

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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STATEMENT OF SENATOR PATRICK LEAHY
CHAIRMAN, SENATE JUDICIARY COMMITTEE
EXECUTIVE BUSINESS MEETING
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Our work helping to fill high-level vacancies at the Department of Justice remains a top priority of the Committee. I have placed on today's agenda the nominations of Kevin O'Connor to be Associate Attorney General, the number three position at the Department, and Gregory G. Katsas, to be Assistant Attorney General of the Civil Division. I, again, thank Senator Whitehouse for chairing the Committee's hearing on their nominations. With our consideration of these nominations, we continue our efforts to restore the Justice Department and fill several of its key offices, which were decimated by resignations in the wake of the U.S. Attorney firing scandal.

Despite the partisan posturing by the President, we have continued to move forward in this regard. Including the nominations on today's agenda, our Committee will have favorably reported 25 executive nominations this Congress. Among the high-level Justice Department nominations pending on the Senate calendar, one is for the number two position at the Department. I understand, however, that there is an anonymous Republican hold on the President's nomination of Michael Sullivan to head an important Justice Department bureau.

For months I have been talking publicly about the need to send the Senate nominees to fill U.S. Attorney vacancies across the country, since nearly a quarter of those positions are not Senate-confirmed appointments. The opportunity to consider those nominations is drawing to a close, we still wait for the President to send nominations for 17 U.S. Attorney vacancies.

I thank Senator Feinstein for chairing a hearing this week on a number of judicial nominations. It was especially difficult to schedule that hearing given the important matters that have been under consideration before the Senate so far this year. Indeed, the hearing had to be postponed until the afternoon after a series of Senate votes were scheduled on amendments to the Foreign Intelligence Surveillance Act legislation were scheduled for Tuesday morning. I very much appreciate Senator Feinstein's diligence in holding that hearing. It could have easily been cancelled given the demands of the Senate schedule, but we followed through.

I have also taken the somewhat extraordinary action of scheduling another Committee hearing on judicial nominations for next week, during the Congressional recess. I say somewhat extraordinary, rather than unprecedented, because I previously chaired a recess hearing for

another circuit court nominee of this President. Ironically, I was criticized at that time by a Republican Senator for proceeding expeditiously. It only goes to prove the truth of the saying that around here, when it comes to judicial nominations, no good deed goes unpunished.

We are building on the progress we made last year in reviewing judicial nominations. In 2007, the Committee reported 40 lifetime appointments to the Federal courts and the Senate confirmed all 40 of them. That is more than were confirmed by the Republican-led Senate in 1997, 1999, and 2000 when they were considering President Clinton's nominations, and more than the Republican-led Senate confirmed in any of the last three years with a Republican President, in either 2004, 2005 or 2006.

At the end of the Clinton administration, the Republican-led Senate returned to the President without action 17 of his appellate court nominees. I do not intend to duplicate that record any more than I intend to see the Senate pocket filibuster more than 60 of President Bush's judicial nominees, as Republicans did with President Clinton's. We have considered nominations - even those I do not support - openly and on the record.

Nineteen current judicial vacancies - almost half - have no nominee. In addition, several of the nominations we have received do not have the support of their home state Senators. Of the vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for eight of them, more than a third. Of the circuit court vacancies, four, nearly a third, are without a nominee and more than half of the current circuit court nominees do not have the support of both home-state Senators.

If this President had worked with the Senators from Michigan, Rhode Island, Maryland, California, New Jersey, and Virginia, we could be in position to make more progress. Instead, we have lost precious time to nominations like that of Duncan Getchell and Claude Allen of Virginia. Those nominations were both withdrawn by the President after months of wasted time and effort. I will insert in the record a column by Carl Tobias in yesterday's Politico paper on the Getchell nomination.

I trust that today we can make progress on our legislative agenda, as well. We have the bipartisan legislation on mentally ill offenders that Senator Sessions carried over at the last meeting, S. 2304. There is a substitute amendment that has been circulated. I hope that we can adopt it and report that measure.

Another bipartisan measure is Senator Kohl's Sunshine in Litigation Act, S.2449. This Committee held an informative hearing about this legislation last year.

We need to complete our consideration and take action on the Grassley-Schumer Sunshine in the Courtroom Act, S.352.

With the mortgage, foreclosure and credit crisis that has gripped the country, Senators Durbin and Specter have requested that we consider their respective legislative proposals. In deference to them, I have included those matters on our agenda, as well.

I also want to alert those Senators who did not attend yesterday's hearing on the state secrets privilege that the Kennedy-Specter-Leahy State Secrets Protection Act, S.2533, is likely to receive prompt attention. Our bill will help the courts balance the Government's interests in secrecy with accountability and the rights of citizens to seek judicial redress.

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