

**NOMINATIONS TO THE DEPARTMENT OF
COMMERCE, THE FEDERAL TRADE COMMISSION,
THE AMTRAK REFORM BOARD, AND
SAINT LAWRENCE SEAWAY DEVELOPMENT
CORPORATION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

JUNE 2, 2004

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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CONTENTS

	Page
Hearing held on June 2, 2004	1
Statement of Senator Boxer	8
Prepared statement	10
Statement of Senator Lautenberg	10
Statement of Senator McCain	1
Prepared statement of Hon. George Allen, U.S. Senator from Virginia	2
Statement of Senator Smith	7
Letter dated April 5, 2004 to Hon. Timothy J. Muris, Chairman, Federal Trade Commission from Hon. Gordon H. Smith, Chairman, Subcommittee on Competition, Foreign Commerce, and Infrastructure	8
Statement of Senator Wyden	2

WITNESSES

Boehlert, Hon. Sherwood L., U.S. Representative from New York	3
DeWine, Hon. Mike, U.S. Senator from Ohio	4
Kohl, Hon. Herbert H., U.S. Senator from Wisconsin	5
Leibowitz, Jon, Nominated to be a Commissioner, Federal Trade Commission	40
Prepared statement	41
Biographical information	42
Majoras, Deborah Platt, Nominated to be Chairman, Federal Trade Commission	28
Prepared statement	29
Biographical information	30
Palmer, Brett, Nominated to be Assistant Secretary, Legislative and Intergovernmental Affairs, U.S. Department of Commerce	12
Prepared statement	13
Biographical information	14
Ryan, Hon. Paul D., U.S. Representative from Wisconsin	6
Sosa, Enrique, Nominated to be a Member, Amtrak Reform Board	48
Biographical information	48
Walker, Scott K., Nominated to be a Member, Advisory Board, Saint Lawrence Seaway Development Corporation	52
Prepared statement	53
Biographical information	53
Wu, Benjamin H., Nominated to be Assistant Secretary, Technology Policy, U.S. Department of Commerce	20
Prepared statement	22
Biographical information	23

APPENDIX

Hatch, Hon. Orrin G., U.S. Senator from Utah, prepared statement	80
Hollings, Hon. Ernest F., U.S. Senator from South Carolina, prepared statement	79
Letter dated May 4, 2004 to Hon. John McCain from June Ling, Associate Executive Director, Codes and Standards; and James F. Thomas, President, ASTM International	80
Letter dated June 8, 2004 to Hon. John McCain and Hon. Ernest F. Hollings from Harvey Applebaum, E.W. Barnett, John DeQ. Briggs, Roxane C. Busey, Ky P. Ewing, Jr., James Halverson, Carla Hills, Caswell O. Hobbs, Robert T. Joseph, Janet L. McDavid, Richard Pogue, Phillip A. Proger, Harry Reasoner, J. Thomas Roch, James F. Rill, Irving Scher, Alan H. Silberman, Robert Taylor and Robert Weinbaum	81

IV

	Page
Response to written questions submitted by Hon. John McCain to:	
Brett Palmer	83
Benjamin H. Wu	84
Response to written questions submitted to Deborah Majoras by:	
Hon. George Allen	92
Hon. John Ensign	87
Hon. Frank R. Lautenberg	94
Response to written questions submitted to Jon Leibowitz by:	
Hon. George Allen	97
Hon. Sam Brownback	96
Hon. John Ensign	97
Hon. John McCain	94

**NOMINATIONS TO THE DEPARTMENT OF
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COMMISSION, THE AMTRAK REFORM BOARD,
AND SAINT LAWRENCE SEAWAY
DEVELOPMENT CORPORATION**

WEDNESDAY, JUNE 2, 2004

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:34 p.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN MCCAIN,
U.S. SENATOR FROM ARIZONA**

The CHAIRMAN. Good afternoon. The Commerce Committee meets today to consider the nominations of six individuals who have been nominated by the President to serve our country in very important positions.

This Committee takes its advice and consent role very seriously, and I will note that each of the nominees has responded in detail to the Committee's request for biographical and financial data. I've had the opportunity to review your responses to the Committee questionnaire, and I look forward to moving your nominations.

We have, appearing before the Committee today, Brett Palmer, to be Assistant Secretary for Legislative and Intergovernmental Affairs, and Benjamin Wu, to be Assistant Secretary for Technology Policy, both with the Department of Commerce; Jon Leibowitz and Deborah Majoras, to be Commissioners of the Federal Trade Commission; Enrique Sosa, to be a Member of the Amtrak Reform Board; and Scott Walker, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.

I thank the nominees for being here today, and I note the presence of several of my colleagues, who are here to speak on behalf of several of the nominees.

I would also like to note, before recognizing them, that Senator Allen regrets he can't be here at the hearing to introduce Deborah Majoras, and has asked that his statement on behalf of Ms. Majoras be submitted for the record. And, without objection, so moved.

[The prepared statement of Senator Allen follows:]

PREPARED STATEMENT OF HON. GEORGE ALLEN, U.S. SENATOR FROM VIRGINIA

Mr. Chairman and members of the Committee, it is my privilege to introduce for your consideration a fellow Virginian, Ms. Deborah Majoras, to be Chair of the Federal Trade Commission.

As an independent regulatory agency, the FTC is one of the most important tools available for protecting individual consumers.

The Commission is primarily charged with eliminating unfair or deceptive practices affecting commerce and protecting competition in our free market economy.

Ms. Majoras is extraordinarily well qualified for an appointment to the Federal Trade Commission.

She is an experienced antitrust lawyer, with extensive experience both in private practice and in government service.

Ms. Majoras earned her undergraduate degree from Westminster College and her JD from the University of Virginia, School of Law in May of 1989.

Currently, Debbie is a partner at the law firm Jones Day in Washington where she practices antitrust and competition law.

At the firm she handles a variety of antitrust counseling and civil and criminal litigation matters, including mergers and acquisitions, monopolization and price-fixing conspiracies.

Debbie is also a member of the Firm's Technology Issues Practice.

In April of 2001, Ms. Majoras became the Deputy Assistant Attorney General at the Department of Justice Antitrust Division and later in her tenure became the Principal Deputy Assistant Attorney General.

At the Department of Justice, her responsibilities included directing the Antitrust Division's civil and regulatory enforcement program, including supervision of all civil and regulatory merger and non-merger investigations, litigation, and policy issues.

Additionally, she served as Counsel to then Acting and now sitting Assistant Attorney General Hewitt Pate.

Ms. Majoras supervised and served as the principal negotiator of the settlement in, *United States v. Microsoft Corp.*; as well as supervised the litigation in *U.S. v. General Dynamics* and *U.S. v. 3D Corp.*

Mr. Chairman, it is important to note (and perhaps some may not like this) but when Ms. Majoras is confirmed, the two top antitrust enforcers in the United States Government will be Virginians and University of Virginia Law graduates.

Mr. Chairman, members of the Committee, it is my sincere pleasure to introduce this exceptional nominee and outstanding Virginian to you this afternoon, and I recommend her swift approval by the Committee.

Thank you.

The CHAIRMAN. Senator Wyden?

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Chairman, obviously there are several reasons why gasoline prices are soaring. Certainly increases in worldwide demand, the mischief of OPEC, and lack of effective conservation measures are significant factors. Today's hearing is important because the Federal Trade Commission's long-running campaign of inaction on gasoline pricing is also a major factor in the escalating prices our consumers are paying.

I'm of the view that gasoline pricing is one of the most important consumer-protection issues that the Federal Trade Commission is responsible for overseeing. Yet during both the Clinton and the Bush Administration, the Federal Trade Commission has sat on its hands and ignored oil-company mergers that short-change consumers, anti-competitive refinery practices that jack up prices, and market-distorting practices such as redlining, where oil companies restrict competition by preventing their wholesalers from selling to dealers.

In effect, for years now the Federal Trade Commission has denied, delayed, and deflected when it comes to consumer protection on gasoline prices. Right now, it is denying the effect of a rash of oil-company mergers on consumers that the General Accounting Office has found led to gasoline price hikes of up to seven cents a gallon on the West Coast of the United States. It is delaying inquiries into questionable refinery practices, such as the Bakersfield refinery closure that I and several members of the Senate are concerned about. And it is deflecting responsibility on redlining, which the agency itself has found—the agency has found to be an anti-competitive practice in its inquiry.

This is an extremely important hearing, Mr. Chairman. I intend to do everything I can, as a Member of the Senate, to force a change at the top in the Federal Trade Commission's policies for protecting gasoline consumers. My constituents and, I think, all Americans deserve it, and I appreciate your holding this hearing.

The CHAIRMAN. Thank you, Senator Wyden.

I'd like to thank my colleagues for appearing here on behalf of some of the nominees. We appreciate you taking the time from your busy schedule to appear, and we recognize that you'll be unable to stay because of other business, and I appreciate the fact that you're here.

I would notice, as a matter of historical trivia, that our two middle Members, Senator DeWine and Congressman Boehlert, and I came to the House of Representatives together in the vintage year of 1982, and all have obviously failed miserably since, but I—

[Laughter.]

The CHAIRMAN.—want to recognize my friends. And, if it's OK with you, Mike, we usually go with the oldest first, so we'll begin with you, Mr. Boehlert.

[Laughter.]

The CHAIRMAN. Thank you for being here.

**STATEMENT OF HON. SHERWOOD L. BOEHLERT,
U.S. REPRESENTATIVE FROM NEW YORK**

Mr. BOEHLERT. Thank you very much, Mr. Chairman. I want to thank you for allowing me to appear here today.

I'm here because you're considering one of our former Science Committee staffers, Ben Wu, to be the Assistant Secretary of Commerce for Technology. I hope we will be able to confirm Ben expeditiously to this important position.

The Assistant Secretary has important duties overseeing programs and policies that affect the economic competitiveness of the United States. It is not a position that should be allowed to remain vacant. And Ben is well-qualified to fill it.

For 8 years, he served on the House Science Committee, working with all of us, but most closely with Representative Connie Morella, who chaired what was then the Technology Subcommittee. Through his work on that Subcommittee, Ben developed expertise on a wide range of technology issues, including Y2K, information technology, and standards policy, all issues he will be dealing with, I hope, as Assistant Secretary. Ben has also labored with these issues in his current post of Deputy Under Secretary for Technology, a job that requires him to help supervise policy and man-

agement of the technology administration and its more than 3,000 employees. Ben has shown himself to be equal to the task.

Mr. Chairman, you and I will have many discussions in the coming months, I'm sure, about the issues with which Ben will be dealing. We both have pending bills on a variety of issues that involve the National Institute of Standards and Technology, manufacturing programs, and information technology. That just names a very few. We are interested in a lot of things, and we have been for a lot of these years, Mr. Chairman.

I am hopeful that Ben Wu can be an able and helpful partner in these efforts, and I urge his confirmation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Congressman Boehlert. Thank you for taking the time to come over and join us today.

Senator DeWine?

**STATEMENT OF HON. MIKE DEWINE,
U.S. SENATOR FROM OHIO**

Senator DEWINE. Mr. Chairman, Senator Wyden, I'm pleased to be here today, with my friend and colleague, Senator Kohl, to join in the introduction of his former Staff Director, Jon Leibowitz, and strongly recommend him to your Committee for confirmation as Commissioner of the Federal Trade Commission.

I first worked with Jon starting back in the spring of 1997. Senator Kohl and I had just taken over as Chair and Ranking Member of the Antitrust Subcommittee, and Jon was Senator Kohl's Minority Staff Director. Senator Kohl and I knew that we wanted the Subcommittee to be run in a professional, bipartisan way, and that we wanted the Subcommittee to promote competition and to work for consumers. And, right from the beginning, Jon was always able to do just that. The Subcommittee staff planned the agenda together, did the meetings together, did the work together, and held the hearings together. And, as a result, I think that we were effectively able to promote competition and really accomplish more for consumers than we could have otherwise.

In working with Jon, Mr. Chairman, on competition policy, Jon was always open-minded, pro-consumer, pro-competition, tough on mergers, but fair to the merging parties. If government agencies were going too slow, he pushed them to make decisions and provide the certainty that business needed. If a merger were going to substantially lessen competition, Jon and the rest of the Subcommittee would work with the parties to resolve the issues or hold a hearing or send a letter to let regulators know that the deal posed problems. If a merger didn't pose problems, he did his best to get out of the way and let the marketplace work.

Everything Jon did during his time working on the Subcommittee was to promote competition, and that is one of the reasons I believe that he will be a very fine commissioner. But the other reason is that Jon is such an easy person to work with. He's always looking for solutions to problems, looking for ways to work across the aisle to get things done, looking for a way to be reasonable instead of partisan. Time after time, his efforts in the past have been rewarded with solid, effective competition policy.

The substantive skills and background that he brings to the Federal Trade Commission will make him a knowledgeable Commissioner. But it's his people skills and genuine good nature that will help make him an enormous asset to the Commission. I can't think of anyone better suited to the position of Commissioner, and I certainly wholeheartedly join Senator Kohl in recommending Jon for confirmation.

I want also to mention that I know Jon and his family, as well as many other people who appear before this Committee, make a financial sacrifice, and I salute him for doing that, as well.

Mr. Chairman, I also want to take a moment to say a few words about the nominee for Chair of the FTC, Debbie Majoras. Senator Allen, as you have noted, had planned to be here today to introduce her, but had an unexpected scheduling conflict. In his absence, I would like to tell the Committee that she certainly is a very fine nominee to be chair of the FTC. I'm very pleased to say a few words on her behalf.

She spent several years as deputy in the antitrust division, and worked extensively on the Microsoft case, among other important issues. My office worked a great deal with her, and we have always been impressed with her knowledge, her professionalism. And I believe that she will be an excellent choice.

And, of course, it certainly doesn't hurt, I must say, that she lived in my home state of Ohio, and worked there at a very highly regarded law firm of Jones Day. Having a good supply of Ohioans to fill these important agency positions, Mr. Chairman, is always of benefit to the agency, and I'm particularly glad to see that she has been nominated to lead the FTC.

Mr. Chairman, you have in front of you two excellent candidates for the FTC. I'm just pleased to be here today to urge their confirmation.

I thank the Chair.

The CHAIRMAN. Thank you very much, Senator DeWine. Senator Kohl, welcome.

**STATEMENT OF HON. HERBERT H. KOHL,
U.S. SENATOR FROM WISCONSIN**

Senator KOHL. Thank you, Mr. Chairman and Members of the Commerce Committee.

It is my pleasure today to introduce and enthusiastically support the nomination of Jon Leibowitz to the Federal Trade Commission. As some of you know, this nomination is a matter of particular pride for me, because Jon served as Chief Counsel on my Judiciary Committee staff for 12 years.

Jon Leibowitz is a dedicated public servant and an excellent lawyer who has served the Senate with distinction. He is equipped with a creative and analytical mind, a sharp wit, and an ability to make sound judgments. Working with Jon was a joy, and having his wife Ruth and his children, Emma and Julia, as friends has been a pleasure. I'm confident that he will serve with great distinction as a Member of the Federal Trade Commission.

Jon's experience during this last 4 years on my staff, when he served as Minority Chief Counsel on the Antitrust Subcommittee, leave him particularly well qualified to become an FTC Commis-

sioner. He gained significant knowledge of the wide range of issues that fall within the ambit of the Federal Trade Commission, all with an eye to protecting consumers and business competition.

He worked on mergers in a number of areas, from the media, to the oil industry, to aviation and healthcare. He focused on privacy issues, broadband, and other telecommunication matters.

Areas worth mentioning specifically are Jon's work on media consolidation and media violence. Jon worked diligently on media mergers with an eye toward protecting the marketplace of ideas. In addition, Jon was instrumental in our project to combat media violence, which led to the first ratings system for the video-game industry.

It is gratifying when someone who possesses exceptional talents and abilities and a strong desire to serve our Nation and protect consumers is entrusted with such an important post. I strongly endorse Jon Leibowitz's nomination to the Federal Trade Commission, and I urge my colleagues to join me in supporting him.

Mr. Chairman, I would also like to introduce Milwaukee County Executive Scott Walker to this Committee. The President has nominated Scott for a position on the Advisory Board for the Saint Lawrence Seaway Development Corporation, and we look forward to his confirmation, as well.

Mr. Chairman, I thank you for the opportunity to appear before you and your Committee today.

The CHAIRMAN. Thank you very much for being here.

Congressman Ryan, welcome. Thank you for coming today.

**STATEMENT OF HON. PAUL D. RYAN,
U.S. REPRESENTATIVE FROM WISCONSIN**

Mr. RYAN. Thank you, Mr. Chairman. I hope it's not out of place to say I was 12-years-old in 1982.

[Laughter.]

The CHAIRMAN. It is.

[Laughter.]

Mr. RYAN. I thought so.

[Laughter.]

The CHAIRMAN. But we thank you for joining this Senior Citizens Panel.

[Laughter.]

Mr. RYAN. Thanks for having me. I appreciate being here today. I am here to support Scott Walker—County Executive Scott Walker—in his nomination to the Saint Lawrence Seaway Development Corporation.

The story about Scott Walker is a very intriguing and interesting one. Scott Walker came to office in the middle of a pension scandal in Milwaukee County a little over a year ago. This was a very bitter and divisive political climate, and what he did was truly remarkable. Not only did he win with a great mandate at that election, but, immediately when Scott Walker came into office, it was a very bitter political climate, and he sought to build bridges. He had an inclusive style, but very transparent reforms to county government, consolidated redundant programs, and, as a result of all of those things—bringing people together, making government more transparent, more accountable to the people—he was just re-

elected last April with an overwhelming majority vote. And so I think that a person with Scott's skills, his abilities, the things he's already proven to do—to have two property-tax budgets with property-tax freezes, no increase in the country government levy—are skills that would be very welcomed on this Commission. He also has great legislative experience behind him because he served for 10 years in the state legislature prior to that.

So I would just simply like to lend my support and introduction for Scott Walker to the Saint Lawrence Seaway Development Corporation. I think he'd be a great addition to it. He's also in the forefront of economic development in Milwaukee, which, of course, Lake Michigan is a great part of that. And so having someone who's familiar with economic development commerce on the Great Lakes as part of this Commission I think would be some great attributes and skills that are very much needed for this Commission. So I heartily support his nomination.

The CHAIRMAN. Thank you very much.

Mr. RYAN. Thank you.

The CHAIRMAN. Don't ever come back here again.

[Laughter.]

The CHAIRMAN. I want to thank all of you for coming today, and we look forward to hearing from your witnesses. Again, thank you for taking the time to be here on behalf of these nominees. We thank you for appearing before the Committee.

Now we'll have Mr. Brett Palmer, who is nominated to be Assistant Secretary for Legislative and Intergovernmental Affairs with the Department of Commerce.

Will you all please come forward?

Mr. Benjamin Wu is nominated to be Assistant Secretary for Technology Policy with the Department of Commerce; Mr. Jon Leibowitz, nominated to be a Commissioner of the Federal Trade Commission; Ms. Deborah Majoras, nominated to be a Commissioner of the Federal Trade Commission; Dr. Enrique Sosa, nominated to be a Member of the Amtrak Reform Board; and Mr. Scott K. Walker, who's nominated to be a Member of the Advisory Board of the Saint Lawrence Seaway.

Senator Smith, would you like to make an opening comment, or Senator—go ahead.

**STATEMENT OF HON. GORDON H. SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Very, very briefly. I apologize. I was at a press conference on importing prescription drugs, but I do have a very brief statement.

I want to express my support today for Ms. Majoras and Mr. Leibowitz. The FTC is vital to ensuring fair treatment for American consumers, as well as maintaining a competitive marketplace for commerce. Mr. Chairman, while I support the FTC nominees, I would hope that, before I'm asked to vote on their nominations, I'll get a response to a letter that I sent to a Federal Trade Commission as Chairman of your Subcommittee on Competition, Foreign Commerce, and Infrastructure. On April 5, 2004, I wrote to the FTC asking that they provide the Subcommittee with information relating to any FTC investigations of gasoline market pricing

since 1973. I would like to submit a copy of that letter for the record and reiterate that I hope I will get a response soon.

[The information referred to follows:]

UNITED STATES SENATE
Washington, DC, April 5, 2004

Hon. TIMOTHY J. MURIS,
Chairman,
Federal Trade Commission,
Washington, DC.

Dear Chairman Muris:

In representing my constituents, and in my role as Chairman of the Competition, Foreign Commerce, and Infrastructure Subcommittee of the Senate Committee on Commerce, Science, and Transportation, I am very concerned about the rapid increase in the cost of gasoline. Therefore, I am writing to request that the Federal Trade Commission (FTC), over which the Competition Subcommittee has jurisdiction, provide the Subcommittee with information relating to any FTC investigations of the gasoline market since 1973.

As you are aware, for some time, individual Members of Congress have requested that the FTC investigate increases in gasoline prices to determine if there has been any price or market manipulation. It is my understanding that the FTC has, in fact, investigated the gasoline pricing issue numerous times in the past and has not found any evidence of wrongdoing. However, the FTC's findings are often not reported, which does little to improve consumer confidence in the face of rising gasoline prices.

Specifically, I request that you provide the Competition Subcommittee with a list of the gasoline pricing investigations that have been performed by the FTC during the past 30 years and a summary of the conclusions of each of these investigations. Please include those instances when the FTC made a preliminary investigation of allegations but eventually determined that the situation did not warrant a full-scale investigation.

If you have any questions concerning this request, please do not hesitate to contact me.

Sincerely,

GORDON H. SMITH,
Chairman,
Subcommittee on Competition,
Foreign Commerce, and Infrastructure.

Senator SMITH. I'd also like to suggest that the FTC change the manner in which it handles such investigations. For some time, individual Members of Congress have requested that the FTC investigate increases in gasoline prices to determine if there has been any price or market manipulation. My colleague, Senator Wyden, has been tenacious in pursuing this issue, and I congratulate him for that. But it's my understanding that the FTC has, in fact, investigated these issues many times, but its findings are often not reported, and that does very little to instill consumer confidence.

So I hope they can figure out a better way to do some PR, get us the facts, answer our letters so we can vote in good conscience on these nominations.

The CHAIRMAN. Thank you very much.

Would Senator Boxer or Senator Lautenberg like to make an opening comment?

**STATEMENT OF HON. BARBARA BOXER,
U.S. SENATOR FROM CALIFORNIA**

Senator BOXER. I'm so pleased, thank you. And I would ask unanimous consent to place my full statement in the record, please.

The CHAIRMAN. Without objection.

Senator BOXER. I wanted to welcome Ms. Majoras and Jon Leibowitz. I know Jon quite well. I worked with him when he worked with Senator Kohl in the MPAA, and it's a delight to see you here. And I had a very, I think, honest, straightforward meeting with Ms. Majoras, and I welcome her here today.

Mr. Chairman, I want to take the rest of my time to just tell you what we just found out was going on in California during the electricity crisis. And a lot of you really helped us through that.

CBS did an amazing job, and they found some tapes here of the traders—I don't say "traitors," they were "traitors," but "traders"—of electricity. And I'm just quoting, "While California had a major forest fire that shut down a major transmission line, the unidentified man on the phone, trader number one, said, 'Burn, baby, burn. That's a beautiful thing,' and unidentified man number two said, he just 'blanked' California." He steals money from California, to the tune of about a million. That's how they treat our people.

Then in another one, as California was trying to obtain refunds, which we still are—and this has to do with the FERC, not the FTC; there's a reason for my sharing this—unidentified man six, "They're 'blank' taking all the money back from you guys, all the money you guys stole from those poor grandmothers in California"—that's what they said about our efforts to reimburse—"all that money you guys stole from those poor grandmothers in California." Unidentified man, "Yes, Grandma Millie, man." Unidentified man back, "Yes, she wants her 'blanking' money back for all the power you've charged right up—'blank' jammed right up her 'blank' for 'blank' \$250-a-megawatt hour."

All I could tell you is, you have to listen to what's happening out there to ordinary people who you are responsible to help through this and protect. And the FERC—and I would agree, regardless of who the Administration wants—they never stepped up to the plate, and they're still not stepping up to the plate. And on gas prices, the FTC hasn't stepped up to the plate. Really. Under old Administrations and new.

And what I want to hear from you—I don't know if you're going to give me what I want to hear from you—is this. We are just getting killed in California and other states. We've seen prices over three bucks a gallon, Mr. Chairman. And Chairman Muris has been wonderful to talk to. Wonderful. He says, in an informal investigation, he can't figure out why this is happening. He calls it an anomaly. But yet they haven't moved forward with a formal investigation. We brought up the issue of Shell, trying to shut down a refinery that makes 2 percent of the gas in California that's produced there, and 6 percent of the diesel. And they just bought that refinery 2 years ago as a result of a merger between Texaco and Chevron. Now they're walking away. First they said it didn't make any money. Then we found out, through documents, it's one of the most successful refineries in the country, let alone in the state. Then they said they didn't really—there were no buyers. Then we found out there were 18 buyers.

There are things going on out there that are really wrong. And the FTC—I got a beautiful letter from Chairman Muris, "Oh, I'm looking at this. I'm very seriously looking at this Bakersfield deal."

The point, in closing, Mr. Chairman, is, we need to hear from you, How are you going to stand up for the consumer? Because we got it in the neck in California; we're getting it in the neck again. Thanks.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Good afternoon, thank you Mr. Chairman for holding this hearing today.

I want to welcome Ms. Majoras and Jon Leibowitz who I worked with in his capacity with Senator Kohl and with the MPAA. I also welcome the other nominees.

As all of you know, gasoline prices across the country are extremely high and even higher in California.

Nationwide, the average price per gallon of gasoline has risen from \$1.54 on January 5 to \$2.05 on May 31. In California, the price increase over this same period has been even sharper, from \$1.61 to \$2.32. In some cases, gasoline prices were over \$3 per gallon.

In April, I announced a 9-point plan to fight this gasoline price gouging. The plan includes keeping Shell's Bakersfield refinery in operation, pressing OPEC to increase oil production, and using America's Strategic Petroleum Reserve to help slow the rise in gas prices.

One very important part of the plan is my call for the Federal Trade Commission to undertake a formal investigation of the current gasoline price spikes in California.

In March, I met with outgoing FTC Chairman Moris, who confirmed that there was an "anomaly" in California's gasoline market and that the FTC was conducting an informal investigation.

I strongly support the Pitofsky-Muris FTC policy of continually monitoring gasoline prices for anomalies.

In addition, I believe that a formal investigation is necessary to find out why gasoline prices are out of control.

I also believe the FTC must take a hard look at anti-competitive practices after mergers are completed. For example, Shell took full control of the Bakersfield refinery in 2002, after the FTC forced Texaco in 2001 to sell its interest in the plant. The FTC feared that merging Texaco's ownership with Chevron's own local refinery assets would hurt gasoline competition in California.

Only two years after the FTC's decision, Shell announced it would shut the Bakersfield refinery. Shutting this refinery will short California of at least 2 percent of its gasoline and 6 percent of its diesel supply. This would happen at a time of huge demand and soaring prices.

I believe the FTC must be a voice for consumers. As that voice, it needs to take a very hard look at the competitive implications of Shell's decision to shut this refinery permanently.

The FTC's mission is to protect the consumer. I want to ensure that the FTC Commissioners are committed to protecting the consumers.

The FTC is supposed to be the voice of the consumer in government. It is vital that the Commissioners—and especially the Chairman—represent the people and not the companies that come before the Commission.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thanks, Mr. Chairman. I appreciate the fact that we are having—

The CHAIRMAN. May I just say, before you go on, I saw that on television last night, too. It's just—it's so despicable that it's hard to imagine.

Senator Lautenberg, I'm sorry to interrupt.

Senator LAUTENBERG. No, that's all right. Thanks, Mr. Chairman.

These are important nominees, and we'd like to welcome them. I am certain that every one of them is a well-qualified nominee. But the problem I'd like to get to—and it's consistent with now the cost of energy in transportation, in particular—I have an active interest in Amtrak. And I welcome Mr. Sosa. And this criticism is not directed at all to Mr. Sosa, but rather to the fact that from the White House we've lost some of the commitments to bipartisanship. And this loss of bipartisanship has been an unfortunate theme these days. And even now, as we see it, the President threatens to veto a bipartisan agreement on highway funding in both houses of Congress.

Now, membership on the Amtrak Board is not a political vehicle for the Administration officials to bring home an ideology. It is an invaluable mode of transportation in this country and one that more and more people are relying upon. And without intercity passenger rail service, some 25 million people every year would be on the road or in the air, in line at the airports as the summer season comes about.

Furthermore, Mr. Chairman, I'd like to remind everybody that the authorization for funding of Amtrak is a matter for this Committee to decide. Now, we decided last year that up to \$2 billion a year may be necessary to get this railroad back on track, to use the expression, to a good state of repair and operating efficiently and safely.

And, once again, I am pleased that the nominees are here today, and I raise my protest because it is a matter of concern. One of the things that I hope, in the future, that we'll be able to do is provide a serious bipartisan participation in all of these decisions.

And I thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Lautenberg.

Before we begin our statements, I'd like to ask the witnesses if they'd like to introduce members of their family who are here today to appreciate this very important moment. We'll begin with you, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

Actually, I don't have members of my family here, but I have two individuals from my staff, and one other supporter, who came along with—Jim Villa, John Hiller, and Tad Coper—all here.

The CHAIRMAN. Thank you.

Mr. WALKER. We appreciate their presence.

The CHAIRMAN. Thank you. You're all welcome here.

Mr. Palmer?

Mr. PALMER. Thank you, Mr. Chairman.

I do have some family here. My wife and son, Charles—

The CHAIRMAN. Would you please stand?

Mr. PALMER.—in the back there.

The CHAIRMAN. She's standing.

[Laughter.]

Mr. PALMER. She's keeping him bouncing.

[Laughter.]

The CHAIRMAN. There will be some courteous person who will give you their seat, I am sure.

[Laughter.]

Mr. PALMER. My father Tim, his wife Andrea, up front here, my sister Susannah, my mother-in-law, Camilla, and my sister-in-law, Sarah. Without them, I probably would not be here today, so thank you for letting me introduce them.

The CHAIRMAN. Thank you. You're most welcome here.

Mr. Wu?

Mr. WU. Thank you, Mr. Chairman, for the opportunity to introduce my family. I have my wife Teresa, and my mother and my father and my cousin also are here.

Thank you.

The CHAIRMAN. Thank you.

Ms. Majoras, we'll go, next, to you.

Ms. MAJORAS. Thank you, Chairman McCain.

I'm blessed to have my husband, John, here with me today at the hearing.

The CHAIRMAN. Welcome.

Ms. MAJORAS. And if I could also, Chairman McCain, we're very pleased to have four Commissioners from the Federal Trade Commission here today.

The CHAIRMAN. And I recognize them.

[Laughter.]

Ms. MAJORAS. And if I could, I would just like to recognize Chairman Mozelle—I'm sorry, Commissioner Mozelle Thompson, Commissioner Orson Swindle, Commissioner Tom Leary, and Commissioner Pamela Jones Harbour. We're thrilled to have them here today.

The CHAIRMAN. Thank you.

Dr. Sosa?

Dr. SOSA. Mr. Chairman, I'd like to introduce my wife Irene.

The CHAIRMAN. Welcome. Welcome, Ms. Sosa.

Mr. Leibowitz?

Mr. LEIBOWITZ. I'd like to introduce my wife, Ruth Marcus, who has been wonderfully supportive of the notion of my possibly returning to public service, and our daughters, Emma, age 9, and Julia, age 7, who have been generally supportive, even though they know, if I'm fortunate enough to be confirmed, Daddy won't have a movie theater in his office anymore.

[Laughter.]

The CHAIRMAN. Welcome Emma and Julia. Great.

Mr. Palmer, we'll begin with you for your opening statement, and we'll go, then, through as we are on the schedule.

Please proceed, Mr. Palmer.

**STATEMENT OF BRETT PALMER, NOMINATED TO BE
ASSISTANT SECRETARY, LEGISLATIVE AND
INTERGOVERNMENTAL AFFAIRS,
U.S. DEPARTMENT OF COMMERCE**

Mr. PALMER. Thank you, sir.

Mr. Chairman and Members of the Committee, thank you for having me here today. I am honored to be testifying before you, and honored to be nominated. I'd like to thank the President for nominating me, the Secretary for supporting me, and the Senate for considering my nomination.

I have served the Congress in the House leadership and in the personal office of a House Committee Chairman. My experience in the House leadership office made me understand and respect the Congressional process, and having worked in a personal office, I understand and value good constituent service.

In my current capacity as the Deputy Assistant Secretary for Trade Legislation and the Acting Assistant Secretary for Legislative and Intergovernmental Affairs, I have worked with just about every Senator's office and most every House office, as well. Working under the leadership of Secretary Evans, Assistant Secretary Brenda Becker, and Under Secretary Grant Aldonas has been the best and most fulfilling job I've ever had. It has allowed me to stay intimately involved in the Congress while continuously exposing me to new policy challenges.

Now that I have been nominated to take the job that was performed so well by Brenda Becker, I intend to maintain the very high standards she set. Secretary Evans would tolerate nothing less.

I see my mission as ensuring that Department of Commerce's relationship with Congress remains robust and constructive. Members from both chambers and parties must be able to expect timely and full information on issues of concern to them.

I am an advocate for both the Secretary and the Congress. You can expect that I will aggressively make Congress aware of the Department's actions and positions. You can also expect that I will aggressively advocate for Congressional concerns inside the Department in our decisionmaking processes. While I do not expect Congress to like all of our decisions, I do expect the Congress to be fully engaged and it will be treated fairly.

I believe it also important to mention that this job is not limited to Congressional affairs. State and local governments have an interest, and I intend to keep the lines of communication open with them, as well.

As we go forward, if I am fortunate enough to be confirmed by this Committee and the Senate, I pledge to make myself available to the Committee personally to deal with any and all challenges that confront us jointly in the future.

Thank you again for your time, and I would welcome any questions you have, sir.

[The prepared statement and biographical information of Mr. Palmer follow:]

PREPARED STATEMENT OF BRETT PALMER, NOMINEE FOR ASSISTANT SECRETARY,
LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS, U.S. DEPARTMENT OF COMMERCE

Mr. Chairman, Senator Hollings, and members of the Committee,

I am honored to be testifying before you today. I would like to thank the President for nominating me, the Secretary for supporting me, and the Senate for considering my nomination.

My wife Emily and my new son Charles, my father Tim and his wife Andrea, my mother-in-law Camilla, my sister Susannah, my sister-in-law Sarah and many friends and colleagues are here today. I would not have had the chance to be before you today without the lifetime of support given to me by my family and friends.

I have served the Congress in a House leadership office and the personal office of a House Committee Chairman. My experience in the House leadership made me understand and respect the Congressional process. Having worked in a personal office, I understand and value good constituent service.

In my current capacity as the Deputy Assistant Secretary for Trade Legislation and the Acting Assistant Secretary for Legislative and Intergovernmental Affairs, I have worked with just about every Senator's office and most House offices. Working under the leadership of Secretary Evans, Assistant Secretary Brenda Becker, and Undersecretary Grant Aldonas has been the best and most fulfilling job I have ever had. It has allowed me to stay intimately involved in Congress while continuously exposing me to new policy challenges.

Now that I have been nominated to take the job that was performed so well by Brenda Becker, I intend to maintain the very high standards she set. Secretary Evans would tolerate nothing less.

I see my mission as ensuring that the Department of Commerce's relationship with Congress remains robust and constructive. Members from both chambers and parties must be able to expect timely and full information on issues of concern to them.

I am an advocate—for both the Secretary and the Congress. You can expect that I will aggressively make Congress aware of the Department's positions and actions. You can also expect that I will aggressively advocate for Congressional concerns inside the Department. While I do not expect Congress to like all of our decisions, I do expect that Congress will be fully engaged and treated fairly.

I believe that it is also important to mention that the job for which I have been nominated is not limited to Congressional relations. State and local governments also are interested in many of the Department's issues. I intend to keep the lines of communication open with them as well.

As we go forward, if I am fortunate enough to be confirmed by this Committee and the Senate, I pledge to make myself available to the Committee to personally deal with any and all challenges that confront us jointly in the future.

Thank you again for the time you have taken to consider my nomination. I look forward to answering any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nicknames used.) Brett Palmer.
2. Position to which nominated: Assistant Secretary of Commerce for Legislative and Intergovernmental Affairs.
3. Date of nomination: May 11, 2004.
4. Address: (List current place of residence and office addresses.)

Residence: Information not released to the public.

Office: U.S. Department of Commerce, Office of Legislative & Intergovernmental Affairs, Room 5414, Washington, D.C. 20230.

5. Date and place of birth: January 28, 1972; Tennessee.
6. Marital status: Married, Dr. Emily Davis Palmer (formerly Emily Davis)
7. Names and ages of children: (Include stepchildren and children from previous marriages.)

Charles Davis Palmer, born March 2004.

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

Davidson College 1990–1994, BA in History

Boston College 1989, 1991—summer classes taken—no degree sought

Syracuse University/Instituto Internacional, 1993—classes taken—no degree sought

University of Georgia—1994–1995, classes taken—no degree sought

University Nebraska at Omaha—2002, class taken—no degree sought

East Carolina University—Masters in Public Administration Program—1998–?, incomplete moved back to Washington—plan to complete

NC State University—2000, class taken, did not finish class (moved to Washington)—no degree sought

9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Congressional Aide—Office of the Speaker, Washington, 1995–1998

Senior Associate—BKSH, Washington, 2000–2001

Deputy Chief of Staff—Congressman Bob Ney, Washington, 2001–2002

Deputy Assistant Secretary for Trade Legislation—U.S. Department of Commerce, Washington, 2002–2004

Currently Acting Assistant Secretary for Legislative and Intergovernmental Affairs—U.S. Department of Commerce, 2004 to present

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)

See above.

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

I worked for BKSH doing research for a number of their clients including such organizations as the National Restaurant Association, the Travel Business Roundtable, Accenture, Coalition for Indoor Air Quality, the Hotel and Motel Association, and others.

I was once a trustee of my father's living and irrevocable trusts.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Alpha Epsilon Delta (Premedical Honor Society)

Sigma Phi Epsilon Fraternity—VP/Social Chairman, Pledge Educator

Holmes Run neighborhood association

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

No formal positions

Volunteered for campaigns of Rep. Walter Jones, Rep. Shelley Moore Capito, Bush for President, and the NRCC

Volunteered for NH GOP

Volunteered at 2000 Republican National Convention

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

None

14. Honors and awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognition for outstanding service or achievements.)

Alpha Epsilon Delta—Premedical Honor Society

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.

I have addressed groups several times, but there were no formally written speeches. I normally sketch a few themes on a piece of scrap paper and then deliver a speech extemporaneously. I do not have transcripts of these events.

17. Selection:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

Yes. I believe I am the best person for the job. I have worked at the Department of Commerce for almost 2 years in the Office of Legislative and Intergovernmental Affairs as the Deputy Assistant Secretary and have been serving as the Acting Assistant Secretary since the departure of my predecessor.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

I have three traits that I believe make me qualified for this position. First, I want to serve. This job is not a notch on the belt or an opportunity to brag. This is my chance to use my skills to serve my country. Second, I have years of broad Congressional experience having served in a leadership office, a personal office, and in the

Congressional Affairs office of an Executive Branch agency. Third, I also have a deep heartfelt respect for the institution of Congress and the vital contributions that a healthy relationship with Congress offers the Administration and the public.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

I currently work for the Department of Commerce from which I would not separate myself. I still must work with all of Congress so I must still work with Congressional Office for whom I had worked. I am willing to sever relations with previous private employers.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, please explain. No.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I do not see any conflicts of interest.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

While working in Congress I worked to advance or oppose hundreds of bills for the elected Member for whom I worked.

While serving as the Deputy Assistant Secretary for Trade Legislation I worked to inform Members of Congress about the Chile, Singapore, and Australia FTA's as well as the Miscellaneous Tariff Bill, and other pieces of legislation.

While working at BKSH, I provided legislative research for the company, much of which was related to appropriations, but also conducted research used to highlight the conflicts of interest between auditors and their consultant divisions.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I am not aware of any conflicts of interest. I will divest myself of any potential conflicts should such a circumstance arise.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain.

Never arrested.

I once received a possession of alcohol ticket when I was 21 years old. I was 21 years old, standing outside of locked car that I did not own. In the back seat was a single unopened bottle of alcohol in a bag. However, since the neck of the un-

opened bottle extended outside of the bag and therefore visible from outside of the car and I owned the bottle, technically I was in public possession of alcohol. The charges were dropped and the record was to be expunged.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain.

Never arrested.

I once received a possession of alcohol ticket when I was 21 years old. I was 21 years old, standing outside of locked car that I did not own. In the back seat was a single unopened bottle of alcohol in a bag. However, since the neck of the unopened bottle extended outside of the bag and therefore visible from outside of the car and I owned the bottle, technically I was in public possession of alcohol. The charges were dropped and the record was to be expunged.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Please explain how if confirmed, you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

If confirmed, I would not be directly overseeing a regulatory office. However, part of my job is to ensure Congress understands actions that the Department is planning to take. Further, it is also my job to be the voice for Congress inside the Administration. Part of this advocacy involves strongly advocating for the original Congressional intent in the implementation of laws.

5. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experiences and education qualify you for the position for which you have been nominated?

As a former Congressional staff member, I understand the important role of Congress in overseeing executive agencies. I see this importance as stemming from the Constitutional duties and powers with which Congress is charged.

I have worked in Department of Commerce's Office of Legislative and Intergovernmental Affairs for over a year and a half. This experience has given me insight into the issues and the concerns of many Members of Congress and state governments.

2. Why do you wish to serve in the position for which you have been nominated?

I believe public service is important. Given my background in Congress and at the Department of Commerce, this is a natural fit for my skills and the best way for me to serve the public.

3. What goals have you established for your first two years in this position, if confirmed?

Maintain the Department's good reputation for Congressional service by constantly improving our service.

Establishing a better system for tracking and managing Congressional contacts, questions, and tasks. At this point, we do not have any unified way to track our open Congressional tasks or hearings. When a Member calls me or the Secretary I want to have a system in place that would allow me to update him or her on all the issues they may have before the Department. Right now, I have to go from memory or call and e-mail whichever bureaus may or may not be handling the issues affecting that Member. Congress does an excellent job doing exactly this with their constituents. Senators and Representatives are our constituents and deserve better and faster service.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

My career as a Congressional staff person was spent in the House. I do not know the Senate nearly as well. I am constantly reaching out to the new people in the Senate to expand and strengthen these Senate relationships.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe most goods and services are best delivered by the private sector. However, there are services for which market forces fail to be an adequate supplier and if these services are vital to the public interest then some level of government should supply them.

The Constitution that separates and limits the powers of government to recognize the intrinsic advantage a free people have in making their own judgments. I respect those limits.

A government program is no longer necessary when it has either accomplished its mission, circumstances have changed which no longer require the government to provide the service, or when the resources for the program would better be utilized by something else.

Programs should have solid goals and performance measures that should be used by the Administration and Congress to determine if a program should continue.

6. Describe the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated.

We have many missions here that are ongoing, but our basic mission is to advocate strongly for the domestic private sector's needs and to create the environment for private sector growth.

We are working to reorganize the International Trade Administration and the Economic Development Administration to make our government's trade and development efforts reflect a rapidly changing world.

The Manufacturing Initiative is a top priority.

Review of the Ocean Commissions Report, examination of its recommendations, and the implementation of some or all of its recommendations will be a major focus of NOAA.

7. What do you believe to be the top three challenges facing the department/agency and why?

The top issue is always how can we be serving the public better. We need to consistently asking ourselves what can we do to help our domestic competitiveness and create an environment for a robust economy.

We face serious budget decisions. Addressing our policy goals while maintaining budget discipline is as much an opportunity as a challenge.

The Oceans Commission Report will likely present a broad range of challenges that we will have to analyze. The result of this analysis will likely cause us to adjust our policies and organization.

8. In reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

I think we have begun to make significant progress in these three areas.

We have totally reorganized the International Trade Administration to reflect the changes in the global economy—centralizing export promotion efforts, strengthening trade law compliance activities, creating new tools for better information from which policymakers will make decisions. The Economic Development Administration is very close to being reauthorized and reorganized to maximize effectiveness. The one area where we have not had success is in a new Export Administration Act, but the modernization of dual use export controls is highly controversial right now.

On the budgetary front, we have tried to maximize public service while limiting spending. The International Trade Administration and the Economic Development Administration reorganizations are good examples of this type of good government and good budgeting coming together. However, the cuts at the NIST labs are a serious concern, and we will need to work with Congress to establish how much we really value these scientists and their efforts.

The Oceans Commission's Report has not been finalized so we cannot fully review its recommendations yet.

9. Who are the stakeholders in the work of this department/agency?

Congress, the state governments, domestic industry, and ultimately the public.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

My role is to be a strong advocate for the Administration's position. However, my role is not limited to telling Congress what the Department likes and does not like. My role is also to be a good listener for Congress and then be a vigorous advocate

for their concerns inside the Administration. The proper relationship is one of honesty and trust.

11. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your department/agency has proper management and accounting controls?

My responsibilities are to spend and save the people's resources wisely.

(b) What experience do you have in managing a large organization?

I ran a large congressional office with offices in four locations. I currently am the Acting Assistant Secretary and therefore I am temporarily running the Office of Legislative and Intergovernmental Affairs.

12. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) What benefits, if any, do you see in identifying performance goals and reporting on progress in achieving those goals?

If government is unaccountable then the public will get poor service. Every person and every organization needs goals to give it purpose and to establish measures of success or failure. Useful performance goals can be a vital management tool. Performance goals that are unrealistic or too easily met offer an organization very little benefit.

(b) What steps should Congress consider taking when a department/agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing, or consolidation of departments and/or programs?

There is no "one size fits all" answer to this question. The answer depends on what goals were not met and why.

If the problem is a bad organizational structure then that should be addressed.

If the problem is leadership then better leadership should be placed in authority.

If the issue is that market forces would serve the public better then privatization should be the answer.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

Office of Legislative and Intergovernmental Affairs is unlike other bureaus or offices because we are the customer service desk of the Department. I believe the performance measure that I should and will be judged by is the quality of interaction the 535 Members of Congress have with the Department. This does not mean that I expect every Member of Congress to approve of every decision the Department makes, but it does mean that timely and quality information is given to Congress and the State governments. I and my office will be judged with every phone call, every e-mail, every hearing, and every meeting we have.

13. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

My philosophy with regard to management is that if you have good people they will be their own toughest critic. What good people need is opportunities to grow in their job and learn more. If they ask for help then provide it. Luckily I have good people on my team.

I have not had any complaints filed against me.

14. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

I work with Congress everyday. I expect to be judged with every phone call, every e-mail, every hearing, and every meeting the Department has with Congress.

I worked for a Committee Chairman when I served in the House. I also worked in the House leadership where I worked closely with all the House Committees.

I still deal with many Congressional Committees.

15. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

The Inspector General is charged as the internal, independent watchdog. I will be fully cooperative with any Inspector General efforts.

16. In the areas under the department/agency's jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

I think the issue of domestic competitiveness is paramount.

This issue is not isolated to any one bill, but instead is a simple yet profound question, "Will action or inaction on a piece of legislation or regulation help or hurt our ability to be competitive in a global market."

This spans issues from trade, to spectrum management, to oceans policy.

17. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending in an open manner through a set of fair and objective established criteria? If yes, please explain what steps you intend to take and a time frame for their implementation. If not, please explain why.

The Office of Legislative and Intergovernmental Affairs does not issue grants or make major purchases. What funds we do have we will allocate in accordance with all ethical and procurement rules.

The CHAIRMAN. Thank you.
Mr. Wu?

**STATEMENT OF BENJAMIN H. WU, NOMINEE TO BE
ASSISTANT SECRETARY OF COMMERCE, TECHNOLOGY
POLICY, U.S. DEPARTMENT OF COMMERCE**

Mr. WU. Chairman McCain and distinguished Members of the Committee, it's a privilege and an honor to appear before you today as the President's nominee for Assistant Secretary of Commerce for Technology Policy. I'm deeply grateful to President Bush and Secretary Evans for the confidence that they have shown in me.

I'm also very pleased to have been introduced by Congressman Sherry Boehlert, the Chairman of the House Science Committee, where I called home for the majority of my years working in Congress. Chairman Boehlert has been a tireless leader in championing Federal investments in science and technology. I have known him since I first began my professional career in Congress, and he really has been a true inspiration, teaching me life-long lessons in the value of public service.

I would also like to, as you have allowed me to do, recognize my wife Teresa and express my appreciation to my parents, who are here with me today.

This is a proud moment for my family. When we first arrived in the United States from Taiwan, in the 1960s, this country opened its arms to us and allowed us to follow our hopes and dreams in this land of opportunity. And back then, Taiwan was still a mostly agrarian country, and had yet to unleash the revolutionary power of its technology as an economic engine. And today that little island the size of Massachusetts is one of the "Asian tigers," ranking with some of the world's most developed countries.

Taiwan, however, is certainly not the only current example of a country that has, or is seeking, a dramatic conversion fueled by technology. Countries all over the world—in Europe, Asia, and South America—are competing for their share of the technology market. They all understand, as we have experienced here in the United States, especially in the past two decades, the transformative impact of technological innovation.

As these nations improve their economies and capabilities, now more than ever we must act decisively so as not to jeopardize our market leadership and preserve our American technological pre-eminence. We cannot afford to stand still with the pace of technology advancing so rapidly.

At this critical juncture, the challenges are coming from varied fronts, and much is at stake. The keys to future United States competitiveness will be our ability to continue to develop technological innovation and our ability to spur entrepreneurship. They are the foundation upon which our command of the global marketplace

rests, and they are also the overarching mission of the Commerce Department's Office of Technology Policy, which I would lead.

I intend to focus OTP's resources on the process of technological innovation and entrepreneurship; in other words, how the genius of American technology gets developed, how the results of R&D make their way to the marketplace, and how technology could be harnessed to grow American jobs, companies, and industries.

For Fiscal Year 2005, President Bush has requested an unprecedented level of \$132 billion for research and development funding. And this R&D needs to be maximized for the country by converting it to wealth-generating, productivity-enhancing products, processes, and services.

OTP would also examine the wide range of factors and policies that affect the process of technology development, deployment, and commercialization. These areas include industrial structure and management, manufacturing capabilities, the ability and availability of highly skilled technical workers, innovation management practices, foreign policies and practices related to technology innovation, state and local government efforts to stimulate technology-led economic growth, and public-sector and private-sector cooperation in technology. The office would also identify and work to remove barriers that impede the flow of new technology into the economy, both domestically and in key foreign markets.

My immediate goals in the Office of Technology Policy would be to provide the President, the Secretary, policymakers, and lawmakers quality analyses of important cutting-edge science and technology issues, establish greater dialogue with the high technology industry sectors, develop a rapid-response mechanism to advise on appropriate actions, strengthen the interagency collaborations with other Federal agencies on issues that crosscut departmental boundaries, and also form greater partnership opportunities with the three entities that perform our Nation's research and development—industry, universities, and our Federal Government—in order to enhance our Nation's science and technology enterprise.

From the beginning of my 16-year professional career in public service, I have worked on policies and programs to promote United States science and technology advancements. I've been engaged with OTP ever since its inception, when it was created, either through legislative oversight or budget or through executive supervision and management. And in doing so, I've had the pleasure of working with you and your staffs in a strong bipartisan relationship.

If confirmed by the Senate, I look forward to continuing that relationship. Together, we can promote innovation for a stronger, safe America, and I look forward to that opportunity.

Thank you, Mr. Chairman, and I'd be pleased to respond to your questions.

[The prepared statement and biographical information of Mr. Wu follow:]

PREPARED STATEMENT OF BENJAMIN H. WU, NOMINEE TO BE ASSISTANT SECRETARY OF COMMERCE, TECHNOLOGY POLICY, U.S. DEPARTMENT OF COMMERCE

Chairman McCain, Senator Hollings, and distinguished members of the Committee,

It is a privilege and an honor to appear before you today as the President's nominee for Assistant Secretary of Commerce for Technology Policy. I am deeply grateful to President Bush and Secretary Evans for the confidence they have shown in me.

I am so very pleased to have been introduced by Congressman Sherry Boehlert, the Chairman of the House Science Committee, where I called home for the majority of my years working in Congress. Chairman Boehlert has been a tireless leader in championing Federal investments in science and technology. I have known him since I first began my professional career in Congress and he has served as a true inspiration, teaching me life-long lessons about the value of public service.

I would also like to recognize my wife, Teresa, and express my appreciation to my parents who are here with me today. This is a proud moment for my family. When we first arrived in the United States from Taiwan in the 1960s, this country opened its arms and allowed us to follow our hopes and dreams to seek greater prospects in this land of opportunity.

Back then, Taiwan was still a mostly agrarian country and had yet to unleash the revolutionary power of high technology as an economic engine. Today, that little island the size of Massachusetts is one of the "Asian tigers," ranking with some of the world's most developed economies. Taiwan is certainly not the only current example, however, of a country that has, or is seeking, a dramatic conversion fueled by technology. Countries all over the world—in Europe, Asia, and South America—are all competing for their share of the technology market. They all understand, as we have experienced here in the United States especially in the past two decades, the transformative impact of technological innovation.

As these nations improve their economies and capabilities, now more than ever, we must act decisively so as not to jeopardize our market leadership and preserve our American technological preeminence. We cannot afford to stand still when the pace of technology is advancing so rapidly. At this critical juncture, the challenges are coming from varied fronts and much is at stake. The keys to future United States competitiveness will continue to be our development of technological innovation and our ability to spur entrepreneurship. They are the foundation which our command of the global marketplace rests and they are the overarching mission of our Commerce Department's Office of Technology Policy (OTP), which I would lead.

I intend to focus OTP's resources on the process of technological innovation and entrepreneurship; in other words, how the genius of American technology gets developed, how the results of R&D make their way to the marketplace, and how technology can be harnessed to grow companies, jobs, and industries. For Fiscal Year 2005, President Bush has requested an unprecedented level of \$132 billion for research and development funding, and this R&D needs to be maximized for the country by converting it to wealth-generating, productivity-enhancing products, processes, and services.

OTP would also examine the wide range of factors and policies that affect the process of technology development, deployment, and commercialization. These areas include: industrial structure and management, manufacturing capabilities, the availability of highly skilled technical workers, innovation management practices in the private sector, foreign policies and practices related to technological innovation, state and local government efforts to stimulate technology-led economic growth, public-private sector cooperation in technology, and more. The office would also identify and work to remove barriers that impede the flow of new technology into the economy, both domestically and in key foreign markets.

My immediate goals in the Office of Technology Policy would be to: provide the President and the Secretary with quality analyses of important, cutting-edge science and technology issues of national concern in order to ensure that American technological preeminence is maintained; establish greater dialogue with the high-technology industry sectors; develop rapid response mechanisms to advise on appropriate actions; strengthen interagency collaborations with other Federal agencies on issues that cross-cut departmental boundaries; and form greater partnership opportunities with the three entities that perform our Nation's research and development—industry, universities, and the Federal Government—in order to enhance our science and technology enterprise.

From the beginning of my 16-year professional career in public service, I have worked on policies and programs to promote United States science and technology advancements. I have been engaged with OTP ever since its inception, either through legislative budget and oversight or through executive supervision and man-

agement. In doing so, I have had the pleasure of developing strong bipartisan relationships with you and your staffs. If confirmed by the Senate, I look forward to continuing that relationship. Together, we can promote innovation for a stronger, safer America.

Thank you and I would be pleased to respond to your questions.

A. BIOGRAPHICAL INFORMATION

1. Name (include any former names or nicknames used): Benjamin H. Wu.
2. Position to which nominated: Assistant Secretary of Commerce for Technology Policy.
3. Date of nomination: April 8, 2004.
4. Address: (List current place of residence and office addresses.)
Residence: Information not released to the public.
Office: 4822 Hoover Building, Washington, D.C. 20230.
5. Date and place of birth: March 6, 1963; Tainan, Taiwan (Republic of China).
6. Marital status: (Include maiden name of wife or husband's name.)
Married, Teresa L. Lee.
7. Names and ages of children: (Include stepchildren and children from previous marriages.) None.
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
University of Pittsburgh (Pittsburgh, PA) 1985–1988, J.D. granted 5/88
New York University (New York, NY) 1981–1985, B.A. granted 5/85
Thomas S. Wootton High School (Rockville, MD), 1977–1981, diploma granted 5/81
9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
Deputy Under Secretary, U.S. Dept. of Commerce, Washington, D.C.; 2001 to present.
Counsel, Technology Subcommittee, House Science Committee, Washington, D.C.; 1993–2001.
Counsel, Congresswoman Constance A. Morella, Washington, D.C.; 1988–2001.
Prosecutor, University of Pittsburgh Judicial System, Pittsburgh, PA; 1987–1988.
Legal Intern, U.S. Attorney's Office for the Western District of Pennsylvania, Pittsburgh, PA; 1988.
Judicial Intern, The Honorable Joseph F. Weis, Jr., U.S. 3rd Circuit Court of Appeals, Pittsburgh, PA; 1987.
International Trade Law Clerk, Ablondi & Foster, Washington, D.C.; Summers 1986 and 1987.
10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)
Chairman, Maryland Governor's Commission on Asian Pacific American Affairs, 2003 to present.
11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)
Limited Liability Partner, Mk WU JAYS Investment Partnership
12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)
Member, Executive Advisory Board of The Asian-American Review, Kennedy School, Harvard University
13. Political affiliations and activities:
(a) President, Montgomery County Young Republicans, 1997
(b) Member, National Asian American Coalition, American Dreamers, and the Marshals Program for Bush/Cheney 2000
Alternate Delegate & Deputy Whip for the Maryland delegation at the Republican National Convention in San Diego, District Chairman for Montgomery County, MD, and Co-Chair, Maryland Asian American Coalition for Dole/Kemp 1996

Member, National Asian American Steering Committee and Co-Chair, Asian American Lawyers for Bush/Quayle 1992

(c) Bush/Cheney 2004—\$2,000

Bush/Cheney 2000—\$500

Maryland Republican Party—\$500

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

Several honors and awards from New York University, associated with undergraduate activities.

Several honors and awards from the University of Pittsburgh, associated with law school activities.

Several awards and recognitions for outstanding service or achievements from various Asian Pacific American community organizations.

Several awards and recognitions from various professional organizations, associated with Congressional staff duties.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.

(Two speeches are attached)

American Association for the Advancement of Science (AAAS) Colloquium on Science and Technology Policy, Washington, D.C.: April 11, 2002.

Information Technology and Government Forum (Doing Business with the Federal Government Series sponsored by the House Government Reform Committee), Austin, TX; September 26, 2003.

17. Selection:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

I believe I was nominated by President George W. Bush to be his Assistant Secretary of Commerce for Technology Policy because I possess the necessary qualifications to assist in the administration of the President's science and technology agenda to promote innovation for a stronger, safer America.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

I have spent my entire 16-year professional career, first in Congress and then in President George W. Bush's administration, working on policies and programs to promote our Nation's science and technology advancements. I had the opportunity to play an important leadership role on technology policy issues for the U.S. House of Representatives during the largest peacetime economic expansion in our history a growth that was fueled and driven by our high-technology sector. Additionally, I have been engaged in the mission and activities of the Commerce Department's Office of Technology Policy ever since its inception in 1988, either through legislative budget and oversight or through executive supervision and management.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate? Yes, as required.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? No.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

Limited liability partner in a *de minimus* private investment club with two other law school friends.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I have attached my financial disclosure report. If required, I will divest conflicting financial interests where appropriate. I will not participate in any matter directly involving Advamed (Advanced Medical Technology Association), where my spouse is employed. On any matter that might involve a potential conflict of interest, I will consult with the Commerce ethics counsels.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

Per the advice and counsel of the Office of Government Ethics, my status in the private investment club has been changed from general partner to limited partner in order to be shielded from any possible conflict of interest in investment decisions. (Please see attached document withdrawing as a general partner).

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes. (Please see attached document).

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of interest to the Committee? Yes.

4. Please explain how if confirmed, you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

If confirmed, in the executive implementation of regulations issued by our department/agency, I would keep the statutory intent of the enacting legislation in mind and would work with Congress, as needed, so that the regulations comply with the spirit of Congressionally-passed laws.

5. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experiences and education qualify you for the position for which you have been nominated?

I have spent my entire 16-year professional career, first in Congress and then in President George W. Bush's administration, working on policies and programs to promote our Nation's science and technology advancements. I had the opportunity to play an important leadership role on technology policy issues for the U.S. House of Representatives during the largest peacetime economic expansion in our history—a growth that was fueled and driven by our high-technology sector. Additionally, I have been engaged in the mission and activities of the Commerce Department's Office of Technology Policy ever since its inception in 1988, either through legislative budget and oversight or through executive supervision and management.

2. Why do you wish to serve in the position for which you have been nominated? It has been a privilege to serve President George W. Bush and Secretary Donald L. Evans in my current capacity and I am honored to be nominated for this Senate-confirmed presidential appointment. My entire professional career has been dedicated to public service. I believe my experience and background provide unique qualifications and abilities to serve effectively as Assistant Secretary of Commerce for Technology Policy.

3. What goals have you established for your first two years in this position, if confirmed?

My immediate goals in the Office of Technology Policy are: to provide the President and the Secretary quality analyses of important, cutting-edge science and technology issues of national concern in order to ensure that American technological preeminence is maintained; to establish greater dialogue with the high technology industry sectors represented at the Department of Commerce in order to be most responsive to our stakeholders; to develop rapid response mechanisms to advise on appropriate actions; to develop greater interagency collaborations with other Federal agencies on issues that cross-cut departmental boundaries, and; to form greater partnership opportunities with the three entities that perform our Nation's research and development industry, universities, and the Federal Government—in order to strengthen our science and technology enterprise.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

I am confident that I possess the necessary and requisite skills, expertise, and background that will enable me to successfully pursue the goals listed above.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

The landscape of U.S. research and development has changed dramatically since the end of the Cold War. In the middle of the last century, at the height of the Cold War and the race to put a man on the moon, Federal Government R&D investments exceeded industry R&D by a ratio of two to one. Today, the U.S. industry outspends the Federal Government on R&D by more than two to one—completely reversing that ratio in less than 50 years. As a result of these trends, Federal Government R&D funding—while obviously still important—is no longer the primary driver of R&D or its attendant economic benefits, such as economic growth, job creation, and improved standards of living. Accordingly, it should now be the role of the Federal Government to help shape the climate for innovation and create fertile conditions for entrepreneurship and to fund basic research. Since the drivers of technological advancement now increasingly reside in the private sector, greater attention must be given to how industry develops technology and commercializes technology. Policymakers must consider how policies—economic, regulatory, trade, education, and more affect the private sector's ability to develop technology and bring it to market. Also, as technology rapidly evolves, government programs that become technically obsolete, outdated, or no longer useful should be phased out.

6. Describe the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated.

The Office of Technology Policy is concerned with the process of technological innovation; in other words, how technology gets developed, and how the results of research and technology development make their way to the marketplace or get deployed throughout the economy. For Fiscal Year 2005, President George W. Bush has requested an unprecedented level of \$132 billion for research and development funding, and this R&D needs to be maximized for the country by converting it to wealth-generating, productivity-enhancing products, processes, and services. Moreover, the process of technological innovation goes far beyond research and development. OTP is concerned with and examines the wide range of factors that affect the process of technology development, deployment, and commercialization. These areas include: economic and regulatory policies, economic and labor conditions, capital

availability, manufacturing capabilities, industrial structure and management, manufacturing capabilities, the availability of highly skilled technical workers, innovation management practices in the private sector, the deployment of modern technology-based infrastructure, foreign policies and practices related to technological innovation, state and local government efforts to stimulate technology-based economic growth, public-private sector cooperation in technology, and more. The office identifies and works to remove barriers that impede the flow of new technology into the economy.

7. What do you believe to be the top three challenges facing the department/agency and why?

Given the President's national priorities of funding the war on terrorism, providing for our homeland defense, and ensuring an economic recovery, a tight budget has limited the Office of Technology Policy from aggressively expanding into greater analyses of emerging technologies. The government is being asked to do more with less as a result of necessary budget constraints that affect all Federal non-defense and homeland security discretionary programs. Other challenges include being able to constantly keep up pace with the rapid, ever-changing pace of technology development and ensuring that policymakers do not inadvertently make ill-informed decisions based on a lack of understanding or insufficient data.

8. In reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

It appeared as if the department had developed stovepipes among bureaus in the previous administration and this perceived lack of collaboration and coordination impacted performance. Secretary Donald L. Evans has actively encouraged breaking down these stovepipes and, as a result, there is greater interaction and joint activities with all of the departmental bureaus that is creating a number of successful initiatives.

9. Who are the stakeholders in the work of this department/agency?

The Office of Technology Policy serves a number of stakeholders in its mission, most notably advocating and maximizing the benefits of the U.S. high-technology sector.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

The Office of Technology Policy should be objective, ethical, and judicious in its relationship with all of its stakeholders.

11. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your department/agency has proper management and accounting controls?

I would work closely with the Department of Commerce Chief Financial Officer and the Office of Management and Budget to ensure that the Office of Technology Policy has proper management and accounting controls, as well as meets requirements as set forth in the President's Management Agenda.

(b) What experience do you have in managing a large organization?

As the Deputy Under Secretary of Commerce for Technology, I have supervisory and management responsibility for almost 4,000 Federal employees.

12. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) What benefits, if any, do you see in identifying performance goals and reporting on progress in achieving those goals?

I worked in Congress during the passage of the Government Performance and Results Act and I support the GPRA principles. Performance goals and reporting progress are useful in evaluating the success of programs and policies. Developing metrics for success provides managers a measurement tool for effective administration.

(b) What steps should Congress consider taking when a department/agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing, or consolidation of departments and/or programs?

If Congressional oversight determines that performance goals have not been met, program managers should discuss all options for an appropriate recourse with Congress.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

Programs should be run in a well-managed, efficient, and effective manner that maximizes all available resources.

13. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I believe that employees should be given clear direction but also empowered to make decisions in order to meet the mission of the office. Employees should be treated with respect and dignity, accorded rights and privileges as deemed appropriate and necessary. I have never had any employee complaints brought against me.

14. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

Having worked in both Congressional Member's and committee offices, I have a very strong sense of Congressional needs and oversight. I spent 13 years working for both Congresswoman Constance A. Morella of Maryland and the House Science Committee. During that time, I developed strong bipartisan relationships with both Members of Congress and their staffs.

15. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

When I worked in Congress, I worked closely with the Inspector General of the Department of Commerce as required in Congressional oversight. In the administration, I continue to work closely with the Commerce Inspector General. The Inspector General's office can serve as a sounding board to address issues of concern and provide objective auditing and investigative resources that assists in the management of programs.

16. In the areas under the department/agency's jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

President Bush has developed a high-technology agenda that calls for the enactment of a number of measures that will boost our economy and assist our Nation's high-technology and manufacturing industries. I would work with Congress to pass these measures into law.

17. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending in an open manner through a set of fair and objective established criteria? If yes, please explain what steps you intend to take and a time frame for their implementation. If not, please explain why.

Yes, I would be willing to discuss with Congress specific steps and a timeframe to develop and implement fair and objective discretionary spending allocations, to the extent practicable.

The CHAIRMAN. Thank you.
Ms. Majoras?

**STATEMENT OF DEBORAH PLATT MAJORAS, NOMINATED TO
BE CHAIRMAN, FEDERAL TRADE COMMISSION**

Ms. MAJORAS. Thank you, Mr. Chairman.

Chairman McCain and Members of the Committee, it is a great honor to have been nominated by the President to chair the Federal Trade Commission, and it's a great honor to appear before you today. I thank you for your expeditious scheduling of this hearing.

I thank Senator George Allen for submitting his generous statement on my behalf, and I also thank Senator DeWine for his kind remarks.

The free market is the foundation of our enviable economic system. It breeds innovation, creativity, and entrepreneurship at unmatched rates. Yet while we can be proud of our beneficial use of the economic laws of demand and supply, we must never reduce either force to simply a curve on a graph. Demand is not a scientific formula. Rather, it is the collective voice of the U.S. consumer. And while, in a well-functioning marketplace, that collective consumer voice has the power to drive product innovation, marketing strategies, and pricing decisions, consumers are still at times taken for granted, ignored, manipulated, defrauded, and even robbed of their resources.

For 90 years, the Federal Trade Commission has stood up for the welfare of the consumer. While the supply side, in general, responds effectively and responsibly to consumers' demands, some individual suppliers from inside and outside of our borders choose to illegally prey on consumers rather than battle for their business in the competitive arena. This harms consumers. And, frankly, it also harms firms that would conduct their businesses within the bounds of the law. And that is why strong law enforcement in defense of the consumer is an imperative.

The range of commercial activity that the FTC must patrol is ever growing. The rise of the Internet and other technology-related developments have brought consumers and suppliers closer together, creating new fora for providing and obtaining marketplace information and engaging in efficient commercial transactions. But these new tools have also, in another sense, driven consumers and some suppliers further apart, as those bent on deception can now hide behind phony identities, jurisdictional borders, and computers, and can steal private information without immediate detection. Working cooperatively with other law enforcers and with Congress, the FTC must lead the way in the fight against fraud and deception in whatever form it takes.

The combination of antitrust and consumer protection enforcement is a powerful "one-two punch" in the FTC's fight to protect and promote and enhance consumer welfare. Protecting competition through enforcement of the antitrust laws gives consumers lower prices, innovation, and choice. Simultaneously, enforcement of the consumer protection laws promotes the exchange of complete, accurate, and non-deceptive information in the marketplace, while protecting consumers' private information from unwanted and unknowing dissemination. One type of enforcement complements the other as the flow of accurate information contributes to robust competition in our free market. And, significantly, properly enforced, these laws instill and restore in consumers a faith in the fair and proper working of our economic system.

Mr. Chairman, serving as the consumers' defender and protector is a tremendous responsibility. If I am confirmed, I commit that I will undertake that responsibility, together with my colleagues, with the utmost dedication and integrity, working tirelessly, and using the talented men and women of the FTC as my example.

Thank you very much.

[The prepared statement and biographical information of Ms. Majoras follow:]

PREPARED STATEMENT OF DEBORAH PLATT MAJORAS, NOMINATED TO BE CHAIRMAN,
FEDERAL TRADE COMMISSION

Thank you, Mr. Chairman. Chairman McCain, Senator Hollings, and members of the Committee, it is an honor to have been nominated by the President to serve as Chairman of the Federal Trade Commission and to appear before you today. I thank you for your expeditious scheduling of this hearing. I also wish to express my great appreciation to Senator George Allen for his generous introduction.

I am blessed to have the strong support of my husband, John, who is here with me today. It is also a great privilege for me to recognize four sitting Commissioners who are with us today, Commissioner Mozelle Thompson, Commissioner Orson Swindle, Commissioner Tom Leary, and Commissioner Pamela Jones Harbour. Chairman Tim Muris regrets that he had to be out of town and could not be present. Also here today are some of my former and current colleagues, whose support I

genuinely appreciate. Finally, it is an honor to be on this panel today with so many accomplished nominees and, in particular, with Jonathan Leibowitz, a proven public servant with whom I hope to have the opportunity to serve on the Commission.

The free market is the foundation of our enviable economic system. It breeds innovation, creativity, and entrepreneurship at unmatched rates. Yet, while we can be proud of our beneficial use of the economic laws of demand and supply, we must never reduce either force to simply curves on a graph. Demand is not a scientific formula. Rather, it is the collective voice of the U.S. consumer. And while, in a well-functioning marketplace, that collective consumer voice has the power to drive product innovation, marketing strategies, and pricing decisions, consumers are still at times taken for granted, ignored, manipulated, defrauded, and even robbed of their resources.

For 90 years, the Federal Trade Commission has stood up for the welfare of the consumer. While the supply side in general responds effectively and responsibly to consumers' demands, some individual suppliers from inside and outside of our borders choose to illegally prey on consumers rather than battle for their business in the competitive arena. This harms consumers and, frankly, also harms firms that conduct their businesses in accordance with the law. That is why strong law enforcement in defense of the consumer is an imperative.

The range of commercial activity that the FTC must patrol is ever growing. The rise of the Internet and other technology-related developments have brought consumers and suppliers closer together, creating new fora for providing and obtaining marketplace information and engaging in efficient commercial transactions. But these new tools have also, in another sense, driven consumers and suppliers further apart, as those bent on deception now can hide behind phony identities and jurisdictional borders and can steal private information without immediate detection. Working cooperatively with other law enforcers and with Congress, the FTC must lead the way in the fight against fraud, in whatever form it takes.

The combination of antitrust and consumer protection enforcement is a powerful "one-two punch" in the FTC's fight to protect and enhance consumer welfare. Protecting competition through enforcement of the antitrust laws gives consumers lower prices, innovation, and choice. Simultaneously, enforcement of the consumer protection laws promotes the exchange of complete, accurate, and non-deceptive information in the marketplace, while protecting consumers' private information from unwanted and unknowing dissemination. One type of enforcement complements the other, as the flow of accurate information contributes to robust competition in the free market. And significantly, properly enforced, these laws instill and restore in consumers a faith in the fair and proper working of our economic system.

Serving as the consumer's defender and protector is a tremendous responsibility. If I am confirmed, I commit that I will undertake that responsibility, together with my colleagues, with the utmost dedication and integrity, working tirelessly, and using the talented men and women of the FTC as my example.

Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nicknames used.)

Deborah Platt Majoras
 Deborah Platt Herman (previous married name)
 Deborah Sue Platt (maiden name)
 Deborah Sue Buser (birth name until adoption at 11 months)
 Debbie (nickname)

2. Position to which nominated: Chairman, Federal Trade Commission.

3. Date of nomination: May 11, 2004.

4. Address: (List current place of residence and office addresses.)

Residence: Information not released to the public.
 Office: Jones Day, 51 Louisiana Avenue, NW Washington, D.C. 20001.

5. Date and place of birth: August 10, 1963; Titusville, Pennsylvania.

6. Marital status: (Include maiden name of wife or husband's name.)
 Married to John Michael Majoras.

7. Names and ages of children: (Include stepchildren and children from previous marriages.)

Stepchildren: Nicole Elizabeth Majoras, 17
Shannon Christine Majoras, 15
Andrew Louis Majoras, 11

8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)

(1) University of Virginia School of Law
August 1986–May 1989
J.D. 1989

(2) Westminister College (New Wilmington, PA)
September 1981–June 1985
B.A., Sociology and Spanish, 1985

(3) Meadville Area Senior High School, Meadville, PA
September 1978–June 1981
High School Diploma, 1981

9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

(1) Law Firm Partner
Jones Day
Washington, D.C.
1/1/04 to present

(2) Principal Deputy Assistant Attorney General
United States Department of Justice, Antitrust Division
Washington, D.C.
11/23/02 to 12/31/03

(3) Deputy Assistant Attorney General, Civil Matters
United States Department of Justice, Antitrust Division
Washington, D.C.
4/16/01 to 11/22/02

(4) Law Firm Partner
Jones Day
Washington, D.C.
3/1/01 to 4/15/01
Cleveland, Ohio
1/1/99 to 2/28/01

(5) Law Firm Associate
Jones Day
Cleveland, Ohio
1/1/94 to 12/31/98
Chicago, Illinois
10/21/91 to 12/31/93

(6) Law Clerk
Hon. Stanley S. Harris, United States District Court
for the District of Columbia
Washington, D.C.
9/89 to 9/91

(7) Summer Associate
Kirkland & Ellis
Chicago, Illinois
6/89 to 7/89

(8) Summer Associate
Jones Day
Cleveland, Ohio
7/88 to 8/88

(9) Summer Associate
Arnold & Porter
Washington, D.C.
5/88 to 7/88

(10) Summer Associate
 Fox, Weinberg & Bennett
 Washington, D.C.
 6/87 to 8/87

(11) Paralegal
 Porter, Wright, Morris & Arthur
 Washington, D.C.
 9/85 to 8/86

(12) Receptionist
 Porter, Wright, Morris & Arthur
 6/85 to 8/85

10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)

Member, Antitrust Modernization Commission, April 2004 to present

11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

Partner, Jones Day
 Vice Chair, Shennan Act Section 2 Committee, ABA Section of Antitrust Law,
 2001 to present

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Member, Church of the Saviour United Methodist Church, Cleveland Heights,
 OH (roughly 1995–2000); Youth Council Member (1997–2000)

Member, Immanuel Presbyterian Church, McLean, VA (2002 to present)

Member, Independent Women's Forum (2002 to present)

Member, Federalist Society (Jan. 2004 to present)

Member, Business & Professional Women/USA (Feb. 2004 to present)

Member, Antitrust Section of the American Bar Association (1993 to present);
 Vice Chair, Publications Committee (1996–98); Associate Editor, Antitrust mag-
 azine (1999–2001); Vice Chair, Sherman Act Section 2 Committee (2001 to
 present)

Member, Illinois Bar Association (roughly 1991–1993)

Member, Ohio Bar Association (roughly 1994–1998)

Board Member, In-Counsel With Women, Cleveland, OH (1999–2000)

Member, University of Virginia Alumni Association (2002 to present)

Member, Lowe's Island Club (May 2003 to present)

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

\$2,000 to Bush-Cheney 2004 campaign.

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

Order of the Coif

Virginia Law Review, Articles Editor

American Jurisprudence Awards in Civil Procedure, Property Law

The Raven Society

Summa Cum Laude (B.A.)

Alumni Honors Award

Zeta Tau Alpha Foundation Scholarship

Wolves Club Scholarship
 Henrietta Lee Scholarship
 H.E. Parker-Schmid Scholarship
 Westminster College Scholarship
 Lambda Sigma
 Pi Sigma Pi
 Omicron Delta Kappa

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.)

I have authored or co-authored the following publications:

“Antitrust Compliance in a Federal/State Environment,” *Government, Law & Policy Journal*, [], 2004 (to be published).

“The Price of Price-Fixing Through International Cartels,” 1 *Business Law International* 24, Sept. 1999.

“A Program That Has Lost Its Way,” *Legal Times*, May 4, 1998.

“The Effect of Twenty Years of Hart-Scott-Rodino on Merger Practice,” 65 *Antitrust Law Journal* 865, Spring 1997.

(I have not included papers that were published in the context of speeches and panels; those papers are listed in response to No. 16, and copies are provided.)

16. Speeches: (Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated.)

The following is a list of speeches I have delivered or panel discussions in which I have participated in the last 5 years (two copies of texts provided where they exist):

2004 Competition Law and Policy Forum, “Interdependency/Coordinated Effects Issues In Merger Review,” Cambridge, Ontario, April 30, 2004 (Text)

American Bar Association, Section of Antitrust Law, 52nd Annual Spring Meeting, “Economic Analysis of Mergers: Recent Developments/Future Convergence,” Washington, D.C., March 31, 2004. (No text)

The Conference Board, 2004 Antitrust Conference, “New Trends in Antitrust Oversight of Mergers,” New York, New York, March 3, 2004. (No Text)

Business & Professional Women USA, “Keynote Address: Reflections on Equity In The Workplace,” Washington, D.C., February 5, 2004. (Text)

The British Institute of International and Comparative Law, Second Annual Merger Control Conference, “Transatlantic Cooperation—What is Really Happening?,” London, England, December 2, 2003. (No text)

Kaye Scholer’s Annual Antitrust Seminar, Key Developments in Antitrust for Corporate Counsel, “A View from the Antitrust Division: Top 10 Things Every Corporate Counsel Should Know,” New York, NY, November 20, 2003. (Text, though unpublished)

American Chamber of Commerce in Germany, Significant Antitrust Developments in Europe and the U.S., “An Overview of Antitrust Enforcement in the United States Department of Justice,” Frankfurt, Germany, November 18, 2003. (No Text)

The State Bar of California, Antitrust and Unfair Competition Law Section, 11th Annual Golden State Antitrust and Unfair Competition Law Institute, “Vigorous Antitrust Enforcement Covering the Waterfront: An Update from the Antitrust Division,” October 23, 2003 (Text).

Meadville Business & Professional Women’s Club, 75th Anniversary of National Business Women’s Week, “Business & Professional Women: Restoring Faith in a Climate of Mistrust,” Meadville, PA, October 20, 2003. (Text, though unpublished)

American Bar Association, Section of Antitrust Law, Post Annual Meeting, Panel: U.S. and Canada Antitrust Issues, Vancouver, B.C., August 15, 2003. (No text)

National Economic Research Associates, 23rd Annual Antitrust & Trade Regulations Seminar, “Ensuring Sound Antitrust Analysis: Two Examples,” New Mexico, July 3, 2003. (Text)

American Bar Association, Section of Business Law, 2003 Conference for Corporate Counsel, "A Review of Recent Antitrust Division Actions," June 12, 2003 (Text).

The Corporate Counsel Section of the Virginia State Bar and McGuire Woods, "The Antitrust Forum: An Interactive Program with High-Ranking Government Officials," Richmond, VA, April 24, 2003. (No text)

The National Institute for Women Corporate Counsel, "Keynote Address," Washington, D.C., April 10, 2003. (Text)

American Bar Association, Antitrust Law Section, 51st Annual Spring Meeting, "Dominant Firms Under U.S. and E.U. Competition Law: Convergence or Divergence? Tying, Bundling, Leveraging," Washington, D.C., April 3, 2003. (No text)

The Conference Board, 2003 Antitrust Conference, "Horizontal Restraints and Antitrust Concerns in Designing Joint Ventures, Networks, and Strategic Alliances," New York, NY, March 18, 2003. (No text)

DOJ/FTC Hearings on Health Care and Competition Law and Policy, Federal Trade Commission, Introductory Remarks, "A Tale of Two Cities," Washington, D.C., February 28, 2003 (Text).

American Bar Association, Antitrust Law Section, Forum on International Competition Law, "Recent Developments in International Competition Law," New York, NY, February 6, 2003. (No text)

Precursor Group, Tenth Annual—"Investment Precursors" Workshop, "Antitrust Outlook," Washington, D.C., February 4, 2003. (No text)

U.S. Council for International Business, Competition Committee Meeting, "Current International Antitrust Agenda," Washington, D.C., January 29, 2003. (No text)

New York Bar Association, Antitrust Law Section, Annual Meeting, "Antitrust and Federalism," New York, NY, January 23, 2003 (Text).

American Bar Association, Antitrust Law Section, Midwinter Leadership Conference, "Efficiencies in Merger Review," Rio Grande, Puerto Rico, January 19, 2003. (No text)

Federal Bar Association, Corporate and Association Counsels Division and American Corporation Counsel Association, Northeast Chapter, "Antitrust Going Global in the 21st Century," Cleveland, Ohio, October 17, 2002 (Text).

Canadian Bar Association, National Law Section, 2002 Annual Fall Conference on Competition Law, "Antitrust Remedies in the United States: Adhering to Sound Principles in a Multi-Faceted Scheme," Ottawa, Canada, October 4, 2002 (Text).

American Bar Association, Section of Antitrust Law, Masters Course, "Current Enforcement Priorities at the Antitrust Division," Sea Island, Georgia, October 2002. (Text)

International Competition Network, "Guiding Principles and Recommended Practices for Merger Notification and Review"—Introductory Remarks (made on behalf of AAG Charles A. James), Naples, Italy, September 29, 2002 (Text).

KPMG/Chicago Graduate School of Business Mergers and Acquisitions Forum, "Merger Enforcement at the Antitrust Division," Chicago, IL, September 27, 2002 (Text Published, But Not Delivered).

Health Care and Competition Law and Policy Workshop, Federal Trade Commission, Washington, D.C., September 9, 2002 (Text).

American Bar Association, 2002 Annual Meeting—Developments in Merger Law and Policy, "Merger Developments," Washington, D.C., August 13, 2002. (No text)

American Bar Association, 2002 Annual Meeting Plenary Program, "Federal Enforcement 2002," Washington, D.C., August 9, 2002. (No text)

New York Women Antitrust Lawyers Luncheon Program, "The Microsoft Case," New York, NY, June 7, 2002. (No text)

George Mason University Symposium, "Recognizing the Significance of Prosecutorial Discretion in a Multi Layered Antitrust Enforcement World," Washington, D.C., May 17, 2002. (Text)

American Bar Association, Antitrust Section, Annual Spring Meeting, "Hot Topics," Washington, D.C., April 25, 2002. (No text)

Houston Bar Association, Antitrust and Trade Regulation Section, "Houston, We Have a Competitive Problem: How Can We Remedy It?", Houston, TX, April 17, 2002 (Text).

American Bar Association Section of Antitrust Law and Howard University, "Why Antitrust?", Washington, D.C., March 26, 2001. (No text)

The Precursor Group—The Anticipating Change Workshop for Communications and Technology Investors, "Antitrust: Microsoft, EchoStar & Consolidation," Washington, D.C., February 6, 2002. (No text)

New York State Bar Association, Antitrust Law Section, Annual Meeting, Panel—"Preparing and Presenting Experts; Practical and Ethical Issues," New York, NY, January 24, 2002. (No text)

New York City Bar Association, Committee on Antitrust and Trade Regulation, Milton Handler Review, "Antitrust Review," New York, NY, December 4, 2001. (No text)

American Law Institute—American Bar Association—Trying and Winning a Civil Antitrust Case, Panel—"Effective Interaction and Coordination in Multi-Party Antitrust Trials," Washington, D.C., November 30, 2001. (No text)

State Bar of Georgia, Antitrust Law Section, "GE-Honeywell: The U.S. Decision," Atlanta, GA, November 29, 2001 (Text).

American Bar Association, Antitrust Section, Fall Forum: New Administration and New Technologies, Panel—"Mergers in High-Tech Industries," Washington, D.C., November 15, 2001. (No text)

National Economic Research Associates, 21st Annual Antitrust & Trade Regulation Seminar, Panel: "New Directions in Antitrust Enforcement," Santa Fe, NM, July 6, 2001. (No Text)

American Bar Association, Section of Antitrust Law, 49th Annual Spring Meeting, "Antitrust Litigation Without Borders: Managing Private Antitrust Actions Across Multiple Jurisdictions," Washington, D.C., March 28, 2001. (Text)

17. Selection:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

I believe that I was chosen based on my qualifications as an antitrust lawyer and as a leader and manager, with which many relevant persons became familiar during my tenure at the Department of Justice Antitrust Division.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

I am an experienced antitrust lawyer, having served both in the public enforcement and in the private representation sectors. During my recent tenure as Principal Deputy Assistant Attorney General in the Antitrust Division, my responsibilities spanned the civil, international, and policy fronts, and I oversaw enforcement matters in a wide variety of industries. I also gained significant experience in leading and managing a large enforcement organization and developed strong relationships throughout the global antitrust enforcement community. In my private law practice, I have participated in a variety of antitrust counseling and civil litigation matters, including matters involving mergers and acquisitions, governmental investigations, monopolization, price-fixing conspiracies, joint ventures, distribution issues, and trade associations. I firmly believe in the importance of competition to our economy and our citizens and in the importance of strong enforcement of the antitrust laws. I further believe that laws designed to protect consumers from marketing fraud, deceptive practices, and false advertising and to protect consumers' privacy must be vigorously enforced.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

If confirmed, I will resign from my partnership at Jones Day. At the time of my departure, the firm will pay me my agreed upon compensation pursuant to the partnership agreement. I have no deferred compensation agreements with Jones Day and, once I leave the firm, it will make no further payments to me. I will continue to participate in both the defined benefit and defined contribution retirement plans but will receive no contribution during my tenure at the FTC.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

My investments and those of my spouse are widely diversified in mutual funds that should not present potential conflicts. My spouse is a partner at, and receives partnership income from, Jones Day, a law firm that represents and is likely to represent clients before the FTC. I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of Jones Day, unless I obtain a written waiver under the applicable statute.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated?

During the last ten years, excluding my tenure at the Justice Department, I have been an associate and then a partner at Jones Day, a law firm that represents and likely will represent clients before the FTC. I have represented numerous clients in various matters, including before the FTC. I am aware of the conflict of interest rules pertaining to these prior dealings, and I will abide by those rules if and when applicable, consulting liberally with the Agency Ethics Official.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

In my role as Deputy Assistant Attorney General at the Antitrust Division from 2001 through 2003, I consulted with colleagues at the Justice Department and/or Congressional staff members on various legislative proposals relating to antitrust or presenting competition issues. Legislative issues that I discussed internally and/or with Congressional staff members included proposals to increase fines and sentences for criminal antitrust violations; to expand the Antitrust Division's leniency policy; to revise the Tunney Act; to make technical corrections to the antitrust laws; to immunize airlines from antitrust liability during emergencies; and to place competition requirements on holders of music copyrights.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

If confirmed, I will resign from my partnership at Jones Day. I will then abide by all applicable conflict of interest statutes and rules, consulting liberally with the Agency Ethics Official.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

Yes. I was a party to a divorce proceeding: *Deborah P. Herman v. Steven James Herman*, No. D270730 (Filed Nov. 18, 1999, Court of Common Pleas, Cuyahoga County). The divorce was uncontested, and judgment granting it was entered on January 26, 2000.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Please explain how if confirmed, you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

I know that the Commission has long been committed to reviewing the effectiveness of its regulations on a periodic basis. This is an important task for an agency like the FTC that is responsible for implementing by rule and enforcing a wide variety of Federal laws. Rigorous review of regulatory objectives and possible solutions is important also during the process of developing and issuing regulations. Before doing so, I will study the enabling legislation and work to ensure that a full record is developed on which the Commission can make sensible, well-supported decisions. The views of interested members of Congress would be an important part of the rulemaking record. The ultimate goal of the rulemaking process is to ensure that any FTC regulations are well-crafted to achieve results as Congress intended in passing the underlying statute.

5. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experience and education qualify you for the position for which you have been nominated?

I am an experienced antitrust lawyer, having served both in the public enforcement and in the private representation sectors. During my recent tenure as Principal Deputy Assistant Attorney General in the Antitrust Division, my responsibilities spanned the civil, international, and policy fronts, and I oversaw enforcement matters in a wide variety of industries. I also gained significant experience in leading and managing a large enforcement organization and developed strong relationships throughout the global antitrust enforcement community. In my private law practice, I have participated in a variety of antitrust counseling and civil litigation matters, including matters involving mergers and acquisitions, governmental investigations, monopolization, price-fixing conspiracies, joint ventures, distribution issues, and trade associations. I firmly believe in the importance of competition to our economy and our citizens and in the importance of strong enforcement of the antitrust laws. I further believe that laws designed to protect consumers from marketing fraud, deceptive practices, false advertising and to protect consumers' privacy must be vigorously enforced.

2. Why do you wish to serve in the position for which you have been nominated?

During my tenure at the Department of Justice, I worked with the Commission on the enforcement of the antitrust laws, for which the agencies share responsibility. I developed an appreciation for the Commission's distinctive role in that area and learned of its many other responsibilities. The Commission has earned an excellent reputation for sensible, effective law enforcement and also for its policy development work. I believe that I am well-qualified to advance the FTC's important missions and, if confirmed, look forward to the opportunity again to serve our Nation's consumers. I firmly believe in the importance of competition to our economy and our citizens and in the importance of strong enforcement of antitrust and consumer protection laws.

3. What goals have you established for your first two years in this position, if confirmed?

In general, my goals are to continue the strong enforcement programs that the FTC has implemented over the past 15 years to the benefit of consumers; to adjust the Commission's priorities to keep pace with economic and other developments; to ensure that the taxpayers' dollars are spent effectively and efficiently; to lead and manage with professionalism and integrity; and to continue to exercise global leadership in antitrust enforcement and in the protection of consumers.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

Although I have little experience in dealing with consumer protection issues, my antitrust experience will usefully inform my understanding of the consumer protection challenges facing the Commission. I am currently working to learn the legal landscape for consumer protection enforcement, as well as the issues currently facing the Bureau of Consumer Protection. If confirmed, I will listen freely to all those with an interest in the Commission and will work closely with respected colleagues on the Commission and the agency's expert staff. Such collaboration will help me to gain further familiarity with the Commission's work.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

The free market, the hallmark of our strong economic system, greatly benefits consumers. Accordingly, in general, I favor market forces over extensive government regulation. Regulation can be costly and provoke unintended consequences. What the absence or limitation on regulation means, however, is that the government must not hesitate to act in an enforcement capacity when market participants fail to comply with the rules governing the market, *i.e.*, the antitrust and consumer protection laws. In the few instances in which a market or markets experience systemic failure that is not likely to self-correct, government regulation tailored to correct the failure may be appropriate, provided that careful analysis shows that the proposed regulation's expected benefits outweigh its expected costs. Because markets will act in accordance with regulation and adjust to it, and because not all actions and adjustments can be predicted in advance when regulations are first implemented, it is important that regulatory schemes undergo regular evaluations of their continuing benefits and costs. This should be done on a case by case basis, using market facts to evaluate the benefits of continuing regulation against the expected benefits of less or no government intervention. Factors to consider include what the economic actors' incentives would be in a market free of regulation and the costs of regulation or the lack thereof to consumers.

6. Describe the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated.

The mission of the FTC is to protect consumers from actions that interfere with their free enjoyment of the benefits of the free market. The FTC accomplishes its mission by enforcing the antitrust laws; by enforcing the consumer protection laws; by educating consumers about the competitive process and unfair and deceptive practices; and by providing a forum for study and debate on significant market issues that, in turn, informs Congress, government agencies, and the public.

The FTC's major programs are: (1) Competition Law Enforcement and Guidance, which includes merger and nonmerger components, (2) Consumer Protection Law Enforcement, Rulemaking, and Guidance, (3) Policy Instruments for Assisting and Complementing Law Enforcement, and (4) International Activities, in both the competition and consumer protection areas. Recent FTC accomplishments have included launching the "Do Not Call" list; bringing more Part 3 administrative adjudication; completing an assessment of identity theft and the effectiveness of existing tools to combat it; increasing attacks on deceptive health claims; completing a report on the balance between competition and patent policy; completing a report on the reach and applicability of the state action doctrine; and holding a workshop to assess the effectiveness of the Horizontal Merger Guidelines. I understand that currently, the Consumer Protection and Economics Bureaus are working very hard to complete the rulemakings and studies the Commission was charged with last year by the Fair and Accurate Consumer Transactions Act.

7. What do you believe to be the top three challenges facing the department/agency and why?

Working with agencies inside and outside of the United States to battle cross-border fraud; continuing to find appropriate ways to evaluate the effectiveness of FTC enforcement remedies and programs; and hiring and retaining top legal and economic talent in the face of appreciably higher private sector salaries.

8. In reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

The FTC has performed quite well in achieving its missions over the past several years. Still, every government agency must always look for ways to improve and, if confirmed, I intend to thoroughly evaluate the agency's performance in achieving its goals and identify areas and plans for improvement.

9. Who are the stakeholders in the work of this department/agency?

Consumers are the primary stakeholders. Other stakeholders include the business and legal communities, Federal and state agencies, and elected representatives.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

The primary consideration for members of the FTC as they carry out the FTC's mission is whether an action will increase the welfare of consumers. Making that determination requires listening to and responding to a full range of participants in the economic and political system: members of Congress and other elected officials; consumer organizations; businesses and their organizations; members of the bar and their organizations; officials at Federal and state agencies; and any other relevant voices. The FTC should also continue to make its resources (such as consumer and business education, the National Do-Not-Call Registry; Identity Theft resources; and Consumer Sentinel) widely known and available to the public.

11. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your department/agency has proper management and accounting controls?

Ensuring that the Commission has proper management and accounting controls is a significant responsibility for the Chairman. I understand that the Commission has published a Strategic Plan for Fiscal Years 2000-2005 that includes clearly articulated performance measures and targets. If confirmed, I will study the Plan and any other relevant documents to assess management and accounting controls, working closely with the employees who have such responsibilities and changing or adding controls as needed.

(b) What experience do you have in managing a large organization?

As Principal Deputy Assistant Attorney General in the Antitrust Division of the Department of Justice, I worked closely with the Assistant Attorney General to manage an organization with hundreds of employees, a significant budget, and a broad and significant mission. As a partner at Jones Day, an international law firm of 2000 attorneys, I have been involved in several aspects of management, including serving on the firm's Strategic Planning Committee.

12. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) What benefits, if any, do you see in identifying performance goals and reporting on progress in achieving those goals?

Every government department and agency must be accountable to the U.S. taxpayer. And every successful organization sets goals and then evaluates its performance. The benefit of identifying measurable performance goals and reporting to Congress on success in achieving those goals is that it requires the agency employees to demonstrate direct accountability to the representatives of the taxpayers, while imposing the discipline of self-evaluation on a busy agency, which ultimately assists the agency itself.

(b) What steps should Congress consider taking when a department/agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing, or consolidation of departments and/or programs?

As a first step, Congress and the agency leadership should communicate in an effort to determine why goals have not been met and whether continuation of programs is likely to achieve the goals. Particularly in a law enforcement context, the ability to meet certain goals may depend on outside circumstances. In many instances, a restructuring or reorienting of a program may be the best way to achieve the program's goals. This underscores the value of internal evaluations of an agency's goals and performance in achieving them. More dramatic adjustments such as the elimination, privatization, downsizing or consolidation of departments or programs should be undertaken only after the deliberate evaluation of performance that considers the program in its historical context.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

If confirmed, my primary goal will be to work collegially with my fellow Commissioners and with the FTC staff to continue to execute effective law enforcement, competition and consumer advocacy, and economic and policy analysis.

13. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

My philosophy is based on respect, fairness, and teamwork. I show respect for all employees, regardless of rank or viewpoint; I work to be fair in delegating and evaluating; and I prefer to work together with all as a team. My supervisory model is to lead by example, again by being respectful and working as a team player, and also through hard work, strong focus on accomplishing the best possible result, and integrity. When employees within my responsibility fall short, I believe in communicating the shortfall directly and respectfully, which has the best chance of improving the organization and the individual's performance and professional growth. No employee has brought a complaint against me.

14. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

During my tenure at the Justice Department, I worked directly with the agency's oversight committee, with interested members of Congress, and with their staffs. In all of these dealings I believe that I developed effective and respectful relationships. If confirmed, I will strive to maintain a cordial and effective working relationship with this Committee. The critical economic issues faced by this Committee and the Commission deserve no less.

15. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

I recognize the important role of Inspectors General in assisting agency management to eliminate waste, fraud and abuse of agency programs, and to recommend ways to improve agency operations. If confirmed, I will work with the FTC's Inspector General to achieve these goals. I will, of course, cooperate fully in any audits and investigations.

16. In the areas under the department/agency's jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

I know that the Commission has recommended legislation to enhance its ability to combat cross border consumer fraud. In an increasingly global marketplace, sufficient tools to address this important problem would be a useful adjunct to the Commission's authority. The Commission has also suggested that the Congress eliminate the FTC Act's exemption for telecommunications common carriers so as to allow it to bring cases against false and deceptive advertising by telephone companies. This, too, seems sensible. If confirmed, I will confer with my FTC colleagues and closely study the Commission's responsibilities to determine whether there are other legislative priorities I would recommend.

17. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending in an open manner through a set of fair and objective established criteria? If yes, please explain what steps you intend to take and a time frame for their implementation. If not, please explain why.

Although the Commission does not have any grantmaking authority, it does provide a detailed programmatic budget to the Congress that shows the allocation of its budget authority to the many programs for which it is responsible. Together with the Commission's Strategic Plan and its performance measures, the program budget provides the Congress and the public effective means to evaluate the Commission's operations.

The CHAIRMAN. Thank you very much.
Mr. Leibowitz?

**STATEMENT OF JON LEIBOWITZ, NOMINATED TO BE A
COMMISSIONER, FEDERAL TRADE COMMISSION**

Mr. LEIBOWITZ. Thank you, Mr. Chairman, Senator Wyden, Senator Boxer, Senator Lautenberg—from my original home state of New Jersey.

I also want to thank Senators Kohl and DeWine for that kind and, I'm not sure entirely deserved, introduction on my behalf. The Antitrust Subcommittee, under their direction, was and is a terrifically bipartisan place to work. We planned our agenda together, we held meetings together—it's a tribute to their leadership. And you

couldn't have a better, more decent boss than Herb Kohl. I can't say enough about what an honor it was to have been a part of his office for two terms.

Mr. Chairman, with the possible exception of the Senate, I can't think of a better or more important place to work than the Federal Trade Commission. Its mission, to ensure competition and to foster the exchange of accurate information in the marketplace, brings consumers lower prices, greater choices, and creates more informed decisionmaking.

When spam began to clog the inboxes of millions of computers and made parents afraid to let their children use e-mail, Congress turned to the FTC to start going after the worst spammers and to tackle, or start to tackle, this technological traffic jam.

When brand-name drug companies colluded with generics to prevent consumers from receiving more affordable medicine, the FTC halted this abusive practice.

When a constant barrage of telemarketing calls disrupted the dinner tables of America, the FTC devised a plan to protect the privacy that all Americans deserve in their own homes. The "Do Not Call" List has improved the lives—and the dinners—of literally tens of millions of Americans.

From stopping predatory lending practices and phony weight-loss schemes, to ensuring privacy and security on the Internet, to blocking mergers that harm competition, the FTC is a critical first line of defense for bread-and-butter issues that affect all Americans. And while protecting consumer welfare, the Commission has also been crucial to preserving our system of free enterprise, and they have been doing so effectively for almost 90 years—since it was established during the Wilson Administration.

Part of this is due to the leadership of the Commission in recent years: people like Bob Pitofsky and Tim Muris, the late Janet Steiger of Wisconsin; the Commissioners who are here today—I'm sure Debbie will become part of this rich tradition. And part of it's due to the talented, energetic, and hardworking staff at the Commission. Not a better staff, I believe, in all of government.

Of course, it's impossible to imagine what consumer protection and competition challenges loom on the horizon, but I'd be honored to play even a small role in helping this unique Federal agency—one of the few in Washington whose stated mandate is to protect American consumers—devise solutions to the problems of the future.

So, Mr. Chairman, if I am fortunate enough to be confirmed, I will go to the Commission with an open mind on every issue, but also with a firm commitment to very aggressively enforce the laws.

Thank you.

[The prepared statement and biographical information of Mr. Leibowitz follow:]

PREPARED STATEMENT OF JON LEIBOWITZ, NOMINATED TO BE A COMMISSIONER,
FEDERAL TRADE COMMISSION

Thank you, Mr. Chairman, Senator Hollings and Members of the Committee. I also want to thank Senators Kohl and DeWine for those kind and I'm not sure entirely deserved words on my behalf. The Antitrust Subcommittee, under their direction, was and is a wonderfully bipartisan place to work—it's a tribute to their joint leadership. And you couldn't have a better, more decent boss than Senator Kohl. I

can't say enough about what an honor it was to have been a part of his office for two terms.

I don't have a long statement but, with the Committee's permission, I would like to introduce members of my family who are here today, and to speak briefly:

Behind me is my wife Ruth Marcus, a writer at the *Washington Post*, who has been enormously supportive of my returning to public service; and sitting next to her are our daughters—Emma, age 9, and Julia, age 7.

Mr. Chairman, with the possible exception of the Senate, I can't think of a better or more important place to work than the Federal Trade Commission. Its mission—to ensure competition and to foster the exchange of accurate information in the marketplace—brings consumers lower prices and greater choices, and creates more informed decision-making.

When SPAM began to clog the in-boxes of millions of computers and made parents afraid to let their children use e-mail, Congress turned to the FTC to start going after the worst spammers and help tackle this technological traffic jam. When brand name drug companies colluded with generics to prevent consumers from receiving more affordable medicine, the FTC stopped this abusive practice. And when a constant barrage of telemarketing calls disrupted the dinner tables of America, the FTC devised a plan to protect the privacy that all Americans deserve in their own homes. The "Do Not Call List" has improved the lives—and the dinners—of literally tens of millions of Americans.

From stopping predatory lending practices and phony weight loss schemes to ensuring privacy and security on the Internet to blocking mergers that harm competition, the FTC is a critical first line of defense for bread and butter issues that affect average Americans. And while protecting consumer welfare, the Commission has also been crucial to preserving our system of free enterprise—doing so effectively for almost 90 years, since it was established during the Wilson Administration.

Part of this is due to the leadership of the Commission in recent years—people like Bob Pitofsky, Tim Muris, and the late Janet Steiger of Wisconsin—I am sure Debbie will be part of this rich tradition. And part of this is due to the talented, energetic and hard working agency staff. Not a better staff, I believe, in all of government.

Of course, it is impossible for us to know—or perhaps even imagine—what consumer protection and competition challenges loom on the horizon. But I would be honored to play even a small role in helping this unique Federal agency—one of the few in Washington whose stated mandate is to protect American consumers—devise solutions to future problems.

Mr. Chairman, if I am fortunate enough to be confirmed, I will go to the Commission with an open mind on every issue. But also with a firm commitment to very aggressively enforce the laws.

Thank you.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nick names used.) Jonathan D. Leibowitz.
2. Position to which nominated: Federal Trade Commission (Commissioner).
3. Date of nomination: April 8, 2004.
4. Address: (List current place of residence and office addresses.)
 Residence: Information not released to the public.
 Office: Motion Picture Association of America, 1600 I Street, Washington DC 20006.
5. Date and place of birth: Born June 17, 1958 in New York City, NY.
6. Marital status: (Include maiden name of wife or husband's name.)
 Married to Ruth Allyn Marcus.
7. Names and ages of children: (Include stepchildren and children from previous marriages.)
 Emma Rose Leibowitz—Age 8
 Julia Rachel Leibowitz—Age 6
8. Education: (List secondary and higher education institutions, dates attended, degree received and date degree granted.)
 Dwight Morrow High School, Englewood, N.J. (1972–1976)
 University of Wisconsin (1976–1980), BA 1980
 New York University School of Law (1981–1984), JD 1984

9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)

Vice President, Congressional Relations, Motion Picture Association of America, Washington, D.C. (2000 to present)

Chief Counsel, United States Senator Herb Kohl, Senate Judiciary Committee, Washington, D.C. (1989–2000)

Democratic Chief Counsel and Staff Director: Senate Judiciary Committee Subcommittee on Antitrust, Business Rights and Competition (1997–2000); Senate Judiciary Committee Subcommittee on Terrorism and Technology (1995–1996); Senate Judiciary Committee Subcommittee on Juvenile Justice (1991–1994)

Counsel, United States Representative Edward Feighan (1987–1988)

Counsel, United States Senator Paul Simon, Senate Judiciary Committee (1986–1987)

Attorney, Lane and Edson, Washington, D.C. (1985–1986)

Attorney, Cole, Raywid and Bravennan, Washington, D.C. (1984–1985)

Attorney, Katten Muchin Zavis Pearl & Geller (Summer 1983)

Employee, Sib's-by-the-Sea, St. Thomas, U.S. Virgin Islands (1981)

Employee, Vantage Publishing, New York, N.Y. (1980–1981)

10. Government experience:(List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)

None other than those listed above.

11. Business relationships:(List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

I am an officer of the Motion Picture Association of America.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

Member, D.C. Bar Association, 1986 to present

Member, New York State Bar Association (Retired)

13. Political affiliations and activities:

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

None, except that I have been a registered Democrat in Maryland since 1998 and before that was a registered Democrat in Virginia.

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

Phi Beta Kappa, University of Wisconsin, 1980

Knapp Fellowship (for Undergraduate Honors Thesis)

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated. None.

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?

Senators Daschle and Kohl recommended me to the President for a Democratic vacancy on the FTC. While I have not discussed my nomination with the President personally, I believe I was nominated based on my educational and professional background, which included four years as Chief Counsel to the Antitrust Subcommittee of the Senate Judiciary Committee, and my reputation for bipartisanship and consensus building.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

My work on the Antitrust Subcommittee involved a variety of competition policy matters as well as oversight of the Federal antitrust agencies. My work on the Judi-

ciary Committee involved consumer protection issues. My work in the Senate, generally, has given me a healthy respect for legislative intent and insight into the interaction between Congress and agencies. I believe that my background and experience will enable me to make informed, common sense judgments about complex matters before the Commission.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

I am partially vested in the MPAA's 401K plan and, from my years working for Congress, I have vested in the Thrift Savings Plan and am also entitled to a pension after I retire.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

My financial disclosure report, which is attached, identifies several stock mutual funds my wife and I hold as well as small stock holdings my dependent children have in several companies. If appropriate, I will divest conflicting financial interests. I will not participate in any matter involving the *Washington Post*, where my wife is employed, unless I am authorized to participate pursuant to 5 C.F.R. 2635.502. Moreover, pursuant to that same regulation, for one year after I leave the MPAA I will not participate in any particular matter involving specific parties in which the Association is a party or represents a party, unless I am authorized to participate. Indeed, on any matter that might involve a potential conflict of interest or raise the appearance of one, I will consult with the ethics officers at the FTC.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated?

There is none.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

As Counsel to Senator Kohl and to the Judiciary Committee from 1989 through 2000—and to Senator Simon and Congressman Feighan before that—I worked on a large number of legislative matters. These ranged from bankruptcy reform to crime policy to increasing the filing thresholds for merger reviews to encouraging the deployment of satellite television. In other words, one of my principal responsibilities was to influence legislation; during that time, I probably gave recommendations for literally hundreds of floor and committee votes. Since I left the Hill to work for the MPAA, my principal legislative focus has been more limited: to support measures that would reduce film piracy, especially on the Internet.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

To the extent that I have any potential conflicts of interest, I will follow applicable statutes and regulations, and consult with ethics officers at the Federal Trade Commission. I have attached my "conflict of interest" letter to the FTC, which was reviewed by its Designated Agency Ethics Official, the White House and the Office of Government Ethics.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation or ordinance, other than a minor traffic offense? If so, provide details. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in an administrative agency proceeding or civil litigation? If so, provide details?

I have never been involved in any civil litigation or agency proceeding, personally, and I have not been involved in any MPAA-related litigation or agency proceeding.

The Association, however, represents its member companies in connection with issues of common interest to the motion picture and television industry. MPAA conducts anti-piracy efforts, which involve both civil and criminal enforcement actions related to infringements of its member companies' copyrights in their motion pictures and television programs. In the course of those anti-piracy activities and member company litigation, the MPAA itself has become party to several civil litigation matters. In addition, it has been party to certain litigation involving disputes arising in the ordinary course of its business operations. The litigation that has involved MPAA as a named party during the time I have been an MPAA officer is as follows:

"John Doe, Plaintiff, vs. Motion Picture Association of America, Inc., a Delaware Corporation, Defendant," filed in 2001 in the United States District Court for the Eastern District of Michigan, Southern Division, as Case No. 01-72664. This action asserted claims by an informant for payment of a reward out of MPAA's "anti-piracy rewards program." The case was amicably resolved in 2002.

"AbovePeer, Inc. v. Motion Picture Association of America, *et al.*," filed in 2001 in the United States District Court for the Northern District of New York, as Case No. 01-CV-0806. This action sought a declaration that the Aimster peer-to-peer service did not violate the copyrights of MPAA's member companies or the Digital Millennium Copyright Act. The action was consolidated for pre-trial proceedings with other litigation involving the Aimster service as "In re Aimster Copyright Litigation," in the United States District Court for the Northern District of Illinois, Eastern Division, as Case No. 01C 8933. On October 30, 2002, that court issued a preliminary injunction, effectively shutting down the Aimster service; that injunction was affirmed by the Seventh Circuit Court of Appeals on June 30, 2003.

"Michael J. Rossi, dba Internet Movies.Com v. Motion Picture Association of America, *et al.*," filed in 2002 in the United States District Court for the District of Hawaii as Civil No. 02-00239 BMK. This action seeks damages in connection with letters sent by MPAA to plaintiff's Internet Service Provider pursuant to the Digital Millennium Copyright Act. On April 29, 2003, the Court granted summary judgment in favor of MPAA, dismissing plaintiff's complaint. Plaintiff has filed an appeal to the Ninth Circuit Court of Appeals. The case number in the Ninth Circuit is 03-16034.

"Encino Spectrum LLC v. Motion Picture Association of America, Inc.," filed in 2003 in the Superior Court of the State of California for the County of Los Angeles, Northwest District, as Case No. LC 065604. This action sought damages for breach of contract in connection with calculation of the parking rent due under the lease by MPAA of its principal offices in Los Angeles. MPAA filed a counterclaim for declaratory relief and breach of contract. MPAA anticipates that the parties will complete an amicable resolution of the case later this month.

"Antidote International Films, Inc. *et al.*, v. Motion Picture Association of America," filed in 2003 in the United States District Court for the Southern District of New York as Case No. 1:03-cv-09373-MBM. This action alleged that a policy announced by the MPAA with respect to the sending of awards screeners was an unlawful restraint of trade. On December 3, 2003, the Court issued a pre-

liminary injunction against the enforcement of that policy by MPAA. The parties have reached an amicable settlement of this action.

“Motion Picture Association of America v. FCC 309 F.3rd 796” (D.C. Cir. 2002), in which the U.S. Court of Appeals for the District of Columbia vacated video description rules imposed on networks by the FCC. The original rulemaking took place prior to the time I arrived at the MPAA but the Petition for Reconsideration at the FCC was not decided until 2001. See MM Docket No. 99–339.

The MPAA also is a party in interest in two pending FCC matters: (1) the so-called “Plug & Play” proceeding, which involves compatibility between cable systems and consumer electronics equipment (PP Docket No. 00–67) and (2) the so-called “Broadcast Flag” proceeding, which involves digital broadcast copy protection (MB Docket No. 02–230). In addition, the Association was a respondent in a “counter-veiling duties” proceeding at the U.S. International Trade Commission and the Commerce Department (C–122–842) (2001). Petitioners argued that the Canadian Government illegally subsidized film production in Canada; the petition was eventually withdrawn. Finally, the MPAA represents copyright holders before the Copyright Office—as well as in any related appeals—and is involved in the FTC’s periodic reviews of the entertainment industry’s marketing practices but the Association is not a party in interest in either of these matters.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. I have no additional information to add.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines set by congressional committees for information? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the committee with requested witnesses, to include technical experts and career employees with firsthand knowledge of matters of interest to the committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. Please describe how your previous professional experience and education qualifies you for the position for which you have been nominated.

During my years in the Senate I worked on a variety of antitrust and consumer protection issues, including reviewing the state of telecommunications and airline competition, assessing major mergers and acquisitions, oversight of the antitrust agencies, and ensuring that the video game industry rated its games (so that parents would know what they were purchasing for their children). These public policy matters all relate to the work of the FTC. My years in the Senate also taught me the value of bipartisanship and developing consensus, which should be especially useful at an agency where Commissioners are appointed from both parties. My work at the MPAA has given me insight into the importance of the private sector as an engine of economic growth. In addition, I have degrees in history and law, both of which should serve as useful tools in considering the complex matters before the Commission.

2. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

None, though I am looking forward to working with the experts at the Commission to get up to speed on a variety of matters.

3. Why do you wish to serve in the position for which you have been nominated? I have a long-standing commitment to public service, and I believe I can make a contribution to the Agency’s twin missions of protecting competition and promoting accurate information in the marketplace.

4. What goals have you established for your first two years in this position, if confirmed?

My goals are to become intimately informed about all the issues before the Commission as quickly as possible and to serve to the best of my ability.

5. Who are the stakeholders in the work of this agency?

There are many who have a “stake” in the FTC, including businesses, producers of goods and services and, ultimately, the American consumer.

6. What is the proper relationship between your position, if confirmed, and the stakeholders identified in question number ten.

A Commissioner should be an objective, ethical and informed decision-maker on matters before the Commission. That means listening to all sides and seeking out agency experts for guidance.

7. Please describe your philosophy of supervisor/employee relationships.

Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

I do not subscribe to a particular supervisory model but I do believe in a few basic principles. For example, I tend to delegate authority; encourage vigorous internal debate on specific matters; and treat all colleagues and subordinates with respect. No employee complaint has ever been brought against me.

8. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please describe.

My professional experience, both on the Hill and off of it, has generally involved working with the Commerce and Judiciary Committees, its members and their staffs, especially in the Senate. I spent more than twelve years on the Senate Judiciary Committee, working first for the late Paul Simon and then for Herb Kohl. Since leaving the Hill, much of my time has been spent working on a bipartisan basis with the Commerce and Judiciary Committees. I believe my relationships with Members of Congress and their staffs are good.

9. Please explain how you will work with this Committee and other stakeholders to ensure that regulations issued by your board/commission comply with the spirit of the laws passed by Congress.

I am a strong believer in Congressional oversight and making certain that agencies follow Congressional intent. I will be available to the Committee or its staff should you have any questions or concerns. I also intend to work with the Chairman and the FTC's Director of Legislative affairs to ensure an open and cooperative relationship with the Committee.

10. In the areas under the board/commission jurisdiction, what legislative action(s) should Congress consider as priorities? Please state your personal views.

I believe the Congress has done a very good job of helping set priorities for the Federal Trade Commission. For example, in his 1999 confirmation hearing before your committee, Commissioner Leary noted that one of the most pressing legislative needs was to raise the thresholds for pre-merger filings under the Hart-Scott-Rodino law, which had not been indexed for inflation since its enactment more than twenty years before. Congress then wrote legislation effectuating that much-needed change the following year. When a Federal district court judge threw out the “do not call” registry that protects consumers from unwanted phone solicitations on the specious grounds that the FTC overstepped its authority, this Committee quickly acted to ensure the Commission has the authority it needed. (The First Amendment challenges to the registry, while raising more serious issues, seem unlikely to be sustained and, hopefully, should not require more Congressional involvement.) More recently, Congress enacted useful anti-spam legislation.

Given that I have just been nominated, I have only a few recommendations. (If I am fortunate enough to be confirmed, I anticipate eventually having more such suggestions.) First, combating cross-border fraud is critically important, especially in a global economy. Congress ought to enact the FTC Reauthorization, a largely non-controversial measure that would enhance the Commission's ability to reduce international consumer fraud. (The Reauthorization is out of the Committee but has not yet been taken up by the full Senate.) Second, the quality of an agency's work can occasionally be strained by the quantity of demands placed upon it. Today, the FTC's obligations are growing, which is entirely appropriate; after all, no Federal agency is better prepared to address matters relating to Internet fraud, Internet privacy, identity theft, deceptive trade practices that transcend national borders, etc. Having said that, however, this Committee needs to remain ever vigilant to ensure that, *in the future*, demands placed on the FTC do not overwhelm its ability to fulfill its twin missions of promoting competition and protecting consumers.

11. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president.

Nominees to independent agencies are selected, I believe, to exercise their independent judgment. That is especially true with respect to agencies like the FTC, which have regulatory and enforcement powers. Having said that, Commissioners are not supposed to function in isolation, especially on broad policy questions. I

would always give respectful consideration to the views of the Executive Branch, just as I would to the views of people in the Legislative Branch of government.

The CHAIRMAN. Mr. Sosa?

**STATEMENT OF ENRIQUE SOSA, NOMINATED TO BE A
MEMBER, AMTRAK REFORM BOARD**

Dr. SOSA. Mr. Chairman, I have no formal statement to present. I just want to say that I'm delighted to be here, and I look forward to answering your questions.

[The biographical information of Dr. Sosa follows:]

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nicknames used.) Enrique Jose Sosa.
2. Position to which nominated: Amtrak Reform Board.
3. Date of nomination: February 6, 2004.
4. Address: (List current place of residence and office addresses.)
Residence and Office: 430 Grand Bay Drive, #1002, Key Biscayne, Florida 33149.
5. Date and place of birth: March 17, 1940; Camaguey, Cuba.
6. Marital status: (Include maiden name of wife or husband's name.)
Married to Irene Maria Tremols.
7. Names and ages of children: (Include stepchildren and children from previous marriages.)
Maria Luisa Villegas (42), Sylvia Cofer (40), Lourdes Sosa (39), Beatriz Douma (38), Irene Callam (34).
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)
University of Florida from 1957 to 1964. Obtained a B.S., M.S. and Ph.D. all in Agriculture in 1960, 1961 and 1964, respectively.
9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.)
Retired—April 1, 1999 to present.
President, BP Amoco Chemicals (Chicago, Illinois)—1995–1999.
President, Dow Chemical North America (Midland, Michigan)—1993–1995.
Senior Vice President, Dow Chemical Co. (Midland, MI)—1990–1993.
Vice President Dow Chemical USA, Chemical and Performance Product Group (Midland, MI)—1986–1990.
President, Dow Chemical Brazil (Sao Paulo, Brazil)—1982–1986.
Director of Marketing for Plastics, Dow Chemical, USA (Midland, MI) 1981–1982.
Business Manager for Plastics, Dow Chemical USA (Midland, MI) 1979–1980.
General Manager, Dow Mexico (Mexico City, Mexico)—1977–1979.
General Manager, Dow Venezuela (Caracas, Venezuela)—1974–1977.
Marketing and Business Manager for Agricultural Products, Dow Chemical Latin America (Miami, Florida)—1971–1974.
District Manager, Dow Chemical Colombia (Bogota, Colombia)—1970–1971.
Various positions in Agricultural Business of Dow Chemical International (Midland, MI)—1964–1966; (Miami, Florida)—1966–1970.
10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.) None.
11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational, or other institution.)

Director—Dow Chemical Company—1990 to 1995.
 Director—Dow Corning Corporation—1992 to 1994.
 Director—EDS—1995 to 1999.
 Director—FMC—1999 to present.
 Director—Royal DSM of the Netherlands—2000 to present.

12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.)

I was on The Board of the National Manufacturers Association, The Chemical Council, The Plastic Council, Chairman of the United Way Campaign of Midland Michigan and President of The American Chamber of Commerce in Sao Paulo, Brazil.

13. Political affiliations and activities:

(a) List all offices with a political party, which you have held, or any public office for which you have been a candidate. None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. None.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

I contributed \$45,000 (along with my wife) to the Republican Party and to George W. Bush for President. I contributed \$1,000 for the campaign of Tom Gallagher in the State of Florida. I contributed, this year, \$1,000 for the Bush Cheney reelection. I contributed \$1,000 for the Alex Penelas campaign for the U.S. Senate in the State of Florida. I contributed \$200 for the election of Congresswoman Ileana Ros Leithan. There were some other minor contributions in the 90s the specifics of which I cannot remember but I believe them to total less than \$5,000 in the aggregate.

14. Honors and awards: (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievements.) None.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.) None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated. None.

17. Selection:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

I believe I was selected for this position because of my background occupying senior management positions in corporations that went through difficult times.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

See answer to 17(a), above.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

I will not sever my ongoing business activities, which are currently limited to being a Director of FMC Corporation and Royal DSM.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. None.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employers, business firms, associations, or organizations? None.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

I expect to serve out my full term or until the next Presidential election, whichever is applicable.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

I receive retirement benefits from the Dow Chemical Company and BP. I have some unexercised stock options from BP and EDS. I have deferred compensation from FMC. I realize director's fees from Royal DSM and FMC.

2. Indicate any investments, obligations, liabilities, or other relationships, which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I have not engaged in any business activities over the past 10 years that could result in a conflict of interest situation.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

I have not engaged in any activity over the past 10 years that would affect legislation or would affect the administration or execution of law or public policy.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

I do not believe I have any conflict of interest as it pertains to the position for which I am being considered. If a conflict of interest situation was to be identified I would expeditiously remove myself from that situation by either divesting my financial interest or placing said financial interest in a blind trust. Alternatively, as appropriate, I would remove myself from any consideration or decision involving any entity or matter in which there was an actual or apparent conflict of interest.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain.

In 1959 I was found guilty of a misdemeanor charge (petit larceny) while attending the University of Florida in Gainesville, Florida. I was given a three day suspended sentence. In 1974 I was found guilty of DUI (alcohol) in Miami, Florida and was fined \$150 as well as having my drivers license suspended for 6 months.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

The Corporations for which I have worked or served as a Director during my career (see answers to A.9 and A.11., above) are large multi-national corporations, which, in the normal course of business, are parties to many administrative hearings and civil litigation. I have never been a named party to any administrative hearing or civil litigation in my capacity as an Officer or Director of one of these Corporations, or as an individual.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

See answer to D.2., above.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

I know of no additional information which I feel should be disclosed.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your board/commission complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your board/commission does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How do your previous professional experiences and education qualify you for the position for which you have been nominated?

In my previous experiences I have worked in very large organizations and have been exposed to the difficulties of dealing with business cycles, restructuring, competition, and labor unions. I have been on the Boards of Directors of 5 publicly traded companies and in one of them (The Dow Chemical Company) I was also a member of the Executive Committee. In my last job at Dow Chemical I supervised 20,000 employees and while at BP (then Amoco) I supervised in excess of 8,000 employees. My vast corporate experience should be helpful in advising a large and complex enterprise such as Amtrak which is undergoing severe losses and seems to be in need of an update of its strategy and modus operandi.

2. Why do you wish to serve in the position for which you have been nominated?

I wish to serve on the Board of Amtrak because I consider it to be a challenge and because I have been asked by the current Administration to help. I wish to be helpful in this small way to my Country, which has been generous to me and my family.

3. What goals have you established for your first two years in this position, if confirmed?

My immediate goal, if confirmed, would be to develop an understanding of Amtrak's lines of business and how well they perform so that I could participate with the other members of the Board in providing strategic direction for the company.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

I do not have experience in the area of land transportation. My initial plans are to take the time to learn and understand as much as possible in the shortest period of time about the railroad business and about Amtrak.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe that there is a role for the government to play in our private lives. I would hope that the role is limited since at the end of the day I firmly believe that self-initiative should be the call and an individual and his or her family should not be depending on the government to provide for themselves. It is up to individuals to be productive in our society. I believe the government needs to make sure its citizens live by the law. Obviously there are certain aspects of the infrastructure that can only be provided by the government such as highways, ports, water, etc. I believe very strongly in individual freedom, free market and capitalism.

6. Describe the current mission, major programs, and major operational objectives of the board/commission to which you have been nominated.

I do not as of yet have sufficient understanding of what the Board will be focusing on and what the priorities are. But as a general observation based upon my prior service on other boards, I would expect this board to be focused on the integrity of the company's financial statements, the development of a business plan and oversight of the company management's implementation of that plan.

7. What do you believe to be the top three challenges facing the board/commission and why?

Again I do not have sufficient understanding of Amtrak to be able to identify what the three top challenges are. But I understand that Amtrak is supposed to be run like a business and the three key challenges facing every business are increasing revenue, controlling expenses and providing high quality service.

8. In reference to question number six, what factors in your opinion have kept the board/commission from achieving its missions over the past several years?

I do not have sufficient understanding today of the challenges facing the past Amtrak boards to provide a knowledgeable response to this question. I hope to learn much more about this if I am confirmed. However, from what I have read in the media, Amtrak is incurring heavy capital and operational losses that are borne by the Federal Government. This Federal funding is the subject of public debate that

creates uncertainty for the company and such uncertainty always makes accomplishing a specific mission more difficult.

9. Who are the stakeholders in the work of this board/commission?

The American Public and the legislative and executive branches of the U.S. Government.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

The relationship between the Board and the stakeholders should be one where communications are very clear, where accountability is well established and where goals and objectives are well defined and where results should be pursued as agreed upon and are monitored.

11. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you.

I believe very firmly in making sure that individuals are assigned tasks, which match their capabilities. I believe that once these individuals are given the opportunity to perform that they should be given ample freedom and support to succeed. I do not believe in abdicating my accountability solely to the individual but I believe that selecting the right individual for a job and motivating and supporting them should go a long way towards achieving successful results.

12. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

I do not have any experience working with Congress.

13. In the areas under the board/commission jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

The fact that Amtrak has a board of directors appointed by the President demonstrates that the Federal Government has a strong interest in this company. I think that Congress needs to be clear about the intended mission for the company and the resources that it will make available to accomplish that mission.

14. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president.

I believe that as a member of the Board of Amtrak I will be recommending and supporting actions that I see as sound whether I am in agreement with the President or not. I believe that is the only way to conduct my duties.

The CHAIRMAN. Thank you very much.
Mr. Walker?

**STATEMENT OF SCOTT K. WALKER,
NOMINEE TO BE A MEMBER, ADVISORY BOARD,
SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION**

Mr. WALKER. Chairman McCain, distinguished Members of this Committee, thank you for the opportunity to appear before you today and to consider my nomination to serve on the Saint Lawrence Seaway Development Corporation.

It's an honor to be here and a privilege to be selected for this position by President Bush.

Mr. Chairman, if confirmed, I look forward to working with this Committee on the many important issues regarding commerce, transportation, and security facing the SLSDC Advisory Board and the Congress.

I would particularly like to express my appreciation for the support I got for this position from our two Members of this distinguished body: Senator Herb Kohl and Senator Russ Feingold—I particularly want to thank Senator Kohl for his kind comments, as well as tell you that I'm proud to call him a constituent, as well—as well as express my appreciation for the support I have for this position from my Member of Congress, Chairman Sensenbrenner,

and from the other two Members of Congress from Milwaukee County, Jerry Kleczka and Paul Ryan.

And, Mr. Chairman, I will not tell you how old I was in 1982, but just as an aside, that your comments at the American Legion Boys Nation Program in the mid-1980s were one of the things that inspired me to public service.

[Laughter.]

Mr. WALKER. How is that for diplomacy?

I have an excellent working relationship with the entire Wisconsin Congressional delegation, and I appreciate their support. I'm the elected County Executive for Milwaukee County in Wisconsin. Our county government has an annual operating budget of \$1.1 billion and nearly 7,000 employed positions. Our county is made up of 19 municipalities, including the City of Milwaukee, with a combined population of 937,000 people on the western shores of Lake Michigan. I hope to draw on this executive management experience as well as my energy and enthusiasm for this position in carrying out my duties as an Advisory Board member.

The work of the SLSDC is critically important to the progress of commerce and transportation in the Great Lakes region and, in turn, throughout the country. This is an excellent opportunity to work with our administrator and the members of the Advisory Board. And, if confirmed, I look forward to working with you, Mr. Chairman and the Members of this panel, on transportation and commerce, and to help that work well in the area covered by the SLSDC.

Thank you for the opportunity to appear, and I look forward to your questions.

[The prepared statement and biographical information of Mr. Walker follow:]

PREPARED STATEMENT OF SCOTT K. WALKER, NOMINEE TO BE A MEMBER, ADVISORY BOARD, SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Chairman McCain, Senator Hollings and members of the Committee, thank you for the opportunity to appear before you today to consider my nomination to serve on the Saint Lawrence Seaway Development Corporation (SLSDC). It is an honor to be here and a privilege to be selected by President Bush for this position. Mr. Chairman, if confirmed, I look forward to working with this Committee on the many important issues regarding commerce, transportation and security facing the SLSDC Advisory Board and the Congress.

I also would like to express my appreciation for the support I have for this position from my Congressman, Chairman Jim Sensenbrenner as well as Congressmen Paul Ryan and Jerry Kleczka. Two members of your distinguished body—Senator Herb Kohl and Senator Russ Feingold have also been a great support to me. I have an excellent working relationship with the entire Wisconsin Congressional delegation and I appreciate their support as well.

I am the elected County Executive for Milwaukee County, Wisconsin. Our county government has an annual operating budget of \$1.1 billion and nearly 7,000 employee positions. Our county is made up of 19 municipalities—including the City of Milwaukee—with a combined population of 937,000 people and we rest on the western shores of Lake Michigan. I would hope to draw on this executive management experience, as well as my energy and enthusiasm for the position, in carrying out my duties as an Advisory Board Member.

The work of the SLSDC is critically important to the progress of commerce and transportation in the Great Lakes region and—in turn—throughout the country. This is an excellent opportunity to work with Administrator Jacquez and the other members of the SLSDC Advisory Board.

If confirmed, I look forward to working with you, Mr. Chairman, and members of the Committee to make transportation and commerce work well in the area cov-

ered by the SLSDC. Again, thank you for the opportunity to appear, and I look forward to answering any of your questions.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nicknames used.) Scott Kevin Walker.
2. Position to which nominated: Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.
3. Date of nomination: November 23, 2003.
4. Address: (List current place of residence and office addresses.)
Residence: Information not released to the public.
Office: Office of the County Executive, 901 N. 9th Street, Milwaukee, WI 53233 USA.
5. Date and place of birth: November 2, 1967; Colorado Springs, CO.
6. Marital status: (Include maiden name of wife or husband's name.):
Tonette Marie Tarantino Walker.
7. Names and ages of children: (Include stepchildren and children from previous marriages.):
Matthew David Walker (9) and Alexander Nicholas Walker (8).
8. Education: (List secondary and higher education institutions, dates attended, degree received, and date degree granted.):
Marquette University 1986 to 1990; no degree.
9. Employment record: (List *all* jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment.):
IBM Corporation, Inc.—Milwaukee Metro Office; Account Administrator from 1988 to 1990.
American Red Cross—Greater Milwaukee Chapter; Financial Development Specialist from 1990 to 1994.
Wisconsin State Assembly—State Representative; elected from 1993 to 2002.
Milwaukee County Executive; elected April 30, 2002, re-elected April 6, 2004.
10. Government experience: (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.):
Sesquicentennial Commission—State of Wisconsin 1992.
11. Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational, or other institution.):
Board of Directors, Foundation for Heart Science, Wauwatosa, WI.
12. Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable, and other organizations.):
National Association of Counties
American Legislative Exchange Council
Underwood Memorial Baptist Church in Wauwatosa
Boy Scouts of America Milwaukee County Council
Wauwatosa Historical Society
NAACP—Milwaukee Chapter
United Way of Greater Milwaukee—Campaign Cabinet
13. Political affiliations and activities:
 - (a) List all offices with a political party which you have held or any public office for which you have been a candidate.
Wisconsin State Representative—ran and was elected as a Republican.
 - (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Republican Party of Wisconsin (chair of the 5th Congressional District; member of the state executive committee; member, Wauwatosa Republican Club; member, Milwaukee County Republican Party)

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years: None.

14. Honors and awards: (List *all* scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognitions for outstanding service or achievements.):

Honorary member, Sons of Italy.

Honorary member of Board of Directors, Milwaukee Symphony Orchestra.

Past Presidents Award from West Suburban Chamber of Commerce.

Lawmaker of the Year—State Medical Society.

Lawmaker of the Year—Wisconsin Professional Fire Fighters Association.

Lawmaker of the Year—Wisconsin Public Health Association.

15. Published writings: (List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written). None.

16. Speeches: Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of on topics relevant to the position for which you have been nominated: None on this direct topic.

17. Selection:

(a) Do you know why you were selected for the position to which you have been nominated by the President?

Wisconsin borders Lake Michigan and trade and commerce through the Great Lakes are important parts of the economy.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

Chief Executive Officer/Chief Elected Official of the largest county in Wisconsin.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate? I have no employment aside from holding the office of Milwaukee County Executive (elected office).

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. No.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employers, business firms, associations, or organizations? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe *all* financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

I am a participant in the Milwaukee County Deferred Compensation Plan. The balance as of March 31, 2004 is \$2,826.73. All future contributions will be directed as follows (per the plan): 55 percent T. Rowe Price Personal Strategy Balanced; 25 percent American Funds Wash Mutual Invs.; 10 percent Heartland Value Fund; 10 percent T. Rowe Price International Stock Fund.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing, or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

As the elected County Executive of the largest county in the State of Wisconsin, I occasionally comment on legislation proposed at the state and Federal level—primarily dealing with funding for county operated programs. Prior to taking office on May 9, 2002, I served as a member of the Wisconsin State Assembly from the date of my election on June 29, 1993 to the day I resigned on May 9, 2002. During that time, I introduced, debated and discussed legislation on a variety of topics, *e.g.*, labor contracts and healthcare, and, while serving in the Wisconsin Legislature my principle assignment committees were as follows: I chaired the Committee on Corrections and the Courts and the Assembly Committee on Campaigns and Elections; I also served on the Assembly Committee on Health, the Assembly Housing Committee, Financial Institutions, Judiciary and Personal Privacy Committee.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Just as I did when serving as a member of the State Legislature, I realize that there may be times when the larger interests of the United States and this advisory board will make my decision based on the larger good for the country. Reviewing the work of this advisory board, however, do not believe that this would be a common occurrence (if at all).

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

Yes, I was as the former Chairman of the state Assembly Committee on Corrections and the Courts, I was occasionally listed (along with other state officials) in lawsuits brought by inmates against the state.

As the top elected officer in the county, I am occasionally listed in suits brought by individuals or groups against the county. None of these legal matters relate to my personal actions, but are related to my role as an elected official with that level of government.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

My current office is nonpartisan. While I am clearly a Republican, I work well with elected officials from both major parties—including Senators Kohl and Feingold and the members of the Wisconsin Congressional Delegation. I know and contacted former Governor Tony Earl—whom I replace on this panel and would, if confirmed, work well with the other members. I also contacted the members of the Port of Milwaukee authority because of their positive relationship with the board and interest in the seaway.

E. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your board/commission complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your board/commission does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experiences and education qualify you for the position for which you have been nominated?

Current role as the CEO of the largest county in the State of Wisconsin.

2. Why do you wish to serve in the position for which you have been nominated? It would be an honor to serve the President of the United States.

3. What goals have you established for your first two years in this position, if confirmed?

Working with other members to increase commerce opportunities for the United States, compliance with all federal, state and local requirements and continued dedication of protection of the natural resources available through the Great Lakes.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

I do not have a direct occupational background in the areas of commerce and conservation on the Great Lakes. I am working with former Governor Earl—as well as organizations and individuals throughout Wisconsin to obtain insight from those with direct occupational experience.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

I believe that government should play a limited role in the lives of individuals, but that this involvement should be determined by the legislative and executive branches. Individual commissions, boards and authorities within the government should administer this pre-established policy.

6. Describe the current mission, major programs, and major operational objectives of the board/commission to which you have been nominated.

The SLSDC is responsible for the operations and maintenance of the U.S. portion of the St. Lawrence Seaway between Montreal and Lake Erie. This responsibility includes maintaining and operating the two U.S. Seaway locks in Massena, N.Y., and vessel traffic control in the areas of the St. Lawrence River and Lake Ontario. In addition, the SLSDC performs trade development functions designed to enhance Great Lakes St. Lawrence Seaway System utilization.

The SLSDC coordinates its activities with its Canadian counterpart, the St. Lawrence Seaway Management Corporation (SLSMC), particularly with respect to rules and regulations, overall day-to-day operations, traffic management, navigation aids, safety, environmental programs, operating dates, and trade development programs. The unique binational nature of the Seaway System requires 24-hour, year-round coordination between the two Seaway entities.

7. What do you believe to be the top three challenges facing the board/commission and why?

Reliability, safety and security are the top three challenges. Continuing to meet these challenges will allow the people of the United States and Canada who rely on the ports throughout the system to prosper. If the system is reliable, safe and secure, commerce will grow.

8. In reference to question number six, what factors in your opinion have kept the board/commission from achieving its missions over the past several years?

It seems that the SLSDC has met the objectives that I stated in question number six over the past few years.

9. Who are the stakeholders in the work of this board/commission?

The biggest stakeholders are the people of the United States and Canada. More specifically, the communities that run ports, the companies that rely on goods received through those ports and the companies that provide goods to other parts of the world through those ports. In addition, there are a great many individuals whose employment is connected to the operations of the ports and of the seaway system. The owners and operators of the more than 2,000 commercial vessels are clearly stakeholders in the system.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

This position requires a balance of interests between the stakeholders and between various states and—ultimately—the United States and Canada. Any actions taken should also be consistent with the policy of the United States on overall transportation and commerce policy.

11. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

No, not against me personally, but complaints are routinely brought against Milwaukee County.

12. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain.

Yes, I work closely with all of the members of the Wisconsin delegation. Two of the current members served directly with me in the Wisconsin State Legislature.

13. In the areas under the board/commission jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

Maintenance of support for the safety, security and reliability of the system.

14. Please discuss your views on the appropriate relationship between a voting member of an independent board or commission and the wishes of a particular president.

There must be a careful balance between the fact that these appointments are driven by the Executive Branch and there should be proper deference given to the policies of the current administration and the fact that members of an independent board are selected because of experience and talents specific to the workings of the board and they must use those skills to make appropriate decisions for the board.

The CHAIRMAN. Thank you very much, Mr. Walker. I regret I mentioned the year 1982.

[Laughter.]

The CHAIRMAN. I congratulate all the nominees.

Mr. Palmer, last year I wrote the Secretary of Commerce requesting the Department's view on the Commerce Justice State Appropriations bill. The Department of Commerce responded in an initial letter, saying, "We'll work out the issue." I wrote a second letter. I never got an answer. I want an answer, Mr. Palmer, before your nomination moves forward. Got it?

Mr. PALMER. I will get you an answer, sir.

[The information referred to follows:]



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

June 16, 2004

The Honorable John McCain
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I write in response to your letter requesting the Department's views on S. 1585, the Commerce, Justice, State and Related Agencies Appropriations Act of 2004, which was reported by the Senate Appropriations Committee on September 5, 2003. That bill was incorporated into HR 2673, the FY 2004 Consolidated Appropriations bill, and signed into law on January 23, 2004 (Public Law 108-199).

I appreciate your long-standing support of and advocacy for the Department of Commerce as Chairman of the Commerce, Science, and Transportation Committee. The Department has benefited enormously from your oversight of the Department's many critical programs and I thank you for your leadership.

Throughout the budget process, my staff and I worked with the Congress, including your office, to make known our concerns about unrequested spending items and policy provisions added to S. 1585 that were not included in the President's budget request. As you know, the final bill reflected some of the changes sought by the Department.

Many of our concerns with S. 1585 were set forth in the Statement of Administration Policy (SAP) of November 10, 2003. The SAP highlighted the bill's inclusion of more than \$450 million above the Administration's request for the National Oceanic and Atmospheric Administration, largely for unrequested projects, while failing to provide funding for the NOAA all hazards warning network, a necessary element of a comprehensive nationwide homeland security warning system.

A number of provisions in the bill received reduced or zero funding relative to the President's request. Among those items were the proposed elimination of funds for the Office of the Under Secretary/Office of Technology Policy, cuts to the Census Bureau's request, and an insufficient level of funding for the U.S. Patent and Trademark Office to continue its work to implement its 21st Century Strategic Plan. The bill also did not provide adequate funds for the Department's initiatives such as E-Government, information technology security, and critical infrastructure protection.

The Honorable John McCain
Page 2

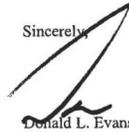
The bill also contained a number of policy provisions, such as Section 208, that, in my view, would have unduly constrained the work of the Department. Section 208 would have hampered the Department's ability to manage its constituent bureaus and programs.

I share your concern about unrequested spending items and policy provisions and their impact on the Department's flexibility to manage its diverse programs. Throughout the budget process, my staff and I worked with the Congress to make known our concerns. I appreciate that the final bill reflected some of the changes sought by the Department, while including some items that Congress, as is its Constitutional prerogative, added to the bill.

My team and I worked throughout the FY 2004 budget process to achieve, to the best of our abilities, a result that reflected the President's funding priorities and made the best use of the American taxpayers' dollars. The final result of that process, P.L. 108-199, reflects the outcome of our collective efforts.

I look forward to working with you throughout the FY 2005 budget process to enact the President's priorities for the Department of Commerce. Again, I appreciate your oversight of the Department and your leadership on our issues of mutual concern. If you have any further questions or concerns, please contact me or have your staff contact Brett Palmer, Acting Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,



Donald L. Evans

The CHAIRMAN. Mr. Wu, let me read to you a statement. "Greenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising. The changes observed over the last several decades are likely mostly due, "likely mostly due," to human activities, but we cannot rule out that some significant part of these changes are also a reflection of natural variability."

Before I ask you to comment on that, that's from the National Academy of Sciences. Do you agree or disagree with that statement?

Mr. WU. Well, I certainly think that—

The CHAIRMAN. I would ask if you agree or disagree with that statement, and then elaborate.

Mr. WU. Well, I think that the Academy of Sciences brings out good points, and—

The CHAIRMAN. I would ask if you agree or disagree with that statement, and then elaborate.

Mr. WU. I would generally agree with that statement.

The CHAIRMAN. Thank you. And please proceed.

Mr. WU. And I know that the climate-change issue is one that certainly is a major concern, for not just you, but for a number of the members of the Administration and also for lawmakers and policymakers. And while NOAA, in our Department, has been engaged in a number of the research activities related to climate change, we can develop new technologies that will also work to enhance and protect our environment, and we'd be happy to work with you and your staffs to further that.

The CHAIRMAN. Well, I deeply regret the Administration and the Department of Commerce has strongly opposed a very modest piece of legislation that Senator Lieberman and I view as a first step in the reduction of greenhouse gases. We're doing terrible things to future generations of Americans, this Administration is, by failing to support even a modest proposal which is based on market economics. We'll give the Administration another opportunity to weigh in on that issue, because we're going to vote on it, and we're going to keep voting on it until the overwhelming majority of the American people's voice is heard, and that is, we've got to act, and act now, to reduce the effects—overwhelming effects of greenhouse gases, which, in the view of the National Academy of Sciences, is of the utmost serious consequence.

Ms. Majoras, 2 years ago you were involved in negotiating an FTC/DOJ agreement that would have required the FTC to give the DOJ exclusive authority to review media, telecommunications, and entertainment industry mergers without—with very little consultation with this Committee, by the way. Why do you believe that this agreement was needed at the time?

Ms. MAJORAS. Thank you, Mr. Chairman.

At the time, we believed that the agreement was needed because the two agencies, which, as you know, share jurisdiction for enforcement of the antitrust laws, had gotten quite bogged down. And, indeed, there was one matter that was in need of investigation, and both agencies agreed on that, and yet they had allowed the matter to sit for 16 months, not being investigated by either

agency, because they were arguing over which one was entitled to do it. So that was why, at the time, Chairman McCain, we thought that a change was a good idea.

There's no question that we should have handled it differently. We did not handle it well. And I regret that that was the case.

I would also add that, were I to be confirmed, Senator, I have no intention of resurrecting that clearance agreement, which, of course, has also been banned now by legislation.

The CHAIRMAN. At a recent hearing on CAN-SPAM, which I'm sure you're aware of, the witnesses testified the volume of spam is still rising, accounting for anywhere from 64 to 83 percent of all e-mail traffic. Do you share the concern that consumers are being rapidly driven away from e-mail as a result of spam?

Ms. MAJORAS. I do share that concern, Chairman McCain. I think the Federal Trade Commission—

The CHAIRMAN. What do you think needs to be done?

Ms. MAJORAS. I think what needs to be done, now that the CAN-SPAM Act has been passed, which is a very good first step, in which the Federal Trade Commission—

The CHAIRMAN. Do you think that going after the businesses that hire the spammers is a method you might pursue?

Ms. MAJORAS. Absolutely. And, indeed, I think the Federal Trade Commission is already pursuing that, and that is a method that I think should be further pursued.

The CHAIRMAN. What else would you like to say on that?

Ms. MAJORAS. What else I'd like to say is, I think that the CAN-SPAM Act, Senator, is a very good first step. Part of the problem with new methods, such as spamming and the like, is that those who engage in it—and much of the spam, of course, is deceptive—have all kinds of new methods that the enforcement agencies need to learn about. And I think that we need to build on the CAN-SPAM Act now, see whether there are any more gaps in the FTC's enforcement arsenal, and move forward in bringing enforcement actions and in discussing with Congress whether any further legislation might be needed.

The CHAIRMAN. Do you have anything to add to that, Mr. Leibowitz?

Mr. LEIBOWITZ. Just a little bit. I generally agree with what Debbie said.

I think the CAN-SPAM bill is very, very important and a very useful tool for the Commission. I think your section 6, which allows you to, as I understand it, follow the money, is something that we should be looking at if we're fortunate enough to be confirmed. Debbie and I have talked about it, and we will take a hard look at that section.

But, you know, we're not at the end of this process with respect to the spam problem or the CAN-SPAM bill. I think we're more at the end of the beginning, at best. Spam is a problem. It's going to take a lot of resources at the Commission, and it's going to require a lot of work with the Committee, and it's going to require, as well, more consumer education and, I think, technology. It's not an easy problem to solve.

The CHAIRMAN. Thank you.

Mr. Walker, congratulations.

Mr. Sosa, you're going to have a very tough job, because one of the most contentious issues that we face here in the Congress is what to do about Amtrak. Most of us don't understand why we continue to subsidize routes at as much as \$400 per passenger. But I hope that you also appreciate that there are also now security issues associated with Amtrak which cannot be separated from reform because there are going to be additional expenses and additional procedures that are going to have to be enacted.

This Committee held a hearing after the Madrid bombing. As usual, we seem to react, rather than act, and I have placed the responsibility on me for that. But I think it's also clear that there are significant challenges that we face in rail security in this country today, and I hope you'll give that your significant priority.

Dr. SOSA. I will do that, for sure. I wholeheartedly agree with what you just said.

The CHAIRMAN. Thank you.

Senator Wyden?

Senator WYDEN. Thank you, Mr. Chairman.

Ms. Majoras, it is hard for me to reconcile your statement that you're going to be the consumer defender and protector, while you don't even mention the question of gasoline pricing, which is clearly the big consumer issue for our country, and certainly for people on the West Coast of the United States. I intend to ask you some detailed questions this afternoon about oil-company mergers, about refinery closures, and redlining.

But I think before I begin that I'd like to give you the same chance that I gave you in my office—and, as you know, I wrote you, as well, on it—and that is to ask you to tell me one area you would change, if you were confirmed as the Federal Trade Commission chair, that's going to make a difference for the consumer on the issue of gasoline pricing.

Ms. MAJORAS. Thank you, Senator Wyden, for that opportunity. I do appreciate it.

I think if I were going to choose—there are several areas, but if I were going to choose one, I would choose the area of refinery capacity. Because refinery capacity in this Nation is so tight, I would treat any proposed reduction in that capacity with extraordinary seriousness. If I am confirmed, the FTC will review the basis for any such reduction, and I will recommend enforcement action against any prohibited anti-competitive conduct that we find in the reduction of that capacity.

Senator WYDEN. I'll get to refinery capacity in a moment. I will tell you, just from the seat of my pants, it's hard to see how that's a change from current law or current practice. Maybe you want to just have a follow up right now, in terms of your statement a minute ago. How does that change current practice at the Federal Trade Commission?

Ms. MAJORAS. Well, what I've committed to you, Senator, is that I would take action if, in fact, we find anti-competitive conduct in the—

Senator WYDEN. That's what the Commission says today.

Ms. MAJORAS. They have said some of that, but I'm committing to you that I will take action. And you have said that what concerns you is that the Federal Trade Commission has not taken ac-

tion. It's very difficult, of course, to commit to specific enforcement action when I have before me, at this moment, no evidence of wrongdoing, Senator.

Senator WYDEN. You just committed to Chairman McCain specific action on spam. You said you'd go after businesses. And that's what I'm going to insist on, in terms of your appointment, and I just want to make that clear again, as I did in the office.

Let me ask you about oil-company mergers. Last week, the General Accounting Office, after reviewing hundreds of mergers, found that, in effect, the Federal Trade Commission's oil merger policy was permitting serial price gouging. In effect, with each merger, prices would go up. And on the West Coast of the United States, they said those mergers led to price increases of up to seven cents a gallon.

Now, when that report was issued, the Federal Trade Commission, the existing one, went into its denial mode, as I highlighted. There's a very lengthy dissent, and "General Accounting Office doesn't have it right, and they don't understand us," and all the rest.

Is that how you feel about this? Do you think the General Accounting Office doesn't understand this? And all this evidence—it is a huge volume of evidence, Ms. Majoras. I mean, the number of areas where their market concentration has almost doubled in the last few years. It went up, I think, from 27 states with highly concentrated markets in 1994; now it's 46 states. And yet the Federal Trade Commission looks the other way on mergers, denies what the General Accounting Office has to say. And I want to give you the same chance that I did in the office to say how you would change the policy on mergers.

Ms. MAJORAS. Thank you, Senator Wyden.

Senator Wyden, I have reviewed the GAO report. It does contain a great deal of information. I'm still reviewing it and dissecting it.

The Federal Trade Commission policy in reviewing mergers has stemmed from the policy that it uses when it reviews all mergers, but with one difference, and that is that the FTC, as I understand it, has reviewed those mergers using even lower concentration standards than it does for most industries, given the extreme importance of this industry and the many markets that must be reviewed.

If I am confirmed and we are confronted with oil mergers, I will absolutely apply the antitrust laws to looking at those mergers. We will—I will recommend action against mergers if, in fact, we—I believe that they will violate the antitrust laws.

And, in addition, Senator, I intend to take that report, to scrub it carefully. Naturally—and I've been an enforcer before, as you know, and also in the private sector, very accustomed to working with econometric studies—it's very important, when one receives such a study, to scrub it down, all the way down to the data, to try to replicate, to look at all of the assumptions that have been made, because even the simplest of assumptions can change the results of the study. So I intend to do that, and then take what we learn there, in discussion with my colleagues at the FTC, and determine whether any changes need to be made in merger policy.

Senator WYDEN. Well, you say in your written testimony, and I quote, you're "protecting competition through enforcement of the antitrust laws gives consumers lower prices." Now, the General Accounting Office just found, in this report, that oil-industry mergers have raised prices for consumers. So I'm curious, is your statement wrong in the case of the oil industry, or has the Federal Trade Commission not been enforcing the antitrust laws when it allowed oil mergers to go through and raise prices?

Ms. MAJORAS. No, Senator, I can assure you that my statement is not wrong. Having been both an enforcer of the antitrust laws and a counselor in the antitrust laws, I do believe that the antitrust laws contribute to lower prices for consumers. The GAO report found some price increases that stemmed from the mergers. As I said, I still need to review that report more closely before I could rely on its assumptions, rely on its results in determining whether any different sort of merger action needed to be taken.

Senator WYDEN. Mr. Chairman, if I might, one last question.

In 2001, Ms. Majoras, the Federal Trade Commission required Texaco to divest its ownership interest in the Bakersfield refinery as one of the conditions the agency imposed to mitigate anti-competitive impacts. The FTC's September 2001 press release touted the consent agreement allowing the merger to go through as having required significant divestitures required to remedy the likely anti-competitive impacts of the transaction.

Having found divestiture of the Bakersfield refinery was necessary to mitigate the anti-competitive impacts of the merger, now the FTC takes no action to ensure that the Bakersfield refinery isn't closed. If the Bakersfield refinery is shut down, wouldn't this eliminate any competitive benefit from the divestiture that the Federal Trade Commission required?

Ms. MAJORAS. Thank you, Senator.

Yes, indeed, it could very well eliminate the benefit of the divestiture. I am aware of the Bakersfield situation. I think it is a serious one. I do not know, of course, exactly what, if anything, the Federal Trade Commission is doing about that because I'm not yet privy to that information, but I hope that I will have the opportunity to find out and to act accordingly, as appropriate.

Senator WYDEN. Mr. Chairman, I would just hope that it would be possible to have another round, because I have a number of additional questions.

Thank you.

The CHAIRMAN. Senator Boxer?

Senator BOXER. Thank you, Mr. Chairman.

And I just want to say—I want to pick up on Bakersfield. And, Ms. Majoras, you and I spoke about that very honestly. And I just want to make a point here to my colleagues. We can't wait until you get confirmed to take care of the Bakersfield problem, Mr. Chairman. We've got an immediate threat that Shell's going to shut down a refinery right away. They're slowing down, starting this summer. The FTC has to act now. And you have no control over that, so let me just speak to my colleagues for a minute, because I think it's important.

I like these people who are here, and I think they're good choices. But the FTC is—and I discussed this with Senator Wyden, who I

thought put it in the best way, they're just sort of slow-walking this stuff, giving us a letter here, a letter there. We've been on this Bakersfield refinery—and I have to give full credit to Senator Wyden for calling it to my attention; then I had whistleblowers in California that talked to me—they're producing 2 percent of our fuel. We can't afford that jolt, Mr. Chairman, when we see \$3 per gallon numbers out in California now and then—certainly well over \$2.50 a gallon. It's hurting people who have to rely on a car to get to work. These are the people that are hurting.

And so I just want to say, maybe this can go out to the FTC Chairman now, who sent me wonderful letters on this; very encouraging letters, I have to say. I'm encouraged. He says he takes what we say very seriously. He's looking at it really seriously.

Well, enough with the looking. Let's get some action. Because, as Senator Wyden said, this refinery was so important to the FTC just a couple of years ago that they said, "Texaco divested. Shell you buy it." And now, 2 years later, they're walking away, and they're going to shut it down. They day they leave, they're shutting it—they're dismantling it.

Now, we cannot wait. And I don't want your nominations to be caught in this bind. But I have to say, to be honest, I may have to do some serious thinking before I add more people to this Commission if the FTC won't act in an appropriate fashion. It's the same way with the investigation on high gas prices. Got a beautiful letter from Chairman Muris. And, by the way, I used to get beautiful letters from Mr. Pitofsky. Let me assure you, this is not a partisan deal. The FTC—and I thought, Ms. Majoras, you gave the most beautiful statement I've ever heard. It is beautiful. Really. It's eloquent. And I'm sure that you wrote it. And it's moving to me, it's so much in favor of the consumers. But there's one thing you say, "For 90 years the FTC has stood up for the welfare of the consumer." I would change that. For 90 years, they should have stood up for their welfare. I could tell you, chapter and verse, where they didn't, where they allowed these mergers.

Would you consider putting a moratorium, Ms. Majoras, on all mergers until we get a handle on this oil crisis?

Ms. MAJORAS. Thank you very much, Senator Boxer, for your comments. I do take them very seriously.

I've never thought about a moratorium on letting mergers go through, Senator Boxer. Of course, the Federal Trade Commission is bound by the merger laws, and I know of no law that would permit a moratorium. I, obviously, would be willing to speak with you, and to other Members of this Committee and to Congress, about methods that we may deal with these issues, particularly while we are in this crisis.

Senator BOXER. Yes. Well, my understanding is that there could be a moratorium if there was a—if people suspected that there was anti-competitive behavior going on, you would be able to do that. But we don't have to discuss that, because you can't do it now. I wrote to the Chairman. He actually didn't get back to me on that particular—I mean, we're—we write a lot, back and forth.

But here's the thing. When you came into my office, we had a really—I thought, the most honest—and I gave you advice. You didn't take it. But you wrote a beautiful statement. What did I tell

you? I said, "When you come before us, you should address Senator Wyden's concerns." He has been very open about his problems and—on how he feels. "You need to address"—I said to you, "Please address gas prices in your statement. Talk about that. Show that you're concerned about that in your statement." Because, you know, if this was another time, another place, and I told you this, you wouldn't be facing this kind of concern. But especially in California, where we see the callousness of the people that held back supply from us.

And, you're perfectly right, when supply and demand works, it's a beautiful thing. I'm an economics major, I was a stockbroker, I love supply and demand. It's so good when it works. But when someone's manipulating supply, like we had, and they don't care, this is the problem we face.

Now, I believe, in the Bakersfield refinery, if you look at all the facts from day one, you will come to a conclusion that something is not right here. First they said they didn't make a profit. Oop, Oop, they were wrong, they make a good profit. Then they say the future of refineries are terrible. Then you read, in Fortune magazine, every other company is saying refineries are golden right now. They're golden right now. Why do they want to shut this place down? And the FTC has a responsibility here.

So I'm going to ask you one more time, and then I'm going to ask Mr. Leibowitz to comment, and we'll be theoretical. We won't use this example. But if you were putting yourself in the shoes of the FTC, and you knew that just 2 years ago they said to Texaco—they said to an oil company, "Sell your refinery. We're—we don't want you to have so much power in the marketplace. Sell it to someone else." And as part of the merger, Company B steps forward, buys the refinery. Suddenly, 2 years later, they're shutting it down at the point where there are the highest prices. Would you not feel—or let me just say—put my own view in it—would you believe that this was enough to launch a very serious investigation?

Ms. MAJORAS. Thank you, Senator Boxer.

Senator BOXER. Before they close down.

Ms. MAJORAS. Senator Boxer, I would think that it's something that needs to be looked at very, very closely, and certainly before it's closed down, when generally the antitrust agencies do like to step in, if they can, to continue—

Senator BOXER. Thank you.

Ms. MAJORAS.—competitiveness in the marketplace.

If I may, Senator Boxer, I thank you for your comments. We did have a terrific meeting in your office, and I apologize if I misconstrued any of your advice. No disrespect is intended to either you or Senator Wyden. I knew that I would have—well, I should say, I suspected that I would have time to address Senator Wyden's concerns, and I do appreciate the opportunity to address them, because they are serious concerns. And I do share the concerns that both of you and others on this Committee have expressed.

Senator BOXER. Jon?

Mr. LEIBOWITZ. Senator Boxer, without prejudging the Bakersfield refinery issue, based on the facts as you related them, it does sound like a market that's perversely skewed. And the Bakersfield refinery is crucial to West Coast competition.

I have talked with Debbie about this quite a bit. I believe she is committed to taking a very close look at this if she's fortunate enough to be confirmed. And if I'm fortunate enough to be confirmed, I will work with her, and I will work with you.

And I guess the only other point I wanted to make is, I read the GAO report. When I worked for Senator Kohl, we were very involved in oil-company merger issues. We held a hearing—or he held a hearing on the BP/Amoco deal, I think, in 1998, and we were very, very concerned that that would lead to a wave of consolidation. And, of course, it did.

So I'm committed to working with you on this issue. I know Debbie is, too. And thank you.

The CHAIRMAN. Senator Lautenberg?

Senator LAUTENBERG. Thanks, Mr. Chairman.

I want to talk for a few minutes about Amtrak, Mr. Sosa. And I recognize that you've had a distinguished business career, and I commend you for that. I, too, come out of the business community, and I ran a company called ADP, which was started by three very young people from poverty-stricken homes. I was one of the three. And today we employ over 40,000 people. So I've had pretty good experience in the corporate world.

And in your response, your written response, to the Committee about your biography, there are a couple of things that I just wanted to air with you here. You say—the question was, How does your previous professional experience and education qualify you for the position you've been nominated? And you say, "In my previous experience, I have worked in very large organizations, have been exposed to the difficulties of dealing with business cycles, restructuring, competition, and labor unions." And I'd like to ask you, What were the problems with the labor unions that you experienced?

Dr. SOSA. I oversaw Dow Chemicals North American operations, and I worked very closely with the management of the factories, which is where we had most of the union groups. And I can tell you that, while I was there, there was no strike. Now, maybe that was fortunate, or not. I had a very good group of individuals. I believe very strongly in good labor relations. And we did not have an antagonistic relationship. So—

Senator LAUTENBERG. But you do say that you had problems with labor unions. So—

Dr. SOSA. Well—

Senator LAUTENBERG.—what were the problems?

Dr. SOSA.—a challenge. Perhaps I used the wrong word. Working of management and union is always full of challenges, and I did not have, as far as I can remember, a confrontational situation while I was in charge of the North American operation. And I oversaw 25,000 people.

Senator LAUTENBERG. But here you say that you did have trouble. Now you're saying you didn't have trouble. And—with unions. The company that I ran had the longest growth record of any company in America, of regular growth—42 years in a row that we had more than 10 percent—10 percent or more in earnings growth—42 consecutive years. It's a record that's unchallenged any place in the annals of business. We had no unions. We have 40,000 today. Don't

have a union. We didn't have a problem with unions because we treated our people in such a way that there was no reason to bring in anybody outside in this case. They were our partners in many instances, whether it came to educational investments or stock participation, you name it. That's the way the company is. And we now have 44 years worth of continuous earnings growth, not at the same 10 percent rate in the last two.

Because, Mr. Sosa, there are lots of union questions about Amtrak and how they operate, and there are different traits involved. And if we start off with one premise, and that is that you had problems with labor unions, it's going to be tough sledding, I think, if that's an attitude that you bring.

I would ask, also, one other question. You say, "I do not have experience in the area of land transportation." What do you think your best qualification is to be on the Amtrak Board, Mr. Sosa?

Dr. SOSA. Well, first of all, I come here with no bias in either direction. I guess my only bias is, I like to make profits. I understand that there is a unique situation when it comes to Amtrak, and some of the fundamentals that one learns in managing businesses may not apply here, or cannot be applied, but a lot of the other fundamentals do apply. I'm talking about good business. And I think that because I've had an exposure to manage large organizations and complex worldwide businesses, I have a fairly good understanding of the some of the fundamentals that make business effective and make things work. And—

Senator LAUTENBERG. Mr. Sosa, I don't want to interrupt, but our time is limited. And I just gave a chair to Columbia University, my alma mater, and I was a guest speaker at their keynote—at their graduation, the business school, last week. And the one thing I addressed my comments to was business and ethics. And I gave a chair in corporate governance to Columbia. It's a Frank R. Lautenberg chair. Didn't come from government money; it came from my money.

And when you say "how to make a profit," this business is not going to make a profit. This is a public corporate. Every railroad, passenger railroad, in the world requires subsidies, even those that are in private hands. So I submit that there are some lessons here that you're going to have to apply. And I'm sure you want to be a constructive member. You don't want to be engulfed in confrontation.

Have you looked at the financial statements for Amtrak?

Dr. SOSA. Absolutely.

Senator LAUTENBERG. What was most noticeable about the financial statements?

Dr. SOSA. Well, the continuous loss that happens at Amtrak. But I understand that.

Senator LAUTENBERG. Operating loss?

Dr. SOSA. Operating loss.

Senator LAUTENBERG. How about capital investment?

Dr. SOSA. And capital investment. I, you know, have a lot to learn here, but evidently there is a need to upgrade some of the facilities. Some of them are aging. So that will be an issue that—

Senator LAUTENBERG. Me, too.

Dr. SOSA.—we would be confronted with. I understand that it's going to be very difficult to make a net profit at Amtrak, but I hope there's opportunity to do some of the things that we're doing better, and, therefore, increase the revenue. But I accept that making a net profit will be very difficult.

Senator LAUTENBERG. Well, the—just an interesting Pocket Guide to Transportation put out by DOT—and, Mr. Chairman, I'll be finished momentarily, I promise—from 1960, the million barrels-per-day consumption of—three parts—industry, buildings, utilities—four parts, I'm sorry—transportation. Transportation went from five million barrels-a-day, in the year 2002, to about 13 million barrels-a-day, while industry practically held flat from going from three million to five million. And we're putting those kinds of funds into transportation because it's required. The growth of our country, the ability to get around, to stop polluting our world requires that we provide transportation other than automobiles and flooding the sky with airplanes. And I hope—have you ever had a ride on an Amtrak train—Northeast Corridor in particular?

Dr. SOSA. No, I haven't.

Senator LAUTENBERG. I take it—

Dr. SOSA. I will. If confirmed, I will.

[Laughter.]

Senator LAUTENBERG. You mean otherwise you won't?

[Laughter.]

Senator LAUTENBERG. OK. Mr. Chairman, thank you very much.

The CHAIRMAN. Very rarely, Mr. Sosa, do we have a moment of candor in these hearings. We thank you.

[Laughter.]

Senator LAUTENBERG. Intended or otherwise.

[Laughter.]

The CHAIRMAN. Senator Lautenberg and I have an ongoing discussion about Amtrak, and that's why I mentioned earlier, Dr. Sosa, that you have a very difficult task. I suggest that one of the things you do is go back and look at the record when heads-of-Amtrak repeatedly came over and testified before this Committee they were on the glide path to fiscal independence. You know, it's a very sordid and sad tale, a waste of taxpayers' money, in my view. And I think Mr. Gunn is doing a good job. I think he's coming over and being very candid with the Congress about the situation as regards to Amtrak, and I think you'll be able to get very good advice and counsel from him.

Mr. Wu, this year, NIST announced that it would have to reduce its staff by about 120 people after the Congress funded NIST laboratories at less than President Bush requested. I think there are a couple of Nobel Prize winners in NIST.

Mr. WU. There are two. We're very proud of them.

The CHAIRMAN. During your tenure as Under Secretary of Commerce for Technology in the Administration, did you attempt to find other sources of funding or reallocate congressional earmarks or take other actions to prevent these critical staff reductions?

Mr. WU. Mr. Chairman, the FY04 appropriations for NIST concerns us greatly. NIST is our Nation's oldest Federal laboratory. We have two Nobel science winners. They do important work. And they're the only laboratory with the express mission of working

with industry. And developing that partnership with industry is very critical if we're to utilize and maximize our Nation's science and technology enterprise.

We have looked at ways in which we can try to augment the NIST budget working with other Federal agencies and trying to work and receive Federal agency contributions from other agencies, such as Department of Homeland Security for our first-responders work, and a number of other Federal agencies across the board, to try to make up for the budget shortfall. It's something that we're very concerned about, and we hope that the President's budget request can be met, even though we're in very tight times for this Fiscal Year.

The CHAIRMAN. Thank you.

Senator Wyden had additional questions. He's on his way back. I'll let Senator Boxer—and, Senator Boxer, I've got to go vote.

Senator BOXER. OK. I just have one—

The CHAIRMAN. Senator Wyden should be back in a minute.

Senator BOXER.—I have just one question. So should we just put it into recess when I'm done and—

The CHAIRMAN. Yes.

Senator BOXER. OK.

The CHAIRMAN. He should be back.

Senator BOXER. Ms. Majoras, when we met, a few weeks ago, in our good meeting, you discussed potential conflicts of interest from your private practice. And what I'm concerned about is, the Bakersfield refinery, as you know, was sold to Shell as part of a condition on the merger between Texaco and Chevron. Do you have a problem with that? Would you have to recuse yourself on that matter?

Ms. MAJORAS. Thank you, Senator Boxer.

We did discuss this. I have discussed the matter further with the FTC's ethics officer, and I'm afraid the answer is, it's just simply not clear. As I told you, I have done work only for one oil company that would require any recusal—that is Chevron Texaco, for whom I did a small amount of work in the few months that I've been back in private practice. And until we know exactly—until I have more information within the Commission and know exactly what action may be underway or what action we would like to take, I'm afraid I can't—

Senator BOXER. OK.

Ms. MAJORAS.—I can't answer that question just yet.

Senator BOXER. Well, this is very important. I'd say it's kind of a bombshell, in a way. It's possible that our nominee might not be able to participate in the Bakersfield refinery due to conflict of interest from prior work. And what that says to me is, we've got to get this thing done now, because we need to have this looked at, and by the Chairman. I think it's very important. But I thank you.

What was the problem that they couldn't give you a more definitive answer?

Ms. MAJORAS. Well, it all depends—as you know, of course, it is Shell that would be shutting down this refinery.

Senator BOXER. That's right.

Ms. MAJORAS. And, at this point, Chevron Texaco, as far as we know—as far as I know—I don't know of anything that Chevron Texaco has to do with that closure. And so—

Senator BOXER. But yet the ethics person said that you might still—he can't answer it? When is he going to be able to answer it—he or she?

Ms. MAJORAS. Well, we would be able to answer it—recusals are based not on general industry looks, and so forth, Senator. They are generally based on particular matters that—

Senator BOXER. I understand that, but you're saying that you went to the ethics officer, and he can't answer the question. Why can't he answer the question?

Ms. MAJORAS. If it is simply a matter of Shell—or perhaps Shell and—

Senator BOXER. No, no, no. But doesn't he know the issue at stake? When you went to him, didn't he know what issue you were talking about?

Ms. MAJORAS. Yes, he—

Senator BOXER. OK. But yet he said he doesn't have an answer? I don't understand that. It's a big problem for us on this Committee, at least several of us here, because we need to have a chairman that's going to be able to resolve this matter. And all I'm suggesting is—I don't understand why he couldn't give you a yes or no. Never heard of a maybe. I've had to go seek recusals, and you get an answer.

Ms. MAJORAS. I understand, Senator Boxer, but part of the answer turns on what it may be that the FTC may have found so far, if they're looking at the issue. And because that information is confidential, and I'm not permitted to know the answer to that, that is why I don't have a—

Senator BOXER. OK.

Ms. MAJORAS.—definitive answer.

Senator BOXER. OK. Well, thank you.

Chairman Wyden, you can take—I think the Chair said you could take the gavel at this point. I'm going to go vote. Thank you. Thank you, all.

Senator WYDEN [presiding]. I thank my colleague, and I'm just going to follow up just on this conflict—

Senator BOXER. Yes.

Senator WYDEN.—question, because I think you're raising a very important matter.

Tell me, if you would, Ms. Majoras, this potential conflict, is it possible that this conflict will run beyond the question of the Bakersfield matter and into oil-pricing issues overall, so that you would have to recuse yourself from the question of oil pricing altogether?

Ms. MAJORAS. I don't believe so, but I would have to recuse myself for some period of time for any specific matter that involved Chevron Texaco, is my understanding. And what the ethics official has told me is that we'll have to take it on a case-by-case basis, obviously if I am confirmed.

Senator WYDEN. So there is a possibility, then, that, for some period of time, you would have to recuse yourself from all oil-pricing issues. Certainly that possibility.

Ms. MAJORAS. I think—but I think that possibility is remote.

Senator WYDEN. And when do you anticipate being able to tell us that?

Ms. MAJORAS. Unfortunately, Senator, it's virtually impossible for me, or for, I believe, anyone at the FTC, to give a blanket answer to that today, because it's taken on a case-by-case basis as matters are formed. It doesn't go to general industry looks; it goes to very specific matters where the FTC may be taking enforcement action against a particular company, and that is what would possibly trigger—

Senator WYDEN. Well—

Ms. MAJORAS.—a recusal.

Senator WYDEN.—tell me how this works, because this is an important issue. And, as you can see, after 8 years of going at this, I want some leadership now. Does this mean that every single time an oil-pricing issue comes up, because of your statement that it's case-by-case, you've got to send this down to the ethics office, wait for a response, and then you can go ahead?

Ms. MAJORAS. With respect to—if I could say it this way, if specific matters are coming to the fore, and a specific matter involved possibly taking action against Chevron Texaco, then the answer is yes, I would need to consult.

Senator WYDEN. I guess what concerns me is, Chevron Texaco has such an entrenched role in the oil marketplace, I think you're going to be sending an awful lot of stuff down to the ethics office. And so at a time when we need leadership, here is yet another reason why the consumer is going to wait. And I guess we'll have to look forward to getting more details from you on this. But I will tell you, I find it very troubling. And what I was going to ask about was not just the Bakersfield issue, which I and all West Coast Senators—Senator Boxer, myself, Senator Reid, and others—are troubled about. But I'm concerned that this recusal will have much more sweeping ramifications, because, as I told you in the office, I don't intend to accept just one change at one refinery unless I see this agency, and you at the top, make the kinds of changes where it's going to be different for the consumer in the real world.

I drove to a Veteran's Day program in Eagle Point in Oregon, more than \$2.30 a gallon, a couple of days ago. A lot of vets said they almost couldn't drive there because of the cost. And I'm not going to accept anything other than a commitment to drain this swamp, and I want to be real specific about that.

Let me ask you about several other areas. Last month, in *Bloomberg News*, the FTC General Counsel was quoted as saying, "It may be possible, in selected markets, for individual firms to unilaterally increase prices." That was a direct quote by your General Counsel. Now, you say, in your written testimony, that protecting competition through enforcement of the antitrust gives the consumer the lower price. Isn't your General Counsel directly contradicting what you said today?

Ms. MAJORAS. Thank you, Senator.

No, I don't think that Mr. Kovacic is directly contradicting. Again, the antitrust laws are absolutely in place for the goal. If there's one goal at all, it's to lower prices to consumers. And enforcement of the antitrust laws by the FTC is directed to that goal, and surely would be, were I confirmed. There are instances in markets—I know of instances in markets where, in fact, firms can unilaterally raise prices for some period of time. And that doesn't nec-

essarily mean, if they're not—if they are not engaging in a monopolistic way under the antitrust laws, it does not necessarily mean that that is a violation of the antitrust laws.

Senator WYDEN. If your General Counsel is saying that individual oil companies have the market power to increase prices unilaterally, is that an argument for giving the Federal Trade Commission new tools to address the ability of a powerful company to manipulate the market without the need to collude?

Ms. MAJORAS. It possibly would be, Senator. I would like to know more about what the FTC has found, very specifically. I don't think that the Commission, to date, has done a very good job at telling the public and telling the Congress what it has found—I think, as far as I understand, has done numerous studies of the industry, looked at what has caused high prices, and yet the rest of us haven't known exactly what it has found. And so I would look forward to the opportunity, if confirmed, to be able to, myself, take advantage of that knowledge that the FTC has gained and see if, in fact, changes would be warranted.

Senator WYDEN. On the redlining issue, I'm especially troubled about this because it is such a pernicious practice on the West Coast. And the agency found that there was redlining. In fact, let me read you what the agency found. This is a specific Commission finding. I quote, "Most of the western states' refiners prevented their jobbers from competing with them to supply branded gasoline to independent dealers in metropolitan areas, a practice called redlining." So redlining is a practice where oil companies restrict competition by preventing wholesalers from selling to dealers. This is an anti-competitive practice. It is draining the competitive juices out of gasoline markets all up and down the West Coast. The agency you want to head has found that it's going on. I read you directly from it. Do you want to change that practice and fight redlining?

Ms. MAJORAS. Thank you, Senator.

I have begun to take a look at redlining. I do know, as you do, that the FTC has also taken a look. The FTC has found that—and the economists have found—that, in some instances redlining can, in fact, be anti-competitive and used as an anti-competitive tool, but, that in some instances, in fact, it might be pro-competitive. And so I would like to take a look at all of that study before determining—and also understand better what the FTC has done on redlining—before saying for certain that I would make changes. But I do understand that there has been some concerns expressed about redlining, and like many vertical distribution practices, we need to take a close look to see whether, in fact, it is pro-competitive or is having an anti-competitive effect.

Senator WYDEN. Well, again, I just am mystified. I mean, you've got commissioners sitting behind you who said it was anti-competitive. Shall I read you their comments? "The result is that in certain metropolitan price zones, refiners either prevent or discourage jobbers from undercutting refinery prices to company-supplied stations."

And I will tell you, I'm just not going to support your confirmation because you tell you're going to look into something and you're going to study it. You know, people in my part of the country—con-

sumers and businesses and others in the real world—have suffered too much. And it's just not enough to expect a Member of the U.S. Senate to say you're going to investigate it and, because you're a good person, to give you an OK. And so I'm going to continue with this a bit longer.

But I haven't changed my view with respect to what we talked about in the office. I need to hear more specific changes, and we'll go through a couple of other areas. What about this matter of, you know, concentration and the fact that the concentration—the number of states in highly concentrated markets has almost doubled from 1994 until now? Do you find that troubling? Is that something you want to do something about? I'm trying to throw you an opportunity to say there are going to be some specific changes down there, but I'm kind of running out of areas.

Ms. MAJORAS. Well, I do appreciate it. I do appreciate it, Senator.

As I have committed to you—and I do want to emphasize that this will be a very high priority if I am confirmed. And if I am at the helm of the FTC, we will take action against illegal anti-competitive practices that oil companies engage in when we find it.

With respect to the GAO report and the concentration—

Senator WYDEN. I asked about the fact that concentration nearly doubled in the last few years. You said that gasoline prices would be an important area. I would like to have an answer to the question I asked.

Ms. MAJORAS. Yes, and—yes, and I apologize, Senator. I would like to answer that. With respect to the GAO report that looked at concentration levels, it found that in some areas concentration went way up. It found that in other parts of the distribution chain it went down. Those are all issues that I am looking at.

The question is whether—not just whether concentration increased, but whether it increased and, therefore, had an anti-competitive effect. When we look at mergers, we go beyond just concentration levels. As I understand what FTC, under Chairman Pitofsky and Chairman Muris, has done in mergers, sure, looked at the concentration level and then went beyond it and looked at the whole range of competitive factors or anti-competitive factors in the industry, and that is absolutely what I would do if I were confirmed and if a merger were to come before me.

Senator WYDEN. Well, the report found specifically that increased market concentration leads to higher prices. Now, do you disagree with that?

Ms. MAJORAS. It can lead to higher prices. And I know that the GAO has done some very good work. But, Senator, econometric studies are extremely complicated. Each one needs to be scrubbed. Each one, I would need to look at to determine whether the bases on which assumptions were used makes good sense. So, for example, I want to look at, Why did the GAO use states as a geographic market? As you know, the market definition, when we do any kind of competitive study, is absolutely critical. It's very critical to get that right. And questions have been raised about whether that was actually the proper market. If you review pricing, and you review other competitive or anti-competitive effects in a market that shouldn't have been defined as such, then your results will be off. So before saying that I would take action based on any report,

whether generated by the Federal Trade Commission, the GAO, or whomever, I want to get down to the numbers and satisfy myself as to the way that the report was done.

Senator WYDEN. You said the General Accounting Office does very good work. Mr. Muris wrote, I would say, as strong a dissent as I've seen in a long, long time with respect to the work done by the General Accounting Office. I mean, he basically—he all but said, “What are you smoking over there at the General Accounting Office?”

Ms. MAJORAS. Yes, he did.

Senator WYDEN. That was the only thing he left out. So are you disagreeing with Mr. Muris and saying that you're inclined to be with the General Accounting Office, or do you agree with him, or—give me some sense. Because you just said the General Accounting Office does good work, and Mr. Muris said it was pretty much garbage.

Ms. MAJORAS. Well, yes, Senator, I know that Chairman Muris feels very strongly that this report was not well done. I have an open mind today. I am looking at this report very closely. I am looking at the FTC's comments on the report. The criticism is quite harsh. Both the FTC and the GAO, quite frankly, have economists helping them with that, and, at the moment, I've been relatively on my own on this. So I'm trying to work my way through it. I obviously, I've told you, have worked with econometric studies before, and I'm going to look closely to see whether this criticism or any other criticism is warranted and, of course, what the GAO's response to that criticism has been.

Senator WYDEN. Early on, when I was just outlining a few of my concerns, I talked about this issue of refineries. And you see, for example, on my website, I've posted oil-industry documents that attest to the fact that in the past oil companies have been closed, not primarily for competitive reasons, but to boost profit. And so I'm very interested in seeing fresh policies with respect to refinery closures.

And you said something with respect to refinery capacity, which certainly struck me as what the agency is doing now, in terms of saying that it will investigate, or it will look at matters when brought to them. But I want to give you another chance to outline specifically the kind of thing you would do to deal with the abuses, the kind of abuses that are up on my website. I mean, this is not some abstract thing; this is not something that some, you know, wild-eyed liberal thought up. It's on my website. And I'd like to give you a chance to tell us how you'd deal with it.

Ms. MAJORAS. Thank you, Senator. I appreciate that opportunity.

There's no question that refinery capacity is extremely tight in the United States today. I would first want to make sure that the Federal Trade Commission has a handle on finding out, if and when refineries are going to be taken down, offline, if any capacity is going to be reduced. First we need to know, so we then would be able to take a look at it. Then I would want to look for the reasons why not only refineries are being shut down—is it they have outdated equipment, and so forth, so they can't function profitably? What is the reason? I also want to take a look at the reasons why

companies are not investing in new refineries, because that's obviously a question that has been raised, from what I have read.

Senator WYDEN. Well, are you going to start a program to investigate refinery capacity? As I say, these are oil-industry documents that I've posted. That's why I think they're important. And so I would like to see something that suggests that there's a change in policy. And are you going to start a program to look at anti-competitive practices with respect to refineries?

Ms. MAJORAS. That's what I said. We're going to treat—we're going to take a look at refineries, we're going to take a look at all the closings. And, yes, we can call that a program. Yes. I'd also like to designate a special energy council within the FTC who can spend full time on these issues, who can work directly with me, and who can always be accessible to the public and to Congress. There's always someone to go to, to talk to. Obviously, the Chairman and the other Commissioners, the buck would stop, but I think that that would be another important piece of this, in terms of making it a high priority.

Senator WYDEN. So at this point, you are going to start a program to investigate refinery capacity. This would be an industry-wide, nationwide inquiry. Is that correct?

Ms. MAJORAS. Well, it would be—

Senator WYDEN. Or is this only going to be done if, say, nothing happens on Bakersfield, and you're going to look at Bakersfield?

Ms. MAJORAS. No, I want to look at the reason why any refinery capacity will close.

Senator WYDEN. But how would that be done? I guess what I want to see is a significant, you know, policy change. And if you're saying, "Well, if somebody tries to close one refinery in one community, I'll take a look at that," that's one thing, and it's not what I'm looking for. If you're telling me that you're going to set up a nationwide program to examine anti-competitive practices in the refinery area, that's significant. Which is it?

Ms. MAJORAS. It's something very close to the second one. I want to look at every refinery closing that we can at the FTC to determine why the refineries are being closed. And, as I said, I also—and you can call it part of the same program, call it part of my agenda—I also want to take a look at why we are not seeing investment in new capacity, new refinery capacity, because right now we don't have any extra capacity. So when there are glitches in the flow—and there are, we've seen them—they've contributed to severe price spikes. We don't have anything to fall back on.

Senator WYDEN. Let's try this another way. If you're confirmed, and you take office, on your first day what are you going to do about refinery capacity to follow up on this pledge that you've made to the Committee today?

Ms. MAJORAS. I'm going to talk to the experts at the FTC, and I'm going to find out immediately what has been done already—both to study the issue and also on any specific investigation. That would be the first thing. I'd also like to take a look at how the FTC has done the gasoline price monitoring project, which, as you know, is monitoring gas prices in 360 cities and 20 wholesale markets every day. I want to see how that's been set up and determine

whether we can change that in any way, add to it in any other way—again, in terms of looking at this refinery issue.

Senator WYDEN. Well, if you're going to do the two things that you described—talk to the experts and look at gas price monitoring—that is business as usual. That is a textbook case of just continuing this campaign of inaction, and it's not something that's going to be acceptable to me. I think we can—

Mr. Leibowitz, you are eminently qualified to be on the Federal Trade Commission, and I understand that this has not put you in a comfortable spot, and I regret it very much. I think you'll be a great asset to the Commission. And all of you who have been spared the questioning today can consider yourself in a position to take the rest of the day off.

[Laughter.]

Senator WYDEN. Ms. Majoras, I want to give you the last word and a chance to offer any comments. Chairman McCain indicated that I should break this off when I was done, and I wanted to give you the last word.

Ms. MAJORAS. OK. Well, thank you very much, Senator. I wish I could commit to you that—on the very first day, if I were confirmed, that I would be able to immediately satisfy myself, as a responsible enforcer, that I have enough information and evidence in front of me to actually bring action against particular companies, but I don't think that that would be the responsible thing to do, and I apologize that it sounds to you like business as usual. But, of course, I haven't been there, Senator. I don't have the evidence of—any evidence of wrongdoing before me. I want to look for it. And if we find it, I can assure that, if I am at the helm, we will prosecute.

Senator WYDEN. I'll still give you the last word, Ms. Majoras. What troubles me is that every time I ask about something that would be specific, in terms of action, what I hear is essentially a recitation of what the Commission is doing. I asked you about the first day in hopes that something would change, you know, the first day. If you want to take 6 months out, or 9 months out, or something along those lines, that would be fine, as well.

But what troubles me is, we could actually be going backward, with respect to consumer protection and gasoline pricing if, in fact, you have to recuse yourself from a significant number of these gasoline pricing issues at a time when I and others want to move forward. I think that's very troubling. Now, we don't know that to be the case, but you've certainly said it's a possibility. And given the pervasiveness of Chevron and Texaco in the American economy, it strikes me as certainly something that ought to be of concern.

So, again, last word to you.

Ms. MAJORAS. Well, I thank you very much, Senator, for airing those concerns. I will continue to think about these issues and, I hope, continue to communicate with you about them, because I would like to do that. And I thank you.

Senator WYDEN. My door remains open to you, Ms. Majoras.

And, with that, the Committee is adjourned.

[Whereupon, at 4:22 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

It is a pleasure to welcome Mr. Sosa here today as we consider his nomination to become a member of the Amtrak Board. As I said to the other three Amtrak Board nominees that we've already considered over the past year, the role of an Amtrak Board Member is an important one, especially during this time of debate about the future of our national passenger rail system. A position on the Amtrak Board provides a significant opportunity for strong leadership and determined advocacy on behalf of our national passenger railroad.

As we do each and every summer, Congress is sure to soon be arguing about how much money to appropriate for Amtrak for the coming year. As usual, this debate will probably result with Amtrak's supporters finding just enough money to keep Amtrak limping along for yet another year, with Amtrak's opponents preventing us from doing anything more than preserving the status quo. But I'm afraid that Amtrak's been limping along for so long that it's legs may be ready to fall off.

We've heard from Amtrak President David Gunn that Amtrak can't survive much longer on its starvation diet, and that without significant investment to maintain the railroad, we're going to have worse service and higher costs to Federal Government. Our nation's interstate highway and aviation systems were developed because of strong Federal leadership and funding for the past 50 years. It's because we've failed to provide that same kind of leadership and foresight for passenger rail that we find ourselves in this situation. This is where you as a member of the Amtrak Board could be vitally important.

The Amtrak Board can play a critical role in helping Amtrak become the national intercity passenger railroad that our Nation deserves. With highway gridlock strangling our cities and passengers once again filling our airports, preserving and developing our intercity passenger rail system is one of our best options to enhance capacity and maintain our present level of mobility. And, amidst the daily warnings of terrorist threats here at home and following the events of September 11, it's obvious that passenger rail serves our national security by providing an alternative to highway and air travel in times of crisis. If we are going to have a strong Amtrak, that operates safely and efficiently in communities big and small, then we will need a firm commitment from you as a member of the Board to ensure that passenger rail is promoted as a necessary and critical part of our national transportation system. The nation deserves nothing less.

Amtrak and intercity passenger rail isn't just another private business. It's a unique entity that serves both public and private functions that have to be carefully balanced. Passenger rail systems throughout the entire world require substantial public investment to survive. Private railroads companies in the U.S., who are arguably some of the best freight railroads in the world, got out of providing passenger rail service because it was a money-losing proposition. What intercity passenger rail needs to grow and thrive is consistent and substantial public investment, regardless of whether the service is operated by the government or a private entity. This is the heart of the matter and any future plans for Amtrak that miss this point will only exacerbate Amtrak's delicate financial situation, or worse, precipitate an unacceptable reduction in safety and service.

Let me also take a minute to talk about the nominations process. There has been absolutely no consultation on the lone democratic nominee, as well as the three other republican individuals, including Mr. Sosa, that have been nominated to serve on the Amtrak Board this Congress.

As I have said before, the Amtrak Reform and Accountability Act of 1997 established a 7 member board with a specific mandate that the President "consult" with the Majority and Minority. President Clinton was the first to nominate board members under this authority and submitted 6 names—3 Democrats and 3 Republicans, including Mayor Smith of Meridian, who became Board Chairman. Under the statute, the Secretary of Transportation is the seventh member of the board and has

voting privileges. Clinton's Secretary of Transportation, Rodney Slater, was the 7th voting Member. I am certain there was consultation with both sides. I mention Mayor Smith because he did an excellent job, and is the person Mr. Thompson is slated to replace.

We need to get back to the way nominations were handled in the past for these types of positions, where consultation with the minority was common place and sought by the White House.

PREPARED STATEMENT OF HON. ORRIN G. HATCH, U.S. SENATOR FROM UTAH

Mr. Chairman:

Thank you for giving me a few moments to express my views in support of Jon Leibowitz, President Bush's nominee to serve as a Commissioner to the Federal Trade Commission.

Mr. Leibowitz currently serves as the Vice President for Congressional Affairs for the Motion Picture Association of America. Many of us have had the pleasure of working with Mr. Leibowitz during his time at the MPAA where he quickly became an able and trusted advisor to the MPAA's President and CEO Jack Valenti.

Many of us in the Senate first came to know Mr. Leibowitz during his years of service to the Senate Judiciary Committee where he was the Democratic Chief Counsel and Staff Director for the Senate Antitrust Subcommittee. While working on the Committee staff, he focused his work on competition policy and telecommunications matters and was a trusted advisor to our Senate colleague, Herb Kohl. Prior to working for Sen. Kohl, Mr. Leibowitz worked for the late Sen. Paul Simon. He graduated *Phi Beta Kappa* from the University of Wisconsin in 1980 and from New York University School of Law in 1984.

While on the Judiciary Committee staff, Mr. Leibowitz developed a reputation as an able lawyer, earnest advocate for the consumer, and a consensus builder. His first inclination has always been to work across the political aisle with the goal being to advance bipartisan solutions to public policy problems.

Mr. Leibowitz came to view his role as Sen. Kohl's advisor on "competition" issues quite broadly so that it included giving Sen. Kohl unsolicited advice on the NBA draft and the roster for Sen. Kohl's Milwaukee Bucks. However, I would note that the Bucks' playoff appearances have increased substantially since Jon left Sen. Kohl's employ.

Mr. Chairman, I am always pleased to see those who worked tirelessly for the Senate go on to greater success in life. Mr. Leibowitz is no exception. His fine personal qualities, and the support of his lovely wife Ruth Marcus and their two children—Emma and Julia, will serve him well on the Federal Trade Commission. I strongly urge the Committee to favorably report his nomination to the full Senate where I believe he will be unanimously supported.

ASME
Washington, DC, May 4, 2004

Hon. JOHN MCCAIN,
Chairman,
Committee on Commerce, Science, and Transportation,
United States Senate,
Washington, DC.

Dear Mr. Chairman:

We are writing to express our strong support for President Bush's nomination of Benjamin H. Wu to serve as Assistant Secretary of Commerce for Technology Policy. Mr. Wu has served admirably as Deputy Under Secretary of Commerce for Technology since 2001, and we believe he deserves the post to which he has been nominated.

Under Mr. Wu's leadership, the Department of Commerce's Technology Administration has aggressively advocated for American technology and codes and standards both in the United States and overseas. Partly as a result, Secretary of Commerce Donald Evans in 2003 issued an 8-point initiative to enhance the Department's standards-related activities as a way to increase the U.S. competitiveness in the global marketplace. Through this initiative, the Department of Commerce has strengthened its collaboration with the Office of the U.S. Trade Representative and the Department of State on the vital issues of trade and competitiveness.

Throughout his tenure at Commerce and during his years on Capitol Hill, Mr. Wu has been a forceful and effective advocate for the laboratories and programs at the National Institute of Standards and Technology, an agency of vital importance to U.S. industry. Mr. Wu understands the important mission of that agency and has worked to ensure it has the resources necessary to effectively assist U.S. industry in technology transfer, precision measurements, standards and global trade, and homeland security technologies.

We are pleased that President Bush has recognized Mr. Wu's contributions to the Department of Commerce and to the Nation by seeking to elevate him to the position of Assistant Secretary for Technology Policy. We urge a positive recommendation on his nomination from your Committee to the full United States Senate.

Sincerely,

JUNE LING
*Associate Executive Director,
Codes and Standards*

JAMES F. THOMAS
*President
ASTM International*

June 8, 2004

BY FAX & FIRST CLASS MAIL.

The Honorable John McCain
The Honorable Fritz Hollings
United States Senate Committee on
Commerce, Science and Transportation
508 Dirksen Senate Office Bldg
Washington, DC 20510-6125

**Re: Deborah Majoras' Nomination to Federal Trade
Commission**

Dear Senators McCain and Hollings:

We write to support the nomination of Deborah Majoras to become Chairman of the Federal Trade Commission. The signatories are all former Chairs of the Section of Antitrust Law of the American Bar Association, which is the largest association of antitrust and competition lawyers in the world. We have worked with Ms. Majoras for many years, both during her time in government and when she was in private practice.

Ms. Majoras had a distinguished record in antitrust enforcement in her three years as Deputy Assistant Attorney General at the Antitrust Division of the U.S. Department of Justice. During her tenure at the Antitrust Division, she was a committed and thoughtful antitrust enforcer and advocate. She articulately explained U.S. antitrust enforcement policies. She worked effectively with foreign enforcement officials on matters being reviewed in the U.S. and abroad, and on building the International Competition Network. She works effectively with agency staff. She has a thoughtful and sophisticated understanding of both antitrust issues and the economic principles that underlie many antitrust issues. She has demonstrated her commitment to effective antitrust enforcement.

The Honorable John McCain
The Honorable Fritz Hollings
June 8, 2004
Page 2

Our Nation is fortunate that Ms. Majoras is prepared to return to public service as Chairman of the Federal Trade Commission.

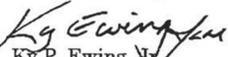
Sincerely,

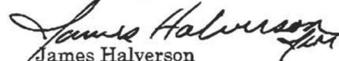

Harvey Applebaum


E. W. Barnett


John DeQ. Briggs


Roxane C. Busey

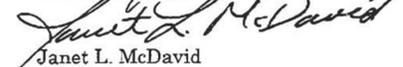

Ky P. Ewing, Jr.


James Halverson

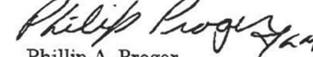

Carla Hills


Caswell O. Hobbs


Robert T. Joseph


Janet L. McDavid


Richard Pogue


Phillip A. Proger

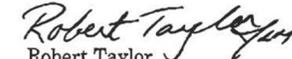

Harry Reasoner

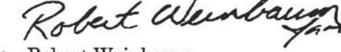

J. Thomas Rosch


James F. Rill


Irving Scher


Alan H. Silberman


Robert Taylor


Robert Weinbaum

cc: Members of the Senate Committee
on Commerce, Science & Technology

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
BRETT PALMER

Question 1. On September 6, 2003, workers with Lockheed Martin were alleged to have tipped over and destroyed the NOAA N Prime polar orbiting satellite on the assembly room floor. What is the status of the investigation into this accident, and what steps does the Secretary of Commerce intend to take to ensure the American people are able to recover the financial costs from this accident?

Answer. The Department of Commerce has undertaken three responses to this mishap.

First, immediately following the incident, NOAA and NASA, its contracting agent with Lockheed Martin for NOAA N Prime, commenced taking appropriate steps to determine the cause of the accident and to implement corrective action, both at the contractor's facility and at the NASA Center responsible for providing oversight of the NOAA N Prime spacecraft. NASA will issue its Accident Investigation Report in the near future.

Second, NASA and the Department of Commerce are assessing available legal means for recovery of the Government's financial costs due to this accident. Following a thorough evaluation of the NOAA N Prime spacecraft and instruments, NOAA and NASA have determined, on a lowest cost, lowest risk basis, that it may be possible to repair or replace components on NOAA N Prime in time to meet a required launch in early FY 2008. The Department of Commerce/NOAA and NASA are negotiating with Lockheed Martin to implement this step if it can be achieved within the anticipated run out of the FY 2005 President's Budget Request had the accident not happened. In other words, no tax dollars other than those originally envisioned for building and placing the satellite in orbit would be spent to rebuild NOAA N Prime.

Third, to protect Government interests in the event these negotiations are unsuccessful, NOAA and NASA are evaluating and preserving alternate means to deliver the environmental measurements and other data that were to come from the NOAA N Prime mission.

Question 2. I remain deeply troubled by the growing number of Congressional earmarks that have been attached in both statutory and report language for the Department of Commerce. What are your thoughts about the effects of Congressional earmarking on agencies and how do you treat these earmarks when they appear in statutory or report language?

Answer. The Department of Commerce works very closely within the Administration in the annual budget formulation process, resulting in the submission of our annual budget request to Congress. I believe the President's budget submission best reflects the funding needs and priorities for the Department. The Department does not and should not advocate for spending provisions that are outside of the President's request.

The Administration strongly prefers to avoid earmarks, because the Executive Branch needs the flexibility to make decisions about how best to allocate funds within each program. However, Congress has the Constitutional prerogative to write the appropriations bill. Congress can, and often does, add specific language in the appropriations language that sets into law how specific funds will be spent. It is our duty to obey all the laws, spending laws included. In doing so, we look first to the actual language of the law, but we take into account any additional expressions of Congressional intent that may be included in accompanying report language. Report language does not bear the force of law. It is worth stating that although report language can be helpful in understanding and implementing the Congressional intent of the law, report language does not override the actual text of the law.

Question 3. Last year, Congress passed the 21st Century Nanotechnology Research and Development Act (P.L. 108-153). This law authorized the Secretary of Commerce to establish a clearinghouse of information related to commercialization of nanotechnology research. What steps have been taken to establish this clearinghouse?

Answer. The Department has taken preliminary steps to create the nanotechnology commercialization clearinghouse, but is not close to completing this project. The bill as passed made the establishment of the clearinghouse on nanotechnology commercialization the responsibility of the Secretary's designee in consultation with the National Nanotechnology Coordination Office. The National Technical Information Service (NTIS) continues to receive and make available federally funded research on nanotechnology as part of its overall clearinghouse program. In addition, the National Nanotechnology Coordination Office and the NTIS have begun discussions for a possible Memorandum of Understanding toward the goal of directing

more information to the NTIS for the dissemination of information related to nano-technology research.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
BENJAMIN H. WU

Question 1. The Administration's Climate Change Technology Program (CCTP) has a FY 2005 budget request of approximately \$3 billion. The Climate Change Science Program (CCSP), headed by the Department of Commerce, has a FY 2005 budget request of approximately \$2 billion. The Climate Change Science Program recently completed its strategic plan and the Climate Change Technology Program plans to issue its initial version of a strategic plan this month. What are your plans for ensuring that the results from the scientific research are incorporated into the technology development programs?

Answer. The Department's CCSP and CCTP efforts are led by our National Oceanographic and Atmospheric Administration (NOAA). I have been advised that both the CCSP and CCTP Strategic Plans recognize the need for close collaboration of the two programs. One such collaborative activity could be technology transfer by industry into the marketplace of scientific research that holds commercial promise. If this technology transfer is successful, we can move into commerce the basic scientific research that holds the potential to monitor climate change and reduce our greenhouse gas emissions. In doing so, we would also enhance the return on this substantial taxpayer investment.

The Office of Technology Policy (OTP) has statutory responsibilities and executive oversight of our Nation's Federal technology transfer enterprise. Additionally, OTP manages the Interagency Working Group on Technology Transfer, comprised of Federal agencies and laboratories that conduct technology transfer activities. As the Assistant Secretary of Technology Policy, I would be willing to promote appropriate efforts to use the working group for an interagency review of actions to assist in furthering the CCTP mission.

I understand that both the CCSP and CCTP recognize the need to integrate science and technology to further the mission of each. In the February 2004 review of the CCSP Strategic Plan, the National Academies said that the CCSP and CCTP had made "commendable efforts" to integrate their activities, particularly with respect to assessing the "scientific implications of technologies under consideration by the CCTP" and developing "realistic emissions scenarios for climate and associated global changes with these technologies in mind." The Academies also noted that "[c]omments by CCSP and CCTP representatives at the committee's August 2003 meeting indicated that efforts are already yielding benefits in coordinating the two programs." Wherever helpful, I would be pleased to work as Assistant Secretary with NOAA, the Department of Energy, the Environmental Protection Agency, other participating Federal agencies, and the Committee to further facilitate the integration of science and technology for both programs.

Question 2. In a December 2003 editorial in the *Financial Times*, Paula Dobriansky, the Under Secretary of State for Global Affairs, wrote that there are only two paths forward toward achieving big reductions in greenhouse gas emissions. One was to use existing technologies and the other was to use breakthrough technologies, which she said is the only acceptable, cost effective option. She further states that a rigid policy that allows no role for new technology would be ill-suited to the realities of the 21st century. One of the main elements in any successful technology development program is the "driver." Can you comment on the importance of having a mandatory emissions reduction program as the "driver" for the Administration's climate change technology development program?

Answer. From the scientific information currently available, the Administration has taken an approach that includes robust mitigation technology research, development, and deployment combined with tax incentives and voluntary programs aimed at securing least cost greenhouse gas emissions reductions. I understand that other market-based drivers will be examined as needed in the future. While a mandatory emissions reduction program could be implemented as a "driver" to spur the development of breakthrough climate change technologies, the regulatory bodies that would consider such action will need to weigh any decision based on a balance of impact to industry, our international competitiveness, and sound science, among other factors.

Question 3. The funding for the Office of the Under Secretary of Technology Administration at the Department of Commerce was eliminated in the Fiscal Year 2004 Commerce, Justice, and State Appropriation bills as initially reported in both the Senate and the House. What actions has the Technology Administration taken

to address the concerns about the agency's performance raised by these actions? What actions will you take as the Assistant Secretary of Commerce for Technology Policy to continue to address these performance concerns raised by the Appropriators?

Answer. The Office of the Under Secretary for Technology and the Office of Technology Policy (OTP) provides policy guidance to the Secretary of Commerce and serves as the primary portal for the high technology industry, advocating for innovation and industrial competitiveness within and outside the government. Last year's initial congressional appropriation actions for the Office of the Under Secretary were clearly disheartening since, as we understood, the actions were taken for reasons that were not directly related to the impact, success, or abilities of the office. Since the Fiscal Year 2004 appropriations cycle, we have sought out regular meetings and have begun a constructive dialogue with both the House and Senate appropriators to discuss concerns, future activities, and opportunities for partnership. We were especially grateful for the Committee's consideration and funding authorization, consistent with the President's budget request, in S. 1395, the Technology Administration Authorization Act of 2003. We were also pleased that the high technology industry sectors spoke out so forcefully in support of the vital need for the office and the necessity for an effective advocate in the government.

As the Assistant Secretary for Technology Policy, I intend to continue to ensure that the funding for OTP continues to be fully leveraged and magnified in order to provide strong returns on a relatively small Federal investment. For well over the past two decades, high technology industries have disproportionately been the lead engine of our economy. OTP works in partnership with the private sector to develop and advocate national policies and initiatives to strengthen the U.S. economy. Under my direction, the office will promote domestic and international technological competitiveness in areas such as technology transfer, business innovation, technology-led economic growth, and workforce preparation for a technology-driven, knowledge-based future.

I expect that OTP will produce high value products and outputs, which meet strategic objectives consistent with the Department's mission and the President's Management Agenda (PMA). These specific objectives include: (1) Support and improve the American innovation system (examples include strengthening the Federal technology transfer system and identifying policies that promote the competitiveness of the U.S. science and technology workforce); (2) Advance the role technology plays in U.S. economic growth and homeland security (increasing the understanding of policymakers of the importance of emerging technologies and identifying strategies that facilitate technology-led economic growth); (3) Strengthen the competitive position of U.S. technology industries (analyzing the impact of globalization, trade, standards, and technology development in an international marketplace, proposing policy options on critical U.S. business climate issues, and promoting adoption of policies that support innovators and entrepreneurs); and (4) Effectively manage OTP's organization, capabilities, and resources to maximize the effectiveness of its activities and services (transforming OTP's internal organization and procedures to align with the PMA objectives).

Question 4. The Office of Technology Policy is charged with working in partnership with the private sector to develop and advocate national policies to build America's economic strength. One area of great concern today is the U.S. manufacturing sector. What policies will you advocate to improve the American manufacturing sector?

Answer. The current state of U.S. manufacturing employment is troubling, despite very positive current trends indicating a rebound in that sector. Manufacturing employment has been declining over an extended period. This trend reflects, in part, to higher productivity growth in the U.S. than in other countries. Our recent analysis indicates that U.S. manufacturing jobs have declined for two major reasons: productivity growth and contracting out to domestic suppliers; with two key factors exacerbating the long-term trend: investment and slower growth abroad. OTP will continue to provide analysis and assistance in efforts to improve our manufacturing sector. OTP provided significant contributions to the January 2004 *Manufacturing in America* report. OTP intends to work very closely with the Department's newly created Assistant Secretary for Manufacturing and Services to collaborate on measures improving manufacturing. Specifically, we need to enhance our manufacturing research and development capabilities, improve supply chain processes, implement enterprise integration that fully utilizes new technologies, ensure that we have a free and fair trade policy for U.S. manufactured exports overseas, and remove foreign trade barriers, among others.

Question 5. What are your thoughts on the recent “out-sourcing” controversy? One of the “not-yet discussed” aspects of out-sourcing is the relocation of U.S. research labs to other countries. This may create a situation known as “in-sourcing” whereby technology developed outside the country is used to create jobs within the U.S. Any thoughts on this phenomenon?

Answer. We need to look into all aspects of the impact of offshoring. There is currently a lack of data that can accurately forecast and determine offshoring trends. The ability to identify these trends is crucial for policymakers and lawmakers to develop informed decisions and be ahead of the policy curve on this very important, yet politically sensitive issue. OTP was tasked by Congress in last year’s appropriations bill to provide an analysis of workforce globalization in key technology sectors and will be submitting a summary of findings in July 2004. Additionally, OTP is consulting with the Department’s Economic Statistics Administration on methods to improve the quality and timeliness for measuring outsourcing, as well as “insourcing” when foreign multinationals choose to locate production and jobs in the U.S. Insourcing is an important datapoint that needs to be effectively measured so that it can be engaged as a part of the greater offshoring debate.

Question 6. Greater international competitiveness in the technology sector is viewed by some observers as a serious challenge to U.S. economic leadership. What are your thoughts on the rise of China and other nations’ share of the technology sector, and how should the U.S. Government and American companies adapt to the new economic climate?

Answer. It is clear that the U.S. cannot afford to stand still while the rest of world moves forward. The rapid pace of technology maturation requires us to be constantly vigilant and aggressive. Creating policies that allows us to maintain our Nation’s technological preeminence in the face of ever-increasing global competitive pressures will be an OTP priority. We must adapt to the new global, knowledge-based marketplace. In doing so, we need to have a policy environment that promotes innovation and allows the technology sector to grow and prosper. We must have, at minimum, a strong education system to expand our country’s knowledge base, free and fair international trade for American exports, a climate that promotes technology as a powerful, productive job creator, and a strong intellectual property rights regime.

Question 7. Many experts believe that nanotechnology can play a role in revolutionizing the U.S. economy, and will offer an opportunity for continued U.S. economic leadership. Some experts have projected that sales of products based on nanotechnology will reach \$1 trillion by 2015. What steps should the Office of Technology Policy take to ensure the smooth transfer of the results of this new field of research from the laboratory to the commercial sector?

Answer. Nanotechnology has the potential to change and/or replace industries and processes, knowledge, and skills as we currently define them. So, it is clear that the first nations to harness these new technologies will be in an advantageous position to reap the greatest rewards. That is why OTP has been prominently engaged in the debate to bring the fruits of this new field of research to commercialization.

Yet at the same time, nanotech’s revolutionary nature will challenge our regulatory systems which may also have to cope with uninformed public fear of potential negative consequences. If we fail to create appropriate regulatory regimes with the flexibility to adapt to rapidly advancing technologies, such as nanotechnology, we will deny ourselves extraordinary economic and societal benefits. And other nations will be sure to step into the vacuum. Comparative advantage will accrue to countries that find the right approach to regulatory oversight in balancing legitimate societal interests. We must ensure nanotechnology is understood and welcomed by the public, lest unfounded fears undermine its potential. OTP has engaged with key stakeholders—government, industry, academia, and financiers—so that we can ensure that knowledge moves quickly and efficiently from the laboratory to the marketplace. We are also working with those stakeholders to ensure that we have a regulatory environment that is fair, open, and transparent—a framework that allows good science to overcome overly bureaucratic and burdensome restrictions in order to bring the promise of nanotechnology to the marketplace.

Question 8. I remain deeply troubled by the growing number of Congressional earmarks that have been attached in both statutory and report language for the Department of Commerce. What are your thoughts about the effects of Congressional earmarking on agencies, and how do you treat these earmarks when they appear in statutory or report language?

Answer. With expected budget pressures being placed upon all discretionary Federal programs, I share the concern that congressional earmarks could have the potential to limit the ability of our agencies to place appropriate emphasis on impor-

tant programs and activities. I would defer the ultimate resolution of Departmental actions relating to earmarks when they appear in statutory or report language to the guidance of our General Counsel's office and our Legislative Affairs office.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN ENSIGN TO
DEBORAH MAJORAS

Mr. Chairman, I would like to propose to both the Federal Trade Commission nominees a series of questions related to a recent Federal Trade Commission staff report entitled "Possible Anticompetitive Barriers to E-Commerce: Wine".

Responses from Deborah Majoras

I understand that the Committee staff has indicated that a general answer to the questions below will suffice. For your convenience, however, I also have provided responses that the FTC previously gave in response to the specific questions.

I am aware that last year, the FTC released a staff report entitled "Possible Anticompetitive Barriers to E-Commerce: Wine". In sum, the report examined state law barriers to Internet wine sales and concluded that wine consumers could save money and have greater choice by purchasing wine on the Internet. I understand that questions have been raised concerning the limited scope of the report, whether the report adequately addresses the tax ramifications of direct shipping, whether the report adequately addressed problems with respect to sales to minors, and whether the report is relevant in light of the 21st Amendment. Because I am not at the FTC currently, I have not had the opportunity to explore these issues with the FTC staff who prepared the report or with those who have expressed concerns with the report's methodology and conclusions. I recognize, however, that this is an important issue (and, indeed, important enough from a legal standpoint that the Supreme Court has granted certiorari in a case raising issues regarding Internet wine sales), and I have an open mind. If confirmed, I will carefully examine the issues raised. At that time, I would be pleased to meet with you to discuss your concerns.

The answers set forth below have previously been provided by the FTC

Question 1. With respect to the FTC staff report that included a study of market conditions in McLean, Virginia:

(a) How does that study provide guidance for the rest of the United States with regard to the price and variety of wines available to consumers?

Answer. Prior to the study of market conditions in McLean ("McLean study"), there was little empirical information on how access to out-of-state wine sellers through the Internet affected prices and varieties of wines available to consumers. To address this void, the study analyzed the prices and wine selections offered by stores that identified themselves as wine retailers in the greater McLean, Virginia area for a pre-identified bundle of wines. McLean was chosen as the relevant retail area for several reasons. First, at the time the study was conducted, Virginia banned direct sales from out-of-state suppliers. Second, given the socio-economic status of many residents in McLean (and northern Virginia, generally), it seemed likely that several bricks-and-mortar outlets could be found locally that catered to the needs of a sophisticated wine drinking population. As a result, an estimate of the effect on variety was likely to be conservative and could not be dismissed as driven by the choice of a location where few fine wines would likely be available. McLean is just one market; smaller or less affluent markets likely have somewhat less variety than McLean, and larger or more affluent markets likely have somewhat more variety.

The McLean study found that consumers can purchase many wines online that are not available in nearby bricks-and-mortar stores. The study found that 15 percent of a sample of popular wines available online were not available from retail wine stores within ten miles of McLean. The study also found that, depending on the wine's price, the quantity purchased, and the method of delivery, consumers can save money by purchasing wine online. Because shipping costs do not vary with the wine's price, consumers can save more money on more expensive wines, while less expensive wines may be cheaper in bricks-and-mortar stores. The McLean study suggests that, if consumers use the least expensive shipping method, they could save an average of 8–13 percent on wines costing more than \$20 per bottle, and an average of 20–21 percent on wines costing more than \$40 per bottle. These results should be interpreted as an indicator of the potential for direct shipment to offer price and variety benefits to consumers, rather than a quantitative prediction of the size of these benefits if a direct shipment ban was lifted.

(b) Doesn't the FTC testimony to the Committee contradict testimony received by the FTC at the FTC Workshop clearly demonstrating that wineries sell wine directly to consumers at retail prices, and when shipping costs are included, the cost to consumers is actually more expensive than purchasing the same products through the three-tier system?

Answer. The McLean study found that, including shipping costs, consumers can save more money on more expensive wines (as detailed in the previous answer), while less expensive wines may be cheaper in bricks-and-mortar stores. At the FTC Workshop, witnesses provided a variety of largely anecdotal views as to the prices available online. Systematic data analysis, however, generally provides more accurate and reliable evidence regarding prices than anecdotes. The McLean study was conducted by economists trained in methods of empirical analysis and reviewed by Ph.D. economists.

Question 2. The FTC press release regarding the FTC report claimed the report did not address the issue of lost taxes, yet at the Subcommittee hearing, the FTC claimed knowledge of the tax ramifications of direct shipping.

(a) Has new information with regard to the tax collection ramifications of direct shipping been made available to the FTC?

(b) How were you able to explain the tax collection ramifications of direct shipping to the Subcommittee if the FTC report did not address this issue?

Answer. The Report focuses on the competition and consumer protection issues, although the Report does discuss the tax issue. The press release identifies the scope of the tax discussion: "The report also does not focus on the merits of the tax debate, other than to note that states attempting to collect taxes generally report few or no problems with collecting them." See Federal Trade Commission, Possible Anticompetitive Barriers to E-Commerce: Wine (2003) ("Report"), at <http://www.ftc.gov/os/2003/07/winereport2.pdf>. Accordingly, while the Report does not "focus" on the tax issue, the Report does discuss information that state officials provided to FTC staff. For example, FTC staff asked officials from many different states the following questions: "Do you try to collect sales or excise taxes on shipments of wine into your state, and if so how effective have you been? Have you had any problems collecting taxes from out-of-state shippers?" The Report reprints the state officials' answers in an appendix, and also discusses their answers. In general, several states that allow interstate direct shipping also collect taxes from those shipments. By requiring out-of-state suppliers to obtain permits, states such as New Hampshire have sought to achieve voluntary compliance with their tax laws. Most of these states report few, if any, problems with tax collection.

Question 3. The 21st Amendment to the Constitution of the United States gives individual states the right to regulate the distribution of alcohol.

(a) Although admittedly not addressed in the FTC report, doesn't the 21st amendment give states the right to regulate the distribution of alcohol?

Answer. Yes. Section 2 of the Twenty-First Amendment states as follows: "The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

(b) What constitutional or statutory authority gives the Federal Trade Commission the right to involve itself in alcohol importation or distribution?

Answer. The Federal Trade Commission is charged by statute with preventing unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Federal Trade Commission Act, 15 U.S.C. §46. This statute gives the Commission the authority to "gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce." Under this statutory mandate, the Commission seeks to identify business practices that impede competition or increase costs without offering countervailing benefits to consumers. See 15 U.S.C. §46(b). As outlined in the written testimony, Commission staff have often assessed the competitive impact of regulations and business practices affecting e-commerce in a variety of industries, including real estate, contact lenses, and funeral goods. Such assessments can inform the decisions of both state and Federal policymakers.

(c) What authority allows the Federal Trade Commission to supercede the authority of the Constitution of the United States and the 21st Amendment?

Answer. The Federal Trade Commission does not have the authority to supersede the authority of the Constitution of the United States or the 21st Amendment.

Question 4. What logical process has the FTC used to extrapolate from a report declaring that a state did not conduct any compliance checks or stings with regard

to sales to minors, and conclude from that [lack of] information that there is not a problem with sales of alcohol to minors associated with direct shipping?

Answer. To gather information on the actual experiences of states that allow interstate direct shipping, FTC staff contacted officials from numerous reciprocity and limited importation states and asked them a variety of questions, including whether they had experienced problems with interstate direct shipping to minors. Most of the surveyed states provided written responses. Staff also reviewed testimony from a California alcohol regulator who had testified before California's legislature.

In general, these state officials report that they have experienced few, if any, problems with interstate direct shipment of wine to minors. Most of them do not believe that interstate direct shipment of wine to minors is currently a serious problem, although several of them believe that it is possible for minors to buy wine online. None of them report more than isolated instances of minors buying or even attempting to buy wine online. Some of them, such as California, have monitored the issue of alcohol delivery to minors for years or even decades.

Notably, New Hampshire has conducted stings against out-of-state shippers. In a letter to FTC staff, New Hampshire reported that, "The NH Liquor Commission Bureau of Enforcement has in the past done compliance stings against out-of-state shipper [sic] who do not hold permits and against shippers who do hold permits." New Hampshire then reported that, "We suspect there may be some instances where this is occurring but we have very little evidence in this area and do not believe this is a serious problem at this time."

As your question suggests, the fact that states have received few complaints about direct shipments to minors does not establish that minors are not purchasing wine online. As noted by a Michigan Assistant Attorney General, minors who buy wine online are unlikely to report their purchases to the authorities, and neither the package delivery company nor the supplier may know or care that they are delivering wine to a minor. The FTC cannot rule out the possibility that minors are buying wine online undetected by state officials. Nevertheless, states that allow interstate direct shipping generally say that direct shipping to minors currently is not a serious problem, and that they have received few or no complaints about direct shipping to minors. States can receive information in ways besides stings. For example, if online wine sales to minors were a serious problem, one would expect that at least some parents would complain to the relevant state officials, particularly because parents likely would see the wine orders charged to their credit cards. In other words, the fact that states have received few such complaints is itself important information about the scope of the problem.

(a) How do you reconcile the FTC's finding of "no problem" with respect to sales to minors in light of testimony given to the FTC by the Michigan Attorney General's office, media reports, and information provided by witnesses at the Subcommittee hearing?

Answer. FTC staff carefully evaluated all of the information received at the workshop. FTC staff also gathered additional information from studies, media reports, and officials from many different states, including New Hampshire, Illinois, California, Michigan, and others. The Report did not find that there was "no problem" with respect to sales to minors. As discussed in the Report, in states that allow interstate direct shipping, the state officials generally report that they have experienced few, if any, problems with shipments to minors. As the Report also notes, there is evidence, largely anecdotal, that minors have been able to buy wine online in some instances. See Report, pp. 26–27. Nevertheless, FTC staff found or received no systematic studies assessing whether direct shipping causes an increase in alcohol consumption by minors. The principal sources of information—data from state compliance checks and one empirical study on home alcohol delivery—are inconclusive on this point. In regard to Michigan and other states that ban interstate direct shipping, it is not clear whether their experiences are comparable to the experiences of states that allow direct shipping, because those states may have different ordering and distribution practices, such as different levels of training for couriers in those states. In any event, the evidence from the McLean study suggests that an interstate shipping ban primarily deprives consumers of access to lower-cost sources of high-end, expensive wines. FTC staff has seen no evidence indicating whether higher prices for these types of fine wines would curtail consumption significantly either among the general populace, minors, or problem drinkers.

(b) What evidence does the FTC possess that the "safeguards" noted by proponents of direct shipping actually work? How do you reconcile that lack of evidence with the evidence given at the FTC Workshop and by WSWA at the Subcommittee hearing that shows the safeguards do not work?

Answer. Unfortunately, there is no systematic empirical data revealing how often couriers obtain a valid adult signature. Both UPS and FedEx, however, have adopted policies that require their couriers to obtain adult signatures. As several Federal courts have discussed, states can develop penalty and enforcement systems to provide incentives for both out-of-state suppliers and package delivery companies to comply with the law.

If online wine sales to minors were occurring frequently, one would expect that parents would complain to the relevant state officials, particularly because parents likely would see the wine orders charged to their credit cards. FTC staff contacted officials from numerous reciprocity and limited importation states and asked them a variety of questions, but those state officials generally report that they have experienced few, if any, problems with interstate direct shipment of wine to minors. Most of those states require an adult signature at the point of delivery and similar safeguards discussed in the Report. In addition, FTC staff is aware of no evidence that states that allow intrastate direct shipping have experienced problems with direct shipments to minors. See Report, pp. 27–29. Finally, as noted earlier, it is not clear whether the experiences of states that ban interstate direct shipping are comparable to those of states that allow such shipping, because ordering and distribution practices, such as the extent of training for couriers, may differ.

(c) Why does the FTC on its Internet site have information warning about Internet gambling and its negative affect on children?

Answer. The FTC Internet site contains two pages regarding Internet gambling. These sites are characteristic of the FTC's broad consumer education program, which provides consumers with information about issues of concern. The sites warn parents that many Internet game operators operate from servers outside the U.S.—beyond the jurisdiction of state or Federal regulations. The sites warn that minors who gamble online can lose money, ruin a good credit rating, and become addicted. They further warn that gambling sites do not pay out to minors. See FTC website, <http://www.ftc.gov/bcp/conline/pubs/alerts/olgamble.htm>; <http://www.ftc.gov/opa/2002/06/onlinegambling.htm>.

(d) In light of the fact that the FTC feels Internet gambling is dangerous for children, why does the FTC believe that Internet sales of alcohol to minors is not dangerous to children? Isn't alcohol a greater real danger to children than gambling?

Answer. The FTC has consistently reported that alcohol consumption poses significant dangers to minors. As discussed in the Report,

Much of the public debate surrounding online sales focuses on the problem of underage drinking. In 2002, approximately 20 percent of eighth graders, 35 percent of tenth graders, and 49 percent of twelfth graders reported that they had used alcohol one or more times within the previous thirty days. . . . Alcohol use imposes significant costs, in both human and economic terms. Although the numbers are very difficult to quantify, one study estimated that, in 1996, the total cost of underage drinking—including traffic crashes, violent crime, burns, drowning, suicide attempts, fetal alcohol syndrome, alcohol poisoning, and treatment—was \$52.8 billion.

See Report at 15. See also FTC, *Alcohol Marketing and Advertising* (2003) at 1.

There are meaningful differences between online gambling and online wine sales. In the case of Internet gambling, the entire transaction occurs online, the injury is completed without the intervention of any gatekeeper, and the activity often falls outside the effective jurisdiction of state and Federal operators. In contrast, online alcohol sales are not completed until the product is delivered to the home, and the delivery company thus plays a role analogous to the retail clerk, serving as a gatekeeper to ensure that an adult receives delivery. Moreover, operators of alcohol Internet sites are licensed entities subject to Federal and state law enforcement penalties in the event of illegal conduct. There are, therefore, important protections and effective avenues of enforcement should violations occur.

Finally, the available evidence suggests that retail sales to minors of all alcohols pose a much greater problem than online sales of wine. Several state officials opined that minors are more interested in beer and spirits than wine. New Hampshire concluded that minors are less likely to purchase wine online because of the extra expense of ordering over the Internet. These conclusions correspond with the McLean study, which found that when transportation costs are included, lower-end wines are more expensive when purchased over the Internet than through the three-tier system. Minors would have to pay a hefty premium, from 33–83 percent, to purchase a bottle of wine costing less than \$20 online and have it delivered to them via 2nd Day Air.

Similarly, several state officials commented that, based on their experience, minors were much more likely to buy alcohol through offline sources than over the Internet. As discussed in the written testimony, in a 2002 survey, large percentages

of high school students, from 68–95 percent, said that it is “fairly easy” or “very easy” to get alcohol. In examining offline and online stings, there are not enough data from which to conclude that minors can buy wine more easily or less easily online than offline (among other reasons, there is far more sting data about offline sales). Theoretically, either channel could be more accessible to minors. In the absence of empirical information, it is difficult to ascertain whether online wine sellers are, or would be, a significant source of alcohol for minors.

(e) In light of the information reported in media and other sting operations clearly demonstrating that common carriers often do not properly ascertain that the recipient of packages containing alcohol is of legal age; and that carriers sometimes leave packages containing alcohol are left at the doorstep of mailing addresses without any attempt to obtain proper identification, why does the FTC believe that common carriers can be relied upon to carry out the function of properly delivering alcohol by checking the identification of the package recipients?

Answer. Although there is some anecdotal information, there is no systematic empirical data revealing how often couriers obtain a valid adult signature. Both UPS and FedEx, however, have adopted policies that require their couriers to obtain adult signatures. Courts have suggested that states could develop statutory systems that would impose similar requirements on package delivery companies as on retail stores. One court concluded that “[t]here is no practical difference from requiring such a procedure and that required of store clerks or bartenders who regularly check customers for valid identification to verify age before allowing the sale of alcoholic beverages.” For instance, Michigan requires that retailers make a “diligent inquiry” to verify a customer’s age, such as by examining a picture identification. States could impose similar requirements on delivery personnel, including training requirements, along with appropriate penalties. In Illinois, for example, package delivery companies “may face business or criminal offenses for failure to report [alcohol shipments] to the [Illinois Department of Revenue].” Many states go beyond verification and require that package delivery companies obtain an adult signature at the point of delivery. Moreover, in New Hampshire, the carrier “is required to forward to the NH Liquor Commission on a monthly basis signature information.” For these reasons, package delivery companies have legal incentives to check the identification of package recipients. The Report recommends that states develop penalty and enforcement systems to provide incentives for both out-of-state suppliers and package delivery companies to comply with the law. Such systems would be less restrictive than an outright ban on interstate direct shipping. See Report, pp. 29, 40. Notably, the National Academy of Sciences largely agrees with this position.

(f) In light of the fact that the Tax and Trade Bureau has never taken a single license away from a winery, [in the face of voluminous evidence of violations from the Michigan Attorney General’s office, for example], why does the FTC believe that the Tax and Trade Bureau can be relied upon as a caution to those shipping alcohol illegally?

Answer. TTB, which has the authority to revoke a winery’s basic permit, has stated that it will assist states in combating significant violations of state law:

ATF [now TTB] could under appropriate circumstances take administrative action against a basic permit where a basic permittee ships alcohol beverage products into a state in violation of the laws of that state. . . . ATF will respond to an official state request for assistance only where a written determination has been made by the chief administrative officer of the state liquor enforcement agency or the State Attorney General that the conduct violates state law and ATF has independently determined that the state law violation has some pronounced impact on the regulatory and/or criminal enforcement scheme of the state in question. That is, ATF will evaluate the conduct in question in relation to the proper exercise of its Federal authority over matters that necessitate Federal intervention.

See Report, pp. 30–31. FTC staff is not aware of whether the circumstances for TTB’s involvement, as outlined by TTB, have ever been met, *i.e.*, whether any state has ever made an “official state request for assistance,” whether there has ever been a “written determination . . . by the chief administrative officer of the state liquor enforcement agency or the State Attorney General that the conduct violates state law,” or whether TTB has ever “independently determined that the state law violation has some pronounced impact on the regulatory and/or criminal enforcement scheme of the state in question.” Indeed, Michigan officials told FTC staff that they have never attempted to use the Twenty-First Amendment Enforcement Act against out-of-state shippers. See Report, p. 39 n.170. Some states may not turn to TTB;

for example, New Hampshire works with out-of-state suppliers that may be violating the law:

[T]he State of New Hampshire Liquor Commission collects an 8 percent fee on all shipments into the State of New Hampshire. When the NH Liquor Commission discovers an improper shipment we contact the company and inform them of the laws in NH. Once the company learns of NH laws they normally get a permit or stop shipping into NH. The NH Liquor Commission is working with out-of-state supplier[s] and encouraging them to obtain a permit.

See Report, p. 38.

Question 5. What would be the response of the FTC be to a mother of a teen who ordered wine over the Internet, who had the wine delivered to his door or didn't have his ID checked, and ended up getting hurt in a drunk driving accident? How would the FTC characterize the alleged safeguards in place in this circumstance?

Answer. The FTC has consistently reported that alcohol consumption poses significant dangers to minors. See Report at 15; FTC, *Alcohol Marketing and Advertising* (2003) at 1. Unfortunately, safeguards sometimes fail for both online and offline sales. For example, bricks-and-mortar stings typically find that minors are able to buy alcohol between 15–30 percent of the time. In Michigan, minors were able to buy alcohol 55 percent of the time after showing a valid Michigan license that identified the customer as a minor. See Report, p. 35.

Question 6. How would the safeguards against minors' access to alcohol espoused by the FTC have prevented deliveries of alcohol from being made in the following cases:

(a) The teen in the alcohol rehabilitation facility in Michigan who successfully ordered 2 separate cases of bourbon, and had them delivered to him in the rehabilitation facility?

(b) The teen that successfully ordered a bottle of wine delivered to him in the South Dakota state capitol?

(c) A 15-year-old who used his own credit card to successfully order bottles of tequila, and had the package left on his doorstep [no I.D. check] in a state that prohibits such shipments regardless of consumer age?

(d) An 11-year-old boy who successfully accepted delivery from a common carrier of a bottle of wine in a box clearly marked "wine" and labeled to require an adult signature?

(e) The sale and delivery of beer to a 17-year-old in Alabama from a company in Illinois?

(f) The shipment of beer to a minor in the Missouri Attorney General's office?

Answer. Some states have applied the same types of safeguards to online sales that already apply to bricks-and-mortar retailers, such as requirements that package delivery companies obtain an adult signature at the time of delivery. Some states also have developed penalty and enforcement systems to provide incentives for both out-of-state suppliers and package delivery companies to comply with the law. These states generally report few or no problems with shipments to minors, although no safeguards are foolproof.

Question 7. What system of safeguards is the FTC aware of that would prevent the foregoing incidents listed in Question 6 a–f from happening in the future?

Answer. As an alternative to banning interstate direct shipment of wine, some states have adopted less restrictive means to satisfy their regulatory objectives. For example, some states register out-of-state suppliers and impose various civil and criminal penalties against violators. Several states, including Nebraska, New Hampshire, and Wyoming, require out-of-state suppliers to register and obtain permits (a permit can be conditioned on the out-of-state supplier's consent to submit to the state's jurisdiction). None of these states reported problems with interstate direct shipping to minors. In addition, many states require an adult signature at the point of delivery, and several Federal courts have suggested that labeling requirements could be effective regulatory tools. See Report, pp. 27–31.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GEORGE ALLEN TO
DEBORAH MAJORAS

Question 1. During his tenure, Chairman Muris noted that there is a growing need in the Federal Trade Commission's competition matters to address issues involving the intersection of antitrust law and patent law. He noted that a particular priority in that area was addressing the problem of patent owners abusing standard

setting processes to the detriment of competitors and consumers. Standard setting activities obviously play a critical role in products across many different industries and can greatly benefit consumers. Given that importance, the Commission has brought a number of cases to remedy abuses of the standard setting process.

a. As Chair of the Commission (or as a Commissioner), do you intend to continue with those important efforts?

Answer. Yes, if confirmed, I do intend to continue with those important efforts. Case selection, of course, involves a careful consideration of the facts and the economic consequences of particular standard setting-related activity, as well as relevant law. I believe that the Commission should challenge standard setting-related activity that appears likely to impose substantial harm on consumers and lacks countervailing efficiency benefits.

b. Do you agree that manipulation of the standard setting process is a legitimate and important area for antitrust enforcement? Why?

Answer. Yes, I agree that manipulation of the standard setting process is a legitimate and important area for antitrust enforcement. While standard setting can greatly benefit consumers, it also can be used as a vehicle for collusion and anti-competitive deception. Manipulation of the process by an IP holder may lead a standard setting organization to favor or disfavor particular technologies for reasons other than cost, efficiency, and technical suitability, with consequent harm to competition and consumers.

Question 2. As you know, the Commission plays a critical role in considering the appeal of an initial decision by an administrative law judge. Importantly, the Commission reviews all of the evidence, arguments, and legal issues from the case. What will you do to ensure that, with respect to appeals, the Commission very carefully and thoroughly investigates and considers all of the evidence and issues in reaching well-reasoned decisions?

Answer. If confirmed, I will carefully evaluate the record to ensure that a final Commission decision rests on a solid basis of law and fact. Although I believe the Commission should be respectful of the factual findings and legal holdings made by the administrative law judge, the Commission has the responsibility to evaluate these findings and holdings in light of its own independent review of the record and its own independent legal analysis. The Commission should displace the administrative law judge's initial factual and legal determinations when it finds that those determinations are not borne out by the record or by sound application of legal principles.

Question 3. In 2002, the Department of Justice and the Federal Trade Commission held joint hearings that focused on the implications of competition and patent law and policy for innovation and other aspects of consumer welfare. In October 2003, the Federal Trade Commission issued a report with views on how to promote innovation by finding the proper balance of competition and patent law and policy. In the October report, the Federal Trade Commission proposed ten legislative and regulatory changes to improve patent quality.

a. Do you support the important recommendations discussed in the report?

Answer. The FTC's October 2003 report on the proper balance of competition and patent law and policy addresses significant issues for the future of innovation in our Nation. Both competition and patents can spur innovation, and policymakers must strike a proper balance between them in implementing antitrust and patent law. Among other things, the FTC report discusses significant concerns about patent quality raised by many members of the patent community, including companies that hold patents and depend on strong patent protection for continued success. The report points out that strong patent protection requires valid, not questionable, patents, and recommends certain changes to improve patent quality.

The FTC's ten recommendations have received a great deal of attention since issuance of the report. The American Intellectual Property Law Association has issued a Response to the FTC's report, which includes some of its own proposals to improve patent quality. In April, the National Academy of Sciences (NAS) issued its own report, "A Patent System for the 21st Century," which also makes recommendations to improve patent quality. Many of the NAS recommendations are similar to those of the FTC; some are not.

I support the ten recommendations in the FTC report. Nonetheless, in light of the many different recommendations for patent reform that are now being discussed, I am also open to considering other alternative or additional means to improve patent quality. If confirmed, I look forward to participating in the dialogue that is developing in this area.

b. At the time of the report, Chairman Muris outlined steps that the FTC would take to increase communication and cooperation between antitrust agencies and pat-

ent institutions and steps toward implementation of the recommendations in the report. Do you intend to continue and support those important efforts?

Answer. Yes, I do. I believe that it is important for the antitrust and patent communities and institutions to build on the communication that has begun, so that we can better support and promote innovation in the United States.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. FRANK R. LAUTENBERG TO
DEBORAH MAJORAS

Question 1. As Chairwoman, do you have any plans to fix the problem with machine testing of cigarette tar and nicotine levels?

Answer. Fighting unfair and deceptive advertising is one of the FTC's most important jobs, and this is particularly true for products like tobacco that harm consumer health. I understand that there are longstanding concerns that the tar and nicotine ratings generated by the so called FTC test method do not provide smokers with accurate information about the amount of these substances that they will receive from any particular cigarette. I further understand that the FTC, recognizing the complex scientific issues raised by designing a new testing procedure, has sought the Department of Health and Human Services' assistance in determining whether a testing system should be maintained and, if so, what specific changes should be made to it.

As a first step in HHS's response to the Commission's request for assistance, the National Cancer Institute issued a monograph entitled, "Risks Associated with Smoking Cigarettes with Low Machine-Measured Yields of Tar and Nicotine."

If confirmed, I will certainly review the status of this effort when I arrive, and continue to work with HHS to determine what changes are necessary to fix the current testing system. Moreover, I note that the Commission has in the past recommended that responsibility for the cigarette testing method be moved to a science-based agency. Legislation currently pending in both the House and Senate would accomplish that result.

Question 2. For years the FTC tried to stop the now infamous Joe Camel ads that targeted youth. Now Koal brand cigarettes is running a "Kool Mixx" marketing campaign targeting African American teenagers. Do you anticipate taking any action on these Kool Mixx ads?

Answer. As you know, the 1998 Master Settlement Agreement ("MSA") between the major cigarette manufacturers and 46 states specifically prohibits any tobacco advertising, marketing or promotion that targets youth and bans the use of any cartoon character (including the use of "Joe Camel") in tobacco advertising marketing and promotion. I understand that, in March 2004, Maine's Attorney General wrote to Brown & Williamson warning that the company's use of a hip-hop theme to promote Kool cigarettes (including special packs with images of DJs and dancers) was likely a violation of the MSA. I further understand that Brown & Williamson subsequently discontinued the packaging and certain related advertising and promotions. I know that the Commission staff continues to monitor cigarette advertising issues and coordinates with the states on questions of youth targeting by companies subject to the MSA, given the specific prohibitions that exist under that agreement. If confirmed, I will review the status of these efforts and ensure that the FTC remains vigilant as to youth targeting.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN MCCAIN TO
JON LEIBOWITZ

Question 1. Please explain how if confirmed, you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

Answer. I am a strong believer in Congressional oversight and making certain that agencies follow Congressional intent, and I will always be available to the Committee and its staff regarding any concerns you may have. Beyond that, my understanding is that the Commission has long had a regulatory review program that provides for periodic review of its rules and guides. To my mind, this is a good way to assess existing regulations and ensure that they continue to implement effectively the spirit of the law. With respect to new rules, I will carefully consider the laws entrusted to the Commission and work to ensure that any rules I vote on embody the intent of the Congress in enacting them. In the rulemaking process I will be open to input in the record from all parties including, of course, Congress.

Question 2. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your department/agency has proper management and accounting controls?

Answer. My responsibility as a Commissioner of the FTC would be to work with the Chairman and other Commissioners to ensure that the agency has proper management and accounting controls. Ensuring effective management starts with the senior management. It is important to demonstrate to agency managers that management of their staff and programs is a critical aspect of their job. Agency executives and managers must understand that they will be held accountable for managing effectively apart from the substantive productivity they may achieve in the short run. Simply put, program performance cannot be sustained in an organization that is not well managed, and I will do my best to ensure proper management at the Commission.

(b) What experience do you have in managing a large organization?

Answer. I do not have experience managing an organization the size of the FTC. My management experience in smaller organizations has, however, given me good grounding in the fundamentals of managing a complex, important enterprise. I believe that experience with the areas of the Commission's responsibilities, especially my work on consumer protection and antitrust issues in the Senate, will help me to contribute to preserving and extending the agency's mandate.

Question 3. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) What benefits, if any, do you see in identifying performance goals and reporting on progress in achieving those goals?

Answer. Identifying performance goals is a useful discipline for any organization, especially in the public sector. The process of developing goals requires the organization to assess its objectives and resources and to articulate clearly what it must accomplish. This also allows the public and the agency itself to understand what ends must be sought. Periodic reporting on progress toward the stated goals provides a useful discipline for the agency. Knowing that progress must be reported is a strong incentive for the organization to accomplish what it has set out to do. Both the Congress and other stakeholders, including the public, can then more easily provide input to the agency on whether the stated goals are appropriate as well as whether they have been met.

(b) What steps should Congress consider taking when a department/agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing, or consolidation of departments and/or programs?

Answer. Congress should assess the reasons why an agency fails to achieve its performance goals. Depending on the particular reasons an agency does not meet its stated objectives, a variety of Congressional responses might be warranted, including the steps mentioned in the question. Eliminating an agency would be an appropriate response, but only where Congress found that the original stated objectives were no longer valid or were not reasonably attainable by the government.

(c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

Answer. For myself, the primary performance goal will be to work with the Chairman and the other Commissioners to continue and to strengthen the agency's ability to protect consumers. My first steps will include reviewing the current enforcement agenda, learning more about the details of FTC operations, and forging an effective working relationship with my colleagues.

Question 4. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

Answer. The proper relationship is one of mutual respect as well as a recognition of the important independent functions of the Inspector General. The Inspector General can provide useful mechanisms for stopping waste, fraud and abuse in an agency or at the Commission—and can be important in keeping the Commissioners as well as Congress fully informed about any problems. I would seek to develop a professional and working relationship with the FTC Inspector General and support the important mission that he or she fulfills.

Question 5. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending in an open manner through a set of fair and objective established criteria? If yes, please explain what steps you intend to take and a time frame for their implementation. If not, please explain why.

Answer. While I don't think that the Federal Trade Commission has the type of discretionary spending authority that the question contemplates, the Commission does have some discretion in allocating its resources among its missions and programs. If confirmed, I will participate vigorously in the Commission's budget deliberations with an eye towards ensuring that resources are allocated in a manner that carries out the agency's mandates in the most effective ways.

Question 6. Describe the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated.

Answer. The FTC serves two primary missions. First, it seeks to promote competition in the marketplace by enforcing Federal antitrust laws and other statutes designed to promote competition and halt anti-competitive business practices. Second, it seeks to protect consumers by ensuring fair, accurate and non-deceptive information in the marketplace, and by preventing unfair, deceptive or intrusive practices, for example, spamming or certain types of telephone marketing. In my view, however, the Commission's twin missions of competition promotion and consumer protection serve a common aim: enhancing consumer welfare.

Question 7. What do you believe are the top three challenges facing the department/agency and why?

Answer. As a mere nominee to the Federal Trade Commission, as opposed to a sitting Commissioner, it is difficult to quantify the three largest challenges to the agency. Having said that, I will identify what I believe to be several important ones:

- (1) Challenges caused by new technologies; for example, how far should the Commission go [and how far can it go under existing laws] to protect the privacy rights of consumers? In particular, the Commission faces the task of effectively implementing the new spam law as well as confronting the issues posed by spyware and adware.
- (2) Challenges resulting from the increased globalization of commerce, which raise a myriad of policy and process matters with respect to both the agency's antitrust and consumer protection missions.
- (3) Challenges driven by additional obligations on the Commission, *i.e.*, new laws it enforces, additional rulemakings, etc., etc. Simply put, how does the Commission ensure that that the quality of its work is not strained by the quantity of demands placed upon it.

Question 8. What factors in your opinion have kept the department/agency from achieving its missions over the past several years?

Answer. This question implies that the Commission has failed in its mission in recent years. In the case of the FTC, I am not sure that assumption is accurate. During the past several decades the Commission's stature as "an agency that works" seems to have grown consistently even as it has confronted a whole host of new and unforeseen policy problems.

Question 9. Please discuss your philosophical views on the role of government.

Answer. The United States, I believe, has the strongest and most open markets in the world, ones that operate freely and competitively. For the most part, this serves the American people well: competition pushes producers to offer the greatest amount of choice at the lowest prices to consumers. Having said that, sometimes even the most competitive markets fail to work the way as we would like them to at all times. Criminals will always try to defraud those unable to defend themselves; businesses will occasionally cross the line into anti-competitive conduct. Of course, free enterprise does not mean a system without rules. For these reasons, well crafted regulatory institutions such as the FTC, which ensure that markets are vigorous, efficient and free from unnecessary restrictions and fraud, are vitally important to enhancing consumer welfare and maintaining faith in our system of government.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. SAM BROWNBACK TO
JON LEIBOWITZ

Marketing of Sexual Content to Children

Question. In response to the letter sent asking the FTC to look at whether the movie, music, recording and computer and video game industries target minors with sexual material, I was informed that the FTC already took some steps to examine that issue in their latest follow-up to the 2002 report that will be released shortly. I look forward to reviewing that report. In the meantime, it appears from the FTC's response that the incorporated analysis of the sexual content was mostly as it occurred alongside violent material. Would you support a greater effort to focus on the marketing of all sexual material to minors? Would you support a separate study?

What steps would you take to improve the research on the marketing of sexual content to minors?

Answer. I have been a strong believer in the FTC's periodic reviews of the entertainment industries' marketing practices ever since I worked on this issue as a staffer for Senator Kohl. Simply put, companies should not market to children any products that they themselves deem inappropriate for such age ranges. While not privy to the exchange of letters between your office and the FTC, I am told that the Commission's "Marketing of Violent Entertainment" Reports—there have been four since September 2000 with another expected by the end of the month—do to some extent incorporate analysis of sexual material into its investigations of violent content. If I am fortunate enough to be confirmed, I would be happy to look into whether (and how extensively) sexual content is incorporated into the Commission's periodic reviews of the entertainment industry and to work with the Chairman and other Commissioners on whether such reviews can be made more effective; to encourage continuation of the Commission's "undercover shopper" survey (in which young teens attempt to buy materials rated for adults or older children); and to meet with you (or your staff) to discuss this matter at any time. Finally, to the extent that these FTC reviews are to some extent now governed by language in the appropriations bills, I would of course carry out the intent of Congress if a separate study on sexual content is mandated.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN ENSIGN TO
JON LEIBOWITZ

Question not submitted in record.

Answer. Pursuant to my discussions with Committee staff and the staff of Senator Ensign, I will respond to these questions generally. As I understand it, last year the Commission staff issued a Report relating to on-line sales of wine ("the Wine Report"). The Wine Report examined barriers to e-commerce in the wine industry, principally bans on direct interstate shipping of wine, and concluded that consumers could often save money by purchasing wine via the Internet. I recognize that there are questions about the Report's methodology, which compared on line wine prices only to those in McLean, Virginia; acknowledged but perhaps did not focus adequately on the issue of lost tax revenues; and according to some may have glossed over the serious and potentially tragic consequences of easier access to alcohol by minors through on-line sales.

I have not yet had an opportunity to speak in detail with the FTC staffers who wrote the Wine Report nor with critics of that Report. If I am fortunate enough to be confirmed, however, I promise to meet with both the Report's supporters as well as its detractors, and to review the entire issue. I also understand that the Supreme Court expects to hear arguments on the matter of on-line wine sales sometime next fall, which may bring some legal (and policy) clarity to the area. And I am of course available to meet with you, Senator Ensign (or your staff), about this or any other matter relating to the Commission.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. GEORGE ALLEN TO
JON LEIBOWITZ

Question 1. During his tenure, Chairman Muris noted that there is a growing need in the Federal Trade Commission's competition matters to address issues involving the intersection of antitrust law and patent law. He noted that a particular priority in that area was addressing the problem of patent owners abusing standard setting processes to the detriment of competitors and consumers. Standard setting activities obviously play a critical role in products across many different industries and can greatly benefit consumers. Given that importance, the Commission has brought a number of cases to remedy abuses of the standard setting process.

a. As chair of the Commission (or as a Commissioner), do you intend to continue with those important efforts?

Answer. Yes.

b. Do you agree that manipulation of the standard setting process is a legitimate and important area for antitrust enforcement? Why?

Answer. This is not just a legitimate area for antitrust enforcement, it is also a crucial area for competition policy. To be sure, standard setting may often confer economic efficiencies and other benefits; indeed, a bill reducing antitrust exposure for certain standard-setting organizations recently passed both the House and the Senate. Having said that, manipulating or subverting the standard setting process—

for example, by failing to acknowledge that certain standards would require use of a particular company's patents—disadvantages competitors, harms consumers and ultimately undermines faith in the marketplace.

Question 2. As you know, the Commission plays a critical role in considering the appeal of an initial decision by an administrative law judge. Importantly, the Commission reviews all of the evidence, arguments, and legal issues from the case. What will you do to ensure that, with respect to appeals, the Commission very carefully and thoroughly investigates and considers all of the evidence and issues in reaching well-reasoned decisions?

Answer. I will familiarize myself with the briefs and opinions, listen to all sides and follow the appropriate procedures and standards for review.

Question 3. In 2002, the Department of Justice and the Federal Trade Commission held joint hearings that focused on the implications of competition and patent law and policy for innovation and other aspects of consumer welfare. In October 2003, the Federal Trade Commission issued a report with views on how to promote innovation by finding the proper balance of competition and patent law and policy. In the October report, the Federal Trade Commission proposed ten legislative and regulatory changes to improve patent quality.

a. Do you support the important recommendations discussed in the report?

Answer. I strongly agree with the Report's conclusions: (1) that although most of the patent system works well, some modifications are probably needed to maintain a proper balance of competition and patent law and policy; and (2) that questionable patents are a significant competitive concern and can harm innovation. I also believe that the Report, which was preceded by 24 days of hearings and involved more than 300 panelists, is exactly the type of useful, thought-provoking undertaking that the Commission should be engaging in. As to the individual recommendations, which range from enacting legislation to changing PTO rules to altering the legal standard for challenging the validity of a patent, for the most part they appear sensible but I do not currently have sufficient information to go beyond that. If I am fortunate enough to be confirmed, however, I will push to ensure that the Commission continues to make the area of patent law and competition policy a priority.

b. At the time of the report, Chairman Muris outlined steps that the FTC would take to increase communication and cooperation between antitrust agencies and patent institutions and steps toward implementation of the recommendations in the report. Do you intend to continue and support those important efforts?

Answer. Yes.

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