

Testimony of

The Honorable Patrick Leahy

May 22, 2003

Today, I welcome the nominees on this hearing who come to us from five different states. I welcome Richard Wesley, nominated to the United States Court of Appeals for the Second Circuit, which covers Vermont, New York and Connecticut, as well as J. Ronnie Greer to be United States District Judge for the Eastern District of Tennessee, Thomas M. Hardiman to be United States District Judge for the Western District of Pennsylvania, Mark R. Kravitz to be United States District Judge for the District of Connecticut, and John A. Woodcock to be United States District Judge for the District of Maine. Mr. Kravitz, your reputation precedes you. I have heard from a number of judges and lawyers in Connecticut for whom I have great respect about your universally recognized fitness to serve on the federal bench.

This is already the tenth hearing the Republican majority has held for judicial nominees this year. Ten hearings before Memorial Day with seven more months left in the year. As of today, the Committee will now have held hearings for 42 judicial nominees overall including 11 circuit court nominees.

This stands in sharp contrast to the way President Clinton's nominees were treated by the Republican majority. I recall that, during the entire year of 1996, when vacancies were higher and growing, this Committee held only six hearings all year and those hearings included only five circuit court nominees. Thus, the Republicans have now considered more than twice as many circuit court nominees in one-third the amount of time they considered President Clinton's nominees that year. In 1997, the Committee only had nine hearings all year and included only nine circuit court nominees. During the entire year of 1999, only seven hearings were held on judicial nominees and, during the entire year of 2000, only eight judicial nominations hearings were held.

This year, with a Republican in the White House, the Senate Republican majority has gone from second gear -- the restrained pace it had said was required for Clinton nominees -- to overdrive for the most controversial of President Bush's nominees.

This year, in spite of the lack of cooperation by the Administration and the overbearing exercise of power by the majority, we have cooperated with Committee action and voted on 31 judicial nominees during the first four months of this year. We have proceeded in the Senate to vote on the confirmations of 25 judicial nominees this year, including five controversial nominees to the circuit courts, which makes 125 of this President's judges confirmed overall.

That compares most favorably when contrasted with how Republicans treated President Clinton's nominees. In the 1996 session, for example, the Senate did not confirm a single circuit judge all year and confirmed only 17 judges that entire session. In 1999, the third year of the last presidential term, and in 1997, the Senate did not reach the level we have already attained of 25 confirmations until October.

A good way to see how much faster Republicans are processing judicial nominations for a Republican president is to compare where we are in May of this year to May of any year during the last Democratic administration when the Republicans controlled the Senate. Over the last six and one-half years of Republican control under President Clinton, the Republicans held less than three judicial nominations hearings, on average, by May 22nd, and had considered only three circuit court nominees, on average by this time. On this day, in 1995, only four hearings had been held for judicial nominations; in 1996, only three hearings; in 1997, only two hearings; in 1998, only six hearings; in 1999, zero hearings; and in 2000, only four judicial nominations hearings were held by May 22nd. Today, we participate in our tenth hearing this year.

Republicans have moved two to three times more quickly for President Bush's circuit court nominees than for President Clinton's, yet vacancies in the courts stand at half of what they were during many of those years. Of note, by this point in 1999, the third year of President Clinton's last term, the Committee had not held or scheduled a single judicial nominations hearing. In fact, no hearing for a judicial nominee was held until June of that year.

The number of judicial vacancies has gone down from the 110 we inherited when Democrats assumed the Senate majority in the summer of 2001 to 46 - the lowest level it has been in 13 years. While I was Chairman I was able to cut it from 110 to 60, despite dozens of new vacancies that occurred during that time. I recall that Senator Hatch said in September of 1997 that 103 vacancies (during the Clinton Administration) did not constitute a "vacancy crisis." He also repeatedly stated that 67 vacancies meant "full employment" on the federal courts. We now stand at 46 vacancies for the entire federal judicial system.

I welcome Judge Wesley, who comes to us with the support of both his home-state Senators. As I have noted throughout the last three years, the Senate is able to move expeditiously when we have consensus nominees. Unfortunately, far too many of this President's nominees have records that raise serious concerns about whether they will be fair judges to all parties on all issues.

Judge Wesley currently serves as an Associate Judge on the New York Court of Appeals, New York's highest state court. Over the course of his judicial career to date, he has also served on New York state trial and appellate courts. He served for four years as a Member of the New York State Assembly. He has received a unanimous rating of "Well-Qualified" from the American Bar Association. I welcome him and his family, and I look forward to hearing from him today.

I note that Judge Wesley is the third nominee of President Bush's to the Second Circuit that the Senate will consider. While I was Chairman last year, the Senate confirmed Judge Reena Raggi and Judge Barrington Parker to the Second Circuit Court of Appeals. Judge Wesley is nominated to fill the only remaining vacancy on that important court.

I also welcome today four nominees to the federal trial courts, who come to us from Tennessee, Pennsylvania, Connecticut, and Maine.

Today we will also hear from Mark R. Kravitz, nominated to the United States District Court for the District of Connecticut. Mr. Kravitz is an accomplished lawyer who has served as a litigator for more than 25 years with the law firm of Wiggin & Dana in New Haven. He currently heads their appellate practice and received a "Well-Qualified" rating from the ABA. He served as a clerk for Justice Rehnquist, who in 2001 appointed him as a member of the U.S. Judicial Conference's Standing Committee on the Rules of Practice and Procedure in the United States Courts - but he is supported by both of his home-state Senators. I look forward to hearing from him.

J. Ronnie Greer is nominated to the United States District Court for the Eastern District of Tennessee. He makes President Bush's fifth judicial nominee from Tennessee. Under Democratic control last year, the Senate confirmed two district court nominees for Tennessee and Judge Julia Smith Gibbons to the Sixth Circuit Court of Appeals. This March, the Senate confirmed its third Tennessee district court nominee, Judge Daniel Breen. Mr. Greer comes to us with more than 20 years of litigation experience, representing primarily individuals in criminal, personal injury, and other matters.

Thomas Hardiman is nominated to the United States District Court for the Western District of Pennsylvania. He is the 12th nominee of President Bush's to the federal courts in Pennsylvania that the Senate will have considered. While I was Chairman, the Senate held hearings for and confirmed 10 nominees to the district courts in Pennsylvania plus Judge D. Brooks Smith to the Third Circuit Court of Appeals.

A look at the federal judiciary in Pennsylvania indicates that President Bush's nominees have been treated far better than President Clinton's. Today, there is no state in the union that has had more federal judicial nominees confirmed by this Senate than Pennsylvania.

This is in sharp contrast to the way vacancies in Pennsylvania were left unfilled during Republican control of the Senate when President Clinton was in the White House, particularly regarding nominees in the western half of the State.

Just last week, on May 16, 2003, Jon Delano wrote in the Pittsburgh Business Times, in an article titled, "Despite Bush's Protests, Court Vacancies Are Down," about how this President's nominees in the western part of Pennsylvania have been treated more fairly than President Clinton's nominees. He wrote:

Take the Western District of Pennsylvania, for example. During the years of the Santorum filibuster, that court of 10 judges had as many as five vacancies. Today, the Senate has confirmed four Bush appointees -- Judges Joy Conti, David Cercone, Terry McVerry, and Art Schwab -- and the fifth nomination, attorney Tom Hardiman, has just been sent to the Senate.

With the elevation and confirmation of Judge Brooks Smith to the U.S. Court of Appeals, the president still needs to name one more judge to the local court, but once completed, Mr. Bush, with less than three years in office, will have named -- and the Senate will have confirmed -- six of the 10 judges on the local federal court. That hardly sounds like obstructionism."

Despite the best efforts and diligence of the senior Senator from Pennsylvania, Senator Specter, to secure confirmation of all of the judicial nominees from every part of his home state, there were seven nominees by President Clinton to Pennsylvania vacancies who never got a hearing or a vote. Yet, the Democrats have turned the other cheek to this past Republican obstruction and delay and have worked to fill vacancies fairly and promptly in all parts of Pennsylvania.

I would also note that the Committee just received Mr. Hardiman's rating from the American Bar Association last night, on the eve before the hearing. It was a partial "Not-Qualified." That raises concerns which we have not had time to investigate, as would be standard practice. We do not know the basis for this rating. But a review of his available materials indicates that his litigation experience is thin for someone nominated to a federal trial court and there are other controversial issues. I look forward to hearing from him today, and I hope that we have time to explore the basis for his Not Qualified rating in the future.

We also will hear today from John A. Woodcock, nominated to the United States District Court for the District of Maine. Mr. Woodcock has served as a litigator in private practice for more than 20 years, and has specialized in workers' compensation. He worked earlier in his career as an Assistant District Attorney for Penobscot and Piscataquis Counties, where he handled all criminal appeals to the Maine Supreme Judicial Court. I also commend him for his considerable work with health care and educational associations. Just this year, he received the Distinguished Service Award from Eastern Maine Healthcare for his significant contributions and longstanding dedication and commitment to the health and well-being of the people of central, eastern and northern Maine. He received a "Well-Qualified" rating from the American Bar Association and comes with the support of both of his home-state Senators.

I welcome all of these nominees and their families and look forward to hearing their testimony today.

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