

Testimony of

# **The Honorable Patrick Leahy**

May 23, 2002

I would like to welcome the nominees to today's hearing. The nominees before us come from Arkansas, Missouri, Virginia, Pennsylvania, and Illinois. Many of the nominees' family members have made this journey with them, and I extend the welcome of this Committee to the friends and families in attendance.

With today's hearing, in just about 10 months, the Senate Judiciary Committee will have held 19 hearings involving a total of 71 judicial nominations. That is more hearings on judges than the Republican majority held in any year of its control of the Senate. In fact, it is more hearings than they held in 1996 and 1997 combined and includes more judicial nominees than were accorded hearings in 1999 and 2000 combined. Indeed, one-sixth of President Clinton's judicial nominees - more than 50 - never got a Committee hearing and Committee vote from the Republican majority, which perpetuated longstanding vacancies into this year.

One of those vacancies was on the Eighth Circuit, a vacancy recently filled by Michael Melloy of Iowa. This was the seat to which President Clinton nominated Bonnie Campbell, a talented, well-qualified candidate who was given a hearing by the Committee, but was never afforded a Committee vote. Her nomination languished and was returned to President Clinton because of this Committee inaction during the last seven months of the 106th Congress.

Since the change in control of the Judiciary Committee, we have moved quickly to fill vacancies on the Eighth Circuit, and have already confirmed two judges to this circuit, William Riley from Nebraska and Judge Melloy from Iowa.

The nominations to the District Courts today also deserve mention. I am pleased to be able to move these District Court nominations so quickly. As soon as Senator Warner came to me to ask me to schedule Judge Hudson for a hearing, I was happy to accommodate him. And the ink on the paperwork on the other trial court nominees before us this afternoon is practically still wet - Mr. Savage's file was not complete until nine days ago, Mr. Dorr's was not complete until six days ago, Ms. St. Eve's until three days ago, and Judge Autrey's until two days ago.

While some of the vacancies to which these nominees have been named arose relatively recently, the vacant seat in the Eastern District of Pennsylvania to which Mr. Savage has been nominated has been empty since the beginning of 1999. President Clinton had nominated Stephen Lieberman to that seat, but he along with a large number of the nominees to fill vacancies in Pennsylvania during the years in which the Republican majority controlled the pace of nominations. In contrast, as of today's hearing, this Judiciary Committee will have held hearings for seven nominees to judgeships in Pennsylvania, including Judge Legrome Davis, Judge Michael Baylson and Judge Cynthia Rufe, who were all confirmed last month. Those

confirmations and today's hearing illustrates the progress being made under Democratic leadership and the fair and expeditious way this President's nominees are being treated.

The vacancy to which Judge Autrey has been nominated has been vacant even longer - since December 1996, when the late Judge Gunn took senior status. President Clinton nominated Missouri Supreme Court Judge Ronnie White to this vacancy in June of 1997. He had to wait nearly a year for a hearing, until May of 1998. The Committee voted to send his nomination to the Senate floor soon thereafter but his nomination sat waiting for a full Senate vote, and, having never received one, was sent back to President Clinton at the end of the 105th Congress. The President renominated Judge White in January of 1999, and again he waited patiently until July of that year to be voted out of Committee a second time to the Senate floor. On October 5, 1999, the Republican-controlled Senate finally gave Ronnie White a floor vote, but it was not the due process he deserved.

As is by now a well-known story, Ronnie White was the victim of a sneak attack on that day. He was defeated on an unprecedented party-line Senate vote and was branded "pro-criminal". These issues were aired during the confirmation hearing of John Ashcroft last year and, to his credit, Senator Specter offered an apology to Judge White for the way he was treated. I have no wish to revisit Ronnie White's terrible experience here, and what happened to him is certainly not the fault of today's nominees. But I do think it is important to remember, when there is so much unfair criticism of the way this Committee has been handling nominations since the change in Senate control last July, that, in fact, we are treating nominees more fairly and moving them more quickly than has ever been done before.

Given the controversy in Missouri and around the country about Judge Ronnie White's treatment, I would like especially to commend Senator Carnahan for being here today to recommend the Missouri nominees to the Committee. It just underscores for us what we all know about her - that she is a person of character and grace, willing to work on a bipartisan basis in the best interests of the State of Missouri.

While I am glad we are able to hold today's hearing and move toward filling more vacancies on the federal bench, large numbers of vacancies continue to exist, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than 50 of President Clinton's judicial nominees, many of whom waited for years. In fact, 56 percent of President Clinton's Courts of Appeals nominees in 1999 and 2000 never got a hearing or a vote and the Republican majority was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session. Many other nominees waited for years, the lucky ones eventually were confirmed, the unlucky ones waited in vain for a hearing and Committee vote.

From the time the Republicans took over majority control of the Senate in 1995 until the reorganization of the Committee last July, circuit vacancies increased from 16 to 33, more than doubling.

Democrats have broken with that recent history of inaction. Nine nominees have been confirmed to the Courts of Appeals in fewer than 10 months. Mr. Smith is the 14th nominee to a Circuit Court to receive a hearing in just 10 months. I want to commend Senator Lincoln for her efforts

and appreciate your interest in ensuring that Mr. Smith be accorded a hearing. Due to her efforts, he is being included in this hearing today. Just as I have worked to accommodate a number of Republican Senators who asked that their States' nominees' hearings be expedited, I accord Senator Lincoln that courtesy.