

Chairman HATCH. Evan. Happy to have you with us as well.  
 Judge OTERO. Thank you.  
 Chairman HATCH. Thank you, sir.  
 Mr. Junell?

**STATEMENT OF ROBERT JUNELL, NOMINEE TO BE DISTRICT  
 JUDGE FOR THE WESTERN DISTRICT OF TEXAS**

Mr. JUNELL. Thank you, Mr. Chairman. It is indeed an honor to be here today. I want to thank both you and Senator Leahy for allowing us to be here for this hearing, and I want to thank Senator Hutchison and Senator Cornyn, the two Senators for Texas that said such nice things.

My wife Beverly is here with a crutch from knee surgery. She hurt the other one, Senator, at Snowbird about 10 years ago in your state.

Chairman HATCH. Oh, my goodness. That is not good.

Mr. JUNELL. And this time it was in New Mexico, so she recently had surgery.

Senator LEAHY. Should have skied in Vermont.

[Laughter.]

Chairman HATCH. No, no, that is worse there. It is just plain ice there. We at least have powder snow.

Mr. JUNELL. My son, Ryan, who is in California, could not be with us. My daughter Keith is the Peace Corps in Bolivia, and my son Clay is a student at Angelo State University in San Angelo.

Chairman HATCH. Well, we are honored to have all of you with us, and we again apologize for this taking so long, but it is the nature of this place. Every once in a while it does take a little bit of time, so please forgive us.

I think we will begin with Senator Leahy. He has been so patient all day, I am going to turn to him first, and then whatever questions he does not ask, maybe the rest of us can.

Senator LEAHY. Thank you, Mr. Chairman. I will try to be brief. The level of controversy is a lot different here.

Judge Adams, you have been actively involved in partisan politics on behalf of your fellow Republicans. You served as an elected official. You have contributed to Republican campaigns. You have volunteered on campaigns. You have run for city council. All of which is perfectly appropriate, but when you go to the Federal Bench, you have no problem with the fact that partisan activity then is—it is gone; is that correct?

Judge ADAMS. Absolutely, Senator, and I think as a common police court judge my record will establish that that has certainly been the case while on the bench.

Senator LEAHY. Thank you. And you assure us that if somebody walked into your court, if you are confirmed, that they would not have to worry about whether they were the right political party or the wrong political party; they would just have to worry that Judge Adams reads the law correctly?

Judge ADAMS. Absolutely, Senator. You can rest assured in that regard, please.

Senator LEAHY. In private practice you specialized in estate planning and trust and probate law. You had a special emphasis on providing service to senior citizens and people with mental and

physical disabilities, and I commend you for that. What do you bring from that, the work you did with people with disabilities? What do you bring from that as you go into a Federal Bench?

Judge ADAMS. Well, I think I bring a couple things that I've learned from my representation of seniors and folks with disabilities. I've learned how important it is to listen. I think as a judge, one of the most important things that we overlook is how important it is to take time to listen to the litigants, the parties, their attorneys. Sometimes I think we, the judges, overstate our own importance, and I think I have learned a great deal in representing seniors, and in my life I always enjoy listening to their life experiences, and I think I have learned a lot from them, I have gleaned a lot from them and from their life experiences. And it has given me balance in my life, in my views from the bench.

Senator LEAHY. Thank you. And I think you are right. It is very easy for a judge who sits there, it is "all rise" and all that kind of thing. I think the judges who are best is, when they hear the "all rise" they almost have to stop themselves to see who it is they are doing that for, and not take it for granted. And the judges that keep themselves fairly grounded in their community end up being the best judges. I mean there are a lot of things you have to give up as a judge. I mean I love politics and I am sure you do too, giving up some of those things. You have to be careful of your associations. Like any member of the bar, a lot of your friends are going to be lawyers. You have to pick and choose there. But you are not really in a monastery. I mean you are still a human being, and the most important thing is that the people who are in front of the bench are also human beings, and so I appreciate that.

Judge Otero, you have served as a judge for the last 14 years. Correct me if I am wrong in any of this. First in the Los Angeles Municipal Court and then on the Los Angeles Superior Court. Is that correct?

Judge OTERO. Yes, Senator.

Senator LEAHY. I spent some years ago in the Superior Court when I was a prosecutor. One of my fellow board members in the National DAs was the District Attorney of Los Angeles, and the times we have meetings out there I go into some of those courts and realize that Los Angeles is larger than my jurisdiction in Vermont or what was my jurisdiction. I do get out there now and then. I have a son, a former Marine, and his wife, who live in Los Angeles, in the Los Filas area, and I do not think there is just about any kind of case anybody is ever going to see that has not been in the Los Angeles Superior Court at one time or another.

Judge OTERO. That's correct. We may be the largest court system in the United States, if not the world.

Senator LEAHY. I think it is an extraordinary court system. I know a lot of the people I see who come here from other countries to study our judicial system, that is one of the places they want to go to, and you probably have seen a lot of foreign representatives who come to your court to see it.

Judge OTERO. From China recently and from Japan also.

Senator LEAHY. One thing that we talk about is the impartiality of our Federal Judiciary. One thing I think might interest you is when the Soviet Union broke up, a group of Soviet, or now Russian,

lawmakers came here to meet with me, with Senator Hatch, others, and I remember one question one of them asked almost incredulously. He said, "We have heard in the United States there have been times when the Government has been sued and the Government actually lost. I mean did you not quickly replace the judge?"

[Laughter.]

Senator LEAHY. And we had to explain to him, no, we have a certain independence here, and yes, the Government does lose on occasions. And I think this was probably as big an eye opener as ever. I have always encouraged these people to go out to Los Angeles and watch your court system.

Now, a number of issues of the death penalty have come up. Justice O'Connor said there were serious questions about whether the death penalty is fairly administered. She added, "The system may well be allowing some innocent defendants to be executed." Now, you have presided over a capital murder case. One case you presided over, *People v. Chauncey Beasley, Delano Cleveland and Rashish Sheron*. The jury returned a guilty verdict against the three defendants, recommended death. And you had the sentencing hearing. You sentenced two of the defendants to death. You rejected the jury's recommendation of death for the third defendant. You sentenced him to life without possibility of parole. And I am not asking you what is your reasoning in that case, but you have obviously had to look at the question of the death penalty. Do you think there are changes that are warranted in the way the death penalty is administered? None of us have questioned that it is constitutional. The Supreme Court has held so. But are there changes that should be made in capital cases, or are they all, in your experience, always fairly handled?

Judge OTERO. I would hesitate to comment about the particular case because it's before the California Supreme Court.

Senator LEAHY. I do not want you to comment about that one, but I mention it only because obviously it has focused your attention here.

Judge OTERO. I think as judges we have to be very concerned about the rights of defendants, especially in capital cases. I think the entire issue is probably better handled by the legislature. As judges it is our duty to follow the law and interpret the law to the best of our abilities. In California we have a system that allows the trial judge to conduct an independent review of the aggravating and mitigating factors, to sit as a 13th juror on the penalty phase, and I think that's a very good system.

Senator LEAHY. Do you feel that it is an absolute, that especially in a capital case, that a judge should make sure that there is adequate counsel, and I mean real counsel for the defense?

Judge OTERO. Oh, absolutely, absolutely, Senator.

Senator LEAHY. We can assume the State will always have the best in a capital case and that if there is evidence available, incriminating or exculpatory, that it be available to both sides.

Judge OTERO. Absolutely. One of the fundamentals of our system is to make sure that all evidence is turned over to both sides.

Senator LEAHY. The reason I say that, there have been some states and some jurisdictions that has not happened, or where the least competent counsel has been appointed at a small flat fee in

a capital case, and that is where we have problems. You have probably found, as has been my experience and I think Senator Hatch's experience and Senator DeWine's, in trying cases you actually have a far easier time of it if you have good counsel on both sides.

Judge OTERO. Good lawyers make for a better trial judge, absolutely.

Senator LEAHY. Mr. Junell, we are chatting earlier, and I repeated the call I received from Congressman Stenholm, who assured me that in his estimation you would be a fair judge of the matter of who was before you. I want to ask for a moment about your work as a State legislator in a claim that a whistleblower named George Green. In August of 1989 he was an employee of the Texas Department of Human Services, and he reported what he thought was corruption among his superiors and others. The State of Texas responded by investigating him and firing him. Then they indicted him, and the indictment was, the charge eventually dropped. He sued under the Texas Whistleblower Statute. The jury awarded him \$13.6 million. In February 1994 the Texas Supreme Court affirmed that judgment, saying the State did not have immunity because of the Texas Whistleblower law. Under State Law, to collect the award Mr. Green was required to get his claim approved by the State legislature. He tried to do that. You were Chairman of the Texas House Appropriations Committee. You refused to approve the full amount, which had grown to around 19 million with interest, and offered him 25 percent or 25 cents on the dollar. You were quoted as saying that the State of Texas does not owe him this money; under the law of sovereign immunity we do not have to pay. The Texas legislature eventually gave him a substantial portion of that.

I raise this because this Committee has heard from people like Sharon Watkins, who are out to expose many of the misdeeds at Enron, or we have read of hers. FBI Special Agent Colleen Rowley brought public attention to some of the shortcomings in the Department of Justice prior to 9-11. Senator Grassley and I have worked—it has been very much of a bipartisan thing—on whistleblowers. A lot of people risk everything to point out waste or corruption and so on. So one, why did you want to deny Mr. Green his full award? Do you think that deterred other whistleblowers?

Mr. JUNELL. No, Senator, and I appreciate you asking that question. No, it didn't. Texas law at that time, if the State of Texas ran over somebody in a truck out on the highway, the amount of damages that could be recovered for someone who either perished or who was made a quadriplegic is \$250,000. In the case of the Whistleblower Act, which was passed before I came to the legislature, there was not a cap on the damages, but it did require a review by the legislature, somewhat like this process of presidential appointees being reviewed with the advice and consent of the Senate and of this committee.

Senator LEAHY. Well, we are written into the Constitution, the U.S. Constitution.

Mr. JUNELL. We are written into statute in the same manner. We are written into statute that all awards of that nature, if there was not a permission to sue prior to the time the suit was brought, had to come to the legislature to apply for the money. We held hearings

on Mr. Green's case. I don't want to—spent a lot of time reading trial testimony and reviewing all of his case. Ultimately participated in amount. And senator, I don't remember the amount that it was ultimately settled for. It was in the millions of dollars though. The legislature, either that session or the next session revised the statute to put the cap the same that we have on our Tort Claim Act as well.

Senator LEAHY. So now he could only recover a quarter of a million?

Mr. JUNELL. Yes, sir, but I can tell you that we have active—not only at the State level, but at the county level and at the city level. Any political subdivision is covered by that, and it has not deterred anyone to my knowledge. I have never heard that, anyone being deterred of reporting wrongdoing in Government.

Senator LEAHY. Well, there you had a specific statute to review. A trial judge can review a question of damages that a jury awards. Is that something a trial judge should eagerly jump in to do, or should they be reluctant to overturn or change a jury verdict?

Mr. JUNELL. I think they should be very reluctant to overturn a jury verdict.

Senator LEAHY. I do too. If I have other questions, I will submit them for the record. You have been patient. Your families have been patient. Senator Hatch has the patience of Job sometimes.

Chairman HATCH. Sometimes, that is for sure, and today is one of them is all I can say.

But you have had patience, and we have been very grateful to have you here. I know all three of you. I know how good you are. I know your reputations. I have no real desire to put you through any more questions. All I can say is that I would—just one little thought.

Mr. Junell, I understand that you are quite well read and that you have excellent taste in books. I would just like to know the last book that you have read.

Mr. JUNELL. You know, one of my favorite books, Mr. Chairman, is *A Square Peg*.

Senator LEAHY. Oh my God.

[Laughter.]

Senator LEAHY. Hold that man over.

[Laughter.]

Chairman HATCH. I think everybody should read that, including Senator Leahy.

Senator LEAHY. I am halfway through it.

Mr. JUNELL. I understand they are going to make a movie, by the way. Tom Cruise is looking to play—

Chairman HATCH. I see. I should be so lucky. Well, thank you.

Senator LEAHY. I would have been able to finish the book today if you had not kept us here so long, Mr. Chairman.

[Laughter.]

Senator LEAHY. That is one of my greatest disappointments.

Chairman HATCH. I have a feeling I am going to support you, Mr. Junell. I am going to support all three of you, and we are grateful that you are willing to take these jobs. We know that it is really a sacrifice for people like yourselves to take these jobs, but yet they are extremely important for our society. Without these Federal Dis-

strict Court Judges, our society would not exist nearly as well as it does.

Let me just say that the one thing that I caution you on, as an attorney trying a lot in Federal Courts, there seems to be a little syndrome that happens sometimes when Federal District Judges and Circuit Judges—well, frankly, all the way to the top. Once they are on the Court for just a little while, they seem to begin to think they have elements of deity, and we just want to make sure that you three do not get that attitude. Just remember—and do not try cases for the other attorneys. When a young attorney is there and he or she might not understand the evidence as well, you can help them, but do not try their cases for them. And be patient, and do not let being a Federal Judge go to your head. That is one bit of caution that I will tell you. And I have seen it happen in so many cases, even with really dear friends of mine, where they just—and part of it is because you have to make decisions all the time, and you have to sometimes draw a line, and sometimes you get so that you get used to that. But I think it is very important that you help everybody concerned and do justice in the Courts. And I have a great feeling that all three of you will.

So with that, we—

Senator LEAHY. I may note for the record, this deification never happens to the 100 members of the U.S. Senate, you understand.

Chairman HATCH. That is right. What we are going to do is we will probably put you on the next markup Thursday after this one, and hopefully you—now anybody on the Committee has a right to put people over or put any item on the markup agenda over for a week. It is an automatic right on the committee, and it is a very important rule. But hopefully no one will put you over for a week. But with that, if they do put you over for a week, in about two weeks we hopefully will have you out of committee. Then we have to get you on the floor, and we will work on that as well. So we will do our very best to push this process along. And I intend to do that when there is a Democrat President as well. I tried to do it, and I think we did do it to a large degree with President Clinton. It was not perfect, but we did move a lot of judges for him. He became second only to Reagan, the all-time champion, and only five less than Reagan, but nevertheless, I wish we could have done better.

And both Senator Leahy and I are committed to try to change this atmosphere to where we can, whoever is President will be given tremendous consideration on his or her selection of judges.

So with that, we are grateful for your patience. Because of it you really have not had to spend an awful lot of time with us, and that is a great blessing. Think about it. And with that, we will—

Senator LEAHY. Mr. Chairman, excuse me. And I have heard of absolutely no objection on our side of the aisle to these three, so I suspect you are going to be able to keep to that schedule without people putting them over.

Chairman HATCH. We are going to try, and then we will try to get you up on the floor immediately thereafter.

I just want to thank Senator DeWine for his leadership on this committee, and he has not asked any questions any more than the rest of us, and frankly, he plays a great role on this committee, and

Mr. Adams, you are lucky to have him as your Senator, as well as Senator Voinovich.

[The biographical information of Judge Adams, Mr. Junell, and Judge Otero, follow.]