

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
February 10, 2009

STATEMENT OF SENATOR PATRICK LEAHY
CHAIRMAN, SENATE JUDICIARY COMMITTEE
ON NOMINATIONS TO BE ASSOCIATE ATTORNEY GENERAL AND SOLICITOR
GENERAL
FEBRUARY 10, 2009

Today, the Senate Judiciary Committee will hear from two more of President Obama's supremely qualified nominees who have chosen to give up important positions and return to public service.

The Committee continues the work of restoring the Department of Justice that it began last month with the hearing on the nomination of Eric Holder to be Attorney General. We continued that work last week by confirming Attorney General Holder in a strong bipartisan vote, and with the hearing I chaired on the nomination of David Ogden to be Deputy Attorney General, the number two position at the Department.

As Deputy Attorney General, Mr. Ogden would be responsible for the day to day management of the Department. He would also occupy a critical national security post at a time when we face threats and challenges. While I left the record for written questions after last week's hearing open for a week, I urged Senators to submit their questions as soon as possible so as not to delay consideration of Mr. Ogden's nomination. No Senators heeded the request to submit questions by noon yesterday. As a result, I held off expediting his nomination, and did not list it on the agenda for our executive business meeting this week. I hope there will not be further delays when we return from the Presidents' Day recess, and that the three weeks that will have passed from Mr. Ogden's hearing are sufficient so that we can vote on his nomination without holding it over.

Today, we turn to the nomination of Thomas J. Perrelli to be Associate Attorney General, the number three position at the Department with management responsibility over 13 vital components, and Elena Kagan to be Solicitor General of the United States, a critical post that encompasses duties quite different from any other lawyer in the Government. The Solicitor General is not only one of the highest ranking officials at the Justice Department and the chief advocate on behalf of the United States Government, but also holds a unique position as an officer of the court, with a duty to bring forward aspects of cases that the Supreme Court might not otherwise know. Because of this critical role, the Solicitor General is often called "the Tenth Justice."

Nearly ten years ago, President Clinton nominated Elena Kagan for a seat on the Court of Appeals for the D.C. Circuit. At that time, she was a highly-regarded former clerk for Supreme

Court Justice Thurgood Marshall and former law professor at the University of Chicago who had served as Special Counsel to the Senate Judiciary Committee, Associate Counsel to the President, Deputy Assistant to the President for Domestic Policy, and Deputy Director of the Domestic Policy Council. Her impressive credentials also included a clerkship for Judge Abner Mikva on the court to which she had been nominated, two years at Williams & Connolly, and a stellar academic career, graduating with honors from Princeton, Oxford, and Harvard Law School, where she was Supervising Editor of the Harvard Law Review.

Despite Elena Kagan's outstanding record, however, the Republican Chairman and Republican Majority on the Judiciary Committee refused to act on her nomination. They pocket-filibustered her nomination with impunity, apparently holding the seat open like many others to be filled by a Republican President, irregardless of the quality of the nominees they refused to consider. That did not stop the far right wing from launching baseless and partisan attacks at Elena Kagan and her record, attacks I hope we do not see renewed today.

Elena Kagan returned to teaching while her nomination was pending, becoming a Professor at Harvard Law School and, in 2003, she became the first woman to be Dean of Harvard Law School. In that position, Dean Kagan has earned praise from Republicans and Democrats, students and professors alike for her consensus-building and inclusive leadership style.

Now Dean Kagan is poised to break another glass ceiling. If confirmed, she would be the first woman to serve as Solicitor General of the United States. Like Justice Thurgood Marshall, for whom she clerked, Elena Kagan would make history if confirmed to what Justice Marshall described as the best job he ever had.

Those who have done the job support her nomination. In fact, every Solicitor General who served from 1985 to 2009 has endorsed her nomination: Charles Fried, Ken Starr, Drew Days, Walter Dellinger, Seth Waxman, Ted Olson, Paul Clement and Greg Garre. In a letter of support, they wrote: "We who have had the honor of serving as Solicitor General over the past quarter century, from 1985 to 2009, in the administrations of Presidents Ronald Reagan, George H.W. Bush, William Clinton, and George W. Bush, write to endorse the nomination of Dean Elena Kagan to be the next Solicitor General of the United States. 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."

Prominent lawyers who served in the Office of the Solicitor General under Democratic and Republican administrations have written to tout Dean Kagan's "great legal and personal skills, intellect, integrity, independence and judgment," concluding that "she has all the attributes that are essential to an outstanding Solicitor General."

Deans of 11 of the most prominent law schools in the country, who are in a key position to judge Dean Kagan's accomplishments at Harvard, describe Dean Kagan as "a person of unimpeachable integrity" who "has been a superb dean at Harvard where she has managed to forge coalitions, attract excellent faculty, and satisfy demanding students." They call her "superbly qualified to fulfill the role of representing the United States in the Supreme Court."

One of the conservative professors Dean Kagan helped to bring to Harvard Law School was Professor Jack Goldsmith, who took charge of the Office of Legal Counsel after the disastrous tenures of Jay Bybee and John Yoo. Professor Goldsmith praised Dean Kagan's "judgment" and wrote that because of Dean Kagan's "previous government experience and the years teaching administrative law," she will, "take to the Solicitor General's Office a better understanding of the Congress and the Executive branch that she will represent before the Court than perhaps any prior Solicitor General."

Three Iraq war veterans who are students at Harvard Law School wrote a letter to the editor of the The Washington Times stating that Dean Kagan "has created an environment that is highly supportive of students who have served in the military" describing the annual Veterans Day dinner for former service members and spouses that she hosts, and the focus she has placed on veterans at Harvard Law School and the military experience of students.

Tom Perrelli, Managing Partner of the Washington D.C. office of Jenner & Block, and who held important Justice Department posts during the Clinton administration, is another outstanding nominee. He served as Counsel to the Attorney General where he assisted the Attorney General in overseeing the civil litigation components of the Department of Justice. He then served as Deputy Assistant Attorney General in the Civil Division, where he supervised the Federal Programs Branch of the Civil Division, which defends Federal agencies in important constitutional, regulatory, national security, personnel and other high-profile litigation. In those capacities, Mr. Perrelli earned a reputation for independence and integrity as well as the respect of career lawyers at the Department. Like the President's other nominees to leadership positions at the Department, Mr. Perrelli's career demonstrates that he understands that the role of the Department of Justice is to be the people's lawyer, with first loyalty to the Constitution and the laws of the United States.

Numerous major law enforcement organizations have written to endorse Mr. Perrelli's nomination. Chuck Canterbury, National President of the Fraternal Order of Police, described Mr. Perrelli's "remarkable record of public service," particularly in management of the Federal Programs Branch of the Civil Division while at the Department, and praised his "commitment to public service" by leaving one of the top law firms in Washington to return to the Department. The Major Cities Chiefs Association wrote to the Committee about Mr. Perrelli's "distinguished career" and welcomed "his pledge to strengthen the partnership between state and local law enforcement and the Department of Justice." William J. Johnson, Executive Director of the National Association of Police Organizations, wrote that "Mr. Perrelli's career at the DOJ has given him extensive knowledge of the department's policies, programs and statutes, which NAPO believes will be invaluable to the position of Associate Attorney General."

Ernie Allen, President & CEO of the National Center for Missing & Exploited Children, wrote that Mr. Perrelli's "unique private sector experience coupled with his exemplary public service will make him a strong effective Associate Attorney General."

Paul Clement, Solicitor General under President George W. Bush, wrote that career professionals at the Department who had worked with both him and Mr. Perrelli "held him in uniformly high regard" and that Mr. Perrelli's "prior service in the Department should prepare [him] to be a particularly effective Associate Attorney General." He also described Mr. Perrelli as "an

incredibly skilled lawyer" whose "skills would serve both Tom and the Department very well if he is confirmed as the Associate Attorney General."

The many letters we have received in support of both of the nominees before the Committee today reinforce my view and the view of many that these are superb picks for the important posts to which they have been nominated.

Rather than move forward at last to consider Dean Kagan's nomination and the nomination of Mr. Perrelli, some on the Republican side of the aisle appear eager to revisit past tactics of obstruction and delay.

I scheduled the hearings today and last week after consultations between my staff and Senator Specter's staff. I accommodated the Ranking Member's request not to hold the hearing on Dean Kagan's nomination last week, and instead scheduled it for this week. We are proceeding in line with the pace for the Committee's consideration of a new Administration's first nominations for Justice Department leadership, when it is particularly important to put a new team in place to get the Department up and running. This is especially true given the threats and challenges we face.

Dating back to the Carter administration, the average days from designation of the Deputy Attorney General nominee to confirmation hearing is 37 days. We held David Ogden's hearing 31 days after his designation. Dating back the same time, the average time from designation to hearing for nominations to be Associate Attorney General is 37 days. Tom Perrelli's hearing today is being held 36 days after his designation. While the time for Dean Kagan's hearing will be a little over a week shorter than the average time from designation to the start of hearings for a Solicitor General in a new administration, it is close to the time between designation and hearing for Paul Clement's nomination to be Solicitor General in Alberto Gonzales' Justice Department. Moreover, Dean Kagan is well known to the Committee, since her last nomination was before the Committee for two years. Since that time, she has been the highly successful Dean of Harvard Law School.

I suspect that the schedule seems rushed to some on the other side of aisle because of the extensive delays in consideration of Eric Holder's nomination to be Attorney General, which extended his confirmation into last week. Had we followed the schedule I set out on that nomination, we would have completed work weeks ago, leaving more time for to prepare for these hearings.

I look forward to the hearing today and to moving forward without delay to continue to restore the Department of Justice.

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