

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Senate Judiciary Committee
Hearing on the Nomination of Brett Kavanaugh

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Today marks the fifth anniversary of the day that this President announced his first group of judicial nominees and began his court packing efforts. I went to the White House in good faith that May five years ago to try to work with the President to fill the scores of vacancies left open when Republican Senators stalled more than 60 of President Clinton's nominees. Thereafter, first as Chairman of the Senate Judiciary Committee and later as its Ranking Member, I worked hard to treat those nominees more fairly than Republicans had treated President Clinton's nominees. We were able to join together to move nominations expeditiously, including the confirmation of five of the nine judges confirmed from the President's initial list who were among the 17 circuit court nominees the Senate confirmed in my 17 months as Chairman. I afforded hearings to a number of controversial nominees, something my Republican predecessor as Chairman refused to do. I voted for some and, in good conscience, voted against Senate consent for others.

All but one of those initial nominations has run their course. With regard to that one, the President should heed the call of North Carolina Police Benevolent Association, the North Carolina Troopers' Association, the Police Benevolent Associations from South Carolina and Virginia, the National Association of Police Organizations, the Professional Fire Fighters and Paramedics of North Carolina, as well as the advice of Senator John Edwards, and withdraw his ill-advised nomination of Judge Terrence Boyle. Law enforcement from North Carolina and law enforcement from across the country oppose the nomination. Civil rights groups oppose the nomination. Those knowledgeable and respectful of judicial ethics oppose this nomination.

Since President Bush took office in January 2001, the Senate has confirmed 240 of his judicial nominees, including two Supreme Court Justices. One hundred of those judges were confirmed during the 17 months when there was a Democratic majority in the Senate compared to 145 judges in the other 45 months under Republican control. Unfortunately, as demonstrated by the recent withdrawals of several nominations--Claude Allen among them-- all too often this White House seems more interested in rewarding cronies and picking political fights rather than being thorough in selecting lifetime appointments of judicial officers who are entrusted with protecting the rights of Americans.

The difficult and controversial nomination and re-nomination of Judge Terrence Boyle and that of the nominee before us today are further signs that the Bush-Cheney Administration and its allies in the Senate are more interested in picking election year fights rather than well-qualified judges.

At a time when the Senate should be addressing Americans' top priorities, including ways to make America safer, the war in Iraq, rising gas prices, health care costs, stem cell research, comprehensive immigration reform and the reauthorization of the Voting Rights Act, the President and his Senate allies, instead, try to divide and distract from fixing real problems by pressing forward with controversial nominations.

The siren call of the special interest groups on the right is urging the Senate Republican leadership toward confrontation over controversial judicial nomination, again. The Senate's job is to fulfill our duty under the Constitution so that we can assure the American people that the judges confirmed to lifetime appointments to the highest courts in this country are being appointed to be fair and protect their interests rather than to advance a political agenda.

The Senate Republican leadership is ready to cater to the extreme right-wing and special interest groups agitating for a fight over judicial nominations. These are the same narrow interest groups that opposed the nomination of Harriet Miers to the Supreme Court and forced the President to withdraw her nomination after he said that he would never do so.

With burgeoning scandals throughout the Administration, with word last week of yet another investigation, this one into poker parties at the Watergate and limousine services and who knows what else, with reports of lucrative government contracts being steered to cronies, with the investigations arising from the criminal convictions of Jack Abramoff, Michael Scanlon, and Duke Cunningham, we meet today to hear from a White House loyalist and insider.

With the sudden resignation last Friday of the President's hand-picked head of the CIA, America witnessed another "heck of a job" accolade to an Administration insider leaving a critical job undone. What is desperately lacking throughout this Administration is accountability. A Republican-controlled Congress has not provided a check and has made it all the more important for the courts to be that check to preserve our rights and way of life, to check the Government's overreaching.

This hearing gives this young man another chance to show his independence. Unless he demonstrates that capacity, I will oppose this nomination. I hope that he will start by using this opportunity to correct his testimony from his 2003 hearing and testify straightforwardly about the Administration's resistance to compensating the 9/11 families when I insisted that be part of the legislation granting the airlines special benefits.

Last year, when the President nominated Harriet Miers, a woman who had not gone to Ivy League schools but had a more impressive background of legal experience than this nominee, Republicans questioned her qualifications and demanded answers about her work at the White House and legal philosophy. They defeated her nomination before allowing her a hearing. It appears that Republicans are back to their rubberstamping routine with every Senate Republican ready to approve this nomination without question or deliberation.

I had hoped, as we discussed in open session last Thursday, the Committee would hear from ABA representatives today on why they took the unusual step of lowering Mr. Kavanaugh's initial ABA rating after two years. The White House had put out the word, falsely, that this was merely the result of a change in the membership of the ABA evaluation committee. We now know that was not correct. In fact, three-quarters of those who continue on the Committee -- who voted previously on this nomination -- downgraded the nomination based on the recent interviews and review. One judge who presided over a case involving Mr. Kavanaugh said his argument was "less than adequate" and described him as "sanctimonious" and as someone who demonstrated "experience on the level of an associate." Others interviewed by the ABA raised concerns about Mr. Kavanaugh's ability to be balanced and fair given his many years in partisan positions working to advance a political agenda. Mr. Kavanaugh was described by interviewees as "insulated" and "immovable and very stubborn and frustrating to deal with on some issues." These are not qualities that make for a good judge.

His work for the past six years at the White House leads to many questions that require answers before we can proceed. What matters is he familiar with at the White House that he will recuse himself from as a judge, if confirmed? Will he protect the rights of the American people to know about their Government given the secrecy policies of this Administration, which he helped design? How did he exercise good judgment while serving in the important Staff Secretary position? And, as I have said, where is the demonstration of his independence from the policies of this Administration? I look forward to answers to these questions and others as this Committee seeks to fulfill its responsibilities to the Senate and the American people.

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