

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
March 5, 2009

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
On Executive Nominations
Executive Business Meeting
March 5, 2009

The Committee has on its agenda today three nominations for high-ranking positions at the Department of Justice. Two of these nominations, Dean Elena Kagan to be the Solicitor General of the United States, and Tom Perrelli to be the Associate Attorney General, were held over last week. These nominations should be reported out of Committee today and considered by the full Senate without further delay.

The other nomination on our agenda is that of David Kris to head the National Security Division. We are working to expedite his consideration for this important national security post and recognize that our consideration is not the end of the process. The nomination will also be considered by the Select Committee on Intelligence before it is considered by the Senate.

In the time I have been privileged to serve as Chairman of this Committee, I have always used the same fair and open practices to protect the rights of every Member, Democratic or Republican. I used those practices during the 17 months I served as Chairman during President Bush's first term. I used those practices in the last Congress, in the final years of the Bush administration. I intend to continue using the same practices in this Congress in considering the nominees of President Obama. I expect good faith on all sides. I do not expect my efforts to be fair and protect the rights of all Members to be abused.

In that regard, I am very disappointed to see that the nomination of David Ogden to be Deputy Attorney General is being held up and filibustered by Senate Republicans. His nomination was reported by this Committee for this critical post after weeks of consideration. A bipartisan majority - 14 to 5 - voted to report this nomination. The Ranking Republican Member and the Republican Whip both voted in favor of the nomination along with the senior Senator from South Carolina. Despite the strong support from law enforcement groups, children's advocates, civil rights organizations and former Democratic and Republican officials, and despite this Committee's bipartisan vote, Republican Senators have now chosen to filibuster the second of President Obama's nominations reported by this Committee. This is not a good start. In addition, this week all 41 Senate Republicans signed a letter to President Obama threatening filibusters of his yet to be named judicial nominees. That is not a good sign.

If Senators want to speak against or vote against Mr. Ogden's nomination, that is their right. We had such a debate and vote here last week. But I hope that Senators would reject the false and scurrilous attacks that have been made against Mr. Ogden. I also hold out hope that they will reject applying double standards when it comes to President Obama's nominees.

Today the Committee considers two nominations that were held over last week, Thomas J. Perrelli to be Associate Attorney General, the number three position at the Justice Department, and Elena Kagan to be Solicitor General of the United States, the chief advocate on behalf of the United States Government. I thank Senator Cardin for chairing the hearing on these nominations back on the February 10.

Dean Kagan's nomination is historic. In 2003, she became the first woman to serve as Dean of the Harvard Law School. In that position, Dean Kagan has earned praise from Republicans and Democrats, students and professors, for her consensus-building and inclusive leadership style. Now Dean Kagan is poised to break another glass ceiling. When confirmed, she will be the first woman confirmed to serve as Solicitor General of the United States.

Every Solicitor General who served from 1985 to 2009 - under Democratic and Republican administrations - has endorsed her nomination: Charles Fried, Kenneth Starr, Drew Days, Walter Dellinger, Seth Waxman, and the three Solicitors General appointed by President Bush-- Ted Olson, Paul Clement and Greg Garre. The Deans of 11 of the most prominent law schools in the country also support her nomination. If there were an equivalent to the ABA rating for judicial nominees, hers would be well-qualified.

One of the conservative professors Dean Kagan helped to bring to Harvard Law School was Jack Goldsmith. He is the conservative who began the cleanup of the Office of Legal Counsel at the Department following the work of 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."

Nearly 10 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 D.C. Circuit, 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.

Tom Perrelli is the managing partner of the Washington, D.C., office of Jenner & Block. He previously held important Justice Department posts where he earned a reputation for independence and integrity as well as the respect of career lawyers 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, including the National President of the Fraternal Order of Police, the Major Cities Chiefs Association, and the National Association of Police Organizations. Paul Clement, who worked for Senator Ashcroft and then Attorney General Ashcroft and was appointed by President Bush to be Solicitor General, wrote that career professionals at the Department who had worked with 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."

I have also put on the agenda today the nomination of David Kris, another highly-regarded veteran of the Department of Justice. He is a former Federal prosecutor who spent eight years as a career attorney in the Criminal Division at the Department. He was then a political appointee under both President Clinton and President Bush, serving as Associate Deputy Attorney General from 2000-2003. In that role, he supervised the government's use of the Foreign Intelligence Surveillance Act (FISA), representing the Justice Department at the National Security Council and in other interagency settings, briefing and testifying before Congress, and assisting the Attorney General in conducting oversight of the U.S. intelligence community. I thank Senator Feinstein for chairing that hearing last week on his nomination.

Mr. Kris understands the role the Bush administration's excesses have played in undermining the Department of Justice and the rule of law. In 2006, Mr. Kris released a 23-page legal memorandum critical of the legal rationale offered by the Bush administration in connection with the National Security Agency's warrantless wiretapping program. Mr. Kris was an early advocate for the creation of the National Security Division he has now been nominated to lead. He is leaving a lucrative practice as in-house counsel for a major corporation to return to government service.

Mr. Kris' nomination has also earned support from both sides of the aisle. Former Bush administration Solicitor General Ted Olson describes Mr. Kris as "a very sound lawyer," who "is committed to the defense of the United States and its citizens, and respects the rule of law and civil rights." Former Deputy Attorney General Larry Thompson writes that he asked Mr. Kris to stay in his post in the Bush administration after finding that "he had a passion for national security issues but also a deep respect and appreciation for the related civil liberties concerns." Former Bush administration Homeland Security Secretary Michael Chertoff and former Attorneys General Janet Reno and John Ashcroft have all written in support of Mr. Kris' nomination.

I scheduled the hearings for the nominees before us today and the hearing Senator Kohl will chair next week on three more important Justice Department nominees 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 the first week of February and, instead, scheduled it for the second week of this month. Consideration of the Kagan and Perrelli nominations have already been delayed a week. It is time to move forward.

I urge all Members of the Committee to come together to do what is right and approve these extraordinary public servants to the critical posts for which President Obama has nominated them.

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Statement Of Senator Patrick Leahy,
Chairman, Senate Judiciary Committee
On S. 386, the Fraud Enforcement and Recovery Act of 2009
Executive Business Meeting
March 5, 2009

Just last week, we learned of the latest scandals in the financial industry, as the leading money managers of WG Trading Co. and Westridge Capital, investment firms in Connecticut, were charged with a \$650 million dollar fraud scheme, which may have been ongoing for more than a decade. According to the charges, these men stole hundreds of millions of dollars invested by colleges and pension funds, and just used it for their own lavish lifestyles.

Sadly, this is just the latest in a series of extraordinarily brash frauds, like the now infamous \$50 billion dollar Madoff "Ponzi" scheme, that have gone undetected for years, exposing just how important it is for us to rebuild and reform our fraud enforcement in this country.

The Fraud Enforcement and Recovery Act of 2009 will correct this serious problem by strengthening the Federal Government's capacity to investigate and prosecute the kinds of financial frauds that have so severely undermined our economy and hurt so many hard working people in this country. It would also provide the resources and legal tools needed to police and deter fraud in connection with the massive bailout and recovery packages now being implemented.

As we heard three weeks ago at this Committee's hearing on fraud enforcement, we need to respond now the way we did following the Savings and Loan Crisis nearly two decades ago by hiring more agents, analysts, and prosecutors and allocating resources to catch those who have taken advantage of these difficult times to profit from fraud.

I want to recognize Senator Grassley, who joined me to introduce this bill and has continued to work with me to improve this legislation even after its introduction. Senator Grassley and I have also worked closely with Senator Schumer to improve this bill. With his input, we have agreed to authorize more funds for the FBI and the U.S. Secret Service in this complete substitute. I also thank two of our newest Members for their engagement on this issue. Senator Kaufman has been active and committed from day one, and Senator Klobuchar is also a cosponsor of the bill.

Today, Senator Grassley and I, together with Senator Schumer, Senator Klobuchar and Senator Kaufman, are offering a complete substitute in Committee to make several improvements to the bill, as well as to address several technical corrections and clarifications offered by the Justice

Department. I want to thank Senator Schumer for his contributions, as well as Senator Shelby, who has also been a leader on efforts to combat fraud and has worked closely with Senator Schumer and with me. I look forward to working with both of them to move this important legislation, and other key anti-fraud initiatives, forward.

There should be strong bipartisan support for this bill. The Justice Department is supportive of this bill, as are the FBI, the Postal Inspection Service, the HUD Inspector General, and the Secret Service. I hope all Senators can join us to adopt this substitute amendment and report this bill to the Senate without delay.

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Statement of Senator Patrick Leahy
Chairman, Committee on the Judiciary
On the Railroad Antitrust Enforcement Act
Executive Business Meeting
March 5, 2009

Today the Committee considers S. 146, the Railroad Antitrust Enforcement Act of 2009, legislation that I am once again pleased to cosponsor. Senator Kohl, who serves as Chairman of the Antitrust Subcommittee, is one of the strongest advocates for effective antitrust enforcement in the Senate. He has reintroduced this bipartisan legislation in the 111th Congress after it was reported unanimously by the Committee in 2007. The legislation is also cosponsored by Senators Feingold, Schumer, Klobuchar, Rockefeller, Dorgan, and Vitter.

There is no doubt that consumers and businesses benefit from a competitive environment, and our antitrust laws are critical in ensuring that competition thrives in the American economy. If the cost of transporting important goods such as grain and coal by rail has been inflated as a result of anticompetitive conduct by the rail industry, the American consumer suffers in the form of higher energy and food prices, among others. The legislation that Senator Kohl has introduced and would simply ensure that the antitrust laws are applied to the rail industry.

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