

Testimony of

The Honorable Patrick Leahy

June 27, 2002

Opening Statement of Chairman Patrick Leahy
on the Nominations of

Dennis Shedd to the U.S. Court of Appeals for the Fourth Circuit

Arthur Schwab to the U.S. District Court for the Western District of Pennsylvania

Terrence McVerry to the U.S. District Court for the Western District of Pennsylvania

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I would like to welcome the nominees to today's hearing. The nominees before us come from South Carolina and Pennsylvania, both States with Senators who are respected members of this Committee. Many of the nominees' family members have made this journey, too, and we extend the welcome of this Committee to the friends and families in attendance.

With today's hearing, in 11 months, the Senate Judiciary Committee will have held 21 hearings involving a total of 78 judicial nominations. That is more hearings on judges than the Republican majority held in any year of its control of the Senate. In fact, the number of hearings we have held in less than one year is three more than Republicans held in the two years of the 104th Congress, only one fewer than they held in the two years of the 105th Congress, and six more hearings than the Republicans held in the two years of the 106th Congress. We have included more judicial nominees in hearings in this much shorter period than were accorded hearings in 1999 and 2000 combined. So when partisan critics contend that the Judiciary Committee has not been holding hearings or has been slow to hold hearings, they do so knowing that just the opposite is true. We have held more hearings faster this last year than in any of the six and one-half preceding years in which a Republican majority controlled the pace of hearings.

Over the last 11 months, we have had hearings for more judicial nominees than in seven of the eight years President Reagan was in office. We have held hearings for more judicial nominees than in any of the four years of the first President Bush. The Democratic-led Senate Judiciary Committee has held hearings for more district and circuit court nominees in less than a year than received hearings in 20 of the past 22 years.

On July 10, 2001, when the Judiciary Committee was assigned new members following the delay in its reorganization, there were 110 judicial vacancies. Today there are 89, despite the 42 vacancies that have arisen since the reorganization of the Committee last July. I should note that this Committee has also favorably reported to the Senate another 16 nominees who await a final vote. When the White House and the Senate leadership work out differences over appointments to bipartisan boards and Commissions and Senator McCain removes his hold, we should be able to move forward. Unfortunately the White House's stance has now resulted in delaying votes on nominees for two months.

In addition, I must note that more than a dozen of the President's judicial nominations do not have home-state Senator support, several do not yet have ABA peer ratings and nearly half of the vacancies do not have nominees, including over a dozen judicial emergency vacancies.

Today, we are considering Judge Dennis Shedd for the U.S. Court of Appeals for the Fourth Circuit. By having a hearing for Judge Shedd today, we are moving forward in spite of the Republican obstruction of President Clinton's nominees to the Fourth Circuit over the last several years. Judge James Beaty, a sitting U.S. District Court Judge for the Middle District of North Carolina, was nominated by President Clinton in December of 1995, but he never received a hearing. Judge Beaty was renominated in 1997, and again, the Committee scheduled no hearing for him. Judge Beaty waited more than 34 months without a hearing.

President Clinton tried again in 1999, nominating another qualified African-American, Judge James Wynn. Judge Wynn, a North Carolina Court of Appeals Judge, was also denied a hearing before the Committee, but President Clinton sent him back to the Senate one more time, at the start of the 107th Congress in January this year. After pending for a total of 16 months without a hearing, Judge Wynn's nomination was among those withdrawn by President Bush in March of last year.

Federal District Court Judge Andre Davis, an African American judge from Baltimore, was also nominated by President Clinton to the Fourth Circuit, but his nomination was also never acted on by the Republican controlled Senate.

Judge Roger Gregory was also first nominated by President Clinton and likewise was never accorded a hearing by the Republican majority. He was initially nominated by President Clinton in June of 2000. When no action was taken by the Senate on Judge Gregory's nomination, President Clinton used his power to make Roger Gregory the first African-American judge in history to sit on the Fourth Circuit by making him a recess appointment. He then renominated him at the beginning of the 107th Congress. Unfortunately, President Bush withdrew Judge Gregory's nomination in March of 2001.

With the strong support of Senator Warner, Judge Gregory was then renominated by President Bush. We included him in our first judicial confirmation hearing last July. It was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years, and the first African American ever confirmed to that Court of Appeals. We have already successfully broken the Republican-imposed moratorium on confirming judges to the Fourth Circuit when the Senate confirmed Judge Roger Gregory last year. Just as we broke through with respect to the Fifth Circuit with the confirmation of Judge Edith Clement, and with respect to the Eighth and Tenth Circuits after years without a new judge being confirmed by the Republican-controlled Senate.

Judge Shedd is the second Fourth Circuit nominee on which we have proceeded in less than a year. He is also the second judicial nominee from South Carolina on whom we have proceeded. In August of last year we had a hearing for Judge Terry Wooten to be a U.S. District Court Judge. Judge Wooten was reported by the Committee and confirmed by the Senate last November. We have continued to do what our Republican predecessors would not by moving to consider fairly judicial nominees from circuits in which they had previously imposed a blockage.

Large numbers of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than half - 56 percent - of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session. 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 Republican history of inaction.

We will also hear from Arthur Schwab and Terrence McVerry, both nominated to the U.S.

District Court for the Western District of Pennsylvania. There will be the tenth and eleventh nominations from Pennsylvania to be considered this year. This is more nominees than we have considered for any other State and is in stark contrast to the treatment President Clinton's Pennsylvania nominees received under Republican leadership.

One example is the treatment of the nomination of Judge Legrome Davis. Judge Davis was first nominated on July 30, 1998. The Republican-controlled Senate took no action on his nomination and it was returned to the President at the end of 1998. On January 26, 1999, President Clinton renominated Judge Davis for the same vacancy. The Senate again failed to hold a hearing for Judge Davis and his nomination was returned after two more years.

Under Republican leadership, Judge Davis' nomination languished before the Committee for 868 days (868!) without a hearing. Unfortunately, Judge Davis was subjected to the kind of treatment that befell so many other nominees to the district courts in Pennsylvania and to the Third Circuit during the Republican control of the Senate. I note, however, that I know personally that the senior Senator from Pennsylvania, strongly supported Judge Davis's nomination and worked hard to get him a hearing and a vote. I give Senator Specter full credit for getting President Bush to renominate Judge Davis earlier this year. As Chairman, I moved expeditiously to consider Judge Davis, and he was confirmed within a few months of his renomination. The saga of Judge Davis recalls for us so many nominees from the period of January 1995 through July 10, 2001, who never received a hearing or a vote and who were the subject of secret anonymous holds by Republicans for reasons that were never explained.

As another example, I note that the hearing we had earlier this year for Ms. Joy Conti was the very first hearing on a nominee to the Western District of Pennsylvania since 1994 (in almost a decade), despite qualified nominees of President Clinton. No nominee to the Western District of Pennsylvania received a hearing during the entire period that Republicans controlled the Senate in the Clinton Administration. One of the nominees to the Western District, Lynette Norton, waited for almost 1,000 days, and she was never given the courtesy of a hearing or a vote. Unfortunately, Ms. Norton died earlier this year, having never fulfilled her dream of serving on the federal bench. Despite this history of poor treatment of Clinton nominees in Pennsylvania and elsewhere, we are moving fairly and expeditiously.

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 and never received a vote on their nomination. It is the Democrats, not the Republicans, who have broken with that history of inaction from the Republican era of control, delay and obstruction.

The Senate has already confirmed 57 of President Bush's judicial nominees and 16 others are awaiting votes by the full Senate. The number of judicial confirmations by the Republican controlled Senate is greater than the number of District Court nominees confirmed in five of the six full years of Republican control, 1995, 1996, 1997, 1999, or 2000. More district court nominees have been confirmed than were confirmed in seven of the eight years of the Reagan Administration and three of four years of the first Bush Administration.

Despite false claims by some, these facts demonstrate quite clearly that the Senate is working hard to evaluate and vote on President Bush's judicial nominees at a fair and fast pace.