

Testimony of
The Honorable Orrin Hatch

July 30, 2003

Statement of Chairman Senator Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on the Nomination of

Henry W. Saad

to be U.S. Circuit Judge for the Sixth Circuit

Today the Committee has the privilege of considering the nominations of seven outstanding lawyers to be federal judges. I commend President Bush for nominating each of them, and I look forward to their testimony.

The first nominee from whom we will hear is Henry W. Saad, who has been nominated for a position on the United States Court of Appeals for the Sixth Circuit. This is an historic appointment. Upon his confirmation, Judge Saad will become the first Arab-American to sit on the Sixth Circuit, which covers the states of Kentucky, Ohio, Tennessee, and Michigan.

It is long past time for this Committee to consider Judge Saad's nomination. He was first nominated to fill a federal judgeship in 1992, when the first President Bush nominated him for a seat on the United States District Court for the Eastern District of Michigan. The fact that he did not get a hearing may have worked to his benefit, since he was appointed in 1994 by Governor Engler to a seat on the Michigan Court of Appeals. He was elected to retain his seat in 1996 and again in 2002, receiving broad bipartisan support in each election.

On November 8, 2001, President Bush nominated Judge Saad for a seat on the Sixth Circuit, the position for which we are considering him today. When no action was taken on his nomination during the 107th Congress, President Bush renominated him to the Sixth Circuit on January 7,

2003. All told, Judge Saad has been nominated for a seat on the federal bench three separate times. It is high time this Committee considered his nomination.

Judge Saad's credentials for this position are impeccable. He graduated with distinction from Wayne State University in 1971 and magna cum laude from Wayne State University Law School in 1974. He then spent 20 years in the private practice of law with one of Michigan's leading firms, Dickinson, Wright, specializing in product liability, commercial litigation, employment law, labor law, school law and libel law. In addition, he has served as an Adjunct Professor at both the University of Detroit Mercy School of Law and at Wayne State University Law School.

Judge Saad is active in legal and community affairs. Some of the organizations he has been involved with include educational television, where he serves as a trustee, the American Heart Association, Mothers Against Drunk Driving, and other nonprofit organizations that serve the elderly and impaired. As a leader in the Arab-American community, Judge Saad has worked with a variety of organizations in promoting understanding and good relations throughout all ethnic, racial, and religious communities. He is an outstanding role model.

Judge Saad enjoys broad bipartisan support throughout his state, as evidenced by endorsements in his last election by the Michigan State AFL-CIO and the United Auto Workers of Michigan. He has received dozens of letters of support from leading political figures, fellow judges, law professors, private attorneys, the Michigan Chamber of Commerce, and a variety of other groups.

Let me quote from just a few of the letters received in support of Judge Saad's nomination. Maura D. Corrigan, Chief Justice of the Michigan Supreme Court, wrote: "Henry Saad has distinguished himself as a fair-minded and independent jurist who respects the rule of law, the independence of the judiciary, and the constitutional role of the judiciary in our tripartite form of government. ... Judge Saad is a public servant of exceptional intelligence and integrity. He has the respect of the bench and the bar." Other judges have written that he is "a hard-working and honorable individual" and that he is "an outstanding appellate jurist with a strong work ethic." Roman Gribbs, a lifelong Democrat and retired judge, wrote, "Henry Saad is a man of personal and professional integrity, is fair-minded, very conscientious and is above all, an outstanding jurist." Judge Saad has clearly earned the respect and admiration of his colleagues on the Michigan state court bench. His nomination deserves consideration by this Committee.

I hope that our consideration of Judge Saad's nomination is not overshadowed by collateral arguments about the propriety of holding this hearing. Let me make this absolutely clear:

Holding this hearing today is entirely consistent with the longstanding blue slip policy of this Committee.

Since I first became chairman of this Committee in 1995, I have followed the same blue slip policy crafted by two former Democratic chairmen of this Committee, Senator Kennedy and Senator Biden. Here's the Committee's blue slip policy as explained in a letter by former Chairman Joe Biden to the first President Bush dated June 6, 1989:

"For many years - under both Democratic and Republican chairmanships - the return of a negative blue slip meant that the nomination simply would not be considered. That policy was modified under Senator Kennedy's chairmanship, so that the return of a negative blue slip would not preclude consideration of the nomination. A hearing and vote would be held, although the return of a negative blue slip would be given substantial weight."

Chairman Biden continued to explain the blue slip policy that the Committee would follow under his chairmanship as follows: "The return of a negative blue slip will be a significant factor to be weighed by the committee in its evaluation of a judicial nominee, but it will not preclude consideration of that nominee unless the Administration has not consulted with both home state Senators prior to submitting the nomination to the Senate. If such good faith consultation has not taken place, the Judiciary Committee will treat the return of a negative blue slip by a home state Senator as dispositive and the nominee will not be considered."

I will submit a copy of this letter for the record.

In the case of Judge Saad, as with the other Michigan nominees, there is a clear record of consultation by the Bush White House with the Michigan Senators. White House records indicate that beginning on April 10, 2001, White House Counsel Alberto Gonzales began discussions with the offices of the Michigan senators regarding the vacancies on the Sixth Circuit and in the Eastern District of Michigan.

On May 17, 2001, Judge Gonzales provided the names of the individuals being considered for the Michigan vacancies, and invited both Senators to provide feedback. The record is clear that over the next year through subsequent telephone conversations, as well as written correspondence, there was extensive consultation and repeated invitations to the Michigan Senators to provide their input into the nomination process. In fact, I understand the White

House offered to consider nominating both of the individuals championed by the Michigan Senators to federal judgeships.

Although President Bush ultimately did not nominate those individuals, the consultation requirement was undeniably fulfilled in the case of Judge Saad and the other Michigan nominees. I will continue to work with my friends and colleagues from Michigan - Senators Levin and Stabenow - the White House, Senator Leahy, and others on the Committee to reach an acceptable resolution in filling judicial vacancies in Michigan and the Sixth Circuit.

And while the Michigan senators' negative blue slips have been and will continue to be accorded substantial weight - indeed, I delayed scheduling a hearing on ANY of the Michigan nominees because of the Michigan senators' views - their negative blue slips are not dispositive under the Committee's Kennedy-Biden-Hatch blue slip policy.

Again, I fervently hope that the debate that I anticipate will occur on my decision to schedule this hearing will neither distract nor detract from the historic significance of Judge Saad's nomination, which was noted by Judge George Steeh III, a distinguished Arab-American appointed by President Clinton to the Eastern District of Michigan. He said, as quoted in the Detroit Free Press on November 9, 2001, that President Bush's nomination of Judge Saad in the wake of the September 11 attacks "conveys an important message to all the citizens and residents of this country that we embrace and welcome diversity and that we are extending the American dream to anyone who is prepared to work hard."

I could not agree more. Judge Saad is a fine jurist who will make an outstanding addition to the Sixth Circuit, and I look forward to hearing from him this morning.

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Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Hearing on the Nominations of

Larry Alan Burns to be U.S. District Judge, Southern District of California;

Glen E. Conrad to be U.S. District Judge, Western District of Virginia;

Henry F. Floyd to be U.S. District Judge, District of South Carolina;

Kim R. Gibson to be U.S. District Judge, Western District of Pennsylvania;

Michael W. Mosman to be U.S. District Judge, District of Oregon; and

Dana Makoto Sabraw to be U.S. District Judge, Southern District of California

In addition to Judge Saad, I am pleased to have six nominees for the federal trial court bench before the Committee today. We welcome each of you, your family members and your friends who might be present today.

The first of our six district court nominees is Larry Burns, who has been nominated for the Southern District of California. Judge Burns sits before us with 24 years of legal experience, including 6 years as a Deputy District Attorney in San Diego and 12 years as an Assistant U.S. Attorney. While at the U.S. Attorney's Office Judge Burns successfully prosecuted the first federal carjacking case in California and the first case under the Armed Career Criminal Act in the Southern District of California. For the past six years, Judge Burns has been serving as a magistrate judge in the same district to which he has been nominated.

Our nominee for the District of South Carolina, Henry Floyd, has enjoyed a stellar legal career on both sides of the bench. Judge Floyd served as a private practice litigator for nineteen years before assuming judicial duty on the Thirteenth Judicial Circuit of South Carolina in 1992. Judge Floyd also served for six years as a member of the South Carolina House of Representatives.

Glen Conrad is our nominee for the Western District of Virginia. Judge Conrad is no stranger to the Western District or its federal court. He has served there as a magistrate judge for 27 years, where he has handled a wide range of legal issues and proved beyond doubt his fitness for the federal bench. Judge Conrad has contributed to continuing legal education efforts over the course of his career, in addition to serving as a member of the Civil Justice Reform Act Advisory

Committee, where he has helped recommend measures to improve the efficiency of the Western District court system and reduce the costs of civil litigation.

Our nominee for the Western District of Pennsylvania, Kim Richard Gibson, is another remarkable candidate. Judge Gibson began his legal career in the Judge Advocate General Office. Coupled with his JAG duties, Judge Gibson practiced law as a solo practitioner. During the same period, he served as the solicitor for various municipalities, a school district, and Somerset County, Pennsylvania. Within Somerset County, he served in several capacities consecutively: public defender, attorney for the county's youth and children's services, assistant solicitor, and solicitor. In 1997, he was elected to a judgeship for the Court of Common Pleas for the 16th Judicial District, where he currently serves.

Michael Mosman is our nominee for the District of Oregon. After graduating magna cum laude from the J. Reuben Clark Law School at Brigham Young University, Mr. Mosman clerked first for the Honorable Malcolm Wilkey of the D.C. Circuit, and then for Justice Lewis F. Powell of the Supreme Court. He then worked as an associate for the prestigious Portland firm of Miller, Nash, where he represented various natural resources and banking clients. As an Assistant U.S. Attorney and U.S. Attorney for the District of Oregon, Mr. Mosman has a wealth of litigation experience that will serve him well on the federal bench.

Dana Makoto Sabraw, the final district court nominee we will consider today, has been nominated for the Southern District of California. Judge Sabraw has ten years of private litigation experience in business and commercial litigation. He served as a Municipal Court Judge for three years before ascending to the San Diego Superior Court where he has served for the past five years. His combined 18 years of legal experience are further bolstered by his extensive pro bono community involvement, for which he has received numerous awards and accolades.

I am pleased to have these nominees before the Committee today, and I look forward to hearing from them.

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