

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
June 10, 2010

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
On Nominations  
Executive Business Meeting  
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Today, as we return from recess, the Committee can make significant progress on a number of fronts. We can consider and report six judicial nominees as well as seven nominees to be U.S. Marshals and U.S. Attorneys. The Senate is well behind the pace I set for President Bush's judicial nominees in 2001 and 2002. By this date in President Bush's presidency, the Senate had confirmed 57 of his judicial nominees. Despite the fact that President Obama began sending us judicial nominations two months earlier than President Bush, the Senate has only confirmed 28 of his Federal circuit and district court nominees to date. While an additional 23 judicial nominations already reported by this Committee are stalled before the Senate, judicial vacancies hover around 100. We should report these six nominees and the Senate should debate and vote on all 29 without further obstruction or delay.

In addition we have before us a bill that has been on our agenda for weeks to extend temporary judgeships needed in some of the busiest and most overburdened Federal courts around the country. The Federal District Court for the Eastern District of California, including Sacramento, has caseloads of more than 1,000 per judge, which is triple what it should be. Senator Feinstein and Senator Boxer have worked tirelessly to correct this problem.

We start with the nomination of Judge Robert Chatigny of Connecticut to the Second Circuit. The Second Circuit is almost one quarter vacant, including three judicial emergency vacancies. Judge Chatigny has been a well-respected district court judge since his Senate confirmation and appointment 16 years ago. He has the strong support of Federal law enforcement officials, both Republican and Democratic, who worked with him in Connecticut, as well as the support of his home state Senators, who introduced him to the Committee. He was rated unanimously well qualified for the position by the American Bar Association, the Association's highest rating.

I will include in the record a letter of support we received from three former U.S. Attorneys for the District of Connecticut appointed by Presidents Reagan and Bush: 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. They write that they "support, without any reservation, the nomination of Judge Robert Chatigny to the U.S. Court of Appeals for the Second Circuit." They inform us 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."

We also received a letter from 17 former Federal prosecutors who have worked with or appeared before Judge Chatigny who wrote to us about their "conviction in [Judge Chatigny's] integrity and fitness to serve on the Court of Appeals." They described 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."

Finally, I think Republican members of the Committee know of the support from former Attorney General and former Judge Michael Mukasey.

I accommodated a Republican request to schedule his hearing before that of Professor Liu, but then received a second request from Senator Sessions to postpone the scheduled March hearing for Judge Chatigny. I accommodated him, again. I also had my staff work with the administration to gather additional materials requested by Senator Sessions. In the wake of this series of accommodations, I was disappointed in the subsequent, unfair attacks in the press prior to the postponed hearing. I thank Senator Klobuchar for the excellent manner in which she chaired the confirmation hearing. When Judge Chatigny was finally given the opportunity to testify, he was responsive to all Senators' questions, giving forthright answers and providing clarity on an issue that had been unfairly muddled prior to his hearing. In fact, what the incomplete submission by a disgruntled former litigant in Connecticut left out was that the Second Circuit Judicial Council reviewed allegations of purported misconduct and exonerated Judge Chatigny. The Report of the Special Committee convened by the Judicial Council to investigate the allegations is publicly available. The panel that reviewed the matter included then-District Court Judge Michael Mukasey, Chief Judge John M. Walker, a President George H.W. Bush appointee, and Judge Pierre N. Leval. The panel reviewed the claims in detail and found no misconduct by Judge Chatigny.

There should be no need to belabor the facts of Judge Chatigny's role in the Ross case. The judge acted to ensure that the justice system considered all relevant evidence before taking irreversible action to carry out a death penalty. He was ensuring that Ross was competent to waive appeals to his death sentence before he was executed. Once due process was satisfied, Ross was executed.

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. The Second Circuit panel 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."

The panel also 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. The panel concluded: "But 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." The lawyer, who was sternly warned by Judge Chatigny, testified before the Second Circuit panel 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.

Judge Chatigny's actions did not prevent the execution. What they did was ensure due process and they should serve to bolster public confidence that the criminal justice system was thorough and fair before imposing the ultimate penalty.

Having reviewed the matter and Judge Chatigny's testimony before this Committee, I see no basis to oppose this nomination. Judge Chatigny answered more than 115 questions in over two hours of testimony before this Committee. He responded to more than 200 questions for the record. Judge Chatigny's record is outstanding. Any Senator who disagrees can vote against his confirmation, but let us consider this nomination fairly and without further delay. I believe that Judge Robert Chatigny should be confirmed to serve on the Second Circuit.

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