

January 20, 2009

Senator Patrick J. Leahy
Chairman, United States Senate, Committee on the Judiciary
Senator Arlen Specter
Ranking Member, United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Leahy and Specter,

It is with the utmost pleasure that I convey my unqualified support for Dawn Johnsen to be confirmed by the Senate as the Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice. Ms. Johnsen is the consummate professional. She is blessed with an exceptional intellect, the highest integrity, and an unshakable devotion to the law.

I had the honor of serving with Ms. Johnsen in the Office of Legal Counsel from 1993 through 1997. During that time, we both served as Deputy Assistant Attorneys General. For eleven years prior to that I served as a prosecutor in, at that time, State Attorney Janet Reno's office in Miami, Florida. At the end of 1997, I was appointed as the Deputy General Counsel for Intelligence in the United States Department of Defense. I remained in that position until January of 2003 when I was asked to serve as the Acting General Counsel of the Defense Intelligence Agency prior to my retirement in July of 2003. Since that time, I have remained active in the national security field both as a part-time contract consultant and as a law professor.

For most of my tenure at the Office of Legal Counsel, I was the Deputy principally responsible for national security matters and, of course, at the Department of Defense, I was occupied entirely by such matters. On every occasion with which I am familiar, including national security matters, Dawn Johnsen exhibited superb professionalism. Not only was her analysis trenchant, her logic impeccable, her research thorough, and her written exposition cogent, but she approached every matter free from ideological biases that might impede yielding the optimum resolution. I have no doubt that Ms. Johnsen will be an exemplary Assistant Attorney General, that the Office of Legal counsel will be well served by her leadership and that the Department of Justice, the White House and the entire executive branch will obtain the best possible legal advice from her efforts.

Most importantly, I believe the American people will be the ultimate beneficiaries of her wisdom and honesty.

If I can be of any further service to you and the Committee, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Shiff", with a long horizontal flourish extending to the right.

Richard L. Shiff

[Redacted]

[Redacted]

[Redacted]

Harriet S. Rabb
Vice President & General Counsel
The Rockefeller University
New York City, New York 10065

January 22, 2009

Honorable Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Re: Dawn Johnsen

Dear Senator Leahy,

I write in support of the confirmation of Dawn Johnsen as Assistant Attorney General, Office of Legal Counsel. She is superbly suited to carry out the duties of the position by reason of her legal acumen, her judgment, and her fitness for the OLC role.

I met Ms. Johnsen in early 1993 when I was confirmed by the Senate to the position of General Counsel to the Department of Health and Human Services, a post I held until January, 2001. During those eight years, I worked in close collaboration with a number of divisions of the Department of Justice, including the Office of Legal Counsel, and, in particular with Ms. Johnsen. It is on the basis of my experience that I write this letter.

Ms. Johnsen has an unusually fine legal mind. Her career reflects her inherent capability as a lawyer and her commitment to excellence in the study and practice of the law.

Ms. Johnsen's experience in the law has honed her innate good judgment. She is thorough in her research and has the good sense to know when she and those she supervises have gotten to the core of legal issues. She is a natural leader.

Ms. Johnsen is particularly well suited to the position for which she has been nominated. In the course of her career, Ms. Johnsen has, at times, been an advocate, but when we worked together during the '93-'98 period, she was, instead, a lawyers' lawyer. When I requested OLC advice on difficult issues, Ms. Johnsen responded with full, clear and reliable statements of the law. No advocacy and no policy leanings were hidden in the legal reasoning. I knew that what I was learning from OLC was the basis on which sound policy could be made. Ms. Johnsen is a person of such unwavering integrity that the OLC, under her direction, will be an excellent, honest and forthright legal resource in service to the nation

I urge your confirmation of Dawn Johnsen to the position of Assistant Attorney General. She is a brilliant and upstanding lawyer and leader who will bring honor to the Department of Justice and to the Office of Legal Counsel.

Sincerely,

A handwritten signature in black ink, reading "Harriet S. Rabb". The signature is written in a cursive style with a large, elegant initial "H".

Harriet S. Rabb

An exact copy of this letter has been sent to the Honorable Arlen Specter.

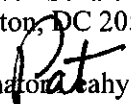


**Woodrow Wilson
International
Center
for Scholars**

LEE H. HAMILTON
President and Director

January 22, 2009

The Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator  Leahy:

I write in support of President Obama's nomination of Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel in the Department of Justice. I believe she will provide outstanding service to the administration and our country.

I know Dawn personally, as she married my nephew fifteen years ago. I also know her professional qualifications and her stellar reputation among leading constitutional scholars and veterans of the Justice Department.

We face daunting challenges as a country, to honor our deepest constitutional values while confronting and defeating determined enemies. Dawn has served our country ably and with distinction in providing cogent and practical legal advice to the executive branch in the 1990s. I am confident she will be a valuable member of the new administration as it moves our country forward.

In particular, Dawn has demonstrated a nuanced and practical understanding of how the Office of Legal Counsel should operate to ensure the executive branch achieves its strategic and tactical objectives while honoring and affirming the underlying constitutional values of our nation. She led a group of constitutional scholars to support a nonpartisan affirmation of key principles that should guide the operation of the Office of Legal Counsel, available at 81 Indiana Law Journal 1345 or <http://www.indianalawjournal.org/articles/478/1/Principles-to-Guide-the-Office-of-Legal-Counsel/Page1.html>.

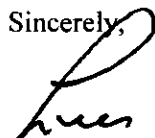
Dawn has demonstrated the crucial ability to provide legal advice that is grounded in the Constitution and the law, and respectful of the roles of the various players in our democratic structure. Her reputation for openness and clarity are valuable as we build the common ground needed to sustain a national commitment to defeat our enemies while we protect our values.

Dawn is a prominent scholar and experienced government lawyer who understands executive power and democratic values, constitutional demands and practical realities. She is an outstanding appointment who will balance wisely the demands of the law with the realities of our country's responsibilities in the world. It is with the highest confidence that I endorse Dawn Johnsen's appointment as Assistant Attorney General for the Office of Legal Counsel.

Thank you for your attention to this letter. If I may provide any further information, I would be happy to do so.

With best wishes, I am

Sincerely,



Lee H. Hamilton

WILMERHALE

Seth P. Waxman

January 22, 2009

By Hand

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

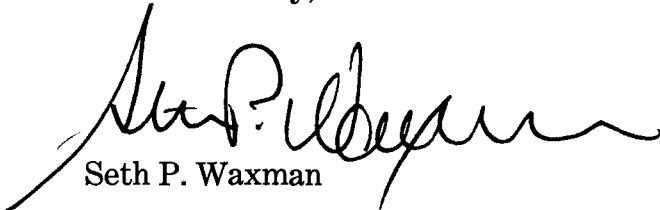
Re: Nomination of Dawn Johnsen to be Assistant Attorney General

Dear Senators Leahy and Specter:

I write enthusiastically to endorse the nomination of Dawn Johnsen to be Assistant Attorney General overseeing the Office of Legal Counsel.

Dawn and I worked together at the Department of Justice for four years, between May 1994 and June 1998. During that period Dawn served first as a Deputy Assistant Attorney General in the Office of Legal Counsel, and then Acting Assistant Attorney General. In my duties as Solicitor General, and earlier as Acting Deputy Attorney General, Acting Solicitor General, and Deputy Solicitor General, I interacted with Dawn nearly every day. She is smart, professional, hardworking, levelheaded, collegial, scrupulously fair, and utterly devoted both to the rule of law and the prerogatives of the President in our constitutional structure. I am confident that, if confirmed, Dawn will bring great credit to an already venerable office. I commend her to the Committee enthusiastically and without reservation.

Yours sincerely,



Seth P. Waxman

Alan J. Kreczko

January 23, 2009

Chairman Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

I am writing to endorse the confirmation of Dawn Johnsen to the position of Assistant Attorney General, Office of Legal Counsel.

From senior legal positions in the State Department and National Security Council during the Reagan, Bush and Clinton Administrations, I have worked very closely with the Office of Legal Counsel on national security issues over the course of twenty years. I fully appreciate how vital it is, particularly in these times, that the head of that office be someone who is willing to both promote respect for US law throughout the executive branch and to defend the President's Constitutional authority to act vigorously in the national defense.

Having worked with Ms. Johnsen during the Clinton Administration for several years while she was at OLC and I was the Legal Advisor to the National Security Council, I am confident that she understands that the Constitution vests the President with broad authorities in the national security and foreign policy arena, and that she will vigorously defend those authorities. At the same time, I am confident that she appreciates that our Constitution does not give the President limitless authority, even in the national security arena. I know that she will identify those limitations when necessary, not to obstruct action but out of deep respect for our system of laws, and, in those situations, will work tirelessly on ways that the President can work with Congress to protect our national security.

Again, I heartily support Ms. Johnsen's nomination and urge your committee's positive consideration of it.

Sincerely,


Alan Kreczko

January 23, 2009

Jamie S. Gorelick

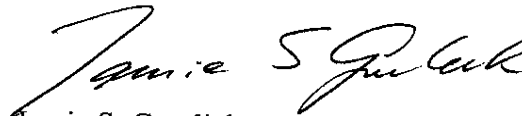
The Honorable Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

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+1 [REDACTED] (f)

Dear Chairman Leahy:

I am writing to endorse Dawn Johnsen, who has been nominated to serve as the Assistant Attorney General for the Office of Legal Counsel. Dawn played an important role in that Office when I was Deputy Attorney General and I have followed her work since that time. Having served at Justice, at the Department of Defense, on the 9/11 Commission and on the CIA's National Security Advisory Panel, I am acutely conscious of the critical role of the Office of Legal Counsel in ensuring that the President has all of the authority he needs and all that he may lawfully assert to protect the people of our country. Having seen the quality of Dawn Johnsen's legal analysis, her ability to listen to all sides of an issue, her desire to ensure that the President is able to act in the best interests of the country, I am confident that she will be a thoughtful steward of the Office and that its opinions will indeed ensure that the President has the authority he needs and be fully supported by the law and precedent. I am pleased to support her nomination and urge her confirmation.

Sincerely yours,


Jamie S. Gorelick

January 23, 2009

Jamie S. Gorelick

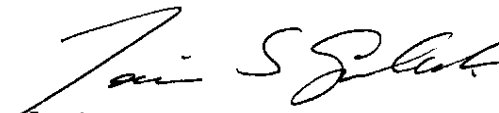
+1 [REDACTED] (t)
+1 [REDACTED] (f)

The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Specter:

I am writing to endorse Dawn Johnsen, who has been nominated to serve as the Assistant Attorney General for the Office of Legal Counsel. Dawn played an important role in that Office when I was Deputy Attorney General and I have followed her work since that time. Having served at Justice, at the Department of Defense, on the 9/11 Commission and on the CIA's National Security Advisory Panel, I am acutely conscious of the critical role of the Office of Legal Counsel in ensuring that the President has all of the authority he needs and all that he may lawfully assert to protect the people of our country. Having seen the quality of Dawn Johnsen's legal analysis, her ability to listen to all sides of an issue, her desire to ensure that the President is able to act in the best interests of the country, I am confident that she will be a thoughtful steward of the Office and that its opinions will indeed ensure that the President has the authority he needs and be fully supported by the law and precedent. I am pleased to support her nomination and urge her confirmation.

Sincerely yours,


Jamie S. Gorelick

January 23, 2009

The Honorable Patrick Leahy
The Honorable Arlen Specter
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy, Senator Specter, and Members of the Senate Judiciary Committee:

I write to urge that you confirm Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel. In a Department full of outstanding lawyers, Dawn stood out as one of the very finest. She was a trusted colleague who never failed to provide cogent and wise counsel during the five years we worked together. She is an outstanding choice for this position.

During my tenure as Attorney General, Dawn served as acting Assistant Attorney General for the Office of Legal Counsel for eighteen months. I worked closely with her virtually every day, dealing with the full range of issues and challenges at the Department. She served with great integrity and skill. Her counsel was always intelligent and helpful. Her good judgment was unsurpassed.

Dawn is unwavering in her commitment to the best traditions of the Office of Legal Counsel and the law. She demonstrated that consistently across areas of national security, civil rights, public safety, criminal prosecutions, executive and legislative interactions, and many more. Dawn is an outstanding lawyer, always helpful in devising strategies that would enable the executive to achieve its legitimate goals in ways that would conform to the law. And where the law imposed constraints on executive action, she was unwavering in her willingness to uphold those legal limits. In this way, Dawn embodied the honorable, nonpartisan tradition of the Justice Department and the Office of Legal Counsel in promoting the rule of law.

Dawn has proven exceedingly capable at affirming the rule of law, honoring the constitutional relationships among and within the branches of the federal government, and helping an administration achieve its objectives, from vigorously protecting our national security to advancing our common good. She unfailingly kept the national interest at the center of her focus, dedicating her talents to its service.

In my judgment, President Obama could not have chosen a better lawyer to head the Office of Legal Counsel. She has the skill, the judgment, the tenacity, the independence and the integrity to serve the new administration and the country with excellence. I urge that you confirm her to this critical position.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno", with a horizontal line extending from the end of the signature.

Janet Reno

DEVAL L. PATRICK
GOVERNOR

**75 Hinckley Road
Milton, MA 02186**

January 26, 2009

Dear Chairman Leahy:

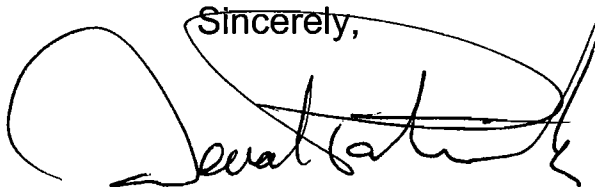
I have the privilege of writing in enthusiastic support of Dawn Johnson for confirmation to the position of Assistant Attorney General in the Office of Legal Counsel.

I have known Dawn for many years, since I served in the Civil Rights Division during the first term of the Clinton Administration. Dawn was unfailingly a good listener, a keen legal analyst, well spoken, unflappable, and an absolute delight to have as a colleague. We did not always agree but she brought to every matter -- some of which were highly controversial -- a clarity of thought, creativity and commitment to the public good that was a constant source of pride and inspiration.

As you know, Dawn has served with the ACLU Reproductive Freedom Project and was legal director of NARAL Pro-Choice America. She has also served on the board of the American Constitution Society for Law and Policy, on which I also served for a time. She is exceedingly well grounded in the human and civil rights issues of our time.

I recommend Dawn for confirmation without reservation, and respectfully urge the Committee to act favorably on her candidacy.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval Patrick", written over the word "Sincerely,".



Yale Law School

Harold Hongju Koh – *Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law*

January 26, 2009

Members of the Senate Judiciary Committee
United States Senate
Washington, DC.

Dear Senators:

I am Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School. From 1998-2001, I served as Assistant Secretary of State for Democracy, Human Rights and Labor. From 1983-85, I served as an Attorney-Adviser at the Office of Legal Counsel at the Department of Justice under then-Assistant Attorney General Ted Olson and Attorney General William French Smith.

I write to urge you to confirm the nomination of Professor Dawn E. Johnsen of Indiana Law School as Assistant Attorney General General for the Office of Legal Counsel (OLC). I have known Professor Johnsen since she was a Yale law student in 1986, and over the years I have read most of her written work, both in her scholarly capacity and while she served as acting head of the office that she has now been nominated to head. Of her many qualifications, let me single out three: her intimate knowledge of the Office and its unique role in our constitutional system of checks and balances; her lawyerly rigor and scholarly excellence, and her unimpeachable personal decency and integrity.

First, while OLC has had a most distinguished roster of leaders, including such outstanding lawyers as Hugh Cox, William Rehnquist, Antonin Scalia, Ted Olson, and Walter Dellinger, arguably none was as superbly qualified *at the time of nomination* as Professor Johnsen currently is to lead OLC. Professor Johnsen progressed from a brilliant academic record at Yale and Yale Law School to a top-flight appellate clerkship on the Seventh Circuit, to a leading general counsel position, along with many years of service as a staff lawyer and Deputy (and Acting) Assistant Attorney General in the Office of Legal Counsel. Having worked in that office myself, I know how intense the pressures are and how steep the learning curve, even for extraordinarily able lawyers. Professor Johnsen's deep understanding of her office would enable her to step in and hit the ground running on all issues. Her work during the past few years has given her unique insight into OLC's current condition: analyzing the extensive process failures that led to the infamous 2002 "Torture Opinion," compiling the critically important "Principles to Guide the Office of Legal Counsel" (published in the *Indiana Law Journal*), assessing the work of the office for the American Constitution Society, and most recently her point position for the Obama transition team investigating issues relating to the Office of Legal Counsel and Solicitor General's Office. She will need no on-the-job training to fulfill one of most challenging legal positions in government, and will quickly catch nuances, gaps in analysis, and missing constitutional arguments that would escape even other fine lawyers.

Second, Professor Johnsen is a superb lawyer, deeply steeped in federal statutory law, constitutional theory, scholarship, and practice. Although she has expressed strong views as an



Yale Law School

Harold Hongju Koh – *Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law*

academic--which our scholarly profession obliges good legal scholars to do--she remains fully aware that the credibility of her standing as a government lawyer turns on the thoroughness of her research, the integrity of her interpretations of the laws, and the sensitivity with which she balances her loyalty to her governmental client with her fidelity to the Constitution to which she takes her oath. Unlike some who have worked in OLC, Professor Johnsen will not work backward from desired outcomes. Nor will she bend to political pressure, ignore legal arguments contrary to her client's policy positions, or disrespect the views of seasoned career attorneys. Nor, most fundamentally, does she have any interest in weakening the presidency. Rather, she fully understands how a strong President should operate within a robust system of checks and balances, which protects our nation's security without ignoring the values and liberties the Constitution was established to secure.

Third and finally, Professor Johnsen is a human being of the highest humanity and decency. She has lived an utterly admirable life, modest and selfless, devoting herself only to a search for the truth and a desire to serve others. Some have criticized Professor Johnsen for being too outspoken in her criticism of the work of OLC over the past eight years. Others have suggested that her vigorous public rebuttal of those who would twist the Constitution betrays political bias or an intemperate spirit. Nothing could be further from the truth. Her strong voice shows only her courage to speak when others were silent. We want and need a head of OLC who will speak truth to power, and assume unpopular public positions when her conscience and considered legal judgment lead her there.

If confirmed, Dawn Johnsen would be genuinely judicious and would genuinely serve Justice. We need her desperately to tackle the critical job of keeping the new Administration on the path of law. Her appointment would greatly restore the public's shaken confidence in the rectitude of our Department of Justice. She will be remembered as an Assistant Attorney General for the Office of Legal Counsel of whom the Senate, and our country, will be justly proud. For all of these reasons, her appointment deserves your swift and enthusiastic confirmation.

Sincerely,

Harold Hongju Koh

Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law

[REDACTED]

January 26, 2009

Chairman Leahy, Ranking Member Specter and Members
of the Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing to endorse Dawn Johnsen, who has been nominated to serve as the Assistant Attorney General for the Office of Legal Counsel.

During thirteen years of government service, I served as Special Assistant to three Directors of Central Intelligence (William Webster, Robert Gates and James Woolsey), the Deputy Legal Adviser to the National Security Council, Executive Assistant to National Security Advisor Anthony Lake and as General Counsel and Deputy General Counsel of the U.S. Department of the Treasury under Secretaries Rubin and Summers.

In each of these roles I have worked with the Office of Legal Counsel. I very much appreciate how important it is, especially at this time, that the Assistant Attorney General for the Office of Legal Counsel, be someone who is committed to defending the President's authorities and prerogatives in support of the national security interests of the United States while promoting the rule of law and respect for our Constitution.

Having worked with Ms. Johnsen, while at the National Security Council and the Treasury in the 1990's, I am confident that her experience at OLC, her talent as a lawyer and as a manager, and her strong sense of the importance of the President's authorities and prerogatives, especially in the national security area, will serve her extremely well in the position for which she has been nominated.

I believe Ms. Johnsen, if confirmed, would be an excellent head of the Office of Legal Counsel. I enthusiastically support her nomination and urge her confirmation.

Sincerely yours,



Neal S. Wolin

EVAN H. CAMINKER
Dean and
Branch Rickey Collegiate Professor

625 South State Street
Ann Arbor, Michigan 48109-1215

January 27, 2009

Chairman Patrick J. Leahy
Ranking Member Arlen Specter
Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Committee Members:

I am writing to express my enthusiastic and unreserved support for the nomination of Dawn Johnsen for the position of Assistant Attorney General in the Office of Legal Counsel, United States Department of Justice.

I have known Ms. Johnsen ever since we were classmates at Yale Law School in the mid-1980s. Over the past 25 years we have worked together or in parallel fashion in several different professional capacities, including collaboration on significant litigation projects, service in OLC in the 1990s (where I was a Deputy Assistant Attorney General just after Ms. Johnsen completed her stint as Acting Assistant Attorney General), and in the academy.

Ms. Johnsen is an extremely talented lawyer and dedicated public servant. She is very intelligent, insightful, and intellectually thoughtful, and she of course brings a wealth of experience to this position. She is a person of great integrity and high ethical standards: she will care about doing her job both well and right, and she will care about serving her client and the public interest. Ms. Johnsen is simultaneously an outstanding leader and a collaborative team player, both skills being equally required for this position.

I cannot imagine a better or more appropriate person to lead the Office of Legal Counsel at this time. She will serve the nation with great distinction and honor.

Sincerely,

Evan Caminker

Judith A. Winston
Former Undersecretary and General Counsel
U.S. Department of Education
1371 Kalmia Road NW
Washington, DC 20012

Telephone: [REDACTED]

Fax: [REDACTED]

email: [REDACTED]

January 27, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Dawn Johnsen

Dear Chairman Leahy:

I am delighted to have the opportunity to endorse the nomination of Dawn Johnsen for the position of Assistant Attorney General, Office of Legal Counsel in the Department of Justice. I have known Dawn Johnsen for more than two decades, both in government and outside of it, as a superb lawyer whose judgment and commitment to the rule of law makes her an ideal candidate for the position of Assistant Attorney General in the Office of Legal Counsel.

I served as the General Counsel of the U.S. Department of Education during both terms of the Clinton Administration (1993 -2001). In this capacity, I often worked with lawyers from the Justice Department including those in the Office of Legal Counsel. Frequently, Dawn Johnsen was responsible for advising me and my colleagues at Education on critical cases and important issues of federal law and policy. Without exception, her ability to listen to competing view points and interpretations, analyze the issues and craft legal advice that was universally accepted as unimpeachable among those involved was breathtaking. She is indeed a "lawyer's lawyer."

Ms. Johnsen's excellent legal skills and abilities are evenly matched by her personal qualities and her collegiality both with her peers and staff. She is a gentle woman in the best sense of this term. At the same time, she is analytically tough in the service of justice and fairness. She is thoughtful and decisive but never arrogant, abrasive or overbearing. Just the opposite, in fact, through her quiet and selfless manner, she engenders confidence in the positions she crafts by taking the time to explain in detail and with patience her reasoning and conclusions. During her time at the Justice Department and in my experience, Ms. Johnsen's approach to her responsibilities in advising the executive branch of the federal government represented the type of transparency and accountability that is both expected and desired from those occupying high legal positions and who interpret federal laws and policies.

Letter to The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary, U.S. Senate re: Dawn Johnsen
from Judith A. Winston
January 27, 2009

Page 2 of 2

For the foregoing reasons, I am able without reservation to recommend Dawn Johnsen to you and your colleagues on the Senate Judiciary Committee. I would be happy to respond to any questions you may have about my endorsement. Thank you for your time and attention to this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith A. Winston", with a long, sweeping horizontal line extending to the right.

Judith A. Winston



FORDHAM UNIVERSITY

THE SCHOOL OF LAW

OFFICE OF THE DEAN

WILLIAM MICHAEL TREANOR

DEAN

January 27, 2009

Chairman Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

It is my privilege to write this letter in support of the nomination of Dawn Elizabeth Johnsen for the position of Assistant Attorney General for the Office of Legal Counsel. It is a post of the greatest importance, and I can think of no one better qualified to hold it. In every regard, Ms. Johnsen would be a superb Assistant Attorney General.

I am currently Dean of Fordham Law School, a post I have held since 2002. I am writing this letter in my personal capacity. I have known and greatly admired Ms. Johnsen since we were in law school. (I graduated a year before she did.) I am also very familiar with the work of the Office of Legal Counsel, having served as a Deputy Assistant Attorney General in the Office from 1998 until 2001. During the early part of my tenure with the Office, Ms. Johnsen was Acting Assistant Attorney General for the Office of Legal Counsel, so I had the opportunity to see her work heading the office. Finally, I have been in contact with her since my return to teaching in 2001 and have worked with her on academic and public service projects involving constitutional law and the Office of Legal Counsel.

Ms. Johnsen is a remarkable lawyer, a remarkable public servant, and a remarkable person. Having worked with her and known her for many years, I can testify to her deep and unshaking commitment to the rule of law and to the United States Constitution. She is superbly knowledgeable about constitutional law and has thought more carefully and more fully about the proper role of the Office of Legal Counsel than anyone. She has a brilliant legal mind, and I have never seen anyone with finer judgment, a critical factor given the significance of the decisions the Assistant Attorney General makes. She inspires the deepest respect from those who have worked with her, whether subordinates or superiors. The role of the Assistant Attorney General for the Office of Legal Counsel will be a crucial one in the years ahead. Ms. Johnsen is, quite simply, the best person for this job.

Please feel free to contact me if you or your staff have any questions. As I said at the outset, it is a privilege to write in support of Ms. Johnsen's nomination.

Respectfully,

A handwritten signature in blue ink that reads 'William Michael Treanor'.

William Michael Treanor

WMT:as

ROBERT S. LITT



January 28, 2009

Hon. Patrick Leahy
Chair, Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Hon. Arlen Specter
Ranking Member, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510-3801

Dear Chairman Leahy and Senator Specter:

I am writing to provide my enthusiastic support for Dawn Johnsen's nomination to be Assistant Attorney General for the Office of Legal Counsel. I served in the Justice Department as Deputy Assistant Attorney General in the Criminal Division from 1994 to 1997, and Principal Associate Deputy Attorney General from 1997 to 1999, while Dawn was Deputy Assistant Attorney General and Acting Assistant Attorney General for OLC.

In my opinion Dawn is exceptionally well qualified and would be an outstanding leader of OLC. She is a brilliant, thoughtful and careful lawyer whose views were afforded great respect by all. Her past service in OLC has given her both a deep appreciation of the importance that body plays in the proper operation of our government, and the respect of the outstanding and dedicated career lawyers who staff it. Both of these attributes will be essential to the desperately needed task of restoring intellectual integrity and morale at OLC. I can think of no one better than Dawn to do that.

Between my service in the Justice Department in the last Administration, and my prior time as an Assistant United States Attorney, I have spent a major part of my professional career in law

Hon. Patrick Leahy
Hon. Arlen Specter
January 28, 2009
Page 2

enforcement, and have, as well, considerable experience in matters of intelligence and national security. I appreciate the paramount importance of ensuring that the law enforcement and national security communities have the tools necessary to defend our nation at a time when we are under attack by vicious enemies, while at the same time preserving our values and our civil liberties. Having worked with Dawn for several years, and having read some of what she has written since leaving the Department, I have full confidence that she understands these concerns, and will ensure that executive authorities are interpreted in a manner that protects us all. I believe that the nation would be well served by her prompt confirmation.

Very truly yours,

A handwritten signature in dark ink, consisting of several stylized, overlapping loops and a long horizontal stroke at the end, characteristic of Robert S. Litt's signature.

Robert S. Litt

[REDACTED]

January 28, 2009

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

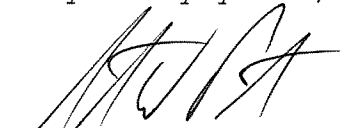
I am writing in support of the nomination of Dawn Johnsen to be the Assistant Attorney General for the Office of Legal Counsel (OLC) at the U.S. Department of Justice.

Currently in private practice, I was previously Principal Deputy General Counsel of the Department of Defense (DoD) (1993-1995), Deputy Assistant Attorney General in the Civil Division (1995-1998), and General Counsel of the Department of the Navy (1998-2000). While in government, I dealt with Ms. Johnsen from time to time when she was in OLC. In particular, I recall our working together when I was Acting General Counsel of DoD and she was Deputy Assistant Attorney General in OLC.

In my experience, Ms. Johnsen's work was characterized by great care and intellectual honesty, yielding opinions that were rooted in the law, as well as common sense. In matters of national security, I am aware of no instance in which she was other than diligent in seeking to safeguard the interests of the United States and solicitous of the positions of DoD and other agencies as appropriate.

Based on this experience, I am pleased to support Dawn Johnsen's nomination.

Very truly yours,



Stephen W. Preston

cc: The Honorable Arlen Specter, Ranking Member



INDIANA UNIVERSITY

MAURER SCHOOL OF LAW
Bloomington

January 29, 2009

Senator Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

I write to express the strongest possible support for Dawn Johnsen's nomination to head the Office of Legal Counsel in the Department of Justice. Professor Johnsen joined our faculty ten years ago, and I have worked with her, first as Associate Dean and then as Dean, during that entire time. Professor Johnsen's intellectual acuity is coupled with deep probity and excellent judgment. She has a love for the Office and an understanding of the importance of its role that is unparalleled. I do not believe there is a better lawyer in America for this position.

I have read all of Professor Johnsen's academic work, and have watched her make numerous presentations on the role of the OLC and the constitutional role of the Executive Branch. Professor Johnsen is a careful and brilliant legal scholar whose constitutional analysis is pragmatically grounded in her previous experience in OLC and her equally pragmatic and principled views on separation of powers. Her writing evidences her deep respect for constitutional values, and she has been particularly focused on the need for careful and precise analysis of the proper role of the Executive. In her presentations and her academic writing, Professor Johnsen has both joined widespread criticism of the recent OLC and cautioned against an overreaction to the Bush administration's expansive claims of Executive power. She has defended, appropriately, many aspects of Executive branch power such as Executive privilege and the Executive's role in constitutional interpretation of statutes, in nuanced and sophisticated writing that demonstrates her deeply grounded judgment.

She has also been a leader in thinking about the proper role of the OLC, and is widely recognized as such by the most respected legal scholars in the area of constitutional separation of powers. Her leadership is demonstrated through her role in producing the bipartisan "Principles to Guide the Office of Legal Counsel," 81 Indiana Law Journal 1348 (2006). A fair appraisal of all of Professor Johnsen's written work would note the consistency of each of her proposals with the principles that this piece outlines, particularly the requirement that legal advice "should provide an accurate and honest appraisal of applicable law" and "should reflect all legal constraints, including the constitutional authorities of the coordinate branches of the federal government."

Finally, Professor Johnsen's personal integrity is absolutely beyond reproach. Her life in Bloomington, Indiana, has been marked by her devotion of time and talent to the various communities that are lucky enough to count her as a member. She is an exemplary citizen and colleague, a gifted and careful lawyer, and absolutely a stellar choice for the position of Assistant Attorney General.

Yours truly,

Lauren Robel
Dean and Val Nolan Professor of Law

LEWIS, FEINBERG, LEE, RENAHER & JACKSON, P.C.
ATTORNEYS AT LAW
1330 BROADWAY, SUITE 1800
OAKLAND, CALIFORNIA 94612-2519

January 30, 2009

Chairman Patrick Leahy
Senate Judiciary Committee
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
Senate Judiciary Committee
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

**RE: Dawn Johnson's Nomination for Assistant Attorney General for the Office
of Legal Counsel in the U.S. Department of Justice**

Dear Chairman Leahy and Ranking Member Specter:

The purpose of this letter is to support the nomination of my former colleague Dawn Johnson for the position of Assistant Attorney General for the Office of Legal Counsel in the U. S. Department of Justice. I do so enthusiastically and without hesitation.

As Assistant Attorney General for Civil Rights in the Clinton Administration, I worked with Dawn when she previously served in the Office of Legal Counsel on the interpretation and construction of the civil rights laws. Her advice and counsel were impartial, nonpartisan and first rate in terms of accurately and fairly stating the law and the scope of governmental authority. While we did not always agree, I believe I and everyone else walked away with the firm impression that Dawn heard everyone out and was rendering advice that was in the best interests of the United States consistent with the rule of law. Whatever the result, I believe that Dawn showed a fundamental commitment to the strong enforcement of the civil rights laws that Congress has required.

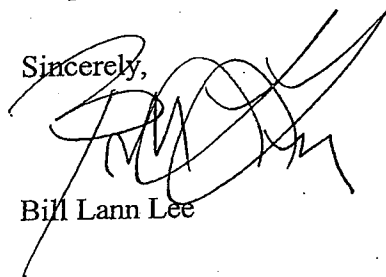
As you know, Dawn has been forceful in arguing that the Office of Legal Counsel in recent years had lost its way in rendering advice on the torture of detainees as part of the war on terrorism. Congress ultimately repudiated the interpretations that Dawn criticized. In speaking out, Dawn argued appropriately on behalf of the need for integrity and independence in the operation of the Office of Legal Counsel.

Attorney General Reno was fond of pointing out that the duty of the Department was to enforce the law "without fear or favor", as inscribed on the walls of the Main Building of the Department of Justice. Dawn, in my opinion, has amply demonstrated that she will interpret and construe the laws of the United States, including the civil rights laws, without fear or favor.

Patrick Leahy
Arlen Specter
January 30, 2009
Page 2

If I can be of further assistance to the Committee, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lann Lee", with a large, stylized flourish extending from the end of the signature.

Bill Lann Lee



SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
(202) 736 8000
(202) 736 8711 FAX

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FOUNDED 1866

January 30, 2009

Honorable Patrick Leahy, Chairman
United States Senate Committee on the
Judiciary
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Honorable Arlen Specter, Ranking Member
United States Senate Committee on the
Judiciary
711 Hart Building
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

As the Judiciary Committee considers the nomination of Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel, its members may wish to take into account a recent experience I had working with her on draft legislation related to that office. Although there is probably more publicly available information concerning her views on the proper role of the Office of Legal Counsel than any previous nominee for this position, I relate the additional information below in case it might be of assistance to the Committee in its deliberations.

On April 30, 2008, Professor Johnsen and I testified together in a hearing before the Subcommittee on the Constitution chaired by Senator Feingold in which we offered the Subcommittee our views on "Secret Law and the Threat to Democratic and Accountable Government," a subject which embraced many issues relating to the appropriate bounds of executive branch secrecy with respect to legal matters. She and I served as lawyers in different presidential administrations -- Prof. Johnsen in President Clinton's Justice Department and I in the White House of President George W. Bush -- and we represented somewhat different points of view on many of the topics under discussion. However, during the hearing, we agreed generally on the proposition that requiring some measure of additional inter-branch transparency with respect to a limited category of OLC opinions would serve the public interest, the separation of powers, and democratic accountability.

We were accordingly invited by Senators Feingold and Brownback to work together following the hearing to see if we could mutually agree upon legislative language that would accomplish this goal and appropriately balance the executive branch's legitimate need to receive confidential legal advice with Congress's legitimate need to know and understand how the laws it passed are being executed, interpreted, and applied. After several months of discussions and negotiations, which also involved Senate staff, Prof. Johnsen and I ultimately reached agreement

Honorable Patrick Leahy, Chairman
Honorable Arlen Specter, Ranking Member
January 30, 2009
Page 2

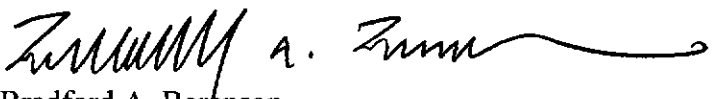
on a draft bill that became the OLC Reporting Act of 2008, which Senator Feingold introduced and which passed unanimously out of the Committee at the end of the last Congress.

Throughout our negotiations, I found Prof. Johnsen to be fair and reasonable. When she made sound points, I compromised on issues and concerns that I had, and when I made sound substantive points, she responded in kind. In particular, Prof. Johnsen made important compromises in order to ensure that the needs and interests of the Executive Branch were protected and that the bill did not violate the separation of powers. One of the most difficult issues involved how to require more transparency and reporting about legal advice without invading the constitutionally-based legal privileges of the executive branch. Ultimately, we devised a solution that allowed the executive to minimize the scope of disclosure where necessary to protect privileged information. The narrower disclosure enables Congress to be made aware that advice has been given without compromising the privileged substance of that advice. This allows the normal tools of congressional oversight, and the various inter-branch accommodations that are an essential feature of that oversight, to determine the extent to which Congress is permitted access to information the executive believes is covered by privilege. In my opinion, this compromise was necessary to ensure that the bill was constitutional, and Prof. Johnsen prudently and responsibly agreed to it. She also acceded to certain compromises designed to guard against excessive reporting burdens and to protect classified national security information.

Overall, the attitudes and opinions she expressed during our negotiations, and the actions she took, reflected a balanced view of the separation of powers and an appropriate respect for the interests of the branch of government that will become her client if she is confirmed. Although clearly rejecting some of more aggressive views of executive authority espoused by the Bush Administration (which concluded the bill was unconstitutional and sent a senior adviser veto threat through Attorney General Mukasey when the bill reached the floor of the Senate), she also did not appear to me to be an adherent of extreme congressionalist views, either. Rather, based on our interactions on this subject, she struck me as a thoughtful lawyer motivated primarily by a concern for good government and a desire to see our democratic system work properly.

I hope these observations, limited though they are, will be of some use to the Committee as it considers her nomination.

Sincerely,


Bradford A. Berenson

Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary

Honorable Arlen Specter
Ranking Member, U.S. Senate Committee on the Judiciary

Honorable Herb Kohl
Member, U.S. Senate Committee on the Judiciary

Honorable Dianne Feinstein
Member, U.S. Senate Committee on the Judiciary

Honorable Orrin G. Hatch
Member, U.S. Senate Committee on the Judiciary

Honorable Russell D. Feingold
Member, U.S. Senate Committee on the Judiciary

Honorable Charles E. Grassley
Member, U.S. Senate Committee on the Judiciary

Honorable Charles E. Schumer
Member, U.S. Senate Committee on the Judiciary

Honorable Jon Kyl
Member, U.S. Senate Committee on the Judiciary

Honorable Richard J. Durbin
Member, U.S. Senate Committee on the Judiciary

Honorable Jeff Sessions
Member, U.S. Senate Committee on the Judiciary

Honorable Benjamin L. Cardin
Member, U.S. Senate Committee on the Judiciary

Honorable Lindsey Graham
Member, U.S. Senate Committee on the Judiciary

Honorable Sheldon Whitehouse
Member, U.S. Senate Committee on the Judiciary

Honorable John Cornyn
Member, U.S. Senate Committee on the Judiciary

Honorable Ron Wyden

Member, U.S. Senate Committee on the Judiciary

Honorable Tom Coburn

Member, U.S. Senate Committee on the Judiciary

Honorable Amy Klobuchar

Member, U.S. Senate Committee on the Judiciary

Honorable Edward E. Kaufman

Member, U.S. Senate Committee on the Judiciary

Dear Chairman Leahy, Ranking Member Specter, and Committee Members

We are writing on behalf of Americans who are concerned with the lack of scrutiny that could be applied to some of President Obama's most important nominees. As new nominations come before your Committee, we hope you will reject pressure from the White House or others to rubber stamp nominations. Instead, it is our hope that you will give the American people an opportunity to hear about nominees and their records.

If confirmed by the U.S. Senate to serve in high offices within the Department of Justice, Dawn Johnsen, David Ogden, and Thomas J. Perrelli could have a dramatic impact on the state of this nation's legal order. Each of these nominees has made public comments or has taken positions indicating strong support for a shift in national policy regarding the culture of life. Whatever one thinks of the culture of life, dramatic shifts in policy on such important national questions should not happen without serious deliberation.

Consider the following facts:

--David Ogden has been nominated for Deputy Attorney General. His hearing is next week, less than a month after his nomination. On behalf of the American Psychological Association, he filed a terrible amicus brief in *Casey v. Planned Parenthood*, and here are the relevant quotes:

(1) "The conclusions from the most rigorous scientific studies are consistent: for the overwhelming majority of women who undergo abortion, there are no long-term negative emotional effects..."

(2) "Abortion rarely causes or exacerbates psychological or emotional problems. When women do experience regret, depression, or guilt, such feelings are mild and diminish rapidly without adversely affecting general functioning. Those few women who do experience negative psychological responses after abortion appear to be those with preexisting emotional problems"
and

(3) "In sum, it is grossly misleading to tell a woman that abortion imposes possible

detrimental psychological effects when the risks are negligible in most cases, when the evidence shows that she is more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant (if not greater) risks or adverse psychological effects"

--Dawn Johnson has been nominated to serve as head of the Office of Legal Counsel. She is the former Legal Director to NARAL and was a Staff Counsel Fellow for the ACLU Reproductive Freedom Project—a project which recently served as lead counsel in *Ayotte v. Planned Parenthood of Northern England*. This is absolutely stunning. For eight years, the Democrats and the Left complained that this office, charged with providing the government with objective opinions about the constitutionality of acts it wishes to undertake (this is the office that opined on detainees and interrogation, for example), had been politicized in an unprecedented way. And, now, without any debate or discussion, the Obama Administration is putting forward an absolute political zealot from two of the nation's most Leftist groups.

--Thomas Perrelli, nominated to serve as Associate Attorney General, is most infamous for his defense of Terri Schiavo's husband in the battle over withdrawing life-sustaining treatment. Perrelli even worked with pro-euthanasia attorney George Felos on the case, sending a clear message about his own end-of-life views. The appointment of Perrelli is hardly a surprise—President Obama voted with a unanimous Senate to pass the Schiavo bill, but now calls it one of his biggest mistakes.

Millions of Americans reasonably expect their elected representatives in the Senate to provide meaningful review of the President's nominees, particularly when they could dramatically change national policy. We urge the Committee to provide ample time for meaningful review to take place, and we urge members to ask probative questions of these nominees and demand serious answers so that the American people can continue to play a part in defining the cultural fabric of our nation.

Sincerely,

Kristan Hawkins
Executive Director, Students for Life of America

Tony Perkins
President, Family Research Council

David N. O'Steen, Ph. D.
Executive Director, National Right to Life Committee

Charmaine Yoest
President, Americans United for Life

Austin Ruse
President, Catholic Family and Human Rights Institute

Marjorie Dannenfelser
President, Susan B. Anthony List

Kris Mineau
President, Massachusetts Family Institute

Bradley Mattes
Executive Director, Life Issues Institute

Phyllis Schlafly
President, Eagle Forum

J. C. Willke, MD
President, International Right to Life Federation

Thomas Brejcha
President & Chief Counsel, Thomas More Society

Peter Breen
Executive Director & Legal Counsel, Thomas More Society

Joseph A. Brinck
President, Sanctity of Life Foundation

Jennifer Giroux
Executive Director, Women Influencing the Nation

Samuel B. Casey
General Counsel, Law of Life Project, Advocates International

Gary Bauer
President, American Values

Brian Burch
President of CatholicVote.org

David Bereit
National Director, 40 Days for Life

Phil Burress
President, Citizens for Community Values

Jill Stanek, RN

WorldNetDaily columnist

Peggy Hartshorn
President, Heartbeat International

Michael Geer
President, Pennsylvania Family Institute

Bryan Kemper
President, Stand True- Christ Centered Pro-life

John T. Bruchalski, MD, FACOG
Divine Mercy Care

James Nolan
President, Crossroads Pro-Life

Marie Bowen
Executive Director, Presbyterians Pro-Life

Jennifer Kimball, Be.L.
Executive Director, Culture of Life Foundation

Jo Tolek
Executive Director, Human Life Alliance

Dean Nelson
Executive Director, Network of Politically Active Christians

Chris Slattery,
President, Expectant Mother Care-EMC FrontLine Pregnancy Centers, New York City

Rev. Louis Sheldon
Chairman, Traditional Values Coalition

Andrea Lafferty
Executive Director, Traditional Values Coalition

February 2, 2009

The Honorable Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

We are proud to support the nominations of Elena Kagan to be Solicitor General of the United States and of Dawn Johnsen to be Assistant Attorney General for the Office of Legal Counsel. No woman has ever been confirmed by the Senate to hold either of these crucial offices. Because these two offices carry the broadest immediate responsibility for constitutional law, the confirmations of these two women will represent an important milestone for the Department of Justice and for women in the legal profession.

Each of us has been the first woman, or among the first women, to hold her office in the Justice Department. Based on our experiences in the Department, we fully understand the demands of the offices to which Ms. Johnsen and Ms. Kagan have been nominated. We have no hesitation in concluding that each of them possesses the skills and character to excel in the position for which she has been nominated. We therefore urge their prompt confirmation.

The Department of Justice is one the nation's most significant legal institutions. Across the broad spectrum of practice areas, the Department handles some of the most consequential and complicated matters that confront our legal system. By opening its highest offices to outstanding lawyers without respect to race, creed or gender, the Department has long played a pioneering role in opening the practice of law to all. This openness has also allowed the Department to benefit from access to a diverse range of the finest legal talents the bar has to

offer. By confirming Elena Kagan and Dawn Johnsen, the Senate will help the Department advance this honorable tradition.

Sincerely,


Jamie S. Gorelick
Deputy Attorney General (1994-1997)

Janet Reno
Attorney General (1993-2001)

Patricia Wald
Assistant Attorney General
Legislative Affairs (1977-1979)

Eleanor D. Acheson
Assistant Attorney General
Office of Policy Development (1993-2001)

Loretta C. Argrett
Assistant Attorney General
Tax Division (1993-1999)

Jo Ann Harris
Assistant Attorney General
Criminal Division (1993-1995)

Lois Schiffer
Assistant Attorney General
Environment and Natural Resources
Division (1993-2001)

Michael Vatis

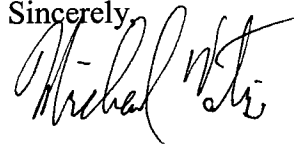
Hon. Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman,

I am writing in support of the nomination of Dawn Johnsen for Assistant Attorney General for the Office of Legal Counsel at the Department of Justice. I worked with Professor Johnsen at the Justice Department during the Clinton Administration, when she was Deputy Assistant Attorney General at OLC and I was an Associate Deputy Attorney General responsible for national security matters. In my experience, Professor Johnsen possessed an unshakeable allegiance to the rule of law, personal and professional integrity, and a firm understanding of not only the president's powers in the national security area but also the vital role of the separation of powers in our constitutional system. These attributes, combined with her experience running OLC as Acting Assistant Attorney General from 1997 to 1998, make Professor Johnsen uniquely qualified to serve as Assistant Attorney General for OLC in the Obama Administration.

Please do not hesitate to contact me if you have any questions or if I might be of any assistance regarding Professor Johnsen's nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Vatis", written in a cursive style.

Michael Vatis

BARON P. HILL
9TH DISTRICT, INDIANA

**COMMITTEE ON
ENERGY AND COMMERCE**
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET

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SUBCOMMITTEE ON
ENVIRONMENT AND HAZARDOUS MATERIALS

**COMMITTEE ON
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SUBCOMMITTEE ON
RESEARCH AND SCIENCE EDUCATION

JOINT ECONOMIC COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-1409

WASHINGTON OFFICE
223 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5315

DISTRICT OFFICE
279 QUARTERMASTER COURT
JEFFERSONVILLE, IN 47130
(812) 288-3999

DISTRICT OFFICE
320 WEST 8TH STREET, SUITE 114
BLOOMINGTON, IN 47404
(812) 336-3000

February 3, 2009

The Honorable Patrick Leahy, Chairman
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

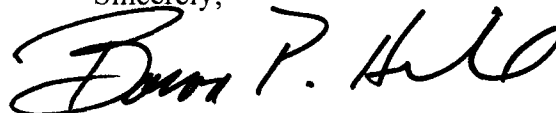
I write to you today in support of Dawn Johnsen as President Obama's nominee for Assistant Attorney General, Office of Legal Counsel at the United States Department of Justice.

Dawn Johnsen is one of our nation's leading legal minds. She and her family currently live in Bloomington, Indiana, which is located within my Congressional District. Dawn has spent the last decade as a law professor at Indiana University there, where she continues to be a widely respected authority on many issues concerning the Constitution.

During my time in public service, I have come to know Dawn Johnsen and her family quite well. Not only do I consider her a personal friend, but I have also relied on her legal expertise when considering issues before Congress, most notably the debate in my district surrounding the Foreign Intelligence Surveillance Act (FISA). Her perspective brought to the discussion a critical legal opinion that focused not on individual views, but on individual civil rights as criteria for reaching a conclusion concerning this law. She is a consummate professional, and one I can count on to offer a sound legal opinion on issues regardless of her personal views and convictions.

I am honored to offer my recommendation for her appointment to the Department of Justice, and I respectfully urge her confirmation from the Committee on the Judiciary. If you have any further questions or would like to discuss Dawn's nomination further, please do not hesitate to contact me at (202) 225-5315.

Sincerely,



Baron P. Hill
Member of Congress

Cc: Senate Judiciary Committee Members

WALKER, TIPPS & MALONE PLC

ATTORNEYS AT LAW

2300 ONE NASHVILLE PLACE
150 FOURTH AVENUE, NORTH
NASHVILLE, TENNESSEE 37219

TELEPHONE (615) 313-6000
WWW.WALKERTIPPS.COM

FRANK W. HUNGER

February 3, 2009

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Re: **Nomination of Dawn Johnsen**

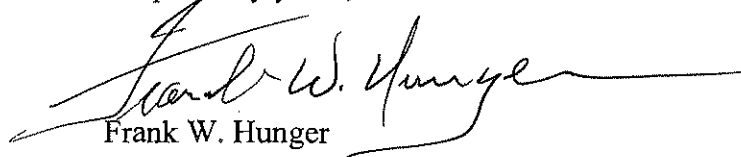
Dear Senator Leahy:

I write in support of the nomination of Dawn Johnsen to become the Assistant Attorney General over the Office of Legal Counsel of the United States Department of Justice. I have known Ms. Johnsen for a number of years and had the pleasure of working with her when we served together in the Justice Department during the Clinton administration. Ms. Johnsen served as a Deputy and acting Assistant Attorney General over the Office of Legal Counsel while I was serving as the Assistant Attorney General over the Civil Division.

I can and do state unequivocally that Ms. Johnsen is a person of the highest moral character and integrity. She enjoys a stellar reputation throughout the United States legal community and will be dedicated to restoring the independence and integrity of the Department of Justice. She is highly regarded and respected by all who serve in the Department. Ms. Johnsen possesses a high intellect coupled with sound judgment. From personal observation, and my direct involvement, I assure you that her work is always of the highest quality shaped by following the law without regard to whatever the political consequences may be. She will make an outstanding Legal Counsel to the Department, and it is a pleasure for me to recommend her to you, the Judiciary Committee, and the United States Senate.

Thank you for giving this your consideration.

Respectfully yours,



Frank W. Hunger

FWH/sc

Howard M. Shapiro

February 3, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

I write enthusiastically in support of the nomination of Dawn Johnsen to be Assistant Attorney General, Office of Legal Counsel.

I have known Dawn personally and professionally for many years. She is an extraordinarily capable and analytically gifted lawyer, a careful and precise counselor, and a deeply dedicated public servant. During most of her previous service in the Office of Legal Counsel I had the privilege to serve as General Counsel of the Federal Bureau of Investigation. I had many occasions to work closely with the Office of Legal Counsel on important law enforcement and national security issues. Under Dawn's leadership as Deputy Assistant Attorney General and Acting Assistant Attorney General the office ran smoothly and efficiently and provided consistently thoughtful, measured advice in both formal memoranda and many less formal interactions. In a department notable for the commitment and patriotism of its lawyers, Dawn nevertheless stood out as exceptional.

I know that Dawn is deeply committed to the rule of law and to our Constitution. She will work tirelessly to protect and defend the lawful prerogatives of the President in order to preserve the security of our nation in this dangerous time.

I support Dawn's nomination without hesitation and respectfully urge her confirmation.

Yours sincerely,



Howard M. Shapiro



Yale Law School

DREW S. DAYS, III

Alfred M. Rankin Professor of Law

February 9, 2009

✓ The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Senator Specter:

I am writing you to express my strong support for Dawn Johnsen who has been nominated by the President to serve in his Administration as Assistant Attorney General for the Office of Legal Counsel in the Department of Justice. Based upon my personal and professional association with Ms. Johnsen that now spans almost twenty-five years, I have every confidence that she is exactly the right person to fill the OLC post at this crucial juncture in the history of our Nation and of the Department of Justice.

My first contact with Ms. Johnsen was during the 1985-86 academic year at Yale Law School. I was a rather new member of the Faculty and Ms. Johnsen was one of the Article and Book Review editors of the Yale Law Journal. It proved to be my good fortune that she was assigned the job of editing one of my first articles for the Journal. While understandably deferential to me as a faculty member, Ms. Johnsen was, nevertheless, clear and firm, in expressing her views on how my draft might be improved. I think that both of us were pleased with the final result.

Since then, I have maintained contact with Ms. Johnsen in a number of different respects. First, I have read and relied upon, in my own teaching and writing, a number of Ms. Johnsen's scholarly publications on constitutional jurisprudence and Supreme Court practice. Second, I have either served with her, or been in the audience, at presentations on developments at the Supreme Court or in the Department of Justice. Third, during my tenure from 1993-1996 as the Solicitor General of the United States, I had frequent opportunities to discuss with Ms. Johnson and her boss, Walter Dellinger, the Assistant Attorney General, the work of the Office of Legal

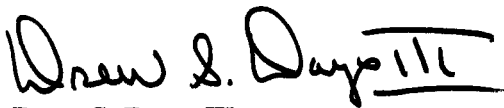
The Honorable Patrick J. Leahy, Chairman and
The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
February 9, 2009
Page 2

Counsel. In all of the foregoing respects, the personal qualities of Dawn Johnsen then were the same ones that I had admired in the student who had edited my Journal piece: extremely thoughtful, well-prepared, candid and direct, yet courteous and respectful, in presenting her views. It was apparent that she worked hard to consider seriously competing arguments before taking a final position on whatever matter might be at hand.

I would be remiss, however, if I left you with the impression that the only thing that OLC needs as Assistant Attorney General is someone with sterling professional qualifications and impeccable personal characteristics. They certainly are necessary but not sufficient, in my estimation. For, as you are fully aware, the Justice Department, in general, and OLC, in particular, have gone through a trying eight years in which their high standards of candor, accuracy and freedom from political influence have been severely undermined and flagrantly ignored. And the morale of the Department's career lawyers and other employees has reached an unprecedented low level, threatening the overall effectiveness of this crucial law enforcement agency.

Given these dire circumstances, the new leadership must be characterized, to the greatest extent possible, by prior experience with, and knowledge of, the proper workings of their respective components from the Attorney General on down. Insofar as OLC is concerned, it will take someone who can perform the delicate task, for example, of identifying those opinions of the former administration that need to be disavowed, or explicitly reversed, from those that should not. I cannot think of anyone more qualified than Dawn Johnsen to carry out this agenda with intelligence, expedition and firmness.

Sincerely,

A handwritten signature in black ink that reads "Drew S. Days, III". The signature is written in a cursive, flowing style with a horizontal line underlining the name.

Drew S. Days, III

February 11, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Dawn Johnsen to be the Assistant Attorney General of the
Office of Legal Counsel

Dear Chairman Leahy, Ranking Member Specter and
Members of the Senate Judiciary Committee:

I write strongly to support the nomination of Professor Dawn Johnsen to be the Assistant Attorney General of the Office of Legal Counsel.

I have dealt with the Department of Justice for over 40 years in a variety of roles, both inside and outside of the Department. It was my honor to serve in the Justice Department during the Carter Administration (as the United States Attorney for the Eastern District of Michigan 1977-1980) and in the Clinton Administration (as the Assistant Attorney General for the Criminal Division 1998-2001). I also served as President of the bipartisan National Association of Former United States Attorneys in the early 80s. I feel strongly that the Department is at a critical juncture in its history and that it requires the best and brightest leadership possible. I expressed these views in an article published in the most recent issue of the Harvard Law & Policy Review. See Robinson, Restoring Public Confidence in the Fairness of the Department of Justice's Criminal Justice Function, 2 Harv L & Pol Rev. 237 (2008).
http://www/hlpronline.com/Robinson_HLPR.pdf

I have worked with Professor Johnsen in a variety of capacities, including our work together on the Obama Administration's Justice Department Transition Team, on the Center for American Progress project concerning a Blueprint for the 44th President and on several programs sponsored by the American Constitution Society concerning the Justice Department.

In my opinion, Professor Johnsen brings exactly what is necessary to the position of Assistant Attorney General for the Office of Legal Counsel to assure this nation's commitment to the rule of law--outstanding academic credentials, strong OLC leadership experience and, most importantly, an unwavering commitment to the rule of law. As a former law school dean

C A D W A L A D E R

United States Senate
February 11, 2009

(Wayne State University Law School 1993-1998) I have also admired Professor Johnsen's scholarly work on presidential power, and I am convinced that she will exercise her responsibilities with fealty to the Constitution and the rule of law at all times. I was particularly impressed with Professor Johnsen's work with other former OLC lawyers in preparing the Principles to Guide the Office of Legal Counsel. Following these Principles will go a long way to restoring OLC's credibility as the nation's independent source of constitutional and legal advice to the President and the entire Executive Branch.

I am pleased to lend my support to Professor Johnsen's nomination and I am confident that she will do an outstanding job as Assistant Attorney General of the Office of Legal Counsel.

Sincerely,

A handwritten signature in cursive script that reads "James K. Robinson". The signature is written in dark ink and is positioned above the printed name.

James K. Robinson

JKR



February 13, 2009

Senator Patrick Leahy
Chairman United States Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senate Judiciary Committee Members:

The Alliance Defense Fund (“ADF”) submits this letter in opposition to the Department of Justice nominees David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli. ADF is a legal alliance, composed of more than 1,200 attorneys, that focuses its activities around three legal issues: (1) guarding the sanctity of life; (2) protecting marriage and the family; and (3) defending religious freedom. ADF regularly litigates difficult and contentious cases involving both novel and complex constitutional issues. In doing so, ADF consistently advocates for an originalist interpretation of the constitution, with the goal of fostering long-term legal stability and adherence to the “rule of law.”

President Obama’s most recent nominees for top-level positions in the Department of Justice (“DOJ”)—David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli—each subscribe to a results-oriented school of jurisprudence unmoored from a proper understanding of the constitution. Their legal philosophies depart from mainstream views, their professional careers reflect a far-left ideology, and their involvement in the DOJ will jeopardize the proper enforcement of federal law and development of constitutional doctrines. For the reasons expressed herein, ADF opposes each of their nominations and urges the Senate Judiciary Committee (“Committee”) to do the same.

David Ogden

President Obama has nominated David Ogden to serve as Deputy Attorney General. Mr. Ogden’s far-left jurisprudential background is truly astounding. He has repeatedly been an advocate of sexually oriented businesses, including distributors of hard-core pornography. He has represented a variety of clients seeking to strike down even slight restrictions on abortion, such as parental-consent laws, spousal-consent laws, and 24-hour waiting periods. And he has been a

consistent advocate for the homosexual agenda. Perhaps most troubling of all, it appears that Mr. Ogden has been somewhat misleading in his testimony before this Committee. For these reasons, which will be more fully discussed herein, ADF urges this Committee to reject Mr. Ogden's nomination.

Throughout his career, Mr. Ogden has been a major defender of sexually oriented businesses and organizations. He has repeatedly represented major organizations within the pornography industry—including Playboy Enterprises, Playboy Programming Distribution Corporation, the Consenting Adults Telephone Rights Association, and PHE, Inc., which is the nation's largest distributor of hard-core pornography and other sexually oriented products. This industry is unique in its extreme degradation of women and disregard for human relationships.

In *United States v. American Library Association*, 539 U.S. 194 (2003), Mr. Ogden submitted an amicus brief on behalf of fifteen library directors, arguing that the federal constitution requires public libraries to remove internet pornography filters. In that brief, Mr. Ogden treated pornography like informative data, writing that "[i]mposition of mandatory filtering on public libraries impairs the ability of librarians to fulfill the purpose of public libraries—namely, assisting library patrons in their quest for information" In several other cases, including *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994), Mr. Ogden represented sexually orientated businesses and organizations in their quest to avoid any measure—however slight—of government regulation. His advocacy of expansive First Amendment rights for sexually oriented businesses rests on a revisionist understanding of the constitution.

Mr. Ogden has also been a staunch supporter of abortion, seeking to eradicate any state or federal law protecting unborn children or educating women about the harms of abortion. In *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), Mr. Ogden argued, in a brief for the American Psychological Association, that a parental-consent law violated the constitutional "right" of a 14-year-old girl to kill her unborn child. In that brief, Mr. Ogden argued that 14-year-old girls are mature enough to decide whether to abort their child, stating that "the decision to abort is one that . . . a reasonable adolescent[] could make." He also asserted that 14-year-old girls are just as capable of making abortion decisions as adults are:

[E]mpirical studies have found few differences between minors aged 14-18 and adults in their understanding of information and their ability to think of options and consequences when asked to consider treatment-related decision. These unvarying and highly significant findings indicate that with respect to the capacity to understand and reason logically, there is no qualitative or quantitative difference between minors in mid-adolescence, i.e., about 14-15 years of age, and adults.

Mr. Ogden's efforts to invalidate parental-consent laws conflict with citizens' sentiment in this country; nearly 70% of Americans favor laws requiring women under 18 to get parental consent for any abortion. See Gallup's Pulse of Democracy: Abortion, available at <http://www.gallup.com/poll/1576/Abortion.aspx>.

In *Casey v. Planned Parenthood of S.E. Pennsylvania*, 505 U.S. 833 (1992), Mr. Ogden argued, in an *amicus* brief for Planned Parenthood and the American Psychological Association, that spousal notification and a mandatory 24-hour waiting period violate the federal constitution. He reasoned that "compelled spousal notification places a substantial burden on a married woman's right to terminate her pregnancy" and "cannot be justified [by] the [government's] interest in promoting the integrity of the marital relationship." By taking this position, Mr. Ogden's brief advocated the invalidation of a spousal-notification law supported by 64% of Americans. See Gallup's Pulse of Democracy: Abortion, available at <http://www.gallup.com/poll/1576/Abortion.aspx>. He also insisted that a minimal waiting period of 24 hours "severely burdens a woman's right to choose." These absolutist positions on abortion are based on a flawed understanding of the constitution, wholly disconnected from the federalist principles upon which our great nation was founded. Mr. Ogden's views leave no room whatsoever for the state to advance its compelling interest in its future citizens and taxpayers.

Mr. Ogden has also been an unwavering advocate for homosexual activists. In *Lawrence v. Texas*, 539 U.S. 558 (2003), he served as counsel for the American Psychological Association and argued that the criminalization of sodomy violates federal constitutional rights. In that brief, he asserted that "homosexuality is a normal form of human sexuality." He also argued, despite abundant evidence to the contrary, that "the children of [same-sex couples] . . . demonstrate no deficits in intellectual development, social adjustment, or psychological well-being as compared to children of [opposite-sex couples]." He submitted a brief advocating similar positions in *Bowers v. Hardwick*, 478 U.S. 186 (1986).

Mr. Ogden supports the use of "strict scrutiny" for equal-protection challenges brought by persons involved in same-sex relationships. He has asserted that "gay men and lesbians constitute a discrete and insular minority deserving strict equal protection scrutiny." Donald N. Bersoff and David W. Ogden, "APA Amicus Curiae Briefs: Furthering Lesbian and Gay Male Civil Rights," *American Psychologist*, Vol. 46, No. 9, p. 950-56 (Sept 1991). This radical legal theory has been rejected by nearly every court that has addressed the issue. See, e.g., *Hernandez v. Robles*, 7 N.Y.3d 338, 855 N.E.2d 1 (2006); *Andersen v. King County*, 158 Wash.2d 1, 138 P.3d 963 (2006); *Conaway v. Deane*, 401 Md. 219, 932 A.3d 571 (2007). The only judicial opinion adopting that approach—the California Supreme Court's decision in *In re Marriage Cases*, 43 Cal.4th 757, 183 P.3d 384 (2008)—has been resoundingly rejected by the people of California when they approved a

constitutional amendment that effectively nullified the Court's decision. Mr. Ogden's advocacy of such radical constitutional jurisprudence lacks any basis in sound constitutional theory; instead, it is intended to further his favored political end, without regard for an originalist understanding of the document he purports to be interpreting.

And perhaps more troubling than Mr. Ogden's far-left jurisprudence is his lack of candor before this Committee. In a child pornography case, *United States v. Knox*, Mr. Ogden argued—on behalf of the ACLU, the American Library Association, and the American Booksellers Association—that the defendant had been improperly convicted under the federal child pornography statute. In that case, the Department of Justice adopted an “extreme” interpretation of the child pornography law, asserting that materials do not qualify as child pornography unless there is actual nudity, *i.e.*, the child's genitals or pubic area are fully or partially exposed. President Clinton publicly chastised the DOJ for its position, as did the Senate, by a vote of 100-0, and the House, by a vote of 425-3.

When questioned about this case during the Judiciary Committee's hearing, Mr. Ogden stated that he and his clients did not adopt what he characterized as the DOJ's “very extreme view . . . of the law.” He stated: “The brief that I submitted . . . made a different point. . . . The court decided not to accept that view, but it wasn't the view—the extreme view that I myself rejected—that the Justice Department brief took.” It appears, however, that Mr. Ogden's brief had in fact adopted the same “extreme” position put forth by the DOJ. The DOJ's brief asserted that “[d]epictions . . . come within the statute only if they show minors engaged in the conduct of lasciviously exhibiting their . . . genitals or pubic areas.” Brief of Respondent United States at 13, *Knox v. United States*, No. 92-1183 (U.S.S.C. Sept 1993) (found at 1993 WL 723366). Similarly, Mr. Ogden's brief argued that “nudity was not only a requirement, but that nudity alone was insufficient. Something more, a ‘lascivious exhibition of the genitals and public areas,’ was required.” Brief of *Amici* in support of Petitioner at 17, *Knox v. United States*, No. 92-1183 (U.S.S.C. Sept 1993) (found at 1992 U.S. Briefs 1183 (Lexis)). This lack of candor in Mr. Ogden's testimony further demonstrates that he is not fit to serve as a high-ranking DOJ official.

Elena Kagan

President Obama has nominated Elena Kagan to serve as Solicitor General. In her past, Ms. Kagan has shown open hostility towards the military's “Don't Ask, Don't Tell” policy, which is favored by a majority of Americans and, more importantly, by a majority of military servicemen and women. See Gallup's Pulse of Democracy: Homosexual Relations, *available at* <http://www.gallup.com/poll/1651/Homosexual-Relations.aspx>; Military Times Poll, *available at* http://www.militarycity.com/polls/2007activepoll_politics.php.

While Dean of Harvard Law School, Ms. Kagan did not allow military recruiters on campus in protest to the military's "Don't Ask, Don't Tell" policy. In an email to the Harvard Law School community, she referred to this fifteen-year policy as "a profound wrong—a moral injustice of the first order." See Email from Elena Kagan, Dean Harvard Law School, to Harvard Law School Community (Oct 6, 2003, 9:04 EST), *available at* http://www.hlrecord.org/home/index.cfm?event=displayArticlePrinterFriendly&uStory_id=fb9b7e30-726c-45a1-ae9c-e74a7c5f655f.

Moreover, Ms. Kagan submitted an *amicus* brief challenging the Solomon Amendment, the federal law denying federal funding to an institution of higher education that has a policy or practice of prohibiting or preventing the military from gaining access to campuses for purposes of military recruiting. The *amicus* brief joined by Ms. Kagan and other law professors offered an implausible interpretation of the Solomon Amendment, which was rejected by a unanimous Supreme Court. See *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006). In fact, the Court's opinion characterized Ms. Kagan's interpretation as one that would render the Solomon Amendment "largely meaningless." *Id.* at 57-58.

Ms. Kagan's proffering of an unsupportable interpretation of federal law to achieve her desired political result raises serious questions about her capacity to defend federal laws with which she personally disagrees. She appears driven by a results-oriented jurisprudence, unfitting for a high-ranking DOJ official who should not be tainted by an extremist ideology. Her outright hostility towards governing military policy and her inability to reconcile her personal views with her legal positions demonstrates that Ms. Kagan is ill qualified for the job of Solicitor General.

Dawn Johnsen

President Obama has nominated Dawn Johnsen to lead the Office of Legal Counsel within the DOJ. One need not explore far to see Ms. Johnsen's far-left legal background and jurisprudential theories. She was a staff counsel for the ACLU, and served as Legal Director for the National Abortion Rights Action League ("NARAL"). NARAL has adopted extreme, absolutist positions on abortion, opposing any attempt to restrict abortion on-demand. In line with its unwavering demands on abortion, NARAL has publicly condemned the federal law banning partial-birth abortions, see NARAL Pro-Choice American Press Release, "Senate Votes to Criminalize Safe, Legal Medical Procedures, Next Stop is President Bush" (Oct 21, 2003), *available at* <http://www.commondreams.org/news2003/1021-04.htm>—a law supported by more than 72% of Americans. See Gallup's Pulse of Democracy: Abortion, *available at* <http://www.gallup.com/poll/1576/Abortion.aspx>.

As a legal scholar, Ms. Johnsen has promoted radical legal positions concerning abortion. She has sharply criticized the creation of any legal rights for unborn children, asserting that this might have a deleterious effect on her desired end—a woman’s unfettered access to abortion. *See* Dawn E. Johnsen, “The Creation of Fetal Rights: Conflicts with Women’s Constitutional Rights to Liberty, Privacy, and Equal Protection,” 95 Yale L.J. 599 (Jan 1986). In addition, she has adopted far-left feminist positions, arguing that “[f]etal rights laws would not only infringe on constitutionally protected liberty and privacy rights of individual women, they would also serve to disadvantage women as women by further stigmatizing and penalizing them on the basis of the very characteristic that historically has been used to perpetuate a system of sex inequality.” *Id.* at 620. These radical legal theories are far outside mainstream legal thought; they are grounded in achieving her desired end—the widespread availability of abortion—and not in a proper understanding of constitutional doctrine. And again, they run contrary to the government’s profound interest in promoting life.

Thomas Perrelli

President Obama has nominated Thomas Perrelli as Associate Attorney General. While in private practice, Mr. Perrelli represented Terri Schiavo’s husband and worked closely with the ACLU to deprive Ms. Schiavo of food and water. His intimate involvement in that case and tireless efforts to ensure Ms. Schiavo’s death show a calloused disregard for the sanctity of all life, including the lives of disabled individuals.

In fostering Ms. Schiavo’s death, Mr. Perrelli advanced a legal position rejected by 80% of Americans. A poll completed after Ms. Schiavo’s controversial death found that 80% of likely voters said that a disabled person who is not terminally ill or in a coma should not, in the absence of a written directive to the contrary, be denied food and water. *See* Zogby International Poll, *available at* <http://www.zogby.com/search/ReadNews.cfm?ID=982>. Moreover, by a three-to-one margin, likely voters said that, when there is conflicting evidence on the wishes of a patient, elected officials should order that a feeding tube remain in place. *See* Zogby International Poll, *available at* <http://www.zogby.com/search/ReadNews.cfm?ID=982>. Mr. Perrelli’s unwillingness to protect Ms. Schiavo’s most important right—her inalienable right to life—raises serious questions about his ability to protect and defend the rights of other Americans.

Conclusion

ADF respectfully requests that the Committee reject the DOJ nominations of David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli. Their far-left, results-oriented jurisprudence is wholly unmoored from the constitution as drafted

and understood by our Founders. Confirming them to high-level DOJ positions will wreak havoc on the “rule of law” in our country.

Respectfully submitted,

The Alliance Defense Fund

LEWIS C. MERLETTI
Director
United States Secret Service (Ret.)

February 13, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Mr. Chairman:

I hope you and your family are well. These are difficult times, but I feel better knowing you are there still fighting the good fight.

I want to take just a moment of your time to pass along to you my sincere endorsement of President Obama's selection of Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel.

I had the privilege of working with Dawn when I was the Director of the United States Secret Service. Dawn is a true professional and has a thorough understanding of the importance of national and executive security. I found her to be keenly responsive, dedicated, and conscientious in applying herself to the highest standards of conduct.

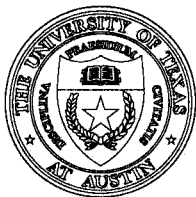
As the Director of the Secret Service and now Senior VP at the Cleveland Browns, I have had the opportunity to work with many professionals at many different levels of authority and position, and in many stressful situations requiring tact, diplomacy, and good judgment, Dawn is among the best of those professionals. I heartily endorse her nomination.

Warm regards,



Lewis C. Merletti

*PLEASE STAY IN TOUCH, IT WOULD BE WONDERFUL TO
GET TOGETHER SOMETIME.*



SCHOOL OF LAW

THE UNIVERSITY OF TEXAS AT AUSTIN

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February 17, 2009

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Dawn Elizabeth Johnson as Assistant Attorney General of the United States

Dear Chairman Leahy, Ranking Member Specter, and the Members of the Senate Judiciary Committee:

I want to indicate how very delighted I was at President Obama's nomination of Prof. Dawn Elizabeth Johnson to serve as the head of the Office of Legal Counsel within the Department of Justice. I have known her for at least six or seven years. We share a common general interest in the institutional mechanisms by which the Executive Branch pays due heed to its constitutional obligations, as well as a more particularized interest in the articulation by the OLC of views on the permissibility of various means of interrogation, including torture.

I have, of course, read her work with interest and admiration. We have also participated in several scholarly conferences together, including one that she organized several years ago at the University of Indiana Law School. I know of very few people—they include, for what it is worth, the two newly appointed principal deputies within the OLC, David Barron and Martin Lederman—who have devoted as much intellectual energy to thinking through the truly difficult questions involved when trying to delineate the responsibilities of OLC attorneys. She is, I am fully confident, well aware of the peculiar importance of the OLC in setting legal boundaries for the entire Executive Branch. Even if the institutional judiciary will, in some instances, actually review OLC determinations, that inevitably will take significant time, and in the meanwhile executive officials will structure their conduct around the legal advice (or permissions) they have received from the OLC. This is an awesome responsibility, greater, in many ways, than that held by almost any given federal judge. One wants, as head of the OLC, someone not only "learned in the law," but also possessed of a strong moral compass that will generate good judgment. I am absolutely confident that Prof. Johnson possesses both qualities—sheer intellectual ability plus complete trustworthiness, in every way—and I unequivocally recommend her prompt confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Levinson", with a long horizontal flourish extending to the right.

Sanford Levinson
W. St. John Garwood and
W. St. John Garwood Jr.
Centennial Chair in Law,
University of Texas Law School

RANDOLPH D. MOSS



February 23, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Dawn E. Johnsen to serve as Assistant Attorney General

Dear Chairman Leahy, Ranking Member Specter, and Members of the
Senate Judiciary Committee:

I write to offer my enthusiastic support for the nomination of Dawn E. Johnsen to serve at the Assistant Attorney General for the Office of Legal Counsel.

I served as the Assistant Attorney General for the Office of Legal Counsel from 2000 to 2001, and prior to that served as the Acting Assistant Attorney General. In addition, I worked with Dawn at the Office of Legal Counsel from February 1996 (when I joined the office) until July 1998 (when Dawn left to teach law at the University of Indiana). During the later portion of this time, Dawn served as the Acting Assistant Attorney General. As a result, I both understand the demands of the job and have had the opportunity to see first-hand how Dawn approaches the role of an OLC lawyer.

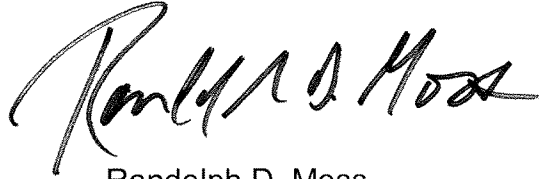
Based on this experience, I have complete confidence that Dawn would, if confirmed, do a superb job in leading the Office of Legal Counsel. Dawn's ability and integrity are impeccable. Although modest, she is a truly exceptional lawyer. She is also invariably honest and straightforward. Even those who disagree with Dawn on particular issues come to admire her for the way she approaches legal issues and debate. In addition, I know of no one who has thought more extensively and carefully about the role and duties of the Office of Legal Counsel. Most importantly, Dawn has an abundance of practical experience making the very hard decisions required of the Assistant Attorney General for the Office of Legal Counsel.

During her prior tenure at the Office of Legal Counsel, Dawn served as the "conscience of the office." She was the one who reminded all of us on a daily basis—through her words and actions—of our obligation to get the law right and that our client was the United States. She understood the role of a government lawyer and OLC's duty to protect both the rule of law and the authorities of the Executive Branch. She understood that her role was not as a policymaker, but as a lawyer. Dawn also brought to the job a profound respect for the Department of Justice and the institutions of

government. In short, Dawn not only understood, but exemplified, the traditions of the Office of Legal Counsel.

For all of these reasons, I believe Dawn is uniquely qualified to lead the Office of Legal Counsel.

Respectfully,

A handwritten signature in black ink, appearing to read "Randolph D. Moss". The signature is fluid and cursive, with the first name "Randolph" being more prominent and the last name "Moss" following in a similar style.

Randolph D. Moss

BETH NOLAN



February 24, 2009

Senator Patrick Leahy, Chair
Senator Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Professor Dawn Johnsen to serve as Assistant
Attorney General, Office of Legal Counsel

Dear Chairman Leahy, Ranking Member Specter, and Members of the
Senate Judiciary Committee:

I am writing to offer my enthusiastic support for President Obama's
nomination of Professor Dawn Johnsen to serve as Assistant Attorney
General for the Office of Legal Counsel (OLC). I urge the Committee to
approve her nomination

Professor Johnsen served in OLC from 1993-1998, as both a Deputy
Assistant Attorney General and as Acting Assistant Attorney General. I had
the privilege of working directly with her when I was a Deputy Assistant
Attorney General in that office (1996-1999), and also had come to know her
work when I served as Associate Counsel to the President (1993-1995).
Having also served as Counsel to the President (1999-2001), and early in my
career as an Attorney-Advisor in OLC when Ted Olson headed that Office
(1981-1985), I have had both a close-up view of Professor Johnsen as a
lawyer and head of OLC, and a longer view of the importance of OLC to our
President and the government, and the qualities that are important in one
serving as its head.

As a legal scholar Professor Johnsen has addressed with deep
sophistication and thoughtfulness the proper role of OLC in our constitutional
system, as well as a range of difficult constitutional issues. Her academic
experience and deep intelligence would by themselves qualify her for the
position to which she has been nominated. But it is the way in which she has
conducted herself as an OLC lawyer in the past that makes absolutely clear
how ideally suited she is to undertake this important responsibility.

OLC doesn't get the easy questions. It is called upon to address
questions that other lawyers in the Executive Branch can't answer on their

own. It is called upon to address legal questions of the deepest significance for our country. What I know from working closely with Dawn Johnsen is that she is one of the most intelligent, tenacious, and thoughtful analyzers of complex legal problems I have ever seen. A legal conclusion from her comes only after thoughtful assessment of all relevant considerations, and reflects her best judgment on the applicable law, rather than on any policy preferences. Moreover, I have never seen Dawn take a shortcut or reach a conclusion that is "close enough." She insists on excellence—from herself, and from those with whom she works.

Dawn's deeply felt personal commitment to the rule of law is present in all her legal work. Under her leadership, all at OLC will understand the importance of that commitment to the work of the office, as it did when she served as its acting head.

In addition, Dawn will provide a great service to the government because of her outstanding practical ability to devise solutions to seemingly irresolvable conflicts, so that the parties are able to accomplish their objectives in full compliance with the law. When she has to say "no," however, she will do so—clearly and directly—and earn the respect of all who work with her. They will turn to her to solve problems, and accept her conclusions when a problem cannot be solved as the requestor would wish.

I urge the Senate to confirm Professor Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel. In these challenging and even perilous times, there is no one who is better suited to guide OLC in its critical role of assisting the President "to take care that the laws be faithfully executed."

Very truly yours,

A handwritten signature in black ink, appearing to read "Beth Nolan", with a long horizontal flourish extending to the right.

Beth Nolan



Leadership Conference on Civil Rights

1629 K Street, NW
10th Floor
Washington, D.C. 20006

Phone: 202-466-3311
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Marc H. Morial
National Urban League

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National Council of La Raza

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Andrew L. Stern
*Service Employees
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*Mexican American Legal Defense
and Educational Fund*

Randi Weingarten
American Federation of Teachers

Mary G. Wilson
League of Women Voters

COMPLIANCE/ENFORCEMENT COMMITTEE CHAIRPERSON

Karen K. Narasaki
Asian American Justice Center

PRESIDENT & CEO

Wade J. Henderson

February 24, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Leadership Conference on Civil Rights, the nation's oldest, largest, and most diverse civil and human rights coalition, and the undersigned organizations, we write to express our strong support for the nomination of Dawn Johnsen to the position of Assistant Attorney General for the Office of Legal Counsel (OLC) at the Department of Justice.

The Office of Legal Counsel is of great importance to the civil and human rights community, as it frequently advises the White House and the federal agencies on a number of issues that directly affect the communities we represent. In recent years, for example, it has weighed in on important matters such as voting rights and congressional representation, criminal justice, immigration benefits and enforcement, religious discrimination, and torture. In addition, the OLC's opinions on matters such as executive privilege or Presidential appointments can also set important, even if more indirect, precedents that ultimately affect the missions of our organizations.

As such, we have a stake in ensuring that the OLC is run by highly-capable individuals who have demonstrated a strong commitment to the rule of law. We believe that Professor Johnsen's extensive prior experience in the Office of Legal Counsel, as well as her tenure as a constitutional law professor, makes her exceptionally qualified to lead this office.

Professor Johnsen's experience and preparation for this job are unparalleled. She served as deputy assistant attorney general at the Office of Legal Counsel from 1993 to 1996 and was named acting assistant attorney general from 1997 to 1998 – giving her a very strong familiarity with the office and its mission that will ensure a fast start after she is confirmed. Following her years with the OLC, Professor Johnsen joined the faculty of the Indiana University School of Law—Bloomington, where she teaches and writes about constitutional law – an experience that has further honed her research capabilities and her

"Equality In a Free, Plural, Democratic Society"

Hubert H. Humphrey Civil Rights Award Dinner • May 7, 2009



ability to listen to and weigh all sides of challenging issues, which will help to better ensure that she makes sound legal decisions.

In addition, since leaving the OLC, Professor Johnsen has remained a fierce advocate for protecting the integrity of the Office of Legal Counsel and has written extensively on this subject – including articles on the dangers of ideologically-driven decisions at the OLC and on the Bush administration’s abuses of power. In 2004, she organized nineteen former OLC attorneys to jointly create a statement of principles for the OLC, which received praise from Republicans and Democrats alike. In addition, she helped craft legislation to bring greater transparency and integrity to the OLC. Professor Johnsen’s continued concern for the office further demonstrates not only her long-term commitment to the OLC but also her exceptional qualifications for leading it now.

In an era where the Bush administration’s Office of Legal Counsel often flouted legal constraints in an effort to advance its policies, Dawn Johnsen’s nomination as the executive branch’s top legal advisor is a sure sign that the Department of Justice will, once again, ensure adherence to the rule of law. Professor Johnsen’s extensive experience in the office and her long-standing commitment to its integrity makes her well-qualified for the post.

For these reasons, we urge you to support Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel. Thank you for your consideration. If you have any questions, please contact Rob Randhava, LCCR Counsel, at [REDACTED] or Nancy Zirkin, LCCR Executive Vice President, at [REDACTED]

Sincerely,

Alliance for Justice
Asian American Justice Center
Campaign for America’s Future
Citizens’ Commission on Civil Rights
Human Rights Campaign
Leadership Conference on Civil Rights
Mexican American Legal Defense and Educational Fund
NAACP
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Women
National Council of La Raza
National Health Law Program
National Organization for Women (NOW)
National Partnership for Women & Families
National Senior Citizens Law Center
National Women’s Law Center
People For the American Way

March 18, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Nomination of Dawn E. Johnsen

Dear Chairman Leahy and Senator Specter:

The Senate's task in confirming nominees for senior Justice Department offices is always important and frequently difficult. Often, Senators can do no more than attempt to project from a nominee's past writings, speeches and positions some estimation of how that individual might perform in the position for which he or she has been nominated. In this instance, however, the guesswork has been eliminated: Dawn Johnsen spent nearly five years in major leadership roles in the Office of Legal Counsel, a year and a half of that time as its acting head. The views of those throughout the government with whom she worked, and the opinions published under her name, establish that she is an exceptional choice to head the office.

Sometime during the years that Dawn Johnsen served as Deputy Assistant Attorney General while I was head of the office, her colleagues in OLC's leadership and I adopted a simple motto to guide our deliberations: "*Dawn Johnsen Is Always Right.*" This was offered only partially in jest. The senior officials of the office would debate complex issues among ourselves for days and finally realize, time and again, that Dawn's first answer was the right one after all. Finally, after many recurrences, we memorialized this pattern into a testament of tribute to Dawn.

Dawn's capacity to come to the right answer -- the answer that after much analysis, lengthy discussion and sober analysis others came to agree was the best rendering of the law -- was not just a product of her keen intellect and extraordinarily good judgment. There was more. Dawn's deep dedication to the rule of law allowed her to put aside immediately and emphatically the confounding influences of policy preferences, political partiality and pressure from important governmental clients desirous of getting the answer they wanted to hear. Because she brought such intellectual honesty to her work, she was able to see through to the right answer with a clarity that made her universally admired by those with whom she worked in government.

Senior officials from the FBI, the CIA, the Department of Defense, the National Security Administration, the Secret Service -- the list goes on -- have filed with this Committee statements that attest to the fact that Dawn, in the office for which she has been nominated, carried out her duties in a responsible, even-handed way. Her skill and dedication in both serving the interests of effective government and adhering to legal principle is attested to by these important officials and others who sought and relied upon her legal advice during her tenure.

The opinions she signed stand on their own as testaments to Dawn's adherence to the rule of law. Her opinions on the question of whether compensation could be paid to African-American farmers who were victims of discrimination in farm benefits are an example. Many hoped that the Attorney General's settlement authority could be used to get around the fact that these claims were barred by the statute of limitations. Even though Dawn's sympathies were no doubt strongly with the farmer plaintiffs, her view of the law compelled her to reject "the novel conclusion that the executive branch has the discretion to dispense with a congressional mandated statute of limitations in litigation or the compromise of claims."

In these and other matters that came before the Office of Legal Counsel, Dawn demonstrated that respect for the legitimate role of Congress in enacting legislation was an essential part of the rule of law. Laws enacted by Congress are not, in her view, to be lightly disregarded. Her more recent criticism of some OLC opinions reflects this basic approach. Her principal critique has been that some opinions took positions that unduly denigrated the constitutional role of the Senate and House in enacting legislation under Article I to regulate torture and wiretapping. At the same time, she has cautioned critics of the early Bush OLC opinions to "be precise with their objections and recommendations in order to avoid undermining future Presidents' legitimate authorities or otherwise undermining the proper balance of governmental powers." The positions she took when the controversial OLC opinions were released are now the positions widely agreed upon by leaders of the bar, by members of this Committee from both parties and by subsequent officials in the administration of President Bush. As usual, Dawn got it right, and got it right from the beginning.

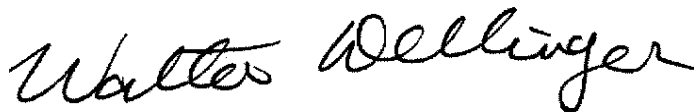
Critics of Dawn's nomination have scoured every footnote from every brief and article and every scrap of paper, including handwritten notes for speeches, from Dawn's entire professional life in an effort to glean bits suggesting that she would be an irresponsible or partisan head of OLC. Such "predictions" of course seem entirely beside the point for one who has actually held a leadership position in the office. But even on their own terms, these shards amount to nothing. The canard that this Sunday school teacher of three year olds at the United Methodist Church in Bloomington and loving mother of two wonderful boys believes that "pregnancy is slavery" is false, as is the suggestion that she urged the Supreme Court to strike down abortion restrictions on the basis of the Thirteenth Amendment. The truth is that Johnsen was the lead lawyer on a reproductive rights brief filed in 1989 on behalf of seventy-seven organizations represented by twelve independent attorneys that included a footnote that made a rough analogy between government-compelled childbirth (not "pregnancy") and involuntary servitude. The brief did not ask the Court to invalidate the restrictions on any basis but *Roe v. Wade* and the Fourteenth Amendment.

Dawn's legal work at an earlier point in her career for a pro-choice advocacy organization, and her more recent work for the American Constitution Society have been raised against her. But the relevant question is not what causes or parties an individual has worked for in the past, but whether this is a person who can put those prior public service efforts aside when entering into the United States Department of Justice. Officials of both parties have shown that men and women of character do just that. For example, one of our most admired former Justice officials, Theodore B. Olson, has shown how it is done right. Before becoming head of OLC, after serving in that office, before becoming Solicitor General, and again after his service as Solicitor General, Ted Olson has been an active, committed and effective advocate for his political party and for conservative causes. But everyone who follows the administration of justice knows that when he assumed duties at the Department, he left his party and his politics at the door and advanced no interest other than the interests of the United States. Dawn's work at OLC shows that she is cut from the same cloth.

Because of her exemplary resume, her extraordinary legal credentials, her extensive body of scholarship exploring issues of separation of powers, and her substantial prior experience in the Office of Legal Counsel, Dawn comes to the leadership of OLC as the most highly qualified nominee in memory. One of Dawn's faculty colleagues at Indiana has written, "Dawn is level-headed, deliberate and thoughtful. She is never afraid to speak her mind, but chooses her words with care. She listens to opposing viewpoints. Dawn radiates integrity." Exactly.

I believe that Dawn Johnsen will be the best head of OLC in the history of the office.

Respectfully,

A handwritten signature in cursive script that reads "Walter Dellinger". The signature is written in dark ink and is positioned above the printed name and title.

Walter Dellinger
Assistant Attorney General
Office of Legal Counsel
1993-1996



National Council of Jewish Women

New York Office
475 Riverside Drive, Suite 520
New York, NY 10115
Tel 212 645 4048
Fax 212 645 7466
Email action@ncjw.org

Washington Office
1707 L Street, NW Suite 950
Washington, DC 20036-4206
Tel 202 296 2588
Fax 202 331 7792
Email action@ncjwdc.org

Israel Office
NCJW Research Institute for
Innovation in Education, Room 267
Hebrew University, Mt. Scopus
Jerusalem, Israel 91905
Tel 972 2 5882 208
Fax 972 2 5813 264
Email ncjwisrael@gmail.com

Web www.ncjw.org

March 31, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

Dear Senators:

On behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW), I am writing to urge your support for Dawn Johnsen's nomination as assistant attorney general for the Office of Legal Counsel (OLC). She is a highly qualified candidate who would serve with expertise and skill.

As a decades-long advocate for civil rights and liberties, NCJW understands the importance of the Office of Legal Counsel. The OLC regularly advises the White House and federal agencies on issues pertaining to human and civil rights, issues as varied and significant as criminal justice, voting rights, torture, immigration enforcement, and religious discrimination. This critical office must be led by someone skilled and experienced enough to take on these issues so central to our democracy.

Professor Johnsen is the right person for this position. She served as deputy assistant attorney general at the OLC from 1993-1996 and was acting assistant attorney general from 1997-1998. Since then, she has taught and written extensively about constitutional law, as a member of the faculty at the Indiana University School of Law. In her time outside of public service, she has been a strong advocate for following the rule of law in the Justice Department. In 2004, she organized nineteen former OLC attorneys to create a statement of principles for the OLC, which earned bipartisan praise and support. She is just the kind of leader that the office requires to restore discipline and public confidence after a troubling recent history.

NCJW is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children, and families and to ensure individual rights and freedoms. NCJW believes that Dawn Johnsen's record of public service and leadership, as well as her prior experiences in the Office of Legal Counsel and as a constitutional law professor and scholar make her an ideal choice to serve as assistant attorney general for the Office of Legal Counsel. I strongly urge you to support her nomination in committee.

Sincerely,

Nancy Ratzan

Cc: Members of the Senate Judiciary Committee



Michigan Peaceworks Tuesday Working Group
120 ½ W. Liberty Street,
Ann Arbor, Michigan 48104

April 1, 2009

Senator Patrick J. Leahy
United States Senate
Washington, D. C.

Senator Arlen Specter
United States Senate
Washington, D. C.

Dear Senators of the Senate Judiciary Committee,

We write to support and endorse the nomination of Dawn Johnsen as head of the Office of Legal Counsel. Dr. Johnsen is an advocate for human rights in her professional as well as her personal life. Dr. Johnsen has worked for and headed the Office of Legal Counsel in previous administrations and understands that President Bush's attorneys in that office who wrote bogus legal opinions to discount our Constitution and "permit" the Bush Administration to torture prisoners were legally and morally wrong. She understands that the Office of Legal Counsel is entrusted with making sure the President obeys our laws. Dr. Johnsen expects the President and presidential lawyers to respect legal constraints or the rule of law. With her education and experience, we feel Dawn Johnsen is an excellent choice to head and improve the Office of Legal Counsel.

Thank you for your work on our behalf.

Very truly yours,

Mike Danko
Larry Howard

Jana Russell

Michael Peabody

Debbie Shiller
Kay Werthe

Kathleen Peabody

April 21, 2009

VIA FACSIMILE

Re: *Nomination of Dawn E. Johnsen to be Assistant Attorney General for the Office of Legal Counsel, Department of Justice*

Dear Senator:

On behalf of the undersigned women's and reproductive health organizations, we write in strong support of the nomination of Dawn E. Johnsen to be Assistant Attorney General for the Office of Legal Counsel. The role of the Office of Legal Counsel (OLC) is to provide legal advice to the President and the agencies of the Executive Branch. OLC may well be called upon to address a broad array of legal issues, including constitutional and statutory rights of critical importance to women, under this as under any Administration. Accordingly, it is of the utmost importance that the Assistant Attorney General who leads this office possess not only outstanding qualifications but also a demonstrated commitment to the rule of law.

Professor Johnsen is eminently qualified for this position. She worked at OLC for five years under the Clinton Administration, including as Acting Assistant Attorney General. For the past ten years, she has been a tenured professor at Indiana University School of Law, focusing on complex constitutional issues including executive power and separation of powers.

In addition, Professor Johnsen has clearly demonstrated a commitment to the rule of law. She has written and commented extensively regarding the unique role, and the responsibility, of OLC to provide objective legal advice to the President and the Executive Branch. For example, in 2004, she worked with nineteen other former OLC attorneys, who served under both Democratic and Republican administrations, to create a statement of principles to guide the OLC, drawing upon longstanding best practices of that office. Moreover, she has worked in bipartisan fashion to bring greater transparency and integrity to OLC. Specifically, she worked with Brad Berenson, who had served in the White House Counsel's office during the administration of President George W. Bush, to craft legislation with that goal.

Some have opposed Professor Johnsen, despite her sterling credentials and extensive and highly relevant experience, because she has worked to support *Roe v. Wade*, a case consistently described as "settled law." This opposition presumably rests on the concern that this, or any other aspect of Professor Johnsen's prior career, might affect her work at OLC. But her writings and commentary about the unique role of that office, as well as her testimony before the Senate Judiciary Committee, clearly show that she unquestionably understands that her job as head of OLC will be to provide the President with objective, unbiased legal advice. For example, the first of the "OLC Principles" that she helped author states: "OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired

policies. The advocacy model of lawyering...inadequately promotes the President's constitutional obligation to ensure the legality of executive action."

We note that, if approved by the Senate, Professor Johnsen would be the first woman confirmed to this important position in the Department of Justice. But more importantly, Professor Johnsen is uniquely qualified to lead OLC and has clearly demonstrated her dedication to the rule of law. Consequently, the undersigned organizations urge you to support her nomination to be Assistant Attorney General for the Office of Legal Counsel.

Sincerely,

American Association of University Women (AAUW)
Center for Reproductive Rights
Chicago Abortion Fund
Coalition of Labor Union Women
Commission on the Status of Women-Sarasota County
ERA Campaign Network
Feminist Majority
Frontera Women's Organization
Gender Perspectives
Greater New Haven Chapter of NOW
Idaho Women Lawyers, Inc.
Iowa Commission on the Status of Women
Law Students for Reproductive Justice
Legal Momentum
Middlesex County NOW-NJ
Myra Sadker Foundation
NARAL Pro-Choice America
National Abortion Federation
National Congress of Black Women, Inc.
National Council of Jewish Women
National Council of Jewish Women, California
National Council of Jewish Women, Connecticut
National Hook Up of Black Women, Inc.
National Organization for Women (NOW)
NOW-Mid-Suffolk Chapter (NY)
NOW-Sarasota Chapter (FL)
National Council for Research on Women
National Partnership for Women and Families
National Women's Law Center
Planned Parenthood Federation of America
Turning Anger into Change
YWCA of Binghamton and Broome County
YWCA Central Alabama
YWCA of Cortland (NY)

YWCA of Schenectady (NY)
YWCA of Titusville (PA)
Wider Opportunities for Women
West Virginia NOW
Women's Law Project
Women's Research & Education Institute (WREI)
Women Work/Southeast Technical Institute
www.gloriafeldt.com

April 21, 2009

The Hon. Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Hon. Arlen Specter
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senators Leahy and Specter and Members of the Senate Judiciary Committee:

I write to urge you to confirm Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel (OLC). Professor Johnsen's experience and writings demonstrate that she will work to uphold our constitutional system of checks and balances and endeavor to maintain and bolster America's commitment to the rule of law. As a Professor in the Maurer School of Law at Indiana University, she has clearly demonstrated a solid grasp of constitutional issues, particularly regarding separation of powers and civil liberties. These are critical qualifications for our nation's efforts to restore credibility to the OLC and to make the Department of Justice an enviable place to serve again for talented and capable people. When I left government in 2005, the morale of that department was as low as I have experienced it in 40 years.

I served for thirty-one years in the United States Army and, from 2002 to 2005, as Chief of Staff to Secretary of State Colin Powell. Since that time, I have devoted much of my work to promoting the rule of law, and to efforts to restore America's role in the world as a nation of laws and respected civil liberties. Although I do not know Professor Johnsen personally, I am familiar with her background and her writings. In particular, I am impressed by the words she has spoken with regard to "Guidelines for the President's Legal Advisors," as well as several other statements—all recorded and available at <http://www.acslaw.org/search/node/dawn+johnsen>.

In the "Guidelines," Professor Johnsen and her colleagues set forth principles to guide OLC in its proper role and in providing advice to the President on complying with the rule of law. In her introduction to the "Guidelines," Professor Johnsen noted that: "the constitutional text and structure, as well as longstanding practice, affirmatively obligate Presidents to ensure that their actions comply with all relevant constitutional, statutory, and other legal requirements." She further explained that in the "Guidelines" "Our principal aim is to restore and secure the vital role OLC traditionally has played in promoting presidential adherence to the rule of law." The ten principles for the President's advisors in OLC include one urging that OLC attorneys "should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies." This, in my view—and I hope in your view—is the very essence of what OLC should be.

I most strongly recommend that the Members of the Senate vote to confirm Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel.

I'm grateful for your time.

Sincerely,


Lawrence B. Wilkerson



*The Religious Action Center
pursues social justice
and religious liberty
by mobilizing the American
Jewish community and
serving as its advocate
in the nation's capital.*

Rabbi David Saperstein
Director and Counsel

Mark J. Pelavin
Associate Director

Cheryl Gutmann
Chair
Commission on Social
Action of Reform Judaism

Rabbi Marla J. Feldman
Director
Commission on Social
Action of Reform Judaism

The Religious Action
Center operates under
the auspices of the
Commission on Social
Action of Reform
Judaism, a joint
instrumentality of the
Central Conference of
American Rabbis and
the Union for Reform
Judaism with its
affiliates:

American Conference of
Cantors

Association of Reform
Zionists of America

Canadian Association of
Reform Zionists

Early Childhood Educators of
Reform Judaism

National Association of Temple
Administrators

National Association of Temple
Educators

Men of Reform Judaism

North American Federation
of Temple Youth

Program Directors of
Reform Judaism

Women of Reform Judaism

Arthur and Sara Jo Kobacker Building
2027 Massachusetts Avenue, NW

at Kivie Kaplan Way
Washington, DC 20036

202.387.2800

Fax: 202.667.9070

E-mail: rac@urj.org

Visit our website at www.rac.org

May 5, 2009

The Honorable Patrick Leahy
433 Russell Senate Office Building
District of Columbia 20510

Dear Senator Leahy,

On behalf of the Union for Reform Judaism, whose 900 congregations encompass nearly 1.5 million Reform Jews, I write to express support for the nomination of Dawn Johnsen to head the Office of Legal Counsel at the Department of Justice.

Ms. Johnsen is supremely qualified for this critical post. After a distinguished legal career, focused on reproductive rights, Ms. Johnsen served in the Office of Legal Counsel during the Clinton Administration, first as Deputy Assistant Attorney General from 1993 to 1996 and then as Acting Assistant Attorney General from 1997 to 1998. Since then, Johnsen has been a distinguished professor of constitutional law at the Indiana University Maurer School of Law in Bloomington. All of these experiences--particularly her familiarity with the OLC-- make her particularly well-suited for this appointment

Ms. Johnsen's nomination has been lauded by legal experts and officials from across the political and ideological spectrum, including Walter Dellinger, head of the OLC from 1993 to 1996 and United States Solicitor General from 1996-1997 under President Bill Clinton and Doug Kmiec, principal deputy in the OLC from 1985 to 1989 under President George H.W. Bush. Ms. Johnsen has garnered strong support from the civil rights, labor, human rights, women's and environmental communities.

The debate over Ms. Johnsen's nomination is not about her strong credentials or her expertise. Rather, critics have focused on her vocal opposition to torture and support for reproductive rights. However, these positions reflect Ms. Johnsen's commitment to individual rights and fundamental liberties under the law.

In early April, I sent a letter to you and other members of the U.S. Senate contending that Ms. Johnsen's confirmation should not be delayed by an ideological, partisan battle nor should she be blocked from office because of her support for reproductive rights. Today, I reiterate this sentiment and express full support for Ms. Johnsen's confirmation. Her appointment will begin the essential process of restoring integrity to the Office of Legal Counsel, specifically, and the Department of Justice as a whole.

Therefore, I urge you to ensure that a vote on Ms. Johnsen's nomination is not delayed and that her confirmation proceeds expeditiously. I strongly encourage you to vote in favor of her confirmation.

Sincerely,

Rabbi David Saperstein

OFFICERS OF THE
NATIONAL COMMISSION

NATIONAL CHAIR
GLEN S. LEWY

NATIONAL DIRECTOR
ABRAHAM H. FOXMAN

PAST NATIONAL CHAIRS
BARBARA B. BALSER
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KENNETH J. BIALKIN
BURTON M. JOSEPH
BURTON S. LEVINSON
MELVIN SALBERG
DAVID H. STRASSLER
GLEN A. TOBIAS

VICE CHAIRS
MEYER EISENBERG
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MAX M. KAMPELMAN
SAM KANE
BERNARD MARCUS
SAMUEL H. MILLER
MILTON MOLLEN
LESTER POLLACK
ALVIN J. ROCKOFF
ROWLAND SCHAEFER

TREASURER
ROBERT H. NAFTALY
ASSISTANT TREASURER
MURRAY KOPPELMAN
SECRETARY
I. BARRY MEHLER
ASSISTANT SECRETARY
LESLEY ISRAEL

STANDING COMMITTEE CHAIRS

ADMINISTRATION
JOSEPH A. GOLDBLUM
AUDIT
ROBERT H. NAFTALY

BUDGET
SHELLEY PARKER
CIVIL RIGHTS
MARVIN D. NATHAN
DEVELOPMENT
BARRY CURTISS-LUSHER

EDUCATION
DAVID J. MILLSTONE
INFORMATION TECHNOLOGY
CHRISTOPHER WOLF
INTERNATIONAL AFFAIRS
CHARLES F. KRISER

LEADERSHIP
RICHARD D. BARTON
LEGACY ENDOWMENT CAMPAIGN
HELEN WARREN SPECTOR
MARKETING & COMMUNICATIONS
HOWARD SHERWOOD
OUTREACH & INTERFAITH AFFAIRS
MARTIN L. BUDD

PLANNING
PAM B. SCHAFER
REGIONAL OPERATIONS
GINNY MACDOWELL
WASHINGTON AFFAIRS
DENNIS R. KANIIN

DEPUTY NATIONAL DIRECTOR
KENNETH JACOBSON

DIVISION DIRECTORS

CIVIL RIGHTS
DEBORAH M. LAUTER
DEVELOPMENT
CLIFFORD SCHECHTER

EDUCATION

ED ALSTER
FINANCE AND ADMINISTRATION
MICHAEL A. KELLMAN
INFORMATION TECHNOLOGY
SAM MEMBERG
INTERNATIONAL AFFAIRS
MICHAEL A. SALBERG
LEADERSHIP
MARVIN S. RAPPAPORT
MARKETING & COMMUNICATIONS
GRAHAM M. CANNON
REGIONAL OPERATIONS
ROBERT WOLFSON

WASHINGTON AFFAIRS
JESS N. HORDES

GENERAL COUNSEL
BETTY B. ROBBINS



October 8, 2009

The Honorable Harry Reid
Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader Reid,

On behalf of the Anti-Defamation League, we write to express strong support for Dawn Johnsen to serve as Assistant Attorney General for the Justice Department's Office of Legal Counsel (OLC). We believe Ms. Johnsen is an excellent choice to serve in this critically important Justice Department post because of her extensive experience, good judgment, and longstanding commitment to public service and the rule of law.

The Senate Judiciary Committee approved her nomination on March 19 – and we would urge you to now act expeditiously on her nomination. Opposition to Ms. Johnsen's confirmation has focused almost exclusively on her policy views – not lack of ability or qualifications. Senators may disagree on fundamental policy issues, but such disagreements do not justify any further delay of a vote on a nominee as capable and experienced as Ms. Johnsen. As long as the AAG position in the Office of the Legal Counsel remains unfilled, that office will continue to be seriously hampered in its effort to fulfill its essential mandate for the Administration.

Ms. Johnsen's scholarship, background, and experience make her extremely well qualified for this position. During her tenure in leadership posts at OLC from 1993-1998, she demonstrated a keen intellect, dedication, and commitment to the integrity of that office. Her support for greater transparency in OLC's work is welcome.

At this time of great opportunity and challenge, we believe that Ms. Johnsen is an excellent choice to serve as Assistant Attorney General for the Office of Legal Counsel.

We urge the Senate to act promptly and favorably on her nomination.

Sincerely,

A handwritten signature in dark ink, appearing to read "Deborah M. Lauter".
Deborah M. Lauter
Director, Civil Rights

cc. Jess N. Hordes, ADL Washington Director

The Honorable Harry Reid, Majority Leader
United States Senate
S-221 Capitol Building
Washington, DC 20510

Dear Senator Reid:

We are writing today to express our concern over the delay in confirming Dawn Johnsen, President Obama's nominee to head the Department of Justice's Office of Legal Counsel (OLC). Professor Johnsen was nominated for this critical position on February 11, 2009 and was favorably reported by the Senate Judiciary Committee on March 19, 2009. Yet to date, in the absence of a time agreement, Professor Johnsen's nomination has not been voted on by the full Senate. This delay is extraordinary and unacceptable.

As you know the Office of Legal Counsel performs a critical role in guiding executive branch activities, advising the President and his Administration on the constitutionality of proposed policies, legislation, and executive orders. It requires an individual of exceptional scholarship and unimpeachable integrity, someone with the strength of character and tough-mindedness to deliver unbiased advice without qualification.

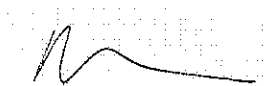
No one is better qualified for this position than Professor Johnsen. She has extensive previous experience in the Office of Legal Counsel, including service as acting head of OLC for over a year in the Clinton Administration, and has demonstrated throughout her career an ability to work with others across the political spectrum in the interest of supporting the rule of law. She's received support from legal scholars – liberal and conservative alike - as well as endorsements from officials from the administrations of Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush. In 2004, after Bush administration OLC abuses came to light, she organized an impressive panel of former OLC lawyers which set forth a statement of principles to guide the office going forward. That document has been praised by Republican and Democratic officials alike. Doug Kmiec – the OLC head under Presidents Ronald Reagan and H.W. Bush -- has affirmed, during her previous service at OLC, Johnsen "repeatedly separated policy preference from rendered opinion."

Professor Johnsen's nomination, along with other executive branch nominations, has been delayed to an unprecedented extent. In the 60 years since the rules of the Senate were changed to allow debate on nominations to be brought to a close through a vote on cloture, there have been only 24 executive branch nominations on which cloture votes have been taken. Yet in just the first 9 months of the Obama Administration, the minority has already forced cloture votes on 5 nominees. Another 37 executive nominations are currently on the Senate's Executive Calendar, many of which have been pending for some time, raising the

specter of yet more unprecedented and unnecessary cloture votes to fill key Administration positions. Indeed it is a full three months since a significant majority (65%) of these individuals was nominated. This degree of obstruction cannot be tolerated. It throws sand in the gears of executive branch departments and agencies that are serving critical public needs. And it defies the deference traditionally provided Presidents in shaping their Administrations, particularly with respect to sub-Cabinet level positions.

Professor Johnsen has the experience, the integrity, and the intellect to head this critical office. She should be confirmed without further delay. We understand the press of legislative business before the Senate. But further delay is untenable. We urge you to use the full force of your office to bring this nomination to a vote at the earliest possible date.

Sincerely,



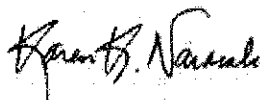
Michael B. Keegan
People For the American Way



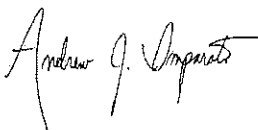
Wade Henderson
Leadership Conference on Civil Rights



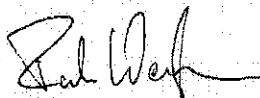
Nan Aron
Alliance for Justice



Karen Narasaki
Asian American Justice Center



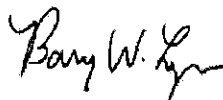
Andrew Imparato
American Association of People
with Disabilities



Randi Weingarten
American Federation of Teachers



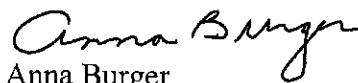
Michael J. Wilson
Americans for Democratic Action



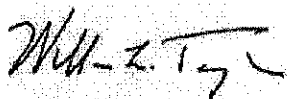
Barry W. Lynn
Americans United for Separation of
Church and State



Rabbi Ellen Weinberg Dreyfus
Central Conference of American Rabbis



Anna Burger
Change to Win



William Taylor
Citizens Commission on Civil Rights



Doug Kendall
Constitutional Accountability Center



Alan Reuther
CWA-UAW Legislative Alliance



Eva Paterson
Equal Justice Society



Ellie Smeal
Feminist Majority



Joe Solmonese
Human Rights Campaign



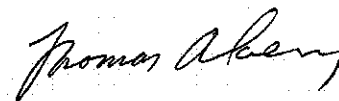
Floyd Mori
Japanese American Citizens League



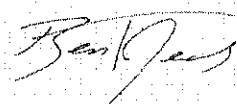
Barbara Arnwine
Lawyers' Committee for Civil
Rights Under Law



Irasema Garza
Legal Momentum



Thomas Saenz
Mexican American Legal
Defense and Educational Fund



Benjamin Jealous
National Association for the
Advancement of Colored People



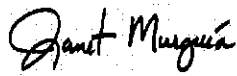
John Payton
NAACP Legal Defense and Educational
Fund



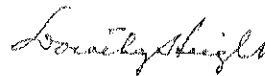
Nancy Keenan
NARAL Pro-Choice America



Nancy Ratzan
National Council of Jewish Women



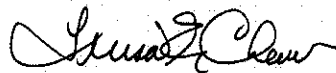
Janet Murguía
National Council of La Raza



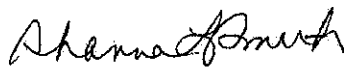
Dorothy Height
National Council of Negro Women



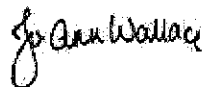
Dennis Van Roekel
National Education Association



Terisa E. Chaw
National Employment Lawyers
Association



Shanna L. Smith
National Fair Housing Alliance



Jo-Ann Wallace
National Legal Aid & Defender
Association



Debra Ness
National Partnership for Women and
Families



Paul Nathanson
National Senior Citizens Law Center



Marc Morial
National Urban League



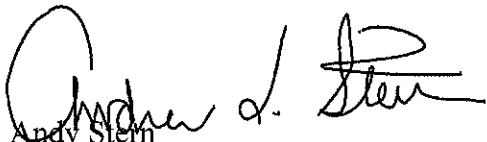
Marcia Greenberger
National Women's Law Center



Cecile Richards
Planned Parenthood Federation of
America



Jamiennie S. Studley
Public Advocates, Inc.



Andy Stern

Service Employees International Union



Rabbi David Saperstein

Union for Reform Judaism



Anne Ladky

Women Employed

February 1, 2010

The Honorable Senator Harry Reid
Senate Majority Leader
522 Hart Senate Office Bldg
Washington, DC 20510

Dear Senator Reid:

We, the undersigned, are professors of law at leading universities around the country.

We are writing out of concern for the delay in confirming Dawn Johnsen, President Obama's nominee to head the Department of Justice's Office of Legal Counsel (OLC). Professor Johnsen's nomination has been pending on the Senate's Executive Calendar since it was favorably reported by the Senate Judiciary Committee on March 19, 2009. To date, however, because of the minority's refusal to enter a time agreement, Professor Johnsen's nomination has not been voted on by the full Senate. This delay is extraordinary and unacceptable.

The Office of Legal Counsel plays a critical role in guiding executive branch activities, advising the President and his Administration on the constitutionality of proposed policies, legislation, and executive orders. It requires an individual of exceptional scholarship and unimpeachable integrity, someone with the strength of character and tough-mindedness to deliver unbiased advice without qualification.

Professor Johnsen is immensely qualified for this position. She has extensive previous experience in the Office of Legal Counsel, including service as its acting head for more than a year during the Clinton Administration. Doug Kmiec – the OLC head under Presidents Ronald Reagan and George H.W. Bush – has applauded Professor Johnsen's track record during that service, noting that she "repeatedly separated policy preference from rendered opinion."

Throughout her career, Professor Johnsen has demonstrated an ability to work with others across the political spectrum in support of the rule of law. She has been endorsed by officials from the administrations of Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush. In 2004, after Bush administration OLC abuses came to light, she organized an impressive panel of former OLC lawyers to develop a statement of principles to guide the office going forward. That document has been praised by Republican and Democratic officials alike.

The extraordinary obstruction of Professor Johnsen and other executive branch nominations must not be allowed to continue. In the 60 years since the rules of the Senate were changed to allow debate on nominations to be brought to a close through a vote on cloture, there have been only 36 executive branch nominations on which cloture motions have been filed. During the entire eight years of George W. Bush's presidency, cloture was filed on 15 nominees. Yet, as you know, in just the first nine months of the Obama Administration, you were forced to file cloture petitions on 10 nominees. Another 63 executive nominations are currently on the Senate's Executive Calendar, many of which have been pending for some time, raising the specter of yet more unprecedented and unnecessary cloture votes to fill key Administration positions.

This level of obstruction is simply unacceptable. It frustrates the ability of executive branch agencies and departments to serve critical public needs. And it defies the deference traditionally provided Presidents in shaping their Administrations, particularly with respect to sub-Cabinet level positions.

Professor Johnsen has the experience, the integrity, and the intellect to head this critical office. We urge you to bring this nomination to a vote at the earliest possible date.

Sincerely,

Harry Hopkins
University of Alabama School of Law

Paul Bender
Arizona State University Sandra Day O'Connor College
of Law

Michael O'Connor
Phoenix School of Law

Kenneth Salzberg
California Western School of Law

Francine Lipman
Chapman University School of Law

Robert Calhoun
Golden Gate University School of Law

Drucilla Ramey
Golden Gate University School of Law

Rachel Van Cleave
Golden Gate University School of Law

John Schick
Humphreys College Laurence Drivon School of Law

Bridgit Lawley
John F. Kennedy University School of Law

Gary Williams
Loyola Law School Los Angeles

Donald Polden
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Margaret Russell
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David Sloss
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Stephanie Wildman
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Marina Hsieh
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Southwestern Law School

Craig Christensen
Southwestern Law School

Janet Cooper Alexander
Stanford Law School

Thomas C. Grey
Stanford Law School

Pamela Karlan
Stanford Law School

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Stanford Law School

Miguel Mendez
Stanford Law School

Michael Wald
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Maria Blanco
UC Berkeley School of Law

Carolyn Blum
UC Berkeley School of Law

Christopher Edley
UC Berkeley School of Law

David Oppenheimer
UC Berkeley School of Law

Paul Schwartz
UC Berkeley School of Law

David Sklansky
UC Berkeley School of Law

Floyd Feeney
UC Davis School of Law

Lisa C. Ikemoto
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Carlton F.W. Larson
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Carter C. White
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UC Irvine School of Law

Richard Abel
UCLA School of Law

Grace Blumberg
UCLA School of Law

Robert Goldstein
UCLA School of Law

Clyde Spillenger
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University of San Francisco School of Law

Michael Iglesias
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Kim S. Buchanan
University of Southern California Gould School of Law

Mary Dudziak
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Niels Frenzen
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Daria Roithmayr
University of Southern California Gould School of Law

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University of Denver Sturm College of Law

Justin Marceau
University of Denver Sturm College of Law

Paula Rhodes
University of Denver Sturm College of Law

Howard Rosenberg
University of Denver Sturm College of Law

Ann Scales
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Kris Miccio
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Quinnipiac University School of Law

Sara Bronin
University of Connecticut School of Law

Timothy Everett
University of Connecticut School of Law

Richard Michael Fischl
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Amanda Frost
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Herman Schwartz
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Georgetown University Law Center

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Georgetown University Law Center

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Naomi Mezey
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Christopher J. Roederer
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Leonard Strickman
Florida International University College of Law

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Georgia State University College of Law

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University of Iowa College of Law

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Nicole Martinez
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Christopher Seaman
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Carolyn Shapiro
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University of Chicago Law School

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University of Chicago Law School

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Patrick Baude
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Jeannine Bell
Indiana University Maurer School of Law

Kenneth Dau-Schmidt
Indiana University Maurer School of Law

Ann Gellis
Indiana University Maurer School of Law

Charles Geyh
Indiana University Maurer School of Law

Sophia Goodman
Indiana University Maurer School of Law

Betsy Levin
Indiana University Maurer School of Law

Ajay Mehrotra
Indiana University Maurer School of Law

Aviva Orenstein
Indiana University Maurer School of Law

Cynthia Reichard
Indiana University Maurer School of Law

Lauren K. Robel
Indiana University Maurer School of Law

John Scanlan
Indiana University Maurer School of Law

Carwina Weng
Indiana University Maurer School of Law

Leandra Lederman
Indiana University Maurer School of Law

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Indiana University School of Law - Indianapolis

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Indiana University School of Law - Indianapolis

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Indiana University School of Law - Indianapolis

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Indiana University School of Law - Indianapolis

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Indiana University School of Law - Indianapolis

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Notre Dame Law School

Kent Hull
Notre Dame Law School

Jeanne Jourdan
Notre Dame Law School

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Valparaiso University School of Law

Ivan Bodensteiner
Valparaiso University School of Law

Paul Brietzke
Valparaiso University School of Law

Dan Gioia
Valparaiso University School of Law

Rosalie Levinson
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Cedric Powell
University of Louisville Brandeis School of Law

Robert Lancaster
Louisiana State University Law Center

Ken Murchison
Louisiana State University Law Center

Mitchell Crusto
Loyola University New Orleans College of Law

James Klebba
Loyola University New Orleans College of Law

M Isabel Medina
Loyola University New Orleans College of Law

Kent Greenfield
Boston College Law School

Elizabeth Bartholet
Harvard Law School

Carol Steiker
Harvard Law School

Frank Michelman
Harvard Law School

Curtis Nyquist
New England School of Law

Elizabeth Spahn
New England School of Law

Peter D. Enrich
Northeastern University School of Law

Lewis Hope
Northeastern University School of Law

Hope Lewis
Northeastern University School of Law

James Rowan
Northeastern University School of Law

Michael Avery
Suffolk University Law School

Karen Blum
Suffolk University Law School

Eric Blumenson
Suffolk University Law School

Matthew H. Charity
Western New England College School of Law

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Western New England College School of Law

Anne Goldstein
Western New England College School of Law

Sudha Setty
Western New England College School of Law

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University of Baltimore School of Law

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University of Baltimore School of Law

Clinton Bamberger
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Douglas Colbert
University of Maryland School of Law

Martha Ertman
University of Maryland School of Law

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University of Maryland School of Law

Susan Hankin
University of Maryland School of Law

Deborah Hellman
University of Maryland School of Law

Sherrilyn Ifill
University of Maryland School of Law

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University of Maryland School of Law

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Michigan State University College of Law

Kimberly OLeary
Thomas M. Cooley Law School

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Wayne State University School of Law

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Hamline University School of Law

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Jennifer Green
University of Minnesota Law School

Heidi Kitrosser
University of Minnesota Law School

Gregory Shaffer
University of Minnesota Law School

Christina Kunz
William Mitchell College of Law

Denise Roy
William Mitchell College of Law

Daniel R. Mandelker
Washington University School of Law

Matthew Hall
University of Mississippi School of Law

H. Jefferson Powell
Duke Divinity School

Neil Siegel
Duke Divinity School

Diane Alarcon
Duke University School of Law

Carolyn McAllaster
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Gene Nichol
University of North Carolina School of Law

Kathryn Sabbeth
University of North Carolina School of Law

J. Wilson Parker
Wake Forest University School of Law

Marvin Ammori
University of Nebraska - Lincoln College of Law

Eric Berger
University of Nebraska - Lincoln College of Law

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Sarah Ricks
Rutgers School of Law - Camden

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Rutgers School of Law - Newark

Peter Simmons
Rutgers School of Law - Newark

Frank Askin
Rutgers School of Law- Newark

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Seton Hall University School of Law

Marc Poirier
Seton Hall University School of Law

Jon Romberg
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Lynne Henderson
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Las Vegas

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Nancy Ota
Albany Law School

Laurie A. Shanks
Albany Law School

Anita Bernstein
Brooklyn Law School

Susan Herman
Brooklyn Law School

Bailey Kuklin
Brooklyn Law School

Michael Madow
Brooklyn Law School

Elizabeth M. Schneider
Brooklyn Law School

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City University of New York School of Law

Susan J. Bryant
City University of New York School of Law

Frank Deale
City University of New York School of Law

Julie Goldscheid
City University of New York School of Law

Natalie Gomez-Velez
City University of New York School of Law

Franklin Siegel
City University of New York School of Law

Vivian Berger
Columbia Law School

Barbara Black
Columbia Law School

Ellen P. Chapnick
Columbia Law School

Katherine Franke
Columbia Law School

Jack Greenberg
Columbia Law School

Jamal Greene
Columbia Law School

Elizabeth Scott
Columbia Law School

Jane M. Spinak
Columbia Law School

Kendall Thomas
Columbia Law School

Cynthia Grant Bowman
Cornell University Law School

Bernadette Meyler
Cornell University Law School

Steven Shiffrin
Cornell University Law School

George Conk
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Elizabeth Cooper
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Sheila Foster
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Abner Greene
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James Kainen
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Robin Lenhardt
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Russell G. Pearce
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Martin Flaherty
Fordham University School of Law

Rachel Vorsan
Fordham University School of Law

Eric M. Freedman
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Monroe Freedman
Hofstra University Law School

Carlin Meyer
New York Law School

Sylvia Law
New York University School of Law

Burt Neuborne
New York University School of Law

Kenji Yoshino
New York University School of Law

Derrick Bell
New York University School of Law

Sarah Burns
New York University School of Law

Norman Dorsen
New York University School of Law

Deborah Ellis
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Barbara Atwell
Pace University School of Law

Steven Goldberg
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Vanessa Merton
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Society of American Law Teachers

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Leslie Bender
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Howard Glickstein
Touro Law Center

Eileen Kaufman
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Marjorie Silver
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Rolf Olsen Jr
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Rebecca Zietlow
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Lyn Entzeroth
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Michael Blumm
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Mark Peterson
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Gilbert Carrasco
Willamette University College of Law

David Cohen
Drexel University Earle Mack School of Law

Anil Kalhan
Drexel University Earle Mack School of Law

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February 16, 2010

Patrick Leahy, Chair

Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I write in strong support of the confirmation of the president's re-nomination of Dawn Johnsen to head the Office of Legal Counsel as an Assistant Attorney General.

As I detail in the attached commentary ("DOJ Appointments: The Case of Dawn Johnsen's Confirmation" which was posted two weeks ago on HuffingtonPost.com) Prof. Dawn Johnsen is a superb choice to lead the OLC.

As she has now waited almost a year since her first approval by the Judiciary Committee, I urge her immediate re-approval by the Judiciary Committee.

For the sake of Justice, I hope that she and the other DOJ nominees will be allowed a timely confirmation vote by the full Senate.

Sincerely,

Victor Williams

Assistant Professor of Law



February 16, 2010

This is the print preview: [Back to normal view »](#)

Victor Williams and Nicola Sanchez

Posted: February 3, 2010 12:37 PM

DOJ Appointments: The Case for Dawn Johnsen's Confirmation

Is Barack Obama now ready to fight partisan confirmation obstruction against his nominees? When Ben Bernanke's reappointment was jeopardized, the president fully engaged the fight. Obama worked the phones himself to help Senate leadership line up 60 cloture votes. But what about the additional 300 critical federal executive, regulatory and judicial positions that remain empty?

At his question session during the Senate Democrat retreat, Obama was adamant that if "government is going to work for the American people" Republican confirmation obstruction "has to end."

Senate Majority Leader Harry Reid recently detailed national security dangers resulting from Republican obstruction of defense, intelligence and homeland security appointments. And, Sen. Tom Harkin is prioritizing labor-related confirmation fights. Of equal concern should be the growing number of Department of Justice vacancies, especially in those offices charged with establishing legal policy and vetting scores of other federal nominees, including judges.

Deputy Attorney General David Ogden's resignation effective early this month leaves the Justice Department without a permanent number two executive official. And the three recently renominated Assistant A.G.s (Dawn Johnsen, Christopher Schroeder, and Mary Smith) will rejoin the long queue of other Obama nominees waiting for a Senate floor vote. It is past time for the Senate majority and the Administration to fight for Justice.

Soliciting Bipartisan Advice, Receiving Partisan Contempt

A year ago seemed like such a hopeful time. Barack Obama entered the White House sincerely wanting to end the partisan confirmation wars. Obama actively solicited bipartisan senatorial advice and, at first, received well-deserved praise for his genuinely diverse, exceptionally qualified, and experienced nominees.

But by late spring, "partisan payback" was revealed as the Senate minority's watchword from January 20, 2009. As presidential poll numbers declined, Republican obstruction increased. Extreme slow walking was Senate summer sport and the abuse of individual Senate holds (mini-filibusters), the regular order of business.

In fall 2009, partisan procedural delay tactics had proven effective; hundreds of executive and regulatory vacancies still existed and Obama had benched only a dozen judges. On December 24, 2009, Republicans claimed yet another tactical victory by forcing several key nominees back to the White House.

Republican leaders refused to allow the traditional courtesy permitting pending nominations to carry over to the second Senate session. For the Obama nominees, whose lives were on hold for up to a year awaiting confirmation, it was an especially insulting lump of Republican coal in their stockings.

Among the rudely returned were three DOJ Assistant A.G. nominees (Dawn Johnsen for the Office of Legal Counsel, Christopher Schroeder for the Office of Legal Policy, and Mary Smith for the Tax Division). Also rejected was Craig Becker, Obama's nominee to Chair the quorum-challenged National Labor Relations Board.

Commentators from the left and right prematurely blogged: "Senate Returns Nominees: White House Rolls Over." Wrong!

Obama Fights Back but Sessions Targets Dawn Johnsen

First-year confirmation lessons may have been learned. President Obama stood by his women and men -- at both Justice and the NLRB. The nominations were sent back to the Senate with White House expectations that the respective Senate committees (Judiciary and Labor) would quickly reapprove the renominations so they could proceed to a floor vote.

Obama's bold act spurred Sen. Arlen Specter to finally commit to Dawn Johnsen for the OLC. Indiana Republican Richard Lugar also reaffirmed his pledge to support the Indiana University law professor. For a few days it appeared

Johnsen finally had the 60 cloture votes to unblock her year-old nomination. This whip count did not include Sen. Ben Nelson, the lone Democrat yet undecided on Johnsen.

But Obama's assertive renomination resulted in Johnsen being targeted for more obstruction. Sen. Jeff Sessions, a ranking Judiciary Committee member, demanded a second round of hearings for Johnsen and other renominated DOJ officials. Republicans also invoked committee rules to game out an additional week's delay. The three renominated DOJ officials join other nominees, including several judicial nominees, on the Thursday, February 4th agenda of the Judiciary Committee's latest executive schedule.

Meanwhile, Scott Brown's election confused the cloture whip count. Regardless of when Senator-elect Brown takes Ted Kennedy's Senate seat, Johnsen and all re-nominated DOJ officials should be quickly reapproved by the Judiciary Committee. Also, Chair Patrick Leahy should take the nominations to the Senate floor as soon as possible.

The 60 votes needed for cloture can be found. On February 1, Sen. Tom Harkin mustered exactly the 60 votes needed for cloture when he broke the GOP filibuster of Obama's nominee for Labor Department Solicitor.

As the Administration did for Bernanke, Barack Obama, Joe Biden, and the entire White House political operation must lobby for the 60 cloture votes for Justice and NLRB officials. Particular attention should be focused on Dawn Johnsen's appointment.

Johnsen: A Superb OLC Fit

Democrats and Republicans know the importance of the Office of Legal Counsel to national justice and the rule of law (if only by the damage it inflicted during the Bush years).

The OLC is the in-house lawyer for the Attorney General and the Justice Department. When an official needs high-level constitutional advice, the OLC can be consulted. An OLC opinion carries great persuasive authority but it also effectively insulates federal officials relying on the advice, from liability. When government factions disagree, the OLC is an important arbiter.

Doug Kmiec, OLC head for Ronald Reagan and George H.W. Bush, describes the OLC as the Justice Department's "conscience." Kmiec, who endured harsh party and church criticism for his 2008 support of Barack Obama, is well aware of the cost of conscientious conviction. Prior to his appointment as Ambassador to Malta, Doug Kmiec joined other legal stars of both parties in praising Dawn Johnsen.

He judged Johnsen's "spunk and independence of mind" as "just the right tonic for a once proud, but recently tarnished, office." Kmiec referenced her constitutional scholarship and past public service: "[W]e would be hard-pressed to identify any other comparable appointee for a Justice post who would be as well suited." (Authors' note: Doug Kmiec was our Dean at Catholic University of America's Columbus School of Law from 2001-2003.)

Most importantly, the OLC has a proud tradition of offering independent and tempered advice to the President and the White House. In Dawn Johnsen's words, "saying no" to the president is "the OLC's core job description."

Walter Dellinger, former OLC head, worked with Johnsen and went on to serve as U.S. Solicitor General, heralds Johnsen's "keen intellect and extraordinarily good judgment." Dellinger, a reported Obama Supreme Court short-listener, recommends Johnsen because of her "deep dedication to the rule of law."

By any measure, Johnsen is a superb choice for the job. She served in the OLC for five Clinton years; indeed, Johnsen was acting head of the OLC from 1997-1998. For over the past dozen years, she has been a leading scholar on Justice Department issues. Prof. Johnsen is certainly patient. She patiently waited a year for Senate confirmation for her to fulfill exactly the same role she did for over a year in the Clinton Justice Department.

Speaking Truth to Power, Too Often

Dawn Johnsen is a distinguished academic and advocate, championing privacy, reproductive choice, the rule of law, separation of powers, and DOJ integrity. So why have Republicans, like Sen. John Cornyn, blocked her appointment for over a year? Perhaps the scholar dared to speak truth to power once too often.

In her 2008, Slate commentary, Johnsen dissected the flawed reasoning of the infamous torture memos and other legal opinions written by then OLC attorney John Yoo. She dared connect the bloody dots from Yoo's poison pen directly to George W. Bush's oval office: "President Bush asked for this kind of distorted legal advice. Remember, from day one, the President sent his lawyers the express message that they were NOT to interpret the law impartially and straight up."

Time to Get Serious

Sen. John Cornyn represents the obstructionist wing of the Republican Party well in defaming Johnsen (using perhaps unintentionally sexist language) by claiming she lacks the "requisite seriousness" for the OLC job. Truth be told, Cornyn's real issue with Johnsen may be that the woman is just too serious a scholar and too smart a lawyer.

Were it not for his Senate power to individually block a nominee, it would be hard to take Cornyn's criticism seriously. Consider his recent Senate campaign ad featuring "Big John, Big Bad John" sporting an oversized cowboy hat, riding on a too pretty horse. The reelection ad's Zane Grey Theatre voice-over describes Senator "Big Johnnie" being thanked by a

grateful populace for "doing the Lord's work for Texas," in an undisclosed location: "For that place out yonder needs more men like you, Who shoot straight, And talk straight, And enjoy a good brew. "

Perhaps most threatening to the junior senator from Texas, Johnsen has been too consistent in her principles. If Senate memory serves, it was long-time "up-or-down confirmation vote" advocate John Cornyn who stated: "What the American people want and expect is that we...will not degenerate into partisan finger-pointing or name-calling, nor obstruction." Sen. Cornyn also complained in a 2005 letter to the New York Times: "Senate practice and even the Constitution contemplate deference to the president and a presumption in favor of confirmation."

Are there at least two or three Republican senators who will join Democrats in a series of confirmation cloture votes for Justice's sake? Are none in the minority embarrassed by the blatant GOP hypocrisy in blocking Obama nominations, when such procedural tactics were so uniformly (even elegantly) criticized by the Republicans during the George W. Bush years?

Dawn Johnsen's appointment is a litmus test for the Senate confirmation process and for the recharged Obama political operation. If she does not receive a full Senate vote, Democrats must implement the Constitutional Option to return to the Framers' design of a simple majority confirmation vote.

And, independently, as I've argued before for presidents of both parties, President Obama should fully utilize the alternative recess appointment process to fully staff our national government. If Obama finds the will, Clause 3 of Article II, Section 2 will provide the constitutional way. All recess commissions signed over the President's Day Senate break would last until "the End of their next Session" -- late 2011.

One appointment way or the other, the government must be fully staffed.

Victor Williams is an attorney in Washington D.C. and clinical assistant professor at Catholic University of America School of Law; **Nicola Sanchez** is an attorney with the U.S. Nuclear Regulatory Commission. The views expressed are the authors' alone and do not reflect those of CUA, the NRC or the federal government.