

Obama Picks New Nominee For Legal Counsel's Office

by CARRIE JOHNSON

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The White House has nominated Washington lawyer Virginia Seitz on Wednesday to lead the Justice Department's Office of Legal Counsel. If she is confirmed, Seitz will run a unit that became famous for approving waterboarding and other harsh interrogation methods in the Bush years.

Seitz's supporters are hoping that her nomination bucks the office's recent history, which has been filled with controversy and disappointment. In all, it's been seven years since the office had a leader confirmed by the Senate, something that veterans like Walter Dellinger shake their heads at.

"OLC, as we've all learned from the torture memos, is a critically important office," Dellinger said. "And it is striking — indeed, almost shocking — that since I left as the confirmed head of OLC 14 years ago, for fewer than three of those 14 years has there been a confirmed person [as] head of the Office of Legal Counsel."

Indiana law professor Dawn Johnsen was the Obama administration's first nominee for the job. But Johnsen stepped aside in April after months of waiting in vain for the Senate to vote on her nomination. Republicans thought she was too liberal on national security issues, and they used articles she wrote during the Bush years to prove it.

Now, the White House is trying again with the 54-year-old Seitz, a former Rhodes scholar and a onetime Supreme Court clerk for Justice William Brennan. Her father, a chancellor in Delaware, authored a legal opinion that analysts say helped pave the way for the *Brown v. Board of Education* ruling.

Known For Affirmative Action Case

If Virginia Seitz isn't a household name, her law partner Peter Keisler says, she should be. That's because of a friend of the court brief she wrote in an affirmative action case a few years ago.

"It was one of the most influential amicus briefs probably in the history of the court," Keisler said.

During that time, Seitz represented a group of retired military officers. They told the Supreme Court that service members perform better because they take diversity into account. Justice Sandra Day O'Connor cited that argument in the court's landmark 2003 opinion that allowed race to be considered in university admission decisions.

But Seitz is known within legal circles for something else, too. Earlier in her career, she quietly blazed a trail for others who might want to work part time while rearing their children.

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"She's really actually been a pioneer in demonstrating that you can have a hugely successful first-tier law practice while working part time," said Keisler, who works in the office next to Seitz at the Sidley Austin law firm in Washington.

Seitz left her first law firm, Keisler said, because while the firm offered to continue her part-time arrangement, it had apparently refused to extend that same deal to other lawyers.

And Seitz thought that was unfair. So she walked.

That sense of conviction would help Seitz at the Office of Legal Counsel, which sometimes must say no to powerful people in the White House.

The Importance Of A Senate-Confirmed Leader

Jack Goldsmith ran the Office of Legal Counsel during the Bush administration. He stood up to the White House and objected to a warrantless-wiretapping program.

"It's important that there be a Senate-confirmed person at the head of the Office of Legal Counsel, both because it helps secure the independence of the office when it's making legal judgments and because it helps give the office more authority, both within the Justice Department and throughout the government," Goldsmith said.

Seitz has little experience in national security — an issue that might pose a problem with her confirmation in a divided Senate. The Justice Department will hire a deputy who has a background in those issues, which satisfies Goldsmith.

"The truth is that all of these issues are legal issues, and there are a lot of experts on the various issues within the office, working with the head of the office," he said. "And so I don't think that sort of prior expertise in national security law is a prerequisite for the job."

The most important thing, Goldsmith said, is that the leader be a careful lawyer and have good judgment. The Office of Legal Counsel is a relatively small one, with about two dozen lawyers balancing requests for legal advice from all across the federal government.

And demand may be up this year, according to Goldsmith, because OLC helps the White House and the Justice Department decide the kind of information to turn over to Congress for oversight hearings.