

Testimony of

The Honorable Patrick Leahy

May 16, 2002

Statement of Chairman Patrick Leahy
Senate Judiciary Committee
Executive Business Meeting
May 16, 2002

Today, we have the opportunity to consider and report the 58th, 59th, 60th and 61st judicial nominees since the change in majority and reorganization of the Committee last July. I would like to thank Senator Cantwell for volunteering to chair the hearing the Committee held last Thursday on these nominees.

In addition, I have listed on the agenda the nomination of Judge D. Brooks Smith. I expect all members to be prepared to debate and vote this nomination next week. There are issues that will need to be debated, including his delay in recusing himself from two cases in which he had conflicts on interests due to his financial holdings and his wife's employment, his membership for more than a decade after his confirmation to the District Court in a club that discriminates against women, and his speeches to activist conservative groups about the constitutionality of federal statutes, such as the Violence Against Women Act, while serving as a federal judge. I make this announcement because I want Senators to have a full and fair opportunity to consider the matter but would like to move ahead to Committee consideration and a vote.

We do not want to see a return to the past practice of extensive delays between hearings and votes or the unfortunate precedent of the last several years in which nominees were given a hearing but then held off the agenda of the Committee and never considered by the Committee. Such recent nominees who were never accorded a Committee vote include Allen Snyder nominated to the D.C. Circuit, Bonnie Campbell nominated to the 8th Circuit, Fred Woocher nominated to the Central District of California and Clarence Sundram nominated to the Northern District of New York. These were nominees with bipartisan and home-state Senator support who had uncontroversial hearings but were nevertheless never acted upon by this Committee.

The time that has passed since Judge Smith's hearing does not begin to rival the extensive delays suffered by Judge Richard Paez, Judge Merrick Garland, Judge Tim Dyk, Judge Margaret Morrow or Judge Marsha Berzon, all recent Clinton's nominees. For example, Judge Paez had to wait 728 days, more than two years, from his hearing until a final Committee vote. Judge Merrick Garland and Judge Tim Dyk each waited more than a year (461 days). Judges Margaret Morrow and Marsha Berzon waited almost a year (352 and 336 days, respectively) between their hearings and Committee votes. In contrast, since Judge Smith's hearing earlier this year we have been working to move to the next stage of the process, a Committee vote on his nomination. He has now recently furnished his opinions and written responses to questions.

Over the last 10 months, the Senate Judiciary Committee has held 18 hearings involving 65 judicial nominations, which is more hearings on judges than the Republican majority held in any year of its control of the Senate during the Clinton Administration. In fact, it is more hearings than the Republican majority held in two consecutive years combined of two full Congresses during the prior six and one-half years of Republican control of the Committee.

Large numbers of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on more than half - 56 percent - of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session. From the time the Republicans took over majority control of the Senate in 1995 until the reorganization of the Committee last July, circuit vacancies increased from 16 to 33, more than doubling.

Democrats have broken with that recent history of inaction. Nine nominees have already been confirmed to the Courts of Appeals in fewer than 10 months. Mr. Clifton is the 13th nominee to a Circuit Court to receive a hearing in fewer than 10 months and the 12th to be voted upon. Judge Smith's nomination should be voted upon next week.

The number of judicial confirmations we have already achieved in 10 months - 57 - exceeds the number confirmed during all of 2000, 1999, 1997 and 1996, four out of six full years under Republican leadership. Indeed, it is more than all the judges confirmed over the two sessions in 1996 and 1997 combined. I would like to commend all Senators, but in particular the members of this Committee, for their efforts to consider scores of judicial nominees for whom we have held hearings and on whom we have had votes during the last several months.

I remember very well the efforts of the Senators from Hawaii to establish the Hawaii seat on the Ninth Circuit and to try to fill it with a qualified nominee. I voted with them and supported their effort to ensure that every State, even States as small as Hawaii and Vermont, are represented on our Courts of Appeals.

I recall the saga of the nomination of James Duffy to fill the Hawaii seat on the Ninth Circuit, and how hard Senator Inouye and Senator Akaka worked to find a consensus nominee and how that nomination was stalled for years. Despite the "Well Qualified" rating he received from the ABA and the strong support of both his home-state Senators, Mr. Duffy never received a hearing or a vote. He was nominated at the beginning of 1999 and remained pending for over two full years until it was withdrawn by President Bush in March 2001 without any Senate action of any kind.

Despite that recent history, the Hawaii Senators came to our hearing and supported Mr. Clifton for the same vacancy for which Mr. Duffy was denied a hearing. In contrast to the treatment that Mr. Duffy received, Mr. Clifton's nomination was scheduled for a hearing less than 60 days after his file and paperwork were completed. Mr. Duffy waited 791 days and never got a hearing.

By including Mr. Clifton in the hearing last week and on our agenda today, we hope to provide some relief to the Ninth Circuit, which has four vacancies that have been classified as "judicial emergency" vacancies by the U.S. Courts. Two of those vacancies are more than five years old.

They date back to 1996 and 1997, and there were two outstanding nominees to those seats. I have mentioned the nomination of James Duffy. The other nominee was Barry Goode of California, whose nomination also languished for years without ever getting a hearing or a vote.

When Barry Goode was first nominated to a Ninth Circuit vacancy in 1998 it was already a judicial emergency. Both of his home-state Senators supported the nomination but the Republican leadership refused to act. Mr. Goode was nominated not once, not twice, but three times to the Ninth Circuit and he never was given the courtesy of a hearing or a vote during almost 1,000 days (998 days). Mr. Goode waited almost three years, almost 1,000 days, for nothing. He was renominated in January 2001, and the Republican controlled Senate did nothing. In March of 2001, President Bush withdrew Mr. Goode's nomination, but he has not nominated anyone to this judicial emergency vacancy. It remains one of a number of judicial emergency vacancies for which there is no nominee and one of the 40 judicial vacancies for which there is no nominee.

The Ninth Circuit vacancies are a prime and unfortunate legacy of the partisan obstructionist practices during the Republican control of the Senate. Some are now complaining that nominees are waiting a year for hearing. The anniversary of the reorganized Judiciary Committee with a Democratic majority is not until July 10, of course. We have been in charge for 10 months and we have held hearings on 13 Court of Appeals nominees and 65 judicial nominees overall.

We also have more nominees to federal court vacancies in Pennsylvania on the agenda today. The Senate has already confirmed three Pennsylvania nominees since the change in majority. Joy Conti is the first nominee from the Western District to get a hearing in almost eight years, since September 1994, the last time the Democrats led the Senate. During the entire period Republicans controlled the Senate, no nominees to the Western District of Pennsylvania were given hearings or votes on their nominations.

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Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Law Enforcement Tribute Act, S. 2179
May 16, 2002

I am pleased that the Committee is considering the Law Enforcement Tribute Act introduced by Senator Carnahan. Senator Schumer and I are cosponsors of this legislation to create a \$3 million Department of Justice grant program to help states, local governments and Indian tribes establish permanent tributes to fallen public safety officers. Grants under this legislation are limited to \$150,000 each and must be used to honor officers killed in the line of duty.

Yesterday, I was honored to attend the 21st Annual National Peace Officers Memorial Day Services at the Capitol.

Sadly, last year was the deadliest year in law enforcement history since 1974. In 2001, 230 law enforcement officers were killed in the line of duty - including 72 fallen heroes who were killed

on September 11th. These brave public servants selflessly risked and sacrificed their own lives so that others might live. Each one of us owes these courageous men and women, and their families, a debt of gratitude that we can never fully repay.

It is appropriate during Police Memorial Week that the Committee endorse Senator Carnahan's legislation to provide federal resources to our states and local communities to pay proper tribute to the brave public safety officers who sacrificed their own lives to serve and protect us.