

Testimony of
The Honorable Patrick Leahy

September 18, 2002

OPENING STATEMENT OF SENATOR PATRICK LEAHY,
CHAIRMAN, SENATE JUDICIARY COMMITTEE

HEARING FOR MICHAEL MCCONNELL TO BE A UNITED STATES CIRCUIT JUDGE
ON THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
ALIA LUDLUM TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE WESTERN DISTRICT OF TEXAS
KENT JORDAN TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF DELAWARE
WILLIAM MARTINI TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE DISTRICT OF NEW JERSEY
THOMAS PHILLIPS TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE EASTERN DISTRICT OF TENNESSEE
JEFFREY WHITE TO BE A UNITED STATES DISTRICT COURT JUDGE
FOR THE NORTHERN DISTRICT OF CALIFORNIA

September 18, 2002

Today we hold our 24th hearing for judicial nominees since the change in majority in the summer of 2001, as the Committee considers six more judicial nominees. This will bring to 90 the number of judicial nominees for whom the Committee has held hearings in the last 14 months. Professor McConnell is the 19th Court of Appeals nominee for whom we have held a hearing in that time.

This is the fourth hearing on a judicial nominee sponsored by my friend Senator Hatch, the third hearing for a nominee to the Court of Appeals for the Tenth Circuit, and the second hearing for a Utah nominee. This is also the first hearing for Professor McConnell and each of the others here today who have been nominated for lifetime appointments to the federal bench.

The fact is that we have held more hearings for more judicial nominees and more hearings for circuit court nominees than in any 14-month period of the six and one-half years in which Republicans last controlled the Committee. Under Democratic leadership, this committee has voted on more judicial nominees - 82 -- and on more circuit court nominees - 17 -- than in any 14-month period of the six and one-half years of Republican control.

The Senate has already confirmed 77 of the judicial nominations of President George W. Bush. We have confirmed more of President Bush's nominees in 14 months than were confirmed in the last 30 months that a Republican majority controlled the Senate. We have done more in half the time. We have also already confirmed more of President Bush's judicial nominations since July

2001 than were confirmed in the first two full years of the term of his father, President George H.W. Bush.

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 these last 14 months as our predecessors averaged per year 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 65 to 110, with more than forty additional vacancies occurring since then. We have reversed those trends. Since the change in majority, through setting and holding to a regular schedule and through hard work, we have been able to outpace attrition and reduce vacancies overall and on the circuit courts.

Today the Committee proceeds with a hearing on the nomination of Professor McConnell to the United States Court of Appeals for the Tenth Circuit, Alia Ludlum to the Western District of Texas, Kent Jordan to the District of Delaware, William Martini to the District of New Jersey, Thomas Phillips to the Eastern District of Tennessee, and Jeffrey White to the Northern District of California. I welcome the nominees, their families and their friends, and all those interested in these important matters.

Professor McConnell is a popular and provocative law professor at the University of Utah Law School. As a scholar, an advocate, and an activist, Professor McConnell has advanced controversial positions. He will be given the opportunity today to clarify whether his writings will inform his judicial decision-making, whether as a judge he will uphold the constitutional right to privacy, and whether as a judge he would seek to weaken the wall separating church and state in our jurisprudence.

I hope that the Democratic members on this committee are not subjected to unfair criticism based on our religious affiliations - as unfortunately happened in the past -- for asking questions on important constitutional issues. The responsibility to advise and consent on the President's nominees is one that I take seriously and that this Committee takes seriously. In asking questions, Senators are working conscientiously to fulfill their constitutional responsibilities.

Ultimately the question each Senator on this Committee will be asking himself or herself as we proceed is whether these judicial nominees meet their standards for lifetime appointments to the federal courts. We look forward to hearing from the nominees.

In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, I have made a variety of efforts to accommodate a number of Republican Senators, including the Republican Leader, this committee's ranking member, and at least four other Republican members of this committee, in scheduling a number of nominees for hearings during the past 14 months. I have also been mindful of the need to make progress in filling the many vacancies that we inherited on the federal bench when the Senate majority shifted.

We proceed today, as I said that we would, with a hearing on Professor McConnell. In addition, as I indicated that I would, I will be noticing another confirmation hearing for next Thursday for another controversial nominee, Miguel Estrada.

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