

Testimony of

# **The Honorable Orrin Hatch**

March 13, 2003

Welcome to this hearing on the nomination of Justice Priscilla Owen of Texas to the US Court of Appeals for the Fifth Circuit. Justice Owen, we want to welcome you again to the Committee. A lot of people have been looking forward to this Committee's reconsideration of this nomination. People in my home state of Utah have flooded my office with phone calls and letters and e-mails in support, and I've heard from quite a few folks from Texas and elsewhere across the country as well.

I called this hearing because I believe Justice Owen's treatment in this Committee last September was unfair, unfounded, and frankly a disgrace to the Senate. As several of the Members who voted against her admitted, Justice Owen is a tremendously intelligent, talented and well-credentialed nominee. She earned the American Bar Association's highest rating, unanimously well qualified - and was the first person with that rating ever voted down in this Committee. She is also an honest, decent, fair, principled and compassionate human being and jurist whose service on the Fifth Circuit would be a great benefit to that court and our country. She should have been confirmed last year, and she should be confirmed this year.

I have made these views clear several times, so it should come as no surprise that, after the American voters returned the Senate to the Republicans, and therefore the Chairmanship of this Committee to me, that this Committee will now begin setting straight the mistake it made by halting this nomination in Committee last fall. We will have a hearing; we will have a vote in Committee; and we will give the full Senate an opportunity to vote on this nomination. It is important to note that the Committee vote last year was a straight party-line vote which denied the rest of the Senators an ability to vote on Justice Owen.

Let me be clear about one other thing: I personally do not believe that Justice Owen needs another hearing. Justice Owen gave complete and appropriate answers to all questions. Senator Feinstein, who presided at last year's hearing, was entirely fair and appropriate in that role. As Senator Leahy said before the Committee vote, "Those who have had concerns have raised them and have heard the nominee's responses. To her credit, she has met privately with those who have had concerns, as well as her public testimony, and has answered the follow-up questions." I agree that Justice Owen has answered all relevant questions - and then some - and has provided this Committee with all the information it needs. She is a model witness - one of the very best this Committee has ever had the honor of considering. This hearing is not a do-over for Justice Owen - it is an encore.

For the Committee, this hearing is about remedying the wrongful treatment provided to Justice Owen. I don't say this to offend any Member of this Committee - I think they all know that I have deep personal respect for each one of them, and I know they voted according to their best judgment at the time. Nevertheless, as I reviewed the transcript of Justice Owen's last hearing, read her answers to written follow-up questions, and then reviewed the comments made at the markup debate, I was struck at the pervasive way in which Justice Owen's answers were almost totally ignored. The same accusations made by Members at her hearing were repeated at the markup as if Justice Owen's answers did not even exist - as if she was never even before the Committee.

Let me give just a couple of examples - there are too many to cover them all.

At the hearing, Justice Owen was accused of needlessly delaying an opinion in the case of *Ford v. Miles*, the Willie Searcy case, and it was alleged that the young man died waiting for Justice Owen's opinion. Justice Owen clarified that Mr. Searcy passed away three years after the Texas Supreme Court's decision. But the same false allegation was raised and repeated at the markup as if Justice Owen had never given this Committee the correct facts.

At the hearing, Justice Owen was accused of ruling against abortion rights in cases involving Texas's parental notification law. Justice Owen clarified that the notification statute, and therefore her written opinions, concerned only the law that girls younger than 18 tell one of their parents. The right of those girls to obtain abortions was never questioned by the law or by Justice Owen. Yet, as if she had never appeared before the Committee, one Member of the Committee stated during the markup debate that Justice Owen is "frequently in dissent from rulings of the Texas Court majority sustaining a young woman's right to have an abortion." That is simply an outrageous misstatement of the facts.

Also at the hearing, Justice Owen was accused of not finding in favor of any plaintiffs or consumers - as if a good judge would simply hand out half of her decisions to plaintiffs and half to defendants in a display of ends-oriented activism, rather than look to the law upon which both sides based their arguments. Justice Owen listed a number of cases in which, based on the law, she had ruled on the side of individual plaintiffs, including *GTE v. Bruce*, a case affirming a \$275,000 dollar jury verdict in favor of female victims of sexual harassment. But at the markup, several Members repeated the allegation as though her testimony and answers to follow-up questions had been written in invisible ink.

In her written questions, Justice Owen was asked about her dissent in the case of *Weiner v. Wasson*, the charge being made that the majority opinion had "lectured" Justice Owen about the importance of following precedent. Justice Owen pointed out in a cogent written response that the majority was in fact responding to an argument made by the defendant that a prior Texas

Supreme Court decision should be overturned. At the markup the very same charge was repeated, as though Justice Owen had entered a guilty plea previously.

There are several other examples, including the fact that Judge Gonzales' oft-repeated comment was not directed at Justice Owen, that I do not have the time to get into. But this pattern of ignoring answers is exactly what happened to Justice Owen.

So although we are not beginning anew to review this nomination, and there is no reason simply to rehash old and answered allegations, I nevertheless hope and expect Committee Members - especially those who voted against her - to come to this hearing with a fresh mind, and with a genuine willingness to listen, to consider, and to think again.

We are quite fortunate to have with us today the Senators from Texas, whose support for Justice Owen's nomination is as well-known as it is well-deserved. Texas could not have two finer and more effective public servants in the Senate. Senator Hutchinson has worked tirelessly over the past two years to make sure our colleagues know the facts about Justice Owen's distinguished career, service to Texas, and perhaps most importantly, Justice Owen's high personal integrity, fairness and commitment to equal justice under the law.

Senator Cornyn, although new to the Senate, is certainly not a newcomer to this nomination, to Justice Owen, or to several of the issues that were misunderstood or misconstrued as part of the effort to halt this nomination in Committee last fall. Indeed, Senator Cornyn knows many of these issues better than any other Member of this Committee ever could. Senator Cornyn brings a unique and compelling perspective on Justice Owen's nomination, having served side-by-side with Justice Owen as a colleague on the Texas Supreme Court. He examined many of the same legal issues and knows how she approached them. He knows how judges go about their work. Senator Cornyn understands that judges are called upon to render their very best judgment in frequently difficult and close cases and that sometimes judges will have legitimate differences of opinion among themselves and express themselves accordingly.

I find it particularly significant that Senator Cornyn supports Justice Owen even though they did not always agree on the bench. His support is based on how Justice Owen goes about the job of being a judge, not on whether she reaches the same outcome he would. I urge all of my colleagues to think this way. Any attempt to emphasize the points on which Senator Cornyn and Justice Owen disagree will backfire - it only proves the point better. So Senator Cornyn's endorsement of Justice Owen has extraordinary credibility to me, and should, by itself, provide Members of this Committee a fresh view of this nomination.

So I am looking forward to hearing from the Texas Senators, and from Justice Owen. And I am optimistically looking forward to evidence of renewed open mindedness from my colleagues. With that hope, I'll turn to the Ranking Member for any statement he would like to make at this point.

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