

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.

Puerto Rico is a mixed law jurisdiction. Large areas of its legal system are governed by the civil tradition and others by common law. During the early part of this century, the boundary—

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 Legislation Comparée, France, 1981; guest lecturer at the Seminar on American Studies, Salzburg, Austria, 1981; elected