

**NOMINATIONS OF PAMELA HARBOUR
TO BE A COMMISSIONER OF THE
FEDERAL TRADE COMMISSION AND
NICOLE NASON TO BE ASSISTANT SECRETARY
FOR GOVERNMENTAL AFFAIRS FOR
THE DEPARTMENT OF TRANSPORTATION**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION**

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JULY 8, 2003

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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DEPARTMENT OF TRANSPORTATION**

TUESDAY, JULY 8, 2003

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

The Committee met, pursuant to notice, at 9:30 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman, presiding.

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

The CHAIRMAN. Good morning. The Commerce Committee meets today to consider the qualifications of two individuals who have been nominated by the President to serve the Nation in very important posts. Ms. Pamela Harbour has been nominated to be a Commissioner of the Federal Trade Commission, the agency whose primary mission is to protect consumers. Among Ms. Harbour's credentials are more than 10 years of service in the Office of the New York State Attorney General, including over 7 years as Assistant Attorney General in the Antitrust Bureau.

Also here today is Ms. Nicole Nason, who has been nominated to serve as Assistant Secretary for Governmental Affairs at the Department of Transportation (DOT). Ms. Nason comes to DOT after serving in a similar capacity with the U.S. Customs Service and thus brings a unique perspective to her new position.

The nominees, if confirmed, will enter their positions at a very auspicious time. In the coming months Congress will act on three major DOT programs: the federal highway program, including the federal safety programs under the jurisdiction of the Commerce Committee; the Federal Aviation Administration; and the future of Amtrak.

Congress will also consider important legislation relating to FTC matters, including two bills recently reported out of this Committee.

The Committee takes its advice and consent role very seriously. I will note that each of the nominees has responded in detail to the Committee's request for biographical and financial data. I have had

the opportunity to review their responses to the Committee questionnaire as well as prehearing questions, and I look forward to moving these nominations quickly.

[The prepared statement of Senator McCain follows:]

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

Good morning. The Commerce Committee meets today to consider the qualifications of two individuals who have been nominated by the President to serve the Nation in very important posts. Ms. Pamela Harbour has been nominated to be a Commissioner of the Federal Trade Commission, the agency whose primary mission is to protect consumers. Among Ms. Harbour's credentials are more than ten years' service in the Office of the New York State Attorney General, including over seven years as Assistant Attorney General in the Antitrust Bureau. Also here today is Ms. Nicole Nason, who has been nominated to serve as Assistant Secretary for Governmental Affairs at the Department of Transportation (DOT). Ms. Nason comes to DOT after serving in a similar capacity with the U.S. Customs Service and thus brings a unique perspective to her new position.

The nominees, if confirmed, will enter their positions at a very auspicious time. In the coming months, Congress will act on three major DOT programs: the Federal highway program, including the Federal safety programs under the jurisdiction of the Commerce Committee, the Federal Aviation Administration, and the future of Amtrak.

Congress will also consider important legislation relating to FTC matters, including two bills recently reported out of this Committee: (1) an FTC reauthorization bill that would, among other things, enhance the Commission's ability to fight cross-border fraud, and (2) the CAN-SPAM Act of 2003, which would regulate interstate commerce by imposing limitations and penalties on the transmission of spam.

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 requests for biographical and financial data. I have had the opportunity to review your responses to the Committee questionnaire as well as pre-hearing questions, and I look forward to moving your nominations quickly.

We will begin today by hearing from Ms. Harbour and then proceed to the consideration of Ms. Nason. I thank the nominees for being here today. I know your nomination is a great honor, and that your families are very proud. Please feel free to introduce any family members who are present here today before you begin your remarks.

I would like to note that Congressman Hyde wanted to be here today to introduce Ms. Nason, but is unable to attend. His full statement will be included in the record.

Unless other members of the Committee have opening statements, I invite Ms. Harbour to give her statement.

The CHAIRMAN. We will begin today by hearing from Ms. Harbour and then proceed to the consideration of Ms. Nason. I thank the nominees for being here today. I know your nomination is a great honor, and that your families are very proud. Please feel free to introduce any family members who are here today before you begin your remarks.

I would like to note that Congressman Hyde wanted to be here today to introduce Ms. Nason, but is unable to attend. His full statement will be included in the record.

[The prepared statement of Representative Hyde follows:]

PREPARED STATEMENT OF CHAIRMAN HENRY J. HYDE

It's a pleasure to be able to testify on behalf of Nicole Nason's nomination to be the Assistant Secretary for Governmental Affairs for the Department of Transportation.

I know Nicole well. When I was Chairman of the House Committee on the Judiciary, she worked as a summer intern right after she finished law school. She was so impressive as a lawyer I retained her on the full committee staff. When a vacancy arose on the very important Crime Subcommittee, our former colleague Bill McCollum, the Chair of that subcommittee, requested that I permit her to join that

staff. She served as Counsel on the House Judiciary Committee and its Subcommittee on Crime during all the years that I was Chairman of the Committee (1995–2001). Since matters of criminal law were a major part of the Committee's work, I got to work closely with Nicole.

I have relied on Nicole's wise counsel on a series of complex and contentious matters. Having Nicole to advise me during those times gave me a feeling of comfort. Not only is Nicole an excellent lawyer, but she also possesses pure common sense. That combination made her an invaluable asset to me, the Committee, and Congress over the years.

While she was working for Chairman Porter Goss, her understanding of Congress resulted in the White House recruiting her to work in the Legislative Affairs office at the Treasury Department.

Nicole's reputation for being able to deal with controversial issues in a professional, skillful, and tactful manner is well-deserved. She is well respected on both sides of the aisle, both sides of the Hill, and in the executive branch. Her nomination itself speaks for how positively the Administration feels about her knowledge, skills, and abilities.

I believe she has a comprehensive understanding of the practices and procedures involved in the legislative process, which makes her an outstanding candidate for this position.

Mr. Chairman, Members of the Committee, I am confident that Nicole Nason will acquit herself ably as Assistant Secretary for the Office of Governmental Affairs for the Department of Transportation. As a knowledgeable lawyer, and a dedicated professional, Nicole is well-suited to serving both the Department of Transportation and Congress in this important capacity.

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

Senator LAUTENBERG. Mr. Chairman, Ms. Harbour is from New Jersey and I would like an opportunity to say something about her.

The CHAIRMAN. I recognize Senator Lautenberg.

Senator LAUTENBERG. Thank you.

Welcome to both of our candidates. I want to say that in recommending Ms. Pamela Jones Harbour the President has nominated someone what is very able and committed to the mission and that we are proud that she is from New Jersey and we know that she will do a good job, and we congratulate you on your nomination.

Ms. Harbour—and I want to point out something about her background which I think is really distinctive. That is that she has worked in the private sector as a partner in the prestigious law firm Kaye Scholer and the public sector as the New York State Deputy Attorney General and Chief of the Office's 150-attorney Public Advocacy Division. That is a lot of attorneys to manage. And I know that she has worked with you, Mr. Chairman, on boxing reform in that capacity.

Although most of us do not consciously think about the FTC as we go around our daily lives, this agency deals with issues that directly affect all Americans.

Mr. Chairman, Ms. Harbour is well qualified to be an FTC commissioner. She has got extensive experience in consumer protection, antitrust, trade regulation, product liability, and is going to help the agency continue its regulatory mission of striking a balance between maintaining a vigorous marketplace and ensuring that consumers are appropriately protected.

So I hope that Ms. Harbour will take an active role on an issue that I am particularly concerned with and that is tobacco. The FTC is the sole agency with authority over tobacco through its ability to enforce federal truth in advertising laws and monitor unfair

practices or deceptive claims and report to Congress on cigarettes and smokeless tobacco labeling, advertising, and promotion. So I hope Ms. Harbour will take a leadership role on tackling the tobacco issues.

I am so pleased to speak on her behalf to make the recommendation I am making. I am convinced that she is going to serve the American consumer well as she carries out her responsibilities.

Thank you, Mr. Chairman.

The CHAIRMAN. Welcome. Ms. Harbour, we will begin with you.

**STATEMENT OF PAMELA JONES HARBOUR, COMMISSIONER-
DESIGNATE, FEDERAL TRADE COMMISSION**

Ms. HARBOUR. Thank you and good morning, Chairman McCain, Senator Lautenberg.

I come before you today with pride, humility, and grateful thanks, regardless of your ultimate action on my nomination. My family is here with me today: my husband John Harbour and my daughters Victoria, Alexandra, and Catherine; their caregiver Karmin Rine; my parents Joseph and Verneta Jones; my mother and father-in-law Rachel and Ed Harbour; my aunt and uncle, Marzella and Walter Dalkins; my brother-in-law Greg Harbour; and his niece and nephew, Melissa and James Harbour; and friends and colleagues.

The CHAIRMAN. I welcome all of your family members and I know this is a very proud moment for them. I think this may be a record for the most family members ever in attendance, and congratulations. I know this is a very proud moment for all of them. Thank you for having them all here today.

Ms. HARBOUR. Thank you. Their presence, Senator, and encouragement and unconditional support makes this occasion possible and even more meaningful to me.

Public service is both an obligation of citizenship and the greatest professional honor. I served the public for 15 years in New York State government, including my role as supervisor of the Attorney General's Antitrust and Consumer Protection Bureaus.

The antitrust laws are the Magna Carta of the incredible American free enterprise system, as frequently recognized by the Supreme Court, a body which I have had the honor to argue before while upholding those laws. The antitrust laws and the open competition which they foster and protect work best when business and consumers meet in a marketplace unsullied by fraud, deception, and misinformation perpetrated on consumers and businesses.

The enforcement of antitrust and consumer protection laws, properly informed by economics, is the mission of the FTC. I have devoted virtually all of my professional career to these important legal regimes and I am humbly confident that I can advance the work of the commission and help extend the benefit of intelligent antitrust and consumer protection enforcement to our entire society.

This is my only agenda as I appear before you to offer my credentials to you, answer your questions, and hopefully win your confidence and consent to my nomination by the President.

Thank you.

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

PREPARED STATEMENT OF PAMELA JONES HARBOUR, COMMISSIONER-DESIGNATE,
FEDERAL TRADE COMMISSION

Good morning, Chairman McCain, Senator Hollings and distinguished members of the Committee. I come before you today with pride, humility and grateful thanks regardless of your ultimate action on my nomination. My family is here with me today. My husband John Harbour—and my daughters—Victoria, Alexandra and Catherine. Their presence, encouragement and unconditional support makes this occasion possible and even more meaningful.

Public service is both an obligation of citizenship and the greatest professional honor. I served the public for 15 years in New York State government, including my role as supervisor of the attorney general's antitrust and consumer protection bureaus.

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This is my only agenda as I appear before you, to offer my credentials to you, answer your questions and hopefully win your confidence and consent to my nomination by the President.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used.): Pamela Jones Harbour ("Pamela") ("Pam") (formerly: Pamela L Jones or Pamela LeDeyce Jones).

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

3. Date of nomination: June 12, 2003.

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

Residence: Information not released to the public.

Office: Kaye Scholer LLP 425 Park Avenue, New York, NY 10022.

5. Date and place of birth: July 15, 1959; Queens, New York.

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

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

Victoria Heath Harbour (11); Alexandra Taylor Harbour (9); Catherine Burke Harbour (1).

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

Guilderland Central High School—1974–77 (High School Diploma)

Indiana University School of Music—1978–81 (BM 1981)

Indiana University School of Law—1981–84 (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.)

Partner, Kaye Scholer LLP, New York, N.Y., June 1999 to Present; Assistant First Deputy Attorney General, Executive Office, Office of the New York State Attorney General, New York, N.Y., January 1999–May 1999; Deputy Attorney General of the Public Advocacy Division, Office of the New York State Attorney General, New York, N.Y., October 1996–December 1998; Assistant Attorney General, Antitrust Bureau, Office of the New York State Attorney General, New York, N.Y., January 1989–October 1996; As a member of both Screen Actors Guild and AFTRA, I have appeared from time to time in television commercials

and film from 1989 through 1992; Deputy Bureau Chief, Legal Training Recruitment and Development Bureau, Office of the New York State Attorney General, New York, N.Y., October 1987–December 1988; General Counsel, New York State Public Transportation Safety Board, New York State Department of Transportation, Albany, N.Y., August 1985–October 1987; Assistant Counsel, New York State Department of Transportation, Albany, N.Y., August 1984–October 1987; Student Legal Services, Indiana University, Bloomington, IN, 1982–83; Dormitory Assistant Coordinator and Resident Assistant, Indiana University, Bloomington, IN, 1981–83; Concession Stand Employee at NASCAR Grand Prix Race in Detroit, MI, August 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.)

Board Member, New York City Campaign Finance Board, 2000 to Present; Member, Chief Judge Judith S. Kaye’s New York State Commission on Public Access to Court Records, 2002 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, Kaye Scholer LLP, 1999 to Present.

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

Section Delegate, American Bar Association, Antitrust Section of Law, 2001 to Present; Antitrust Section Liaison, American Bar Association Commission on Women, 2001 to Present; Chair, New York State Bar Association, Antitrust Section, 2003 to Present; Board Member, New York City Campaign Finance Board, 2000 to Present; Member, Chief Judge Judith S. Kaye’s New York State Commission on Public Access to Court Records, 2002 to Present; Member, Loyola University Institute for Consumer Antitrust Studies, 2001 to Present; Choir Member, Christ Episcopal Church, 1993 to Present; Council Member, American Bar Association, Antitrust Section of Law, 1997–2001; Chair, State Antitrust Enforcement Committee, American Bar Association, Antitrust Section of Law, 1995–1997; Vice Chair, State Antitrust Enforcement Committee, American Bar Association, Antitrust Section of Law, 1992–1995; Vice Chair, New York State Bar Association, Antitrust Section, 2002–2003; Secretary, New York State Bar Association, Antitrust Section, 2001–2002.

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. 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.)

Award Recipient, Women History Makers, Caribbean Chamber of Commerce & Industry, NYC March 12, 1998.

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

I have authored the following articles, columns, or publications, individually or with co-authors:

“B2B Basics and Antitrust Issues.” (*ALI-ABA Product Distribution and Marketing*, March 2002)

“A Practical Guide to the Donnelly Act, Antitrust Law in New York State, Second Edition” (*NYS Bar Association*, January 2002) (Editor-in-Chief with Robert L. Hubbard)

“State Attorneys General: The Third Prong in the Antitrust Triad.” *Antitrust Review of the Americas: A Global Competition Review Special Report*. (Law Business Research 2001) (co-authored with Robert M. Langer)

“Jury Trials in Antitrust Cases: Juror Competence and Tools for Increasing Comprehension and Participation by the Antitrust Jury.” (*ABA Task Force on Civil Practice and Procedure*, September 2001) (co-authored with James V. Kennedy and James A. Wilson)

“B2B Basics and Antitrust Issues.” (*Emerging Issues for Competition Policy in the E-Commerce Environment*, May 2001; FTC website, www.ftc.gov/opp/ecommerce/comments/harbour.htm)

“B2B Basics and Antitrust Issues.” (*ALI-ABA Product Distribution and Marketing*, March 2001)

“Antitrust Refusals to Deal.” (*PLI 40th Annual Advanced Antitrust Seminar*, February 2001)

“B2B Basics and Antitrust Issues.” (*Internet Law & Business and Representing the New Media Company*, February 2001)

“B2B Basics and Antitrust Issues.” *PLI Representing the New Media Company*, January 2001)

“Refusals to Deal.” (*PLI 39th Annual Advanced Antitrust Seminar, Distribution and Marketing*, February 2000)

“Antitrust Enforcement in the Area of Vertical Trade Restraints by State Attorneys General.” (*ABA Section of Antitrust Law Advanced Distribution Workshop: Antitrust and Advertising Issues*, September 1999)

“Non-Price Vertical Restraints: Toward a Rule of Per Se Legality?” (*ABA Antitrust Section of Law Annual Meeting Program*, August 1999).

“Antitrust Enforcement in the Area of Vertical Trade Restraints by State Attorneys General.” (*The Westchester Women’s Bar Association of the State of New York*, May 1999)

“State Antitrust Law and Enforcement.” (*PLI 40th Annual Antitrust Law Institute*, May 1999) (co-authored with Thomas Green and Kevin O’Connor)

“Antitrust Enforcement in the Area of Vertical Trade Restraints by State Attorneys General.” (*PLI 38th Annual Advanced Antitrust Seminar: Distribution and Marketing*, January 1999)

“What are the Implications of The Supreme Court’s Decisions in *State Oil Company v. Khan?*” (*International Franchise Association, 31st Annual Legal Symposium*, May 1998) (co-authored with Steven B. Feirman and Paula J. Morency)

“Antitrust Enforcement in the Area of Vertical Restraints by State Attorneys General.” (*PLI 37th Annual Advanced Antitrust Seminar: Distribution and Marketing*, March 1998)

“Antitrust Enforcement in the Area of Vertical Trade Restraints by State Attorneys General.” (*13th Annual Advanced ALI-ABA Course of Study: Product Distribution and Marketing*, March 1998)

“State Antitrust Law and Enforcement.” (*PLI 38th Annual Antitrust Law Institute*, May 1997) (co-authored with Thomas Greene, Kevin J. O’Connor, and Laurel A. Price)

“Antitrust Enforcement in the Area of Vertical Trade Restraints by State Attorneys General.” (*ALI-ABA Course of Study: Product Distribution and Marketing*, March 1997)

“Antitrust Enforcement in the Area of Vertical Trade Restraints by State Attorneys General.” (*PLI 36th Annual Advanced Antitrust Seminar*, Jan. Feb. 1997)

“Antitrust Enforcement in the Area of Vertical Trade Restraints by State Attorneys General.” (*Conference jointly sponsored by the ABA Section of Antitrust Law and the Corporate Counsel Center of Northwestern University School of Law*, May 1995)

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 given the following speeches during the last 5 years:

B2B Basics and Antitrust Issues, PowerPoint (*17th Annual Advanced ALI-ABA Product Distribution & Marketing*, San Francisco, March 7–9, 2002)

Panelist analyzing e-commerce antitrust issues (*FTC Public Workshop on Emerging Issues for Competition Policy in the World of E-Commerce*, May 7–8, 2001)

B2B Internet Exchanges & Antitrust Implications (*16th Annual Advanced ALI-ABA Product Distribution & Marketing*, New Orleans, March 15–17, 2001)

Refusals to Deal & Termination Issues, (*PLI Advanced Antitrust Seminar: Distribution and Marketing Program*, NYC, February 5–6, 2001)

B2B Basics and Antitrust Issues, (*PU Representing the New Media Company*, NYC, January 11–12, 2001)

E-Commerce: The Digital Divide (*Federal Trade Commission, Empowerment Through Technology: The African American Experience*, Washington, D.C., February 24, 2000)

Refusals to Deal (*PLI 39th Annual Advanced Antitrust Seminar: Distribution & Marketing*, New York City, February 14–15, 2000)

Dealer Termination and Resale Price Maintenance Panel (*ABA Antitrust Section of Law, Advanced Distribution Workshop: Antitrust and Advertising Issues*, New York City, October 1, 1999)

Non-Price Vertical Restraints: Toward a Rule of Per Se Legality? (*ABA Annual Meeting Program*, Atlanta, August 9–11, 1999)

Antitrust Federalism (*Bundesvergand def Jun Deutschen Industrie*, Cologne, Germany, June 29, 1999)

Government Enforcement Panel (*PU 40th Annual Antitrust Law Institute*, New York City, May 14, 1999)

Donnelly Act and Vertical Restraints Lecture (*The Westchester Women's Bar Association of the State of New York Convention 1999*, Tarrytown, NY, May 1, 1999)

Vertical Restraints Lecture (*PLI 38th Annual Advanced Antitrust Seminar: Distribution & Marketing*, New York City, January 14–15, 1999)

NAAG Boxing Task Force Speech (*World Boxing Council, 36th Annual World Convention*, Johannesburg, South Africa, October 25–31, 1998)

Protecting Consumers Against Exclusionary Conduct (*ABA Advanced Antitrust Counseling Workshop*, New York City, September 25, 1998)

17. Selection:

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

It is my understanding that Senator Tom Daschle recommended my nomination to President Bush to fill the seat being vacated by Commissioner Sheila Foster Anthony on the Commission. It is my belief that I was also recommended by others.

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

I have considerable leadership and management experience in government, having served under four New York State Attorneys General, where the bulk of my practice has focused upon antitrust and consumer protection matters. As Deputy Attorney General, I had supervisory responsibility over both the Antitrust and Consumer Protection Bureaus. In this capacity, I have coordinated, investigated and prosecuted Federal and state antitrust violations and represented numerous state attorneys general in the United States Supreme Court, the United States Court of Appeals, and various United States District Courts. I have also counseled clients on a variety of competition and consumer related matters, including matters before the U.S. Department of Justice, the Federal Trade Commission and state attorneys general. I have lectured extensively on antitrust and consumer protection matters in the U.S. and abroad and have published numerous articles on antitrust as well.

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 will receive a final partnership salary payment, from Kaye Scholer LLP, for my 2003 work in two installments, in January and April, 2004. The amount of this payment will be determined on or before the date of my resignation from the firm, and will include a percentage of the profits from work performed by the firm only up to the day of my resignation from the firm. I also will be reimbursed the value of my Kaye Scholer capital account. This value will be fixed on the date of my resignation and will be paid in three installments, three months, fifteen months and twenty-seven months after my resignation. Until these amounts are paid, I will not participate in any particular matter that would have a direct and predictable effect on Kaye Scholer's ability or willingness to make these payments. During this time, I also will seek the advice of an ethics official before participating in any particular matter involving specific parties in which the firm is a party or represents a party. I will continue to participate in Kaye Scholer's 401(k) and HR10 plans. I also will continue to participate in the New York State pension and 401(k) plans.

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.

I understand that the following stock holdings or stock options present potential conflicts of interest under section 18 U.S.C. §208(a), although it has been determined that it is not necessary at this time for me to divest these interests: Johnson & Johnson, Merck, General Electric, Colorcom, Accelerated I/O Inc., and Blacklight Power Inc. I will not participate personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of these entities, unless I first obtain a written waiver or qualify for a regulatory exemption.

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 10 years, I have had dealings with and represented clients in various matters before the FTC. I am aware of the conflict of interest rules pertaining to these prior dealings. I will abide by the conflict rules if and when applicable.

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 capacity as New York State Deputy Attorney General of Public Advocacy, in April 1999, I organized a bi-partisan group of 22 state attorneys general who sent a letter to various Senators strongly endorsing the Muhammad Ali Boxing Reform Act (S. 305), which sought to curb anti-competitive and fraudulent business practices and prevent blatant exploitation of professional boxers. My activities focused on the Senate and House Commerce Committees.

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 potential conflicts of interest other than the matters previously disclosed and will abide by all applicable conflicts of interest rules.

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. 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. 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.

In regard to congressional and Commission interaction, Congress has a vital and important role to play by conducting reviews of Commission programs and plans. When Commission enforcement policy changes, for example, it is appropriate for Congress to request and receive an explanation. Members of Congress—like other citizens—should feel free to call illegal activity to the Commission's attention and suggest rulemaking, litigation and other action. When the Commission has promulgated a trade regulation rule, Congress may consider its desirability and, if Congress deems the rule harmful, enact substantive legislation to undo it. With this in mind, I will review Commission regulations and work with Congress to ensure that such regulations fulfill the spirit of the laws passed by Congress.

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? See response to Questions A9, A12, A15, A16, and 17(b)

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

I believe that my professional experience well qualifies me for this important position. Although I have grown considerably from my experience as a partner at a great American law firm, my greatest professional fulfillment has come through government service, to which I have devoted most of my career. If confirmed, I will work at the Commission to advance the goal of a strong and competitive U.S. economy and a business environment which provides high quality and competitively priced goods and services to a well and accurately informed consuming public.

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

If confirmed, I have no current agenda or policy goals but will bring to the job a mind objective and open to master the complicated facts and sophisticated concepts upon which I will be called to deliberate.

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 lack no specific skills to speak of, but view myself as a perpetual student of the law and will take the opportunity, if confirmed, to immerse myself in the substantive work of the Commission.

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 the people of the United States are its government and that government's essential role is to allow the people to achieve their personal and collective

objectives within our constitutional framework. The efficacy of government involvement in the private sector will depend upon the particular issue and the appropriate mandate of a particular government body. The Federal Trade Commission was conceived by President Wilson and Louis Brandeis as a new kind of governmental body. Its mandate was not primarily to intervene in private sector matters but to work with the private sector to improve the performance of business for the mutual benefit of consumers and business and derivatively to improve the manner in which government and business interact. The antitrust laws are properly viewed as the Magna Carta of the American system of free enterprise.

For the antitrust laws to fulfill their objectives, the consuming public must be fully and accurately informed. Congress was wise to empower a single agency to enforce both consumer protection and antitrust laws because of the interdependent relationship of these two legal regimes. Many competitive and informational defects are self-correcting and should be left to the market for self-correction. The government, however, should and indeed must intervene when the nature of the competitive defect is not self-correcting or when market forces will expunge restraints of trade too slowly or only partially. There is no general formula for predetermining when government intervention in private sector behavior, raising questions under the antitrust and consumer protection laws, is appropriate. These decisions are contextual and require wisdom, skill, and a proper understanding of when past government intervention has worked well and when it has not.

Practically speaking, general standards should be used to determine when government programs are no longer necessary. In the case of the FTC, for example, I understand that the Commission periodically reviews past rules, guides, orders, and initiatives and has found that many were obsolete or inappropriate and thus vacated some 25 percent of its rules and guides in 1995. Although most of the vacated rules involved consumer protection initiatives, a few also involved competition issues. I also understand that, based on complaints by regulated companies, the Commission instituted reforms that would make the merger review process more meaningful and efficient before a second request issued. I believe that the Commission's policy under both Chairman Muris and former Chairman Pitofsky, of instituting workshops so that more factual data can be gathered about how present and proposed rules operate, is a sound one. I believe periodic review is important to ensure that the rules in place are proper and are still necessary. It is also a good practice to listen to suggestions from those who are regulated to assess how the regulatory process might work even more efficiently.

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

The current mission of the FTC is to prevent or correct business practices that are anticompetitive or deceptive or unfair to consumers; to enhance informed consumer choice and public understanding of the competitive process; and to accomplish these missions without unduly burdening legitimate business activity.

The major programs of the Commission, during the past year, include the far reaching amendments to the Telemarketing Sales Rule, in the Privacy area, where the FTC launched its "Do Not Call" registry. The registry will be a central database of telephone numbers of consumers who choose not to receive telemarketing calls.

Prescription drugs in the health care area is another key program of the Commission. To help ensure that anticompetitive practices do not injure consumers by reducing the availability or increasing the price of drugs, the FTC published a study examining the frequency of anticompetitive abuses to block market entry of lower-cost generic drugs. The Commission also provided comments to the Food and Drug Administration (FDA) on the potential for misusing procedures under the Hatch-Waxman Amendments governing employing improper efforts to delay generic entry, also, has been a priority of the Commission.

Recently, the Commission and Department of Justice concluded extensive hearings on *Competition and Intellectual Property Law and Policy in the Knowledge-Based Economy*. The hearings responded to the growth of the knowledge-based economy; the increasing role of dynamic, innovation-based considerations in antitrust policy; and the importance of managing the intersection of intellectual property and competition law to realize the goal of promoting innovation.

The Commission also has sought to protect competition in the gasoline market. In a recently issued administrative complaint, the Commission alleged that Unocal improperly manipulated the process through which the California Air Resources Board set regulations for the formulation of low-emissions gasoline. The Commission alleged that Unocal's anticompetitive conduct potentially could cost California consumers hundreds of millions of dollars a year in higher gasoline prices. The case currently is in trial before an administrative law judge. Gasoline price monitoring is another effort by the Commission which complements and supports its enforce-

ment in the energy field. Staff members have analyzed wholesale gasoline prices in more than 20 cities and resale gas prices in 360 cities throughout the U.S. I understand that the Commission will analyze this data and take any action deemed appropriate.

The Internet's development has created many consumer issues, requiring the Commission to draw on its competition and consumer protection capabilities. The Commission has formed an Internet Task Force to analyze state regulations that may restrict the entry of new Internet competitors. Likewise, the Commission hosted public workshops on spam and potential anticompetitive barriers to e-commerce, continuing its efforts to keep this medium free from fraud, deception, and unfair or anticompetitive practices.

In the financial practices area, the Commission has targeted deceptive lending as an enforcement priority. A court recently finalized a settlement to resolve charges that a banking company had engaged in widespread deceptive and abusive practices involving subprime home mortgage lending. The settlement is expected to provide \$215 million in redress through cash refunds and reduced loan balances to 2.2 million consumers in the U.S., Puerto Rico, and the Virgin Islands.

The major operational objective of the Commission's competition program is to prevent anticompetitive mergers and other anticompetitive business practices in the marketplace by identifying such mergers and practices that cause the greatest consumer injury; stemming anticompetitive mergers and practices through law enforcement; and preventing consumer injury through education. In the area of consumer protection the Commission seeks to prevent fraud, deception, and unfair business practices in the marketplace by identifying practices that cause the greatest consumer injury; by stopping such practices through law enforcement, ensuring broad-based protection for consumers and by preventing consumer injury through education.

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

A challenge which constantly faces the Commission and the Antitrust Division as well, is to find and allocate sufficient resources to engage in non-merger related antitrust investigation and enforcement. Despite the recent and likely short-term downturn in mergers subject to Hart-Scott-Rodino review, the agency has for more than twenty years struggled to devote sufficient resources to non-merger enforcement under the Commission's Section 5 authority to enforce the Nation's primary antitrust law, the Sherman Act. The recent downturn in merger filings should create the opportunity for additional and vital non-merger antitrust activities. The experience gained and the lessons learned in these activities should help the Commission strike a new and a proper balance between merger and non-merger enforcement when merger activity increases with a rebounding economy.

As is clear from my resume, a good portion of my antitrust work in government involved prosecuting violations of law relating to so-called vertical restraints of trade. My extensive experience in this area has taught me that vertical trade restraints often harm consumers as clearly as the horizontal trade restraints which the Federal agencies have focused upon almost exclusively. A clear challenge for the Commission is to investigate and, when warranted, prosecute vertical trade restraints. I am sure that the lack of Commission activity in this area is not justified by any lack of problems in this area or due to the adequacy of private or state attorney general enforcement. While the states have traditionally played the lead role in this area, they and the consuming public need an active and knowledgeable Commission in this important part of antitrust enforcement.

The Commission has identified deceptive spam as a growing problem, which is addressing through law enforcement efforts, consumer and business education, and a recent recommendation for legislation to enhance its effectiveness in fighting spam. The problems caused by unsolicited commercial e-mail go well beyond the annoyance spam causes to the public. These problems include the fraudulent and deceptive content of most spam messages, the sheer volume of spam being sent across the Internet, and the security issues raised, because spam can be used to disrupt service or as a vehicle for sending viruses. The Commission has found that 66 percent of spam contained obvious indicia of falsity. Moreover, a significant portion of spam is likely to be routed through foreign servers. For these reasons, the Commission believes it would be useful to have additional legislative authority, addressing both procedural and substantive issues, that would enhance the agency's effectiveness in fighting fraud and deception. The procedural legislative proposals would improve the Commission's ability to investigate possible spam perpetrators, and the substantive legislative proposals would improve the agency's ability to sue the perpetrators.

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 question assumes that the Commission has not achieved its mission. I am unable to comment on that assumption, with one exception. That exception being the lack of there are factors, however, which might prevent the agency from accomplishing its mission such as limited resources due to budgetary constraints; complexities involved in assessing new technology and intellectual property; and the ease with which scam artists have taken to new technology to prey upon consumers.

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

The American consumer, the general public, quality producers of goods and services, members of various congressional committees, numerous Federal and state agencies and private organizations are the stakeholders in the work of the Commission.

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

The FTC has a unique adjudicative, educational, and investigatory mission. In relation to the stakeholders, the Commission should be cognizant of their concerns and responsive when this responsiveness is consistent with the Commission's investigatory or adjudicative missions. In fulfilling its duties to the stakeholders, Commissioners should approach each matter diligently, fairly, well-informed, and with an open-mind.

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?

The Commission has published a Strategic Plan for Fiscal Years 2000–2005 with clearly articulated performance measures and targets. If confirmed, it will be essential to familiarize myself with the strategic plan and other relevant documents to assess proper management and accounting controls.

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

In my previous experience as New York State Deputy Attorney General of Public Advocacy, my duties included oversight of the Attorney General's Public Advocacy Division which employed over 350 Assistant Attorneys General and supporting staff, in seven substantive areas of law (Antitrust, Consumer Protection, Civil Rights, Charities, Environmental Protection, Investor Protection and Real Estate Finance).

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?

Identifying, reporting on and meeting articulated performance goals provides significant benefits to the American consumer. The cost of the Commission's operations is a good investment for consumers and businesses. Effective management of Commission resources provides an additional benefit to the public. The Commission's internal control review program, along with its Inspector General's audits, plays a significant role in ensuring effective and responsive agency operations.

(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?

When an agency fails to achieve its performance goals, Congress should determine the reason such goals have not been achieved. If the failure is due to external factors, such as reduced funding, the above steps would not appear warranted. Before any such structural actions are taken, Congress should weigh the benefits and burdens of the proposed action to the ultimate stakeholders.

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

If confirmed, the applicable performance goal should be that of an informed, engaged member of the Commission, who executes her duties with integrity, intelligence, compassion, selflessness, and honesty. As these standards apply to my own performance—so, too, should they apply to our Nation. In the words of Frederick Douglass, "The life of a nation is secure only while the Nation is honest, truthful, and virtuous."

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" in this area precisely matches my practice. I believe in leadership by example. While I do not follow any particular supervisory model, I believe in the responsible and appropriate delegation of authority and the knowledge that those

who work with me will do so intelligently, professionally and with integrity. No employee complaints have been 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.

During my tenure as the New York State Deputy Attorney General of Public Advocacy, I created the National Association of Attorneys General Boxing Task force, comprised of 18 member states, that collaborated with Senator John McCain to reform professional boxing in the U.S. As a member of the Task Force, I and others strongly endorsed The Muhammad Ali Boxing Reform Act (S. 305) sponsored by Senator McCain. The final bill, Public Law 106-210, was passed May 26, 2002, during the 106th Congress.

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

Though I have no specific knowledge about the duties of the FTC Inspector General, my general sense of an Inspector General's role would be to conduct and supervise audits and investigations relating to the programs and operations of an agency; to promote economy, efficiency, and effectiveness in agency administration; to prevent and detect fraud and abuse in agency programs and operations; and to provide a means for keeping the head of an agency and the Congress fully and currently informed about problems and deficiencies relating to the administration of particular programs and operations and the necessity for and progress of correct action. In this regard, the proper relationship should be to fully cooperate with such audits and/or investigations and not unduly influence or impede the investigatory process.

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.

Congress should consider for legislative action unauthorized commercial e-mail (spam) (a discussion of spam is stated, *supra*, on pages 15-16), cross-border fraud, and identity theft.

Cross-border fraud is a growing problem for consumers and businesses in the U.S. and abroad. During 2002, approximately 14 percent of complaints collected in the FTC's Consumer Sentinel complaint database involved a cross-border element. The number of Commission cases involving offshore defendants, offshore evidence, or offshore assets has also increased. In 2002, the Commission brought over 20 law enforcement actions involving cross-border fraud. To address this problem, Chairman Muris announced a Five-Point Plan to Combat Cross-Border Fraud by (1) Developing OECD Guidelines on cross-border fraud; (2) Strengthening bilateral and multilateral relationships with foreign jurisdictions; (3) Continuing public-private partnerships with industry; (4) Providing technical assistance to developing countries; and (5) Recommending proposals for legislative amendments.

Identity fraud was number one on the top ten consumer fraud complaints in calendar year 2002. In response, the Commission has implemented a toll-free number as the central clearinghouse for identity theft complaints and provides a valuable source of consumer complaint data. The identity theft database now holds more than 430,000 entries. The Commission began making the data available to law enforcement partners through an online database, and now more than 540 law enforcement agencies access the data. Working with the Secret Service, the Commission investigators develop preliminary investigative reports that are referred to regional Financial Crimes Task Forces for possible prosecution.

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.

I know that the Commission submits a detailed programmatic budget to the Congress, together with its Strategic Plan, performance measures, and audited financial statements. Transparency in the area of discretionary spending is a laudable goal, and if confirmed, I will discuss this initiative with my fellow Commissioners.

The CHAIRMAN. Thank you very much.

Ms. Nason.

**STATEMENT OF NICOLE NASON, NOMINATED TO BE
ASSISTANT SECRETARY FOR GOVERNMENTAL AFFAIRS,
U.S. DEPARTMENT OF TRANSPORTATION**

Ms. NASON. Thank you very much, Mr. Chairman.

I am also blessed to have many members of my family here today: my mother, Janice Robilotto, here from New York; my in-laws George and Ann Nason, coming from Rhode Island; my husband David; and my two-year-old daughter Alexandra. I apologize in advance if she tries to upstage mommy in her developing public speaking abilities.

Senator LAUTENBERG. She will get you a lot of votes.

The CHAIRMAN. Your family members are very welcome here today and thank you for coming.

Ms. NASON. Chairman McCain and Members of the Committee: Thank you for the opportunity to appear before you today to consider my nomination to be Assistant Secretary for Governmental Affairs of the Department of Transportation. It is an honor to be here and a privilege to have been selected by President Bush and Secretary Mineta for this position.

Mr. Chairman, if confirmed I look forward to working with this Committee on the many critical pieces of legislation moving through the Congress this session and next. I would also like to express my appreciation for the support I have received from both of my former Chairmen, Congressman Henry Hyde and Congressman Porter Goss. Although they are both on travel today, they have been the most reliable and trustworthy advisers any person could have asked for and I am in their debt.

Mr. Chairman, as you noted, this is a significant year for the Department of Transportation as so many of the modes are facing Congressional reauthorization. If confirmed, I intend to work closely with all of the modal administrators to help coordinate their dealings with Congress on the critical issues they are facing. They have been selected for their positions because of their expertise in the field and I intend to listen closely to their concerns so that the Department can speak with one voice to Congress.

Mr. Chairman, I believe it is my primary responsibility and the primary responsibility of any government affairs office to ensure that lines of communication between the Department and the Congress are always open. If confirmed, it is my goal to be in constant consultation with Congress and the other transportation stakeholders to ensure that laws and regulations are implemented effectively.

I believe it is crucial that the Department complies with both the letter and the spirit of laws passed and that all sides fully understand both Congressional history and Congressional intent with respect to any law.

The opportunity to serve as Assistant Secretary to President Bush and Secretary Mineta is a great honor. If confirmed, I know this will be a very interesting and challenging role, and I look forward to working with you, Mr. Chairman, and the Members of this Committee to help make transportation in America the safest and most efficient possible.

Again, thank you for the opportunity. I look forward to answering your questions.

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

PREPARED STATEMENT OF NICOLE R. NASON, NOMINEE FOR ASSISTANT SECRETARY
FOR GOVERNMENTAL AFFAIRS, U.S. DEPARTMENT OF TRANSPORTATION

Chairman McCain, Senator Hollings and members of the Committee, thank you for the opportunity to appear before you today to consider my nomination to be Assistant Secretary for Governmental Affairs of the Department of Transportation. It is an honor to be here and a privilege to have been selected by President Bush and Secretary Mineta for this position. Mr. Chairman, if confirmed, I look forward to working with this Committee on the many critical pieces of legislation moving through the Congress this session and next.

I also would like to express my appreciation for the support I have received from both of my former Chairmen, Congressman Henry Hyde and Congressman Porter Goss. Although they are both on travel today, they have been the most reliable and trust-worthy advisors any person could have asked for and I am in their debt. I still approach them both regularly when I need advice and guidance and their doors are always open.

This is a significant year for the entire Department, as so many of the modes are facing congressional reauthorization. If confirmed, I intend to work closely with all of the modal administrators to help coordinate their dealings with Congress on the critical issues they are facing. They have been selected for their positions because of their expertise in the field, and I intend to listen closely to their concerns so that the Department can speak with one voice to Congress.

Mr. Chairman, I believe it is the primary responsibility of the government affairs office to ensure that lines of communication between the Department and the Congress are always open. If confirmed, it is my goal to be in constant consultation with Congress and other transportation stakeholders to ensure that laws and regulations are implemented effectively. I believe it is crucial that the Department complies with both the letter and the spirit of the laws passed, and that all sides fully understand both congressional history and intent with respect to any law.

The opportunity to serve as Assistant Secretary to President Bush and Secretary Mineta is a great honor. If confirmed, I know this will be a very interesting and challenging role, and I look forward to working with you, Mr. Chairman, and members of the Committee to help make transportation in America the safest and most efficient possible.

Again, thank you for the opportunity to appear, and I look forward to answering your questions.

A. BIOGRAPHICAL INFORMATION

1. Name: (Include any former names or nicknames used.): Nicole Robilotto Nason.
2. Position to which nominated: Assistant Secretary of Transportation for Governmental Affairs.
3. Date of nomination: May 14, 2003.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: U.S. Dept. of Transportation, 400 Seventh St., SW, Washington, D.C. 20590.

5. Date and place of birth: August 12, 1970, Bayshore, New York.
6. Marital status (Include maiden name of wife or husband's name.): Married to David G. Nason.
7. Names and ages of children: (Include stepchildren and children from previous marriages.)

Alexandra Hope Nason, born March 29, 2001.

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

Case Western Reserve University, Juris Doctorate, 1995

The American University, Bachelor of Arts in Political Science, 1992

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.)

Department of Transportation, Consultant, Washington, D.C., March 2003 to Present.

U.S. Customs Service, Assistant Commissioner of Congressional Affairs, Washington, D.C., Jan. 2002–March 2003.

Congressman Porter J. Goss, Communications Director, Washington, D.C., Sept. 2000–Jan. 2002.

MetLife, Inc. (formerly Metropolitan Life Insurance Company), Government Relations Counsel, Washington, D.C., March 1999–August 2000.

U.S. House Committee on the Judiciary, Counsel, Washington, D.C., Sept. 1995–March 1999.

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.)

Not Applicable.

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.)

MetLife, Inc., Government Relations Office Counsel.

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

Delta Gamma Fraternity, 1989–1992 (Recording Secretary 1990–1991; Vice President 1991–1992), Student Advisor: 1995–2001; American Bar Association, 1992–1996 (approx.); Maryland State Bar Association, 1995–1997 (approx.); Cornerstone School of Washington, D.C. (local, faith-based elementary school), sponsor for 1 child, 2000 to Present; Washington Golf & Country Club (Arlington, VA), Wait List; St. Agnes Catholic Church.

13. Political affiliations and activities:

(a) None

(b) None

(c) To the best of my knowledge, I have made the following political contributions, although none were over \$500.00: National Governor's Association, 2000; Abraham for Senate, 2000; Rob Portman for Congress, 1999–2000; National Republican Senatorial Committee, 1999.

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.)

Suffolk County Police Memorial Scholarship winner, 1988–1992.

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) I believe I was chosen because of my experience as the Assistant Commissioner of Congressional Affairs of the U.S. Customs Service and my time as a staff member in the House of Representatives. I believe that President Bush and Secretary Mineta focused on my management experience and familiarity with the legislative process in determining my suitability as Assistant Secretary of Governmental Affairs of the Department for Transportation.

(b) Should be confirmed by the U.S. Senate, I will bring my experience in governmental relations in a variety of positions to my new role in the Department of Transportation. Having worked as a committee counsel, a communications director, a lobbyist, and an agency government relations representative, I am looking forward to being a part of President Bush's senior legislative team. This is an especially significant time for transportation interests, and I am eager to work with the Congress towards passage of the significant transportation legislative initiatives this session.

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, except that I am presently employed by the Department of Transportation as a consultant.

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. 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.

I am not aware of any conflicts of interest.

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 am not aware of 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.

As a counsel to the House Judiciary Committee, I was engaged in the passage, defeat or modification of numerous pieces of legislation. Also, as government relations counsel at MetLife, I lobbied the Congress in support of several legislative initiatives. Finally, while serving as the Assistant Commissioner of the U.S. Customs Service, I represented the Administration's position regarding many bills affecting the Customs Service and/or the Department of the Treasury. I have outlined below, to the best of my ability, some of the major pieces of legislation that I was involved with during the past ten years.

Judiciary: Several different pieces of antiterrorism legislation; U.S. Marshals Service oversight legislation; BATF oversight legislation; *H.R. 3633*, the Controlled Substances Trafficking Prohibition Act; *H.R. 2070*, Correction Officers Health and Safety Act of 1997; *H.R. 1524*, Rural Law Enforcement Assistance Act of 1997; *H.R. 2829*, Bulletproof Vest Partnership Grant Act of 1997; *H.R. 2134*, Bail Bond Fairness Act of 1997; *H.R. 2380*, Internet Gambling Prohibition Act of 1997; cellular telephone fraud legislation; *H.R. 218*, Community Protection Act of 1997; *H.R. 339*, to provide for a national concealed firearm standard; *H.R. 2380*, the Internet Gambling Prohibition Act of 1997; *H.R. 1248*, the Violence Against Women Act; *H.R. 1869*, the "Stalking Prevention and Victim Protection Act of 1999."

MetLife: Legislation related to electronic signatures, pension reform and employee benefits, tort reform.

U.S. Customs Service: Legislation related to trade facilitation; sea, air and land cargo; air passenger manifests; drug smuggling; antidumping duty enforcement; Jones Act compliance; money laundering.

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.)

Please refer to the Deputy General Counsel's opinion letter.

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. 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. No.

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

I am not aware of any additional information that is not already covered in other sections of this questionnaire.

E. RELATIONSHIP WITH COMMITTEE

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

Yes, to the best of my ability.

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

Yes, to the best of my ability.

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, to the best of my ability.

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.

It is my intent to work closely with every modal administrator of the Department of Transportation to ensure that regulations issued comport with both the letter and the spirit of the law. Additionally, I will consult with Members of Congress and staff to gain an understanding as possible of the congressional intent of a given law. As a former Member of Congress, Secretary Mineta has a keen understanding of the importance of complying with legislative intent, and I will also rely on his judgment and experience to assist me.

5. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions 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?

My undergraduate degree from The American University was in political science, and my first exposure to the political process was as an intern in the House of Representatives. Following college graduation, I moved to Cleveland to attend Case Western Reserve University's law school, but I returned immediately to Washington after I completed my studies to prepare for the Maryland bar and find employment on Capitol Hill. I spent nearly four years as a committee counsel for the House Judiciary Committee, most with the Subcommittee on Crime, and I believe I gained a good understanding of the challenges associated with the legislative process. I then left to work as a government relations counsel in the Washington, D.C. office of MetLife, Inc. As a lobbyist for MetLife, I saw a different and equally important side to the process—the role of the private sector. When I returned to government service working for Congressman Porter Goss, I was privileged to gain both committee and personal office experience in the role of communications director. After September 11, I was honored to have been asked by the Administration to serve as the Assistant Commissioner for Congressional Affairs for the U.S. Customs Service, and subsequently saw yet another side to the process. I believe that this wide variety of viewpoints will assist me as I try to understand all of the different perspectives relative to transportation policy. I am interested in learning all the various views on a particular issue because I believe everyone—the Congress, the Administration and the private sector—can all contribute in a meaningful way to a particular piece of legislation.

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

I believe this nomination represents a wonderful opportunity to represent two people I greatly admire and respect, President George Bush and Secretary Norman Mineta. The position will certainly be challenging, and I am very enthusiastic about learning much more about transportation law and policy. I think transportation is one of the most basic and significant needs of the American public, and I am excited about all of the reauthorization bills coming before the Congress this year. Also, I believe the Department can contribute significantly to ensuring the Nation's domes-

tic security, and look forward to working on that agenda. I can't think of a better time to get involved with such a fundamentally important department as the Department of Transportation.

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

My primary goal will be to support the President and the Secretary on all issues that fall within my purview at the Department of Transportation. If confirmed, I hope to ensure that Congress and the Administration maintain or improve communication regarding the other's concerns and needs. I believe that regular and open communication will be critical to achieve passage of the numerous comprehensive legislative proposals that must pass this year. I believe that, while the agenda is very heavy and complex, an open dialog will guarantee success for all parties.

I also hope to make communication within the Department's government affairs team even stronger. It is critical that the Department speaks with one voice. Otherwise we risk confusing the Congress and the private sector unfairly and unnecessarily. I know that many employees have new ideas, and I look forward to hearing their proposals regarding better and more productive meetings, conference calls, etc.

I will also seek to ensure that the entire government affairs team at the Department strives to meet the highest ethical standards. I believe that integrity and credibility are the most important characteristics of a government relations employee. The Congress must know that we are honest and straightforward in our dealings, and the President and the Secretary deserve nothing less.

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 hope and expect to continue to develop my management skills in this role. I also know that I will have to develop a much more detailed knowledge base on transportation policy. The role of Assistant Secretary for Governmental Affairs carries great responsibility, and I know that I have much to learn from my advisors within the Department and the policy experts in the Congress.

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 have never believed that government can cure all of society's problems; however, I do believe that it is incumbent upon all levels of government to invest in transportation infrastructure. Particularly in the transportation arena, federal, state and local governments need to partner with the private sector to benefit the citizenry. Government investment in transportation infrastructure is not meddling, and I believe most Americans expect and depend on their elected representatives to support a strong national transportation system.

This should not mean that the Federal Government has a responsibility to "bail-out" every different mode of transportation. On the contrary, I believe the government has an obligation to show restraint, and allow the free market to expand or contract based on the public's needs. The government should not become a public trough for every transportation industry that has fallen upon hard times. As recent reports have demonstrated, bad business decisions by the private sector can cause, or at least contribute to, a corporation's downward fiscal slide. The government has sensibly embraced a periodic review of the various modes to determine if emerging trends are positive or negative for the traveling public.

It is difficult to say at what point exactly the government needs to intervene and what standards should be used. A strong public-private partnership should aid in such a determination. With a strong partnership comes strong communication, and the government can know sooner of a developing problem. The government then has the option to insert itself partially or totally to help resolve the potential crisis. Hopefully, in cases where the market needs to work its will, the government will not choose to get involved at all.

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

The primary responsibility of the Department of Transportation is to ensure that a safe, efficient and cost-effective transportation system is available for the traveling public. One of Secretary Mineta's major goals this year is to promote safety in all modes of transportation, and I believe that is a very significant and worthwhile objective. The challenge to each of the appropriate agencies within the Department is to improve upon its own safety record, and to publicly promote safety as a top priority. Although safety should not slow efficiency; both can be achieved when the Department is committed as the Secretary is—to meeting these twin objectives.

This is an extremely busy year for the Department of Transportation, as the Administration works with the Congress on several major legislative reauthorizations. The surface reauthorization proposal affects many of the modes, including the Federal Highway Administration, the Federal Transit Administration, the National Highway Transportation Safety Administration, and the Federal Motor Carrier Safety Administration. The Administration's proposal for reauthorization of the Federal Aviation Administration, dubbed "Flight 100," is also a top priority for this session. Another major operational objective is to work closely with the Congress on a plan to restructure Amtrak. Considering all these difficult issues, the Office of Governmental Affairs will need to ensure close coordination between the Congress and the Administration, so that information is shared appropriately and inquiries are answered promptly.

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

As Secretary Mineta has repeatedly stressed, the primary challenge facing the Department this year is to improve the overall safety record. For example, although improvements have been made in the rates of fatalities and injuries on highways, the total numbers are unacceptably high. Even more troubling is the fact that they are climbing. There are also attendant economic costs, such as medical and insurance costs, and loss of workplace productivity. Stressing the importance of making the national transportation system the safest possible is a top challenge.

There are numerous additional challenges of the Nation's transportation system that the Department must tackle this year, during the reauthorization process. It is difficult to assign a ranking to these challenges, as all are significant. For example, congestion mitigation, intermodal connectivity, efficiency, and timely project delivery are all important. Overall, President Bush and Secretary Mineta are committed to promoting a safer, simpler and smarter Federal transportation system.

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?

This is a very significant congressional session for the Department of Transportation because nearly all of the modes have reauthorization legislation pending. Although it will be a challenge to give each a high level of attention, I believe the Department will meet its mission. It is simply coincidence that smaller modes, such as the Maritime Administration with its approximately 850 total employees, are facing major legislative reviews simultaneous to the larger modes, like the Federal Aviation Administration with its forty-eight thousand employees. In recent years, the Inspector General has done thorough reviews of the agencies within the Department of Transportation; and many of the recommendations are now ready to be implemented during the reauthorization process. Additionally, much of the focus since September 11 was on development of the Transportation Security Administration, which has now been folded into the Department of Homeland Security. If confirmed, I will help ensure that the Office of Government Affairs works closely with the Congress to give each agency the assistance it deserves during this busy session.

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

The Department stakeholders are the Congress; the states and localities; the various transportation industries; and, of course, the traveling public. If the Department has failed the users of the transportation system, the traveling public, then the most critical stakeholders have been forgotten.

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

The position of Assistant Secretary requires me to be accountable to the stakeholders. If confirmed, I intend to learn the issues, listen to the stakeholders' concerns, and work to resolve any problems. I believe the primary role of Assistant Secretary for Government Affairs is to facilitate communication between the stakeholders and help solve problems.

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?

The primary responsibility for proper management and accounting at the Department of Transportation is with the Assistant Secretary for Budget and Programs, who also serves as the Department's Chief Financial Officer. If confirmed, I intend to work closely with the Budget Office, to help ensure that Members of Congress get timely responses to inquiries regarding proper accounting and management. I also intend to work with the Department's Inspector General to make sure that funding is allocated lawfully and appropriately.

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

As the former head of an agency government affairs office, I was responsible for supervising an office of approximately twenty employees. These employees ranged from a GS-6 entry-level to several GS-15 senior managers. The office operated on an approximately \$2 million dollar budget. As Assistant Commissioner, I was responsible for ensuring that all budgetary needs were appropriately balanced, from salary to equipment to yearly bonuses. I also conducted all performance reviews and was responsible for all staffing changes (hires, transfers, etc.) below the GS-15 level.

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 believe that measurable performance goals are very helpful for setting achievable standards over the course of the year. Goals provide clarity for all employees, and help everyone work towards the same set of objectives. However, goals must be reviewed periodically, to ensure that new needs have not overtaken old ones, and performance adjustments are made as necessary. Otherwise, the value in setting measurable performance goals is lost. Also, I believe that employees need to have an active voice in the goal-setting process, so the goals have a positive meaning for everyone.

(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?

While the Department sets its own goals, many of the Department's successes or failures are tied to congressional determination. Reviewing the Department's goals is an appropriate and important role undertaken by the Congress, but Congress can also help the Department achieve success by providing the necessary tools and resources. The Department has failed to meet its goals if it first fails to communicate regularly with the Congress about its needs and shortfalls. If the Department doesn't meet its goals, investigation into the failure must be conducted and Congress should review to determine whether elimination, privatization, downsizing or consolidation is necessary. Any of these options may be viable alternatives. The Department also has the responsibility to learn from its mistakes, to ensure that they are not repeated.

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

If confirmed, I believe my first responsibility will be to set goals relative to the Department's goals for the congressional session. I believe that any Office of Government Affairs can help guarantee a Department's success by focusing on communication with stakeholders as a performance measure. Although this is difficult to quantify, regular communications can be measured and accounted for by employees. If confirmed, I hope to do a review with current employees to learn their perspective on whether the office is operating at a high level of success. I believe they will expect the Assistant Secretary to implement necessary changes, and I hope to meet that goal. I also intend to hire as appropriate to fill any existing or upcoming staffing vacancies, so work is distributed fairly. I hope to set an example of integrity and responsiveness, so employees in the office feel that we are all held to the same high standards.

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 who feel involved and empowered are more likely to be enthusiastic in their work. In my experience at the U.S. Customs Service, I saw that employees were more likely to embrace additional responsibilities if they felt included in the process. In other words, people like to know what is going on within an organization. Information sharing is key to helping people feel like part of a team. I always maintained an open door policy, so staff could share concerns at any time. While at Customs, I embraced a model of "team" work, so that several people worked on projects together. I also believe that giving public credit to individuals, even within a team, is a very important tool. I am not aware of any employee complaints that have even been 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.

My professional career has related to working with the Congress in several different forms. As a committee counsel for the Judiciary Committee of the House of Representatives, I saw the congressional perspective on the lawmaking process. When I left the Judiciary Committee, I took a position as government affairs counsel

with MetLife, Inc. and saw the legislative process from a very different angle. I planned briefings for Members and staff on MetLife's legislative priorities, and participated in fundraisers and retreats. This was unfamiliar work for me, and extremely valuable because I got to meet numerous congressional staff who didn't focus on Judiciary Committee issues. When I returned to Congress to work for Representative Porter J. Goss, I took a position as Communications Director and was able to learn about a broad range of issues from a communications perspective. Later, as the Assistant Commissioner for Government Affairs for the U.S. Customs Service, I interacted with the Congress on behalf of the Administration regarding primarily cargo, trade and security issues. I also communicated regularly with a wide range of Members' personal and district offices concerning their local port needs.

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 has a unique role to play, as he or she is independently confirmed and required by statute to report to Congress. The IG needs to remain somewhat insulated, to give an unbiased accounting to Congress regarding the Department's practices and activities. If confirmed, I intend to review the IG's reports and findings carefully, to better understand what concerns the Congress may have about the Department's practices. Also, I intend to work with the IG and the Congress as appropriate to assist with implementation of any needed changes within the Department.

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.

With so many major pieces of legislation up for reauthorization this year, there are several obvious priorities, and I believe they are all important. One example is the reauthorization of the Federal Aviation Administration. The Senate Commerce, Science, and Transportation Committee has already begun action on the FAA bill. The Committee's markup represents an important first step in moving this significant piece of legislation forward. Another major issue for the Department is the reauthorization of TEA-21, which the Administration has named SAFETEA. Secretary Mineta has made the focus of this proposal an overall increase in safety. As the Secretary has stated repeatedly, it is not acceptable that the Nation suffers approximately 43,000 deaths and over 3 million injuries annually on our highways. If confirmed, I intend to work closely with all committees of jurisdiction in the House and Senate on this critical bill. Also very important this year is the reauthorization of Amtrak. The Senate Commerce Committee and other committees have already held hearings on various proposals to reform Amtrak, and if confirmed I intend to work with the committees to develop consensus legislation for passenger rail reform.

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 discretionary funds allocated by the Department are significant and must be awarded through an open process. It is important to note that the percentage of funds over which the Department has discretion is relatively small. Much of the funding is either earmarked or awarded to the States for their prioritization. As transportation funding becomes ever more critical, I believe the Department has an obligation to ensure that funds are spent on the most necessary and cost-effective projects. If confirmed, I would immediately begin working with the Congress and the State and local governments to guarantee that funds are used in the best and most fiscally prudent manner possible.

The CHAIRMAN. Thank you very much. We welcome both witnesses.

Ms. Nason, I noticed in the news this morning that Michael Jackson has announced his departure and we note that with great regret because of the outstanding job that he has done with this Committee and for the Nation.

Senator Lautenberg, do you have any questions?

Senator LAUTENBERG. Thank you, Mr. Chairman.

I did not want Ms. Nason to think that I was displeased in any way with her nomination. But Ms. Harbour, coming from New Jersey, establishes an inextricable link. So if I neglected, I do want to

say that we are very proud of the appointment that is being recommended for you as well.

I have this question. Just a few weeks ago the Senate voted overwhelmingly to adopt an amendment that I offered to S. 824, the FAA reauthorization bill, to prevent the administration from privatizing the air traffic control. Now, leading up to that, though, DOT, the Office of Congressional Affairs, sent an unsolicited e-mail to Senate staffers in opposition to my amendment. Not only was the e-mail unsolicited, but it was factually incorrect. Interestingly, DOT did not send it to my staff. They had to get it secondhand.

I understand that you, Ms. Nason, have been working as a consultant to DOT for the past several months. So I am interested to learn what involvement, if any, you had in preparing and sending that ATC e-mail.

Ms. NASON. Thank you, Senator Lautenberg. I would be very concerned to learn if the government affairs office was sending misinformation through e-mail or any other means of communication. I think the most important thing any government affairs office can do is to help facilitate communication between the Hill and the Administration, and the one most important responsibility for someone in that office is to be credible and honest at all times.

So I would be extremely concerned to learn that there was any kind of misinformation. I assure you I will look into that.

Senator LAUTENBERG. Please do.

Ms. Harbour—enough with the nice guy stuff. Are there any areas of consumer protection that are of particular interest to you at the FTC?

Ms. HARBOUR. Thank you, Senator. Yes, I have a particular interest in cross-border consumer protection initiatives. The Internet and electronic commerce, as we all know, is boundaryless and cross-border fraud is a growing problem for consumers and businesses in the United States and abroad. I understand that in Fiscal Year 2002 approximately 14 percent of complaints collected at the Federal Trade Commission complaint database involved a cross-border element, and I know that the FTC is currently working with foreign countries to develop OECD guidelines—that is the international Organization for Economic Cooperation and Development—and that this effort was actually spearheaded by Commissioner Thompson, who leads the U.S. delegation to the OECD committee. This cross-border initiative would also help the Commission fight spam, the unsolicited commercial e-mails, and would allow sharing with foreign counterparts.

If confirmed, Senator, I will work with my fellow commissioners to continue this very important initiative.

Senator LAUTENBERG. Thank you.

Two FTC chairmen, public health agencies, even cigarette companies, have recognized that current tar and nicotine rating system for cigarettes is deeply flawed. It gives false information to consumers. Ms. Harbour, do you think that the FTC ought to reexamine whether the rating system that is presently in place ought to be continued?

Ms. HARBOUR. I am aware that the rating system for assessing the tar and the nicotine yields for cigarettes was promulgated back in 1967 and the science has definitely progressed since then. I do

know that this system does not mimic the actual smoking behavior of consumers. I am aware that consumers will compensate in their smoking styles by drawing deeper, longer, more frequent puffs and that they might inadvertently cover the air holes in the filter and thereby negate the benefits that the low tar and nicotine cigarettes might offer.

I do agree that the current rating system should definitely be reassessed. I believe, however, that it should be done by a public Federal agency with scientific-based expertise. I believe that the FTC has indicated this as well, that a science-based public agency such as the Health and Human Services' National Cancer Institute should develop a methodology for testing this tar and nicotine to see the amount of yield.

Senator LAUTENBERG. So you will be looking at that, and we encourage you to do so because it is believed in many circles that the advertisements for light, for less, is false, and that it should be examined by an agency with credibility and staffing and knowledge to evaluate this and make sure that people are getting the truth.

Ms. Nason, thank you for your answer to the first question about the e-mail. We will take you at your word that you will check on that, please, and see what happened and make certain that it does not happen again in the future to the best of your ability.

Mr. Chairman, these are two outstanding candidates and I hope that, even though the family pictures are beautiful, that there will be an opportunity to interview that little one there. I have a granddaughter about her age. I love talking to them. Maybe that is my class of intellect, Mr. Chairman. I preempt you on any comment you might want to make.

The CHAIRMAN. Thank you very much, Senator Lautenberg.
Senator Sununu.

**STATEMENT OF HON. JOHN SUNUNU,
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator SUNUNU. Thank you, Mr. Chairman.

I just want to congratulate both nominees and their families. This is obviously an important day for you. I wish you well in your work. I certainly look forward to working with you.

These are tough positions, challenging positions that deal with a whole host of complex issues, and they do not get a lot of accolades and a lot of publicity for the hard work that you are going to do. But rest assured you will get plenty of criticism from both friends and foes alike, not just here on the Committee but elsewhere on Capitol Hill.

So I certainly wish you well in your service and thank you for serving.

Ms. HARBOUR. Thank you, Senator.

The CHAIRMAN. Both nominees responded in detail to a long series of questions that were submitted to them and they did so satisfactorily. I have also reviewed their background investigations.

I just want to point out, Ms. Harbour, the FTC has considered and continues to be involved with some very, very important issues—spam, don't-call lists, a broad variety of very important issues—and we work very closely with the FTC. So you assume a very responsible position.

Ms. Nason, as we again approach our oncoming battle over highway funding—I know of no more acrimonious encounter every year or so than that—we look forward to working with you very closely on a broad variety of issues, with our outstanding Secretary of Transportation Mr. Mineta. As I mentioned earlier, we will miss Mr. Jackson very much, who we have had a very close working relationship with.

I congratulate you both. We will move your nominations as quickly as possible. Hopefully, we will be able to report them out on Thursday and move them to the floor of the Senate so you can get to work.

Thank you both for your willingness, your past and present and future service to our nation. Thank you for being here today.

Ms. NASON. Thank you very much.

Ms. HARBOUR. Thank you.

The CHAIRMAN. This hearing is adjourned.

[Whereupon, at 9:50 a.m., the hearing was adjourned.]

