

Testimony of

The Honorable Orrin Hatch

August 1, 2002

It is my sincere pleasure to welcome to the Committee this afternoon four outstanding nominees for the federal bench. I am impressed with the qualifications of each of these nominees, and the President should be commended for the incredible quality of the nominees he has submitted. I will place my statements for the nominees in the record but I would like to focus my remarks on our nominee for the Court of Federal Claims, Larry Block.

Larry hardly needs an introduction to this Committee, since he has served as our Counsel since 1994. Those of us who have worked with him know that he is an incredibly talented lawyer whose broad legal experience spans private practice, all three branches of the federal government, and academia.

Larry earned a B.A. degree from New York University magna cum laude before earning his law degree from The John Marshall Law School in 1981. He began his legal career as a clerk for the Honorable Roger J. Miner, who at the time was a U.S. District Court Judge for the Northern District of New York and who now sits on the Second Circuit Court of Appeals (where, incidentally, Judge Raggi will join him as a colleague upon her confirmation). After his clerkship, Larry worked as an associate in the high-powered New York office of Skadden, Arps, Slate, Meagher and Flom, where his practice included constitutional claims pertaining to Commerce Clause and commercial speech issues, as well as litigation involving financial services, mergers and acquisitions, securities, labor law, and administrative law.

After several years in private practice, Larry returned to public service, and served with distinction in the Reagan, George H.W. Bush, and Clinton Administrations. From 1986 to 1990, he worked in the U.S. Department of Justice, first in the Commercial Litigation Branch, then as Senior Attorney-Advisor in the Office of Legal Policy and Policy Development. From 1990-94, Larry served as Acting General Counsel for Legal Policy and Deputy Assistant General Counsel for Legal Policy at the U.S. Department of Energy, where he spearheaded a number of complex legal projects.

As Counsel to the Judiciary Committee, Larry has worked on a number of significant issues, including property rights legislation, punitive damages and court reform bills, regulatory reform, arbitration policy, and First Amendment and attendant constitutional issues.

It has been a privilege for many of us to have had the opportunity to work with Larry for the past eight years, and I have benefitted immensely from his advice and counsel. He has demonstrated his legal acumen by handling the most complex legislative matters adeptly and professionally. It is, accordingly, with bittersweet emotion that I endorsed his nomination for the Court of Federal Claims. President Bush could not have made a finer choice, and I commend him for it - even though it means that I will be losing a valued staffer.

Now, some of the Washington special interest groups have made some unfair allegations about Larry that require a response. At the heart of this tempest in a teapot is the fact that Larry worked on property rights legislation for me several years ago. The outside groups contend that Larry's work shows not only that he shares my view of what the law should be on property rights, but also that, as a federal judge, he would not or could not set aside this view for legislation to change the laws - a responsibility of the legislative branch - and follow the law as it is.

In all honesty, this allegation is simply false. These groups are trying to punish Larry for merely doing his job - which, in this case, required him to advocate my position on a hotly debated issue. Emotions ran high on both sides of the property rights debate, and the groups consider me to have been on the wrong side of the fence. That's fine - they are entitled to their opinion. But what they are not entitled to do is hold Larry accountable for my views - or any other Members' views - based on the most strained interpretation of innocent language in his questionnaire.

The reality is that, on occasion, we Senators ask our staffers to work hard on controversial measures, particularly on this Committee. But we have never held that against a staffer - and there are quite a few former Judiciary Committee staffers on the federal bench today, both Republicans and Democrats, some of whom worked very hard on some highly partisan issues while they were here. And they have proven to be some of the finest judges or justices - as in the case of Stephen Breyer - because they understand better than anyone the true role of a judge: To interpret the law and not to make the law. The point is that we have always considered nominees for their own abilities, aptitude, and temperament, rather than judging them for their bosses' legislative positions.

The allegations against Larry are, in my view, as ludicrous as holding a lawyer responsible for the positions of a client he represents in a legal proceeding. The attorney is, of course, responsible for conducting a legal defense, but can no way be responsible for his client's underlying position or conduct. A Senate staffer's role is no different: He must represent the views of the Member for whom he works, regardless of his own personal views. If anything, Larry's demonstrated ability to advocate on my behalf indicates to me that he will be exactly the type of judge we want to see confirmed: One who is able to follow the law regardless of his personal views.

The three other excellent nominees on today's agenda are, no doubt, equally committed to following the law.

Judge Reena Raggi, our nominee to the Court of Appeals for the Second Circuit, has served for 15 years as a federal district judge in the Eastern District of New York. Judge Raggi has capably presided over some of the most interesting and high-profile cases in New York, including the recent civil rights prosecution of a former New York City police officer for the sexual battery of Abner Louima, the trial of Thomas "Tommy Karate" Pitera, which was the first federal death penalty case in New York in three decades, and a series of cases stemming from the alien smuggling scandal of the "Golden Venture," a freighter that ran aground in Rockaway, New York.

Judge Raggi's skill in handling such matters should surprise no one who is acquainted with her education and accomplishments. She attended Wellesley College, where she was a member of

Phi Beta Kappa and earned a B.A. in History in 1973. In 1976, she graduated cum laude from Harvard Law School. Upon graduation from law school, Judge Raggi served as law clerk to the Honorable Thomas E. Fairchild, then-Chief Judge of the United States Court of Appeals for the Seventh Circuit. She then entered private practice for approximately two years. In 1979, she was appointed an Assistant United States Attorney for the Eastern District of New York, and she quickly advanced in that office to become, first, Chief of the Narcotics Section, then Chief of Special Prosecutions, and then interim U.S. Attorney. Following two more years in private practice, she was nominated by President Reagan to her current position.

Both of the District Court nominees on today's agenda also have outstanding credentials.

Ronald Clark, who has been nominated for the Eastern District of Texas, graduated from the University of Texas School of Law and then went to work for the City Attorney's Office in Abilene, Texas, as an assistant city attorney, where he tried cases in local, state, and federal courts. He handled voting-rights cases, tax claims, domain matters, and municipal issues. Later, Mr. Clark joined a private firm in Sherman, Texas, focusing on civil cases, bankruptcy, banking, and representation of small cities. Since 1993, Mr. Clark's private practice has concentrated on the defense of local governmental entities and businesses in cases of excessive force, wrongful termination, eminent domain, search and seizure, libel and slander, denial of due process, and constitutional challenges to city ordinances. He has tried to judgment over 70 civil cases, two-thirds of which went to a jury. He was appointed to the Eastern District's Civil Justice Reform Advisory Committee in 1991, chaired the committee from 1994-96, and finishes his term this year. Mr. Clark won election to the Texas House of Representatives in 1996 and has served there since that time.

Last - but certainly not least - is Judge James Knoll Gardner, our nominee for the Eastern District of Pennsylvania, who has served on the Lehigh County Court of Common Pleas since 1981, presiding over more than 265 jury trials and writing approximately 1000 opinions and rulings. A native of Allentown, Pennsylvania, Judge Gardner is a graduate of Yale University and Harvard Law School. He has served on active duty with the U.S. Navy JAG Corps, providing legal assistance to approximately 5000 servicemen and women and their dependants. He has also worked in private practice, concentrating on civil trial court litigation and appellate practice, including personal injury cases, medical malpractice, estate matters, corporation law, domestic relations issues, real estate law, and public utility commission cases. Judge Gardner also has served as Solicitor to the Lehigh County Treasurer and as an Assistant District Attorney of Lehigh County. As an attorney he tried nearly 600 cases to verdict, almost all as sole counsel.

I am confident that all four of these fine nominees have the skills, aptitude, experience, and temperament for service 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 timely votes for confirmation.

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