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

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

or to appear as a speaker on legal education panels. He listens and responds. Indeed, he does not wait to be approached by the bar, but often reaches out to make sure that lawyers understand changes in the rules or other matters of importance.

It was Judge Breyer who first suggested—and perhaps the chairman might be interested in this—that he discuss with lawyers the changes contemplated by the Judicial Improvement Act of 1990 and to alert advocates to the significant changes that were contemplated by the civil justice expense and delay reduction plans.

I know there has been testimony about the site of the new Federal courthouse in Boston, but I should say that before the site was selected, Judge Breyer approached members of the bar to ascertain our views, and as you know, he arranged for lawyers and citizens to meet with the architects and others to discuss their concerns.

In fact, Judge Breyer is always ready to talk with any group of lawyers or to appear at any event if it is helpful to lawyers or judges; and he is as thoughtful and helpful with new members of the bar as he is with established bar leaders and litigators.

I recall a talk that he gave some years ago at the American Bar Association, at its ceremony at the Franklin Flaschner Judicial Award, given each year to an outstanding jurist of a court of limited jurisdiction. Not so many attend that particular ABA ceremony each year—certainly not the many hundreds who flock to the meetings of the big ABA sections—but, as is typical of him, Judge Breyer took the assignment seriously, and he chose on that occasion to reflect on the relationship between appellate judges and those whose decisions are reviewed on appeal.

It was as thoughtful aim to meet illuminating talk reflecting real sensitivity and insight on the role of appellate judicial making delivered to judges who had a real interest in the subject. In fact, Judge Breyer has worked hard and effectively to bridge the gap that often exists between judges and lawyers, and every bar president will be fortunate to have as a chief in her circuit a judge of Judge Breyer's qualities.

As I said, I have also known Judge Breyer personally for a number of years, and let me make a few comments about him as a friend. His qualities include enthusiasm, willingness to listen, interest in a wide range of subjects, humor, and gentleness.

I think of another great first circuit judge, Calvert Magruder, the first Supreme Court law clerk of Justice Brandeis, later a close friend to Justice Frankfurter and himself a distinguished member of the Harvard Law School faculty. Judge Magruder was known for his intelligence, his fairness, his integrity and his realism, and Judge Breyer is a man I believe in the Magruder tradition, as a Justice of the Supreme Court, he would give distinguished service to this Nation, even as we in Massachusetts would regret his departure from the first circuit.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Marshall follows:]

PREPARED STATEMENT OF MARGARET H. MARSHALL

CURRICULUM VITAE

Margaret H. Marshall is Vice President and General Counsel of Harvard University. Prior to her appointment in November, 1992 she was a senior partner in the