

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
February 6, 2007

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Chairman, Senate Judiciary Committee,  
On First Judicial Confirmation Hearing of the 110th Congress  
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Today, we are holding our first confirmation hearing of the new Congress for three nominations for important lifetime appointments to federal district courts. The nominees before us today, John Preston Bailey for the Northern District of West Virginia, Otis D. Wright, II for the Central District of California, and George H. Wu for the Central District of California, each come to us with the support of their home state Senators.

I know Senators Feinstein, Boxer, Byrd, and Rockefeller would have liked to be here today to introduce the nominees, but unfortunately a members briefing on the National Intelligence Estimate that was released last week on the situation in Iraq was scheduled for this time. I did not want to inconvenience the nominees, so we will proceed and insert their statements in support of these nominees in the record.

We have worked hard since convening this Congress to make significant progress in our consideration of judicial nominations. At our first executive business meeting, the Judiciary Committee reported out five judicial nominations little more than two weeks after they were sent to us. Three of these were for vacancies determined by the Administrative Office of the U.S. Courts to be judicial emergencies. All five were among those returned to the President without Senate action at the end of last Congress when Republican Senators objected to proceeding with certain of the President's judicial nominees in September and December last year.

Last week, those five nominees were confirmed by the Senate. I worked cooperatively with Members from both sides of the aisle on our Committee and in the Senate to move quickly to consider and report these judicial nominations so that we can fill vacancies and improve the administration of justice in our nation's federal courts. I appreciated the interests of Senator Chambliss and Senator Isaakson in the confirmation of Judge Wood, the first judge confirmed this year. Likewise, I was pleased to be able to respond to the needs of Senator Inhofe and Senator Coburn by expediting consideration of Judge Frizzell. I thank Senator Feinstein and Senator Boxer of California for their efforts on several of the nominations we considered last week and those before us today.

With the five confirmations last week we have confirmed more of President Bush's nominations in the 18 months I have served as Judiciary Committee Chairman than in the more than two years when Senator Hatch chaired the Committee with a Republican Senate majority or during the last Congress with a Republican Senate majority. That total is now 105 in 18 months.

I know some on the other side of the aisle have tried to raise a scare since I, again, became Chairman of the Judiciary Committee. They rant as if the sky is falling and we would not proceed on any judicial nominations. We have proceeded promptly and efficiently. We continue to do so with today's hearing. We are holding this hearing on February 6. When a Republican chaired the Committee in 1999 and there was a Democratic President, the first hearing on a judicial nominee was not held until June 16.

I had initially thought that we would include the nomination of Norman Randy Smith of Idaho to the Ninth Circuit at the hearing today. However, with the cooperation of the Senators from California and the other Members of the Judiciary Committee, we may avoid another hearing on Judge Smith's nomination. In fact, I have listed his nomination on the agenda for an executive business meeting later this week.

I was pleased when the White House changed course and nominated Randy Smith for the Idaho seat on the Ninth Circuit. I had urged President Bush to take this action last year when he insisted on resubmitting Judge Smith's nomination for a California seat on the Ninth Circuit. I thank the President for finally doing the right thing. I will urge the Senate to confirm the nomination of Randy Smith to the vacant seat on the Ninth Circuit from Idaho. At long last Senator Craig and Senator Crapo will then have a judge on that important court from their home state.

I have long urged the President to fill vacancies with consensus nominees. The Administrative Office of the U.S. Courts list 54 judicial vacancies, 25 of them have been deemed to be judicial emergencies. So far this Congress, the President has yet to send us nominees for 17 of those outstanding judicial emergency vacancies.

I have also urged the President to nominate men and women to the federal bench who reflect the diversity of America. Racial diversity remains a pillar of strength for our country and one of our greatest natural resources. Diversity on the bench helps ensure that the words "equal justice under law," inscribed in Vermont marble over the entrance to the Supreme Court, is a reality and that justice is rendered fairly and impartially. Judicial decisions should reflect insight and experiences as varied as America's citizenry. A more representative judiciary helps cultivate public confidence in the judiciary which strengthens the independence of our federal courts.

A more representative judiciary also strengthens the fabric of our democracy. As we were reminded last month, while honoring the life of Dr. Martin Luther King, Jr., the promise of our democracy lies in building a nation more inclusive of all Americans.

The nominations before us today represent an important step towards achieving that promise. I am pleased that, if confirmed, Judge Wright would become the 90th African-American judge currently on the federal bench. If he is confirmed Judge Wu would be the 9th Asian-Pacific American judge on the federal bench, and the 6th active judge.

But there is still much work to be done.

In six years, President Bush has nominated only 18 African-American judges to the federal bench, compared to 53 African-American judges appointed by President Clinton in his first six years in office. And out of the 875 seats on the federal judiciary, there are only five active Asian-Pacific American judges on the federal bench, less than 1 percent of all federal judges. President Bush has nominated only 2 Asian-Pacific American candidates, neither to a seat on a federal circuit court. With outstanding lawyers like Dean Harold Koh of Yale, Professor Goodwin Liu of Boalt Hall School of Law at University of California at Berkeley, or attorneys Karen Narasaki, John Yang and Debra Yang, it is not as if there is a dearth of qualified candidates who would be universally endorsed.

Our nation has highly qualified individuals of diverse heritages who would unify our nation while adding to the diversity of our courts. I hope the President will send us more consensus nominees that reflect the rich diversity of our nation. I welcome the nominees and their families to this hearing and I look forward to their testimony.