

Testimony of

The Honorable Patrick Leahy

July 31, 2003

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Executive Business Meeting
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I ask for just a moment to welcome the new Republican Chief Counsel to his new responsibilities on the Committee. Bruce Artim has worked for Senator Hatch for some time. Speaking on behalf of the Democratic Senators and staff of this Committee I congratulate him on his promotion. We want to present him with a long-stemmed welcoming gift.

As the Senate prepares to recess, I believe this is a good time to reflect back on the first seven months of the 108th Congress. With respect to the Committee's work on judicial nominations, in those first seven months, we have already exceeded the yearly totals of judicial confirmations for four of the six years the Republican majority controlled the pace of President Clinton's nominees. The Senate has confirmed 40 judges so far this year, including 10 judges to the Courts of Appeals, bringing the total to 140 of the President's nominees confirmed so far. When I became chair of the Judiciary Committee on July 10, 2001, the Democrats inherited 110 vacant seats in the federal judiciary. In the following 17 months, we confirmed 100 of President Bush's judicial nominees. There are more full-time federal judges on the bench today than at any time in U.S. history. We have been able to reduce vacancies to a 13-year low and have now added new judgeships which we are filling as well.

I would think that this was a record of which the Chairman could be proud. He has speeded up the nominations conveyor belt to the rate the White House requested, scheduling nominations hearings at a record pace, sometimes before all the nominees' paperwork is completed, sometimes over the objections of the minority on open ethics or investigative issues. He has ignored rules he scrupulously followed when there was a Democrat in the White House, and has forced controversial nominees through the Committee before Senators have felt satisfied that their questions had been answered. Regrettably, we have witnessed a string of double standards that have become the standard in the Judiciary Committee today.

While I am proud of the way the Democratic members of this Committee have worked diligently and fairly to consider so many of President Bush's nominees, what concerns me are the double standards that the Republican majority has adopted in the way they are pushing President Bush's nominees through the confirmation process. Last week, the Republican majority chose to abandon our historic practice of bipartisan investigations and to abandon the meaning and consistent practice of protecting minority rights through a longstanding Committee rule that required a member of the minority to vote to cut off debate in order to bring a matter to a vote. This week, the Committee, for the first time, convened a hearing for a judicial nominee in spite of two negative blue slips returned to the Committee from the home-state Senators. The Senate

has a clearly defined constitutional role in the judicial confirmation process and I urge us to work together as members of this Committee to maintain a fair and independent judiciary. Maybe the Chairman and his colleagues on the other side of the aisle will take the month of August, rethink the approach they have been taking in the Committee, and return with a renewed commitment to fair process, fair dealing and bipartisanship. Hope springs eternal.

Among the nominees we consider today is Steven Colloton, nominated to the United States Court of Appeals for the Eighth Circuit. Mr. Colloton's confirmation process has been very smooth, and stands in stark contrast to an earlier nominee to the Eighth Circuit from Iowa, Bonnie Campbell. Ms. Campbell, a former attorney general of Iowa, a former head of the Department of Justice's Office on Violence Against Women, a nominee who had the support of both of her home state senators including Senator Grassley, did not ever receive a vote before this Committee following the hearing on her nomination. Neither the nominee nor we were ever told why the Republican majority refused to accord her nomination a Committee vote, and when given the chance to do right by her, President Bush instead decided to withdraw her nomination.

Today Mr. Colloton is being accorded a vote in Committee to recommend his nomination to the full Senate. I have great respect for the Iowa Senators, and I trust them, as I did with Ms. Campbell.

For a process that ought to be a model for the rest of the Senate, we need to look no further than just up the east coast to New York. Today we have the pleasure of voting on four nominees for the District Court in New York, who come to us through a bipartisan process of cooperation and consultation between Democratic Senators and Republican White House. Justice Feuerstein, nominated to the Eastern District of New York, currently serves as a justice in the New York State Appellate Division and has served as a judge in the New York State court system for approximately 15 years. Mr. Castel, Mr. Holwell and Mr. Robinson, nominated to the U.S. District Court for the Southern District of New York, all have significant litigation experience as well as commendable records of providing legal services to disadvantaged persons. Some of these nominees may be Republican, some may be conservative, but we do not object. They are qualified, they are consensus candidates, and they are not ideological. They have spent their lives and careers up to now committed to furthering justice, not political agendas, and I am entirely sure they will continue that work on the federal bench. I am pleased to be able to support them.

We will also consider today R. David Proctor, a nominee to the U.S. District Court for the Northern District of Alabama, to fill a new judgeship, and Paul Michael Warner to continue his service as U.S. Attorney for the District of Utah.

Finally, we also have before us today two nominees for positions at the Justice Department. Alex Acosta has been nominated to be Assistant Attorney General for the Civil Rights Division. If this Committee held Alex Acosta to the standard that it held Bill Lann Lee, I doubt he would ever be confirmed. Mr. Acosta has only two years of legal experience working on civil rights issues, and less than two years of litigation experience. He is only 34 years old. His background as a campaigner against judicial activism raises far deeper questions about whether he will be an "ideological" steward for the Civil Rights Division than did Bill Lann Lee's work as a civil rights lawyer. And, he evaded the written questions asked by members of this Committee, failing to

state his position on numerous key issues. In that regard, if Mr. Acosta is confirmed, I trust that he will be more responsive to our oversight than he has been as an Executive Branch nominee.

Finally, the Committee is to vote today on Daniel J. Bryant's nomination to be Assistant Attorney General for the Office of Legal Policy. While Mr. Bryant is certainly knowledgeable about legislative matters across a range of subjects, I have some concern about the role he has played in limiting congressional access to information as head of the Justice Department's Office of Legislative Affairs and his role in assisting the Administration in the selection of increasingly ideological right-wing judges as acting head of OLP. Notwithstanding these concerns, I believe Mr. Bryant is an honorable person and I will vote today to confirm him.

I want to end my remarks by saying that I hope we can return to this Committee in September and remember our role in the critical nomination process and begin serving the American people by fulfilling our responsibilities to provide real oversight.

With respect to the legislative agenda, we have two important legislative matters that are bipartisan. I expect the substitute for the PACT Act and the Hatch-Leahy reauthorization of the Runaway, Homeless and Missing Children Protection Act will both be favorably reported by this Committee.

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