

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
May 13, 2010

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
On The Nomination Of Goodwin Liu  
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Today, the Committee considers the President's nomination of Professor Goodwin Liu of California to fill a judicial emergency vacancy on the Ninth Circuit. His nomination was on our agenda last week, but held over at Republican request.

Senator Feinstein was correct to note at his hearing that he has an extraordinary legal mind and is a person of integrity. No one can or should question his qualifications, talent or character, all of which are first rate. In fact, today's debate and vote will likely say more about the Senators voting than about Professor Liu. No fair-minded person who attended his hearing can doubt his temperament. He answered every question. He assured this Committee that he understands the role of a judge, and the need for a judge to follow the law and adhere to the rule of law. He meets and exceeds every standard we have used to measure judicial nominees. He met every test the Senators on this Committee presented to him.

Goodwin Liu is a widely-respected constitutional law professor with sterling credentials. He is admired by legal thinkers and academic scholars from across the political spectrum. Professor Liu has spent his career in public service, private practice and as a teacher since receiving degrees from Stanford University and Yale Law School. He is a Rhodes Scholar. After law school, Professor Liu clerked for D.C. Circuit Judge David Tatel and Supreme Court Justice Ruth Bader Ginsburg.

His parents, wife, children, friends and community are justifiable proud of him, and look forward to his confirmation. The son of Taiwanese immigrants, Professor Liu would bring much-needed diversity to the Federal bench. There is currently only one active Asian Pacific American Federal appeals court judge in the country-- Judge Denny Chin of the Second Circuit, who was finally confirmed unanimously last month after the Majority Leader filed cloture to end the 19-week obstruction of his nomination.

I thank Senator Feinstein for chairing Professor Liu's twice-delayed hearing. Regrettably, at that hearing Republican Senators seemed to be applying a standard to him that they did not demand of President Bush's judicial nominees. Indeed, rather than approach his nomination and his hearing with an open mind, they declared themselves "disappointed" as soon as he was

nominated and immediately began claiming that he was "far outside the mainstream of American jurisprudence."

At his hearing, I urged all Senators on the Committee to treat Professor Liu fairly and to give serious and open-minded consideration to his nomination. I do so again. The reflexive opposition Republican Senators have demonstrated from the outset of this nomination renders our hearings merely a meaningless roadblock and a source of delay, rather than the important component of the confirmation process that they should be.

I am disappointed to hear some Senators claim to need more time to consider this nomination. We were not able to hold his hearing until April 16, after it was twice delayed, once when I accommodated a Republican request and the second time when Republicans employed a seldom-used procedural rule at the last minute to prevent the hearing from proceeding, even after he and his family had traveled across the country.

Professor Liu has not been a stealth candidate. He has produced voluminous materials. His career as a teacher and advocate has been out in the open for Senators to review, and about which they could ask questions. And they have.

During his hearing, Professor Liu answered questions for more than three hours. He answered over 100 questions. Senator Feinstein, who chaired the hearing, gave Senators as many rounds of questions as they wished. Some Republican Members asked four rounds of questions.

Following the hearing, Republican Senators sent Professor Liu over 200 written follow up questions, even after the hours of live questioning. After he answered those questions with a greater degree of detail and responsiveness than I recall from many of the nominees of President Bush, several Republican Senators waited an additional week before sending scores of additional follow-up questions. He has now sent the Committee answers to this additional round of questions.

Again, I am concerned that Republican Senators seem to be applying a different standard to this nomination, a standard they never applied to the nominees of a Republican president. They appear to demand a level of specificity about how Professor Liu might rule as a judge that Senators on both sides of the aisle have deemed inappropriate for prior judicial nominees to answer. A cynic might conclude that they are trying to "trap" him by putting him in the impossible position of being asked questions he should not--must not--answer to avoid prejudging cases that might come before him as a judge, and then are complaining that he has not been responsive.

Of course, any Senator who does not like his answers, or who does not credit his answer that he will follow the law, or who will not accept his assurance that he understands the role of the judge, can vote against his confirmation.

This is not how I approached the nomination President Bush's nomination of Professor Michael McConnell to the Tenth Circuit. He was another widely-regarded law professor, who appeared before our Committee as a nominee championed by our friend from Utah. Professor McConnell, from the University of Utah, was nominated to a Federal appeals court without having first served as a judge. He was one of two dozen such nominations confirmed by the Senate after

nomination by President Bush. Professor McConnell had his own provocative writings. He had expressed strong opposition to Roe v. Wade and to the clinic access law. Professor McConnell's writings on the actions of Federal District Court Judge John Sprizzo in acquitting abortion protesters could not be read as anything other than praise for the extra-legal behavior of both the defendants and the judge. He testified that he believed the Violence Against Women Act was unconstitutional.

I had concerns that Professor McConnell would turn out to be a conservative activist on the Tenth Circuit. I was concerned about his refusal to take responsibility for his harsh criticism of the Supreme Court's decision in the Bob Jones case. But I put faith in Professor McConnell's assurances that he understood the difference between his role as a teacher and advocate, and his future role as a judge. He assured us that he respected the doctrine of stare decisis and that as a Federal appeals court judge he would be bound to follow Supreme Court precedent. And I valued Senator Hatch's support for him.

I supported the confirmation of Professor McConnell, as did other Democratic Senators. He was reported favorably by this Committee, and he was confirmed to the Tenth Circuit by voice vote in the Senate just one day after his nomination was reported. I challenge the Republican members of this Committee to treat Professor Liu with that same fairness.

Professor Liu has demonstrated a command of the law and devotion to it. I have no doubt that he understands the role of the judge and how it differs from his career as an advocate and an academic. As a professor he has done what great professors do--challenge our view of the law. But he has left no doubt that as a judge he would do what great judges do in applying the law fairly to each case. I have no doubt that he will be committed to the rule of law as the guiding principle of his judicial decision-making.

I urge Republican Senators to give the same weight to Professor Liu's assurances that he understands the proper role of a judge that we gave to Professor McConnell's identical assurances. I hope they will not apply a double standard to this extraordinary nominee.

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