

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
April 13, 2011

Statement Of Senator Patrick Leahy (D-Vt.)
Chairman, Senate Judiciary Committee
Hearing On Judicial And Executive Nominations
April 13, 2011

I thank Senator Franken for chairing this hearing and welcome all five of the nominees and their families to the Committee today.

Today, we welcome President Obama's nominee to be the Assistant Attorney General in charge of the National Security Division at the Justice Department, a very important position. The nominee, Lisa Monaco, has extensive and bipartisan support.

I trust her nomination will not be subjected to the delays that still surround the President's nomination of the Deputy Attorney General, the number two position at the Justice Department and the person to whom the Assistant Attorney General for National Security reports. Although the nomination of the Deputy Attorney General was reported favorably by the Committee last year, it was blocked from final Senate consideration for more than five months. The nomination has been considered and reported favorably by the Committee again this year and is, again, being blocked.

As I have outlined before, this is wrong. When we first reported Jim Cole's nomination last July, I said that I hoped the Senate would treat his nomination with the same urgency and seriousness with which we treated all four of the Deputy Attorneys General who served under President Bush. All four were confirmed by the Senate by voice vote an average of 21 days after they were reported by the Judiciary Committee. In fact, we confirmed President Bush's first nomination to be Deputy Attorney General the day it was reported by the Committee. Regrettably, that is not the treatment that Deputy Attorney General Cole has received.

We should do better, and we should work to ensure that President Obama and Attorney General Holder have the key members of our national security team in place to protect the American people. I am glad we have been able to proceed with a hearing on Ms. Monaco's nomination without delay. I hope that the Committee will be allowed to consider her nomination without unnecessary holds so that it can quickly be referred, as required, to the Select Committee on Intelligence, and then to the Senate for final action without delay.

We are actually welcoming Ms. Monaco "back" to the Committee. Prior to law school, she served as a research coordinator for Chairman Biden from 1992 to 1994. Since graduating from

the University of Chicago Law School and clerking for Judge Jane Roth on the Third Circuit, Ms. Monaco has continued her public service as a prosecutor and a high-level official at the Justice Department and the Federal Bureau of Investigation. She was counsel to Attorney General Janet Reno. She served as an Assistant United States Attorney for the District of Columbia, with details as a prosecutor on the Enron Task Force and to be a special counsel to FBI Director Robert Mueller. She then served as chief of staff to FBI Director Mueller. She is currently serving as the Principal Associate Deputy Attorney General. Ms. Monaco will bring a wealth of experience and important institutional knowledge to her new position. And, she will be the first woman to serve as the Assistant Attorney General for National Security.

Former Justice Department officials who worked with her at the Department during the Bush administration have written to the Committee in support of her nomination. Former Attorney General Mukasey wrote: "Based on my meetings and conversations with Ms. Monaco, I believe that she has both sound judgment and a keen understanding of national security law. Which is to say, she understands both the stakes and the rules."

As part of his extensive recommendation, Ken Wainstein, the first person to hold the position to which Ms. Monaco has been nominated, cited her experience as a prosecutor, with intelligence law, and in high-level management at the Department. He also wrote:

Lisa also recognizes one other important truism--that national security operations are no place for politics. As we all recognize, it is vital to the credibility and effectiveness of the National Security Division--and the national security program as a whole--that is leaders assess their options without regard to politics. Lisa has been doing just that for many years now, and her non-political reputation will serve her well in the tough decisions that she will have to make as Assistant Attorney General.

I ask that certain letters of support be included in the hearing record.

We also welcome four of President Obama's nominees for lifetime appointments to the Federal bench. All four judicial nominees come to the Committee with bipartisan support.

I thank our Ranking Member for working with me to schedule this important hearing. In his statement this week to the Senate on judicial nominations, he spoke about the 32 judicial nominees favorably reported by the Judiciary Committee so far this year, what he called the "productive pace" we have achieved, and what he characterized as the "positive action" the Senate has taken on 60 percent of the President's judicial nominations. The President has sent 63 judicial nominations to the Senate this year. Based on this statement about positive action on 60 percent of the President's judicial nominees, people might think that the Senate had confirmed 38 new judges so far this year. In fact, the Senate has not confirmed half that amount. As we approach the Easter recess at the end of this week, the Senate has confirmed only 17 judicial nominations.

In order to make this statement of progress meaningful, the Senate needs to consider and confirm the 15 judicial nominations that are awaiting final consideration and action by the Senate. Some have been stalled since last year. Two were reported favorably both last year and in February of this year. Some have been reported three times. One has been reported four times. They all are

awaiting what I would call "positive action." We would also need to have considered and the Senate will have to confirm the judicial nominees who have had hearings and those who are being included in our hearing today.

Federal judicial vacancies around the country continue to top 90, and one in nine authorized judgeships remains vacant. By this time in President Bush's first term, we had reduced the vacancies to below 60. At the end of President Bush's first four years in office, the Senate had confirmed 205 of his judicial nominees. By contrast, the Senate has been allowed to consider only 77 of President Obama's Federal circuit and district court nominees in his three years in office. We will need a more productive pace and more positive action if we are to approach 200 confirmations by the end of next year and match the Senate's efforts from 2001 through 2004. With cooperation, we can make significant progress on the continuing judicial vacancies crisis that puts at serious risk the ability of Americans to get a fair and timely hearing for their cases in Federal court.

#####