

Statement of
The Honorable Benjamin L. Cardin

United States Senator
Maryland
February 10, 2009

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

HEARING ON

NOMINATION OF THOMAS PERRELLI
ASSOCIATE ATTORNEY GENERAL OF THE UNITED STATES

NOMINATION OF ELENA KAGAN
SOLICITOR GENERAL OF THE UNITED STATES

SENATE JUDICIARY COMMITTEE

February 10, 2009

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

Today we consider two important nominations for leadership positions in the Department of Justice. These are the nominations of Thomas Perrelli to be Associate Attorney General of the United States, and Elena Kagan to be Solicitor General of the United States.

I agree with Chairman Leahy that this Committee should move quickly to continue restoring the morale and integrity of the Department. I am pleased that this Committee recently reported Attorney General Eric Holder's nomination by a strong, bipartisan vote of 17 to 2, and that the full Senate overwhelmingly confirmed him shortly thereafter.

The Associate Attorney General is the number three position at the Department of Justice. This official oversees a wide range of offices at the Justice Department, including the Civil Rights, Civil, Antitrust, Environment, and Tax Divisions, as well as the Office of Justice Programs.

Thomas Perrelli comes to this Committee with an impressive range of experience in both the private and public sectors. He served as counsel to Attorney General Janet Reno from 1997 to 1999. For the final two years of the Clinton Administration, he served as Deputy Assistant Attorney General, where he supervised the Federal Programs Branch of the Civil Division, representing nearly every federal agency in complex civil litigation. In that role, Mr. Perrelli supervised a staff of 100 attorneys responsible for defending the constitutionality of federal

statutes, defending federal agency action and regulations, representing both the diplomatic and national security interests of the U.S. in courts of law, and conducting a wide range of other litigation. He also supervised the Department's Tobacco Litigation Team's lawsuit against major tobacco companies.

In the private sector, Mr. Perrelli worked for many years at the Washington law firm of Jenner & Block, handling a caseload that includes constitutional, intellectual property, and appellate cases, as well as a wide range of complex civil litigation matters.

Most recently, he served on President Obama's Justice Department Transition Team. He is a graduate of Brown University and Harvard Law School.

I also want to note for the record that Mr. Perrelli has received the endorsement of several law enforcements organizations, such as the Federal Law Enforcement Officers Association and the National Fraternal Order of Police, as well as the National Center for Missing and Exploited Children. These letters will be entered into the record.

Elena Kagan also comes to this Committee with a wide range of experience, having served as the dean of a law school, a law professor, a senior official at the White House, a lawyer in private practice, and a legal clerk for a Justice of the Supreme Court.

A graduate of Princeton University and Harvard Law School, Ms. Kagan clerked for Justice Thurgood Marshall on the Supreme Court, and then worked as an associate at the Washington law firm of Williams & Connolly. While teaching law at the University of Chicago, she took on another assignment as special counsel to Senator Joseph Biden, our distinguished former Chairman of this Committee. Ms. Kagan assisted in the confirmation hearings of Supreme Court Justice Ruth Bader Ginsburg.

In 1995, Ms. Kagan served as President Clinton's Associate White House Counsel, Deputy Assistant to the President for Domestic Policy, and Deputy Director of the Domestic Policy Council. In the White House Counsel's Office, she acted as a lawyer for the White House policy councils and legislative office, analyzing and drafting statutory language and executive actions, and offering policy advice. In the Domestic Policy council office, she played a role in the Executive Branch's formulation, advocacy, and implementation of law and policy in a wide variety of issue areas.

In 1999 Ms. Kagan left government and began serving as a professor at Harvard Law School, teaching administrative law, constitutional law, civil procedure, and a seminar on legal issues and the presidency. In 2003, she was appointed to serve as Dean of the Harvard Law School, becoming the first woman dean in the school's history. In her five years at Harvard Law School, Dean Kagan has overseen both the academic and non-academic aspects of the law school. I will enter into the record a letter from the deans of 11 major law schools in support of the nomination. The letter states in part that the office of Solicitor General is a job that "requires administrative and negotiation skills as well as legal acumen, and Elena Kagan excels along all relevant dimensions. Her skills in legal analysis are first-rate. Her writings in constitutional and administrative law are highly respected and widely cited. She is an incisive and astute analyst of law, with a deep understanding of both doctrine and policy....Ms. Kagan is also an excellent

manager. She has been a superb dean at Harvard...Finally, Elena Kagan is known to us as a person of unimpeachable integrity."

The Solicitor General of the United States holds a unique position in our government. It is one of the few government positions in which the occupant must be "learned in the law", pursuant to a statute enacted by Congress. The Solicitor General is charged with conducting all litigation on behalf of the United States in the Supreme Court, and is often referred to as the "tenth Justice." Indeed, the Supreme Court expects the Solicitor General to provide the Court with candid advice during oral argument and the filing of briefs on behalf of the United States. The office participates in about two-thirds of all the cases the Court decides on the merits each year.

So it is indeed high praise for Dean Kagan that former Solicitors General Walter Dellinger and Ted Olson joined with six other Solicitors General of both parties to endorse her nomination. The letter stated in part that "we are confident that Dean Kagan will bring distinction to the office, continue its highest traditions and be a forceful advocate for the United States before the Supreme Court. Elena Kagan would bring to the position of Solicitor General a breadth of experience and a history of great accomplishment in the law....[we believe] that she will excel at the important job of melding the views of various agencies and departments into coherent positions that advance the best interests of the national government. She will be a strong voice for the United States before the Supreme Court. Her brilliant intellect will be respected by the Justices, and her directness, candor and frank analysis will make her an especially effective advocate." This letter will also be made part of the record.

At the same time, we expect the Solicitor General to exercise independent judgment from the Department of Justice, the Attorney General, and even the President of the United States. The office is charged with vigorously defending statutes duly enacted by Congress against constitutional challenges. The office also supervises all lower court appellate litigation, and decides whether to appeal decision that are adverse to the government, and what position should be taken on the merits of the case.

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