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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

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>

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 prompted 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 remodeling 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."<sup>2</sup>

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.<sup>3</sup>

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