

Testimony of
The Honorable Patrick Leahy

October 7, 2002

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

Hearing On Judicial Nominations:

Rosemary Mayers Collyer

To Be A U.S. District Court Judge For The District Of Columbia,

Mark Everett Fuller

To Be A U.S. District Court Judge For The Middle District Of Alabama,

Robert Gary Klausner

To Be A U.S. District Court Judge For The Central District Of California,

Robert Byron Kugler

To Be A U.S. District Court Judge For The District Of New Jersey,

Ronald Bruce Leighton

To Be A U.S. District Court Judge For The Western District Of Washington,

Jose Luis Linares

To Be A U.S. District Court Judge For The District Of New Jersey,

William Edward Smith

To Be A U.S. District Court Judge For The District Of Rhode Island

October 7, 2002

I would like to welcome all of the nominees and their families to today's judicial nomination hearing. This is the 26th hearing for judicial nominees since the change in majority in the summer of 2001. Today the Committee considers seven more judicial nominees, which will bring to 103 the number of district and circuit court nominees for whom the Committee has held hearings in less than 15 months. One of you is the 100th judicial nominee for whom the Senate Judiciary Committee has held a hearing since the Committee was permitted to reorganize following the change in the Senate majority.

This past week some critics on the other side of the aisle complained that not all the President's judicial nominees have yet been confirmed, although Democrats have only been leading the judicial confirmation process for less than 15 months. They complained that a handful of judicial nominees have not yet had hearings or been confirmed, although they never acknowledge the large number of judicial nominees we have held hearings for, voted on, and confirmed in little more than a year. We have been working at a dramatically faster pace considering judicial nominees than Republicans did in their prior six and one-half years of control of the Senate. It took the Republican controlled Senate 33 months -- almost three full years -- to hold hearings for

100 of President Clinton's judicial nominees, although more than 100 were pending well before that. We have reached that mark in less than half that time.

This hearing is part of that effort to return fairness and prompt consideration to the confirmation process. Consensus nominations make this difficult work easier. Today we will hear from seven district court nominees: Rosemary Collyer, nominated to the District Court in Washington, D.C.; Mark Fuller, nominated to the Middle District of Alabama; Judge Robert "Gary" Klausner, nominated to the Central District of California; U.S. Magistrate Judge Robert Kugler, nominated to the District of New Jersey; Ronald Leighton, nominated to the Western District of Washington; Judge Jose Linares, nominated to the District of New Jersey, and William Smith, nominated to the District of Rhode Island. Several of you have judicial experience and all of you have been involved in your local community and bar associations, and you come to us with the strong support of your home-state Senators.

Since the summer of 2001, we have held more hearings for more judicial nominees - 103 candidates -- than in any comparable 15-month period of the six and one-half years before the Senate changeover last year. We have also held more hearings for circuit court nominees - 20 -- than in any comparable period of that previous six and one-half years, when our predecessors allowed an average of only seven circuit court nominees to be confirmed per year. In the past three weeks we held two back-to-back hearings for controversial circuit court nominees back to back. In contrast, at 11 of the judicial nomination hearings held during the prior period of Republican control, no circuit court nominees were on the agenda. During their six and one-half years of control of the Senate, there were also 30 months in which Republicans held no hearings at all. Democrats have held at least one hearing per month and have held almost two per month on average. We have been working nonstop to address the vacancy crisis 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. Added to that were the 47 new vacancies that have arisen since last summer. Thus, rather than 157 vacancies, with the 80 circuit and district court nominees we have confirmed, there are now 77 vacancies.

The President has yet to nominate anyone for 30 of these vacancies. With today's hearing for seven judicial nominees, we will have held hearings for 21 of the 47 nominees currently pending. Many of the 26 judicial nominees who have not yet had a hearing were nominated only recently toward the end of this congressional session. Due to the White House's refusal to allow ABA peer reviews to begin prior to nomination and because the ABA peer reviews have been taking between 50 and 60 days from the time of nomination, the White House knows that many of these late nominees will not have their files completed in time for hearings. Thus, of the 26 who have not yet had a hearing, only seven have completed files - especially, ABA reviews and the consent of both of their home-state Senators. That is, the majority of the nominees who have not yet had a hearing - 19 -- do not have completed files. Of the seven who are eligible for a hearing, but who have not yet had a hearing, six have relatively controversial records which require more review. Accordingly, with today's hearing, since the changeover last year we will have held hearings for 103 of the 110 eligible judicial nominees with complete files. Thus, 94 percent of this President's judicial nominees who had completed files have been given hearings. This remarkable achievement is irrefutable evidence of the good-faith efforts we have made to restore

order to the confirmation process - good faith efforts that we continue to hope will be matched by the White House.

I am certain that President Clinton would have been overcome with gratitude if the Republicans ever gave 94 percent of his judicial nominees hearings in the years Republicans controlled the confirmation process during his administration. They never did. Instead, in 1995 for example, Republicans allowed only 58 of the 86 pending judicial nominations of President Clinton to be confirmed, nowhere near 100 percent or even 90 percent. In 1996, Republicans allowed only 17 of the 49 pending judicial nominees, or 35 percent, to be confirmed, and none were circuit court nominees. In 1997, Republicans allowed only 36 of the 79 Clinton nominees to be confirmed, or 46 percent. In 1998, Republicans allowed 66 of 92 pending judicial nominees to be confirmed. In 1999 they allowed only 33 of the 71 judicial nominees to be confirmed, about 46 percent, and in 2000 they allowed only 39 of the 81 pending judicial nominees to be confirmed, or 48 percent.

Thus, during their six years of Senate control during the Clinton Administration, Republicans allowed only about half of the judicial nominations to be confirmed on average per year. Their percentages are even worse for circuit court nominees. These are detailed in my floor statement of October 4.

I am hopeful that today's hearing will go smoothly for the nominees on the panel and that they will be able to move expeditiously through the Committee. To this point, the Senate Judiciary Committee has voted on more judicial nominees - 83 -- and on more circuit court nominees - 17 -- than in any comparable 15-month period of prior Republican control. The Democratic-led Senate has already confirmed 80 of the judicial nominations of President George W. Bush. In so doing, we have confirmed more judicial nominees in less than 15 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.

All of the nominees hear today have had completed files for three weeks or less. With today's hearing, every single district court nominee with home-state consent who had received an ABA rating by the date the hearing was noticed will have received a hearing. We look forward to learning more about these seven nominees today.

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