

Testimony of

The Honorable Patrick Leahy

August 1, 2002

I begin by thanking Senator Durbin for chairing today's hearing and all Senators who have agreed to chair nominations hearings since the change in majority last summer. Today we hold our 23rd hearing for judicial nominees and consider the 82nd, 83rd and 84th nominees to be Federal Court of Appeals and District Court judges since the change in Senate majority last summer.

Judge Raggi is the 18th Court of Appeals nominee for whom we have held a hearing in fewer than 13 months. The fact is that we have held more hearings for more circuit court nominees than in any of the six and one-half years in which Republicans last controlled the Committee. The truth is that in less than 13 months we have held hearings on twice as many Court of Appeals nominees as the Republican majority used to when they were in the majority.

Under Democratic leadership, this Committee has also voted on more judicial nominees, 79, than in any of the six and one-half years of Republican control that preceded the change in majority. We have already voted on twice as many circuit court nominees, 15, as the Republican majority averaged in the years they were in control. In fact, this last year we voted on more nominees than were voted on in 1999 and 2000 combined and on more circuit court nominees than Republicans voted on in 1996 and 1997 combined.

We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees were treated. By many measures the Committee has achieved almost twice as much this last year as Republicans averaged during their years in control.

In the six and one-half year period of Republican control before the change in majority last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33 and overall vacancies rose from 63 to 110. We have reversed those trends.

Today, the Committee proceeds with a hearing on the nomination of Reena Raggi to the United Court of Appeals for the Second Circuit, Ronald Clark to the Eastern District of Texas, and James Gardner to the Eastern District of Pennsylvania. I welcome the nominees, their families and their friends, and all those interested in these important matters.

Judge Raggi has been nominated to fill a seat vacated by the retirement of Judge Amalya Kearse. I congratulate not only the White House but also Senators Schumer and Clinton on this nomination. This is a widely-respected nominee, a consensus nominee, the type of nominee who can move forward quickly for consideration. I know Judge Raggi and look forward to her sitting on the Second Circuit, which hears cases from Vermont, Connecticut and New York.

In addition we have before us the seventh federal court nominee from Texas and the 12th federal court nominee from Pennsylvania on which we have held hearings over the last year. This is in sharp contrast to the treatment of nominees from those States by the Republican majority, as I have detailed before.

With this hearing we have now completed hearings for every federal district court nominee sent to the Senate by President Bush who has an ABA peer review and the support of home-state Senators. All 67 of these federal trial court nominees will have had hearings and 65 have already been reported by the Committee to the Senate within the first year of Democratic control. I have repeatedly spoken about the need for the President to work with the Senate and to make nominations to these important courts, but those suggestions have been for naught. There remain 38 judicial vacancies without a nominee. Thirteen District Court nominations are without ABA ratings because the President unilaterally changed the 50-year tradition of Republican and Democratic Presidents to involve the ABA early in the process. In addition, 24 judicial nominations are without home-state Senator support because the White House did not sufficiently consult with those Senators.

At this point it is fair to estimate that between about 15 to 20 additional District Court nominees would have had hearings this past year if the White House had not unilaterally chosen to delay the ABA's peer reviews. That includes three at this hearing, three at last week's hearing, and those who could have been considered just before the July 4 recess and in July and August last year. That is unnecessary. For those of us interested in trying to help the federal courts, it is a shame that we have been prevented from doing that which we were willing and able to do. So, as good as our record has been in moving judicial nominees promptly and as stark the contrast with the recent days in which so many of President Clinton's nominees were obstructed by a Republican Senate majority, we now see circumstances in which the White House's lack of attention to these important matters continues to obstruct the confirmation process.

We also have before us today a nominee to the United States Court of Federal Claims. This is not a so-called "article III" court but is an important court nonetheless with 15-year terms for its members. This is a court for which there had been, until this White House, a tradition of bipartisan involvement in selecting nominees.

The Clinton Administration's record of accommodations to the Republican Senate majority include the re-appointment of Judge Christine Miller, and the nomination of another former aide to Senator Hatch, Edward Damich to the Court. President Clinton also permitted Chief Judge Loren Smith to remain Chief Judge for the duration of his term.

Indeed, I recall that although Lawrence Baskir was first nominated by President Clinton to the Court of Federal Claims in January 1997, his nomination was not included in a hearing through two full sessions of Congress until Chairman Hatch and the White House had assembled a slate of six nominees for vacancies to the Court of Federal Claims that included an aide to Senator Hatch. That former aide now serves as the Chief Judge of the Court of Federal Claims, having

been so designated by President Bush in spite of the courtesy shown to Chief Judge Smith by President Clinton.

The current White House has determined to proceed unilaterally with nominations to what had previously been a court for which nominations were treated in a bipartisan way. There has been no consultation with the Democratic leadership of this Committee regarding recommendation or nominations to the Court. Instead, the White House proceeded as it does in most things.

The same is true with respect to the way this White House has approached the Parole Commission, the Federal Election Commission and many other bipartisan boards and commissions. It is a shame and has led to disruption of the process of filling these vacancies.

In spite of these considerations we take the exceptional action of proceeding today with the nomination of Larry Block to the Federal Court of Claims at the request of the Ranking Republican, Senator Hatch. We will expect fairness and consideration in return, including true bipartisan consultation with respect to Federal Court of Claims nominations.

The White House could start by reconsidering its decision to withdraw the nomination of Judge Sarah Wilson to a full 15-year term. Judge Wilson is a fine person, and a well-respected and talented lawyer. She graduated from Columbia Law School, clerked for a federal judge, was a fellow with the Administrative Office of the Courts, served in the Department of Justice and a prior White House, and has now served with distinction for a year and a half on the Court of Federal Claims. Republicans have tried several maneuvers to oust Judge Wilson, including attempting to cut off her salary. She has received the shoddiest of treatment. If the White House wants to do the right thing and restore some sense of fairness to the process of nominations for the Court of Federal Claims, it could start by renominating Judge Wilson. Alternatively, I remain ready to work with the White House with respect to assembling the type of bipartisan panel that Senator Hatch helped assemble in 1997 and 1998 to fill the vacancies on the Court of Federal Claims.

Today, we make an exception to consider Larry Block. I look forward to hearing his answers to a number of questions about his policy work at the Department of Justice, his views on Supreme Court precedents and on the issue of regulatory takings, which goes to the heart of the very important, though often overlooked, jurisdiction of the Court to which he is nominated. Mr. Block has spent much of his legal career advancing a very specific and ideological political agenda. While I certainly wish Mr. Block and every member of the Judiciary Committee staff from both sides of the aisle well, this is a serious nomination which deserves serious scrutiny.

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