

Testimony of

# The Honorable Orrin Hatch

May 22, 2003

Statement of Chairman Orrin G. Hatch  
Before the United States Senate Committee on the Judiciary  
Executive Business Meeting  
On

## THE DANGERS INHERENT IN ALLOWING MEDIA COVERAGE OF FEDERAL COURT PROCEEDINGS

The next item on our agenda is S. 554, which is cosponsored by Senators Grassley and Schumer, as well as several other Committee Members. I am sure that they have remarks that they would like to make in support of this legislation, but I have some remarks that I would like to make at the outset as well.

I oppose this bill for several reasons. First, under its provisions, the decision whether to permit certain types of media coverage of federal court proceedings will be left to individual judges. I think we will find tremendous differences within and between the various federal courts, which will invariably lead to inconsistencies. Any decision about whether to permit these types of media coverage of federal court proceedings should be left to the sound discretion of the Judicial Conference to determine in a uniform policy applicable to all federal courts.

The Judicial Conference opposes S. 554 because it believes that allowing cameras and electronic media in federal courtrooms could interfere with the ability of federal courts to mete out justice. I share this concern. The paramount objective of our federal courts is to administer fair and impartial justice to individual litigants in individual cases. No other mission of the federal courts is as important.

Cameras and electronic media in the courtroom can have an intimidating effect on litigants, witnesses and jurors that negatively impacts the trial process. For example, cameras can intimidate civil defendants who, regardless of the merits of their case, might prefer to settle rather than risk damaging accusations in a televised trial. Moreover, a witness recounting facts to a jury often will act differently when he or she knows that thousands of people are watching and listening to the story. This change in a witness's demeanor could have a profound impact on a jury's ability to accurately assess the truthfulness of that witness.

The Judicial Conference also believes that S. 554 does not adequately address the privacy concerns of litigants, witnesses, attorneys, judges and others sucked in to the maelstrom of a federal trial. Witnesses and counsel often discuss sensitive information during the course of a trial -- information that frequently relates to individuals who are not even parties to the case. Although such personal information about non-parties is available to anyone attending court proceedings in person, televising and broadcasting such information would needlessly elevate the exposure. S. 554 raises a host of other issues as well, such as the security concerns resulting from televised trials, which would raise the public profile of judges, U.S. Marshals, and court personnel. There are also serious funding problems with this bill, since S. 554 does not authorize the funding needed to address the costs of allowing cameras and electronic media in the courtroom.

For all of these reasons, I cannot support S. 554.

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On the Nomination of

MICHAEL CHERTOFF FOR THE  
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

I want to take a moment to talk about the first item on today's agenda, which is the nomination of Michael Chertoff for the Third Circuit.

Mr. Chertoff is well known to this committee. He has served as Assistant Attorney General of the Criminal Division at the United States Department of Justice since June 2001. Since the tragedy of September 11, Mr. Chertoff and his staff have worked tirelessly on behalf of our country prosecuting those whose specific goal is to harm America. But even before he was tapped to head the Criminal Division, Mr. Chertoff had developed a distinguished career during which he dedicated himself not only to fighting crime and corruption, but, just as importantly, to ensuring that the overarching goals of justice and fairness are served. There is no doubt in my mind that Michael Chertoff will be an exemplary Third Circuit judge.

In my view, Mr. Chertoff has been very candid with this Committee throughout the nominations process. During his confirmation hearing, he demonstrated that he is articulate, respectful, and extremely knowledgeable in the law. Following his hearing, he responded to written questions from various Members of the Committee and, like his testimony during his confirmation hearing, I found his responses to be direct, truthful, and appropriate given his position within the Department of Justice.

At least week's mark up, Senator Kennedy raised concerns about Mr. Chertoff's answers to his written questions. As I have stated, I firmly believe that Mr. Chertoff has always been nothing but honest and forthright concerning his business with this Committee, not only during his confirmation hearing, but throughout his tenure with the Department of Justice. However, to give Senator Kennedy additional time to obtain information and, with the understanding from Senator Leahy that he would urge very limited debate on this nomination, I agreed to put last week's vote on Mr. Chertoff off until today.

Now Mr. Chertoff has answered Senator Kennedy's second set of written questions. As I expected, he answered this second set of questions honestly and forthrightly. It is now time to vote on the Chertoff nomination. I have every confidence that he will be a sterling addition to the Third Circuit, and I urge my colleagues to join me in supporting his nomination.

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Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary  
Executive Business Meeting  
On the nominations of

ROBERT D. MCCALLUM, JR. TO BE ASSOCIATE ATTORNEY GENERAL  
AND  
PETER KEISLER TO BE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION  
UNITED STATES DEPARTMENT OF JUSTICE

The next items on the agenda are two top-level Justice Department nominees, Robert McCallum to be Associate Attorney General and Peter Keisler to be Assistant Attorney General of the Civil Division.

Neither of these nominees are newcomers to the Department. Since September 2001, Mr. McCallum has led the Civil Division with great skill during extremely challenging times for our nation. He has shown himself to be a dedicated public servant, and I am certain that the Department will continue to benefit from his leadership upon his confirmation as its third in command.

Mr. Keisler has extensive experience with civil litigation in both the public and private sectors. He currently serves as Principal Deputy Associate Attorney General, and enjoys bi-partisan support from past and present high ranking Justice Department officials. I have no doubt that he, too, will continue his distinguished service once confirmed.

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On

#### PAY INCREASES FOR THE FEDERAL JUDICIARY

I am pleased to turn to the next item on the agenda, S. 1023, which addresses the serious matter of the erosion of pay for the federal judiciary. As the list of cosponsors of this bill demonstrates, there is strong bipartisan consensus that the independence and quality of the judiciary is at risk because of the inadequacy of the current salaries of federal judges. I want to extend my thanks to the cosponsors of this legislation, particularly Members of this Committee who have joined me in this effort - Senators Leahy, Kennedy, Feinstein, Durbin, Chambliss, and Cornyn. The bill is also cosponsored by Senators Lott, Alexander, Collins, and Miller. I am confident that this measure will continue to enjoy a broad level of support as we move it to the Senate floor for final passage.

In his 2002 Year-End Report, Supreme Court Chief Justice William Rehnquist identified the need to increase judicial pay as the most pressing issue facing the judiciary. He observed, "Inadequate compensation seriously compromises the judicial independence fostered by life tenure. That low salaries might force judges to return to the private sector rather than stay on the bench risks affecting judicial performance. Instead of serving for life, those judges would serve the terms their finances would allow, and they would worry about what awaits them when they return to the private sector."

His concerns were supported by studies conducted by The American Bar Association and Federal Bar Association, which issued a report on this issue in February 2001. Furthermore, in the Report of the National Commission on the Public Service, issued in January of this year, the Chairman of the Commission, Paul Volker, made this observation: "Judicial salaries are the most egregious example of the failure of federal compensation policies. Federal judicial salaries have lost 24 percent of their purchasing power since 1969, which is arguably inconsistent with the Constitutional provision that judicial salaries may not be reduced by Congress. ... The lag in judicial salaries has gone on too long, and the potential for diminished quality in American jurisprudence is now too large." Accordingly, the Commission made the recommendation that Congress should grant an immediate and significant increase in judicial salaries to ensure a reasonable relationship to other professional opportunities.

S. 1023 is a step towards addressing these concerns. It provides for a 16.5 percent increase in the salaries of the justices of the Supreme Court and other federal judges, an average salary increase of about \$25,000. It does so without altering the respective provisions of Title 28 of the United States Code, which defines their salary rates. The pay adjustment would be effective with the first pay period beginning on or after January 1, 2004, and would be applied before any annual salary adjustment authorized under the Employment Cost Index approval mechanism provided by 28 U.S.C. § 461.

The judicial officers enumerated in this bill to receive the 16.5 percent pay increase are the Chief Justice of the United States, associate justices of the Supreme Court, United States circuit judges, United States district judges, and judges of the United States Court of International Trade. In addition, this legislation would have the effect of increasing salaries of the judges of the U.S. Court of Federal Claims, bankruptcy judges and full-time United States magistrate judges whose salaries are related to the rate of pay of United States district judges.

This legislation is supported by the Judicial Conference as well as by the President. I look forward to swift Committee action on this bill and am hopeful the full Senate will, in the very near future, take up this matter and pass this long overdue measure.

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