

Testimony of  
**The Honorable Patrick Leahy**

June 27, 2002

Statement of Chairman Patrick Leahy,  
Senate Judiciary Committee,  
On Nominations  
Executive Business Meeting

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Today we will be considering another of President Bush's Court of Appeals nominees, Lavenski Smith, who is nominated to the Court of Appeals for the Eighth Circuit.

The Republican majority averaged seven Court of Appeals nominees reported a year. We have already voted on 13 and reported 12 circuit court nominees over the last 11 months. If the Committee favorably reports the nomination of Lavenski Smith today, that will be the thirteenth Court of Appeals judge reported in less than a year- almost twice as many as the Republican average.

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. With this afternoon's hearing, in less than one year, we will have held 16 hearings for circuit court nominees. That is almost precisely the number of circuit court nominees (17) who were never given a Committee vote by Republicans in 2000.

Today the Judiciary Committee is voting on the third Eighth Circuit nominee the Committee has considered in less than one year. This is in sharp contrast to the treatment of Eighth Circuit nominee Bonnie Campbell by Republicans. Ms. Campbell is now a partner at the distinguished Washington law firm of Arent Fox, where she acts as an advisor, negotiator, advocate, and litigator, representing employers in personnel, labor relations, employment discrimination, benefits, and other employment-related matters. A graduate of Drake University and Drake's law school, Ms. Campbell has an outstanding record of public service.

She was nominated by President Clinton early in 2000 to serve on the United States Court of Appeals for the 8th Circuit. She was supported by both of her Senators, Democrat Tom Harkin and Republican Chuck Grassley, given a "Qualified" rating by the ABA, and afforded a hearing before the Judiciary Committee a few months later, in May of 2000.

Ms. Campbell was never scheduled for a Committee vote. No explanation for this failure to give her a vote was ever given, and her nomination was eventually returned at the end of the 106th Congress. She seems to have been the victim of the Republican practice of anonymous, indefinite holds. Other individuals nominated after Ms. Campbell were given Committee hearings and

votes and were confirmed later that year, while Ms. Campbell's nomination languished. In January of 2001, President Clinton re-nominated Ms. Campbell, but President Bush failed to seize the opportunity for bipartisanship, and withdrew her nomination shortly thereafter. At the time of her nomination Ms. Campbell was nearing the end of a distinguished term at the U.S. Department of Justice, where she served as Director of the Violence Against Women Office, a position to which she was appointed by President Clinton in 1995. In that capacity, she oversaw a \$1.6 billion program to provide funding to states to strengthen their efforts in the areas of domestic violence and sexual abuse. She also directed the federal government's efforts to implement the new criminal statutes created by the 1994 Violence Against Women Act. Ms. Campbell oversaw the Justice Department's efforts to combine tough new federal criminal laws with assistance to states and localities to fight against violence against women. Before coming to Washington, Ms. Campbell served as the Attorney General of Iowa, the first woman ever elected to that position. During her tenure in office, she was instrumental in pushing the state legislature to strengthen Iowa's domestic abuse statute, and in 1992 she authored one of the nation's first anti-stalking laws. In 1997 Bonnie Campbell was named by Time Magazine as one of the 25 most influential people in America.

Ms. Campbell's record of distinguished public service and her experience in private practice combined to make an excellent nominee to the Court of Appeals for the Eighth Circuit, a fact with which both of her home-state Senators obviously agreed. Given the chance at her hearing to raise questions about her or her work, members of the Senate Judiciary Committee voiced no objections at all, and no opposition from any quarter surfaced on any issue. Yet once afforded a hearing, Bonnie Campbell was left to linger in an indefensible limbo. She was not granted a Committee vote, but neither was she confronted with any objections to her nomination to the Eighth Circuit proceeding.

In contrast, Lavenski Smith, was given a hearing last month on his nomination to the Eighth Circuit, and he is receiving a vote in Committee today. He is supported by both of his home-state Senators. I want to commend Senator Lincoln, in particular, for working with us to secure Mr. Smith his hearing.

The Senate has already confirmed 57 of this President's judicial nominees, including nine circuit court nominees. Fifteen more have been voted out of Committee and are awaiting a vote by the full Senate. If the Senate takes final action to confirm them, we will have confirmed more judges in this first year of Democratic control than in any of the preceding six and one-half years of Republican control. Republicans never worked through more judicial nominees when they last controlled the Senate. If all of those nominees on the floor are confirmed, we will have confirmed more judges in one year than were confirmed by the Republican majority in the 1996 and 1997 sessions combined.

Democrats are working hard to reduce judicial vacancies and we have moved quickly on these nominees, as well as many, many others. I have noted how we could have been even more productive with a little cooperation from the White House, but that has not been forthcoming. Moreover, of the current vacancies, almost half do not have a nominee. We are almost out of district court nominees to include at hearings, because the President has been so slow to nominate district court nominees and insists on delaying the ABA peer review process until after the nominations are made. We have only two district court nominees with completed paperwork who have not yet been scheduled for hearings, and further steps are being taken to evaluate their files.

In the 11 months since the Committee was permitted to reorganize last July, we have held

hearings for 75 of President Bush's judicial nominees at 20 judicial nominations hearings. That is more judicial nominees than given hearings in any year of the prior six and one-half years of Republican control of the Senate and the Senate Judiciary Committee. In fact, it is more hearings than Republicans held in 1996 and 1997 combined and includes more judicial nominees than were accorded hearings in 1999 and 2000 combined. This afternoon, Senator Kohl is chairing our 21st judicial nominations hearing, which will include another nominee for the Fourth Circuit and two more district court nominees.

Over the last 11 months, we have had hearings for more judicial nominees than in seven of the eight years President Reagan was in office. We have held hearings for more judicial nominees than in any of the four years of the first President Bush. The Democratic-led Senate Judiciary Committee has held hearings for more district and circuit court nominees in less than a year than received hearings in 20 of the past 22 years.

Unfortunately, one-sixth of President Clinton's judicial nominees - more than 50 - never got a Committee hearing and Committee vote from the Republican majority, which perpetuated longstanding vacancies into this year. If the Republicans had not left more than 50 of President Clinton's nominees without a hearing or a vote, the current number of vacancies might be closer to 40 than 89.

This Committee has already reported out 72 judicial nominees since July 10, 2001. That is 10 times the number reported out in the full year prior to the reorganization of the Senate under Democratic control. We have far exceeded the number of judicial nominees reported out in any year of the recent six and one-half years of Republican control. Not once in the last six years of Republican control did the Senate Judiciary Committee report as many as 70 judicial nominees and only once did they report 60. They averaged 40 judicial nominations reported. In fact, in less than one year, we have reported out more judicial nominees than in the last two years of Republican control of the Committee combined and more judicial nominees than the Republicans reported in 1996 and 2000 combined. We have again done two years of work in less than one.

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STATEMENT OF SENATOR PATRICK LEAHY,  
CHAIRMAN, SENATE JUDICIARY COMMITTEE  
AT COMMITTEE MARK-UP OF S. 2134, THE ATERRORISM VICTIM=S ACCESS TO  
COMPENSATION ACT OF 2002"  
JUNE 27, 2002

I placed S.2134, the Terrorism Victim=s Access to Compensation Act, on the agenda of our Executive Business meeting last week in order to expedite Committee consideration of it. It was held over for the last two weeks and during this time a version of the bill passed the Senate as an amendment to the Terrorism Insurance bill, S.2600. At the request of the cosponsors of S.2134, I have kept the bill on the agenda of today=s meeting.

The bill expresses the sense of the Congress that the U.S. should use the frozen assets of terrorist states to pay court-ordered judgments to Americans harmed in attacks sponsored by such states. It has broad bipartisan support, including nearly equal numbers of Democrat and Republican cosponsors. It is consistent with a number of earlier actions taken by the Senate.

Many of us have fought for some time to achieve fair and expeditious compensation for victims of state sponsored terrorism. At the end of 2000, Congress directed the executive branch to provide it with a proposal for fair treatment of victims= claims against terrorist states. This proposal was to be submitted, at the latest, by the time the President delivered the FY03 budget request. The budget request was delivered last winter, but we have still not received the proposal.

Just a few weeks ago, before the Thursday morning business meeting at which we were to have considered S.2134, a letter from the executive branch was delivered to our offices. This letter was not the proposal Congress had directed the State Department to deliver with the FY03 budget request B a document that arrived here roughly five months ago B but was a Astatement of principles@ that essentially dodged the question. I had hoped that Congress could work hand in hand with the Administration to develop legislation last winter. I am still willing to consider proposals from the Administration, but do not intend to hold up pending bills in the meantime.

This bill would provide assistance to victims held hostage in the U.S. Embassy in Tehran, a group that is currently blocked, I am told, from accessing Iran=s frozen assets by the international agreements made to secure their release from captivity. I am sympathetic to some of the concerns that have been raised in regard to this approach of compensating victims. The State Department has argued that our Government must honor its international agreements if the U.S. expects other nations to fulfill their own international obligations. I am a firm supporter of the U.S. living up to its international commitments, and so I have some questions about how this proposal will impact our diplomatic relations with other nations. Nonetheless, I have honored the requests of Senators that this Committee proceed expeditiously to send this legislation to the Senate.

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Statement of Senator Patrick Leahy on S. 862  
Chairman, Senate Judiciary Committee  
Executive Business Meeting  
June 27, 2002

At last week's markup, a number of Senators spoke about the unfairness of forcing States to bear the burden of our national immigration policies. Today we consider a bill that responds directly to those concerns, the State Criminal Alien Assistance Program Reauthorization Act. This bill, introduced by Senators Feinstein and Kyl, would reauthorize the program that reimburses States and counties for the costs of incarcerating aliens who enter the country illegally and are later convicted of felonies or multiple misdemeanors. I agree with those Senators that we should not hold States liable for the costs of our failure to prevent people from entering the United States illegally, and I support their exhaustive efforts to preserve this important law enforcement program.

Unfortunately, the Bush Administration has decided to eliminate funding for this program. One would think that President Bush, as a former governor of Texas, would understand the importance of this funding for State and local governments. Perhaps this Administration simply suggested eliminating SCAAP as a gimmick, predicting that Congress would restore it because it is so crucial to so many States. Whatever the motive, however, the President's decision was

wrong, and this Committee can send a message today that the States - especially those along the Southwest border - need this help.

Money that States and counties spend on housing illegal aliens is money that cannot be spent to keep communities safe. Considering the severe financial straits of States across the country, and the increasing burdens on all levels of law enforcement to fight terrorism, taking away the \$565 million that was appropriated for this program last year presents a severe financial burden. It is bad policy, and Congress should not let it happen. The control of illegal immigration is a Federal responsibility, and this bipartisan legislation will do much to relieve State, county and local governments of the some of the high costs of incarcerating illegal aliens.

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Statement of Senator Patrick Leahy on S. 1339  
Chairman, Senate Judiciary Committee  
Executive Business Meeting  
June 27, 2002

I am pleased that today the Committee is considering The "Persian Gulf War POW/MIA Accountability Act of 2001," S. 1339. This bill would provide an asylum program for foreign nations who help return prisoners of war and missing in action Americans from the Persian Gulf War. I applaud Senator Campbell for his leadership in this issue and I am proud to cosponsor the bill.

This bipartisan measure - cosponsored by 35 Senators - builds on the important precedent established in the Bring Them Home Alive Act of 2000, which grants refugee status in the United States to selected foreign nationals who play crucial roles in helping return safely home to the United States any surviving POW/MIAs from the Korean and Vietnam conflicts.

On January 17, 1991, during the first hours of the Persian Gulf War, Lieutenant Commander Michael Speicher's fighter plane was shot down over Western Iraq. Based on the accounts of other pilots flying in the mission and 12 hours of radio silence, Lieutenant Commander Speicher was declared Missing in Action, MIA, the next day. On May 22, 1991, his status was changed to Killed in Action/Body Not Recovered.

In December 1995, investigators from the Army and Navy found the crash site of Lieutenant Commander Speicher's F-18. Located at the crash site were used flares and parts of a survival kit. Close by the site, the canopy of the plane was found which would indicate that Lieutenant Commander Speicher ejected from his plane before it crashed. Based on this information, the Navy came to the conclusion that it could no longer claim that Lieutenant Commander Speicher was indeed killed in action. On January 11, 2001, the Navy changed his official status from back to MIA.

News reports indicated one of the major breaks in this case was provided by an Iraqi defector. According to his information, during the first days of the war, he drove a downed American pilot - alive and alert - to Baghdad. This defector was able to pass two lie detector tests and pointed to Lieutenant Commander Speicher in a photo lineup.

Under this legislation, if Lieutenant Commander Speicher is found alive and returned home, the defector who helped him, as well as the defector's family, would be granted refugee status and safety in the United States. This bipartisan legislation could persuade other brave and freedom-

loving foreign nationals to take whatever means necessary to help brave Americans who may be captured in the line of duty to make it home alive.