

not be accommodated in the hearing room. Now, we are very disappointed that we were unable to get SH-216, which would have been a bigger room and would have allowed us perhaps to get everybody in. I have asked my staff to look at SD-G50 and see how full it is, and see if we can accommodate everybody down there because we could immediately move down there if it is. Our problem is all of the television is set up and everything else right now, but we will check on it and we will see what we can do, because I am the last person on earth who would not want to accommodate those who are persons with disabilities. So we will start here and we will check out that room. If it is capable of handling this, we will try to accommodate if we can move everything down there, but as of right now, I think we are going to have to proceed here until I receive back word from staff.

Senator LEAHY. Can I say something about that?

Chairman HATCH. And I would like your staff to work with them.

Senator LEAHY. I would. I have already asked my staff to go down and look at SD-G50. When I went by there earlier this morning, I mean it is a huge room. I think it would probably accommodate. We had people standing out here for an hour waiting, and maybe one way to do it would be to have the Senators who are here to make their statements, but I would really strongly urge that we move down there. It is a much larger room and it would be a lot easier to accommodate some people who have not been able to get in.

Chairman HATCH. Let's see if we can do it.

[Applause.]

Senator KENNEDY. I think it is a reasonable way to proceed in terms of hearing from the presenters here, and then as I understand as well, that SD-G50 is open and is available, and it seems to me that we ought to give the opportunity for people who have an interest in these nominees, an opportunity to hear them. And so I support Senator Leahy's proposal and hope that that can be—

Chairman HATCH. I think I made that comment, and I am certainly amenable to that. So let's have Senator Leahy's staff and my staff go down there and see if we can accommodate us down there. If we cannot, we are going to continue here. If we can, we will move down there with dispatch, because I am not going to waste a lot of time moving. So everybody is just going to have to move down there as quickly as they can. But I certainly want to always accommodate as many people as we possibly can, and especially those who suffer from disabilities, and we will just do it that way.

We can make our two statements, and then we will have the two Senators make theirs or any other Senators who want to come at this time.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM THE STATE OF UTAH**

Chairman HATCH. Good morning. I am pleased to welcome all of you to the committee's first judicial confirmation hearing of the 108th Congress. I first would like to acknowledge and thank Senator Leahy for his service as Chairman of this Committee over the past 16 months.

I also would like to extend a particular welcome to Senator Bob Dole, our former majority leader, and to Commissioner Russell Redenbaugh, the three-term U.S. Civil Rights Commissioner, who also happens to be the first disabled American to serve on that Commission. It means a great deal to me that they are both here today to support Mr. Jeff Sutton's nomination, and of course, I would also like to express my deep appreciation for the members we have here who have taken time to come and present their views on the qualifications of our witnesses today.

Our first panel features three outstanding circuit nominees who were nominated on May 9, 2001, whose hearing was originally noticed for May 23, 2001. I agreed to postpone that hearing for a week at the request of some of my Democratic colleagues who claimed that they needed an additional week to assess the nominees' qualifications. As we all know, control of the Senate and the Committee shifted to the Democrats shortly thereafter on June 5th, 2001, and these nominees have been languishing in the Committee without a hearing ever since. So I am particularly pleased to pick up where we left off in May of 2001 by holding our first confirmation hearing for the same three nominees we noticed back then: Justice Deborah Cook, Jeffrey Sutton and John Roberts. It is with great pleasure that I welcome these distinguished guests before the Committee this morning.

We also have three very impressive District Court nominees with us today: John Adams for the Northern District of Ohio, Robert Junell for the Western District of Texas, and S. James Otero for the Central District of California. I will reserve my remarks about these District Court nominees until I call their panel forward.

Our first nominee is Ohio Supreme Court Justice Deborah Cook, who has established a distinguished record as both a litigator and a jurist. Justice Cook began her legal career in 1976 as a law clerk for the firm now known as Roderick Linton, which is Akron's oldest law firm. Upon her graduation from the University of Akron School of Law in 1978, Justice Cook became the first woman hired by that firm. In 1983 she became the first female partner in the firm's century of existence. I am proud to have her before us as a nominee who knows firsthand the difficulties and challenges that professional women face in breaking through the glass ceiling.

During her approximately 15 years in the private sector, Justice Cook had a large and diverse civil litigation practice. She represented both plaintiffs and defendants at trial and on appeal in cases involving, for example, labor law, insurance claims, commercial litigation, torts and ERISA claims.

In 1991 Justice Cook left the private sector after winning election to serve as a judge on the Ninth Ohio District Court of Appeals. During her 4 years on the Ninth District Bench she participated in deciding over 1,000 appeals. The Ohio Supreme Court reversed only 6 of the opinions that she authored, and 8 of the opinions on which she joined. In 1994 Justice Cook was elected to serve as a Justice on the Ohio Supreme Court. She therefore brings to the Federal Bench more than 10 years of appellate judicial experience which is built on a foundation of 15 years of solid and diverse litigation experience. There can be little doubt that she is eminently

qualified to be a Sixth Circuit jurist, and I commend President Bush on his selection of her for this post.

Our next nominee is Jeff Sutton, one of the most respected appellate advocates in the country today. He has argued over 45 appeals for a diversity of clients in Federal and State Courts across the country, including a remarkable number, 12 to be exact, before the U.S. Supreme Court. His remarkable skill and pleasant demeanor have won him not only a lot of decisions, but also a wide variety of prominent supporters including Seth Waxman, President Clinton's Solicitor General; Benson Wolman, the former head of the Ohio ACLU; Bonnie Campbell, a Clinton nominee to the Eighth Circuit Court of Appeals; Civil Rights Commissioner Redenbaugh, the first disabled American to serve on the U.S. Civil Rights Commission; and former Senate Majority Leader Bob Dole, who is among the country's most powerful advocates on behalf of persons with disabilities.

I feel it necessary for me to comment briefly on some of the recent criticisms we have heard. Of course, no one familiar with the nominations process is surprised. We have the usual gang opposing Republican nominees. Well, their opposition of Jeff Sutton is for all of the wrong reasons. But as people who know me well will attest, I have always been willing to acknowledge a fair point made by the opposition. So in keeping with that principle, I want everyone to know that I found something commendable in the so-called report published by one of these groups about Jeff Sutton. That report conceded that, "No one has seriously contended that Sutton is personally biased against people with disabilities." Now, that is a very important point, and should be obvious since Jeff Sutton has a well-known record of fighting for the legal rights of persons with disabilities. And he was raised in an environment of concern for the disabled. His father ran a school for people affected by cerebral palsy.

Since the opposition to Jeff Sutton is not personal, then what is it? It seems to come down to a public policy disagreement about some Supreme Court decisions relating to the limits to Federal power when Congress seeks to regulate state governments. Those cases include the *City of Berne*, *Kimel* and *Garrett*, among others. But in those cases it was Jeffrey Sutton's job, as the chief appellate lawyer for the State of Ohio and as a lawyer, to defend his client's legal interest. As the American Bar Association ethics rules make clear: "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views of activities."

Now, I do not think anyone on this Committee would actually consider voting against a nominee out of dislike for the nominee's clients. We had an important discussion about clients in connection with the confirmation of Marsha Berzon, now a judge on the Ninth Circuit, who was born in Ohio by the way, and this Committee ultimately decided not to hold her responsible for her clients' views. Judge Berzon had been a long-time member of the ACLU, serving on the board of directors as the vice president of the Northern California Branch. She testified that, quote: "If I am confirmed as a judge, not only will the ACLU's positions be irrelevant but the positions of my former clients and indeed my own positions on any pol-

icy matters, will be quite irrelevant, and I will be required to, and I commit to look at the statute, the constitutional provisions and the precedents only in deciding the case.” That was on July 30th, 1998.

Now, I want to remind my colleagues that that answer sufficed for Judge Berzon, and she was approved by this Committee with my support and confirmed by the Senate. It took longer than I would have liked it to have taken, but she was approved. I think we all agree that anybody involved in a legal dispute has a right to hire a good lawyer, even if that person is guilty of murder. And Jeff’s clients are not murderers. They are state governments defending their legal rights. So let’s not beat up on Mr. Sutton because he worked for the State of Ohio.

Of course, I am not suggesting that Committee members must praise the effects of the Supreme Court’s rulings in *City of Berne*, *Kimel* and *Garrett*. Those decisions affected real people and undid some of the hard work on the part of Congress. I should know. A number of us on this committee, and certainly Senator Kennedy and I, we did a lot of work on those cases. We put in a great deal of time and energy into drafting and passing the Religious Freedom Restoration Act, the Americans with Disabilities Act, and other laws that have been declared Federal power, including the Violence Against Women Act, which Senator Biden spent so much time on, and myself. I thought those laws would be good for the country, and they still are. It was not easy to see them limited or struck down. Of course I understand the powerful constitutional principles and underpinning of the Supreme Court’s decisions in those cases, but I can sympathize with those who see things differently. I have no sympathy, however, for the notion that those Supreme Court decisions and the positions of the states that were Mr. Sutton’s clients are somehow a legitimate reason to oppose Mr. Sutton’s nomination. That is ridiculous.

So since even the people for the American Way concedes that Jeff Sutton harbors no personal bias, and since Mr. Sutton cannot be held responsible for the Supreme Court’s decisions, and since we all agree that Ohio and Alabama and Florida have the right to representation in court, then I do not see any real reason to oppose this highly skilled and highly qualified and highly rated lawyer by the ABA. I do look forward to his testimony and would only urge my colleagues and observers to keep an open mind. From the record I have observed so far, I am convinced that Jeff Sutton will be a great judge, and one who understands the proper role of a judge.

Our final circuit nominee today is Mr. John Roberts, who has been nominated for a seat on the D.C. Circuit Court of Appeals. He is widely considered to be one of the premier appellate litigators of his generation. Most lawyers are held in high esteem if they have the privilege of arguing even one case before the U.S. Supreme Court. Mr. Roberts has argued an astounding 39 cases before the Supreme Court. At least that as the last count I had. It is truly an honor to have such an accomplished litigator before this committee, and one of the most well-recognized and approved appellate litigators in history.

The high esteem in which Mr. Roberts is held is reflected in a letter the Committee recently received urging his confirmation. This letter, which I will submit for the record, was signed by more than 150 members of the D.C. Bar, including such well-respected attorneys as Lloyd Cutler, who was the White House Counsel to both Presidents Carter and Clinton; Boyden Gray, who was the White House Counsel for the first President Bush; and Seth Waxman, who was President Clinton's Solicitor General. The letter states, quote: "Although as individuals we reflect a wide spectrum of political party affiliation and ideology, we are united in our belief that John Roberts will be an outstanding Federal Court of Appeals Judge and should be confirmed by the United States Senate. He is one of the very best and most highly respected appellate lawyers in the Nation, with a deserved reputation as a brilliant writer and oral advocate. He is also a wonderful professional colleague, both because of his enormous skills and because of his unquestioned integrity and fair-mindedness." This is high praise from a group of lawyers, who themselves have clearly excelled in their profession, who are not easily impressed, and who would not recklessly put their reputations on the line by issuing such a sterling endorsement if they were not 100 percent convinced that John Roberts will be a fair judge who will follow the law regardless of his personal beliefs.

Let me just say a brief word about Mr. Roberts' background before turning to Senator Leahy. He graduated from Harvard College summa cum laude in 1976, and received his law degree magna cum laude in 1979 from the Harvard Law School, where he was managing editor of the Harvard Law Review. Following graduation he served as a law clerk for Second Circuit Judge Henry J. Friendly, and for then Justice William Rehnquist of the Supreme Court. From 1982 to 1986 Roberts served as associate counsel to the President in the White House Counsel's Office. From 1989 to 1993 he served as Principal Deputy Solicitor General at the U.S. Department of Justice. He now heads the appellate practice group at the prestigious D.C. law firm Hogan & Hartson, and he has received the ABA's highest rating of unanimously well qualified.

I have to say that this panel represents the best, and I commend President Bush for seeking out such nominees of the highest caliber.

Now, I just have a note here. Let me see what it says, and then I will turn to Senator Leahy. For everybody's information, I have been advised that we can set up in another large room. We will proceed here until the other room is ready for us at which time we will take a short recess and accommodate further the request made yesterday for additional accommodations. So I would prefer that, and even though it is an inconvenience to all of you, let's see if we can try and get at least these folks into that room first because they were here first, as well as those persons with disabilities who desire to attend. Anybody know what the room is? SD-G50 will be the room, so apparently we can hold it there.

Senator KENNEDY. Could I just thank the chair for that accommodation? Appreciate it very much.

Chairman HATCH. That is fine.

Senator LEAHY. Chairman, I think it was—

Chairman HATCH. Let me turn to the Ranking Member for his remarks.

[The prepared statement of Chairman Hatch appears as a submission for the record.]

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator LEAHY. I think it was a wise thing to do. As I said, when I walked by there, there appeared to be plenty of room. I am wondering, Mr. Chairman, I am wondering if we are going to be moving down there anyway, and Senator Warner and Senator Hutchinson, I would just as soon withhold my statement until we go down there, as a courtesy to Senator Warner and Senator Hutchinson, and if Senator Voinovich comes, if they want to give their statement here, and then I will give my opening statement down there.

Chairman HATCH. I would prefer for you to give your opening statement, and then we will hear from the two Senators.

Senator LEAHY. Happy to do that, Mr. Chairman. I tried.

Chairman HATCH. I think my colleagues understand.

Senator LEAHY. I know they are anxious to hear my statement anyway.

Chairman HATCH. Well, I am certainly anxious to hear it.

Senator LEAHY. Following the Chairman's example, it will be a little bit lengthy.

We meet in an extraordinary session to consider six important nominees for lifetime appointments to the Federal Bench. During the last 4 years of the Clinton administration this Committee refused to hold hearings and Committee votes on qualified nominees to the D.C. Circuit and the Sixth Circuit. Today, in very sharp contrast, the Committee is being required to proceed on three controversial nominations to those same circuit courts and do it simultaneously. Many see this as part of a concerted and partisan effort to pack the courts and tilt them sharply out of balance.

In contrast to the President's Circuit Court nominees, the District Court nominees to vacancies in California, Texas and Ohio, seem to be more moderate and bipartisan. Today we will hear from Judge Otero, nominated to the U.S. District Court for the Central District of California, unanimously approved by California's bipartisan Judicial Advisory Committee, established through an agreement between Senator Feinstein and Senator Boxer with the White House. I wish the White House would proceed to nominate another qualified consensus nominee like Judge Otero for the remaining vacancy in California. Too often in the last 2 years we have seen the recommendations of such bipartisan panels rejected or stalled at the White House. I note that Judge Otero's contributed to the community, worked on a pro bono project for the Mexican Legal Defense and Education Fund, served as a member of the Mexican Bar Association, the Stanford Chicano Alumni Association and the California Latino Judges Association, among others.

We will hear from Robert Junell, nominated to the U.S. District Court for the Western District of Texas, another consensus nominee who has a varied career as litigator and member of the Texas House of Representatives, life member of the NAACP, and a former