an abstract belief of yours. That is not just something subjective. Maybe there is. And if you see there is, that suggests there is something odd about this law that requires thought.

Senator COHEN. Let me turn in that vein to *McCleskey* v. *Kemp.* You are familiar with that decision.

Judge BREYER. Yes, yes.

Senator COHEN. I want to just ask you to tell us whether or not you agree with the rationale of the five-member majority, or the dissent, characterized by Justice Stevens. Let me just summarize the finding of the majority, that the study that was submitted by the plaintiffs in this particular case at most indicated a discrepancy that appeared to correlate with race, not a constitutionally significant risk of racial bias affecting Georgia's capital sentencing process, and thus did not violate the eighth amendment. So the study

in that particular case was given rather short shrift by the majority.

In the dissent, Justice Stevens said:

> The studies demonstrate a strong probability that McCleskey's sentencing jury, which expressed the community's outrage, had sensed that the individual had lost his moral entitlement to live, was influenced by the fact that McCleskey is black, his victim was white, and that this same outrage would not have been generated had he killed a member of his own race. This sort of disparity is constitutionally intolerable. It flagrantly violates the Court's prior insistence that capital punishment be imposed fairly and with reasonable consistency, or not at all.

So I would like your opinion as to whether you agree with the reasoning of Justice Stevens or that of the majority.

Judge BREYER. The case was decided. It is the opinion of the Court. I have not read it with enough care and thinking it out thoroughly to know the rights and wrongs of if I were deciding it afresh, but it would not be afresh, and to be—I know this is a big issue in Congress. I know that you are considering legislation——

Senator COHEN. Before we get to Congress, I do not want to talk about Congress. I want to talk about the use of statistical information before the Court. For example, in *Massachusetts Association of Afro-American Police, Inc.* v. *Boston Police Department*—I believe that was a case you decided in 1985——

Judge BREYER. Yes.

Senator COHEN [continuing]. You allowed an affirmative action program to stand because the plaintiff had shown a consistent pattern of discrimination within the department. So there, you found a statistical analysis to be substantive, persuasive, and therefore allowed the affirmative action program to stand.

Judge BREYER. That is right.

Senator COHEN. Now, in that case, Congress is not involved.

Judge BREYER. That is right.

Senator COHEN. So what I am asking you is if you have the same sort of statistical analysis prepared in a case involving racial disparity in capital cases, does it need an act of Congress, in your judgment, to set the law?

Judge BREYER. The question of statistics, as I have said, is their danger is that they are not really good statistics and do not prove what they say. That means when you have good statistics, they can be used to prove what they say.

Senator COHEN. I know you said there are statistics, and there are statistics.

Judge BREYER. Exactly.

Senator COHEN. Let me turn instead to Holmes who, instead of that, said that the history of the law is not logic, but experience; or a page of history is worth more than a volume of logic. Is there no doubt in your mind that there is a deep-seated racism that has existed in this country for many, many years; that there has been great disparity in terms of the capital punishment that has been inflicted upon those who are in the minority versus those in the majority? Has that not been the experience of this country, historically?

Judge BREYER. Historically, in the simplest way, the Constitution was written; the Constitution provided a limited central government that was meant to secure liberty, and a Bill of Rights was added to guarantee liberty. And one thing was missing. What was

missing was what the 14th amendment added, which was a promise of fairness. And what had existed before could not have been more unfair. After that promise was made in the 14th amendment, decades went by before people tried to keep the promise.

With *Brown*—and it is a legal reason, as well as a moral, practical and every other reason—the country decided we will try to keep our promise. It is hardly surprising to me, given the prior situation and given the years of neglect, that it will be decades, decades before that promise is eventually kept. But we are trying, and the trying is absolutely correct.

Senator COHEN. I come back to the point with the use of statistical information combined with the history of the practice in this country. Do you feel that the Court, in *McCleskey* v. *Kemp,* reached the right result?

Judge BREYER. Yes; and I think you are absolutely fair to ask the question, and I think it is so closely tied up with the particular legislation and the particular political debate, and so forth, that I am uncomfortable with——

Senator COHEN. Let me ask you a different way, then. In the event that the anticrime bill passes with the Racial Justice Act intact, which is a big question, does that settle the issue? In other words, is the Court then precluded from examining the statistical viability or accuracy of the information at that point?

Judge BREYER. There I am stuck, because I don't know. I don't know what the bill says. I am not being coy at this point. It is that I don't really know.

Senator COHEN. But you said yesterday that the Congress will decide it and the Court will accept it.

Judge BREYER. The Court then will go and accept what Congress does, and unless there is some constitutional problem—and I don't know, I mean at this stage maybe somebody will come along and say there is one, I don't know what it is—sure, it is up to Congress. I reserve a lot on that, because I don't know what the argument is.

Senator COHEN. Let me turn quickly to habeas corpus. This also is a matter of considerable debate here in the Congress. Back in 1988, the Judicial Conference was then headed by Chief Justice Rehnquist, and he commissioned the conference to make a study that was chaired by Justice Powell. Justice Powell concluded that habeas corpus was being used frivolously as a tactic to postpone the imposition of death penalty, rather than review the constitutionality of the trial.

There is considerable debate here in the Senate and the House on trying to strike the balance between finality and fairness of the process and between the two issues that frequently come up, namely, retroactivity and full and fair hearing. I would like your view on whether or not you feel the habeas corpus process has been abused to frivolously appeal convictions and delay decisions and sentences. And I know you come from a circuit that does not have many cases which are capital cases.

Judge BREYER. In our circuit, I have never sat on a capital case. I think the only State that has the death penalty is New Hampshire, and it has not applied it, at least not in any cases, so I have never had any experience with this in the death penalty context.

In the other context, the normal nondeath penalty context, I have no reason to think there is a particular problem. It seems to work OK. It seems to work OK.

Senator COHEN. One of the suggestions that has been made is that perhaps if defendants had competent counsel in the first instance, then there would be fewer reasons to have these habeas corpus petitions. I frankly take issue with that. I think a person could have the best counsel possible, and whenever someone is convicted, the first thing they are going to do is file a petition for habeas corpus, alleging incompetent counsel. That was my experience when I was practicing law, and I think it will be the experience from now into the future.

But do you have any views about whether having a cadre of professional litigants, defense counsel, would do anything to reduce the flow of petitions for habeas corpus in capital cases?

Judge BREYER. I really don't, because of my lack of experience in that area. I think that you correctly identified what I think are the two basic considerations.

Senator COHEN. Let me turn quickly—I keep saying quickly, as the lunch hour is approaching and past—to the fourth amendment. I am not sure who earlier touched upon the notion of losing perspective on what is going on. But we know that ours has become an increasingly more violent society and, as a result of that violence, we are taking and perhaps compromising some of the rights that we cherish most.

Recently—and I will yield to my colleague from Illinois in a moment—to cite as an example: all Chicago public housing leases contain a clause that grants law enforcement officials the right to search an apartment. Interestingly enough, some of the residents who are directly affected favor it most. But I would like to read again from a letter that Holmes wrote to his friend Polly.

He said:

> The tendency seems to be toward underrating or forgetting the safeguards and Bills of Rights that had to be fought for in their day and they are still worth fighting for. I have had to deal with cases that made my blood boil, and yet seemed to create no feeling in the public or even most of my brethren. We have been accountable for so long, that we are apt to take it for granted that everything will be all right, without taking any trouble.

Then he went on to note "all of which is but a paraphrase that eternal vigilance is the price of freedom."

I mention this, because there is again concern that we are moving into a more repressive area, that because of the violence in our society, the pervasive fear that is generated, we may tend to allow the Government in the form of the police, the FBI, or any other law enforcement agencies to perhaps do things that in the past we would say, hold it, that violates our right of privacy.

I mention this in connection with—is it *Irizzary,* the case that you decided, I-r-i-z-z-a-r-y? Anyway, you will be familiar with it. It was *U.S.* v. *Irizzary* in 1982. It involved an individual who was in a motel room.

Judge BREYER. Yes, I remember that.

Senator COHEN. You remember that case?

Judge BREYER. Yes.

Senator COHEN. In that case, the majority held that the police, who conducted a warrantless search, had violated the defendant's fourth amendment rights. You dissented in that case, believing that the defendant had no such right of privacy, or he had a diminished right of privacy by virtue of being, first, in a motel room, and, second, by the fact that he had punched a hole in the ceiling to hide some illegal substance, and, therefore, his right of privacy was not as expansive as it ought to be.

I mention all of this in conjunction with what is taking place today, because I think that we are losing sight of the fact of what is happening to our fundamental rights. The case I really want to talk about is the case, if I can pronounce it correctly, *California* v. *Sarola,* in which the police were hovering above in a helicopter, as I recall, being able to detect the growing of marijuana at a person's residence, in a fenced-in yard.

The court ruled that he did not have a legitimate expectation of privacy under those circumstances, because it was visible from an aerial viewpoint. It raised a question in my mind, as we and Senator Biden and others who have served on the Intelligence Committee have come to appreciate the tremendous technology that is available to us. We can from distant space spot a soccer ball on a field. We can read a license plate from outer space, practically.

The impact of technology upon fundamental rights is in danger of being eroded, unless we insist that technology cannot intrude in that area. That is why I was concerned about the rationale in the *California* v. *Sarola* case, that the expectation of privacy was unreasonable, because something was observable from an aerial viewpoint. With satellites we can pick out almost anything from outer space now.

I was wondering what your views are in terms of this so-called zone of privacy. The First Lady has complained that she had expected some de minimis zone of privacy that might be allowed her, as First Lady, and she found that that was a false expectation. But there is quite a difference between a public person and a private citizen in terms of what is a reasonable expectation of privacy and an era in which technology is proceeding in such a pace that we will approach the Orwellian nightmare that literature provides for us.

Judge BREYER. Insofar as you are suggesting that you have to remember that privacy is what Brandeis said is the most civil and the most important right of civilized people, and so forth, is a right that really is protected by the fourth amendment against unreasonable searches, unreasonable seizures.

Insofar as you are suggesting beware of fixed rules interpreting that, because if you just follow fixed rules, you will discover that technology outdates the rules, and remember to protect the basic value which might be threatened by some kind of technology that we have not heard of, or that we have heard of but we didn't know could get that far. I agree with that.

Senator COHEN. Could you explain the case, if you can recall it——

Judge BREYER. Yes, I do remember. I thought that the case, as I recall it—I might not be recalling it correctly—I think what I was not in disagreement about was the nature of the right. I think I

was in disagreement about the circumstance. I think what happened was that there were some police staking out a hotel or a motel, and they looked through the window and they see these people in there with guns that are pointed out. You know, these were some drug guys. I think it was a drug bust. And they were pointing the guns out the windows, so the police said we had better be careful about this.

The man was sitting—I think there was one man and he was inside, and they burst in and they found him sitting on the bed and they handcuffed him to the bed, and they looked for the gun and they didn't see it. But the knew the gun was there, because they had seen it through the window. Indeed, in the bathroom, I think up above the toilet there was a hole, and what the police had done is one of them went into the bathroom and reached up and there, sure enough, was the gun.

Basically, we were in agreement about the rule of law that the police had a right, even without a warrant, to go look for that gun, if they reasonably thought they were in danger. And the majority thought, no, no, they are not in danger, because, after all, this guy is handcuffed to the bed. I thought, well, a handcuff, you know, a lot can happen. I mean they might say, "I want to go to the bathroom," and they unlock it, he knows the gun is up there, they do not, I don't know how strong the bed is, and so in my mind is that the police were reasonable in thinking that there was a danger, and they knew there was a gun there and so they ought to look for it. In a factual matter, the others came out the other way.

Senator COHEN. I have exhausted my time, Mr. Chairman. I have other questions in the second round, and I will defer them. Thank you.

Thank you very much, Judge.

The CHAIRMAN. Thank you.

With regard to schedule, we have necessarily gone over—Senator Cohen has not gone over, but because of the timing, we did not finish this round at 1. We will come back at 2:15, unless you all want it to be longer. We will come back at 2:30.

Second, I would like to ask staff present here if they would survey their bosses to find out whether those who have already had a first round, and four or five have not, whether they have an interest in asking a second round of questions, and, if so, how long.

Because I would like, if it is reasonably possible, to finish with the witness tonight, since tomorrow we will go into what I initiated in the last hearing. It is now standard operating procedure that there is a closed session that every nominee who will come before this committee will participate in, where we go over, under rule 26 of the Senate, those matters that we are not able to discuss in public, that is, the FBI report. And we are going to, in every Supreme Court nomination that I chair, go into that hearing, whether we need it or not, so that is the forum in which we will be able to discuss openly, without fear of inadvertently violating the law, the contents of FBI reports.

What is in an FBI report, for those of you who are new covering this or listening, every nominee is required to have an FBI report done, and so we are going to discuss that tomorrow morning, which will require the presence of the nominee. But I would hope that we

would finish the public testimony tonight. Obviously, there is no need to rush it. If people have second rounds and they wish to go, we will have to go tomorrow afternoon in finishing. So I would ask the staff to check with their principals, if they have a second round.

We will adjourn now, Judge, until 2:30, at which time we will come back and begin with Senator Kohl. He has to be downtown at a meeting, but either Senator Kohl or Senator Feinstein.

Judge BREYER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

[Whereupon, at 1:22 p.m., the committee was in recess, to reconvene at 2:30 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. The hearing will come to order.

Welcome back, Judge. I realize it was a short lunch break, but I hope you at least got something to eat.

Our next questioner is Senator Pressler.

Senator PRESSLER. No, Mr. Chairman.

The CHAIRMAN. Excuse me. Let me make sure I am correct.

Senator PRESSLER. I think my colleague over there——

The CHAIRMAN. I beg your pardon. Senator Kohl. I am sorry.

OPENING STATEMENT OF HON. HERBERT KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Thank you very much, Mr. Chairman.

Judge Breyer, as you know, John Adams once said that we are a government of laws and not men. But this is, at most, a half truth, for ultimately it is men and women who give meaning to the law. And so it follows that character matters, and matters a great deal.

Character is not only to be found in the lines of your very impressive resume, Judge Breyer; it is also to be appreciated in the exchange of ideas and values and viewpoints that began yesterday and which we are continuing today.

I have first a few open-ended questions that I would like to throw at you.

Judge Breyer, yesterday you said that your mother did not want you to spend too much time with your books, and because of her urgings, you said that your ideas about people do not come from libraries. So I want to ask you something about people, the American people, and the problems that we face today as a Nation. And I hope that you will very much take this opportunity to speak openly and frankly, and perhaps not as a nominee for the Supreme Court but as an American citizen who is intelligent and thoughtful and who has, I know, thought long and hard about the problems that we face as a country.

Judge Breyer, what do you think are the major challenges that we face today as an American society, our problems, whether it be racism, poverty, crime, or drugs, the growing disparity between the rich and the poor in our country? What are some of our major problems? And as we look ahead, how do you think we are going to face and resolve one or two of these major problems as a society?