

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

January 13, 2010

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

Dear Chairman Leahy:

In recent weeks, there have been several incidents threatening our national security and underscoring the need for more aggressive counterterrorism efforts, information sharing, and military and intelligence initiatives to uproot and eliminate al Qaeda and its affiliates from footholds around the globe. At a time like this, it is essential that the Department of Justice provide sound legal guidance to the various intelligence and counterterrorism agencies within our government.

We believe many unanswered questions remain about Dawn Johnsen's suitability to guide our Nation's legal response to the war on terror through the Office of Legal Counsel (OLC). Ms. Johnsen's record calls into question her dedication to aggressive Executive action in national security matters. She has supported backward-looking investigations and written that the last administration's detainee policies "failed miserably." She has consistently advocated placing unnecessary constraints on the President and our intelligence professionals, constraints not required by our laws or Constitution. Based on her statements, it is unclear whether Ms. Johnsen would be able to set aside her personal biases and provide the type of objective, yet aggressive, constitutional legal advice the President will need to effectively combat the continued terror threat. Accordingly, we ask that you hold a new hearing on her nomination before scheduling her nomination for a Committee vote.

We do not make this request lightly, but feel compelled to do so based on the nominee's record and the position to which she has been nominated. In recent years, the OLC has been critical in authorizing appropriate government action to combat al Qaeda. For example, the Clinton administration OLC reportedly determined as a matter of law that the Executive Order banning assassinations did not apply to the targeting of top al Qaeda leadership, a ruling that appears to have been vital to CIA efforts in the 1990s and even America's aerial drone program today. It is critical that OLC be led by a lawyer who is willing to support and authorize all necessary and appropriate action in our Nation's continued war against al Qaeda.

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
January 13, 2010
Page 2

For the Committee to properly discharge its advice and consent duty, we believe a second hearing is necessary to evaluate Ms. Johnsen's nomination and approach to the serious national security questions currently facing this administration.

Very truly yours,









