

Testimony of
The Honorable Patrick Leahy

September 3, 2003

Statement of Senator Patrick Leahy
Senate Judiciary Committee
Judicial Nominations Hearing
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Today the Committee will hear from seven judicial nominees, including another nominee to a Court of Appeals. For the record, this hearing is the 16th judicial nominations hearing held so far this year. This pace stands in sharp contrast to the way President Clinton's nominees were treated by the Republican majority. Chairman Hatch never allowed the number of hearings to get that high in any comparable time period during his six years as chairman during the Clinton Administration. In most of those years, there were far fewer hearings and far fewer nominees.

For example, I recall that during the entire year of 1996, when the vacancy rate was higher and rising, the Committee held a mere six hearings all year, and those hearings included only five Circuit Court nominees. During 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 2000, only eight judicial nominations hearings were held.

In 1999, the Committee did not have a hearing to consider a single judicial nominee until June 16th, and during the rest of 1999, it held only seven hearings to consider judicial nominees. That was the third year of President Clinton's second term. Like 1999, this year, 2003, is the third year of this President's term. By contrast, Chairman Hatch has already held 11 hearings by the time Chairman Hatch held his first hearing in 1999.

It is clear from these statistics that 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 President Bush's judicial nominees.

This morning we will consider the testimony of Judge Carlos Bea, who is nominated to the Ninth Circuit Court of Appeals. I sincerely hope that no one claims that Judge Bea has been awaiting confirmation for 13 years. In fact, Judge Bea was nominated by former President Bush to the district court at the very end of 1991 - just a year after he was appointed to the Superior Court bench in San Francisco. At that time his nomination was strongly opposed by several local organizations including the Bar Association of San Francisco and certain individuals. In contrast to that earlier nomination, Judge Bea now has 13 years of judicial experience and the support of local leaders such as Senator Feinstein and Mayor Willie Brown and organizations such as MALDEF and La Raza.

I am troubled by the fact that at least some of the members of the ABA standing committee remain of the opinion that Judge Bea is "not qualified" for a position on the federal bench. After reviewing this nomination for over three months, the ABA peer review report included a partial "not qualified" rating. This rating is but one of almost two dozen "not qualified" or partial "not qualified" ratings for this President's nominees already. Unfortunately, the ABA does not share with us the basis for its concern, so we are not in a good position to evaluate it or whether we concur. I hope that today's hearing will shed some light on his suitability for this lifetime appointment to a very important circuit court and I look forward to receiving his testimony.

Today we will also hear from two nominees to newly-created seats in the Southern District of California. Mr. William Hayes and Magistrate Judge John Houston were both recommended by the bipartisan selection commission established by Senators Feinstein and Boxer. The senators from California have worked hard to maintain this local mechanism that recommends consensus nominees for the district courts in their state and we welcome these two nominees.

We also welcome Judge Robert Jones, nominated to the District Court of Nevada who also enjoys the bipartisan support of both of his home state senators. We will also hear today from Magistrate Judge Marcia Crone, nominated to the U.S. District Court for the Eastern District of Texas. Magistrate Judge Crone has served as a U.S. Magistrate Judge for the Southern District of Texas for 11 years and has the support of both of her home-state Senators. Finally, we will hear from Mr. Phillip Figa, nominated to the District Court of Colorado and Mr. Ronald White, nominated to the U.S. District Court for the Eastern District of Oklahoma.

Notably, all of these nominees have the support of their home state senators. As I have repeatedly remarked throughout the last three years, the Senate is able to move expeditiously when we have consensus nominees. I look forward to receiving testimony from the seven nominees on today's hearing and hope that we can continue to act in a bipartisan manner in considering these lifetime appointments to our federal courts.

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