

Judge.

**PANEL CONSISTING OF JOSE TRIAS MONGE, FORMER JUSTICE OF THE SUPREME COURT OF PUERTO RICO, SAN JUAN, PR; MARGARET H. MARSHALL, VICE PRESIDENT AND GENERAL COUNSEL, HARVARD UNIVERSITY, CAMBRIDGE, MA; AND HELEN G. CORROTHERS, VISITING FELLOW, NATIONAL INSTITUTE FOR JUSTICE, AND FORMER COMMISSIONER, U.S. SENTENCING COMMISSION, WASHINGTON, DC**

# **STATEMENT OF JOSE TRIAS MONGE**

Mr. TRIAS MONGE. Thank you, Senator.

My name is Jose Trias Monge. I served as chief justice of Puerto Rico from 1974 to 1985. As part of my duties and pleasure, I have been a close student for many years of the Supreme Court of the United States, and given its special relationship to Puerto Rico, of the U.S. Court of Appeals for the First Circuit. Their decisions on insular affairs since the start of the century have been discussed at length in several of my books. In a 1991 book, I singled out for special praise several of Judge Breyer's opinions on the subject.

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Senator METZENBAUM. Judge, I think it would serve your purposes better if I interrupted you before you got into the main thrust of your remarks. I am informed I have 5 minutes to get to the floor.

This committee stands in recess until some other member of the committee returns, so that we may proceed forward. Please forgive us.

[Recess.]

The CHAIRMAN. The hearing will come to order.

I must apologize to our witnesses. We are debating one of the most controversial issues of that every year comes up, and that is the foreign aid appropriations bill, which lends itself—it is very important, but occasionally lends itself to some demagoguery on occasion and occasionally lends itself to very difficult votes on occasion. But there is a whole series of votes, and this is going to continue.

I failed to announce to the press and everyone here that we are, as is obvious by now, going right through the lunch hour, and our fourth panel, which has been brought up but not introduced at this point, includes several of Judge Breyer's colleagues who know him in his various capacities as Chief Judge for the First Circuit, a professor at Harvard Law School, and his work on the Sentencing Commission in the late 1980's.

In addition, we are fortunate to have on this panel a former colleague of the Chief Judge in the First Circuit, Judge Trias, and Judge, it is a pleasure to have you here. I appreciate you making the effort.

Justice Trias is a former chief justice of the Supreme Court of Puerto Rico, which is located in Judge Breyer's circuit, and currently serves as counsel to Trias—that is all I have here, but that is not the whole name of the firm—what is the name of the firm?

Mr. TRIAS MONGE. Trias & Melendez.

The CHAIRMAN. Trias & Melendez, in San Jose, PR. And I would like to thank you for being here, Mr. Justice.

With us also is Margaret Marshall, vice president and general counsel of Harvard University, where Judge Breyer is employed as a professor—I guess now, an adjunct professor; is that correct—

Ms. MARSHALL. That is correct, Mr. Chairman.

The CHAIRMAN [continuing]. Professor of law, in addition to his duties as Chief Judge of the first circuit.

Prior to her appointment at Harvard, Ms. Marshall was a partner in the Boston law firm of Choate, Hall & Stewart.

And Helen Corrothers has extensive experience in the field of criminal justice. She is past president of the American Correction Association; served with Judge Breyer on the U.S. Sentencing Commission. Appointed to the Commission in 1985 by President Reagan, Ms. Corrothers served on that body until 1991.

I welcome you all.

Judge if you would begin, and then we will work our way across. I thank you very much.

Mr. TRIAS MONGE. Mr. Chairman, I had started briefly while you were out. As part of my duties and pleasure, I have been a close student for many years of the Supreme Court of the United States, and given its special relationship to Puerto Rico, of the U.S. Court of Appeals for the First Circuit. Their decisions on insular affairs since the start of the century have been discussed at length in several of my books. In a 1991 book, I singled out for special praise several of Judge Breyer's opinions on the subject.

Puerto Rico is a mixed law jurisdiction. Large areas of its legal system are governed by the civil tradition and others by the common law. During the early part of this century, the boundary between the civil and the common law became increasingly blurred. The lower Federal courts used to decide civil law questions on the basis of common law doctrines and reverse local rulings with great frequency. The situation promoted the Supreme Court of the United States to point out repeatedly the deference due to the decisions of local courts on matters of local law, particularly in the light of the different conformation of such law.

In the words of Oliver Wendell Holmes:

This Court has stated many times the deference due to the understanding of the local courts upon matters of purely local concern. This is especially true in dealing with the decisions of a court inheriting and brought up in a different system from that which prevails here. Our appellate jurisdiction is not given for the purpose of remodelling the Spanish-American law according to common law conceptions, except so far as that law has to bend to the expressed will of the United States.

In spite of this and other statements by the Supreme Court of the United States, the lower Federal courts have sometimes handled civil law questions in diversity cases without proper attention to civil law sources. In the tradition of Holmes and other distinguished members of the Supreme Court through the years, Judge Breyer has displayed great sensitivity to the civil law roots of several areas of Puerto Rican law and the intricacies of the constitutional relationship between the United States and Puerto Rico.

Judge Breyer has contributed in other, less-known ways to Puerto Rican society. Many years ago, I received a phone call from him. He wanted to know whether I could recommend a candidate for one

of his clerkships. I gave him the name of one of our clerks who was then doing postgraduate work at Yale Law School. That man was the first Puerto Rican to clerk for a member of the Court of Appeals for the First Circuit. He has been for some years now the dean of the University of Puerto Rico Law School. Another of Judge Breyer's clerks was until recently attorney general of Puerto Rico.

These considerations, to an extent parochial in nature, do not provide, however, the basic reasons for my endorsing Judge Breyer's nomination to the Supreme Court. The Supreme Court, after all, seldom deals with Puerto Rican issues. My admiration for Judge Breyer is rather based on two other considerations: the quality of his judicial thinking—

The CHAIRMAN. Judge, I hate to do this to you. I just got a phone call, and the Speaker of the House of Representatives and the chief of staff of the White House are on the telephone and asked whether I would join them briefly on a conference call to discuss a matter that is of some urgency, which is the crime bill. With your permission, I would like to recess for about 3 minutes to see if I can arrange to do that another time.

With that, I will recess just for a few minutes. I am going to be right back here on the telephone, and I will come right back in.

[Recess.]

Senator HATCH [presiding]. Judge Monge, why don't you continue?

Mr. TRIAS MONGE. Senator, I was about to finish. I had been talking about some of Judge Breyer's positions with reference to the distinction between the attention due to civil law questions and diversity cases. But I was saying also that those were not the reasons for my admiration for Judge Breyer, and that that is, rather, based on two further considerations—the quality of his judicial thinking, and his worth as a human being. Judge Breyer, to my believe, is blessed with a wide-ranging, inquisitive intellect, solid learning, and a passion for fairness. As a human being, I have found him to possess a great capacity for friendship, a warm, caring manner, and deep respect for the opinions of others.

I believe that, should you decide to confirm him, Judge Breyer certainly would be not only a good Justice of the United States Supreme Court, but that he has the makings of a truly great Justice.

Thank you.

[The prepared statement of Mr. Trias Monge follows:]

#### BIOGRAPHICAL SKETCH OF JOSE TRIAS MONGE

Born at San Juan, Puerto Rico, May 5, 1920. B.A., University of Puerto Rico, 1940; M.A., Harvard University, 1943; LL.B., Harvard University, 1944; J.S.D., Yale University, 1947; LL.D. (Hon.), Inter-American University, 1986. Married since 1943 to Jane Grimes (B.A. Radcliffe College, 1943, b. June 3, 1921).

Attorney General, 1953–1957; member, Constitutional Convention of Puerto Rico, 1951–1952; United States Representative before the Caribbean Commission, 1954–1960; United States Representation to the Inter-American Juridical Commission, Organization of American States (OAS), 1966–1967; trustee, Superior Educational Council, 1962–1972; Vice-President, Casals Festival, Inc., 1957–1969 and 1973–1974; private practice, 1945–49; 1950–53; 1957–1974; Chief Justice, Supreme Court of Puerto Rico, 1974–1985; Distinguished Professor, University of Puerto Rico, 1985–; at present of counsel, Trias & Meléndez.

Honors: Elected life member, Royal Academy of the Spanish Language, Puerto Rico Chapter, 1979; elected member, Société de Législation Comparée, France, 1981; guest lecturer at the Seminar on American Studies, Salzburg, Austria, 1981; elected

Associate Member of the International Academy of Comparative Law, France, 1982; President, P.R. Academy of Jurisprudence and Legislation, 1986-.

Author: *El Sistema Judicial de Puerto Rico*, Río Piedras, Ed. Universitaria, 1978, *La Crisis del Derecho en Puerto Rico*, San Juan, Edit. JTS, 1979; *Historia Constitucional de Puerto Rico*, 4 vols., Río Piedras, Ed. Universitaria, 1980-1983; *Sociedad, Derecho y Justicia*, Ed. Universitaria, Río Piedras, 1986; *El Choque de Dos Culturas Jurídicas en Puerto Rico*, Equity Publishing Co., a U.S. Division of Butterworths, 1991; a fifth volume to the *Historia Constitucional* is being published this Fall.

#### PREPARED STATEMENT OF JOSE TRIAS MONGE

My name is José Trias Monge. I served as Chief Justice of Puerto Rico from 1974 to 1985.

As part of my duties and pleasure I have been a close student for many years of the Supreme Court of the United States and, given its special relationship to Puerto Rico, of the United States Court of Appeals for the First Circuit. Their decisions on insular affairs since the start of the century have been discussed at length in several of my books. In a 1991 book I singled out for special praise several of Judge Breyer's opinions on the subject.<sup>1</sup>

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Judge Breyer has contributed in other, less known ways to Puerto Rican society. Many years ago I received a phone call from him. He wanted to know whether I could recommend a candidate for one of his clerkships. I gave him the name of one of our clerks who then was doing postgraduate work at Yale Law School. That man was the first Puerto Rican to clerk for a member of the Court of Appeals for the First Circuit. He has been for some years now the Dean of the University of Puerto Rico Law School. Another of Judge Breyer's clerks was until recently Attorney General of Puerto Rico.

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<sup>1</sup> *El Choque de Dos Culturas Jurídicas en Puerto Rico*, Equity Publishing Company, San Juan, 1991, p. 391 et seq.

<sup>2</sup> *Diaz v. González*, 261 US 102, 105-106 (1923). See also Holmes' opinion in *Calaf v. Calaf*, 232 US 371 (1914).

<sup>3</sup> Among other decisions, see: *Republic Sec. Corp. v. P.R.A.S.A.*, 674 F2d 952, 958 (1st Cir. 1982); *Reyes-Cardona v. J.C. Penney Co., Inc.*, 694 F2d 894 (1st Cir. 1982); *Federal Insurance Co. v. Banco de Ponce*, 751 F2d 38 (1st Cir. 1984); *Córdova & Simonpietri Ins. Agency, Inc. v. Chase Manhattan Bank*, 649 F2d 36 (1st Cir. 1981).

Mister Chairman and members of this Committee, I believe that, should you confirm him, Judge Breyer will not only be a good Justice of the United States Supreme Court; he has the makings of a truly great Justice.

Senator HATCH. Thank you very much.

Ms. Marshall.

#### STATEMENT OF MARGARET H. MARSHALL

Ms. MARSHALL. Senator Hatch, it is a particular pleasure for me to appear before this committee today to testify on behalf of Judge Stephen Breyer.

I knew Judge Breyer first as a member of the bar, and I appeared before him in the first circuit court of appeals. I may be one of the few witnesses here today who has actually had the pleasure, I might say, of appearing before Judge Breyer, and I came to know him as well in my capacity as president of the Boston Bar Association, and I know him more recently as a friend.

I have a peculiar and deep respect for an independent judiciary and the role that it plays in our society. My respect stems from my perspective as an immigrant from South Africa, where in the past, the judiciary in that country too often rubber-stamped apartheid-suppressive laws and failed to protect its citizens.

By contrast, in this country, we have the protection of independent judges, women and men of integrity and courage, and Judge Breyer is an outstanding example of those qualities.

First, as a lawyer appearing in the first circuit, it is always a pleasure to draw Judge Breyer as a member of the panel. Any appellate advocate wants to believe that oral argument before a court can make a difference, and that is so with Judge Breyer; one feels as if he has focused on the issues and that he sees the case not as an abstraction but as a reality for the parties involved. In his questioning, he can be serious and attentive, but also witty. And to appear before Judge Breyer is to appear before a "hot bench," as we say. The questions are many and demanding, and one is relieved when the argument draws to a close, but also disappointed that his questions do not continue.

Senator HATCH. He and Justice Ginsburg are going to enjoy each other, I think.

Ms. MARSHALL. I think there is going to be an interesting issue on that question when he is there.

Senator HATCH. That is correct.

Ms. MARSHALL. With so many women now admitted to the bar, permit me to add one historical observation. A decade or more ago, there were not many of us who appeared in court, and I always had a sense when a judge was really listening, even though a woman was speaking. And long before I knew Judge Breyer personally, I recognized him as someone who did listen to women and who did not permit bias to influence his decisions, and who could be persuaded to change his mind by skillful advocacy.

As an officer and later president of the Boston Bar Association, I had many occasions in which to observe Judge Breyer in a different role. First, he is an admirer of lawyers, and not all judges evince the same view. He welcomes our participation in the judicial process; he wants them to be well-informed. Judge Breyer is generous with his time, always willing to meet with bar representatives

or to appear as a speaker on legal education panels. He listens and responds. Indeed, he does not wait to be approached by the bar, but often reaches out to make sure that lawyers understand changes in the rules or other matters of importance.

It was Judge Breyer who first suggested—and perhaps the chairman might be interested in this—that he discuss with lawyers the changes contemplated by the Judicial Improvement Act of 1990 and to alert advocates to the significant changes that were contemplated by the civil justice expense and delay reduction plans.

I know there has been testimony about the site of the new Federal courthouse in Boston, but I should say that before the site was selected, Judge Breyer approached members of the bar to ascertain our views, and as you know, he arranged for lawyers and citizens to meet with the architects and others to discuss their concerns.

In fact, Judge Breyer is always ready to talk with any group of lawyers or to appear at any event if it is helpful to lawyers or judges; and he is as thoughtful and helpful with new members of the bar as he is with established bar leaders and litigators.

I recall a talk that he gave some years ago at the American Bar Association, at its ceremony at the Franklin Flaschner Judicial Award, given each year to an outstanding jurist of a court of limited jurisdiction. Not so many attend that particular ABA ceremony each year—certainly not the many hundreds who flock to the meetings of the big ABA sections—but, as is typical of him, Judge Breyer took the assignment seriously, and he chose on that occasion to reflect on the relationship between appellate judges and those whose decisions are reviewed on appeal.

It was as thoughtful aim to meet illuminating talk reflecting real sensitivity and insight on the role of appellate judicial making delivered to judges who had a real interest in the subject. In fact, Judge Breyer has worked hard and effectively to bridge the gap that often exists between judges and lawyers, and every bar president will be fortunate to have as a chief in her circuit a judge of Judge Breyer's qualities.

As I said, I have also known Judge Breyer personally for a number of years, and let me make a few comments about him as a friend. His qualities include enthusiasm, willingness to listen, interest in a wide range of subjects, humor, and gentleness.

I think of another great first circuit judge, Calvert Magruder, the first Supreme Court law clerk of Justice Brandeis, later a close friend to Justice Frankfurter and himself a distinguished member of the Harvard Law School faculty. Judge Magruder was known for his intelligence, his fairness, his integrity and his realism, and Judge Breyer is a man I believe in the Magruder tradition, as a Justice of the Supreme Court, he would give distinguished service to this Nation, even as we in Massachusetts would regret his departure from the first circuit.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Marshall follows:]

#### PREPARED STATEMENT OF MARGARET H. MARSHALL

##### CURRICULUM VITAE

Margaret H. Marshall is Vice President and General Counsel of Harvard University. Prior to her appointment in November, 1992 she was a senior partner in the

Boston law firm of Choate, Hall & Stewart, where her practice concentrated on civil litigation.

Ms. Marshall was born in Newcastle, Natal, in the Republic of South Africa. In 1966 she received her B.A. from Witwatersrand University, in Johannesburg, South Africa. An opponent of apartheid, she served as President of the National Union of South African Students from 1966 to 1968. She came to the United States in 1968 and became a United States citizen in 1978. In 1969 she received a master's degree from the Harvard Graduate School of Education, where she also pursued doctoral studies from 1969 through 1973. She received her J.D. degree from Yale Law School in 1976.

In 1991 Ms. Marshall was elected president of the Boston Bar Association. She also serves as Massachusetts state chair of the American Bar Foundation and as a delegate to the American Bar Association.

Ms. Marshall is a member of the American Law Institute, the Advisory Committee on Rules of the United States Court of Appeals for the First Circuit, and served on the Civil Justice Advisory Group of the U.S. District Court for the District of Massachusetts.

She has served on a number of boards including the National Lawyers Committee for Civil Rights Under Law, the Supreme Judicial Court Historical Society, and the Civil Liberties Union of Massachusetts.

Ms. Marshall has also served on the boards of a number of charities. She has maintained her interest in South Africa and is a trustee of The Africa Fund and is a board member of Southern Africa Legal Services and Legal Education Project, Inc. and of Africa News. She is a trustee of Regis College, Weston.

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Mr. Chairman, Members of the Senate Committee on the Judiciary:

It is a particular pleasure for me to appear before you today to testify on behalf of Judge Stephen Breyer. I knew him first as a member of the bar, and I appeared before in the First Circuit Court of Appeals. I came to know him as well in my capacity as President of the Boston Bar Association and related bar activities. And I know him more recently as a friend.

I have a peculiar and deep respect for an independent judiciary and the role that it plays in our society. My respect stems from my perspective as an immigrant from South Africa, where in the past the judiciary too often rubber stamped apartheid's oppressive laws and failed to protect its citizens. In this country we have the protection of independent judges, women and men of integrity and courage. Judge Breyer is an outstanding example of those qualities.

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I have known Judge Breyer personally for a number of years, and let me make a few comments about him as a friend. His qualities include enthusiasm, willingness to listen, interest in a wide range of subjects, humor, gentleness. In a crowded room he will notice who is excluded, and move to include them. I have been taken aback at the suggestion that Judge Breyer lacks passion: one senses always his enthusiasm, and his intensity. It is true that one sometimes has to run to keep up with him, but the attempt to keep up is a pleasure.

I think of another great First Circuit Judge, Calvert Magruder, the first Supreme Court law clerk of Justice Brandeis, later close to Justice Frankfurter, and himself a distinguished member of the Harvard Law School faculty. Judge Magruder was known for his "intelligence, fairness, integrity and realism."<sup>1</sup> Judge Breyer is a man in the Magruder tradition. As a Justice of the Supreme Court he would give distinguished service to this Nation, even as we in Massachusetts would regret his departure from the First Circuit.

The CHAIRMAN. Thank you, Ms. Marshall.  
Ms. Corrothers.

#### STATEMENT OF HELEN G. CORROTHERS

Ms. CORROTHERS. Yes, Mr. Chairman and members of the committee. It is so good to see you again. I still remember and appreciate the support that you and this committee rendered for our efforts on the Commission.

The CHAIRMAN. We appreciate the work you did. It was heavy lifting.

Ms. CORROTHERS. That is right. Thank you.

I appreciate the opportunity to appear before the committee today to support the nomination and recommend confirmation of the chief judge of the U.S. Court of Appeals, first circuit, Stephen Breyer, for the post of Associate Justice, U.S. Supreme Court.

I would like to offer what may be for you a different kind of testimony. You have no doubt been inundated with opinions attesting to Judge Breyer's important educational and professional credentials, with statements about his wit, keen intelligence and knowledge. And I agree with all of these assessments.

But I invite you to share my perspectives concerning Steve Breyer as an associate and fellow human being in a professional setting. Steve and I were colleagues at the U.S. Sentencing Commission, and I am going to address the qualities and traits that I observed during that period.

It is important to consider the fact that, at the beginning of our work effort, it was necessary for us during a short period of time to find office space, hire staff, develop an organizational structure,

<sup>1</sup> Dargo, George "A History of the United States Court of Appeals for the First Circuit: Volume 1, 1891-1960," p. 216.



begin and complete the initial set of guidelines, an unprecedented task, and at the same time deal with numerous issues concerning each area of concern addressed by the guidelines.

During this early period and at different points later, long hours and hard work proved to be routine. It was a time when seven people, all eager to make a personal contribution to the product, were faced with the knowledge that there was not an automatic consensus on important issues.

Hectic periods of this sort often brings out the worst traits in people. So it is meaningful for you to know that it is from this in the trenches perspective that I saw Steve Breyer's true character. Also, it will be necessary for me to examine Judge Breyer's qualities against the background of my own personal values.

The first trait I would like to mention is Steve Breyer's ability to relate to persons from diverse backgrounds. Judge Breyer is from a world of privilege, from the I believe western and north-eastern part of the country. Conversely, I am from a background of poverty, from the southern part of the country. As a woman born of African descent in the rural segregated South. It would not be surprising if we failed to relate to each other.

However, I found that I could relate to him and his ideas. I also noted that, as Steve Breyer listened to my opinions on various matters of the years, that he had the extraordinary ability to not just listen, but to hear and to comprehend the information. He understood that each Commissioner brought a different strength and perspective to the Commission, and that we each had something of import to share.

Moreover, he could articulate or accurately communicate our views in subsequent discussions or in his famous amazingly clear, I guess you could call them summations or review of all matters covered before decisions were made.

I would like to mention why I value this attribute. We are a diverse nation. We have different professions. There are differences that are physical, such as race, gender and age. Additional differences are less visible, but also important, such as cultural heritage, personal background, functional expertise, and certain strengths and skills which are both inherited and learned.

The Nation is best served, if the Justices on the court of last resort are able to understand, then communicate and articulate that understanding, as the law is construed and applied to particular situations.

The second trait I observed was one of accountability. I believe that Steve Breyer holds the same commitment as I do about the importance of accountability in a criminal justice system that strives for effectiveness. Now, such a system must be strong on accountability and replete with fairness.

Of course, as you know, the Commission's overall goal had to do with providing a structure and framework for sentencing decisions, so that similar offenders who commit similar offenses are sentenced in a similar fashion or to enhance fairness.

I came to believe that Steve Breyer cared about this precious entity. He shared significant sensitivity to my deep-seated concerns about fairness. A person from my background might view justice as a hoped-for miracle, and fairness as a scarce and valuable commod-

ity. I think Steve Breyer on the highest court can contribute to the dispensation of that precious commodity called justice.

I would like to mention briefly industriousness. It is relevant to this appointment to note that Steve Breyer is one of the hardest working people that I know. His thoroughness and preparation for our meetings on the Commission was key to his ability to serve as a stimulus for compromise. Not only was it necessary for him to research and think through his own perspective or position on subject issues, but it was necessary for him to examine the issues from a variety of perspectives.

His penchant for hard work and thorough preparation, along with his God-given wisdom, enabled him to synthesize the various seemingly dissimilar ideas sufficiently to be the leader in effecting compromise on numerous occasions.

I would be remiss, if I failed to note his temperament, his pleasant disposition and respectful treatment of staff and other individuals with whom he had contact on a routine basis.

Finally, Judge Stephen Breyer is a man who can relate to all Americans, and he is fair, a man of great integrity and sound judgment. He is a decent human being. I am confident that should you confirm him, he will through his service on the Court bring great honor on this committee, President Clinton and to our Nation.

[The prepared statement of Ms. Corrothers follows:]

#### PREPARED STATEMENT OF HELEN G. CORROTHERS

##### CURRICULUM VITAE

Aug 1993 recipient of her profession's highest award, the E.R. Cass Correctional Service Award from the American Correctional Assn.

A native of Pine Bluff, Arkansas, Helen G. Corrothers recently completed a term of office as the President of the American Correctional Association, the largest correctional association in the world. In 1985, she was appointed by President Ronald Reagan to the post of Commissioner, United States Sentencing Commission. She served in this capacity from October 1985-November 1, 1991. The Commission's purpose is to meet the Congressionally imposed mandate, which includes the establishment of sentencing policies and practices for the federal criminal justice system that meet the established purposes of sentencing and ensure certainty and fairness while avoiding unwarranted sentencing disparities among like defendants. Corrothers received her first appointment from President Reagan in 1983 to the United States Parole Commission. In addition to her national policy development and formulation responsibilities, she assumed command in January, 1984, for the fourteen-state Western Region with headquarters in Burlingame, California. This position included responsibility for administration, release decisions, the training of several hundred probation officers and quasi-judicial duties to include the issuance of summons, warrants, and subpoenas that were implemented by the United States Marshals Service.

Prior to her federal posts, she was Superintendent/Warden of the Women's Correctional Facility for the State of Arkansas. Violent offenders consistently constituted the bulk of the prison population throughout her tenure. She developed a successful program of administration and rehabilitation and ensured the facility's recognition through receipt of national accreditation. Additionally, she is a veteran. She advanced through the ranks in the United States Army from Private to Captain and served with distinction in the Far East, Europe, and the United States. She was Distinguished Military Graduate from Officer Leadership School and has received the Good Conduct Medal, the National Defense Service Medal, and the Army Commendation Medal.

She has served on numerous local, state, and federal policy-making boards, has extensive experience in the Criminal Justice field and has received numerous awards for her contribution to the field of corrections. She is currently an officer and member of the Executive Committee of the American Correctional Association; an officer and member of the National Board of Directors for the Volunteers of America, Inc.; and member of the National Board of Directors for The National As-

sembly of National Voluntary Health and Social Welfare Organizations, Inc. She is included in the "International Directory of Distinguished Leadership" and is featured by the Marquis Publication Board in their editions of "Who's Who of American Women" and "Who's Who in the World."

Mr. Chairman, members of the committee, my name is Helen G. Corrothers. I am from Pine Bluff, Arkansas. A retired member of the United States Sentencing Commission and currently a Visiting Fellow, conducting a research project, at the National Institute of Justice. I appreciate the opportunity to appear before the committee today to support the nomination and recommend confirmation of the Chief Judge, United States Courts of Appeals, First Circuit, Stephen Breyer for the post of Associate Justice, United States Supreme Court.

I would like to offer, what may be for you, a different kind of testimony. You have no doubt been inundated with opinions attesting to Judge Breyer's important educational and professional credentials, with statements about his wit, keen intelligence and knowledge and I agree with all of these assessments. But, I invite you to share my perspectives concerning Steve Breyer as an associate and fellow human being in a professional setting.

Steve and I were colleagues at the U.S. Sentencing Commission and I am going to address the qualities and traits that I observed during that period. It is important to consider the fact that at the beginning of our work effort, it was necessary for us (during a short period of time) to find office space, hire staff, develop an organizational structure, begin and complete the initial set of guidelines (an unprecedented task), and at the same time deal with numerous issues concerning each area of concern addressed by the guidelines. During this early period and at different points later, long hours and hard work proved to be routine. It was a time when seven people, all eager to make a personal contribution to the product were faced with the knowledge that there was not an automatic consensus on important issues. Hectic periods of this sort often bring out the worst traits in people. It is meaningful for you to know that it is from this "in the trenches" perspective that I saw Steve Breyer's true character. Also, it will be necessary for me to examine Judge Breyer's qualities against the background of my own personal values.

The first trait to be mentioned is Steve Breyer's ability to relate to persons from diverse backgrounds.

Judge Breyer is from a world of privilege, from the western and northeastern part of the country. Conversely, I am from a background of poverty, from the southern part of the country. As a woman, born of African descent, in the rural segregated south, it would not be surprising if we failed to relate to each other. However, I found that I could relate to him and his ideas. I also noted that as Steve Breyer listened to my opinions on various matters over the years, that he had the extraordinary ability to not just listen, but to hear and to comprehend the information. He understood, that each commissioner brought a different strength and perspective to the commission and that we each, had something of import to share. Moreover, He could later articulate or accurately communicate our views in subsequent discussions or in his famous (amazingly clear) "summations" or review of all matters covered before decisions were made.

Why do I value this attribute?

We are a diverse nation, we have different professions, there are differences that are physical, such as race, gender and age. Additional differences are less visible, but also important, such as cultural heritage, personal background, functional expertise, and certain strengths and skills which are inherited and learned. The nation is best served if the justices on the court of last resort are able to understand then communicate and articulate that understanding, as the law is construed and applied to particular situations.

The second relevant trait—Accountability. Because of the death of my father when I was 2 years old, my mother proved to be the sole source for a personal value system, that I still treasure today. The work ethic and accountability are high on the list. I believe Steve Breyer holds the same commitment to the importance of accountability in a criminal justice system that strives for effectiveness. Such a system must be strong on accountability and replete with fairness.

Fairness. The Commission's overall goal and our mandate from Congress was to provide a structure and framework for sentencing decisions so that similar offenders who commit similar offenses are sentenced in a similar fashion, or to enhance fairness. Steve Breyer displayed significant sensitivity to our goal and my deep seated concerns for fairness. I came to believe that he, too, cared about this precious entity. Persons coming from my background might view justice as a "hoped for miracle" and fairness as "a scarce and valuable" commodity. I think Steve Breyer, on the

highest court, can contribute to the dispensation of that precious commodity called "justice."

Industriousness. It is relevant to this appointment to note that Steve Breyer is one of the hardest working people I know. His thoroughness in preparation for our meetings on the commission was key to his ability to serve as the stimulus for compromise. Not only was it necessary for him to research and think through his own perspective or position on the subject issues but it was necessary for him to examine the issues from a variety of perspectives. His penchant for hard work and thorough preparation, along with his God given wisdom, enabled him to synthesize the various, seemingly dissimilar ideas, sufficiently to be the leader in effecting compromise on numerous occasions.

I would be remiss if I failed to note his temperament. His pleasant disposition and respectful treatment of staff and other individuals with whom he had contact on a routine basis.

Finally, Judge Stephen Breyer is a man who can relate to all Americans and he is fair. A man of great integrity and sound judgment. He is a decent human being. I am confident that, should you confirm him, he will through his service on the court, bring great honor on this committee, President Clinton and to our nation.

Mr. Chairman, I thank you for this time.

The CHAIRMAN. Thank you very much.

I thank all three of you. Your testimony from three different perspectives of your relationships with Judge Breyer are helpful, meaningful and are very much appreciated by the committee. I know you have all come a long way to be able to make these statements. We appreciate your accommodating the hectic and difficult schedule of the Senate. I thank you all very much for being here.

Mr. CORROTHERS. Thank you, Mr. Chairman.

The CHAIRMAN. Now, our next panel is comprised of a total of four witnesses, I believe all four in opposition to the nomination of Judge Breyer. On this panel is Ralph Nader, founder of the Center for Responsive Law. Dr. Sidney Wolfe is also here. He is director of Public Citizen's Health Research Group.

Also on the panel is Lloyd Constantine, a lawyer in the field of antitrust and a partner in the firm of Constantine & Associates. In addition, Mr. Constantine teaches antitrust law at Fordham University School of Law and is a former assistant attorney general for antitrust enforcement for the State of New York. And Mr. Ralph Estes also joins this panel. Mr. Estes is a professor of business administration at the American University here in Washington. Professor Estes has written in the area of corporate regulation and is currently a fellow at the Center for the Advancement of Public Policy.

I welcome you all. I guess we caught Mr. Nader off-guard with the last panel, and I apologize for that. Unless you all would prefer to proceed in another way, I would suggest we proceed in the order in which you were recognized, Mr. Nader, Dr. Wolfe, Mr. Constantine, and Mr. Estes.

Senator METZENBAUM. Mr. Chairman, before this panel begins, I committed to be elsewhere at 2 o'clock, at a press conference on health care. I am particularly interested in what this panel has to say. I hope to come back before the panel concludes its deliberations, but I do not want to be interpreted that my leaving is from a lack of interest or support. I am very interested in what they have to say, and I just wanted to make that statement before I excused myself in about 5 minutes.

The CHAIRMAN. Thank you, Senator.

Senator SIMON. Mr. Chairman, if I could just say I am going to the same press conference on health care.

The CHAIRMAN. One thing Mr. Nader understands is press conferences, and I am sure he will understand your need to be there.

Senator METZENBAUM. Also, he understands health care.

The CHAIRMAN. He understands health care, as well. As a matter of fact, I am surprised he is not going to the press conference with you.

Senator COHEN. Mr. Chairman, I am told there is going to be a vote at 1:45 p.m.

The CHAIRMAN. I am glad to be informed of all these things. Why don't we just begin and we will see where the schedule takes us.

Mr. Nader, welcome.

**PANEL CONSISTING OF RALPH NADER, WASHINGTON, DC; SIDNEY M. WOLFE, CITIZEN'S GROUP, WASHINGTON, DC; LLOYD CONSTANTINE, CONSTANTINE & ASSOCIATES, NEW YORK, NY; AND RALPH ZESTES, KOGOD COLLEGE OF BUSINESS ADMINISTRATION, AMERICAN UNIVERSITY, WASHINGTON, DC**

#### **STATEMENT OF RALPH NADER**

Mr. NADER. Thank you, Mr. Chairman and members of the committee.

I would like to submit my 20-page testimony and note that there are five important attachments: First, one by Professor Carstensen, of the University of Wisconsin Law School, dealing with the case of price squeeze that was so widely discussed earlier in these hearings, a case by Judge Breyer; second, a thorough critique by a friend of Judge Breyer, but he is a critic, Professor Tom McGarity, of the University of Texas Law School, on Judge Breyer's health and environmental safety positions; third, a critique of Judge Breyer's chapter on the National Highway Traffic Safety Administration, by Clarence Ditlow and Joan Claybrook, which illustrates that some of Judge Breyer's research is quite shoddy; fourth, a list of very stimulating questions by Prof. Richard Parker, of Harvard Law School, on the first amendment and its interpretation to provide affirmative opportunities for ordinary citizens to participate in their democracies, the exercise of free speech; and, fifth, an 11-page letter by Prof. Monroe Freedman, the legal ethicist, where he concludes that Judge Breyer violated the disqualifications statute. I hope they will be included in the record.

The CHAIRMAN. The entire statement, along with the attachments. Would you clarify for the record, Mr. Nader, are all five of the people on behalf whose statements you are submitting comments, are all five of those opposed to Mr. Breyer?

Mr. NADER. Professor Freedman is. The others have not expressed their opposition.

The CHAIRMAN. Thank you. They will all be placed in the record.

Mr. NADER. Thank you.

One point on process, I think the White House process of sifting through nominations, which was managed by Lloyd Cutler, is extremely tainted and unfair and raises an issue within the Judiciary Committee's jurisdiction. A man who is still special counsel to a