

Testimony of
The Honorable Patrick Leahy

September 26, 2002

Opening Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee
Hearing For

Miguel Estrada to be a United States Circuit Judge on the D.C. Circuit

Judge Stanley Chesler to be United States District Judge for the District of New Jersey

Daniel Hovland to be United States District Judge for the District of North Dakota

Justice James Kinkeade to be United States District Judge for the Northern District of Texas

Judge Linda Reade to be United States District Judge for the Northern District of Iowa

Judge Freda Wolfson to be United States District Judge for the District of New Jersey

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I would like to welcome all of the nominees and their families to today's judicial nomination hearing. This is the 25th hearing for judicial nominees since the change in majority in the summer of 2001. Today, the Committee considers six more judicial nominees, which will bring to 96 the number of district and circuit court nominees for whom the Committee has held hearings in the last 14 months. Miguel Estrada is the 20th Court of Appeals nominee for whom we have held a hearing in this time, which is approximately double the pace at which the Republican majority considered President Clinton's nominees.

We will also hear from five United States District Court nominees with judicial experience: two United States Magistrate Judges from New Jersey, Judge Stanley Chesler and Judge Freda Wolfson; two state court judges, Judge James "Ed" Kinkeade of Texas and Judge Linda Reade of Iowa; as well as Administrative Law Judge Daniel Hovland of North Dakota.

Since the summer of 2001, we have held more hearings for more judicial nominees and more hearings for circuit court nominees than in any 14-month period of the six and one-half years in which Republicans last controlled the Committee. The Judiciary Committee has likewise voted on more judicial nominees, 83, and on more circuit court nominees, 17, than in any comparable 14-month period of prior Republican control. The Democratic-led Senate has already confirmed 78 of the judicial nominations of President George W. Bush. In so doing, we have confirmed more judicial nominees in 14 months than were confirmed in the last 30 months that a Republican majority controlled the Senate. We have done more in half the time. We have achieved what we said we would by treating President Bush's nominees more fairly and more expeditiously than President Clinton's nominees were treated.

We have also worked tirelessly to address the judicial vacancies we inherited. In the six and one-half years of Republican control, before the reorganization of the Committee last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33 and overall vacancies rose

from 65 to 110. In addition, 44 new vacancies arose since last summer. The facts will not stop partisan critics but may inform those who care to know the truth.

As Senator Feinstein noted two weeks ago, our historic record of giving hearings and votes shows that this Committee is alive and well, because we are fulfilling our responsibilities to evaluate the President's judicial nominees. As Senator Biden has observed, a federal judgeship is yours to no one by birth, no one by right, and no one as a consequence of nomination by the President of the United States.

The burden of proof for entrusting someone, for life, with these weighty responsibilities over the lives of millions of Americans and non-citizens rests on the nominee. Our freedoms are the fruit of too much sacrifice to fail to assure ourselves that the judges we vote to confirm have a commitment to upholding the Constitution, following precedent, and listening to claims without fear or favor. When a President is nominating individuals to tip the balance, stack the deck, or to pack the courts with ideologues, the Senate would be abdicating its responsibilities to ignore the very criteria that led to selection of such a nominee.

Under our Founders' design, the political branches share the power of appointment: the President has the power to nominate or propose judges, but the Senate has a corresponding power to confirm or reject those nominations. That is one of the ingenious checks and balances of our federal system. If a nominee's record, or lack of a record, raises doubts, these are matters for thorough scrutiny by the Members of this Committee who are entrusted to review all of the information and materials relevant to a nominee's record relating to fairness, impartiality, bias, experience, or other matters. Unlike elected officials, these are lifetime jobs, so the Senate Judiciary Committee must undertake an inquiry to be assured that a nominee should be confirmed to high office. When there is no judicial experience to look to, it is all the more critical that the Committee inquire fully into a nominee's experience, record, views and understanding of our fundamental rights.

Today, the Senate Judiciary Committee will hear from five district court nominees with experience as judges as well as advocates for their clients. We will also hear from a nominee to the nation's second highest court, the D.C. Circuit. This appellate court is also known as the Nation's circuit court because it plays a uniquely significant role in evaluating certain decisions of federal agencies, such as the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA), among others.

Today's hearing on a nominee for the D.C. Circuit is also significant because it is the first hearing for a nominee to this Court in five years. The last person confirmed to this Court was Judge Merrick Garland, who was nominated in 1995 and was not allowed by Republicans to be confirmed until 1997. For the next four years, Republicans blocked any and all nominees to the D.C. Circuit. Republicans blocked the nominations of both Elena Kagan and Allen Snyder.

Mr. Snyder was allowed a hearing in May 2000 but then never accorded a Committee vote. They did not even give Professor Kagan a hearing during the 18 months her nomination was pending. Republicans refused to consider any and all nominees to the D.C. Circuit since 1997. In contrast, Mr. Estrada will receive a hearing and have an opportunity to address concerns that have been raised about his controversial nomination to our Nation's second-highest court.

Mr. Estrada is the only Latino nominated by President Bush to any of the 41 vacancies that have existed on the 13 Circuit Courts of Appeals. Hispanics have not been nominated to any of the six vacancies in the Ninth Circuit, which includes California and Arizona; the four vacancies in the Tenth Circuit, which includes New Mexico and Colorado; the three vacancies in the Fifth Circuit, which includes Texas; the three vacancies in the Second Circuit, which includes New York; or any of the three vacancies in the Third Circuit, which includes New Jersey and Pennsylvania. In my statement last week on Hispanic judicial nominees, I noted how few Latino nominees this President has sent to the Senate and detailed how quickly we have proceeded to consider and confirm Judge Christina Armijo of New Mexico, Judges Phillip Martinez and Randy Crane of Texas and Judge Jose Martinez of Florida. Just last week, we held a hearing for Magistrate Judge Alia Ludlum. Now that we have a completed file on the nomination of Jose Linares of New Jersey, we will work to provide him with a hearing. We do not yet have an ABA review on the nomination of Judge James Otero of California. Unlike the preceding six and one-half years, Hispanic nominees need not fear that their nominations will be subjected to extra delay or scrutiny; each of these district court nominees has been given a prompt hearing.

Of the 10 active appellate judges in the federal courts who are Latino, eight (or 80 percent) were appointed by President Clinton. Some of these Clinton nominees were denied Senate consideration for years during the period of Republican control of the Senate. For example, the confirmation of Judge Richard Paez to the Ninth Circuit took over 1,500 days. It was delayed by Republicans for almost five years and 39 Republicans voted against him. I recall how the nomination of Judge Sonia Sotomayor to the Second Circuit was stalled from Senate consideration for months by anonymous holds because Republicans were concerned that she might be nominated to the Supreme Court. Although she received a unanimous AWell Qualified@ rating from the ABA and was first named to the federal bench by President Bush, 29 Republicans voted against her confirmation.

Other circuit court nominees of President Clinton never received hearings or votes, such as Jorge Rangel and Enrique Moreno of Texas, who were both nominated to the Court of Appeals for the Fifth Circuit and Christine Arguello of Colorado who was nominated to the Tenth Circuit. Scores of the last President=s judicial nominees were never given hearings or votes and many of them were qualified Hispanic, African American or female nominees.

Democrats have restored fairness to the judicial confirmation process. We have endeavored to responsibly address the vacancy crisis we inherited as a result of the delay and obstruction of judicial nominations, particularly circuit court nominations, during the prior six and one-half years of Republican control of the Senate.

I noted last week that diversity is one of the great strengths of our nation and that diversity of background should be reflected in our federal courts. Race or ethnicity and gender are, of course, no substitutes for the wisdom, experience, fairness, and impartiality that qualify someone to be a federal judge entrusted with a lifetime appointment. White men should get no presumption of competence or entitlement. Hispanic and African American men and women should not be presumed to be incompetent. All nominees should be treated fairly. We must carefully examine the records of all nominees to high offices but we know the benefits of diversity and how it contributes to achieving and improving justice in America.

We look forward to learning more about the six nominees receiving a hearing today.
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