

Testimony of

The Honorable Orrin Hatch

February 5, 2003

Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

On the Nominations of:

Jay S. Bybee for the Court of Appeals for the Ninth Circuit

Judge Ralph R. Erickson for the District of North Dakota

Judge William D. Quarles, Jr. for the District of Maryland

Judge Gregory L. Frost for the Southern District of Ohio

I am pleased to welcome to the Committee this morning four excellent nominees for the federal bench. All of you are to be commended for your impressive qualifications and accomplishments. Our first panel today will feature an outstanding circuit court nominee, Jay S. Bybee, who has been nominated to the Ninth Circuit Court of Appeals. Mr. Bybee is no stranger to Committee hearings, having appeared most recently before the Committee in October 2001. We will also hear from three District Court nominees: Judge Ralph R. Erickson for the District of North Dakota, Judge William D. Quarles, Jr. for the District of Maryland, and Judge Gregory L. Frost for the Southern District of Ohio. And of course, I would also like to express appreciation for the Members who have taken time to come and present their views on the qualifications of our witnesses today. We will hear from them in a moment.

I am especially honored to have Mr. Jay Bybee here today, who has been nominated by President Bush to serve on the Court of Appeals for the Ninth Circuit. Professor Bybee comes to us with a sterling resume and a record of distinguished public service.

Professor Bybee is currently on leave from UNLV's William S. Boyd School of Law, where he has served as a professor since the law school's founding in 1999. He has served as Assistant Attorney General for the Department of Justice's Office of Legal Counsel (OLC) since October 2001. Notably, this is a post formerly held by two current Supreme Court justices. As head of the Office of Legal Counsel, Mr. Bybee assists the Attorney General in his function as legal advisor to the President and all executive branch agencies. The Office also is responsible for providing legal advice to the executive branch on all constitutional questions and reviewing pending legislation for constitutionality. I'm sure Professor Bybee can attest that his work has been more than challenging, especially since he joined OLC soon after the events of September 11th, but the nation is lucky to have him.

Professor Bybee is a Californian by birth, but he made the wise choice of attending Utah's own Brigham Young University, where he earned a bachelor's degree in Economics, magna cum laude, and a law degree, cum laude. While in law school, he was as a member of the BYU Law Review.

Following graduation, Mr. Bybee served as a law clerk to Judge Donald Russell of the Fourth Circuit Court of Appeals before joining the firm of Sidley & Austin. In 1984 he accepted a position with the Department of Justice, first joining the Office of Legal Policy, and then working with the Appellate Staff of the Civil Division. In that capacity, Mr. Bybee prepared briefs and presented oral arguments in the U.S. Courts of Appeals. From 1989 to 1991, Mr. Bybee served as Associate Counsel to President George H.W. Bush.

Professor Bybee is a leading scholar in the areas of constitutional and administrative law. Before he joined the law faculty at UNLV, he established his scholarly credentials at the Paul M. Hebert Law Center at Louisiana State University, where he taught from 1991 to 1998. His colleagues have described Professor Bybee as a first-rate teacher, a careful and balanced scholar, and a hardworking and open-minded individual with the type of broad legal experience the federal bench needs.

The recommendations of two individuals, in particular, deserve special note. Bill Marshall, a professor of law at the University of North Carolina and a former Associate White House Counsel under President Clinton who also participated in the judicial selection process for Clinton Administration appointments while at OLP, said of Mr. Bybee:

"The combination of his analytic skills along with his personal commitment to fairness and dispassion lead me to conclude that he will serve in the best traditions of the federal judiciary. He understands the rule of law and he will follow it completely."

Stuart Green, a law professor at Louisiana State University, who describes himself as a "liberal Democrat and active member of the ACLU" has written the Committee:

"I have always found [Jay Bybee] to be an extremely fair-minded and thoughtful person. Indeed, Jay truly has what can best be described as a 'judicious' temperament, and I would fully expect him to be a force for reasonableness and conciliation on a court that has been known for its fractiousness."

We hear a great deal from some Committee Members about the need for "balance" on the federal courts. Here we have a self-described liberal Democrat who testifies that Professor Bybee would bring some balance to the Ninth Circuit. I would welcome some balance on a court in which 14 of the 24 active judges--including 14 of the last 15 confirmed--were appointed by President Clinton. A court which is seldom out of the news and often seems to court controversy with its decisions needs some leavening once in a while.

We are all familiar with the Ninth Circuit's Pledge of Alliance ruling this past summer, and the Ninth Circuit's high reversal rate by the Supreme Court is well documented, but less well known is the Ninth Circuit's propensity for reversing death sentences, some judges voting to do so almost as a matter of course. No doubt the Ninth Circuit has some of the nation's most intelligent judges, but some cannot seem to follow the law. Just this term, the U.S. Supreme Court has summarily reversed the Ninth Circuit three times in one day and vacated an opinion 9-0.

With two judicial emergencies in the Ninth Circuit, we need judges who are committed to applying and upholding the law. I firmly believe Professor Bybee represents this type of judge. I am very much looking forward to hearing from Professor Bybee today, and to working with this Committee to obtain the Committee's positive recommendation to the full Senate and to the full Senate's confirmation. He will be a terrific judge.

In addition to the nomination of Professor Jay S. Bybee to the U.S. Court of Appeals for the Ninth Circuit, we have the privilege of considering three district court nominees.

Our nominee to the U.S. District Court for the District of North Dakota, Judge Ralph Erickson, has carved out a stellar legal career on both sides of the bench. Judge Erickson served as a private practice litigator for more than a decade before being elevated to the state court bench in North Dakota eight years ago. According to a secret poll conducted by The Forum, Fargo's daily newspaper, in 2002, Judge Erickson was selected as "Best Judge in Cass and Clay Counties" by survey of over 300 lawyers in those counties. He also has experience as a city prosecutor and attorney in private practice.

Judge William Quarles, our nominee to the U.S. District Court for the District of Maryland, has an impressive record in both the private and public sectors. Upon graduating from Catholic University Law School, Judge Quarles clerked for the Honorable Joseph C. Howard of the U.S. District Court for the District of Maryland. In addition to private practice experience in complex commercial, corporate, antitrust and products liability litigation, Judge Quarles has served as an Assistant U.S. Attorney, primarily focusing on organized crime prosecutions. Judge Quarles is currently an associate circuit judge for the Circuit Court of Baltimore City, where he has handled more than 4,000 criminal cases and tried more than 150 jury trials.

Judge Gregory Frost, our nominee for the Southern District of Ohio, has an impressive background in the private and public sectors. Upon graduation from Ohio Northern University Law School in 1974, Judge Frost served as an assistant Licking County prosecuting attorney. In this capacity, he handled a variety of cases, including juvenile and felony prosecutions. From 1974 to 1983, Judge Frost was a partner at Schaller, Frost, Hostetter, & Campbell, where his practice consisted of civil litigation, including domestic relations law, oil and gas law, estate planning, and personal injury law. From 1983 to 1990, he served as a judge for the Licking County Municipal Court, and since 1990 he has served as a judge for the Licking County Common Pleas Court.

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. I look forward to hearing from them today and to working with my colleagues to bring their nominations to a vote very soon. Again, I welcome all of you.

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