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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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December 10, 2008

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

Dear Arlen:

As I hope you know, I honored your request and asked Secretary Rice to facilitate your 14-day trip to 10 countries from December 25 through January 7. Please do let me know who the other Senators are who will be accompanying you.

I also wanted to respond to your letter of last evening. I am a bit confounded as to why you are surprised that the Holder hearing was noticed for January 8. As I have said repeatedly from the time reports of his likely designation began appearing in the press in mid-November, I thought we should move promptly. It hardly came as a surprise when the President-elect announced that Eric would be a key part of his national security team at the designation announcement on December 1. My recollection is that your initial reaction on November 18 was that you were at that time already reviewing his record. Of course, Eric is someone you and I both know well and have known and worked with for years.

I made no secret of the need to move promptly to schedule this hearing from when I spoke about Eric Holder on the Senate floor on November 20, when I held a press availability on December 1, and when my chief counsel met with both your staff director and your chief counsel last week, I was hoping to hold the hearing on January 7.

Initially, our staffs discussed possibly proceeding before Christmas if the designation were made around Thanksgiving. We commence the new session on January 6, but that day will be devoted to swearing in and recognizing the returning and newly elected Senators. When you extended and expanded your travel plan to include January 7, my staff made sure yours knew that such an extension would mean that you would miss the Holder hearing. Your staff indicated that you would be calling me. You did not, but sent back the message that you chose to extend your travel through January 7. I then learned that the Senate Republicans are planning a Republican caucus retreat for January 7. I respected your desired travel plans and the Republican Senate retreat by postponing the start of the hearings to January 8.

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I have sought to accommodate your interests on many occasions. I scheduled field hearings for you in Pennsylvania on foreclosure and health care mergers issues, and worked hard to ensure fair treatment and confirmation for nominations in which you had a personal interest. We worked in a bipartisan fashion last Congress to investigate the politicization of the Department and to expedite nominations to restock the leadership ranks at the Department after nearly every top official, including the Attorney General, resigned in the wake of the scandals. I hope you will now join me to complete the hard work that must be done to right the ship at the Justice Department. I will continue, as I always have, to work closely with you and Senators from both sides of the aisle to schedule consideration of both executive and judicial nominations and to make progress on our legislative agenda. I look forward to working with you in the next Congress.

When Michael Mukasey was designated to be Alberto Gonzales' successor last year, you urged that we "move promptly on the confirmation proceedings." I did not delay in scheduling that hearing, even though many were suggesting that I do so. Instead, I proceeded promptly with a hearing 30 days after the nomination was announced. For that, I received criticism from my side of the aisle.

Other Republican members of the Committee, at that time -- when President Bush was doing the designating -- urged speed and observed that the average time to a confirmation hearing for an Attorney General was three weeks. They called for moving the nomination "as quickly as possible" given the need for new leadership at the Justice Department, and a member of the Republican Senate leadership called for proceeding "immediately."

After the contentious 2000 presidential election, I also proceeded promptly to hold the hearing on the designation by President-elect Bush of John Ashcroft to be Attorney General. John's designation was not formally announced until December 22, but I held his hearing 25 days later. I do not think President-elect Obama should be penalized for proceeding promptly with transition and designating his Attorney General selection three weeks before President Bush had.

I am sure you recall during your first year in the Senate how promptly Chairman Thurmond proceeded on the designation of William French Smith to be Attorney General at the beginning of the Reagan administration. The Committee completed its consideration of President Reagan's lawyer to be the Attorney General of the United States with a vote on January 16, even though he was not designated until December 11. We have known about Eric's designation officially for 10 days, and unofficially for more than three weeks. The Committee would have to vote on January 6, the first day of the new Congress, to approximate that timeline.

President Carter's first Attorney General, Griffin Bell, was not designated until December 18, yet his hearing and Committee consideration were completed by January 19. Approximating that timeline would have the Committee voting before the new Congress even comes into session.

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Recognizing the importance of the Attorney General of the United States, our Committee has customarily held hearings on a new President's pick before inauguration. That was true of Attorney General Griffin Bell, Attorney General William French Smith, Attorney General Ashcroft and should hold true for the next Attorney General.

Other Attorney General nominations, which you and I have considered together, include that of your fellow Pennsylvanian, Dick Thornburgh, whose hearing was held 24 days after he was announced. He remained in office when Vice President George H.W. Bush was elected President. When he left the post toward the end of that administration, we proceeded with Bill Barr, whose hearing was held 25 days after he was announced. The beginning of President Clinton's administration was unusual, but when he settled on Janet Reno, her hearing was held 26 days after she was announced.

I want to be as fair to President-Elect Obama and his nominee as we have been to others. I held a hearing on President Bush's first Attorney General 25 days after he was designated and on the current Attorney General 30 days after he was designated. I have noticed the hearing for the next Attorney General 39 days after he was officially designated and 52 days after your November 18 statement that you were already at work reviewing his record.

The need for new leadership at the Department of Justice is as critical today as it has ever been. I want to respect the commitment made by the outgoing President to make the transition to the new administration a smooth and speedy one. No one has to remind either of us how decimated the Department of Justice has been during recent years or how important it is that it be restored. I think you have called it dysfunctional, and said morale is in disarray. We both know it is too important that it have its senior leadership in place without delay.

The election of Barack Obama and Joe Biden, and the President-elect's selection of Eric Holder, are an historic opportunity for the country to move past the partisanship of the past decades and work together to solve the nation's problems, protect against serious threats and meet our challenges. We both know these men. They have long and distinguished records of service and accomplishments. They can make a real difference if we join with them, not as Democrats or Republicans, but as Americans.

Sincerely,

A handwritten signature in black ink that reads "Patrick Leahy". The signature is written in a cursive, flowing style with a large initial "P".

PATRICK LEAHY  
Chairman