

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?