Testimony of

The Honorable Patrick Leahy

June 11, 2003

Statement of Senator Patrick Leahy,
Senate Judiciary Committee
Nominations Hearing
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Today we meet to consider an unusual combination of nominations: William Pryor to the U.S. Court of Appeals for the 11th Circuit and Diane Stuart to head the Office on Violence Against Women at the Department of Justice. This could well be the first hearing we have had where one nominee has challenged the constitutionality of the statute on which the work of the other nominee is based.

But before I speak about the many positions that Mr. Pryor has taken that raise concerns with regard to his nomination to a federal court, I should make a few observations about procedure. When the possibility was first raised of scheduling Mr. Pryor before his rating from the American Bar Association was received, we raised concerns. While we have all had our disagreements with the ABA's rating of individual judicial nominees, I have long maintained that their evaluations are an important piece of information that should be available early in the process of considering a lifetime appointment to the federal bench.

When Senator Hatch indicated several years ago that he would no longer consider the evaluations of President Clinton's nominees, I differed and continued considering such ratings for what they were worth. When George W. Bush announced that he was removing the ABA Standing Committee from its traditional place in the judicial nominations process, a place it had held for the last 50 years, I objected. I explained then that I thought it was a major mistake because it would chill the candor with which people speak to the ABA about nominees' qualifications and temperament, and because it would give a President little room to back down after finding out one of the nominees it had already announced received a negative rating. Instead of working with the ABA before announcing a nomination publicly, this White House has forced them to do their work in a truncated period of time in a way under restrictive circumstances.

Among the changes made to our process, this year the Committee has scheduled hearings for nominees before any of us knows how the ABA has evaluated them. Today's circuit court nomination is just one example of that sort of mixed-up process which puts the cart before the horse. Mr. Pryor's ABA evaluation was not complete at the time the hearing was noticed last week. It only arrived yesterday afternoon, and he has been determined by some on the ABA's Standing Committee to be "not qualified" to sit on the U.S. Court of Appeals for the 11th Circuit. Now that we have that piece of information, it is not time to rush into a hearing for this nominee. It is time to stop and conduct further investigations, further evaluations, to determine the reason or reasons for the negative rating. I regret that the Committee does not have all the necessary information it needs before proceeding to a hearing. This should be a meaningful review of the qualifications and fitness of a nominee to a lifetime appointment.
As to the nomination itself, I am concerned about Mr. Pryor's record of ideological rigidity and extremism in a number of areas crucial to the fair administration of justice. I want to know more about his views on the death penalty. I would like to find out more about his views on the so-called "federalist revolution" in which he has been a driving force. I would like to understand how he views discrimination against Americans on the basis of their sexual orientation. I want to know why he disagreed with the Supreme Court of the United States that cuffing a prisoner up to a hitching post in the broiling sun for hours on end was not cruel and unusual punishment. I look forward to learning how he came to believe that the Americans With Disabilities Act, the Violence Against Women Act, the Age Discrimination in Employment Act, and even Title VII of the 1964 Civil Rights Act are unconstitutional. Among many other things, I would like to know why someone who has committed his life, both personal and professional to overturning settled Supreme Court precedent is interested in a job that requires him to uphold it.

I look forward to hearing from Mr. Pryor and to reviewing carefully his answers to the questions of the other Senators.

This is another highly controversial nominee of this Administration to our circuit courts. Even before today's hearing a number of editorial boards and others have weighed in with significant opposition. Last April, even the Washington Post, which has been exceedingly generous to the Administration's efforts to pack the courts, termed Mr. Pryor "unfit". Earlier this week, the Washington Times published Nat Hentoff's opposition to this nomination. The Atlanta Journal-Constitution editorialized against this nomination on May 6. Editorial boards across the country, including the San Jose Mercury News and the Pittsburgh Post-Gazette, have likewise spoken out against this particular nomination and the Administration's ideological court-packing scheme.

The Committee has also heard from a number of organizations and individuals concerned about justice before the federal courts. The Log Cabin Republicans, the Leadership Conference on Civil Rights, the Alliance for Justice, NARAL and many others have provided the Committee with their concerns and the basis for their opposition.

Of course this is not the first "not qualified" rating or partial "not qualified" rating that this Administration's judicial nominees have received. It is at least the 16th such rating and the fourth for a circuit court nominee of this President--so far. We have bent over backwards trying to be accommodating to this Administration for almost two years. The Senate has already confirmed 128 of this President's judicial nominees, including 25 circuit court nominees. That stands in sharp contrast to the treatment of President Clinton's nominees by a Republican-controlled Senate from 1995 through 2001 when judicial vacancies on the federal courts were so much higher.

This is already the 11th hearing the Republican majority has held for this President's judicial nominees this year, including 12 circuit court nominees. This, too, stands in sharp contrast to the way President Clinton's nominees were treated by the Republican majority. I recall that, during the entire year of 1996, when vacancies were higher and growing, this Committee held only six hearings all year and those hearings included only five circuit court nominees. That 1996 session not a single judge was confirmed to the circuit courts--not one. In all of 1997, the Committee only had nine hearings all year and included only nine circuit court nominees. During the entire year of 1999, only seven hearings were held on judicial nominees and this Committee did not hold the first judicial nominations hearing that year until June 16. This year, by contrast, this Committee will have already held 11 hearings by that time of year. During the entire year of 2000, only eight judicial nominations hearings were held. This year, with a Republican in the White House, the Senate Republican majority has gone from second gear -- the restrained pace it had said was required for Clinton nominees -- to overdrive for the most controversial of President Bush's nominees.

A good way to see how much faster Republicans are processing judicial nominations for a Republican president is to compare where we are in June of this year to June of any year during the last Democratic administration when the Republicans controlled the Senate. Over the last six and one-half years of Republican control under President Clinton, the Republicans held fewer than four judicial nominations hearings, on average, by June 11, and had considered fewer than four circuit court nominees, on average, by this time. On this day, in 1995, only five hearings had been held for judicial nominations; in 1996, only three hearings; in 1997, only two hearings; in 1998, only about half as many as this year -- six hearings; in 1999, zero hearings; and in 2000, only five judicial nominations hearings were held by June 11. Today, we participate in our 11th hearing this year. Republicans have moved two to four times more quickly for President Bush's circuit court nominees than for President Clinton's, yet vacancies in the courts stand at half of what they were during many of those years.

The number of judicial vacancies has gone down from the 110 we inherited when Democrats assumed the Senate majority in the summer of 2001 to the lowest level it has been in 13 years. While I was Chairman I was able to cut it from 110 to 60, despite dozens of new vacancies that occurred during that time. I recall that Senator Hatch said in September of 1997 that 103 vacancies (during the Clinton Administration) did not constitute a "vacancy crisis." He also repeatedly stated that 67 vacancies meant "full employment" on the federal courts. We now stand at fewer than 50 vacancies for the entire federal judicial system.

As I have noted throughout the last three years, the Senate is able to move expeditiously when we have consensus nominees. Unfortunately, far too many of this President's nominees have records that raise serious concerns about whether they will be fair judges to all parties on all issues. This is such a nomination. The question raised by this

nomination is how someone so committed to a particular viewpoint on so many issues can be expected to serve as an impartial judicial arbiter.

I look forward to Mr. Pryor's testimony.

The Senate Judiciary Committee today also considers the nomination of Diane M. Stuart to be the Director of the Violence Against Women Office (VAWO) at the Department of Justice. Based on her extensive background and expertise in issues related to violence against women, including sexual assault and domestic violence, Ms. Stuart was appointed by the President in October 2001 to serve as VAWO's Director at the Senior Executive Service level. Since February 2003, she has served as the Office's Acting Director, since the 21st Century Department of Justice Appropriations Authorization Act elevated the Director a presidentially appointed position, subject to Senate confirmation.

Ms. Stuart, I thank you for joining us here today, and I look forward to hearing your thoughts on the current status and policies of the Violence Against Women Office and, more importantly, where you expect that Office will go in the future under your leadership. I also understand that you suffered a recent loss in your family and I offer both you and your family my condolences.

Both the original Violence Against Women Act and its reauthorization - VAWA 2000 - have been important steps forward in our nation's efforts to end violence against women, as will be the third VAWA reauthorization that will come in 2005. I take very seriously my commitment to combating those crimes, and I believe that the Violence Against Women Office and especially its Director have a duty to play an active and high-profile leadership role in those efforts.

Therefore, I hope you can understand how I have been troubled by recent reports that VAWO remains within the Office of Justice Programs and reports to an assistant attorney general. Even the 2004 Justice Department budget proposal states that VAWO does not report directly to Attorney General Ashcroft, although Congress has made it clear by law that the Office should. Members of this Committee wrote the Justice Department Re-authorization bill, which Congress passed and the President signed into law last year. That law makes VAWO a permanent, separate and independent office within the Justice Department. In testimony earlier this year at the House Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary hearing on the 2004 budget, the Attorney General took a different stance, arguing that the provision's language leaves the decision on where to place the office up to him.

The statute is unequivocal - the VAWO Director shall report directly to the Attorney General and VAWO is to be a permanent and independent entity in Justice - do not pass go, do not get out of jail free. I hope you will explain to us why the very agency charged with upholding the law has apparently decided to circumvent the law by substituting its own policy judgment for that of the Congress. I also hope you will share with us your plans to ensure a balance between the technical aspects of grant-making for which VAWO has been known and the equally important role in shaping our nation's policies in issues relating to violence against women, domestic violence and sexual assault. To manage eleven Federal grant programs that have distributed over $1 billion in total VAWA funds since 1995 is no small feat, and I commend VAWO on that work. I also hope you will take seriously suggestions from this Committee on authorization and funding for such programs as desperately-needed transitional housing grants.

I look forward to hearing your testimony and answers to our questions.

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