

Testimony of
The Honorable Orrin Hatch

January 29, 2003

Statement of Senator Orrin G. Hatch, Chairman

Before the United States Senate Committee on the Judiciary
on the Nominations of

Deborah Cook for the U.S. Court of Appeals for the Sixth Circuit

John Roberts for the U.S. Court of Appeals for the D.C. Circuit

Jeffrey Sutton for the U.S. Court of Appeals for the Sixth Circuit

John Adams for the District Court for the Northern District of Ohio

Robert Junell for the District Court for the Western District of Texas

S. James Otero for the District Court of the Central District of California

I am pleased to welcome you all to the Committee's first judicial confirmation hearing of the 108th Congress. I first would like to acknowledge and thank Sen. Leahy for his service as Chairman of the Committee over the past 16 months. I also would like to extend a particular welcome to Senator Bob Dole, our former Majority Leader, and to Commissioner Russell Redenbaugh, the three-term U.S. Civil Rights Commissioner who also happens to be the first disabled American to serve on that Commission. It means a great deal to me that they are both here today to support Mr. Jeff Sutton's nomination. And of course, I would also like to express my deep appreciation for the Members we have here who have taken time to come and present their views on the qualifications of our witnesses today.

Our first panel features three outstanding circuit nominees who were nominated on May 9, 2001, whose hearing was originally noticed for May 23, 2001. I agreed to postpone that hearing for one week at the request of some of my Democratic colleagues who claimed to need the additional week to assess the nominees' qualifications. As we all know, control of the Senate and the Committee shifted to the Democrats shortly thereafter, on June 5, 2001, and these nominees have been languishing in Committee without a hearing ever since. So I am particularly pleased to pick up where we left off in May 2001 by holding our first confirmation hearing for the same three nominees we noticed back then, Justice Deborah Cook, Jeffery Sutton, and John Roberts. It is with great pleasure that I welcome these distinguished guests before the Committee this morning.

We also have three very impressive district court nominees with us today: John Adams for the Northern District of Ohio, Robert Junell for the Western District of Texas and S. James Otero for the Central District of California. I will reserve my remarks about these district court nominees until I call their panel forward.

Our first nominee is Ohio Supreme Court Justice Deborah Cook, who has established a distinguished record as both a litigator and a jurist. Justice Cook began her legal career in 1976 as a law clerk for the firm now known as Roderick Linton, which is Akron's oldest law firm. Upon her graduation from the University of Akron School of Law in 1978, Justice Cook became the first woman hired by the firm. In 1983, she became the first female partner in the firm's century of existence. I am proud to have her before us as a nominee who knows first hand the difficulties and challenges that professional women face in breaking the glass ceiling.

During her approximately fifteen years in the private sector, Justice Cook had a large and diverse civil litigation practice. She represented both plaintiffs and defendants at trial and on appeal in cases involving, for example, labor law, insurance claims, commercial litigation, torts, and ERISA claims.

In 1991, Justice Cook left the private sector after winning election to serve as a judge on the Ninth Ohio District Court of Appeals. During her four years on the Ninth District bench, she participated in deciding over one thousand appeals. The Ohio Supreme Court reversed only six of the opinions that she authored, and eight of the opinions in which she joined. In 1994, Justice Cook was elected to serve as a justice on the Ohio Supreme Court. She therefore brings to the federal bench more than ten years of appellate judicial experience, which was built on a foundation of fifteen years of solid and diverse litigation experience. There can be little doubt that she is eminently qualified to be a Sixth Circuit jurist, and I commend President Bush on his selection of her for this post.

Our next nominee is Jeff Sutton, one of the most respected appellate advocates in the country today. He has argued over 45 appeals for a diversity of clients in federal and state courts across the country, including a remarkable number, 12 to be exact, before the U.S. Supreme Court. His remarkable skill and pleasant demeanor have won him not only a lot of decisions, but also a wide variety of prominent supporters, including Seth Waxman, President Clinton's Solicitor General; Benson Wolman, the former head of the Ohio ACLU; Bonnie Campbell, a Clinton nominee to the Eighth Circuit Court of Appeals; Civil Rights Commissioner Redenbaugh, the first disabled American to serve on the U.S. Civil Rights Commission, and former Senate Majority Leader Bob Dole, who is among the country's most powerful advocates on behalf of disabled Americans.

I feel it necessary for me to comment briefly on some of the recent criticisms we have heard. Of course, to no one familiar with the nominations process' surprise, our usual gang of fringe Washington leftist lobbyists are opposing Republican nominees. Well, their opposition of Jeff Sutton is for all the wrong reasons. But, as people who know me well will attest, I have always been willing to acknowledge a fair point made by the opposition. So in keeping with that principle, I want everyone to know that I found something commendable in the so-called report published by one of these groups about Jeff Sutton. That report conceded that, "No one has seriously contended that Sutton is personally biased against people with disabilities." That is a

very important point - and should be obvious since Jeff Sutton has a well-known record of fighting for the legal rights of disabled people. And he was raised in an environment of concern for the disabled; his father ran a school for people affected by cerebral palsy.

Since the opposition to Jeff Sutton is not personal, then what is it? It seems to come down to a public policy disagreement about some Supreme Court decisions relating to the limits to federal power when Congress seeks to regulate state governments. Those cases include *City of Boerne*, *Kimel*, and *Garrett*, among others. But in those cases, it was Jeff's job, as the chief appellate lawyer for the State of Ohio, and as a lawyer, to defend his clients' legal interests. As the American Bar Association ethics rules make clear, "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."

Now I don't think anyone on this Committee would actually consider voting against a nominee out of dislike for the nominee's clients. We had an important discussion about clients in connection with the confirmation of Marsha Berzon, now a judge on the Ninth Circuit - who was born in Ohio, by the way - and this Committee ultimately decided not to hold her responsible for her clients' views. Judge Berzon had been a long-time member of the ACLU, serving on the board of directors and as the vice president of the Northern California branch. She testified that:

"[I]f I am confirmed as a judge, not only will the ACLU's positions be irrelevant but the positions of my former clients and, indeed, my own positions on any policy matters will be quite irrelevant and I will be required to and I commit to look at the statute, the constitutional provisions, and the precedents only in deciding the case." [July 30, 1998]

I want to remind my colleagues that that answer sufficed for Judge Berzon, and she was approved by this Committee with my support and confirmed by the Senate. I think we all agree that anybody involved in a legal dispute has a right to hire a good lawyer - even if that person is guilty of murder. And Jeff's clients are not murderers; they are state governments, defending their legal rights. So let's not beat up on Mr. Sutton just because he worked for the State of Ohio.

Of course, I am not suggesting that Committee Members must praise the effects of the Supreme Court's rulings in *City of Boerne*, *Kimel* and *Garrett*. Those decisions affected real people and undid some hard work on the part of Congress. I should know - I did a lot of that work. I put a great deal of time and energy into drafting and passing the Religious Freedom Restoration Act, the Americans with Disabilities Act, and other laws that have been declared beyond federal power, including the Violence Against Women Act. I thought those laws would be good for the country, and they still are. It was not easy to see them limited or struck down. Of course, I understand the powerful constitutional principles underpinning the Supreme Court's decisions, but I can sympathize with those who see things differently. I have no sympathy, however, for the notion that those Supreme Court decisions and the positions of the states who were Mr. Sutton's clients are somehow a legitimate reason to oppose Jeff Sutton's nomination.

So - since even the People for the American Way concedes that Jeff Sutton harbors no

personal bias, and since Mr. Sutton cannot be held responsible for the Supreme Court's decisions, and since we all agree that Ohio and Alabama and Florida have the right to representation in

court, then I do not see any real reason to oppose this highly skilled and highly qualified lawyer. I do look forward to his testimony and would only urge my colleagues and observers to keep an open mind. From the record I have observed so far, I am convinced that Jeff Sutton will be a great judge, and one who understands the proper role of a judge.

Our final circuit nominee today is Mr. John Roberts, who has been nominated for a seat on the D.C. Circuit Court of Appeals. He is widely considered to be one of the premiere appellate litigators of his generation. Most lawyers are held in high esteem if they have had the privilege of arguing one case before the U.S. Supreme Court. Mr. Roberts has argued an astounding 39 cases before the Supreme Court. It is truly an honor to have such an accomplished litigator before this Committee.

The high esteem in which Mr. Roberts is held is reflected in a letter the Committee recently received urging his confirmation. This letter, which I will submit for the record, was signed by more than 150 members of the D.C. Bar, including such well-respected attorneys as Lloyd Cutler, who was White House Counsel to both Presidents Carter and Clinton; Boyden Gray, who was White House Counsel to the first President Bush; and Seth Waxman, who was President Clinton's Solicitor General. The letter states, "Although, as individuals, we reflect a wide spectrum of political party affiliation and ideology, we are united in our belief that John Roberts will be an outstanding federal court of appeals judge and should be confirmed by the United States Senate. He is one of the very best and most highly respected appellate lawyers in the nation, with a deserved reputation as a brilliant writer and oral advocate. He is also a wonderful professional colleague both because of his enormous skills and because of his unquestioned integrity and fair-mindedness." This is high praise from a group of lawyers who themselves have excelled in their profession, who are not easily impressed, and who would not recklessly put their reputations on the line by issuing such a sterling endorsement if they were not 100% convinced that John Roberts will be a fair judge who will follow the law regardless of his personal beliefs.

Let me say a brief word about Mr. Roberts's background. He graduated from Harvard College, summa cum laude, in 1976, and received his law degree, magna cum laude, in 1979 from the Harvard Law School, where he was managing editor of the Harvard Law Review. Following graduation he served as a law clerk for Second Circuit Judge Henry J. Friendly, and for then-Justice William Rehnquist of the Supreme Court. From 1982 to 1986, Roberts served as Associate Counsel to the President in the White House Counsel's Office. From 1989 to 1993, he served as the Principal Deputy Solicitor General at the U.S. Department of Justice. He now heads the appellate practice group at the prestigious D.C. law firm Hogan & Hartson. And he has received the ABA's highest rating of unanimously Well Qualified.

I must say that this panel represents the best of the best, and I commend President Bush for seeking out such nominees of the highest caliber.

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Before we begin, I would like to congratulate all three of these nominees on being selected by President Bush for these important positions. It is a pleasure to have nominees before this committee who have distinguished themselves with hard work and great intellect. I would now like to welcome our District Court nominees here today and say a few words about them.

John Randell Adams, Jr., our nominee to the U.S. District Court for the Northern District of Ohio, has extensive experience in both the private and public sectors of the legal community. Upon graduation from Akron University School of Law, Judge Adams clerked for Judge W.F. Spicer of the Court of Common Pleas. After clerking, Judge Adams spent five years in private practice as an associate with an Akron area law firm, handling criminal, civil, domestic and probate matters. Judge Adams then spent three years as an assistant prosecutor at the Summit County Prosecutor's Office, where he handled civil matters, representing various office holders of Summit County. From 1989 to 1999, Judge Adams was an associate and partner at the law firm of Kaufmann & Kaufmann, where he focused his practice in the areas of estate planning, probate and trust law. Since 1999, Judge Adams has served on the Court of Common Pleas for Summit County, presiding over cases involving a wide range of legal issues.

Our second nominee this morning is Robert A. Junell. Mr. Junell comes before this committee as our nominee to the U.S. District Court for the Western District of Texas. He has a stellar record, distinguishing himself both as an advocate and a legislator. Mr. Junell has over 25 years of civil litigation experience and 14 years of service as a Representative in the Texas State Legislature. After graduating from Texas Tech University School of Law in 1976, Mr. Junell became a litigator representing a variety of clients including: insurance companies, plaintiffs in personal injury cases, political sub-divisions in litigation, and businesses involved in commercial litigation. In 1988, Mr. Junell, a Democrat, was elected to the Texas House of Representatives as the Representative for District 72. He has given numerous speeches to organizations within the state and has received numerous awards for his service as a legislator and his general work within the community.

Last but certainly not least, Judge S. James Otero, our nominee for the Central District Court of California, has been a valuable member of the California legal community since he graduated from Stanford Law School in 1976. Judge Otero was a Deputy City Attorney in Los Angeles for 10 years, handling approximately 130 Superior Court and Municipal Court cases during his tenure. Since being nominated to the bench in 1988, Judge Otero has served on both the Los Angeles Superior and Municipal Courts. Judge Otero has a rich background in community assistance, especially through his work with the Salesian Boys and Girls Club & Salesian Family Youth Center.

I am confident that all three of these fine nominees have the intellect, experience, and temperament necessary to serve with distinction on the federal courts to which they have been nominated. I look forward to hearing from them today and to working with my colleagues to bring their nominations to a vote very soon. It is a pleasure to welcome each of you to our committee. Let me now turn to the distinguished ranking democratic member for his opening remarks, and then we will offer our nominees a chance to introduce their very patient family and friends that they have brought with them today.

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