

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
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Today we welcome to the Committee Judge Robert Chatigny of Connecticut, a well-respected district court judge for 16 years who has been nominated by President Obama for elevation to fill one of the three current vacancies on the Second Circuit, all of which are judicial emergencies. Judge Chatigny was originally scheduled to appear before this Committee on March 10, but I accommodated a request from the Ranking Member, Senator Sessions, to postpone his hearing.

I was disappointed that in the wake of that accommodation Republican Committee sources unfairly smeared Judge Robert Chatigny in the press. Like the attacks on Professor Goodwin Liu from the moment he was nominated, the attacks against Judge Chatigny came at a time when he was not able to answer them. Today we will get to hear from Judge Chatigny. I hope that all Senators treat Judge Chatigny fairly today and consider his nomination expeditiously.

The other nominee before us today, John A. Gibney, is nominated for a seat on the Eastern District of Virginia. Mr. Gibney is a distinguished lawyer in private practice in Richmond who has also served as Town Attorney for the Town of Ashland, Virginia. He earned degrees from the College of William & Mary and the University of Virginia.

I had tried to include additional nominees on the hearing today, but the Republicans were not prepared to proceed. I look forward to working together with them to schedule confirmation hearings for a full panel of nominees in two weeks. I thank Senator Klobuchar, a former prosecutor and a valued member of this Committee, for chairing the hearing today. I know there is a district court nominee from Minnesota pending before the Committee she would like to see included in our next hearing.

Judge Chatigny and Mr. Gibney each come to the Committee with impressive experience and the strong support of their home state Senators. Judge Chatigny is a long-serving district court judge whose nomination was unanimously rated "well qualified" by the American Bar Association's Standing Committee on the Federal Judiciary, the highest possible rating. Mr. Gibney has been rated unanimously "qualified" for the position to which he was nominated.

Judge Chatigny's nomination has also been endorsed by former high-ranking Federal law enforcement officials from Republican administrations. The efforts by one disgruntled former litigant in Connecticut to derail Judge Chatigny's nomination by sending the Committee

incomplete information should not be taken at face value. In fact, Judge Chatigny's challenged conduct was reviewed by the Second Circuit, which ruled in Judge Chatigny's favor. That is one of the aspects of this matter that the complainant failed to acknowledge.

I know Senators today may ask Judge Chatigny about this matter, so we should be clear on the facts. They show that Judge Chatigny acted appropriately in ensuring that the justice system considered all relevant evidence before taking irreversible action to carry out a death penalty.

Michael O'Hare sent the Committee a letter on March 5 containing materials essentially identical to those included in a 2006 ethics complaint filed against Judge Chatigny. The complaint challenged Judge Chatigny's role in ensuring that Michael Ross was competent to waive appeals to his death sentence before he was ultimately executed in 2005. The materials submitted by Mr. O'Hare were one-sided and incomplete, excluding any mention of Judge Chatigny's exoneration by the Second Circuit Judicial Council which reviewed and dismissed the complaint. In his submission to this Committee, Mr. O'Hare also failed to acknowledge the extensive, publicly available Report of the Special Committee convened by the Judicial Council to investigate the allegations, which was comprised of a panel including then-District Court Judge Michael Mukasey, Chief Judge John M. Walker, a President George H.W. Bush appointee, and Judge Pierre N. Leval. That panel reviewed the claims in detail, found no misconduct by Judge Chatigny, and recommended dismissal of the complaint.

The charges in the dismissed ethics complaint against Judge Chatigny focused on a January 2005 teleconference with counsel, which was convened by Judge Chatigny hours before Ross was to be executed, to discuss new evidence raising questions about Ross's competence to waive his appeals. Judge Mukasey and the Special Committee concluded that Judge Chatigny's actions "were not motivated by any bias in favor of Ross or against the death penalty, but only by the judge's reasonable perception that the discharge of his own judicial duty . . . required that he take forceful steps on Ross's behalf." I agree.

Contrary to charges by some that Judge Chatigny exceeded his role by "threatening" or "berating" Mr. Paulding, the Special Committee found: "While the judge used strong language, there was no misconduct. Under the proper circumstances, a judge may deliver a warning that threatens a misbehaving attorney with disciplinary action--a contempt citation by the judge or referral to another disciplinary authority--without necessarily interfering with any legitimate right of the attorney or the attorney's client." In fact, the Committee concluded it was not only reasonable but necessary for Judge Chatigny to act as he did in light of his view of the evidence and the pending execution. They wrote, "[b]ut in the judge's reasonable view, the circumstances thrust on him called for unusual action in discharge of judicial duty to ensure the fair resolution of the important proceeding before him."

Judge Chatigny's actions did not prevent the execution, but they did serve to bolster the public's confidence that the criminal justice system was thorough and fair before imposing the ultimate penalty. The defendant's lawyer, the target of Judge Chatigny's alleged coercion, testified to the Special Committee that he did not feel pressured, but sought a postponement of the execution primarily based on his own view of the materiality of the evidence and his duties as a lawyer to the court and to his client. As a result, after six additional days of adversary evidentiary hearings,

the state court concluded that Ross's decision not to seek further appeals was "both competent and voluntary."

Three former U.S. Attorneys for the District of Connecticut, Kevin J. O'Connor, appointed by President George W. Bush in 2002, Alan Nevas, appointed by President Reagan in 1981, and Stanley A. Twardy Jr., appointed by President Reagan in 1985, wrote to the Committee that they "support, without any reservation, the nomination of Judge Robert Chatigny to the U.S. Court of Appeals for the Second Circuit." In their April 16 letter, they also write that they "have found him to be even tempered, thorough and without agenda" as well as "a fair minded and impartial judge" whose "record in sentencing federal criminal defendants shows that he is appropriately sensitive to the facts of the person before him and the rights of the victims of the crimes that have been committed."

In addition, 17 former Federal prosecutors who worked with or appeared before Judge Chatigny have also written to the Committee about their "conviction in his integrity and fitness to serve on the Court of Appeals." In their April 27 letter, they describe Judge Chatigny as "unfailingly respectful of others and their views . . . [with] no axe to grind" and asserted that, "in criminal as well as civil matters Judge Chatigny has proven himself over the course of 15 years on the bench to be unbiased, compassionate and temperate."

I welcome the nominees and their families to the Committee today, and I look forward to prompt, and I trust favorable, consideration of their nominations.

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