

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
October 1, 2003

Statement of Chairman Patrick Leahy  
on the Nomination of Dora Irizarry to the  
United States District Court for the  
Eastern District of New York  
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Today, the Judiciary Committee is holding its 18th judicial nomination hearing this year. The Republican-led Senate has held more hearings in less than 10 months for more judicial nominees of President George W. Bush than they held for judicial nominees of President Clinton in 1999 and 2000 combined. The rapid pace at which the Republican Senate has moved for a Republican President is also shown by the fact that 160 judicial nominees of this President have been confirmed so far, including 60 this year. The number of confirmations in less than 10 months this year is greater than the number of confirmations allowed by Republicans for President Clinton in the 12 full months of 1995, 1996, 1997, 1999, or 2000 and far in excess of the Republican average of 37 a year.

Today, the Senate Judiciary Committee will hear from a district court nominee with the consent of both of the Senators from her home-state of New York. I would like to thank the senior Senator from New York, Senator Schumer, for serving as the Ranking Member at the hearing today. On behalf of the Democratic minority, I worked with Chairman Hatch to allow this hearing to be scheduled on less notice than required under Senate rules. This is one of a series of accommodations Democrats have made, usually without receiving acknowledgment or credit. In so doing, however, I apologize for any inconvenience to the nominee or other witnesses appearing here today for the short preparation time they were accorded in this expedited process.

This is a hearing on this nomination in light of the unfavorable recommendation of the American Bar Association Standing Committee on Federal Judiciary (ABA). This is an appropriate course of action, and will allow the Committee time to focus on the testimony of the nominee, Judge Dora Irizarry, the ABA representatives and the witnesses speaking in support of her qualifications.

Judge Irizarry is the 23rd judicial nominee of this President to receive a partial or majority rating of "Not Qualified" from the ABA Committee that conducts a peer evaluation of judicial nominees. When the ABA advises us that even a minority of the members of its review committee consider a nominee to be "Not Qualified," that is cause for concern. I know that the ABA representatives take their work very seriously. When they suggest that a nominee may not

have the temperament, experience or integrity to be entrusted with a lifetime position on the federal courts, that is a matter of concern.

The Democratic Members of this Committee look very closely at the peer review ratings provided by the ABA. Nevertheless, we consider the views of the ABA an important but not a dispositive piece of information as part of our evaluation. We may not always agree with the recommendation. In 2001, this Committee and the Senate proceeded to confirm another nominee with a "Not Qualified" rating from the ABA and during the course of this administration we have proceeded favorably on a number of nominees with partial "Not Qualified" ratings.

Alternatively, we may believe strongly that there are other factors that are critical considerations for these lifetime positions in the federal judiciary beyond a favorable ABA rating. For example, in the judgment of some Members of the Senate, some of this President's judicial nominees do not have records that demonstrate that they will be fair judges and instead their backgrounds suggest precisely the opposite: that they were chosen with the hope that they would prejudice areas of constitutional law in order to move the law in a certain direction in tune with the political views of the right wing of the Republican party.

There have been times, as mentioned by Senator Reid, earlier this year, when serious doubts have been raised about the fairness of the ABA's rating and the impartiality of the ABA representative charged with recommending a rating to his or her peers. The serious conflict of interest of Fred Fielding in his evaluation of the nomination of Miguel Estrada was very troubling to many Senators. While serving on the ABA Committee that evaluates judicial nominees, Mr. Fielding also served on the Bush-Cheney Transition Team, served as clearance counsel for President George W. Bush in some of his top executive branch appointments, accepted a lucrative appointment from President Bush to work on trade disputes, and co-founded the Committee for Justice, which has since been running attack ads against those who oppose any of President Bush's judicial nominees.

In comparing Mr. Fielding's evaluation of President Bush's judicial nominees with the ratings given President Clinton's judicial nominees with similar experience, it is notable that during Mr. Fielding's tenure on the Committee every single one of President Bush's judicial nominees for D.C. courts received a "Well Qualified" rating, while Clinton nominees did not. Similarly, Mr. Fielding's rating of Mr. Estrada was markedly higher than the ratings of other Bush nominees with similar litigation credentials, like Judge Jeffrey Sutton. Additionally, it is hard to imagine a lawyer giving Mr. Fielding a candid, negative review of any nominee of this President, given Mr. Fielding's trusted role advising this President and serving in the White House Counsel's office of other Republican presidents.

I understand that recently the new President of the ABA, the Honorable Dennis Archer, and the Chair of the ABA Standing Committee, Thomas Hayward, Jr., have taken steps to address these kinds of concerns. I thank them for taking these concerns seriously and to heart.

I do not have any concerns about the impartiality of the ABA member, Pat Hynes, who conducted the interviews in connection with the nomination of Judge Irizarry. Ms. Hynes, who is Of Counsel at Milberg Weiss, chaired the ABA Standing Committee during the beginning of the Bush administration and also served as the ABA's Second Circuit representative from 1995 to

2000. She clerked on the Eastern District of New York for Chief Judge Zavatt and also worked as a federal prosecutor for 15 years. She has served as the Chair of the Federal Courts Committee of the Association of the Bar of the City of New York, Vice President of the Federal Bar Council, as a member of the Planning and Program Committee for the Judicial Conference of the Second Circuit, and as a member of Mayor Giuliani's Advisory Committee on the Judiciary. She is currently Chair of the Merit Selection Panel for Magistrate Judges for the Southern District of New York and serves on the Second Circuit Court of Appeals Rules Committee. She was chosen as a Fellow of the American College of Trial Lawyers and has been named one of the Top 50 Women Litigators in the United States and one of the 50 Most Influential Women Lawyers in America. I welcome her testimony today.

I would also like to welcome the current Chairman of the ABA's Standing Committee, Tom Hayward. Mr. Hayward is a partner at Bell, Boyd & Lloyd in Chicago, and is a corporate and real estate lawyer. He is the past president of the Chicago Bar Association, where he was General Chairman of the Committee on the Evaluation of Judicial Candidates and a founding member of the Young Lawyers Section. He has served as a member of the ABA House of Delegates since 1984 and has served on the ABA Board of Governors since 1998. Among other public service, he is the director of the Chicago Area Foundation for Legal Services and the Chicago Bar Foundation and is the Vice Chairman of the Board of Trustees at Northwestern University. I look forward to his testimony.

The Senate Judiciary Committee's practice has been to invite the ABA's testimony in connection with a nomination when a circuit or district court nominee has earned a majority or unanimous rating of "Not Qualified." In providing such testimony, I know that the ABA takes pains to preserve the confidentiality of the attorneys and judges they interview as part of their review. I do wish the ABA would provide similar information, informally or formally, about other ratings they provide. Before President Bush ejected the ABA from the process of providing an informal rating before a nomination was made, the fact that temperament or ethics concerns were raised was conveyed, and sometimes past White Houses chose not to proceed after making further inquiry into such concerns. Additionally, when the ABA was involved in the process before nomination, I am confident that members of the legal community were more candid before a judicial candidate was given the imprimatur of the President.

I understand that in connection with the nomination of Judge Irizarry, the ABA heard a number of candid assessments from the lawyers and judges Ms. Hynes interviewed, some very positive and some troubling in the area of judicial temperament. Members of this Committee and of the Senate will, through our hearing, have the opportunity to form their own impressions and make their own determinations in this regard.

Judge Irizarry, who was born in Puerto Rico, is an attorney with the New York firm of Hoguet, Newman & Regal. A 1979 graduate of Columbia Law School, she was appointed to the Bronx County Criminal Court in 1996, and then served on the New York County Criminal Court, on the New York Supreme Court (which, despite its name, is a trial level court) in New York County and Kings County, and on the New York Court of Claims. She served as a judge until May 2002, when she resigned to run an unsuccessful campaign for State Attorney General against Eliot Spitzer. As I mentioned, based on concerns about temperament, a majority of the ABA

committee found her to be "Not Qualified" for a federal judgeship and a minority voted to find her "Qualified." The New York City Bar Association's Judiciary Committee also found Judge Irizarry to be unqualified for a position on the federal bench, citing a lack of federal experience and complaints about her judicial temperament. I look forward to hearing her testimony addressing the concerns that have been raised about her nomination.

The Justice Department has asked a number of Judge Irizarry's colleagues and supporters to testify on her behalf. I am very pleased to welcome Judge Lewis L. Douglass, who serves on the New York Supreme Court, and who is a chair of the Franklin H. Williams Commission on Minorities, Presiding Judge Michael L. Pesce, who serves on the Appellate Term of the New York Supreme Court for the Second and Eleventh Districts, and James F. Castro-Blanco, a partner with Shearman and Sterling in New York and the Immediate Past President of the Puerto Rican Bar Association.

I look forward to hearing the perspectives of Judge Irizarry's judicial colleagues, as well as from the Puerto Rican Bar Association. The Puerto Rican Bar supports Judge Irizarry's confirmation and also supported, among others, the confirmation of President Clinton's nomination of Judge Sonia Sotomayor to serve on the Court of Appeals for the Second Circuit. I appreciate the bipartisan approach that the Puerto Rican Bar Association has taken to the nomination process, just as I have appreciated learning the views of other leaders of the Puerto Rican legal community, such as the Puerto Rican Legal Defense and Education Fund, which took a courageous and important stand against the nomination of Miguel Estrada to the D.C. Circuit. I look forward to hearing your views on the nomination of Judge Irizarry.

We are honored to have such distinguished witnesses appearing before the Senate Judiciary Committee today.