

Statement of

The Honorable Orrin Hatch.

United States Senator
Utah
April 8, 2004

Statement of Senator Orrin G. Hatch
Chairman, Committee on the Judiciary

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

William Duane Benton to be United States Circuit Judge
for the Eighth Circuit
Robert Bryan Harwell to be United States District Judge
for the District of South Carolina
George P. Schiavelli to be United States District Judge
for the Central District of California
Curtis V. Gomez to be Judge for the District Court
of the Virgin Islands

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We are delighted today to welcome before the Committee four outstanding nominees who are exceptional choices and will prove to be valuable assets to the federal bench. These nominees include William Duane Benton to be United States Circuit Judge for the Eighth Circuit, Robert Bryan Harwell to be United States District Judge for the District of South Carolina, George P. Schiavelli to be United States District Judge for the Central District of California, and Curtis V. Gomez to be Judge for the District Court of the Virgin Islands for a term of ten years.

I am pleased that the Committee continues to hold hearings and report out the President's highly qualified nominees, and appreciate the cooperation of all Committee members. However, the current confirmation record of judicial nominations is woefully inadequate. The United States Senate is far behind the average confirmation pace of judicial nominations for Presidential Election years. The average confirmation number for April in an Election year is 14. So far in 2004 the Senate has only confirmed 4 (4 vs. 14). In the six presidential election years from 1980 to 2000, the Senate confirmed an average of 45 judicial nominees (37 district, 8 appeals) and confirmations continued well into the fall during five of the past six presidential election years.

In fact, if we compare apples to apples, by April of their fourth year in office, the Senate had confirmed 184 nominees for President Clinton and more than 200 for President Carter. In the same time frame, the Senate has confirmed 173 of President Bush's nominees, fewer than both previous Democratic presidents.

A more troubling statistic remains - the number of judges blocked on the Senate floor. In addition to the unprecedented filibusters of last year, we are now faced with a complete shutdown of all judicial nominations and most executive nominations. Nevertheless, I am optimistic that the Senate will be able to overcome this obstruction and confirm many of the judges that are currently stalled on the floor as well as the nominees before the committee today.

Let me say a few words about the nominees before us today.

Judge William Duane Benton has been nominated to serve on the Eighth Circuit Court of Appeals. He is an ideal nominee and is well suited for the federal bench. Judge Benton is currently a judge on the Supreme Court of

Missouri, where he has served for 13 years, including two years as chief justice of the court. He is highly respected by his peers, has broad bipartisan support, and received a unanimous "Well Qualified" rating from the American Bar Association. Both of Judge Benton's home state senators, Senators Bond and Talent, enthusiastically support his nomination to the Eighth Circuit.

Before I go on, I want to note here that Judge Benton is the only certified public accountant serving on any state supreme court in the United States.

Judge Benton has an outstanding academic record and I want to list a few of his accomplishments: He graduated summa cum laude from Northwestern University, where he became a member of Phi Beta Kappa. He then attended Yale Law School, where he distinguished himself as both an editor and managing editor of the Yale Law Review. While on active duty in the Navy, he attended business school at night at the University of Memphis and received his master's in business administration--with highest honors. And in 1995, he received an L.L.M. from the University of Virginia.

Judge Benton has been a dedicated public servant throughout most of his career, serving in all three branches of the government at the state or federal level. He was confirmed by the Missouri Senate for many of those positions: Director of Revenue for the Missouri Department of Revenue; the Chair of the Board of Trustees for the Missouri State Employees' Retirement, and Member of the Board of Regents for Central Missouri State University. Additionally, the governor of Missouri appointed Judge Benton to the Multistate Tax Commission prior to his service on the bench. The Missouri Senate also confirmed him for that position, and members from 32 other states elected him chair of the commission. Judge Benton also served as chief of staff to Missouri Congressman Wendell Bailey in the U.S. House of Representatives.

In addition to his many years as a public servant, Judge Benton maintained a law practice. During the 1980s, he had a general civil practice representing clients such as statewide associations and groups, small businesses, and local governments. He also represented several federal inmates on a pro bono basis.

I would also note Judge Benton's military career. From 1975 to 1979, he served with the U.S. Navy as a judge advocate. A Vietnam veteran, Judge Benton retired from the U.S. Naval Reserve at the rank of Captain following 30 years of active and reserve service.

As I noted, Judge Benton is nominated to serve on the Eighth Circuit. Another nominee to this court, Raymond W. Gruender, remains on the Senate Executive Calendar awaiting confirmation. I would hope that both of these nominees would get an up or down vote on the Senate floor. Now there have been some issues raised in the past regarding President Bush's nominees from Missouri, always in connection with a Clinton nominee from Missouri, Justice Ronnie White. I would note that Justice White is currently a colleague of Judge Benton's on the Missouri state supreme court. It is my understanding that Justice White supports this nomination.

Justice White is an example of my fair treatment of judicial nominees who have been opposed by home state senators. He was nominated for the United States District Court for the Eastern District of Missouri by President Clinton. Justice White was, in the end, opposed by both home state senators, Senator Ashcroft and Senator Bond. During the deliberation on the nomination of Justice White, I considered the deference due to the President and the deference due to the senators from the nominee's home state. I stated during the debate, and still believe, the President is due a large degree of deference, and therefore, even though I did not support Justice White's nomination, I moved his nomination forward.

Accordingly, I held a hearing on his nomination and Justice White was reported out of Committee. Senator Ashcroft, who was a member of the Judiciary Committee, voted against reporting the nomination. Significantly, despite their opposition to his nomination, neither Senator Ashcroft nor Senator Bond mounted an effort to filibuster the White nomination. Obviously, this is quite unlike the situation we have this Congress, where nominees are filibustered or otherwise blocked from receiving a vote on the Senate floor.

Justice White was given an up or down vote by the full Senate. After reviewing his record and consulting with home state senators, I voted against the nomination. It was unfortunate that following the defeat of Justice White by the full Senate, there were statements made that women and minority candidates were treated unfairly by the Senate.

Let me emphasize that in the case of Justice White, as in every nomination, I give careful consideration of the position of the nominee's home state senators. These senators are in a unique position to evaluate whether a nominee instills the confidence in the people of a state necessary to be a successful Federal judge in that state. This is particularly true for a district judge nominee whose jurisdiction, if confirmed, would be wholly limited to that particular state. There have been several other instances, notwithstanding serious reservations on my part, that I have supported contested district court nominees after considering the views of home state senators.

This is not the case with Judge Benton. He has the support of both home state senators, wide support of members of the Missouri bar, as well as community organizations such as the Jefferson City Branch of the N.A.A.C.P. Judge Benton has a solid reputation for possessing a high level of integrity, and for being personable and engaging. I'm sure that my colleagues will agree that Judge Benton brings unmatched expertise, as well as experience to the federal bench. And I welcome him this morning.

Today's hearing also includes three nominees for district court positions. Robert Bryan Harwell is nominated to serve on the District Court of South Carolina. Mr. Harwell graduated from the University of South Carolina School of Law, after which he clerked consecutively for South Carolina Circuit Judge Rodney A. Peebles and U.S. District (South Carolina) Judge G. Ross Anderson, Jr. He has also served as a Judge Advocate General officer in the South Carolina National Guard. In addition to practicing law, he serves as a mediator or arbitrator for individuals, corporations and governmental entities. Mr. Harwell brings 20 years of legal experience which no doubt has prepared him well for the district court bench.

Judge George P. Schiavelli has been nominated to serve as a district court judge for the Central District of California and will be a great addition to the federal bench. Judge Schiavelli was recommended by a bipartisan committee that reviews potential district judges throughout California and will succeed Judge Lourdes Baird when he steps down on May 12, 2004. Judge Schiavelli's impressive credentials are reflected in his unanimous American Bar Association rating of Well Qualified.

Judge Schiavelli received his undergraduate degree from Stanford where he was a teammate of Heisman Trophy winner Jim Plunkett. After graduating from Stanford he went on to UCLA Law School graduating first in his class.

Much of his legal career has been devoted to appellate work. After a stint at O'Melveny & Myers, he became a partner at Ervin, Cohen & Jessup and later at Horvitz & Levy, before he began his distinguished career in public service. He joined the Los Angeles Superior Court in 1994 where he served until 2000. Judge Schiavelli also has extensive experience as a mediator, arbitrator, referee, and special master.

The nominee for the Virgin Islands, Curtis V. Gomez, comes before the committee with an excellent reputation as an Assistant United States Attorney. He is a native of the Virgin Islands, born on St. Croix. He earned his bachelor's degree from the George Washington University, and law degree from Harvard. After graduating in 1989, Attorney Gomez joined the law firm of Patton Boggs & Blow (now Patton Boggs LLP) in Washington DC. In 1993 Attorney Gomez joined the Virgin Island law firm Dudley, Topper & Feuerzeig until 1997.

In addition to being an Assistant United States Attorney in the Virgin Islands he has also served as an AUSA for the Eastern Virginia District. Mr. Gomez has earned the respect of those in his community and the attorneys who know him best. In fact the Virgin Island Bar Association recently sent a letter expressing that Mr. Gomez had the "overwhelming" support of its members, and that Mr. Gomez received "qualified or highly qualified ratings in the areas of legal competence, judicial demeanor, reputation in the community and courtroom experience." In short, Mr. Gomez will be an outstanding addition to the federal bench.

I look forward to hearing from all of our nominees, and I thank them for appearing before the committee today.