

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 24, 2007

Statement of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee,
On Executive and Judicial Confirmation Hearing
October 24, 2007

Today, the Committee holds yet another hearing with a nominee for a senior leadership position at the Justice Department and for four nominees for lifetime appointments to the Federal bench.

I start by thanking and commending Senator Whitehouse for agreeing to chair this hearing. Senator Whitehouse joined the Committee this year, but his interest in environmental protection has been extensive and deeply felt. This hearing brings together a Senator who was a former State Attorney General, a former United States Attorney and long-time environmentalist with the nominee chosen to head the Environment and Natural Resources Division at the U.S. Department of Justice for the remainder of this President's term. We have had difficulty getting straight answers from Mr. Tenpas' predecessors in that important position.

Already under this Administration, we have moved backward, rather than forward, on enforcing our crucial environmental laws. Just yesterday we learned that Homeland Security Secretary Michael Chertoff cited concerns of "national security" in order to bypass several environmental laws and continue construction of a fence in the middle of a nature preserve along the Arizona-Mexico border. It is a shame when our own government believes that protecting national security is somehow incompatible with protecting our Nation's unique public lands or complying with our precious environmental laws.

We will also hear from four more nominees for lifetime appointments to the Federal courts - Joseph N. Laplante to the District of New Hampshire, Reed Charles O'Connor to the Northern District of Texas, Thomas D. Schroeder to the Middle District of North Carolina, and Amul R. Thapar to the Eastern District of Kentucky. All of the judicial nominees have the support of their home-state Senators. I thank Senators Gregg, Sununu, Hutchison, Cornyn, Dole, Burr, McConnell and Bunning for their consideration of these nominees.

This hearing comes at a critical time for our Nation. Today, we face the most serious threat to the effectiveness and professionalism of the Justice Department since Watergate and the Saturday Night Massacre. Under this President, the Department of Justice suffered a severe crisis of leadership that allowed our justice system to be corrupted by political influence. The crisis of leadership that led to these resignations has taken a heavy toll on the tradition of independence that has long guided the Justice Department and protected it from political influence. This crisis has also taken a heavy toll on morale at the Department and in confidence among the American people.

Last week, our Committee began the process of restoring integrity and independence to the Department with the confirmation hearing of Michael B. Mukasey, the nominee to be Attorney General. We continue that process today by holding a hearing on the nomination of Ronald Jay Tenpas to be Assistant Attorney General in the Environment and Natural Resources Division at the Department.

The former Assistant Attorney General for that Division, Sue Ellen Wooldridge, had her tenure and subsequent resignation mired in a political controversy regarding possible conflicts of interests. According to press accounts, Ms. Wooldridge, while she was still head of the Environment Division, bought a nearly \$1 million vacation home with ConocoPhillips Vice President Donald R. Duncan. Nine months later, she agreed to let that company delay instituting pollution controls that would have cost ConocoPhillips over half a billion dollars.

In July, I sent a letter to then-Attorney General Alberto Gonzales asking whether Ms. Wooldridge's actions raise concerns about potential conflicts of interests. Three months later, I have received no answers to my inquiry. I hope that the next head of the Environment Division will make a commitment to ensure that Congress's questions, pursuant to its oversight authority, are promptly answered.

I am also troubled by the recent enforcement record of the Environment Division. A May 23, 2007, report by the Environmental Integrity Project found that "the Justice Department has become more reluctant to go to court when defendants refuse to clean up their pollution or pay the penalties that they owe." The Justice Department's environmental suits have declined by 70 percent. According to the report, "the Department filed 157 lawsuits in the last three years of the Clinton Administration, or an average of 52 a year - but only 93 in the six years since President Bush took office, or fewer than 16 a year." Furthermore, another review conducted by the Transactional Records Access Clearinghouse at Syracuse University found that between 2001 and 2004, criminal prosecutions of environmental violations declined by 28 percent.

It appears that the Environment Division has begun a troubling trend - rather than removing incentives for violators to accept responsibility for their actions, the Department should be using all of its available resources to ensure faithful compliance with the environmental laws that protect all Americans and the quality of the air and water that sustain us.

Given the recent scandals in the Department's Environment and Natural Resources Division over the last few years, and its recent record of enforcement, the Environment and Natural Resources Division could benefit from repair. If confirmed, I hope Mr. Tenpas will make a commitment to restore the integrity of the Environment Division and reverse the trend of declining enforcement actions. Americans deserve to know that those who would pollute our country's precious air and water in the interest of greater profits will have more incentives to think twice about doing so.

Under Mr. Tenpas's acting leadership, the Environment Division has had recent encouraging news. In cooperation with the Justice Department, several Northeastern States, including Vermont, won a \$4.6 billion settlement with a major polluter in Ohio to redress Clean Air Act violations that have been severely impairing the environment along the Eastern Seaboard. This settlement is estimated to bring about a 1.6 billion pound reduction in pollutants emitted from power plants each year, and will go far toward ending the acid rain that has caused so much degradation of not just our environment but also our cherished landmarks. From the Shenandoah National Park, to the Chesapeake Bay, to the Green Mountains of Vermont, diverse ecosystems will benefit from this settlement.

I commend Mr. Tenpas for his involvement in this settlement, and I hope it signals his commitment to vigorously enforce our Nation's environmental laws. Mr. Tenpas has a distinguished record of public service. If confirmed, I hope he will dedicate his considerable talents to enforcing the Nation's environmental laws faithfully and free of influence from those in the Administration who seek to place partisanship and cronyism over science and the health of all Americans and the environment in which we live.

With today's hearing on four district court nominees, we continue the tremendous progress we have made this year in considering and confirming judicial nominations. This session of Congress, the Committee has reported out 35 lifetime appointments to the Federal bench and the Senate has already confirmed 33 of them, four to the circuit courts. That is the same total number of judicial nominations that a Republican-led Senate confirmed during the entire 1999 session, and more judicial nominations than were confirmed in all of 2005 or 2006 with a Republican Majority. It is 16 more confirmations than were achieved during the entire 1996 session, doubling that session's total of 17, when Republicans stalled consideration of President Clinton's nominations, confirming no circuit nominations.

The Senate has confirmed 21 Circuit Court nominations and 133 total federal judicial nominees in my two years as Judiciary Chairman. During the Bush Presidency, more circuit judges, more district judges, and more total judges have been confirmed while I have served as Judiciary Chairman than during the tenures of either of the two Republican Chairmen working with Republican Senate majorities.

And we are poised to continue making progress. Yesterday, the Senate debated the nomination of Judge Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. The Senate could easily confirm another judicial nomination on its executive calendar, that of Robert Dow to the Northern District of Illinois. And, this week our Committee has on its agenda the nomination of yet another circuit court nomination.

The Administrative Office of the U.S. Courts lists 45 judicial vacancies. The President has sent us only 22 nominations for these remaining vacancies. Twenty-three of them - about half - have no nominee. Of the 16 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for eight of them, exactly half. Of the 15 circuit court vacancies, six -- more than a third -- are without a nominee. If the President had worked with the Senators from Michigan, Rhode Island, Maryland, California, New Jersey, and Virginia, we could be in position to make even more progress.

We will continue moving forward efficiently as long as the President sends us qualified, consensus nominees and we are able to work together. I look forward to hearing from the nominees before us today.

#