

The CHAIRMAN. Thank you very much.

I apologize, Professor Pitofsky, for not being here while you were here, and, Cass, it is great to see you.

I assume Ms. Matthews has not spoken yet. Correct?

Ms. MATTHEWS. Yes.

The CHAIRMAN. I want to thank Senator Kennedy for chairing this. I have a slight scheduling problem. The reason I was out is we were trying to work out a matter on the crime bill between the House and the Senate, and I apologize for not being here.

Because I am going to have to leave before 5 o'clock, probably about 4:55, before the last panel speaks, I want to indicate for the press that is here what the schedule will be for the remainder of consideration of the Breyer nomination. We will now question this panel and the next panel—and the next panel is a very important panel as well because they represent the various bar associations that have done an awful lot of work on this, and other nominations, and we have come to rely on their judgment a lot.

We will then close the hearing, and we will have an executive session in which we will vote in committee, assuming no Senator exercises his or her right to hold it over for a week—I have no notion anyone will do that—at the latest by next Thursday, possibly as early as Tuesday. I want to confer with the ranking member who I believe is, along with his colleagues, ready to accommodate a Tuesday executive committee meeting. To translate, that means we get to vote on Judge Breyer in committee on Tuesday, I hope, but the latest, Thursday.

If we vote on Tuesday, it is my expectation, absent any opposition—and I know of none—we would be voting on Judge Breyer on the floor as early as the end of next week, but I expect no later than the beginning of the following week.

I do not know if that is at all helpful to the press, who always get stuck having to cover these details, but that is what my expectation is.

Now, Ms. Matthews, again, I apologize for the interruption, and the floor is yours.

STATEMENT OF MARTHA MATTHEWS

Ms. MATTHEWS. Thank you. It is a privilege to be here, Senator Biden, Senator Kennedy.

First, I have to offer a disclaimer. I know absolutely nothing about antitrust or regulation.

The CHAIRMAN. That qualifies you, with the exception of Senator Kennedy and a few others, to be a member of the Judiciary Committee.

Ms. MATTHEWS. I am not sure if that is a disappointment or a relief. [Laughter.]

I am a civil rights lawyer and poverty lawyer. I am a staff attorney at the National Center for Youth Law, which is a legal services national backup center specializing in legal issues affecting poor children and families. What I actually do is mostly class action litigation on behalf of foster children, and other litigation and administrative advocacy related to benefit levels, children's access to health care, and other vital legal issues affecting poor children. So

I am not qualified to speak on the debate that we have just heard on antitrust and regulation.

The reason that I think that I was asked to testify today is because several years ago I had the rare opportunity to work both with Judge Breyer and with the distinguished Justice that he was nominated to replace. I served as a law clerk for Judge Breyer from 1988 to 1989. I served as a law clerk for Justice Blackmun from 1989 to 1990. And so I had the somewhat unique opportunity to be there on a day-to-day basis at the elbow of each one of these jurists and see what they do every day.

So I would like to direct my remarks not so much to their overall jurisprudence. You have heard law professors who are far more experienced than I to do that, but as to what Judge Breyer was like on a day-to-day basis, what he was like working—

The CHAIRMAN. Did you write the *Ottati* opinion? [Laughter.]

Ms. MATTHEWS. Law clerks do not write opinions.

The CHAIRMAN. I know. Maybe you are the one we should have speaking to all this time.

Ms. MATTHEWS. I am sure that any fatal errors in antitrust opinions are entirely—well, I cannot say they are due to mistakes of law clerks, because he checks everything that we write so carefully.

Actually, the biggest case that I researched for Judge Breyer during the year I was there was a case about futures trading on the London options market, something I knew nothing about before I came and I knew nothing about after I left, either.

The CHAIRMAN. Well, he has made an Anglophile of almost all of us since we have had to learn about Lloyd's of London.

Ms. MATTHEWS. I was saddened to hear of Justice Blackmun's retirement, but I cannot think of anyone better qualified to replace him than Judge Breyer. Like Justice Blackmun, he cannot be easily labeled as a liberal or conservative judge. His views on cases have never been predetermined by any political agenda. Nobody could accurately say about him that he always rules for the plaintiff in a civil rights case or always rules for the Government in a criminal case or any such generalization.

Judge Breyer has shared with Justice Blackmun a profound commitment to judge each case fairly as it comes before him, with rigorous honesty, intellectual clarity, lack of bias, and with a deep respect for the limits of judicial authority.

It is striking to me that Judge Breyer has been nominated to replace Justice Blackmun because there are some profound similarities between them, even though their temperaments are quite different.

Again, like Justice Blackmun, Judge Breyer has never forgotten that each case that comes before a Federal court is of great importance to the parties involved in the case and to other people who are going to be affected by the decision in the case. Each case he has treated with—

The CHAIRMAN. How do you know that? People say that. But did either of the judges ever turn to you and the clerks and say, By the way, Martha, keep in mind when you look at these cases—I mean, when you—how do you know that?

Ms. MATTHEWS. Well, in Judge Breyer's case, by the rigorous attention he has paid to the record. Judge Breyer makes sure that

every—I mean, the records sent to the Federal circuits are voluminous. He is familiar with every page of those records, makes sure that we really understand how the case came about, who the parties are, what happened to them, what is going to happen to them if they win or if they lose.

I do not think that he is the kind of judge that takes a case as an opportunity to explore some academic legal theory or to write a Law Review article, you know, in the guise of a judicial opinion. I think that he profoundly cares what happens to the people in the cases.

That is shown, for example, by the tone of his questioning at oral argument, and like Justice Blackmun, in fact, is famous. The questions that he asks at oral argument show that kind of concern for what is going to happen as a result of this case.

Another thing that I would like to say about oral argument is that one thing that deeply impressed me as I watched arguments before Judge Breyer is the respect and courtesy that he treated the lawyers who argued the cases with. Not everyone who appears before a Federal circuit court of appeals is brilliant. Some of them are eloquent. Some of them stumble over their words. Some of them drop their papers off the podium.

Every single lawyer who comes before him gets a fair chance to plead his cause. His questions to the lawyers show that he is prepared on their cases. He genuinely wants to hear what they have to say and wants to give them a fair chance. And I think that that is one of the most profound ways in which a judge as a public figure can show respect for the law and show respect even for the positions of lawyers with whom he disagrees.

Another thing I would like to comment on is—this may be prosaic, but the hours that Judge Breyer works. He is there every day. He is completely prepared on each case. The cases that are argued before the court, he is fully briefed. He sits on the bench, understanding each case, and I am not talking about interesting—well, to me, interesting cases. I am saying that the same amount of attention to detail goes into a case on, say, the proper interpretation of a Social Security regulation as to a cutting-edge issue of first amendment law that his law clerks find fascinating. And that gave me a deep sense of respect for him, that it did not matter if a case seemed to my mind to be boring. He would believe that it deserved the same amount of respect and the same amount of detail.

But in spite of the kind of standards that he held himself to, I would also like to say that he was a joy to work for. He was always courteous and polite to his clerks. He was fascinating to talk to in conversation. We used to—Judge Breyer has a taste for sweets, and we used to leave cookies out on the table in the room where we worked as clerks so that we could sort of tempt him to come in and sit down and talk to us. We called this “judge bait.” We would always leave out judge bait because, no matter what subject that you talked to him on, he had something fascinating to say. And he had a broad range of interests beyond the subjects on which he has written books. It was amazing the number of areas of legal scholarship that he kept up with.

I do not want to take too much time with personal reminiscences, but that has always stood out to me.

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.