



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150

WASHINGTON, THURSDAY, JUNE 24, 2004

No. 89—Part II

Senate

NOMINATION OF PETER W. HALL TO BE UNITED STATES CIRCUIT JUDGE FOR THE SECOND CIR- CUIT

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Peter W. Hall, of Vermont, to be United States Circuit Judge for the Second Circuit.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of Peter W. Hall, who has been nominated to the U.S. Court of Appeals for the Second Circuit.

Mr. Hall is an exceptional nominee and well-prepared for the Federal bench. A graduate of the University of North Carolina at Chapel Hill and a cum laude graduate from Cornell Law School, he served as a law clerk for United States District Court Judge Albert W. Coffrin in the District of Vermont. He then served in the United States Attorney's Office for the District of Vermont, first as an assistant U.S. Attorney, then as first assistant U.S. Attorney. From 1986 to 2001, Mr. Hall was a partner in the law firm of Reiber, Kenlan, Schwiebert, Hall & Facey, P.C. He then returned to the U.S. Attorney's Office—this time unanimously confirmed by the Senate—to be the United States Attorney for the District of Vermont, a position he holds today.

Mr. Hall has been very active very in his community. He served as President of the Vermont Bar Association from 1995–96, on the Federal District Court Advisory Committee for the United States District Court in Vermont as a Citizen Board Member of the Vermont Criminal Justice Training Council, and on the Board of the Vermont Karelia Rule of Law Project. From 1989–1994, he was a nonpartisan elected member of select board for the town of Chittenden, VT, and in 1995, he was the elected Justice of the Peace for Chittenden. He has also been involved in the lay leadership of his church.

Mr. Hall has overwhelming bipartisan support, including both of his home State Senators, PATRICK LEAHY and JIM JEFFORDS. The ABA unanimously rated him “well qualified.” He is an outstanding candidate who has been nominated to fill a vacancy that has been designated by the National Judicial Conference as a judicial emergency. I urge my colleagues to join me in supporting his nomination.

The PRESIDING OFFICER. The question is, shall the Senate advise and consent to the nomination of Peter W. Hall, of Vermont, to be United States Circuit Judge for the Second Circuit.

The nomination was confirmed.

NOMINATION OF WILLIAM DUANE BENTON TO BE UNITED STATES CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

The PRESIDING OFFICER. The clerk will state the next nomination.

The legislative clerk read the nomination of William Duane Benton, of Missouri, to be United States Circuit Judge for the Eighth Circuit.

Mr. BOND. Mr. President, it is a pleasure to speak in support of a distinguished Missourian, my good friend Duane Benton, to serve on the United States Court of Appeals for the Eighth Circuit. Judge Benton is a respected jurist and committed public servant. I am very pleased the Senate is taking action on Judge Benton for this important position. The Members voting on this nomination, after reviewing his many accomplishments, will find Judge Benton to have an impressive record of public service and an exemplary judicial record and conclude that he will make an excellent addition to the federal judiciary.

Judge Benton currently serves on the Supreme Court of the State of Missouri. Judge Benton was appointed to the court in 1991, and also has served as its chief judge. Judge Benton has earned a reputation as a judge with a

distinguished intellect who has a skill for uniting his colleagues on difficult questions. His work ethic, approach and reasoning are highly regarded by the lawyers of Missouri.

In addition to his service on the judiciary, Judge Benton brings an impressive breadth of experience to this position. His experience coupled with his judicial record give him a command of a wide range of legal matters. Judge Benton is a Certified Public Accountant—the only CPA serving on any supreme court in the United States. Judge Benton was Missouri's chief tax expert, serving as director of the Missouri Department of Revenue. Judge Benton was member of the United States Navy, serving as a judge advocate for a number of years.

Judge Benton earned his degree at Northwestern University; his law degree at Yale University School of Law, where he also served as editor of the Yale Law Journal; a Masters of Business Administration at Memphis State University and a Masters of Law at the University of Virginia.

Judge Benton has also found time to be active in the communities in which he has lived. While his activities are too numerous to name, he has given his time from coaching baseball to serving on the Board of Regents for Central Missouri State University.

He retired from the U.S. Naval Reserve as a captain, after 30 years of active and reserve duty. He is a Vietnam veteran, a member of the Veterans of Foreign Wars, the American Legion, the Navy League, the Vietnam Veterans of America and the Missouri Military Advisory Committee.

The U.S. Court of Appeals is truly the second most important court in the land. Nearly every Federal case ends up before the court in some manner. Its decisions impact every aspect of society. To these positions, I believe it is imperative that the President nominate people of distinguished intellect and character with a breadth of legal

● This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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experience. This standard has been far surpassed with the nomination of Judge Benton. With his knowledge and experience, he will make an outstanding addition to the Federal judiciary.

Mr. HATCH. Mr. President, I rise today to express my strong support for the confirmation of William Duane Benton, who has been nominated to the U.S. Court of Appeals for the Eighth Circuit.

Judge William Benton is an ideal nominee and is well suited for the Federal bench. He 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.

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.

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 main-

tained 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.

Judge Benton has the support of both home State senators. Furthermore, he has wide support from 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.

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, a little more than a month ago we were able to obtain a firm commitment from the White House that there would be no further judicial recess appointments for the remainder of this presidential term. That undertaking led immediately and directly to the Senate vitiating a cloture vote and proceeding to confirm a district court nominee from Florida. Since that time I have been urging the Republican leadership to schedule consideration and votes on the other two dozen nominees to be considered. They started slowly but last week we were able to confirm nine of the judicial nominees. Today we will act on several more.

It is unfortunate that the Republican leadership did not schedule the debate that they know will be required before a vote on the Holmes nomination. There remains no Democratic hold on that nomination. The problem has been the failure of the Republican leadership to build that debate into the Senate schedule.

I am working with the Democratic leader and all Senators to complete action on all the other judicial nominees subject to the understanding. In order to accommodate Senators, we will proceed with some of the nominees by voice vote.

The facts are that Senate Democrats have been much more cooperative with this President than Republicans were when President Clinton was in the White House. Democrats in this Senate have shown great restraint and extensive cooperation in the confirmation of nearly 200 of this President's judicial nominations. We have reduced circuit court vacancies to the lowest level since the Republican Senate leadership irresponsibly doubled those vacancies in the years 1995 through 2001. We have already reduced overall Federal court vacancies to the lowest levels in 14 years, and after today we may hit a level of vacancies achieved only once in the last 20 years with less than 30.

Today we consider William Duane Benton, the fifth of President Bush's nominees to a circuit court we will have confirmed this year. This should be contrasted with the number of cir-

cuit court nominees confirmed in the 1996 session, the last year of President Clinton's first term. That session not a single circuit court nominee was permitted by the Republican majority to proceed to confirmation, not one. That year only 17 judges were allowed to be confirmed and all were to district court vacancies.

Judge Benton, who currently serves on the Supreme Court of Missouri, is an example of the sort of nominee that President Bush ought to send for the appellate courts. He has a reputation as a conservative, but fair-minded judge. As an attorney he had experience in a variety of areas of law, and on the State Supreme Court he has handled complex criminal and civil cases. He has written a number of excellent opinions, laying out the facts and the law with no hint of any personal bias. Judge Benton shows a willingness to listen to all litigants and to be fair.

I was especially struck by his fairness in death penalty cases. Far too often judges, especially elected judges, yield to the pressure of those who would sacrifice important constitutional principles in capital cases. As I look at his record, I see that of the 21 published opinions Judge Benton has written in death penalty cases, he has affirmed 12 and reversed nine. I think it is telling that he is willing to see beyond what are always terrible facts in these cases to ensure that justice and important constitutional safeguards are preserved.

I hope that my praise for his work in death penalty cases will not hurt Judge Benton's chances for confirmation. I remember not so long ago when another judge on the Supreme Court of Missouri, now-Chief Justice Ronnie White, was before the Senate as a nominee to a seat on the Federal bench. Sadly, Judge White's willingness to uphold the Constitution and ensure fair process in death penalty cases led to his being defeated by an unprecedented party-line vote of Republican Senators. His record was twisted and distorted for purposes of partisan politics.

Judge White was twice nominated by President Clinton to fill a seat on the U.S. District Court. The Judiciary Committee held two hearings on his nomination. Judge White was introduced enthusiastically by Senator BOND, and after each of these hearings the committee voted favorably to report his nomination to the full Senate. Despite this bipartisan support, however, his nomination was delayed for months and then years. When the time finally came for a vote on the Senate floor, Judge White was ambushed, and he was rejected in a party-line vote during which Republicans who had supported his nomination previously reversed position to scuttle it before the Senate.

The biggest distortions of Judge White's record were in death penalty

cases. His record on the whole compares favorably to Judge Benton's. According to testimony at Attorney General Ashcroft's confirmation hearing, Judge White voted to affirm the death penalty in 69 percent of the cases he heard. Looking just at the opinions Judge Benton has authored, we see him writing to affirm the death penalty 58 percent of the time. If we factor in cases in which he did not write the opinion but voted to affirm a capital sentence, I am sure the percentage is higher, and approaches Judge White's record.

For opposing a capital sentence in dissent in a small minority of the cases he heard, Judge White was vilified. Then-Senator Ashcroft took to the Senate floor and pointed to Judge White's record in death penalty cases as evidence that he was "pro-criminal," further describing Ronnie White as a judge, "with a tremendous bent toward criminal activity or with a bent toward excusing or providing second chances or opportunities for those who have been accused in those situations." These were outrageous things to say about a man who had devoted his life to the law, who had served many years on the State's highest court, and who had voted to reverse a small number of death sentences in order to preserve the integrity of the Constitution. When Judge White came to testify at Attorney General Ashcroft's confirmation hearing, Senator SPECTER offered him an apology for the way in which he was treated.

I mention all of this, as I said, because it provides such a stark contrast to the treatment that Judge Benton has gotten throughout his confirmation process. I doubt anyone will look at the nine cases in which he wrote to reverse a death penalty—50 percent more cases than those Judge White voted to reverse—and accuse him of being "pro-criminal". I will be surprised if, because he has found reversible error in the imposition of nine different death sentences, each one involving terrible crimes and horrific facts, any Member of this Senate will accuse him of having a "tremendous bent toward criminal activity." I will be shocked if, because he exercised his best judgment and followed the law as he understood it, he will be vilified and humiliated in a sneak attack in the manner that Judge Ronnie White was treated.

Of course, none of that should happen to Judge Benton, just as none of that should have happened to Judge White. I hope that one day Judge White's name can come back before the Senate and that he can be treated with the integrity and respect he deserves, just as we treat Judge Benton. I will vote in favor of Judge Benton's confirmation.

The PRESIDING OFFICER. The question is, Shall the Senate advise and consent to the nomination of William Duane Benton, of Missouri, to be United States Circuit Judge for the Eighth Circuit?

The nomination was confirmed.

NOMINATION OF DORA L. IRIZARRY TO BE UNITED STATES DISTRICT JUDGE

NOMINATION OF GEORGE P. SCHIAVELLI TO BE UNITED STATES DISTRICT JUDGE

NOMINATION OF ROBERT BRYAN HARWELL TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. The clerk will state the next set of nominations, en bloc.

The legislative clerk read the nominations of Dora L. Irizarry, of New York, to be United States District Judge for the Eastern District of New York;

George P. Schiavelli, of California, to be United States District Judge for the Central District of California;

Robert Bryan Harwell, of South Carolina, to be United States District Judge for the District of South Carolina.

Mr. HATCH. Mr. President, I rise today to express my support for the confirmation of Dora Irizarry, who has been nominated to the U.S. District Court for the Eastern District of New York.

Judge Irizarry has an impressive record of academic achievement and public service. She is a cum laude graduate of Yale University and a graduate of Columbia University School of Law. She has spent the great bulk of her career in public service, including 16 years as an assistant district attorney prosecuting complex narcotics cases. In 1995, then-Mayor Rudolph Giuliani appointed her to the New York City Criminal Court. Two years later, she was elevated by Governor George Pataki to the New York Court of Claims, where she served as an acting justice on the New York Supreme Court. After seven years of service as a judge, she left the bench in 2002 to campaign as the Republican candidate for State Attorney General. She is currently in private practice with the New York law firm of Hogue Newman & Regal.

In acknowledging the questions that some of my colleagues have about Judge Irizarry, let me just say I have done my best to ensure her nomination is treated with fairness and respect, and I believe we've succeeded. During the confirmation hearing for Judge Irizarry, we heard from the ABA and we also heard from three distinguished members of the New York legal community. We heard from New York Supreme Court Justice Michael Pesce, the presiding justice, and New York Supreme Court Justice Lewis Douglass, as well as James Castro-Blanco, immediate past president of the Puerto Rico Bar Association. They praised her legal aptitude and experience, her integrity,

and, most notably, her judicial temperament.

Furthermore, the Committee received a number of letters in support of Judge Irizarry's nomination from those who were unable to attend her hearing, as well as a strong letter in support from the Congressional Hispanic Caucus.

When I look at the full record in this case, including the impressive testimony on behalf of Judge Irizarry from her judicial colleagues and former associates, the endorsements of the Brooklyn, Asian American and Puerto Rican Bar associations, and her own answers to the questions that have been raised, I am persuaded that she is prepared to be a fine Federal judge. I support her confirmation, and I ask my colleagues to do the same.

Mr. President. I yield the floor.

Mr. LEAHY. Mr. President, today, we are asked to consider the nomination of Dora Irizarry to the United States District Court for the Eastern District of New York. There was some controversy with her nomination stemming from interviews conducted by the American Bar Association. A majority of the ABA Standing Committee members concluded that Judge Irizarry was "not qualified" for the Federal bench. I believe we must give considerable weight to such peer reviews.

Unfortunately, Judge Irizarry is one of 28 judicial nominees of this President to receive a partial or majority rating of "not qualified" from the ABA committee that conducts a peer evaluation of judicial nominees. When the ABA advises us that even a minority of the members of its review committee consider a nominee to be "not qualified," that is cause for concern. I know that the ABA representatives take their work very seriously.

Last October, the Judiciary Committee held a hearing on the nomination of Judge Irizarry, with the consent of both of the Senators from her home state of New York. The senior Senator from New York, Senator SCHUMER, served as the ranking member at the hearing. On behalf of the Democratic minority, I worked with Chairman HATCH to allow that hearing to be scheduled on shorter notice than would normally be required under Senate rules. That was one of a series of accommodations Democrats have made to the Republican majority and to this administration without receiving acknowledgment or credit. At the hearing, the committee explored the nomination and the unfavorable recommendation of the ABA. We heard from the nominee, Judge Dora Irizarry, ABA representatives, and the witnesses speaking in support of her qualifications.

The Democratic members of the Judiciary Committee look very closely at the peer review ratings provided by the ABA. Nevertheless, we consider the views of the ABA an important but not a dispositive piece of information as part of our evaluation. We may not always agree with the recommendation.