

Testimony of

The Honorable Patrick Leahy

July 9, 2003

Statement of Senator Patrick Leahy,
Senate Judiciary Committee
Judicial Nominations Hearing
July 9, 2003

Today's hearing is the thirteenth nominations hearing the Republican majority has held this year. As of today, during the past six months, the Senate Judiciary Committee has considered 43 of President Bush's judicial nominees. This stands in sharp contrast to the way President Clinton's nominees were treated by the Republican majority. Thirteen is the same number of hearings for judicial nominees as Chairman Hatch allowed in all of 1998, the year he held the most hearings in any of his six full years as chairman during the Clinton Administration. In most of those years, there were far fewer hearings and far fewer nominees.

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. 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.

In 1999, this committee did not meet to consider a judicial nominee until June 16th, and during the rest of 1999, it only held seven hearings to consider judicial nominees. 1999 was the third year of President Clinton's second term. Like 1999, 2003 is the third year of this president's term, but, by contrast, we have 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 July of this year to July 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 July 9. On this day, in 1995, only six hearings had been held for judicial nominations; in 1996, only four 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 July 9. Today, we participate in our 13th hearing this year. Republicans have moved two to four times more quickly for President Bush's judicial nominees than for President Clinton's, yet vacancies in the courts stand at half of what they were during many of those years.

This 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 the lowest level it has been in 13 years. While I was Chairman I was able to cut it from 110 to 60, after 100 were confirmed, 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 47 vacancies for the entire federal judicial system. We also have more active federal judges on the federal bench than at any time in U.S. history and significantly more federal judges when senior judges are included.

Today, we will hear five nominees to the U.S. District Courts, who come to us with bipartisan support or are consensus nominees. Three of these nominees are filling new seats that will not even become vacant until July 15, 2003, a sign of how expeditiously the Senate is considering this President's nominees.

We will hear from three nominees to the U.S. District Court for the Western District of Texas: Judge Cardone, Judge Montalvo, and Judge Rodriguez. These nominees make the fourth, fifth and sixth of President Bush's nominees considered for the Western District alone. They also make the tenth, eleventh and twelfth of President Bush's district court judges given hearings from the State of Texas. Seven of those judges were given hearings and confirmed during the 17 months I served as Chairman of the Judiciary Committee. That was nearly one judge for Texas every other month, in addition to the four United States Attorneys and three United States Marshals who were reviewed and confirmed in that period of time.

This is in great contrast to the fate of many of President Clinton's nominees from Texas, who were blocked and delayed by the Republican majority, including Enrique Moreno, nominated to the Fifth Circuit Court of Appeals who never got a hearing, never got a vote; Jorge Rangel, nominated to the Fifth Circuit Court of Appeals who never got a hearing, never got a vote, and; Hilda Tagle to the District Court, whose confirmation was delayed nearly two years for no good reason.

On May 1, 2003, the Senate confirmed Judge Edward Prado to the U.S. Court of Appeals for the Fifth Circuit. Today, we will hear from Xavier Rodriguez, who is nominated to fill the vacancy created by Judge Prado's elevation. The Senate Democrats cleared the nomination of Judge Edward Prado to the United States Court of Appeals for the Fifth Circuit without delay. We still do not know who on the Republican side delayed consideration of the consensus nomination of Judge Prado for a month. All Democratic Senators serving on the Judiciary Committee voted to report his nomination favorably. All Democratic Senators indicated that they were prepared to proceed with the nomination. When Republicans finally turned to it, Judge Prado was confirmed unanimously.

We will also hear today from Judge James Cohn, nominated to the U.S. District Court for the Southern District of Florida. Judge Cohn comes to us with the support of both of his home-state Senators. He was recommended by the Florida Federal Judicial Nominating Commission, a bipartisan commission that Senators Nelson and Graham worked hard to establish. I urge the White House to work with more Senators in forming selection commissions to ensure that we have nominees who are supported in their communities and arrive here with bipartisan support.

including from both of their home state senators. Under this Administration, we have seen the recommendations of such bipartisan panels rejected or stalled.

Finally, we will hear from Mr. Browning, another very conservative nominee to the U.S. District Court for the District of New Mexico.

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.

#####