

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Senate Judiciary Committee
Hearing on Judicial Nominations
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Today, the Judiciary Committee is holding its eighth judicial nominations hearing of 2004. This is 33 percent more hearings for judicial nominees than were held in all of 1996 when President Clinton was in the White House. Indeed, by this date in 1996, the last year of that presidential term, the Committee had held only two hearings to consider judicial nominees. The comparison to the number of hearings in 2000, another presidential election year, is also striking. That year only eight nominations hearings were held all year. So by the standards set by Republicans in the last two presidential election years, we would be finished with judicial nominations hearings for the year-- and it is early April.

When the American people hear partisan speeches accusing Senate Democrats of obstructing this President's judicial nominees, they should recognize it as purely political rhetoric, signifying nothing. The facts are that Senate Democrats have been much more cooperative with this President than Republicans were when President Clinton was in the White House. Democrats on this Committee and in the Senate have shown great restraint and extensive cooperation in the confirmation of 173 of this President's judicial nominations. We have reduced circuit court vacancies to the lowest level since the Republican Senate leadership irresponsibly doubled those vacancies in the years 1995 through 2001. We have already reduced overall federal court vacancies to the lowest levels in 14 years. We continue to move forward this year at a rapid-fire pace in Committee, light years faster than any even approached in the Clinton years.

Today we are considering the nominations of four people to seats on the federal bench. William Duane Benton of Missouri, nominated to the U.S. Court of Appeals for the Eighth Circuit, Robert Harwell to the U.S. District Court in South Carolina, George Schiavelli for the U.S. District Court in the Central District of California, and Curtis Gomez, for the U.S. District Court in the Virgin Islands.

Today's nominee for the Circuit Court, Judge Benton, currently serves on the Supreme Court of Missouri. He has a reputation as a conservative, but fair-minded judge. As an attorney he had experience in a variety of areas of law, and on the State Supreme Court has handled complex criminal and civil cases. He has written a number of opinions, and they are really quite good, laying out the facts and the law with no hint of any personal bias. Judge Benton shows a willingness to listen to all litigants and to be fair.

I was especially struck by his fairness in death penalty cases. Far too often judges, especially elected judges, yield to the pressure of those who would sacrifice important constitutional principles in capital cases. As I look at his record, I see that of the 21 published opinions Judge Benton has written in death penalty cases, he has affirmed 12 and reversed nine. Whether I agree or disagree with his decisions in each of these cases, I do think such his record indicates some sense of equity. I think it is telling that he is willing to see beyond what are always terrible facts in these cases to ensure that justice and important constitutional safeguards are preserved.

I hope that my praise for his work in death penalty cases will not hurt Judge Benton's nomination. I remember not so long ago when another judge on the Supreme Court of Missouri, now-Chief Justice Ronnie White, was before this Committee as a nominee to a seat on the federal bench. Sadly, Judge White's willingness to uphold the Constitution

and ensure fair process in death penalty cases led to his being defeated by a party line vote of Republican Senators. His record was twisted and distorted for purposes of partisan politics.

Judge White was twice nominated by President Clinton to fill a seat on the U.S. District Court. This Committee held two hearings on his nomination and at both of those hearings, Judge White was introduced enthusiastically by Senator Bond, and after each of these hearings the Committee voted favorably to report his nomination to the full Senate. Despite this bipartisan support, however, his nomination was delayed for months and then years. When the time finally came for a vote on the Senate floor, Judge White was ambushed and he was rejected in a party line vote during which Republicans who had supported his nomination previously reversed position to scuttle it before the Senate.

The biggest distortions of Judge White's record were in death penalty cases. His record on the whole compares favorably to Judge Benton's. According to testimony at Attorney General Ashcroft's confirmation hearing, Judge White voted to affirm the death penalty in 69 percent of the cases he heard. Looking just at the opinions Judge Benton has authored, we see him writing to affirm the death penalty 58 percent of the time. If we factor in cases in which he did not write the opinion but voted to affirm a capital sentence, I am sure the percentage is higher, and approaches Judge White's record.

For opposing a capital sentence in dissent in a small minority of the cases he heard, Judge White was vilified. Then-Senator Ashcroft took to the Senate floor and pointed to Judge White's record in death penalty cases as evidence that White was Apro-criminal,@ further describing Ronnie White as a judge, "with a tremendous bent toward criminal activity or with a bent toward excusing or providing second chances or opportunities for those who have been accused in those situations." These were outrageous things to say about a man who had devoted his life to the law, who had served many years on the State's highest court, and who had voted to reverse a small number of death sentences in order to preserve the integrity of the Constitution. When Judge White came to testify at Attorney General Ashcroft's confirmation hearing, Senator Specter offered him an apology for the way in which he was treated.

I mention all of this, as I said, because it provides such a stark contrast to the treatment that Judge Benton is getting and I daresay will get as his nomination proceeds through the Senate. I doubt anyone will look at the nine cases in which he wrote to reverse a death penalty - 50 percent more cases than those Judge White voted to reverse -- and accuse him of being "pro-criminal". I will be surprised if, because he has found reversible error in the imposition of nine different death sentences, each one involving terrible crimes and horrific facts, any Member of this Committee or this Senate will accuse him of having a, "tremendous bent toward criminal activity." I will be shocked if, because he exercised his best judgment and followed the law as he understood it, he will be vilified and humiliated in a sneak attack in the manner that Judge Ronnie White was treated.

Of course, none of that should happen to Judge Benton, just as none of that should have happened to Judge White. I hope that one day Judge White's name can come back before this Committee and the Senate and that he can be treated with honesty, integrity and respect, just as we do today treat Judge Benton.

We will also hear today from three nominees to district courts, two for lifetime appointments and one for a 10-year appointment to an Article I Court in the U.S. Virgin Islands. Mr. Schiavelli is another Bush nominee to have been nominated and have a hearing in advance of the time the vacancy he is nominated to fill even exists. I look forward to hearing from these nominees today, as well.

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