

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
March 6, 2008

STATEMENT OF SENATOR PATRICK LEAHY
CHAIRMAN, SENATE JUDICIARY COMMITTEE
OPENING STATEMENT
EXECUTIVE BUSINESS MEETING
MARCH 6, 2008

I trust that today we will make more progress than we did last month. To do that, we will need a quorum. We will need 10 Senators to consider the legislative proposals and presidential nominations on the agenda today.

Despite my efforts in February, when the Judiciary Committee held two hearings for seven judicial nominees, including a circuit nominee, Republican Members of the Judiciary Committee effectively boycotted our business meetings and obstructed our ability to report judicial nominations and high-ranking Justice Department nominations. I adjourned both our February 14 and February 28 meetings for lack of a quorum. At the first meeting I think only one or two Republican Senators remained present. At the latter, the Ranking Member chose to leave.

Despite the partisan posturing by the President and Senate Republicans, I have continued to move forward and sought to make progress but, I must admit, my patience is wearing thin. Two weeks ago, during the congressional recess, I chaired our third nominations hearing of the year. Included were three judicial nominations, including that of Catharina Haynes of Texas to be a Circuit Judge on the Fifth Circuit. I knew that this nomination was important to Senator Cornyn. So, in spite of her participation at the recent partisan political rally and photo op at the White House, I moved forward with that previously scheduled hearing.

We have the fourth nominations hearing of this year scheduled for next week. Senator Kennedy will chair a confirmation hearing for the President's nominee to head the Civil Rights Division at the Department of Justice.

Earlier this week, the Senate confirmed Mark Filip as the Deputy Attorney General. This administration knew from at least May 14, 2007, when Mr. McNulty announced that he was resigning, and should have known for weeks before, that there was to be a vacancy in the important position of Deputy Attorney General. Yet, even after the former Deputy announced his resignation and proceeded to resign months later, the administration failed to work with the Senate to fill this vital position.

The President did not nominate Judge Filip until last December. I announced that the Judiciary

Committee would hold a hearing less than two weeks later, before Congress adjourned for the year, immediately upon receiving the necessary background materials from the White House. The Committee moved as expeditiously as possible and we reported out Judge Filip's nomination at our first executive business meeting of the 2008 session.

Regrettably, this important nomination has been stalled for over a month due to the bad faith of the Bush-Cheney administration in failing to process Democratic recommendations to independent boards and commissions and Senate Republicans' rejection of up or down votes on nominations to the Federal Election Commission.

I commended the Majority Leader Monday for his efforts to resolve this impasse. I also thanked him for agreeing with me to allow the Filip nomination to proceed. It is a demonstration of good faith on his part.

Today we can make further progress on both top executive and lifetime judicial nominations.

We again have 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, on the agenda. I thank Senator Whitehouse for chairing their hearing. 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.

Last week I added to the agenda two judicial nominations from the hearing chaired by Senator Feinstein last month, and I thank her for her outstanding work at that difficult hearing. Follow up questions are being asked in connection with the other nominations, which are requiring additional scrutiny. This week, even though Republicans did not help make a quorum at either of our February meetings, I went the extra mile and added two more judicial nominations to the agenda from the hearing I chaired during the Presidents Day recess.

Thus, on today's agenda are four more of the President's nominations to lifetime judicial appointments.

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, again, encourage the White House to work with Senators Warner and Webb of Virginia to send us consensus nominees for the two Virginia vacancies on the Fourth Circuit.

I hope that today we can make progress on our legislative agenda, as well. For weeks, we have been ready to consider bipartisan legislation on mentally ill offenders that was initially carried over from our meeting in January by Senator Sessions. There is a substitute amendment that has been circulated. I hope that we can finally adopt it and report that measure.

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.

Another bipartisan measure is Senator Kohl's Sunshine in Litigation Act, S.2449, which we have considered and reported favorably in prior years.

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

At the request of Senator Grassley I have included The False Claims Act Correction Act, S.2041, on the agenda.

I have also included the bipartisan Kennedy-Specter-Leahy State Secrets Protection Act, S.2533 on the agenda.

We have a good deal of work we can accomplish if we have cooperation. That starts with a quorum. If we do not have a quorum by 10:15, I have told Senator Specter I will follow his rule and adjourn. I will then consider meeting again when Republican Senators agree to be present and cooperate in doing our work.

#

Statement Of Senator Patrick Leahy,
Chairman, Senate Committee On The Judiciary,
On The Mentally Ill Offender Treatment And Crime Reduction Act
Executive Business Meeting
March 6, 2008

Today the Committee will turn to legislation to reauthorize the "Mentally Ill Offender Treatment and Crime Reduction Act." I was a sponsor of the original authorization of this Act in 2004, and I am proud that these programs have helped state and local governments to reduce crime by providing more effective treatment for the mentally ill. I am pleased to be a cosponsor of the reauthorization of this important legislation in this Congress, and I thank Senators Kennedy, Domenici, and Specter for their leadership on this issue. I also thank each of them for working with me and with the Department of Justice to prepare a consensus substitute amendment which resolves a few concerns and makes a few improvements to this important bill.

All too often, people with mental illness find themselves in a revolving door between the criminal justice system and the streets of our communities, committing a series of minor offenses. These offenders end up in prisons or jails, where little or no appropriate medical care is available for them. This bill gives state and local governments the tools to break this cycle, for the good of law enforcement, corrections officers, the public's safety, and the mentally ill offenders themselves. More than 16 percent of adults incarcerated in U.S. jails and prisons have a mental illness, and about 20 percent of youth in the juvenile justice system have serious mental health problems. Almost half the inmates in prison with a mental illness were incarcerated for

committing a nonviolent crime. This is a serious problem that I hear about often when I talk with law enforcement officials and others in Vermont.

Under this bill, state and local governments can apply for funding to create or expand mental health courts or other court-based programs, which can divert qualified offenders from prison to receive treatment; create or expand programs to provide specialized training for criminal justice and mental health system personnel; create or expand local treatment programs that serve individuals with mental illness or co-occurring mental illness and substance abuse disorders; and promote and provide mental health treatment for those incarcerated in or released from jails and prisons.

The grants created under this program have been in high demand, but only about 11 percent of the applications submitted have been able to receive funding due to the scarce federal funds available. This bill would aim to increase funding for these programs, authorizing \$75 million to help communities address the needs of the mentally ill in our justice system. The bill also provides \$10 million for law enforcement training grant programs to help law enforcement recognize and respond to incidents involving mentally ill persons.

This legislation brings together law enforcement, corrections, and mental health professionals to help respond to the needs of our communities. They are familiar with the unique problems states face with mentally ill offenders, and they understand the importance of federal support. I hope the Committee will report this bill without delay and the Senate will act quickly to pass it.

#####

STATEMENT OF SENATOR PATRICK LEAHY
CHAIRMAN, SENATE JUDICIARY COMMITTEE
ON JUDICIAL AND EXECUTIVE NOMINATIONS
EXECUTIVE BUSINESS MEETING
MARCH 6, 2008

We continue today to make progress in filling high level vacancies at the Department of Justice and in considering the President's nominations for lifetime positions on the Federal bench.

Despite my efforts in February, when the Judiciary Committee held two hearings for seven judicial nominees, including a circuit nominee, Republican Members of the Judiciary Committee effectively boycotted our business meetings and obstructed our ability to report judicial nominations and high-ranking Justice Department nominations. I adjourned both our February 14 and February 28 meetings for lack of a quorum. At the first meeting I think only one or two Republican Senators remained present. At the latter, the Ranking Member chose to leave.

Despite the partisan posturing by the President and Senate Republicans, I have continued to move forward and sought to make progress but, I must admit, my patience is wearing thin. Two weeks ago, during the congressional recess, I chaired our third nominations hearing of the year. At that time, the Committee considered three judicial nominations, including that of Catharina Haynes of Texas to be a Circuit Judge on the Fifth Circuit. I knew that this nomination was

important to Senator Cornyn. So, in spite of her participation at the recent partisan political rally and photo op at the White House, I moved forward with that previously scheduled hearing.

We have the fourth nominations hearing of this year scheduled for next week. Senator Kennedy will chair a confirmation hearing for the President's nominee to head the Civil Rights Division at the Department of Justice.

Earlier this week, the Senate confirmed Mark Filip as the Deputy Attorney General. This administration knew from at least May 14, 2007, when Mr. McNulty announced that he was resigning, and should have known for weeks before, that there was to be a vacancy in the important position of Deputy Attorney General. Yet, even after the former Deputy announced his resignation and proceeded to resign months later, the administration failed to work with the Senate to fill this vital position.

Regrettably, this important nomination had been stalled for over a month due to the bad faith of the Bush-Cheney administration in failing to process Democratic recommendations to independent boards and commissions and Senate Republicans' rejection of up or down votes on nominations to the Federal Election Commission.

I commended the Majority Leader Monday for his efforts to resolve this impasse. I also thanked him for agreeing with me to allow the Filip nomination to proceed. It is a demonstration of good faith on his part.

Today we can make further progress on both top executive and lifetime judicial nominations.

We again have 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, on the agenda. I thank Senator Whitehouse for chairing their hearing. 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.

Last week I added to the agenda two judicial nominations from the hearing chaired by Senator Feinstein last month, and I thank her for her outstanding work at that difficult hearing. Follow up questions are being asked in connection with the other nominations, which are requiring additional scrutiny. This week, even though Republicans did not help make a quorum at either of our February meetings, I went the extra mile and added two more judicial nominations to the agenda from the hearing I chaired during the Presidents Day recess.

Thus, on today's agenda are four more of the President's nominations to lifetime judicial appointments.

With these four judicial nominations on today's agenda, we continue building on the progress we made last year in reviewing judicial nominations. In 2007, the Committee reported out 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.

Republicans returned 17 circuit nominations to President Clinton without action at the end of his presidency. The treatment of President Clinton's nominees contrasted markedly with that accorded by Democrats to the nominations of Presidents Reagan and Bush in the presidential election years of 1988 and 1992, when nine circuit court nominees were confirmed on average. Regrettably, the Republican Senate reversed that course in its treatment of President Clinton's circuit court nominations, confirming none during the 1996 session and an average of only four in presidential election years.

The Republican Senate chose to stall consideration of circuit nominees and maintain vacancies during the Clinton administration. In those years, Senator Hatch justified the slow progress by pointing to the judicial vacancy rate. When the vacancy rate stood at 7.2 percent, Senator Hatch declared that "there is and has been no judicial vacancy crisis" and that this was a "rather low percentage of vacancies that shows the judiciary is not suffering from an overwhelming number of vacancies." Because of Republican inaction, the vacancy rate continued to rise, reaching nearly 10 percent at the end of President Clinton's term, including 26 circuit vacancies.

By contrast, we have helped cut circuit court vacancies across the country in half, reducing the number to 13 in 2007. In fact, circuit court vacancies reached a high water mark of 32 early in President Bush's first term, with a number of retirements by Republican-appointed judges. Indeed, the current judicial vacancy rate is around five percent. That is half of what it was at the end of President Clinton's term, and significantly lower than when Senator Hatch described the vacancy rate as acceptably low. If we applied Senator Hatch's standard, we would have no more hearings or consideration of any of the remaining nominations.

Because of the success of the Republicans at stacking the courts and their success in preventing votes on nominees, the current situation on the circuit courts is that more than 60 percent of active judges were appointed by Republican presidents and more than 35 percent were appointed by this President. If we did not act on another nominee, Republican presidents' influence over the circuit courts is already out of balance.

In the less than three years that I have chaired this Committee during President Bush's administration, the Senate has confirmed 23 circuit court nominations and 140 total Federal judicial nominees. During the four full years Republicans were in charge during the Bush administration the total number of nominees confirmed was just 158.

The Administrative Office of the U.S. Courts currently lists 49 judicial vacancies. Twenty of them - almost half - have no nominee. In addition, several of the nominees do not have the

support of their home-state Senators. Of the 19 vacancies deemed by the Administrative Office to be judicial emergencies, the President has yet to send us nominees for seven of them, more than a third.

We also continue to make significant progress executive nominations. Including the nominations on today's agenda, our Committee will have favorably reported 26 executive nominations already in this Congress. We also discharged four additional nominations, all of which were confirmed. By the time we adjourned the first session of this Congress, the Senate had already confirmed 22 executive nominations, including the confirmations of nine U.S. Attorneys, four U.S. Marshals, and nominees to nine other important positions. With two more high-level Justice Department nominations pending on the Senate calendar, we are poised to make even more progress.

I continue to try to work with this White House and to make progress, but I continue to be disappointed that my offers to work with the President and home-state senators to identify well-qualified consensus nominations seem to be for naught. I would rather see us work together in the selection of nominees so that we can confirm judges rather than fight about them.

#