

Statement of
The Honorable Benjamin L. Cardin

United States Senator
Maryland
April 29, 2009

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

CONFIRMATION HEARING FOR

ANDRE M. DAVIS, U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

THOMAS E. PEREZ, ASSISTANT ATTORNEY GENERAL,
CIVIL RIGHTS DIVISION

DAVID F. HAMILTON, U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

SENATE JUDICIARY COMMITTEE

April 29, 2009

The Committee will come to order. Let me thank Chairman Leahy for asking me to chair today's hearing.

Today we consider two judicial nominations: Judge Andre Davis of Maryland to be a U.S. Circuit Judge for the Fourth Circuit, and Judge David Hamilton of Indiana to be a U.S. Circuit Judge for the Seventh Circuit.

We also consider today an important nomination for a leadership position in the Department of Justice. This is the nomination of Thomas E. Perez of Maryland to be the Assistant Attorney General for the Civil Rights Division.

I agree with Chairman Leahy that this Committee should move quickly to continue restoring the morale and integrity of the Department. I am pleased that this Committee and the Senate have already confirmed the top 4 positions at the Department of Justice, along with 4 of 11 the Assistant Attorneys General. We have more work to do as the first 100 days of the Obama Administration draws to a close.

Our first nominee today is Judge Andre Davis of Maryland. I was pleased to join with Senator Mikulski in recommending Judge Davis to President Obama for nomination to the vacant Maryland seat on the U.S. Court of Appeals for the Fourth Circuit. I look forward to Senator Mikulski's introduction of Judge Davis later in this hearing, as well as the introduction by former

Senator Paul Sarbanes, and to having Judge Davis introduce his family and friends that are attending today's hearing.

I cannot think of a better choice for this seat. Judge Davis has an extremely long and distinguished career in the Maryland legal community, and has deep roots in Maryland. Born and raised in Baltimore - and still a resident of Baltimore - Judge Davis has an exception record of legal experience in our state, include working as an Assistant U.S. Attorney, a state District Court Judge, a state Circuit Court judge, and ultimately a U.S. District Judge. He received his bachelor's degree from the University of Pennsylvania. He graduated cum laude with his J.D. from the University of Maryland School of Law, where he still teaches classes as an adjunct faculty member.

Judge Davis currently serves as a district judge for the US District Court for the District of Maryland, and has served in that position since being unanimously confirmed by the Senate in 1995.

Judge Davis has a clear appreciation for the Constitution, and he faithfully applies the law as he finds it, based on rulings of the Supreme Court and the Fourth Circuit.

Judge Davis has a longstanding record and a demonstrated commitment to protect civil rights and liberties. As a federal judge, Judge Davis has issued a number of landmark decisions on civil rights issues. Most notably, in 1998 in *Reid v. Glendening* Judge Davis ruled that the Baltimore City courthouses were not wheelchair-accessible, in violation of the Americans with Disabilities Act. He then ordered the city and state to create a plan to make the buildings accessible.

Finally, Judge Davis has been praised by lawyers in Maryland as a smart, evenhanded, fair, and open-minded judge. He has served as a judge for 22 years. He served as a state District Court judge for three years, a state Circuit Court judge for five years, and has now served as a federal district court judge in Maryland for 14 years.

As a federal judge over the past 14 years, he has presided over the closing of approximately 5,300 cases. Of that number, Judge Davis has presided over approximately 4,300 cases that went to verdict or judgment based on a trial or decision he made. He has handled the full mix of criminal and civil cases, including both bench and jury trials. Judge Davis received a "well qualified" rating from the American Bar Association's Standing Committee on the Federal Judiciary.

If confirmed, Judge Davis would be the third African-American judge to serve on the Fourth Circuit, which includes Maryland, West Virginia, Virginia, North Carolina, and South Carolina. This circuit has one of the largest populations of African-American residents of any federal circuit outside of the District of Columbia. Federal circuit courts of appeal are the final word on many areas of the law, since the U.S. Supreme Court reviews only a handful of cases each year. The decisions of these courts have an enormous impact on the lives and rights of millions of Americans.

I am confident that, if confirmed, Judge Davis will be an excellent United States Circuit Judge for the 4th Circuit, and will make Marylanders proud of his service. It is indeed fitting that Judge

Davis would replace Judge Francis Murnaghan, who died in August of 2000. Judge Murnaghan was also a lifelong Maryland resident who had served on the federal bench for 20 years, after a long career as one of the most respected lawyers in Maryland. Judge Davis served as a law clerk for Judge Murnaghan on the Fourth Circuit from 1979 to 1980.

Our second nominee today is Thomas Edward Perez, the Secretary of the Maryland Department of Labor, Licensing and Regulation. President Obama has nominated Secretary Perez to serve as the Assistant Attorney General for the Civil Rights Division.

Elie Wiesel once said "indifference, after all, is more dangerous than anger and hatred." We as a nation must not tolerate discrimination, fraud, or corruption in our society. The Civil Rights Division is our nation's moral conscience and is charged with protecting all Americans against discrimination throughout our society. Whether it is discrimination in employment, education, housing, voting, personal liberties or hate crimes, the Civil Rights Division must take action and not stand on the sidelines against those that violate our laws.

I understand, and I think we all understand, that there are many problems in the country today. Our nation is in the midst of an economic downfall, we are at war, unemployment is on the rise, and our environment is suffering. But we must remember that despite all these problems, we must not and cannot forget about civil rights protections in our country. Dr. Martin Luther King, Jr. said we must be true to what we put down on paper, which means we must enforce the laws that protect our citizens from discrimination. The past eight years has not lived up to staying true to what we put on paper. Over the past eight years we have seen a serious and disheartening decline in the number of cases brought by the Civil Rights Division.

The Voting Section had not filed any cases on behalf of African American voters during a five year period, nor did it file any cases on behalf of Native-American voters throughout the entire Bush Administration. In past years, we saw the Division use its enforcement authority to deny access and instead promote barriers to block legitimate voters from participating in the political process. Only 46 Title VII complaints were filed by the Civil Rights Division in 7 years. This is sharp contrast to the Division under the Clinton Administration which initiated 11 Title VII cases per year. Hate groups have increased by 50% since 2000. The Civil Rights Division has a lot of work to do and I believe that Secretary Perez is the best person to lead the division back to prosecuting those offenders that break our laws.

I have also consistently expressed my grave concern with the mismanagement of the Civil Rights Division under the Bush Administration. Throughout the last Congress, my concerns were unfortunately confirmed. The previous Administration had an Attorney General who lacked independent judgment in criminal investigations, personnel decisions and the protection of constitutional liberties. The Department became politicized, so much so that their own Office of Professional Responsibility and the Office of the Inspector General began independent investigations of political appointees at the Department. The joint report was publicly released on January 13, 2009, and it painted a devastating portrait of the Civil Rights Division during the tenure of Bradley Schlozman, first as a Deputy Assistant Attorney General, and then as Principal Deputy Assistant Attorney General and Acting Assistant Attorney General of the Division.

The report found that Schlozman "considered political and ideological affiliations in hiring career attorneys and in other personnel actions affecting career attorneys in the Civil Rights division. In doing so, he violated federal law - the Civil Service Reform Act - and Department policy that prohibit discrimination in federal employment based on political and ideological affiliations, and committed misconduct...Moreover, Schlozman made false statements about whether he considered political and ideological affiliations when he gave sworn testimony to the Senate Judiciary Committee and in his written responses to supplemental questions from the Committee."

Other internal Justice Department reports detailed the improper selection, hiring, and politicization of the Honors Program and Summer Law Intern Program. The Committee's investigation into the dismissal of U.S. Attorneys for failing to bring spurious voter fraud cases also contributed to the resignation of former Attorney General Gonzales.

I therefore look forward to discussing with Mr. Perez how he intends to rebuild morale at the Division, and make absolutely clear that politics or political affiliation will play no role in hiring, case management, or personnel decisions.

Secretary Perez comes before the Committee with an impressive range of experience in civil rights issues as well as management experience, and is uniquely qualified to help get the Civil Rights Division back on the right track. He has had a long and distinguished career in public service. After law school, Mr. Perez clerked for a year and then went on to join the Department of Justice, where he served for 10 years. He began at the Civil Rights Division as a trial attorney in the Criminal Section. Through the years, he moved up the ladder within the division, first as a trial attorney in the Criminal Section, then as deputy chief of the Criminal Section, and finally as Deputy Assistant Attorney General for the Civil Rights Division. He was also detailed to Senator Edward Kennedy's office as his principal advisor on civil rights, criminal justice, juvenile justice and constitutional issues. During his time at the Department of Justice, within the Civil Rights Division, he took on white supremacists, police brutality, corruption, and many additional civil rights violations. He also received the second highest award, the Attorney General's Distinguished Service Award, at the Department of Justice for his work.

After leaving the Department of Justice, he went on to the US Department of Health and Human Services where he became the director of the Office for Civil Rights. While at Health and Human Services, he was involved in developing landmark medical records privacy regulations which for the first time established a federal right to medical records privacy. After leaving HHS, he began consulting on health care and civil rights issues. He also served on the Montgomery County Council in Maryland. He became the first Latino ever to serve on the council as well as the first Latino president of the Council. Mr. Perez has shown leadership in all aspects of his work.

Secretary Perez is currently serving in Maryland Governor Martin O'Malley cabinet as the Secretary of the Department of Labor, Licensing and Regulation. As a Maryland resident myself, I can state that Secretary Perez has done an exceptional job protecting and empowering Maryland workers.

Secretary Perez is a graduate of Brown University, the John F. Kennedy School of Government and Harvard Law School, where he graduated cum laude.

Our third and final nominee we consider today is David Hamilton of Indiana to be a U.S. Circuit Judge for the Seventh Circuit. This is actually Judge Hamilton's second appearance before the Committee. Judge Hamilton has served as a federal district court judge for 14 years. He has received bipartisan support from both Senator Bayh and Senator Lugar. The American Bar Association's Standing Committee on the Federal Judiciary gave him a "well qualified" rating.

So let me thank these three nominees for agreeing to serve their country during this critical time, and I look forward to today's confirmation hearing.