

Testimony of

The Honorable Orrin Hatch

April 1, 2003

It is my pleasure to welcome before the Committee this morning three exceptional nominees for the federal bench.

Our circuit nominee is Carolyn Kuhl, who has been nominated to fill a judicial emergency on the Ninth Circuit, which is the most notoriously liberal federal court in the United States. This is the court that gave us the infamous Pledge of Allegiance case, which held that the Pledge of Allegiance is unconstitutional because it contains the word "God." As a result, public schoolchildren in the nine western states and two territories that constitute the Ninth Circuit are forbidden from pledging allegiance to the flag of the United States, even as their mothers and fathers, uncles and aunts, other relatives and friends are fighting in Iraq to preserve our national security and the ideals that we most treasure in our nation. As my esteemed colleague Senator Schumer put it, this case is "way out of the mainstream on the left side."

Unfortunately, the Pledge of Allegiance case is not an anomaly. Just last month, the Ninth Circuit decided to ignore and distort controlling Supreme Court precedent in order to skew the playing field in favor of criminal defendants. The court concluded that a key law prohibiting child pornography was unconstitutional as applied to certain criminal defendants. Amazingly, the panel handed down this ruling to a defendant who had knowingly and voluntarily pled guilty to violating the child pornography law with materials that had traveled across state lines. As a result, child pornographers can flock to the Ninth Circuit to practice their trade unfettered by federal criminal law. As the author of the PROTECT Act and the Comprehensive Child Protection Act of 2003 -- bills that will toughen the laws against child pornography, child abuse, and child victimization -- I shudder for the welfare of the millions of children who live in the Ninth Circuit. Decisions like are the perfect examples for why our country needs good, constitutionalist judges on the federal bench.

The Ninth Circuit has also held in recent years that California's so-called three strikes law, which imposes life sentences on career criminals, was unconstitutional. It held that a prisoner who was convicted of making terroristic threats had a right to procreate through artificial insemination. This case, which became known as the procreation by FedEx case, was later reversed by an en banc panel of the Ninth Circuit, but just barely. Yet another gem from the Ninth Circuit held that prisoners have a constitutional right to pornography, which had been banned because inmates had used it to harass women guards. Fortunately, saner heads prevailed, and this case was reversed en banc.

Plenty of Ninth Circuit decisions, however, are not corrected en banc, which has led to the Ninth Circuit holding the dubious distinction of having the highest and widest Supreme Court reversal rate in the country among the federal courts of appeals. Over the past seven years, the Supreme Court has reversed an average of 80 to 90% of the Ninth Circuit cases it hears. Just last term, the Supreme Court reversed the Ninth Circuit in 15 of 19 cases, 8 times unanimously. And so far in the current term, the Ninth Circuit has been reversed in 8 of 11 cases. Three of these were unanimous summary reversals, which means that the Court simply reversed on the basis of the petition for certiorari, without asking for briefs or oral arguments.

This pattern of decisions, some of which can only be described as downright wacky, and its high reversal rate has led to the perennial introduction of legislation seeking to split the Ninth Circuit, given that so many of its states seek to disassociate themselves from such inherently illogical rulings.

I have taken the time to recite the state of affairs on the Ninth Circuit because I think that it will benefit from the confirmation of such an esteemed and experienced jurist as Carolyn Kuhl, whose record demonstrates her commitment to following precedent and steering clear of judicial activism. At the same time, I want to make clear that I, for one, do not believe that the ideological composition of a court should have any determination on whether an otherwise qualified nominee should be confirmed. As I have said before on numerous occasions, I do not believe that ideology has any role, constitutional or otherwise, in the advice and consent process.

I recognize, however, that some of my Democratic colleagues disagree with me. They place great importance on achieving what they refer to as the appropriate balance on a court in determining whether to vote to confirm a judicial nominee. So I know that they will find it interesting that of the 25 active judges on the Ninth Circuit, 17 of them were appointed by Democratic presidents, and 14 of them were appointed by President Clinton alone. In fact, 4 Clinton nominees to the Ninth Circuit were confirmed in 2000, a presidential election year. Despite this record, only one of President Bush's three nominees to the Ninth Circuit was confirmed in the last Congress. So much for achieving any so-called balance. And while we just confirmed Jay Bybee to the Ninth Circuit last month, it is high time that Carolyn Kuhl was afforded a hearing before this Committee.

Judge Kuhl has an exemplary record that includes service as both a committed advocate and an impartial jurist. The American Bar Association has rated her Well Qualified for this position. Although the ABA rating used to be the gold standard as far as my Democratic colleagues were concerned, I am only half joking when I say that an ABA rating of Well Qualified seems to have

become the kiss of death for President Bush's judicial nominees. The two nominees blocked in Committee last year, Charles Pickering and Priscilla Owen, both received Well Qualified ratings, as did Miguel Estrada, whose nomination has now been filibustered on the Senate floor for nearly two months. Carolyn Kuhl deserves to fare better, and I certainly hope she does.

I expect that we will hear a great deal about Judge Kuhl's qualifications during our next panel of witnesses, so I want to focus on the widespread support for her nomination, because the ABA is not alone in its judgment that she is well qualified for the Ninth Circuit.

Since 1995 Judge Kuhl has served as a judge on the Los Angeles County Superior Court. Nearly 100 of her fellow judges on that court have written to the Committee to voice their ardent support for her nomination. Here's what they have to say: "We are Republicans, Democrats, and Independents and have all had the opportunity to observe the leadership and demeanor of Judge Kuhl. . . . We know she is a professional who administers justice without favor, without bias, and with an even hand. We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge."

Another letter came from the officers of the Litigation Section of the Los Angeles County Bar Association. With more than 3,000 members, this is the largest voluntary bar association in the United States. They write, "By reputation and our personal experience, Judge Kuhl is extremely intelligent, hard working and thoughtful. She gained the prestigious appointment as Supervising Judge of the Complex Courts after only a few years on the bench because of those traits. In addition, she has a well-deserved reputation as being a fairminded judge who follows legal precedent. . . . On a personal level, we have come to know her as a warm, witty and deeply caring person. We could not recommend her more highly for nomination to the Ninth Circuit Court of Appeals."

I will submit copies of these letters for the record, along with copies of other letters of support we have received for Judge Kuhl's nomination.

Unfortunately, no judicial nominee these days seems to escape criticism by the left-wing special interest groups. Judge Kuhl is no exception. I expect that we will hear attacks on her record as an attorney for the Justice Department during the Reagan Administration, when she was doing her duty to represent the position of the United States. We will probably hear attacks on her record in private practice stemming from the types of clients she represented and the positions she took on

their behalf. And I expect that we will hear some unfounded criticism of decisions she has made as a California state court judge.

These types of attacks on President Bush's judicial nominees have become so commonplace, and often bear so little relationship to the nominees' actual records, that they bring to mind the children's story of the boy who cried wolf. After two years of smear campaigns, with each consecutive nominee being declared more anti-this and pro-that than the former, these groups have simply lost credibility, especially when you consider their poor track record in predicting what kind of judges nominees will turn out to be.

Two cases in point are Supreme Court Justices David Souter and John Paul Stevens. The left wing groups predicted that both of these nominees would roll back decades of protections for women, minorities, and the general population. Of course, the test of time has told a different story: Justice Souter and Justice Stevens are considered stalwart votes on the Court's liberal wing. We should keep this in mind as we consider the claims of the left-wing groups who oppose Judge Kuhl and other Bush nominees.

In addition to Judge Kuhl, we will hear from two nominees for the federal district court bench: Cecilia Altonaga, who has been nominated for the Southern District of Florida, and Patricia Minaldi, who has been nominated for the Western District of Louisiana. I will reserve my remarks on these nominees until after Judge Kuhl's testimony. I look forward to hearing from all of our nominees on today's agenda, and I commend President Bush for nominating each of them.

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Statement of Chairman Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

on the Nominations of

Cecilia M. Altonaga to be United States District Judge

for the Southern District of Florida

and

Patricia H. Minaldi to be United States District Judge
for the Western District of Indiana

I would like to welcome our two district court nominees to this hearing: Judge Cecilia M. Altonaga to be United States District Judge for the Southern District of Florida and Judge Patricia H. Minaldi to be United States District Judge for the Western District of Louisiana. Both nominees are experienced state judges who will no doubt make excellent additions to the federal benches in their home states.

Judge Altonaga graduated from Yale Law School and clerked for the Honorable Edward B. Davis of the U.S. District Court for the Southern District of Florida - the very court she will join upon her confirmation. She then spent 10 years at the Miami-Dade County Attorney's Office before serving as a county court judge for Florida's Eleventh Judicial Circuit. Since 1999, she has served as a circuit judge for Florida's Eleventh Judicial Circuit, where she has been assigned to the court's Juvenile, Criminal, and Appellate Divisions. When she is confirmed, she will become the first Cuban-American woman on the federal bench.

Judge Minaldi graduated from Tulane University School of Law and served as a Felony Assistant District Attorney for 13 years. As a state prosecutor, she tried more than 150 cases to verdict. In addition to strong legal accomplishment, Judge Minaldi has been a great asset to her community. She has volunteered her time to chair every committee formed to establish and run her community's Child Advocacy Center. These committees were charged with establishing multi-disciplinary protocols and procedures for the center, which has multifaceted forensic interface. Since 1997, Judge Minaldi has served as a district judge for the 14th Judicial District Court.

I would like to reiterate my support for these nominees, and I look forward to hearing from them.

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