

Is this what you think is necessary to prevent the establishment of religion?

Judge BREYER. Teaching history of religion, teaching history, history which involves religion, I do not know of any opinion that says you cannot teach history. The question suggests to me what I very much believe, which is the importance of clarity, the importance of the Court making clear and separating what can be done from what cannot be done, and understanding that a Court opinion is going to be read by lawyers, other judges, school administrators, and those who have to live under it.

And what your question to me suggests is a concern that people take an opinion that says don't do X, and then they incorrectly interpret it to say we can't do Y. I think that that shows need for the kind of clarity that will allow people to do what they are permitted to do.

Senator BROWN. I think you have hit the nail on the head. You have described exactly what has happened. There are many who are concerned that the way the Court has interpreted the establishment clause in this country has led to a government establishment of secularism. That is not my interpretation of what the Constitution means.

The CHAIRMAN. Senator, you have hit the time over the head—we are over a few minutes.

Senator BROWN. Thank you, Mr. Chairman. I will wind up with that. If the judge has any comments on that particular observation, I would appreciate it.

Judge BREYER. Thank you.

The CHAIRMAN. Judge, what we will do, we have gone now for a little over an hour and a half, we will break until 12. Before we do, let me explain what we will do after that. The schedule, after consulting with my colleagues, is that we will then come back and go from 12 until 1, with Senators Simon and Cohen, and then from 1 until 2 we will break for lunch, and we will come back. If Senator Pressler is able to be here, we will start with him. If not, we will then go to Senators Kohl, Feinstein and Moseley-Braun, last, but not least, and then make a judgment of how we will proceed from there.

So we will now recess for 6 or 7 minutes until noon, and we will come back with Senator Simon.

[Recess.]

The CHAIRMAN. The hearing will come to order.

Welcome back, Judge.

Judge BREYER. Thank you.

The CHAIRMAN. I now yield to Senator Simon.

#### **OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator SIMON. Thank you, Mr. Chairman.

I might mention I speak with some prejudice, because back in 1972 I lost a race for Governor in Illinois, and in the spring semester of 1973, I was a guest lecturer at Harvard and met a young law professor and his wife and, as I recall, two of the three members of his family sitting here. I was very impressed then and have been impressed through the years.

I would like to enter into the record the letter from John Frank on the whole question of ethical conduct. John Frank has testified before us on several occasions.

The CHAIRMAN. I think on every occasion we have ever had a nominee.

Senator SIMON. That is just about right. It makes very clear that Judge Breyer's conduct has been within ethical bounds.

The CHAIRMAN. Without objection, it will be placed in the record. [The letter referred to follows:]