Center for Advancement of Public Policy

Testimony (Annotated) of Ralph Estes

Hearings on Confirmation
of Judge Stephen G. Breyer
to the U. S. Supreme Court

Senate Judiciary Committee

July 15, 1994

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The purpose of my testimony is to provide information that may assist the Committee in evaluating Judge Breyer's writings, opinions, and views on the corporate system and corporate regulation. My testimony is informed by three decades of research on corporations and regulations, and through service as expert witness on economic loss in numerous wrongful death and personal injury cases.

I am a full professor of business administration at The American University, fellow at the Center for Advancement of Public Policy, author of eight books and over fifty scholarly academic articles. My doctorate is from Indiana University and I am a certified public accountant, formerly with Arthur Andersen & Co.

Judge Breyer's writings give the surface appearance of objectivity. In these he is not prone to overt statements about his personal views, and after extensive reading one is left unaware of his views on many matters of public concern.

But in certain areas his views are revealed quite clearly. Just as an individual's positions and preferences become more evident through the totality of their actions than in singular assertions, so too are Judge Breyer's views concerning corporations and regulation cogently disclosed in the consistent bent reflected in the accumulation of his writings. These reveal that:

- Judge Breyer demonstrates a fundamental lack of understanding of the role of the corporate system in American society, and the historical basis of corporate chartering: the granting of special privileges to private entities in expectation of public benefit.[1]

- His ideas on corporate regulation are grounded in an erroneous "market" view of social costs, or "spillovers."[2]

- In his writings Judge Breyer sets out to teach others about the applicability of statistical and mathematical theory in regulatory discourse, but he reflects an insufficient understanding that results in his misuse of the mathematics and statistics he attempts to apply.[3]

- Judge Breyer's conception of public policymaking reflects an autocratic, undemocratic, and elitist view, as well as an unusual, perhaps even a unique, understanding of the U.S. Constitution.[4]

- Judge Breyer's writing demonstrates a lack of empathy for the poor and for lower income workers and families.[5]

Should Corporations be Favored Over People?

Throughout his writings Judge Breyer evinces an allegiance to business and corporations that could, through his opinions as a Supreme Court justice, do great harm to our citizens and our nation. And while asserting that he is not for complete deregulation, he wants to free corporations from regulatory constraints and believes that in many more cases the market will appropriately constrain corporate behavior -- if indeed, as he seems to doubt, it needs constraining.

Judge Breyer would prefer not to direct corporations to behave responsibly; he instead favors tax breaks and marketable rights to induce socially-responsible behavior. "A more feasible method [than postulating rules] would combine fairly simple rules with economic incentives such as tax breaks or marketable rights."[6] With respect to externalities or spillovers such as pollution, noise, dirt, and waste, Judge Breyer believes, "Classical regulation is not able to deal comprehensively with spillover problems. Taxes, marketable rights, and even bargaining are likely to prove useful as substitutes or supplements."[7]

Judge Breyer's approach seeks to bribe corporations to keep them from doing harm. He apparently fails to recognize that a corporate charter, under which most business activity is conducted, is a special grant of privilege conveyed by the people, through the state, in expectation of benefits to society. If Judge Breyer understood more about the origin of the corporate system, he would support a public policy that demands that corporations behave responsibly in the first place, instead of a policy that seeks to induce responsible behavior by giving corporations tax breaks and special rights to be sold.[8]

Much of what Judge Breyer says about regulatory reform I would support. He is on target, for example, when he observes that each action bears a cost, and there may be better actions we could take for the same cost; or that we should take a systemic approach to regulation that considers harm that may be caused elsewhere by a regulation designed to do good. And his skepticism is likely justified with respect to regulations adopted at the instigation of industry to limit competition - trucking, bank CD interest rates - although not with respect to regulations that protect the public.

There is a prevalent, underlying philosophy beneath the scholarly tone in Judge Breyer's writing, however, that conveys an antagonism to any but the most unavoidable constraints on corporations, a near-adulation of 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; and a symmetrical sympathy for theories and research that support laissez faire deregulation.[9] Judge Breyer's writings suggest the ardor of the religious convert, except in this case it was conversion to the religion of economic theory -- albeit a misinformed theory, as articulated by Judge Breyer.[10] His writings do not suggest a mindset of judicious objectivity.

Judge Breyer's enthusiasm for economic theory is reflected in his emphasis on economic efficiency rather than equity. He accepts the propriety of "classical" regulation if it reduces "allocative inefficiency."[11] He does not speak of regulation being required to achieve equity and fairness, to save lives or prevent crippling injuries, to protect those whose economic resources are such that "allocative efficiency" is meaningless. At least in his writings prior to this nomination, these were not the terms of Judge Breyer's vocabulary. As one reviewer observed, "If presidents and Congresses ignore Judge Breyer's prescription for regulatory reform, it will result from their disagreement with the proposition that economic efficiency is the sole objective of government regulation . . . "[12]

Several have noted Judge Breyer's record of consistently finding for corporate defendants in antitrust cases. The St. Louis Post-Dispatch, for example, reported that "Breyer voted against antitrust claims more often than the most conservative appointees of President Ronald Reagan."[13] George Mason University law professor William Kovacic is reported to have found that Judge Breyer voted 100% of the time on the side of big business in antitrust cases.[14] Charles Mueller observed in Legal Times that:

> Breyer's antitrust decisions display one especially conspicuous principle: The corporate defendant always wins, no matter how egregious the challenged conduct. He has never met a monopoly or a restraint on competition that he didn't like, ruling for the big-business defendant 16 times in the 16 antitrust decisions he wrote during his 14 years on the U.S. Court of Appeals for the 1st Circuit. . . The result is that Breyer has effectively repealed the federal antitrust laws in his four-state (plus Puerto Rico) jurisdiction."[15]

Now I am not a lawyer, but just considered statistically it would appear from this record that either Judge Breyer's court received an astounding sequence of sixteen consecutive ill-conceived cases without merit, or else his decisions reflect a personal predisposition that is antagonistic to antitrust enforcement.

Of course statistical improbability alone does not prove a bias, but The Wall Street Journal is satisfied: "This is one of the few areas where the nominee appears to have made up his mind. He agrees with much of the agenda promoted by Reagan administration officials who staffed the Justice Department and federal courts with opponents of aggressive antitrust enforcement."[16] [emphasis mine] Business Week draws a similar conclusion: "He is skeptical of government interference in markets and sympathetic to defendants in antitrust cases."[17]

Skeptical of government interference in markets indeed. Judge Breyer has stated that, with respect to air and water pollution, "the essential problem is that the price of a product made by means of a polluting process does not reflect the harm that the resulting pollution causes."[18] He does not say that the essential problem is that peoples' health, their property values, and their quality of life are damaged. His writings suggest that it would be acceptable for a manufacturer of industrial chemicals to poison a neighborhood as long as its prices were made, through taxes, to be high enough to reflect these social costs. He does not reveal a concern for preventing the damage done, against the will of the families and communities harmed, in the first place.

Judge Breyer admits that federal regulation has reduced the number of auto deaths, and that the environment is clearly cleaner ("in some parts of the country"), but he thinks that whether these effects are worth the cost "is open to debate." Here, as elsewhere, his concern is with cost to business, not cost to those who suffer the harm.[19]

But, by and large, it is not Judge Breyer's individual statements that especially cause concern. It is the continued repetition of emphasis on cost to the corporation without a balanced attention to harm to the public.[20]

Judge Breyer manifests, taking his writings in the aggregate, 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 American society since the rise of the giant corporation and 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 each year.

Judge Breyer and Corporate America may want the marketplace to adjudicate workplace safety, toxic emissions, and dangerous products, but the effects such a prescription would have on many, especially the poor and those who are weaker, is simply too brutal to be acceptable to the vast majority of Americans. The Congress and the American people have rejected that approach. We have learned the lessons taught by asbestos, Love Canal, the tobacco companies, the Dalkon Shield, silicone breast implants, BCCI, the Exxon Valdez, Times Beach, the Ford Pinto, GM's sidesaddle gas tanks.

Summary

We have heard repeatedly that Judge Breyer has superb qualifications to sit on the Supreme Court. But we know that qualifications -- IQ, academic degrees, a full curriculum vita -- are not all that matter.

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 on the Court of Appeals, this Committee would not, I am sure, vote to confirm -- not only because of his clearly hostile attitude toward civil rights, but because you would not accept such a closed mind on an issue that reaches to the heart and the spirit of our society.

Judge Breyer, as we know, sided with the defendant in every antitrust case that came before him in 14 years on the Court of Appeals. In so doing he manifests an antagonism to Congress's efforts to restrain the ever-expanding power of colossal corporations, and so to hold large corporations accountable to the public responsibility inherent in their publicly granted charters.

As you review the record of these hearings I would urge that you not focus on detailed incidents such as a failure to pay taxes for domestic help, or a possible conflict of interest in rulings on matters that conceivably could have affected his potential financial liability on Lloyd's of London investments. I would urge you to ask instead: What will it mean for the country to have this nominee on the U. S. Supreme Court. 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, to reject appropriate restraint on corporate power, to dismiss regulation designed to protect the environment and human health and safety in favor of a hypothetical "free market" discipline.

If Judge Breyer acts on the Supreme Court in a manner that is consistent with the preponderance of his public writings, the public will ultimately suffer for the sake of corporate profits. More will become ill, more will be injured, more will suffer personal economic loss -- and some number will die.

The President and the American people would be better served with a different nominee -- one less loyal to corporate interests.

Notes

1. In his writings Judge Breyer generally draws no distinction between corporations and people. To the judge the Disney corporation and a homeowner in Manassas are equal players in the economic arena, as are General Motors and a farmer in Oklahoma buying a pickup truck with sidesaddle gas tanks, or a woman who needed silicone breast implants and the Dow Corning Company.

Overall his writings show little understanding of the aggregate power of large corporations:

- Government can invoke the death penalty and take us to war, but Corporate America is responsible for far more deaths than government. From 1973 through 1991, 1,529 people died from the death penalty and military action combined; during that same period 156 times as many workers, a total of

239,300, died on the job at the hands of industry. An additional untold number of people died from industrial pollution, poisonous food and medicine, and dangerous appliances, equipment, and vehicles. (Statistical Abstract of the United States 1985, Table 712; Statistical Abstract of the United States 1989, Tables 326, 547, 680; Statistical Abstract of the United States 1992, Table 665; National Safety Council, August 1993)

- Corporations control 84% of nongovernment payroll, 67% of total payrolls
- Corporate receipts and spending are more than *10 times* as great as the federal government's (Statistical Abstract of the United States 1992, Table 492, "Federal Receipts, by Source: 1980 to 1992.").
- Corporations control our culture, from the media to entertainment to advertising to taste. A typical child sees 22,000 commercials a year, an average of over 400 a week -- some 350,000 commercials by age 18, and virtually all presented in pursuit of private profit. (Robert M. Liebert. "Effects of Television on Children and Adolescents." Developmental and Behavioral Pediatrics, February 1986, pp. 43-48)
- Ranked by their revenues, the larger corporations nest snugly among the larger countries of the world. Several multinational corporations command resources greater than the tax revenues of such developed nations as Switzerland, Denmark, and Austria (Statistical Abstract of the United States 1990, Table 1456, and Fortune, April 24, 1989, p. 354.), not to mention the hundreds of smaller countries. In their ability to affect lives through expenditure of funds, the largest corporations are more powerful than most countries.
- "The fact that . . . government activities are highly visible, in comparison with those of the corporation, has led to the notion that the prime exercise of social control is done by government. On the contrary, so long as investment decisions are made by the corporations, the locus of social control and coordination must be sought among them; government fills the interstices left by these prime decisions." (Harry Braverman, Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century, New York: Monthly Review Press, 1974, pp. 268-9)

As Professor Galbraith has said, "The truly giant corporations . . . are independent republics of their own management."

2. Breyer's "market" view of externalities is wrong, in two ways: he sums interpersonal utilities, equating a 1 cent cost saving by a sugar producer with a 1 cent reduction in price to sugar buyers -- ignoring that pollution sufferers aren't exactly or necessarily the same persons as the sugar buyers. He fails to properly match up the bearers of the costs and the recipients of the benefits. This was the problem with Ford's Motor Company's use of cost-benefit analysis on moving the Pinto's gas tanks -- and numerous other regulatory uses of cost-benefit analysis. [Regulation and Its Reform, p. 23]

In Judge Breyer's economic calculus these are mathematically equal: a child that is brain-damaged for life from a "hot" batch of DPT vaccine, whose parents receive a $25 million award for around-the-clock care, vs. a child that is undamaged, whole.

When applied outside the domain of business, Judge Breyer's "free market" views would sanction arguments against the "regulation" of street muggings and assaults, on the grounds that such assaults are an economically efficient means of achieving resource distribution. He has shown an unwillingness to apply or extend the criminal and regulatory sanctions we impose on individual behavior, to the often much more harmful behavior of corporations.

Judge Breyer lays down what he sees as criteria for regulation of spillovers or social costs. If his criteria are met, he says regulation can then "reduce allocative inefficiency." He does not speak of equity. He does not speak of innocent neighbors, communities, workers wrongfully harmed. He does not conclude that, under his criteria, regulation will save lives and protect communities. It will reduce allocative inefficiency. [Regulation and Its Reform, p. 26]

He continues: before regulation should reverse an apparently sanctified "market-made decision," the social cost should meet certain criteria, one of which is that it be large. A plant that damages a few lives, reduces the value of a few homes, causes only some misery, should not be regulated. The damage must be "large." What would Judge Breyer tell these few affected workers, customers, neighbors? Sorry? Presumably he would accept regulating the behavior of a single murderer. But when the harm is done by business, by corporations, it must be a "large" harm to warrant interference with the "free market." [Regulation and Its Reform, p. 26]

Speaking of spillovers (or external diseconomies, social costs -- uncompensated costs imposed on those outside the company) caused by products, in this case sugar production that "sends black smoke billowing throughout the neighborhood," Judge Breyer says that, with regulation of this smoke, "those who suffer pollution are made richer." This is the sterile, technocratic economist approach to pollution. Judge Breyer does not say, "those who suffer pollution are made whole" or "are restored to their previous undamaged condition." His focus, his thinking, is purely on an economic calculus with no evident (in this instance) thought about equity, about fairness, about who was wrongfully damaging whom in the first place. No, to Judge Breyer pollution regulation makes the sufferer of pollution richer. [Regulation and Its Reform, p. 25]

As Professor Sheila Jasanoff, professor of science policy, chair of the Dept. of Science and Technology Studies at Cornell Univ., and author of books on risk management and on science policy, has noted "Judge Breyer's view of what constitutes an efficient market is hopelessly wrong."

3. Judge Breyer equates certainty with expected value in examples about soldiers and escape routes (a probability-weighted expected value of 400 lives lost -- 1/3 prob. that all will be saved, 2/3 prob. that all will die -- is not the same as certainty that 400 lives will be lost, since in the first instance there is a reasonable chance that all will be saved (and a larger chance that all will die), whereas in the second 400 will die and 200 will live, for sure. Judge Breyer is ignoring utility functions, as he also does in his market-based solutions to pollution. He knows part of the mathematics and arrogantly criticizes the public for not knowing as much ("people do not understand the counterintuitive consequence of certain important statistical propositions.") [Breaking the Vicious Circle, p. 36-37].

He thes speaks of "deviation toward the mean" (he means regression toward the mean, or that the mean of the sampling error approaches zero as more and more samples are drawn). He uses this concept erroneously, confusing the difference between mean test scores of the group and mean scores for an individual. In an example the judge says an individual who scores high on one test will most likely do worse on the next. In fact, an individual who scores high on one test will most likely, ceteris paribus, score high on the next test. But a group that scores well above its norm, or mean, will most likely score lower as a group on the next test. Judge Breyer then observes, "The statistical deviation toward the mean is positively reinforcing the teacher's negative reinforcement, and negatively reinforcing the positive reinforcement." [Breaking the Vicious Circle, p. 37]

4. Judge Breyer proposes an administrative superagency that would rule over regulatory agencies, by taking policy and budget power away from elected representatives and placing it in the hands of insulated bureaucrats] He says it must have "interagency jurisdiction" to "bring about needed transfers of resources." Congress, one assumes, can just go home. He wants his superagency to have a degree of "political insulation" to withstand political pressures "that emanate from the public directly or through Congress or other political sources" (Breaking the Vicious Circle, p. 60).

". . . one important objective is to limit the extent to which public debate about a particular substance determines the regulatory outcome. . ." Context is that he wants

decisions made on basis of expert analysis, not public pressure, but he shows little concern for the danger of excluding public input (Breaking the Vicious Circle, p. 78). (He also says his superagency proposal is a counter to arguments for deregulation; Breaking the Vicious Circle, p. 80.)

In "Judicial Review of Questions of Law and Policy," Administrative Law Review, v. 38 (Fall 1986), pp. 363-398, Judge Breyer cites admiringly France's Conseil d'Etat as a model for this superagency that would review and change regulations and reallocate funds among programs; he admires the facts that the Conseil "is not bound by the strictures of the adversary system," presents its results "without being confined to a formal record," is able to conduct its deliberations in private without counsel present (pp. 396-97). His superagency would directly affect national policy, yet he likes the idea of a "nonpolitical" body shielded from public input and public scrutiny. [In Breaking the Vicious Circle it is clear that the Conseil doesn't have the resource-reallocation power Breyer wants his superagency to have.] Then after pages of admiration for this French approach, he assures us that his article does not endorse any approach discussed (p. 397).

Judge Breyer says this his proposal is likely to engender objections that it sounds undemocratic and elitist, and then (p. 74) summarily dismisses this charge as not an argument but merely a pejorative label

Judge Breyer is proposing a superagency to reallocate budgetary funds among competing programs, that would override or supercede Congress's constitutional responsibility? This would appear to reflect an unusual, even unique, understanding of the Constitution.

5. Judge Breyer's fondness for market solutions reflects a harshness, a lack of sympathy or concern, for those without the means to adequately defend their rights and express their needs in the marketplace (see Note 2 regarding his harsh allegiance to the justice of the marketplace). Nowhere was I able to find any recognition that the marketplace is a fine mechanism for resource allocation only as long as one has the financial resources -- is wealthy enough -- to adequately express one's preferences. It is analogous to a voting booth in which one votes with dollars, and those without the dollars are disenfranchised. They do not have a vote in this kind of balloting on health care, their workplace safety, or the pollution, noise, and odors dumped on them by a chemical plant down the road.

In his review of "Private Choices and Public Health: The AIDS Epidemic in an Economic Perspective" by Tomas J. Philipson and Richard A. Posner (Harvard University Press, 1994), in The New York Times Book Review, Judge Breyer says that ". . . [Society] has built a Social Security system around the concern that rational individuals may not properly save for old age . . ." In writing that individuals may not properly save for old age, instead of recognizing that they may, in fact, not be able to save, Judge Breyer's writing suggests a lack of connection with, or sympathy for, the poor and lower income workers and families -- the ditch diggers, perhaps -- who have nothing to save. ["The nominee, in his own words: A 'mandate of equal justice under law'," New York Times, May 15, 1994, 1, 30:1]

6. Stephen Breyer, "Reforming Regulation," Tulane Law Review, v. 59 (Oct. 1984), pp. 4-23, specifically p. 4.

7. Stephen Breyer, Regulation and Its Reform (Harvard University Press, 1982), p. 195. Later on p. 261 he also attacks standard setting for dealing with spiliovers.

8. For an explication of the public purposes in creating corporations, see Ralph Estes, *Tyranny of the Bottom Line: Why Corporations Make Good People Do Bad Things -- And How We Can Change Them*, forthcoming.

9. In this regard one notes his uniform rejection of antitrust complaints.

One also notes his selectivity in presenting evidence related to his arguments. Professor Jasanoff (see note 1) observed that Judge Breyer's Breaking the Vicious Circle is "not in any sense a complete accounting of what is known about risk. He left out a vast body of highly-respected research and analysis. He appeared unaware of 10 years of writing about risk. Perhaps he had formed his judgments already. Judge Breyer displays advocacy behavior while cloaking his views in a veil of neutrality. He may not even be aware of this behavior."

Professor Jasanoff referred particularly to research reported during the 1980s that indicate the average person integrates probabilities and risk factors more completely than Breyer acknowledges. One can, of course, only speculate as to whether Judge Breyer omits any mention of this research because it is counter to the position he has adopted.

10. See Note 1.

11. Regulation and Its Reform, p. 26.

12. Victor H. Kramer, review of Regulation and Its Reform in the George Washington Law Review, March 1983, pp. 484-490, specifically p. 489.

13. May 15, 1994.

14. Tony Mauro, "Not everyone happy with the nomination," USA Today, May 16, 1994, p. 4A, citing 1993 study.

15. Charles E. Mueller, "The Big-Business Bias in Breyer's Decisions," Legal Times, week of May 23, 1994, pp. 33.

16. "Supreme Court Nominee Wins Business's Approval," The Wall Street Journal, May 16, 1994.

17. "Business Has An Amicus in Stephen Breyer," Business Week, May 30, 1994, p. 40.

18. Regulation and Its Reform, p. 261.

19. Regulation and Its Reform, p. 2.

20. As in the following statement: "Agencies whose primary mission is to protect the environment or health . . . often tend to downplay or disregard the economic costs which protective regulations impose on industry and consumers." (Administrative Law and Regulatory Policy, p. 310)

The CHAIRMAN. Thank you very much, Professor.

Before we move on, I have received a formal request from Mr. Lloyd N. Cutler, special counsel to the President, to ask that a letter directed to me be placed in the record, responding to what he characterizes as a personal attack by Mr. Nader on him. I will place it in the record and make it available to the press and the public if they wish it.

[The letter follows:]

THE WHITE HOUSE,
Washington, July 15, 1994.

Hon. JOSEPH R. BIDEN,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: Because Ralph Nader's testimony against the nomination of Judge Breyer makes a personal attack on me, I respectfully ask permission to file this reply for the record.

Mr. Nader has made it a practice to advance his public policy views by demonizing some person or entity on the other side of the issue. Unfortunately for me, I have long been one of his favorite targets.

Mr. Nader asserts that the President's selection of Judge Breyer was tainted because of my position as a special government employee (SGE) serving as Special Counsel to the President. Specifically, he contends that this status permits me to evade "a number of conflict-of-interest and disclosure statutes."

Before I undertook my current position, ethics officials in the White House and the Office of Government Ethics thoroughly reviewed and cleared the proposed arrangement. Consistent with the law and standards of conduct, I have disqualified myself from any matters in which the firm is a party or represents a party, as well as matters that would affect the financial interests of the firm. Moreover, contrary to Mr. Nader's assertion, I have voluntarily taken a number of steps that go beyond the requirements of the law, precisely because of my commitment to openness and integrity in Government.

For example, to ensure that my financial and client information is open to public security, I have filed a public disclosure form which has been published in full in the *Legal Times*, although only a more limited confidential form is required. Additionally, while I have chosen to serve without government compensation, I have also arranged to have my salary from the law firm reduced to reflect the time I am devoting to government service. I have made this arrangement even though the law applicable to volunteers and special government employees would permit me to receive my full salary from my law firm. Moreover, because I am no longer a member of the firm, but rather a salaried Senior Counsel who will be paid only for the time I work at the firm, I can take no "draw" from the law firm at the end of the year, as Mr. Nader conjectures. I have also agreed to be bound, while in public service, by the representational bar of 18 U.S.C. §205 as it applies to regular government employees, even though special government employees have more limited restrictions. And not only will I adhere to the post-employment restrictions of the criminal law, but I also have announced my intention to comply with President Clinton's Five Year Ethics Pledge for Senior Appointees, which is not otherwise applied to special government employees.

Finally, the decision to nominate Judge Breyer was obviously the President's alone. On Supreme Court nominations, the President solicits and receives advice from many people, including his own staff, members of the Senate and private citizens and groups speaking for every kind of public and private interest. My own advice was given in the spirit of public service and without any thought of personal or financial advantage.

Sincerely,

LLOYD N. CUTLER,
Special Counsel to the President.

The CHAIRMAN. I would yield to Senator Hatch.

Senator HATCH. I have no questions for this panel, Mr. Chairman.

The CHAIRMAN. Senator DeConcini.

Senator DECONCINI. Thank you, Mr. Chairman.

Let me ask the panel, because it concerns me, of the testimony I read of Mr. Nader and Mr. Estes. I did not read the other ones,