

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
November 16, 2004

Statement Of Senator Patrick Leahy
On The Nomination Of Thomas B. Griffith To The
United States Court Of Appeals For The D.C. Circuit
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Today we meet in a somewhat unusual hearing during a very brief post-election lame-duck session of Congress to consider a controversial nominee to the second highest court in the country.

I acknowledge it is the Chairman's prerogative to hold this hearing as he chooses. I recall during the lame-duck session in 2002, while I was chairing this Committee, I utilized the time after the election and before adjournment to continue working on judicial nominations of this President. I fulfilled my commitment to Senator Thurmond to proceed on the nomination of Judge Dennis Shedd even though I did not support that nomination. We were also able to report the nomination of Judge Michael McConnell of Utah, as a courtesy to Senator Hatch. With the help of Majority Leader Daschle and Assistant Majority Leader Reid, we were able to proceed to confirm Judge John Rogers to the 6th Circuit, on the strong recommendation of Senator McConnell, as well as Judge Shedd to the 4th Circuit and Judge McConnell to the 10th Circuit. We also confirmed an additional 17 lifetime appointments to the federal district courts around the country.

Working together there remain a number of relatively non-controversial judicial nominations on whom we might be able to make progress this week.

There are, however, serious questions about Thomas Griffith's nomination. They require careful examination and deliberation. Given the results of the election, this President will have the option of renominating Mr. Griffith in January. Perhaps Mr.Griffith will take advantage of this time to utilize his next opportunity to gain admission to the Utah bar.

As was reported this summer in The Washington Post, and confirmed through Committee investigation, Mr. Griffith has spent the last four years as the General Counsel to Brigham Young University but has not been licensed to practice law in Utah during that time. I have concerns as a result of examining all of the materials and documents provided to us by Mr. Griffith and the Utah Bar. Practicing law without a license, or as the bars call it, unauthorized practice of law, is not a technicality, like forgetting to pay your bar dues. In some States it is a crime - in Texas it is a third-degree felony. It is a serious dereliction of a lawyer's duty. It is a commonplace of American jurisprudence that no one is above the law. If the American people are to have confidence in our system of laws that must include the lawyers, and beyond question, it must

include the judges.

Democratic Senators have established a record of bipartisanship on consensus nominees, and we remain willing to work across the aisle to continue that progress. We have cooperated to a remarkable degree, given the many ideological nominees who have been sent here and the bending, breaking and changing of rules and precedent to force them through the Senate.

This process starts with the President. This President has all too often chosen to divide the American people, the Senate and this Committee with his controversial, ideological and unilateral choices for the independent federal judiciary. In the last few days President Bush has indicated that he plans to work with us in the coming year. I hope that he and his staff are sincere in that pledge and that they truly intend to work with us. We have already reduced judicial vacancies to the lowest number and percentage in decades. With cooperation from the Administration we could achieve even more.