

Testimony of

# **The Honorable Patrick Leahy**

July 23, 2002

I begin by thanking Senator Feinstein for chairing today's hearing and all Senators who have agreed to chair nominations hearings since the change in majority last summer. Today we hold a hearing to consider the 79th, 80th and 81st judicial nominees for whom this Committee has held hearings since last July 11. Judge Owen is the 17th Court of Appeals nominee for whom we have held hearings in less than 13 months. The fact is that we have held more hearings for more circuit court nominees than in any of the six and one-half years in which Republicans controlled the Committee before the change in majority last summer.

During our first year in the majority, we held twice as many hearings for President Bush's Courts of Appeals nominees as were held in the first year of the Reagan Administration, when the Senate was controlled by Republicans, and five times as many as in the first year of the Clinton Administration, when the Senate was controlled by Democrats. Those are the facts.

Under Democratic leadership, this Committee has also voted on more judicial nominees, 75, than in any of the six and one-half years of Republican control that preceded the change in majority. We voted on twice as many circuit court nominees, 15, as the Republican majority averaged in the years they were in control. In fact, this last year we voted on more nominees than were voted on in 1999 and 2000 combined and on more circuit court nominees than Republicans voted on in 1996 and 1997 combined.

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. By many measures the Committee has achieved almost twice as much this last year as Republicans averaged during their years in control.

In the six and one-half year period of Republican control before the change in majority last summer, vacancies on the Courts of Appeals more than doubled from 16 to 33 and overall vacancies rose from 63 to 110. We have reversed those trends.

Today, the Committee proceeds with a hearing on the nomination of Priscilla Owen to the United Court of Appeals for the Fifth Circuit, Timothy Corrigan for the District Court for the Middle District of Florida, and Jose Martinez for the District Court for the Southern District of Florida. I welcome the nominees, their families and their friends, and all those interested in these important matters.

Judge Owen has been nominated to fill a seat vacated by William Garwood, a Reagan appointee who served until taking senior status in January, 1997. Not long afterwards, on July 24, 1997, President Clinton nominated Jorge Rangel, a distinguished Hispanic attorney from Corpus Christi, to fill that vacancy. Despite his qualifications, and his unanimous rating of Well Qualified by the ABA, Mr. Rangel never received a hearing from the Committee, and his nomination was

returned to the President without Senate action at the end of 1998, after a fruitless wait of 15 months. Frustrated with the lack of action on his nomination, Mr. Rangel asked that his name be withdrawn from consideration, and on September 16, 1999, President Clinton nominated Enrique Moreno, another outstanding Hispanic attorney, to fill that same vacancy. Mr. Moreno did not receive a hearing on his nomination either during its pendency of more than 17 months. President Bush withdrew the nomination of Enrique Moreno to the Fifth Circuit and later sent Judge Owen's name in its place. It was not until May of this year, at a hearing before Senator Schumer, that this Committee heard from any of President Clinton's three nominees to the 5th Circuit, when Mr. Moreno and Mr. Rangel testified along with a number of other Clinton nominees about their treatment by the Republican majority. Thus, Judge Owen's is the third nomination to this vacancy and the first to be accorded a hearing before this Committee.

In fact, when this Committee held its hearing on the nomination of Judge Edith Clement to the Fifth Circuit last fall, it was the first hearing on a Fifth Circuit nominee in seven years. By contrast, Judge Owen is the third nomination to the Fifth Circuit on which this Committee has held a hearing in less than one year.

When Judge Owen was initially nominated, the President changed the confirmation process from that used by Republican and Democratic Presidents for more than 50 years. That resulted in her ABA peer review not being received until later in the summer. As a result of a Republican objection to the Democratic leadership's request to retain all judicial nominations pending before the Senate through the August recess, the initial nomination of Justice Owen was required by Senate rules to be returned to the President without action. The Committee nonetheless took the unprecedented action of proceeding during the August recess to hold two hearings involving judicial nominations, including a nominee to the Court of Appeals for the Federal Circuit.

In my efforts to accommodate a number of Republican Senators, including the Republican Leader, this Committee's ranking member, and at least four other Republican members of this Committee, I have scheduled hearings for nominees out of the order in which they were received. This has been a longstanding practice of the Committee. I have also indicated that those nominations that are less controversial are easier to consider and would, by and large, be scheduled earlier. Controversial nominations, such as Judge Owen's, can sometimes take longer. In spite of the treatment by the former Republican majority of so many moderate judicial nominees of the previous President, we proceed today, as I said that we would, with a hearing on Judge Owen.

Despite a history of filling vacancies in Florida through a nonpartisan, merit-based process, going back at least a decade under two presidents of different political parties, this White House decided it knew better. Despite a process that filled 29 vacancies on Florida's federal district courts and despite a consensus within the Florida legal community that the process of working with that State's Senators and a judicial nomination commission process had produced distinguished, qualified nominees, this Administration decided to go in a different direction. I commend Senators Graham and Nelson for being able to come to some agreement so that we can move these nominations forward at this time.

The question each Senator on this Committee will be asking himself or herself as we proceed is whether these judicial nominees meet the standards we require for any lifetime appointments to

the federal courts. The President has often spoken of judicial activism without acknowledging that ends-oriented decisionmaking can come easily to ideological conservative nominees. Through the course of these hearings we will have an opportunity to seek to determine how nominees are likely to act as federal judges.

#####