

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Executive Business Meeting
April 23, 2015**

Today, we have three nominees on the agenda that are ripe for a vote, and one piece of legislation, S. 993, the Comprehensive Justice and Mental Health Act of 2015, that is on the agenda for the first time. We have a request to hold the bill over for one week, so it will be held over.

Today we will consider the following nominees:

- Sally Yates to be Deputy Attorney General,
- Kara Stoll to be Circuit Judge for the Federal Circuit, and
- Roseann Ketchmark to be District Judge for the Western District of Missouri.

We will have a roll call vote on Ms. Yates' nomination, but I believe we can do the other two nominees by voice vote.

Before we vote on the Yates nomination, I'd like to offer a few comments. After some careful deliberation, I'll be supporting Ms. Yates' nomination today.

Let me start by saying that yesterday one of my colleagues said that testimony from the two nominees, Ms. Lynch and Ms. Yates, were "basically the same before the Senate Judiciary Committee."

In my view, that's simply not the case. And I'll discuss a few of the key differences between the two nominees today.

First of all, at her hearing, Ms. Yates was willing to engage and answer questions in a way that Ms. Lynch simply refused to do. She was also more responsive in her answers to written questions.

For example, during her hearing, Senator Lee asked Ms. Yates who the Department's client is. Ms. Yates responded very clearly, "It's the people of the United States. It's not the President, it's not the Congress, it's the people of the United States."

Senator Lee then followed-up, "And so that requires a degree of independence, in a sense, doesn't it?" Ms. Yates responded, "It absolutely does."

This may seem to some like a small point. But it's important to me, and a lot of other Members on our side, that the senior leadership of the Department understands and is committed to that notion.

Senator Lee also asked both Ms. Lynch and Ms. Yates about the limits of prosecutorial discretion. He asked each of them about a hypothetical situation where the President decides to

unilaterally not enforce certain laws, like tax rates or speed limits, and how they would respond to that suggestion by the President.

Ms. Lynch refused to answer the question, or even have a discussion about it, saying that she would need to know all the facts behind the hypothetical and that it would be impossible for her to give an answer in the hearing.

Ms. Yates, on the other hand, said that she'd want to know more of the facts of the situation, as any careful lawyer would. However, she also "Certainly" agreed with Senator Lee that her "knee-jerk reaction... would include a healthy amount of skepticism" that such a proposal by the President would fall within prosecutorial discretion. And that, in her words, it "didn't sound like... a good idea."

Throughout her testimony, Ms. Lynch wouldn't even engage in this discussion.

Ms. Yates was also more responsive in her written questions. Let me give you an example.

As I mentioned last week, I was disappointed with Ms. Yates' responses to my questions regarding the Office of Legal Counsel's correspondence on the President's release of the Taliban 5.

In my first set of written questions, I asked Ms. Yates for specifics on the Office of Legal Counsel's advice to the President regarding the exchange of five senior Taliban officials for Sgt. Bowe Bergdahl. I've been trying for over a year to get the Department to stop hiding this information from the American people.

In her initial responses, Ms. Yates wouldn't even confirm simple facts about the correspondence, like whether it was provided via email and the dates of that correspondence.

I found that particularly troubling because those facts couldn't possibly be privileged.

So, I followed up with Ms. Yates. In her second set of responses, Ms. Yates finally confirmed that this correspondence with the Office of Legal Counsel occurred via email, and she disclosed the approximate dates.

I'd like to note that she responded that the advice was provided "by email, in May and June of 2014." Sgt. Bergdahl was released on May 31, 2014.

So, it appears at least some of the correspondence regarding whether the President had the authority to release the Taliban 5 occurred after the President in fact elected to release those terrorists. I'll continue to press for the public release of this information because the American people have the right to know under what authority the President freed five known terrorists without notifying Congress as required by law.

So, I'm obviously not yet satisfied regarding this matter, but I'd like to acknowledge the small step Ms. Yates was willing to take in giving me more information on this matter. I appreciate the

information. It gives me a glimmer of hope that Ms. Yates will be more willing to work with us on oversight matters than her predecessor was.

And with respect to oversight, let me briefly mention two other matters.

First, I'd note that I sent Ms. Yates a letter this week concerning whistleblower complaints about hiring and spending at United States Marshal Service. I appreciate that the Department acknowledged that they initially sent us inaccurate information on this matter, and I look forward to reviewing the follow-up information we've requested.

Second, Senator Lee and I are sending a follow-up letter to the Department regarding allegations of misconduct in the Moonlight Fire litigation. We've asked for a briefing on this matter, and I don't believe that is too much to ask, particularly now that the judge in the case has denied the Motion to Vacate that was pending when the Department responded to our initial letter.

I'll vote for Ms. Yates' nomination today, but I'd expect her to respond to these requests before the Senate votes on her confirmation.

Finally, let me add that I'm also taking into consideration the position to which Ms. Yates has been nominated. The fact of the matter is, Ms. Yates is nominated to be Deputy Attorney General. She'll be the number 2 at the Department. In this position, obviously, she'll have less policy making authority than the Attorney General. That factor, as well her a willingness to demonstrate some independence when the situation calls for it, and her willingness to take at least small steps to respond to some of my questions, leads me to support her nomination today.