

Testimony of

# The Honorable Patrick Leahy

June 25, 2003

Today the Committee will hold the first hearing on a nomination to the 4th Circuit from North Carolina in 23 years as well as hear from a nominee to the District Court for the Eastern District of North Carolina. I want to thank Senator Edwards for his efforts to resolve the impasse that has stalled so many nominees from North Carolina. His reward will be the service that Judge Allyson Duncan will soon be providing to the people of North Carolina as a member of the United States Court of Appeals for the Fourth Circuit. Just by being included at this hearing today she has already achieved something that Judge James Beaty, Judge James Wynn and Judge Rich Leonard could not during the many years their nominations to the Fourth Circuit were pending before this Committee from 1995 through 2001.

The minority was willing to proceed with the North Carolina nominees at this time. Instead, the Committee is taking advantage of this circumstance to add a large mix of judicial nominees and recent executive branch nominees. Indeed, today the Committee proceeds with an additional "double" hearing on presidential nominees. That is unfortunate because it will interfere with the Committee's ability to give due consideration to each of the nominees. Unfortunately, many of the other nominees were scheduled at a time when many Senators who are interested cannot be present and in conflict with another simultaneous hearing of this Committee.

We have bent over backwards trying to be accommodating to this Administration. The Senate has already confirmed 132 of this President's judicial nominees, including 26 circuit court nominees. That stands in sharp contrast to the treatment of President Clinton's nominees by a Republican-controlled Senate from 1995 through 2001 when judicial vacancies on the federal courts were so much higher. At this point in his presidency, President Bush has appointed more circuit court judges than his father or President Clinton or President Reagan.

This is already the 12th hearing the Republican majority has held for this President's judicial nominees this year, including 13 circuit court nominees. This, too, 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. Neither of the two highly qualified nominees to the Fourth Circuit from North Carolina were considered. That 1996 session not a single judge was confirmed to the circuit courts--not one. In all of 1997, the Committee only had nine hearings all year and included only nine circuit court nominees and continued to pass over the nomination of Judge James Beaty.

During the entire year of 1999, only seven hearings were held on judicial nominees and this Committee did not hold the first judicial nominations hearing that year until June 16. This year is also the third year of a presidential term like 1999 but, by contrast, this Committee already held 11 hearings this year by the time Senator Hatch held his first hearing in 1999. 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.

A good way to see how much faster Republicans are processing judicial nominations for a Republican president is to compare where we are in June of this year to June 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 four judicial nominations hearings, on average, by June 25, and had considered about four circuit court nominees, on average, by this time. On this day, in 1995, only five hearings had been held for judicial nominations; in 1996, only three hearings; in 1997, only three hearings; in 1998, only about half as many as this year -- seven hearings; in 1999, only one hearing; and in 2000, only six judicial nominations hearings were held by June 25. Today, we participate in our 12th hearing this year. Republicans have moved two to four 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.

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 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 45 vacancies for the entire federal judicial system. We also have more active federal judges on the federal bench than at any time in our history and significantly more federal judges when senior judges are included.

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.

The Committee today also begins its consideration of a young man nominated to be the head of the Criminal Division of the U.S. Department of Justice and the Administrator of the DEA. These are extremely important executive positions. I look forward to learning more about Mr. Wray's background, experience and plans for the Criminal Division.

I also look forward to hearing from Ms. Tandy. Karen Tandy is a long-time prosecutor and Justice Department official, nominated to head the Drug Enforcement Administration. In the post-September 11 world, this post is more important than ever. As the FBI has reduced its involvement in drug crimes to focus greater attention on terrorism, the DEA has been charged with even greater responsibility for fighting drug abuse. This hearing will give us the opportunity to hear how Ms. Tandy plans to meet that burden.

Ms. Tandy has extensive experience in enforcing narcotics laws. She served as the Chief of Narcotics for the U.S. Attorney's Office for the Eastern District of Virginia, and has more recently served as Associate deputy Attorney General and Director of the Organized Crime Drug Enforcement Task Forces at the Justice Department. She has also told the committee that she has worked locally in drug demand reduction efforts. I do not doubt her qualifications to head the agency, but I would like to raise a few policy issues with her today.

First, I want to make it clear how severely Vermont, and all of New England, is struggling with heroin. My state has experienced an extraordinary increase in the incidence of heroin abuse, and of heroin-related crime. Heroin use has doubled over the last five years, and the average age of a heroin user in Vermont dropped from 27 to 17 during the 1990s. There were 53 overdose deaths in Vermont in 2002, many from heroin, and 47 in 2001. A number of my constituents have lost family members and friends who succumbed to addiction to heroin or other drugs, and I repeatedly hear from my constituents how heroin abuse is damaging the state and their lives. Law enforcement agencies in Vermont are performing valiantly in battling this wave, but they cannot do it alone. I know that the New England High Intensity Drug Trafficking Area (HIDTA) has provided invaluable assistance to the Vermont State Police in its efforts to prevent drugs from coming across the Canadian border and addressing the heroin problem within the state. I am curious to hear your views on the job that HIDTAs around the country are doing, whether you would support increased funding for the New England HIDTA in light of the increasing levels of drug abuse and smuggling in the region, and whether you plan to seek any changes in the program.

Secondly, although the DEA is obviously a law enforcement agency, I hope that you will also be a voice within the Administration for an increased focus on treatment and prevention as well. I suspect that you would agree that as important as law enforcement is in battling drug abuse, it cannot solve our drug problems alone.

Finally, I continue to be concerned about the DEA's actions in states that have chosen to legalize marijuana for medicinal purposes. This is an issue I spoke to Asa Hutchinson about on numerous occasions, including at his confirmation hearing. It has been my view that although the Supreme Court has stated clearly that the Federal government has the right to enforce the Federal prohibition on marijuana in these states, it would be a wise exercise of discretion and resources for the DEA to focus its attention elsewhere. The apparent decision of the DEA and the Justice Department not to follow this advice has led to serious conflict between the Federal government and state and local governments, particularly in California. In San Jose, for example, Police Chief William Lansdowne pulled his officers from a joint task force with the DEA because he believed resources that should have been used to fight

methamphetamine were being diverted to police medical marijuana users. I will give you the same advice to consider this issue carefully that I gave to Asa Hutchinson when he sat in that chair.

I look forward to your testimony.

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