

Full Committee Hearing Notice - Nomination Hearing: Howard Radzely, of Maryland, to be Solicitor for the Department of Labor

Bill Number: Oversight

Hearing Date: July 29, 2003 - 10:00 AM

Panel I

Howard Radzely

Radzely Testimony

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Witness:

Howard Radzely, of Maryland

Testimony:

Thank you Mr. Chairman, Senator Kennedy, and distinguished members of the Committee. It is an honor to appear before you today as you consider my nomination to be the Solicitor of Labor. At the outset, I would like to express my gratitude to the President of the United States for nominating me for this position and to the Secretary of Labor, Elaine Chao, for the support and confidence she has demonstrated in recommending me for this position. I would also like to thank the Committee for considering my nomination and holding this hearing today. Finally, I would like to thank my wife Lisa and my three-and-a-half-year old son Brendan for all the sacrifices they have made to allow me to serve in the government and for the sacrifices they will make if I am confirmed to be the Solicitor.

Prior to joining the Department of Labor, I was in private practice here in Washington, D.C. The main focus of my practice was advising clients, primarily employers, how to comply with the various labor and employment laws such as the Fair Labor Standards Act, Executive Order 11246, Family and Medical Leave Act, Occupational Safety and Health Act, Service Contract Act, and many others.

Since coming to the Department in June 2001, I have had the opportunity and privilege of working with the employees of the Solicitor's Office – some of the finest attorneys and public servants I have known – on a wide range of legal issues. In my view, the Solicitor's Office has two distinct but vitally important roles.

First, and foremost, the Solicitor's Office has the important responsibility of working in tandem with the individual agencies of the Department to vigorously enforce the laws under the Department's jurisdiction. Unlike most cabinet agency general counsel's offices, the Solicitor's Office has the authority to litigate cases in a wide variety of areas including the Occupational Safety and Health Act, Mine Safety and Health Act, Employee Retirement Income Security Act, Fair Labor Standards Act, Davis-Bacon Act, Service Contract Act, and Executive Order 11246, to name a few.

Second, the Solicitor's Office provides legal advice to the Secretary and the agencies in the Department on rulemakings, ethics laws, procurement, permissible interpretations of various statutes and regulations, and the wide array of other legal matters that arise under the nearly 200 laws that the Department administers and enforces.

With regard to enforcement, it is important for the Solicitor's Office to vigorously prosecute cases and to use the full range of legal tools at its disposal. Through judicious

use of all of its enforcement tools, the Department can obtain justice for those who have been treated unfairly in violation of the law, and can deter those who might choose to violate the statutes and regulations enforced by DOL. For example, I have urged Solicitor's Office attorneys to make expanded use of Section 11(b) of the OSH Act, a provision which had rarely been used. This section of the OSH Act allows the Department to have orders of the OSH Review Commission (including settlements) entered as orders of the courts of appeals. This statutory authority allows the Department to seek contempt and significantly greater sanctions, rather than filing a failure to abate proceeding, in the event that the employer violates a Commission order. To take one other example, since I became Acting Solicitor, I have refused to settle cases in which employers have violated OFCCP conciliation agreements without obtaining additional penalties – which has included debarment from contracting with the federal government. I also believe it is especially important for the Department to focus enforcement efforts on employers who exploit, among others, low-wage and vulnerable workers as well as on employers who repeatedly violate the laws enforced by the Department. Low-wage and vulnerable workers are the workers who most need our assistance and who can most benefit from the Department's aggressive actions to protect their rights. For example, the Solicitor's Office has been aggressively using the Fair Labor Standards Act's hot goods provision, which prevents the shipment of goods in interstate commerce produced in violation of the Act, often in industries that have a high percentage of low-wage workers. In addition, I have placed a premium on swift action by attorneys in the Solicitor's Office in all enforcement cases, and in particular in those cases in which the Department determines that an employer retaliated against an employee for exercising his or her rights, such as under the Mine Safety and Health Act.

In the seven months since I became Acting Solicitor, the Solicitor's Office has initiated a number of major enforcement actions in various programs. For example, last month, the Department filed suit against Enron, the administrative committee, Kenneth Lay, Jeffrey Skilling, and the outside members of the Board of Directors for breach of fiduciary duty. Attorneys in the Solicitor's Office continue to support the Employee Benefits Security Administration as it investigates a number of other corporate fraud cases.

In the OSHA area, since I became Acting Solicitor in January, the Department has issued nine ergonomic citations under OSHA's general duty clause. These citations were issued in a variety of industries, including nursing homes, the printing industry, warehousing, and the beverage distribution industry. Solicitor's Office attorneys throughout the country are prosecuting these cases. In the wage-hour area, we are continuing our efforts to ensure that poultry workers are compensated for donning and doffing by litigating against two poultry producers and by filing, last month, an amicus brief in the First Circuit Court of Appeals in support of private poultry plaintiffs' petition for rehearing in *Tum v. Barber*.

To take one last example, from the civil rights area, as Acting Solicitor I recently authorized the filing of the second systemic compensation discrimination case by the Department in over 25 years. The only other systemic compensation discrimination case filed by the Department in the last 25 years was one that I authorized while Acting Solicitor in 2001.

In addition to approving enforcement actions and working with attorneys to strengthen those actions, I have also intervened in cases when such intervention would facilitate

reaching favorable settlements. I believe it is important for the Solicitor, or the Acting Solicitor, to demonstrate to attorneys in the Solicitor's Office, to investigators in the client agencies, and to the regulated community his or her commitment to enforcement by personal involvement when such intervention can improve the chance for favorable results. For example, as Acting Solicitor in 2001, I worked with lawyers in the National Office and the Philadelphia Office to negotiate a final settlement of the Beverly Nursing Home ergonomics case. One significant feature of this settlement is that the terms extend beyond the cited facilities to a nationwide agreement. Similarly, I worked with career civil servants in the Solicitor's Office and the Wage and Hour Division to negotiate one of the largest Wage-Hour settlements ever, a \$10 million settlement with Perdue for failing to compensate employees for donning and doffing.

Regarding the second important mission of the Solicitor's Office, the legal advisory functions, I believe that attorneys must provide their client agencies with clear, concise, easy-to-understand legal advice that is based on a careful review of all relevant legal authorities. Whether it is legal advice on a newly passed statute, an ethics issue, a proposed or final regulation, or any other question, attorneys must inform their clients of the range of options that are legally available and the legal risks attendant to or prohibitions on a particular course of action. As with any legal organization, Solicitor's Office attorneys must be responsive, thorough, and objective. They must have the confidence and trust of their client agencies.

In addition to enforcement and legal advice functions, the Solicitor of Labor also manages one of the nation's largest law firms – a staff of approximately 700 employees including some 500 attorneys working throughout the country. Throughout my tenure at the Department, and particularly since I became Acting Solicitor in January 2003, I have stressed the need to share cases, experiences and work among the various offices. For example, a number of OFCCP cases have been shifted among regions and the national office to ensure that they would be handled more quickly.

Close coordination among offices also enables the Solicitor's Office to properly staff major cases, such as Enron, with attorneys in multiple offices helping to litigate against teams of lawyers on the other side. Close coordination also facilitates the ability of the Solicitor's Office to shift work if one office becomes overloaded and to more effectively deploy the legal talent in the various offices. Shortly after arriving at the Department in 2001, I requested that the Solicitor's Office set up a nationwide internal brief bank to ensure that all of our offices had access to key briefs and legal memorandum. This internal database should continue to help increase the efficiency of the Solicitor's Office. If confirmed as Solicitor, I will continue these efforts to improve the Office of the Solicitor's ability to litigate all cases, including the increasingly complex cases against defendants with numerous lawyers.

To mention one last management principle that is important to me, as Acting Solicitor I have worked hard to give a greater role to the Associate and Regional Solicitors in the overall management of the office. These dedicated senior career civil servants have tremendous substantive knowledge and a keen sense of what is needed to improve the management of the Solicitor's Office and thus enhance the Solicitor's Office's ability to bring strong enforcement actions and render high-quality legal advice.

In conclusion, the Department of Labor Solicitor's Office has a long and proud tradition of protecting America's workers and providing sound legal advice to its client agencies. I

appreciate the great responsibility that I will bear if confirmed for the difficult and challenging job as Solicitor and understand the need to carry on the office's great tradition. Thank you again for considering my nomination, and I would be pleased to answer any questions that you may have.