

Judge Breyer will be confirmed. I hope that the concerns raised by Senator Metzenbaum and the concerns voiced here may have some small effect on the way he approaches these vitally important cases in the future.

Senator HATCH. Mr. Estes.

#### STATEMENT OF RALPH ESTES

Mr. ESTES. Senator Hatch, Senator DeConcini, Senator Specter, I know there is important business occupying the Senate today, but I do wish that more members of the committee had the opportunity to hear the testimony of this panel, because coming late though it does in the hearings, it is very important testimony for the future of this country. And I do appreciate the opportunity to testify.

My testimony is based entirely on my reading of Judge Breyer's writings. I do not know the gentleman. I do not even know if I have seen him. His writings on the surface present an appearance of objectivity. They conceal much, but as you read them in the aggregate, they reveal much.

Throughout his writings, you can see in Judge Breyer an allegiance to business and corporations that could, through his opinions as a Supreme Court Justice, do great harm to our citizens and to our Nation. He asserts he does not favor complete deregulation, but he does want to free corporations from regulatory constraints, and he believes that in many more cases the market will appropriately constrain corporate behavior, if, indeed, as he seems to doubt, it needs much constraining.

Judge Breyer's ideas on corporate regulation are grounded in an erroneous free-market view of social costs. In this marketplace of Judge Breyer's, there is no distinction between corporations and people. To the judge, the Disney Corp. and the homeowner in Manassas, VA, are equal players in the economic arena, as are a woman who may have needed silicone breast implants and the Dow Corning Co.

In his economic calculus, the following are mathematically equal: On the one hand, a healthy, undamaged, whole child; on the other hand, a brain-damaged child, brain-damaged for life from a hot dose of DPT vaccine who has been awarded \$25 million or whose family has been awarded \$25 million to pay for round-the-clock care for the rest of that child's life. Those are economically equivalent in Judge Breyer's economic calculus.

Judge Breyer would prefer not to direct corporations to behave responsibly. Instead, he favors tax breaks and marketable, special rights, such as pollution rights, to try to get them to behave responsibly. Put in more down-to-earth terms, what he is talking about is bribing corporations to keep them from doing harm.

In this kind of approach, Judge Breyer, I am afraid, fails to show a real understanding of the historical basis in this country for chartering corporations. A good study of history would show him that corporations were created in the first place as servants of the people and of the society, and that a corporate charter is a grant of special privilege, conveyed by the people through their State, in expectation of benefits to society.

If Judge Breyer knew this history, I think he would support a public policy that demands that corporations behave responsibly in the first place, instead of one that tries to get them to do good—

be good, rather, by giving them tax breaks and special pollution rights that they can then sell.

Much of what Judge Breyer says about regulatory reform, of course, I would support, particularly with respect to regulations adopted at the instigation of industry to limit competition—trucking, bank CD interest rates—and also his arguments for greater corporate disclosure, very much needed. But beneath his scholarly tone, Judge Breyer's writings convey an antagonism to any but the most unavoidable constraints on corporations, a near reverence for business and corporations as adjudicator of social well-being and of social policy. In the aggregate, Judge Breyer's writings present a pattern of prejudice, almost of disdain, against arguments, research, and theories that support the protection of the public through limitations on abusive corporate actions, while he shows a symmetrical sympathy for theories and research that support hands-off deregulation. Judge Breyer's writings do not suggest a mind-set of judicious objectivity.

He manifests in the aggregate in his writings an aversion toward restriction of those corporate actions that do harm to workers and the public. Collectively, his writings reveal a preference for a laissez-faire role for Government that has been rejected in this country since the excesses of the robber barons in the last century. He appears to have little awareness of the aggregate cost of the harm done to society by corporate America, a cost I have estimated elsewhere at over \$2.5 trillion a year.

Judge Breyer and corporate America may want the marketplace to adjudicate workplace safety, toxic emissions, dangerous products. But the effects that kind of prescription would have on many, especially on the poor and those less fortunate in our society is simply too brutal to be acceptable. We have learned the lessons of asbestos, of Love Canal, tobacco, the Dalkon Shield, BCCI, GM's side-saddle gas tanks.

Of course, as others, including members of this panel, have noted, one of the strongest measures of Judge Breyer's devotion to big business is his stunning record and 16 and 0 in antitrust cases. Now, just think about it statistically. That kind of record says that either Judge Breyer in his court received an incredible sequence of 16 consecutive, ill-conceived cases without merit, or else his decisions reflect a closed mind and a personal antagonism to antitrust enforcement.

If you had a population of more or less evenly divided cases, the probability of this, against this, is 65,536 to 1. Now statistical improbability alone does not prove a bias. I know that. But the Wall Street Journal is satisfied. They said, "This is one of the few areas where"—and I emphasize—"the nominee appears to have made up his mind." And they add, "He agrees with much of the agenda promoted by Reagan administration officials."

To wrap up, Senator Biden said this morning that Judge Breyer presents incredible credentials. I do not argue with that. But credentials are not all that matter. More important is what Judge Breyer's position on the Supreme Court will mean for the country.

Judge Breyer has shown through his writings and through his record that as a Supreme Court Justice he will be disposed to rule in favor of corporations against the people and to dismiss regula-

tion designed to protect the environment and human health and safety in favor of a hypothetical free-market discipline.

Gentlemen, if a nominee came before this committee with a record of siding with the defendant and rejecting every civil rights claim heard by him in 14 years, what would you do? You would reject that nominee out of hand, not only because of his clearly hostile attitude toward civil rights, but because you would not place someone on the Supreme Court with such a closed mind on an issue of fundamental importance to our society.

In his writings, Judge Breyer has shown a favoritism to corporate interests over those of the people, a lack of empathy for the poor and less fortunate in our society, and an autocratic view of policymaking and an unusual, at best, interpretation of the U.S. Constitution. If Judge Breyer's writings are a guide to the way he will act as a Supreme Court Justice, gentlemen, then the public will ultimately suffer for the sake of corporate profits. More people will become ill. More will be injured. More will suffer personal economic loss. And some number will die.

Articulate, arrogant, elitist, and too often wrong, a wolf in sheep's clothing who will lead the Supreme Court in this area of his special interest down a dangerous path that will be hazardous to our health. The President and the American people would be better served with a different nominee, one less loyal to corporate interests.

Thank you.

[The prepared statement of Mr. Estes follows:]