# II
# *REMARKS AT MONDAY AFTERNOON SESSION*

By The Honorable Stephen G. Breyer
*Associate Justice of the United States Supreme Court*

*The Monday afternoon session of The American Law Institute convened in the Grand Ballroom of The Mayflower, Washington, D.C., on May 17, 2010. President Roberta Cooper Ramo presided.*

**President Ramo:** Good afternoon, ladies and gentlemen. I hope everybody had a dandy lunch and everyone is in good humor.

It is a great honor to invite to the podium Justice Stephen Breyer. Justice Breyer. (*Applause*)

Well, it is a cold, rainy Washington afternoon and Justice Breyer happened to wander in, (*laughter*) because he had hardly anything else at all to do today.

Let me take a moment to explain what we are about to do and to introduce Justice Breyer and two other people.

Everybody knows the magnificent history of accomplishments of Justice Stephen Breyer, but I want to speak for a second about another part of what he does that is so important to our democracy and so important to how we view the world.

Justice Breyer is a wonderful teacher. He is not just a teacher of lawyers and law students and judges, but he is a great teacher of the responsibilities of being an American citizen under our Constitution.

He is a great explainer. In fact, often when I have heard him speak, because he is a magnificent speaker, I have thought that we should call him "The Great Explainer." Justice Breyer can explain important complicated issues, in ways that people who are not lawyers and judges can understand. He is in every way, every time I have ever heard him, a person who makes me enormously proud to be able to say that I am a member of the same profession that he is.

Justice Breyer, as a person who grew up in the world of the struggles of civil rights, the struggles for women's equality, and the difficulties of the Vietnam War, I have a personal view of the importance of the United States Supreme Court, even though I don't appear there as an advocate. I am very grateful for your presence on the Court and very grateful for your presence here today.

This afternoon, at Justice Breyer's suggestion, we will ask him a few questions and he will respond. Lance Liebman, our Director, will ask a few questions, and then we have invited two members of the Institute to join us in asking questions.

Julie O'Sullivan, who is a professor at Georgetown, a member of our Institute, who has worked as an assistant attorney in the Criminal Division in the U.S. Attorney's Office in the Southern District of New York, who worked with Davis, Polk and Wardwell in private practice and was clerk, among other people, to Justice Sandra Day O'Connor, a great friend of many of ours and a great friend of the Institute, will ask some questions as well.

Also, some other questions will be asked by our member Jorge Sánchez Cordero Dávila, the vice chairman of the board of UNIDROIT, a prominent, prominent member of the Mexican legal community, and it is the 200th anniversary of Mexico—is that right, Jorge, of Mexico as a country—of course, I must mention that it is the 400th anniversary of Santa Fe as a city, but that's okay. The world of The American Law Institute turns out to be the entire world, and the world of American law turns out to be much beyond our borders.

We thank you, Justice Breyer, for spending some of your afternoon with us.

**Justice Stephen G. Breyer:** I just want to say thank you very much for inviting me, and it is an honor. I am a member of this Institute, which years ago—I won't say how many—but I used to love to sit here, and I would listen to Henry J. Friendly, and I would listen to A. James Casner, talking about the difference between springing uses and shifting uses (*laughter*) and statute *de donis*, and Lance is the only one who ever understood it. (*Laughter*) So I can see why he's been working with this Institute.

And those things are important, and they comprise quite a lot of our work, and it makes a huge difference what you write about, because I say usually to the law students, most of what we take by way of hearing cases out of the 8000 or so that they ask us to take, lawyers ask us to take, we only hear about 80, and contrary to popular belief, they are not the 80 that we happen to think are interesting or the 80 where we think we could make some kind of mark, but there are actually criteria, there is a criterion. Now I say criteria, there are a couple, but the main one, as you probably know, is on a matter of federal law have different

judges come to different conclusions about the same text, and where they interpret those differently we will almost certainly take it, because our object is not to correct errors; we couldn't. First of all, there are a lot, (*laughter*) and we are just a few, (*laughter*) but more importantly, how do we know which are which?

That's where Jackson was right. He said that the Supreme Court, I like to tell particularly foreign visitors, as you will see why, he said, "We are not final because we are infallible; we are infallible because we're final." You see, the point is no one except this group knows what that means. (*Laughter*) True. It means that we do not have the last word because we are so brilliant. We are, of course, brilliant, (*laughter*) but only in the sense that somebody has to have the last word. Now we all know that. That's why we are there. So our job is basically to make the law uniform. So therefore we could be hearing a case where the question in the case was, does this comma after § 30642178(b) of the Internal Revenue Code mean that the next word, which is a "for," should be read as a "which" or a "that"? We had a case like that. (*Laughter*) I liked it. Nobody else liked it. But I want to point out that when I have such cases, the first thing I am going to turn to is the Restatement to try to find the answer. (*Laughter*) (*Applause*)

It is very useful because people have to live in a country where 99.9999 percent of the law is about that kind of thing, and it affects them directly. So it is terribly important to get the law right on that, and you do play—and I've always thought that, and you think it and you know it—an enormously important role in the profession, coming up with what are the rules and what are the practical consequences and how can we improve those rules, and that's what I thought we together—the lawyers, the academy, and the judges—are trying to do with our job.

All right. Well, now unfortunately I am sort of in the middle of doing my job. This is the last month, and we really have case after case coming into my chambers, which cases, for some reason, people have been postponing, thinking about maybe there's some argument, and so all of a sudden we are besieged. So I thought I could get to the heart of what might most interest you if I asked Lance and some of the others to pose some questions that interest them.

And then are we going to have general questions?

**Director Liebman:** No, I think we'll just— (*Laughter*)

**Justice Breyer:** All right.

**Director Liebman:** But if we want—you don't want to stay too long, (*laughter*) so let me start with the central question of all, and as Roberta talked about her experience, you know, I am so much older than she is that, for me, it goes all the way back to the *Brown* case [Brown v. Board of Education, 347 U.S. 483 (1954)], because I was a high-school student in Kentucky, and between my sophomore and junior years, racial integration occurred under court order. That is, in some ways, the most important thing that's happened in my life, but still it was done by the Supreme Court of the United States, at least that time a unanimous Supreme Court, but what is the justification for these life-tenured random people in a democracy, and to put it in a bigger context, there is no question that constitutional law and the role of constitutional courts has been spreading around the world, and how does this fit with democracy?

**Justice Breyer:** That is a classical question. (*Laughter*) It's meant to put us on the spot since we exercise some of that power.

**Director Liebman:** Yes.

**Justice Breyer:** And I don't have a better answer than the traditional answer. I mean, I think Hamilton wrote it down probably as best anyone could. As he's puzzling in *The Federalist* about, well, we've written this document, but how do we know that the institutions we have created will stick to constitutional limitations?

And he draws from that question the conclusion that, well, we better have some group of people whose job it is to say when the other groups have gone beyond the Constitution, otherwise it will become a dead letter. And then he says, now I wonder who that group ought to be? Well, if we make it the President, he will become a tyrant; too much power. If we make it the Congress, what, are you kidding? They've just passed a law, (*laughter*) I mean they just passed a law that's very popular, they are politically elected officials. Why would they say now that they

are going to take the unpopular position of saying that that popular law they just passed was void? So that doesn't seem like a good idea.

So who's left? Well, there is this rather obscure group of almost bureaucrats who aren't very powerful, they don't have the purse, they don't have the sword, and they tend to be professional, and they probably won't interfere too often, and so we can't find anyone better; we'll give it to them.

Read *The Federalist*. That's pretty much what he says. And, of course, he doesn't then answer a question that his answer raises. If these people are so obscure and have no power and might get things wrong too, why will anyone do what they say? That is a pretty good question. And for quite a long time, though, John Marshall did take the Hamiltonian theory and worked it through a kind of Houdini-like effect, in Marbury v. Madison [5 U.S. (1 Cranch) 137 (1803)]. They never used it until *Dred Scott* [Scott v. Sandford, 60 U.S. (19 How.) 393 (1857)], which wasn't the finest example, and for a long time it went unused, and there were plenty of cases.

There was the Cherokee Indian case [Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832)], where the Court said the land belongs to the Cherokees, and President Jackson supposedly said, "John Marshall made his decision, now let him enforce it," and sent troops to Georgia—not to enforce the law but to evict the Cherokees. So it was by no means a sure thing.

And then the Court comes up with a decision nobody should have enforced, that's *Dred Scott*, and it wasn't till quite a long time later, I think probably Arkansas and Governor Faubus just after that, that the question was squarely put about whether would people follow Brown v. Board, which is a good example of what they are there for. They are there to enforce the Constitution when it's unpopular to do it. Anybody can enforce it when it's popular. What about when it's unpopular? When some of the people it is meant to protect are just not being protected and the others want not to protect them. Well, that's squarely put in Cooper v. Aaron [358 U.S. 1 (1958)]—before Cooper v. Aaron—when Governor Faubus said, some of us can remember that, stood in the schoolhouse door and said, "No; I have the troops."

And the key moment in my mind is Eisenhower deciding to send that 101st Airborne, and it was a calculated thought. He knew who the 101st Airborne was in the minds of most Americans at that time. He knew that those are the heroes who had invaded Normandy—and the Battle of the Bulge—and many of those paratroopers had gotten hung up on the steeples and had been shot dead, and most Americans knew that, too. And they were the ones who flew to Little Rock and took those black children by the hand and walked into the white school. And then the Court wrote Cooper v. Aaron, and they all nine signed the opinion, said it has to be done. Well, you could have had nine judges; you could have had 9000 judges, 90,000 judges. I mean, really, the 101st Airborne did the job.

So I pointed that out to a Russian, a Russian parachute general who had been brought over here, I think, in the late '90s, because he previously had been in charge of pointing the missiles at the United States, and he had recently changed the direction, (*laughter*) and the State Department thought that was a good thing and we ought to encourage this, and so I took him on a tour of the Court. I told him that story and I said, "That shows the paratroopers and the judges must be friends." (*Laughter*)

All right, so bring us up to date and look at the unpopular things that, I mean, my goodness. Think of prayer in the schools, or abortion, or others: Bush v. Gore [531 U.S. 98 (2000)], where I was in dissent. I thought it was wrong so I wrote my dissent, and a lot of people agreed with me, but Senator Reid I heard point out the following. He said: "There is a silver lining in that case." For me, too. There weren't riots in the streets. There were no paving stones or guns. People thought it was wrong, and I think they were right to think it was wrong, but they followed it—a long way from the Cherokee Indians and President Andrew Jackson and the eviction of those Indians onto the Trail of Tears, where they died, mostly, on their way to Oklahoma. But when I see that in the courtroom, and I do see it in the courtroom, I see that in the courtroom every day, every race, people of every religion, people of every point of view, and I've said this 50 million times so why not say it again? My mother used to say, "There is no point of view so crazy in the United

States that there isn't somebody who doesn't hold it," (*laughter*) and she said, "Usually"—because we were from San Francisco—"they all live in Los Angeles." (*Laughter*)

But the point is this, okay? We are 300 million people. We do have every point of view under the sun. We have learned to live together, very, very gradually, and the Constitution has played a role in that, and that means some protection. And so why is it that all countries—not all; some—after World War II, began to move towards this system of having people who are not democratically elected nonetheless enforce the provisions of a basically democratic Constitution? And the answer to that is they thought it might help, might help some assure the guarantees of liberty that are written there to those who need them in the hour of need, when they really need it, and put that way, it is a work in progress. Put that way, and looking back over history, we never can be certain it will continue, and put that way, you see the absolute need to try to explain to people what it is that we have done, the bad as well as the good—the *Dred Scotts* as well as the Cooper v. Aarons, the Civil War as well as the civil-rights movement, and 80 years of segregation and slavery before gradually pulling out of it—and you see from my seat, in a sense, this work in progress, never certain, always requiring passing it on, education, and now I get trite, but I promise you my job makes me believe in those Fourth of July speeches. (*Applause*)

**Director Liebman:** Julie.

**Professor Julie R. O'Sullivan (D.C.):** Hello, Justice Breyer.

**Justice Breyer:** Hi.

**Professor O'Sullivan:** I am going to refrain from asking the questions I really want to ask.

**Justice Breyer:** You can ask whatever you want. It's not a problem if you're asking. (*Laughter*)

**Professor O'Sullivan:** Some of those troubled by the apparent disconnect between judicial review and our commitment to democracy, including many of my colleagues in the academia who have cut down entire forests in the service of answering that question, a lot of those

people have suggested theories of interpretation as a means of legitimizing the Supreme Court's more controversial decisions, and in particular we all know that the originalists, those people who believe in relying on historical understandings of the Constitution and its wording at the framing, argue that theirs is a more objective view and as a consequence has more public legitimacy or democratic legitimacy. How would you answer them?

**Justice Breyer:** Well, I am not sure exactly, because there are many variations of themes, so the way I usually think of the interpretive question, I think, I tend to think that it is similar for any text. I mean, most of us judges, and lawyers, too, we are working with text. There are some words on a piece of paper, and we are not quite certain how to apply those words. I mean, if we are so certain and it is so clear, what's it doing in the Supreme Court? I mean, judges have divided, lawyers have divided, the whole profession's divided on those words.

Now, as a judge, when you face some words and it is a sort of difficult interpretive question, you have tools and they tend to be easily listed. You read the *words*, and it is surprising, that can help. (*Laughter*) And you look at the context. You read the words. You look at the *history*; you look at the *tradition*. Suppose it's habeas corpus; there is a tradition around that. You read the *precedents*. You look at the *purpose*—or the value, if it is a constitutional matter—that this particular form of words is designed to protect or further. And you look at *consequences*—not any old consequences in the world but the consequences that are relevant to the case at hand. If it is a First Amendment case, you will probably look at speech-related or expression-related consequences, not privacy consequences, and vice versa if it is the Fourth.

Now I think all judges use those tools, whatever some academicians might say. I've even heard some people say Justice Scalia never uses purpose. But I've asked him about saying that. I said, "Well, here, I found this article you wrote where you said purpose is very important, and you use it 16 times." He said, "I mean you don't use it that much." And that's what I'm talking about; it's a matter of emphasis. (*Laughter*)

But that is where you find the differences. Some judges tend to emphasize text, history, tradition, precedent, and they tend to deem-

phasize purpose and consequence, and other judges, I would include myself, tend to think sometimes you get the answer out of the first four, but those last two are likely to be particularly helpful, so they emphasize purpose and consequence.

So the real argument and division is, as you—not in the academic world, I don't know that, in the academic world they have to write their own articles and answer each other—but I mean working (*laughter*) in the world I work in, it is a question of, well, those who tend to favor the first four do think, as you said, this will prevent the judge from getting subjectively out of control and substituting what he thinks are good things for what the law requires. All right?

And I think, well, I think no, I think I can keep myself under control, and it isn't as if you don't have, using these last two, controls. You write down the truth about what it is that is moving you and it's criticized, could be right or wrong, and if you are prepared to be dishonest, you could be dishonest about history. I mean, you can be dishonest about anything, but if you are prepared to be honest, there is just as much check and control in the latter as in the former. But if that is so, I think there are advantages to the latter, the one I follow. I didn't make it up; indeed, I just found that you go back. I saw in Gordon Wood's book that he says going back to something like 1760, he discovers a colonial judge who said what we do in America, even though before it was America, is that we American judges look to see what makes common sense and works practically. [Gordon S. Wood, Empire of Liberty: A History of the Early Republic, 1789-1815, 457 (2009).]

Great. I like that. You see, it's not me; there is a tradition there. (*Laughter*) (*Applause*)

So it's true. And when you look back to that, I believe that trying to follow these approaches will make the law work better for people. So I will stay away from the traditional criticisms, like in any real case involving this, the history isn't always very clear. Go read what some of the historians have said about some of our historical decisions, all right? It usually isn't very clear.

We had a case, you go back, I wrote this at the time, that I thought the historical approach, you try to figure out what Blackstone, a 17th-

century treatise writer trying to describe a 16th-century event in the Civil War, what did he mean when interpreted by a 19th-century judge as applied to 20th-century America? And the truth I admit is that I have no idea, okay? (*Laughter*)

So if you want—because these are awfully difficult—the historians, why not have nine history people? Why not have nine historians? Why have nine judges? They would do the job much better.

So I think that that approach tends to have weaknesses. You don't always know the history. It isn't always so definitive. It is quite unclear often. We are not capable of doing it right, and on top of everything else, suppose you got it perfectly right. Suppose you got it perfectly right and it turned out that there was flogging in the Navy in 1789? Would that mean that we should have it today? Is that what the Constitution actually intends?

Or indeed, in the case you brought up, there were children in segregated schools in the District of Columbia in 1874—when was the time the 14th Amendment was passed? Does that mean Brown v. Board was wrong? No, it doesn't mean that. It doesn't. Because in fact, even if it worked perfectly, why, to go back to the first question, wouldn't people want to live in a country where the details, not the basic values, not the basic purposes—the basic values and purposes stay the same—but the details as to how they apply in a changing world can differ. But why would you like to live in a world where that wasn't so?

So all my comments are about that, that I find it awfully difficult to apply. I don't see why I rather than a historian am the one who's doing it. I think it is not very transparent in respect to what the reasons might be, very hard to write, and I don't know why you'd want to do it. Now aside from that, I feel like it's fine. (*Laughter*) (*Applause*)

**Professor O'Sullivan:** Justice Breyer, I was wondering, your emphasis, in your pragmatic theory of interpretation on purposes and consequences, I guess raises a question for me. If you are focusing as a judge on the purposes or values underlying the issue at hand, and you are trying to forecast what the practical answer is, the answer that is going to yield the appropriate consequences, what distinguishes you from a

policymaker and what reference, what role do the political branches have in your considerations? Should they have deference in doing these things, or do you give them deference with respect to policy determinations, or do you go your own way?

**Justice Breyer:** It depends what the case is. If you are talking about, for example, the Constitution says there will be two Senators [U.S. Const. art. I, § 3, cl. 1, amended by U.S. Const. amend. XVII]. You know, you are not going to depart from the text there. Two means two. (*Laughter*)

**Professor O'Sullivan:** Except in the District of Columbia.

**Justice Breyer:** What?

**Director Liebman:** She said the District of Columbia, what about them?

**Justice Breyer:** It says every state is entitled to two Senators. (*Laughter*)

That's what it says. But the Commerce Clause [U.S. Const. art. I, § 8, cl. 3] is less determinative, and of course when people interpret, when they read the Commerce Clause and look at how it has been interpreted over the years, and then you have a case, the statute is passed by Congress, which prohibits, under the Commerce Clause, children possessing guns in schools.

Well, I thought that was constitutional, and I thought that was the kind of matter that Congress has considerable leeway on, but of course there are empirical connections there. You have to be able to make a reasonable judgment that having guns in schools made the school a little less desirable, that less desirable schools meant worse education, that worse education made a difference in respect to whether people move to that place with their families or with whether we have an educated workforce in the future and whether, among other things, this country can compete with foreign countries for intelligent workers and well-trained workers and jobs, etc.

There are a set of connections, all right? I would probably—I did—say that I think we should respect Congress's judgment in respect

to that, and then others were less willing to give quite so much weight to Congress. So at least in that area, I think, we give quite a lot of weight to Congress.

The reason I say it's area by area is, this is just things I have written, and I can't guarantee I'm right, but I mean when we are talking about campaign finance, for example, I've thought it is appropriate to give quite a lot of weight to what Congress says about what the likely consequences are of having campaign-finance limitation as opposed to not. But then I have to admit that I said as well that if the issue in this case is going to be whether this particular rule, as they have written it into a statute, would have a significant consequence in riding the incumbents into office through unfair advantages, I felt that judges had to look at that pretty carefully, and you couldn't necessarily just take Congress's word for that one.

So the answer is it depends on the particular matter in front of us, and I don't think it is up to me. That is, I don't think I make it up as I go along, at least I hope not, and it is the job of a judge to write an opinion that is transparent enough and then, when seen against the other set of opinions that are written, shows that the judge is not making it up as he goes along, okay, and that I am not substituting my policy for anybody.

It is not my job to make policy. It is not my job to—it is my job to carry out the policy that is there in the statute or that is reflected in the values that underlie the Constitutional provisions. Now people can argue about whether I really have done it right. Well, that's fair enough. That's what you are supposed to do. That's why we write opinions, and that is why the professors will sometimes write articles that are critical. That's fine. No problem with that. But I am not a policymaker. I don't think of myself as a policymaker. I do think of myself as someone who is trying to find the policy that is written by others, so there we are and that is the best I can do.

**Director Liebman:** Jorge.

**Mr. Jorge A. Sánchez Cordero Dávila (Mexico):** I would like to congratulate you for this excellent speech and for your legal work.

As Roberta mentioned, my country, Mexico, is commemorating the bicentennial of its independence and the centennial of the Mexican revolution this year, and I just wanted to point out how important the American Constitution and constitutional literature is for us Mexicans.

As you may well know, Mexico transposed the American constitutional system, and that explains why Mexico is an affluent country, and so it is a very happy coincidence that your speech and the publication of your legal work ties in with this commemoration.

Now let me ask some questions that could be of certain interest for both sides of the border. Let me put this in perspective. Twelve years ago, California voted for Proposition 227 that effectively banned bilingual education in Californian public schools. We were so surprised, because we have a large Mexican community in California. The Mexican community living in California approached the Mexican government to ask us what we could do to try to reverse this, and they argued with the Mexican government that, in the U.S., minorities that do not vote, do not count and they were hindered in doing so because they were obliged to preserve their Mexican nationality.

So we amended the Mexican Constitution. This was certainly a 180-degrees change, because we have resisted these kinds of changes due to the history of Mexico, but we overcame the strong nationalistic sentiment in our country and the amendment was approved. Now this Mexican-American community is obliged to pledge loyalty to American values, as well as to Mexican values. This Mexican-American community is going to vote in the near future in the presidential elections in Mexico. Twelve million votes can be counted and can decide presidential elections.

My question would be, Your Honor, whether these new issues, unique in the world, I don't think that, in many parts of the world, we can identify these large communities sharing different values, in this case the Americans' and the Mexicans', could oblige us to revise the notion of sovereignty and of loyalty to the basic values of a nation. I am fully convinced that putting the destiny of Mexico in the hands of

Mexican-Americans or that they could influence the American elections is going to be very challenging. What would be your point of view?

**Justice Breyer:** Well, if you are talking about voting, Americans who live abroad can vote in our elections. If you are talking about people who are not American citizens voting in elections, they can't, so that is sort of a technical answer.

If you are talking about how do people in one country have an influence in the laws of the second country that affect them, that is a very good question, so either I have an excellent answer that didn't really help you or you have a very good question to which I have no answer and therefore can't help you. (*Laughter*)

I will point out that it is more of a problem than many think. I recently had a discussion with an Italian professor, Sabino Cassese, who has had his research assistants try to count the number of organizations that are multilateral organizations, defined as follows: they are made up of representatives of more than one country, and they have the ability to make binding rules that affect more than one country, like the WTO. And he counted about a thousand. Amazing. Amazing. And that is undoubtedly going to affect us and we know not how.

Now we had a case that I thought was relevant to that, a little technical, I'm not sure if I'm going to explain it. I think that—I will give you two examples of how this is already ripe here. In one year, about three or four years ago, for, I guess I had to give a talk or something, I counted up the number of the cases that we had taken, which is about 70 or 80, and of those, nine involved either international law traditionally defined—treaties, for example—or the law of other countries, the law of other nations.

Now three of them were Guantánamo related so put those to the side, but six of them involved such things as a plaintiff [from] Ecuador, a vitamin distributor, sues a defendant [from] Holland, member of a cartel of vitamin manufacturers, one of whose members was from the United States, for an antitrust violation, and he sues in the city of New York. Why New York? Well, one explanation is the vitamins were so expensive he became very weak and couldn't travel all the way to Hol-

land. (*Laughter*) Another explanation is treble damages. But whatever the reasons, we have to decide does the law of the United States, namely the Sherman Act [15 U.S.C. §§ 1-7], apply to his situation and if so how?

A plaintiff in Los Angeles sues a defendant in Los Angeles, both major companies, the first wanting some information from the company that the second doesn't want to give. "But I need it," says the first, "to present it to the European anticartel authority," which, by the way, files a brief saying, "We don't want it." (*Laughter*)

But still we have to decide what does the discovery statute mean? Can they or can they not? If the judge wants them to have it, can he do it? In cases like that, we receive briefs from other countries. Germany. Japan. The European Union. Canada. And they are briefs on the merits, not what I call the kind of amicus brief which says, "Well, we are for." I say, "Thank you very much, I'm glad you're for," but the serious briefs on this subject, because we can't decide this case without knowing something about the authority, the reality. How does that work, the European cartel authority? What are the implications there, as well as here, for a decision one way—with a decision one way or the other? You can't make an intelligent decision without knowing something about that.

Mrs. Klimt, now Mrs. Altmann, who wanted the Klimt paintings, you might have read about that. She claimed that the German Nazis had taken them in World War II, in the '40s, and they ended up in the museum in Vienna, and she sued Vienna in order to get them back. She sued who? The museum. The museum. The museum said sovereign immunity, we're part of the state, and Mrs. Klimt said, no, no, no, you are now commercial, that gets you out of the sovereign immunity; you didn't used to be, but you are now. [Republic of Austria v. Altmann, 541 U.S. 677 (2004).]

So does sovereign immunity mean then or now? Well, I thought I found a helpful answer to that in the great case of Christian Dior v. ex-King Farouk [Ex-King Farouk of Egypt v. Christian Dior, 84 Clunet 717, 24 I.L.R. 228, 229 (CA Paris 1957)], (*laughter*) in the appellate

court in Paris. He didn't pay his bills for his wife's dresses, so Christian Dior sued him, and he lost. Sovereign immunity. But the judges said, hey, wait. *Ex*-King Farouk. Get it? You were the king. (*Laughter*)

So that was helpful. And we had, in that same year, trucks coming in from Mexico under what? Under NAFTA [North American Free Trade Agreement, 32 I.L.M. 605 (1993)], where there are some rules, but there is a Congressional statute, and what's the comparative status of these, and can you reconcile those? We better know something about NAFTA. We better know something about it.

So I find not the answer to your problem, but the existence of the problem, major—and the answer is going to be—because to tell you the truth, we don't know the law of every country. I mean, do we know the law of any country? That's a better question. (*Laughter*)

But we don't know the law of every country, and the people who have to tell us are the lawyers, and they are not going to know, unless they know where to look it up, and they are not going to know where to look it up, unless they are taught in law school, not just the springing uses and so forth but also in the Property course something about the property law of other places and in the Contracts course something about what Mexico is doing and something about how this country does that, so at least they have a glimmer of where to begin.

And so the three parts of our great enterprise, which are called the bar and the bench and the academy, I think, have to work together on this, and they have to create circumstances which, as you well know, because you are practicing in these, you know who your clients are and what they need, and they are going to have to create, and they are doing it, a world in which the lawyers and the judges and the teachers are familiar and happy and understand how to work with these laws of many different countries, and all I can say is that's going to happen, it is happening, and out of that will we hope emerge something of an answer to your question.

**Mr. Sánchez Cordero Dávila:** Thank you so very much.

**President Ramo:** Do you want to ask your second question?

**Mr. Sánchez Cordero Dávila:** No, thank you very much. (*Applause*)

**President Ramo:** Well, this colloquia was extraordinary in every way. I thank you, Julie, very much. I thank you, Jorge, very much. And especially I thank our wonderful member, Justice Breyer, for taking time on a really hard afternoon to enlighten us.

This really has been quite an extraordinary day in every way and has given us a very amazing view of what law reform means and has meant.