Senator SIMON. Mr. Chairman, if I could just say I am going to the same press conference on health care.

The CHAIRMAN. One thing Mr. Nader understands is press conferences, and I am sure he will understand your need to be there.

Senator METZENBAUM. Also, he understands health care.

The CHAIRMAN. He understands health care, as well. As a matter of fact, I am surprised he is not going to the press conference with you.

Senator COHEN. Mr. Chairman, I am told there is going to be a vote at 1:45 p.m.

The CHAIRMAN. I am glad to be informed of all these things. Why don't we just begin and we will see where the schedule takes us.

Mr. Nader, welcome.

## PANEL CONSISTING OF RALPH NADER, WASHINGTON, DC; SIDNEY M. WOLFE, CITIZEN'S GROUP, WASHINGTON, DC; LLOYD CONSTANTINE, CONSTANTINE & ASSOCIATES, NEW YORK, NY; AND RALPH ZESTES, KOGOD COLLEGE OF BUSINESS ADMINISTRATION, AMERICAN UNIVERSITY, WASHINGTON, DC

### STATEMENT OF RALPH NADER

Mr. NADER. Thank you, Mr. Chairman and members of the committee.

I would like to submit my 20-page testimony and note that there are five important attachments: First, one by Professor Carstensen, of the University of Wisconsin Law School, dealing with the case of price squeeze that was so widely discussed earlier in these hearings, a case by Judge Breyer; second, a thorough critique by a friend of Judge Breyer, but he is a critic, Professor Tom McGarity, of the University of Texas Law School, on Judge Breyer's health and environmental safety positions; third, a critique of Judge Breyer's chapter on the National Highway Traffic Safety Administration, by Clarence Ditlow and Joan Claybrook, which illustrates that some of Judge Breyer's research is quite shoddy; fourth, a list of very stimulating questions by Prof. Richard Parker, of Harvard Law School, on the first amendment and its interpretation to provide affirmative opportunities for ordinary citizens to participate in their democracies, the exercise of free speech; and, fifth, an 11-page letter by Prof. Monroe Freedman, the legal ethicist, where he concludes that Judge Breyer violated the disqualifications statute. I hope they will be included in the record.

The CHAIRMAN. The entire statement, along with the attachments. Would you clarify for the record, Mr. Nader, are all five of the people on behalf whose statements you are submitting comments, are all five of those opposed to Mr. Breyer?

Mr. NADER. Professor Freedman is. The others have not expressed their opposition.

The CHAIRMAN. Thank you. They will all be placed in the record.

Mr. NADER. Thank you.

One point on process, I think the White House process of sifting through nominations, which was managed by Lloyd Cutler, is extremely tainted and unfair and raises an issue within the Judiciary Committee's jurisdiction. A man who is still special counsel to a

corporate law firm is also special counsel to President Clinton under a statute that allows a 130-day tenure.

It was never intended for the position of counsel to the President, which was intended for specialized people like scientists and geologists, to spend some time advising the Federal Government. I think that this should never be allowed again. It has never occurred in American history, that a special counsel to the President is still a special counsel to his corporate law firm down the street and will have I think a relatively baleful effect on the integrity of the process.

Second, the law has many purposes, three of which are to discipline the excesses of power, to reflect reality in the facts on the ground, and to facilitate the exercise of ordinary citizens' political and civic energies. That is to facilitate democracy. I think on all three grounds, Judge Breyer is seriously deficient, whether we look at his decisions, his books, his articles, and other activities.

The conservation of existing power alignments has been a priority for Judge Breyer. He has not been interested in curbing, dissolving, displacing or holding such corporate power accountable. We have gone through a number of years where the Wall Street Journal itself has reported time and time again the elements of what constitutes a corporate crime wave. Whether it is procurement fraud, whether it is the S&L debacle, whether it is health care industry fraud, on and on, the context for elaborating on Judge Breyer's specialty in the regulatory area is the corporate crime wave and the exceptional growth of corporate power over many other areas of our life.

His record on antitrust is extraordinarily one-sided. No judge on the Federal Circuit Court of Appeals has a higher percentage of ruling against plaintiffs who are using the antitrust laws to hold corporate defendants accountable. The Wall Street Journal, the business community, corporate commentators and their counterparts in the Senate have serious reasons why they are for Judge Breyer, and those reasons relate to their belief that he will accommodate, support, and defend the existing pattern of concentrated business power in our country against their challengers.

Second, in the area of regulations, I think his scholarship is minutely shoddy, because his factual predicates are so faulty. He belittles hazards and risks and exaggerates costs. He also exaggerates what the Government has actually spent or required to be spent to reduce risks.

I think in many ways, Mr. Chairman, the statement where he says at all times regulation will reduce some people's income. It illustrates the fantasy world that he is operating in. Prevention of death and injury does not reduce anybody's income except funeral directors' income. I think in many ways his analysis, and I detail it in my testimony, is simplistic, superficial, and ridden with fantasy.

If he is sincere, he is unrealistic. And if he is not sincere, he has developed an elaborate technique for paralysis analysis, a kind of multiple overlapping constantly intermodal consideration that the business community doesn't operate under, that the Government doesn't operate under, and no human being should operate under.

He also filters out from his analysis of how Congress and the regulatory agencies work, all the corporate impact in this city. It is as if they are neuter factors and anonymous factors. The issue of greed, avarice, obstructionism, delay, campaign funds, all the realities that we know that corporations engage in to get their way in this city, whether from regulatory agencies or Members of Congress, are left out of his analysis. How can that be pragmatic? How can that be realistic? How can that be scholarly?

But my principal criticism of Judge Breyer, Mr. Chairman, is that he is uniquely disinterested in fostering or recognizing the elaboration of democratic public participation. In his proposal for regulatory reform, he discounts the efficacious role of Congress, the courts, the liability laws, good appointments to regulatory agencies, and expanding the breadth and depth of democratic public considerations and participation. This is being antidemocratic in a rather affirmative manner.

It is inconceivable that a judge with any knowledge of American history can so denigrate the great successes in our Government and our society from giving people more rights to know, more rights to participate, more rights to communicate their preferences through the processes of government.

In conclusion,.Mr. Chairman, a nominee such as Judge Breyer, who is insensitive to the laws' needs to discipline the excesses and concentrations of corporate power, a nominee who rests his proposals on erroneous reality, factual error and fantasy, and, above all, a nominee who rejects the efficacy of ever-improving democratic participation by the people in making these agencies of Government work better is neither pragmatic, neither realistic, nor moderate. He is extremist. He is ridden with fantasy, and he is insensitive on the ground to the health and safety needs of the American people, and his nomination should be rejected on those grounds alone.

Thank you, Mr. Chairman.

[Mr. Nader's submissions for the record follow:]