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S. HRG. 111–695, Pt. 1

CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

FEBRUARY 5, FEBRUARY 25, MARCH 10, and APRIL 1, 2009

Serial No. J–111–4

PART 1

Printed for the use of the Committee on the Judiciary



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NOMINATION OF DAVID W. OGDEN, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

WEDNESDAY, FEBRUARY 5, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:37 a.m., room SD–226, Dirksen Senate Office Building, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Feingold, Cardin, Whitehouse, Wyden, Kaufman, Specter, Hatch, Kyl, and Sessions.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. Good morning, everyone. I see my friend Senator Warner here. He seems to be living in this Committee recently.

On Tuesday, Eric Holder was sworn in as the 82nd Attorney General of the United States. He had strong bipartisan support. In fact, he got the highest number of "aye" votes of any Attorney General for over a decade. In this Committee, it was 17:2, and I think that was a testament to Mr. Holder's character, integrity, and independence. It also shows that it's time to restore the Justice Department and restore the American people's confidence in Federal law enforcement.

Today the Committee restores, or continues the work of restoring, the Department. President Obama nominated David Ogden, a former high-ranking official both at Justice and Defense Departments, to be Deputy AG, the number-two position at Department of Justice, basically, the one who manages the Department and acts as Attorney General in the absence of the Attorney General.

In fact, currently the hold-over Deputy Attorney General, acting as Attorney General, who has been in charge between Attorney General Mukasey's resignation at the end of President Bush's term and Attorney General Holder's confirmation.

In that regard, let me publicly thank Deputy Attorney General Mark Filip, who was appointed by President Bush. He came from Chicago, left a lifetime appointment as a Federal judge, motivated by public service, knowing that it was just going to be a short-term position, but he's done a commendable job. He's worked with many of us on both sides of the aisle to revise the McNulty memo, and

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many other important issues. So, I commend outgoing Deputy Attorney General Filip.

But it was another Deputy Attorney General, a different one, an earlier one during the Gonzales era who had direct supervisory authority over United States Attorneys during the scandalous firings for partisan political purposes. That Deputy Attorney General resigned following the investigation by this Committee.

The report by the Department of Justice's own internal oversight office has confirmed the findings of our investigation. Those conclude that both he and former Attorney General Gonzales abdicated their responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of U.S. Attorneys was not based on improper political considerations.

I mentioned that because of mistakes of the past show how important this position is for the future. Now, Mr. Ogden's nomination has received dozens of letters of support. Nearly every major law enforcement organization—let me just refer to a couple: the National Association of Police Organizations wrote that "David Ogden has the experience and knowledge necessary to direct our Nation's law enforcement efforts."

Chuck Canterbury, the national president of the Fraternal Order of Police, wrote that Mr. Ogden "possesses the leadership and experience that the Justice Department will need to meet the challenges which lay before us."

The National Sheriffs Association joined the law enforcement support for Mr. Ogden. They wrote that his "comprehensive background and experience in civil litigation complements Attorney General nominee Eric Holder's experience in criminal law, thus making him the ideal nominee for Deputy Attorney General."

Mr. Ogden's nomination has received strong endorsement from Republican and Democratic former public officials and high-ranking veterans at the Department. Larry Thompson, who's a former Deputy Attorney General himself, describes Mr. Ogden as "a brilliant and thoughtful lawyer who has the complete confidence and respect of career attorneys at main Justice. David will be a superb Deputy Attorney General."

Well, I agree. Mr. Ogden is a lawyer's lawyer. He has broad experience in government and private practice. I think he has the experience, for example, not at the Department of Justice, but at the Department of Defense, that's going to be the key to success in the years ahead.

He was, as Senator Warner knows, Deputy General Counsel at Defense. A dozen retired military officers who served as Judge Advocates General have endorsed Mr. Ogden's nomination, calling him "a person of wisdom, fairness, and integrity", "a public servant, vigilant to protect the national security of the United States", and a civilian official who values the perspective of uniformed lawyers in matters within their particular expertise.

He is the kind of serious lawyer and experienced government servant who understands the special role the Department of Justice has to fulfill in our democracy and he has the knowledge and ability to help restore it. He is going to be a critical asset for the Attorney General. He can help restore the best traditions of the Department by ensuring that the career professionals at the Depart-

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ment are able to do their jobs and enforce the law without fear or favor. So, I commend him and his family for the willingness to serve.

I yield to the distinguished senior Senator, and longest-serving Senator from the State of Pennsylvania.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman. The nominee, David Ogden, does bring an outstanding resume to this position academically: Phi Beta Kappa, University of Pennsylvania, magna cum laude; Harvard Law Review; outstanding professional credentials. I look forward to an opportunity to discuss the responsibilities of the office with the nominee.

There has been understandably, a large number of submissions. We're looking at some eight nominees, and so far the academic and professional credentials look very promising. That does not mean that this committee has any lesser responsibility to find out more about them as they prepare to run the Department of Justice.

We are under very heavy time pressure to complete a great deal of work on a schedule which I believe requires more time. There are eight nominations pending beyond the Deputy Attorney General: the Solicitor General, the Associate Attorney General, the Assistant Attorney General, Legal Counseling, the National Security Division, Criminal Division, Civil Division, and the Antitrust Division, all very important, very complicated jobs.

Staff has been trying to work out a schedule which can be accommodated by a relatively small minority staff. It would be my hope that staff could work this out so it would not take up the time of the Chairman and the Ranking Member. We're proceeding here today with Mr. Ogden on a questionnaire which was received on January 23rd, including two and a half boxes of writings and supplementary materials on January 30th.

We have a hearing for the Solicitor General, the dean of the Harvard Law School, a very impressive woman, Elena Kagan, whom I talked to yesterday at some length. But we didn't get her questionnaire until January 26th, including approximately 2,000 pages of writings. She provided the Committee with audio files of 58 of her speeches yesterday, and we're still reviewing over 60 hours of speeches. Well, on the face of that there simply isn't adequate time to find out what her record shows to be in a position to intelligently question her.

We have a hearing also on the same date, next Tuesday, for the nominee for Associate Attorney General, Tom Perelli, whose questionnaire was received on January 30th late in the afternoon, including approximately 500 pages of materials.

Now, I won't go on with a long list because we have a big hearing here, but I'll put the balance in the record, and an analysis of the time that has been taken on preparation of similar hearings in the past, which shows a great deal more time to prepare.

[The information appears as a submission for the record.]

Senator SPECTER. I've had strenuous concerns raised by my colleagues on the Republican side of the aisle. I hope their staffs will urge them to come to participate in these hearings because Deputy

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Attorney General is very, very important, as are all of these positions. I have reason to believe that some are not coming because they are not prepared to participate, which is regrettable. But I do hope that this can be worked out on the staff level so that it does not take the time of the Chairman or myself.

Thank you, Mr. Chairman.

Chairman LEAHY. Well, thank you. We will try to move as expeditiously, of course, as we did during the President Bush time, in moving his people. I would assume that we'd want to do the same thing for President Obama.

I'm going to put into the record statements by Senator Mark Warner and Senator Jim Webb from Virginia. They're at another hearing. As Senator John Warner knows, that happens all the time. So their statements in support of the nominee will be placed in the record.

[The prepared statements of Senator Mark Warner and Senator Jim Webb appear as a submission for the record.]

Chairman LEAHY. I yield to our distinguished former colleague, a man I've always called my Senator when I'm away from home, Senator John Warner.

PRESENTATION OF DAVID W. OGDEN, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, BY HON. JOHN WARNER, A FORMER U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman, Senator Specter, and Members of the Committee. I am privileged to appear before you again on behalf of this distinguished nominee. I appeared on his behalf about a decade ago in a Senate confirmation proceeding, and I was privileged to be asked to return this time for this very important nomination, and to be considered by this Committee.

I wish to commend the Chair, the Ranking Member, and the members of the Committee with, really, I think the very thorough and expeditious way in which the nomination of the Attorney General, Mr. Holder, was handled and voted upon by the Senate. In this instance, this is one of the most extraordinary, well-qualified individuals that I have ever had the privilege to introduce to the U.S. Senate. He is joined here today by members of his family; I'll allow the Chair to appropriately and timely recognize that. Of course, I shall ask that my full statement be placed in the record.

Chairman LEAHY. Without objection.

[The prepared statement of Senator John Warner appears as a submission for the record.]

Senator WARNER. That he oversees the Department. The Department has more than $20 billion annual budget and more than 100,000 employees nationwide, and his managerial skills—and he has proven managerial skills—would be brought to bear on that.

But how fortunate America is to have someone as knowledgeable and as experience as David Ogden to step up and serve our great Nation in this challenging role. David has been a practicing lawyer for more than a quarter of a century and he devoted more than a decade of that legal career to public service, mostly in the senior positions at the Department of Justice.

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As the distinguished Ranking Member said, after graduating summa cum laude and Phi Beta Kappa from the University of Pennsylvania, David attended Harvard Law School, graduating from Harvard magna cum laude, and as the editor of the Harvard Law Review in 1981.

Subsequent to law school, David served as a judicial law clerk, working for the Honorable Abram Sofer, a U.S. District judge on the Southern District of New York. Upon completion of this 1-year clerkship, he was selected to serve on the U.S. Supreme Court as a law clerk for the Honorable Harry Blackman.

After completing two clerkships, David entered private practice and was eventually promoted to partner at a well-respect law firm, Jenner & Block. In 1994, he left private practice to serve as Deputy Attorney General and legal counsel at the U.S. Department of Defense, as was mentioned by our distinguished Chairman. During his time at the DOD, David was awarded the medal for distinguished public service—it's the highest civilian award that can be awarded by the Secretary of Defense.

In 1995, David left the Department of Defense and began his service in the U.S. Department of Justice. At the Department, David worked in a variety of roles, including Associate Deputy Attorney General, Chief of Staff and Legal Counsel to the Attorney General, and as Assistant Attorney General for the Civil Division.

Since leaving government service in 2001, David has worked as a partner at the distinguished and venerable law firm of Wilmer, Cutler, Pickering, Hale & Dorr. At the firm, he is co-chair of the Regulatory and Government Affairs and Litigation Departments.

Now, Mr. Chairman, I would say without any reservation that this very fine individual was deemed qualified by the U.S. Senate in previous confirmations, and having had the added experience now as an Assistant Attorney General, he is even more experienced to serve as the Deputy Attorney General. So, I would be hopeful that this Committee will look favorably upon this nomination.

In preparation, Mr. Chairman, if the chair will kindly indulge me a moment, I had a long meeting with this nominee, even though I had been with him before, because I was concerned about his approach to the very important role that the Department of Justice plays over national security responsibilities of the executive branch: the duty to work with the Departments of State, Defense, and the intelligence community as a whole to keep our Nation safe and to deter the many diverse threats against security, while protecting the civil liberties of our citizens.

A gathering of intelligence relating to these threats is essential, and that responsibility has rested for many generations on the shoulders of the most dedicated and courageous of public servants. If I might say with a deep sense of humility, 40 years ago this month I sat before the U.S. Senate and was confirmed as Under Secretary of the Navy, and from that day to this day I have had constant association with the intelligence community, serving on the Intelligence Committee with two of our colleagues here on the bench today.

I am gravely concerned that we've gone through a very serious period of passing laws, trying to make certain that the rule of law, which is the very fundamental basis for our Nation, is upheld not

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only here in the United States, but in the eyes of the world and in compliance with the treaties of the world, as we collect intelligence.

There's been some discussion about actions taken by persons in the intelligence field and collection field in years past, and I subscribe to the theory that no man, no woman is above the law. But I believe in my own experience, having dealt with these people for 40 years, they are among the most dedicated and courageous of our public servants.

As we move into the future and look to the past and we are being guided by perhaps mistakes that were made in the past, I would draw the attention of our distinguished panel here today to the debate on the floor on Tuesday of this wee, February 2nd, at which time a number of Senators addressed this question of the past and how to address it in the future.

Senator Bond, speaking on the floor, said, "I invite my colleagues' attention to the following written assurance given by Mr. Eric Holder to Senator Kyl about a week ago concerning the investigation of intelligence officials conducting intelligence activities in the past." Eric Holder replied to Senator Kyl as follows: "Prosecutorial and investigative judgments must depend on the facts. No one is above the law. But where it is clear that a government agent has acted in responsible and good-faith reliance on Justice Department legal opinions authoritatively permitting his conduct, I would find it difficult to justify commencing a full-blown criminal investigation, let alone a prosecution."

So I was very satisfied with the nominee's observations about this particular part of the responsibilities of the Department, and I will leave to him to speak to the Committee on it.

Chairman LEAHY. Thank you.

Senator WARNER. I thank you, Mr. Chairman, for the privilege to appear before you, a friend of 30 years here in this institution.

Chairman LEAHY. Thank you.

Senator WARNER. And my dear friend Senator Specter, and other members of the Committee.

Chairman LEAHY. I thank the Senator very much. I'm sorry to rush, but because the bill that's on the floor, I anticipate, any time, being called back for votes and we don't want to interrupt if we can.

Thank you very much. Your full statement will be placed in the record, of course.

Senator WARNER. Good. I have Senator Webb's statement here. He was unable to attend. I will hand it to the Clerk.

Chairman LEAHY. Thank you very much.

Senator WARNER. Thank the Chair.

Chairman LEAHY. We're probably going to be making this a weekly event with you.

[Laughter.]

Senator WARNER. No, no.

Chairman LEAHY. Mr. Ogden, would you please step forward?

Mr. OGDEN. Yes, Mr. Chairman.

Chairman LEAHY. Would you raise your right hand and repeat after me?

[Whereupon, the witness was duly sworn.]

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Chairman LEAHY. Thank you very much.

I think we want to change your name plate there.

Mr. Ogden, I think, as Senator Warner mentioned, you have family members here. Would you like to introduce your family, so someday that will be in the Ogden archives or records showing they were here?

Mr. OGDEN. The very small archive, I'm sure, Senator. Mr. Chairman, thank you very much. I would like to do that.

Chairman LEAHY. Please do that.

Mr. OGDEN. This is my wife, Anne Harkavy. Our one-month old daughter is not here today. She's home. But she'd be in Anne's lap if that were possible.

Chairman LEAHY. Congratulations on the——

Mr. OGDEN. Thank you.

Chairman LEAHY. On the birth of your daughter.

Mr. OGDEN. Thank you, Mr. Chairman.

This is my sister Connie Graham, my uncle Bill Condrell, my sister Cece Ogden. Behind in the second row is my sister Jessica Ogden. Over on the other side, my daughter Elaine Ogden, my son Jonathan Ogden, and my mom, Elaine Ogden. In the row behind, very importantly, I don't want to forget, my lovely nieces, Christina and Juliana Graham.

Chairman LEAHY. The Ogden family sort of fills up half the room here.

[Laughter.]

Mr. OGDEN. I apologize for that, Mr. Chairman. It's a good thing.

Chairman LEAHY. Please go ahead.

STATEMENT OF DAVID W. OGDEN, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. OGDEN. Thank you. Mr. Chairman, Ranking Member Specter, and members of the Committee, it is a great honor to be here today as the nominee to be the next Deputy Attorney General of the United States. I am grateful and humbled that President Obama and Attorney General Holder have placed such confidence in me.

I would like to thank the members of the Committee and their staffs for showing me every courtesy and providing me with the opportunity to meet with many of you. Each of those meetings has been instructive and, if I am fortunate enough to be confirmed, I will benefit from your guidance, and I hope from continued dialog, on the full range of policy issues entrusted to the Department and within the responsibility of the Committee.

I want to thank former Senator John Warner for being here today, and Senators Jim Webb and Mark Warner for their support. My family of Virginians is very fortunate to have had, and to continue to benefit from, such fine representatives in this body.

I know you will recognize that I owe a great debt to my wife, Anne Harkavy, who is here today, who has agreed that I may stand for this important job just one month to the day after she gave birth to our beautiful daughter Natalie. Anne has been my law partner, and will always remain my partner in life. The opportunity for public service presented to me by this appointment would impose many burdens on her, and her willingness to take

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them on speaks volumes about her love of our country and her husband. Thank you.

I want to thank my son Jonathan, who is a sophomore at the College of William & Mary, and my daughter Elaine, who is a high school senior and will soon be attending my alma mater, the University of Pennsylvania. I am immeasurably proud that they are such fine people, and grateful that they are such good friends. And though it is too soon for Natalie to understand anything that's going on here, I also thank her for her sacrifices, which will be real, and hope she will read these words someday.

I am so glad that my mother, Elaine Ogden, is here today. I wish that my dad, Hod Ogden, could be here too. From day one, my mom and dad taught me a lot of important things, among them to give the best of myself to my family, my community, and my country; to be willing to take a personal risk to do the right thing and to say "no" when no is the right answer.

Like the other men and women who in recent memory have come before you to be considered for this position, the position of Deputy Attorney General, I have a special regard for the Department of Justice. I know it to be an essential bulwark of our democracy and our freedom.

I am the proud son of a career Federal civil servant, so it did not surprise me during my service in the Department to witness the great dedication and expertise of its career personnel. But I took something away when I left the Department that I did not take in with me: The realization that the greatness of the institution is its dedicated career personnel, particularly those senior attorneys who have devoted their professional lives to the Department's legal missions, and those law enforcement and national security professionals who put their personal safety at risk every day and night to defend our safety and our rights.

Those career professionals are a precious national resource who carry forward the Department's great traditions of independence, nonpartisanship, vigilance, restraint, fairness, and service and fealty to the law. With proper support, they will continue to transmit those transitions across generations and administrations.

I knew going in that the job of the Department's non-career leadership, including the attorney and the deputy, is to provide strong management and clear direction about the Department's goals and to ensure good communication up and down and across the many components that comprise the Department, and with sister agencies.

I hope I learn something about how to do those things, but it is the Department's career personnel who protect the public safety, the national security, the economy, the environment, and the public FISC, safeguard our civil and constitutional rights, operate our Federal prisons, and as important as any mission in any agency, ensure that our Federal Government itself operates consistently with its own laws.

So while serving in the Department's leadership I came to understand that leadership's real job in everything it does is to help the Department's career professionals do the Department's vital work.

I also came to understand that the Department's leadership, including the Attorney General and Deputy, have another critical

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duty: The duty to ensure that the Department's career professionals are able to pass along those living, nonpartisan traditions to the next group that will at some point take their places, and that the leadership must reinforce those traditions with every official act and statement.

It is the chance once again to help the Department's career professionals do those things that brings me here today. I recognize that the challenges facing the Department may be as great as they ever have been across the entire range of the Department's responsibilities: National security, law enforcement, civil rights, managing our prisons, and the rest of those important responsibilities, but I am confident that under Attorney General Holder's leadership, and with your assistance and support, the Department of Justice will meet these challenges. If confirmed as Deputy Attorney General, I will do everything I can to help.

Thank you again for the opportunity to appear before you today. I know that there is great expertise here on both sides of the aisle. If confirmed, I hope to be able to call on you for guidance and will do my very best to ensure that the Department works closely with you.

I would ask that my full statement be accepted for the record, and I look forward to your questions.

Chairman LEAHY. Thank you, Mr. Ogden. It will be part of the record.

[The prepared statement of Mr. Ogden appears as a submission for the record.]

Chairman LEAHY. One of the most egregious examples we found during the investigation this Committee held into the Bush administration's firing of U.S. Attorneys for political reasons was the replacement of Todd Graves as U.S. Attorney from Missouri by Brad Schlossman. He was a Justice Department official who for years was engaged in illegal partisan hiring practices at the Department.

Now, once he was installed by former U.S. Attorney General Alberto Gonzales as interim U.S. Attorney, Mr. Schlossman brought four indictments on the eve of a closely contested mid-term election in Missouri. Now, in the red book, the longstanding policies of the Justice Department has—the guide book talks about Federal prosecution of election offenses and it provides, in investigating election fraud matters, that Justice Department "must refrain from any conduct which has the possibility of affecting the election itself. Thus, most, if not all, investigations of alleged election crimes must await the end of the election to which the allegations relate." Now that's something—a rule followed by both Democratic and Republican administrations previously.

But the Gonzales Justice Department turned this on its head. They put out there changed policy from the red book and a green book to allow last-minute prosecutorial actions that would influence the outcomes of elections. Now, without going back through all the investigation we had of that, and the Inspector General's report which is rather damning, let me ask you this looking forward: Will you reassure us that under your leadership these guidelines are going to be thoroughly reviewed, and if changes are needed, that they'll be changed appropriately?

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Mr. OGDEN. Yes, Mr. Chairman. I did have, in my prior service, familiarity with the policy that the Department had followed for many years, as embodied in the red book, as you describe. I think the importance that the Department, in its law enforcement function, not be utilized in any way that actually interferes with an ongoing election or has the appearance of doing that. It's extremely important to avoid any possibility of that type of interference. I think the policy was a good one.

I gather that the policy has been changed. I know there were some apparent deviations from the policy. We will look very closely at that to make sure that the right policy is in place and that there's no interference in ongoing elections. That's not to say that violations of law, in connection with elections, are not important. They're critically important. The traditional practice has been to deal with them after the election so as to avoid any interference with the actual election itself. I think that policy generally worked well.

Chairman LEAHY. Thank you.

The mortgage crisis and the financial meltdown have contributed, as we all know, to the economic recession which began last year. I think we need more enforcement against financial frauds. I'm glad to see Attorney General Holder mention this on his first day in office. We have to find out those, and hold accountable, those who destabilize our economy and defrauded homeowners and investors. Now, the FBI and the U.S. Attorney's Offices in recent years had to divert resources from criminal law priorities, including fraud and public corruption, into counterterrorism. The number of cases prosecuted has declined; in some places it's been lack of staffing.

Now, I'm working on legislation with Senator Grassley of this Committee to increase resources for investigation and prosecution of mortgage fraud and financial fraud. Can you devote the needed resources to aggressively target mortgage and financial fraud?

Mr. OGDEN. Yes. Mr. Chairman, it's imperative that the resources be available to address those issues. My understanding is that the Department has had to move a significant amount of resources into the national security and counterterrorism area, and that was understandable and necessary. Obviously that priority has to be at the very top of the list. But the issues of financial fraud, in the mortgage area and other areas—it's imperative that we address it with sufficient resources. If I am confirmed, we certainly will do that.

Chairman LEAHY. Thank you. You served as Deputy General Counsel, as we mentioned before, for the Department of Defense, which got you involved in a great number of national security issues. These national security issues also are looked at by the Department of Justice. You must have gained some insights when you worked at DOD that will help in the management of the Justice Department's National Security Division. Is that correct?

Mr. OGDEN. I'd like to think so, Mr. Chairman, yes.

Chairman LEAHY. Good.

Mr. OGDEN. I guess I would—if I were going to identify sort of three principle things I took away from that experience and my succeeding related experience at the Justice Department, is, first,

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the enormous effort that's required across agencies, across resources in a coordinated way to defend our Nation's security in a dangerous world. Obviously, our appreciation of the dangers became all the greater, after I left that service, on September 11th, 2001, and the succeeding events. But even then, it's clear that it requires an enormous coordinated effort, a sustained effort.

The second thing I would say, is it became very clear to me that turf battles, any sort of interference that can occur between agencies, is the most detrimental possible kind of thing. It's absolutely essential that the leadership of each of the agencies that are involved in this, which include Defense, which include the Justice Department, the State Department, Homeland Security, the intelligence agencies, recognize each other's expertise and equities and work together constructively in a seamless way. The last thing, I mentioned in my opening remarks, the extraordinary career professionals at the Justice Department who I had the privilege of serving with.

But there's another absolutely marvelous career force that I got to know very well when I was at the Defense Department, which is our uniformed military, which bring extraordinary expertise, not just in——

Chairman LEAHY. And you received a lot of compliments from them.

Just for my remaining time——

Mr. OGDEN. I'm sorry.

Chairman LEAHY. No, that's OK. In my remaining time I'd just put into one area that has been raised by a number of us here. You supervised the 1993 U.S. Attorneys in the Criminal Division, FBI, and so on. Your background has been in civil litigation. Do you feel, there, that you can handle these criminal justice issues effectively?

Mr. OGDEN. Senator—Mr. Chairman, I do feel that I can. I have done a lot of work in the civil area. But when I was at the Justice Department, I managed significant criminal policy initiatives. I was in the Deputy's Office and worked on significant prosecutions. In the Attorney General's Office, I met with, on a regular basis, the law enforcement components with the Attorney General and helped manage them.

In private practice I've managed combined matters, which involve civil enforcement and criminal enforcement, working in the antitrust area, for example, in the False Claims Act area, as another example, where typically the matters require management on the criminal and civil side.

So I do feel that I'm qualified to manage the criminal side of the Department, in conjunction, of course, with our very experienced Attorney General and with a staff which will include very experienced prosecutors in the Deputy's Office, if I am—if I were to be confirmed.

Chairman LEAHY. Well, thank you. I have to go to another Committee meeting which is taking place right now. I'm going to turn the gavel over to Senator Whitehouse, himself a former prosecutor. But, first, I will yield to one of the most experienced former prosecutors the Senate has ever had, Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

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There's a very limited amount of time, so I'd appreciate it if you'd make your answers as brief and responsive as possible.

Mr. OGDEN. I'll do my best.

Senator SPECTER. This is a very, very busy day. We're on the stimulus package, and in a few minutes a group of Senators, including myself, will be meeting to try to provide major modification to the pending bill, so that I'll have to excuse myself then, too.

I would again renew my call—I see only two of my colleagues here on the Republican side—that my colleagues come because of the importance of this nomination.

I provided you with a letter dated January 28th, setting forth the oversight authority of the Congress, and ask that it be made a part of the record.

[The letter appears as a submission for the record.]

Senator SPECTER. I'd ask you at this time if you agree with the conclusions by the Congressional Research Service that the Department of Justice is obliged to submit to congressional oversight, regardless of whether litigation is pending. It involves both civil and criminal matters. We're entitled to be provided with documents respecting open or closed cases, including prosecutorial memoranda, investigative reports, and the other items specified in that letter.

Mr. OGDEN. Senator Specter, I appreciate the question. I think the subject of oversight is extremely important, and I know you've been a leader throughout your service in making that——

Senator SPECTER. That's an interesting introduction. If you'd get to the answer, I'd appreciate it.

Mr. OGDEN. My answer, Senator, is that I do think that the oversight authority extends to all of the activities of the Department. It's also the case that there are substantial equities on the Department's side in—in—with respect to preserving the discretion and the—and the—and the openness of—of dialog on pending matters.

Senator SPECTER. Mr. Ogden, do you agree with what I just cited as to Congressional Research's conclusions?

Mr. OGDEN. I think, as the Attorney General said, it may go—it may leave out part of the equation, which is the importance of working together as a matter of accommodation on these matters, to make sure that the Senate's important interest in knowing what's going on is fully met.

Senator SPECTER. I'm going to—I'm going to—I'm going to have to move on. I consider that a non-answer, candidly. If you could give a more direct answer, I'd appreciate it.

Do you think, as a matter of public policy, that the fairness doctrine should be reinstated?

Mr. OGDEN. Senator, I don't—I believe that judgment would be largely one made by the Federal Communications Commission. I don't have a particular——

Senator SPECTER. I'm asking you for your opinion.

Mr. OGDEN. I don't have a—I don't have an opinion, Senator.

Senator SPECTER. Then let me move on to another issue.

Mr. OGDEN. Okay.

Senator SPECTER. I discussed this with you in our informal meeting. In the Sun Diamond Growers case, the Supreme Court unanimously said that in order to have a violation on the gift, there must be "a link between the thing of value conferred upon a public offi-

cial and a specific official act for or because of which it was given." Do you agree with that conclusion?

Mr. OGDEN. Well, I know that that's the law of the land. That's the Supreme Court's view. I think that it's important that there be a corrupt purpose with respect to the enforcement of that law. I would certainly follow the Supreme Court's guidance.

Senator SPECTER. Well, of course you'll follow the Supreme Court's guidance. But my question to you goes as to your judgment as to what is an appropriate balance. I think you have answered that one, looking for a corrupt motive as opposed to just an official position.

Mr. OGDEN. I agree. That's entirely my view.

Senator SPECTER. I believe in a woman's right to choose on the issue of choice, but I do believe that there has been quite a bit of scientific material on potential adverse effects after an abortion, although that's within the purview of the right to choose, for a woman to balance that.

I was a little surprised to see the scope of your contention in your brief filed in *Mukasey* v. *Planned Parenthood*, where you say this: "The conclusions from the most rigorous scientific studies are consistent for the overwhelming majority of women who undergo abortion: There are no long-term negative effects. The few women who do experience negative psychological responses after abortion appear to be those with preexisting emotional problems. It is grossly misleading to tell a woman that abortion imposes possibly detrimental psychological effects when the risks are negligible in most cases."

Surprise me a little. What is the basis for the asserted "conclusions from the most rigorous scientific studies" to the quotations I just cited?

Mr. OGDEN. That was a brief, Senator, that we submitted on behalf of the American Psychological Association in an amicus brief in which the purpose was to attempt to present the empirical evidence. We typically would have worked with experts in the—psychologists, and typically would cite the names and identities of those folks at the beginning of the brief, and would have worked with them to put together the information that would, we hope, be useful to the court. Those positions were the positions at the time—I believe it was in the early 1990s—of the American Psychological Association and of the scientists who participated, and we would typically——

Senator SPECTER. Are you making a distinction between that period of time and what might be the conclusions now?

Mr. OGDEN. It's certainly possible. The brief presented the evidence, and empirical evidence that existed at that time, and I don't know what the evidence would say today. It may be that studies continue. But the purpose of the brief was to present the views of——

Senator SPECTER. I understand——

Mr. OGDEN [continued]. Of those scientists.

Senator SPECTER. I understand the purpose of the brief. I'm just trying to get the basis for such a broad assertion, that the conclusions from the most scientific—rigorous scientific studies, et cetera, so minimizing——

Mr. OGDEN [continued]. Well, Senator, I'm not a psychologist.

Senator SPECTER. I again repeat: A woman has a right to choose. But it seems to me that in that context it's a pretty extreme statement.

Let me take up, with the red light just now going on, one final subject. You submitted a brief in the case of the *American Library Association* v. *United States*, where we had the issue of the Children's Internet Protection Act, which required public libraries to shelter minors from obscenity, pornography. You raised the issue in this context, objecting to the congressional insistence that public libraries affirmatively censor constitutionally protected material.

Well, I don't think Congress was seeking to affirmatively censor constitutionally protected material. What Congress was trying to do was to have a limitation on minors, only minors, as to material which is not constitutionally protected. Congress cannot inhibit the disclosure of constitutionally protected materials, we can only limit what is not constitutionally protected. So that is a judicial determination.

We might be wrong. We use our best judgment as to what is constitutionally protected. I believe there ought to be very, very wide latitude on the speech issue and on the reading issue. When I used to have a law enforcement responsibility, I took a very broad view of this. But what is your view on the propriety of Congress seeking to define obscenity and pornography, which we know what the legal definition is, and saying, at least as to minors, you can't show it to them if you're getting Federal funds in a library?

Mr. OGDEN. Well, I think in—I agree. I think, and would associate myself with your remarks entirely on—on that, Senator. I think as a—as a—as a preliminary matter, of course, protected materials—constitutionally protected materials, as to adults, need to be respected by the law. But Congress does have broad power to protect minors from material that is obscene as to them. The court has recognized that. I think that power is entirely appropriate.

Senator SPECTER. Senator Whitehouse.

Senator WHITEHOUSE. Mr. Chairman, I will yield my time, since I'm going to be conducting the hearing here through to the bitter end, to the distinguished Senator from Wisconsin.

Senator FEINGOLD. Thank you, Mr. Chairman.

Mr. Ogden, welcome. I really appreciate our meeting last week. You have a very big job ahead of you. I'm grateful to you and your family, for your willingness to take this on. From what I know of your record, you are obviously eminently qualified for this job, having worked not only at the Department in the Clinton administration, but also in the Department of Defense.

Before I get into my questions, is there anything else you wanted to add about the brief with the American Psychiatric Association?

Mr. OGDEN. Well, I appreciate the opportunity. I guess the only point I would say about the brief that we did there is that there, as with the Library Association brief that Senator Specter referenced, I was representing a client as a lawyer in private practice. As the Chief Justice said when he was before this Committee, a lawyer in private practice takes his—does not sit in judgment on his clients.

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His job is to present their views as—as—as persuasively and appropriately as possible. We did that with the scientific evidence in the American Psychological Association brief. That wasn't my view, that was the view of the association. Similarly with the librarians. They have a strong view about the need to be free from censorship, and they objected to that law. The Supreme Court ruled otherwise. Of course, as counsel for the United States my job will be different. It will be to represent, as aggressively as possible, the position of the U.S. And that's what I've done. I have a record of doing that.

Senator FEINGOLD. Thank you.

When Attorney General Holder was here, I talked with him about the need to look very closely at what's happened at the Department over the last 8 years and try to make sure that people who are engaged in inappropriate and even illegal action don't, in effect, have the last laugh because of what they've left behind.

He answered that one of the things he intends to do is what he called "undertaking a damage assessment" to understand how the Department has been harmed by the things that the Inspector General reports over the past few years have uncovered.

I imagine that a lot of the responsibility for conducting this assessment and making recommendations on what to do will fall with you. You worked on the transition, so perhaps you have some sense already on how that assessment should be done. Can you give us a little idea what your plans are on that?

Mr. OGDEN. Well, thank you, Senator. I do think it's extremely important for us to recognize that there have been a number of things that have happened in recent times which have caused concern about the Department. I think we need, as a primary matter, to restore confidence.

I think Attorney General Mukasey and Deputy Attorney General Filip have done an admirable job to begin that process. The one thing I learned in the transition, the first thing I learned, was how seriously they take these issues and how much they have taken on themselves in the last—the short time they've had to begin to address it. I think we need to continue that work. I think we need to meet with the senior career people. We need to meet with the Inspector General to try to understand where the Department is.

It will be imperative that we take every step to ensure that inappropriate influence can't come from the White House. We can't get inappropriate political impact. We'll need to assess the damage, if any, that's been done to the career ranks I talked about, make sure that we—we have the—the right decisions and the right practices being made with respect to hiring, make sure that prosecutorial decisions are insulated from—from improper influence. So it will be a matter of talking with the people who've looked at these things, who have experienced them, and then responding appropriately.

Senator FEINGOLD. Thank you.

Another issue I discussed with the Attorney General at his hearing was the Federal death penalty. I was pleased that he agreed that the Department should make public data on the administration of the Federal death penalty, information that we haven't really had since Attorney General Reno issued her comprehensive report in the year 2000.

Now, I've heard that some people have raised concerns about your attitude about the death penalty, and they even suggested that your representation of some death row inmates should be held against you. Now, that work is essential and among the most challenging and important work that a lawyer can undertake, in my opinion. So, I think you're to be commended for this.

But let me just ask you point blank: As Deputy Attorney General would you let any personal views you have about the death penalty affect your willingness to enforce the law?

Mr. OGDEN. I would not, Senator.

Senator FEINGOLD. On the other hand, if a U.S. Attorney wanted to speak directly with the Attorney General because he or she felt that the decision to seek the death penalty in a particular case was a mistake, would you prevent that conversation from taking place as one of your predecessors did? How would you handle that kind of request?

Mr. OGDEN. Well, I think it's—it is imperative that we get the full experience of the U.S. Attorney, and for that matter the line attorney who's handled the case. The critical thing I think for all important decisions, and indeed, probably all decisions, is that we get all the input from the experienced people who have the direct responsibility for the matter and make sure we fully understand their views before any decisions is made based on the matters within their responsibility. So, we would certainly encourage those kinds of communications and make sure that there's a full flow of that expertise.

Senator FEINGOLD. I thank you for that answer. I am impressed by the support your nomination has received from lawyers who actually served in the last administration, including Larry Thompson, Rachel Brand, Peter Keisler, Daniel Price, Stuart Gerson, Daniel Evan, Don Bellenger, and Reginald Brown. I was struck particularly by how many of their testimonials remark on your willingness to listen to opposing viewpoints.

I'd like to hear from you whether you think that quality is important to being a successful Deputy Attorney General, and why.

Mr. OGDEN. I think it's critical to being successful in almost any walk of life, but I think more than anything in a leadership position like the position of the Deputy Attorney General. It is absolutely crucial that we make the best possible decision, that it take into account the viewpoints of all people who have relevant views to afford.

Typically, the problems that reach the Deputy Attorney General are the ones where there are differences of opinion, and I think it's critically important that we take full account of the people who have all varying views in order to try to reach the best decision. So I think it is critically important to have an open mind, to consider views that otherwise might not be your approach, and to factor that into your thinking. I'm very proud to have the support of the people that you speak of. They're people I've worked closely with in my career, and it is something that is extremely important to me, to have their respect and their support.

Senator FEINGOLD. Mr. Ogden, I greatly look forward to working with you.

Thank you, Mr. Chairman.

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Senator WHITEHOUSE. Next, is the very distinguished Senator from Utah, a former Chairman of this Committee, and the person whose keen interest in the Department of Justice actually provoked the first letter that created the firewall that has been such a source of attention, the firewall between the White House and the Department of Justice.

Senator Hatch.

Senator HATCH. Well, thank you. Thank you, Mr. Chairman.

Mr. Ogden, welcome to the Committee. I have great respect for your academic record. I'm one of those Senators who wants to be supportive of any President as he or she builds his or her executive branch team, but I do have some real issues and concerns that I'd like to raise with you.

One area that really concerns me is whether you will be committed to enforcing laws that you have argued for so many years to be unconstitutional. Let me be clear what I'm looking for here. I want to know your own views, if you will, the views you will be taking into the leadership of our Justice Department. If you personally disagree with the views and approaches that you have advocated in courts so consistently for so many years, I think now would be a good time to say so.

For example, you argued in 1989 that the law requiring producers of sexually explicit material to keep records about the identity and age of performers was unconstitutional. I was one of the authors of that bill. A revised version of that law is not only still on the books today, but a few years ago Congress extended its reach as part of the Adam Walsh Act. I had a lot to do with that.

Now, how can we believe that the Justice Department will properly enforce this law, and if necessary defend its constitutionality, when you have said for 20 years that it was unconstitutional?

Mr. OGDEN. Well, Senator, first of all, I certainly agree, and the courts have made clear, that the Congress has the power and the government has the power to require that those records be kept. That law ultimately has been upheld. It was initially struck down. I think there were problems that the courts identified, and then I think Congress corrected many of those problems.

I believe it was struck down in my initial—in the lawsuit that I brought on behalf of media organizations that were concerned about the way in which it was done—not the fact, but the way. The court agreed that it could be—that it should be fixed. The Congress fixed it. I think that the law is constitutional as it stands today.

Senator HATCH. Thank you.

Yesterday I received an article about your nomination that appeared on X-Biz, which is the news agency for the pornography industry. It states, "For the adult entertainment industry, the pick could constitute a strong one, considering Ogden's record in representing companies over First Amendment rights and obscenity cases."

Now, the article also quotes the executive director of the Free Speech Coalition, which is the porn industry's legal team, hailing your nomination and saying that it will be "refreshing." Now, it appears that the porn industry does not believe that your own views differ from the views you expressed on their behalf over the years.

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Now, Mr. Ogden, let me ask you about your brief for the ACLU and others in the *Knox* v. *United States* case. After the first Bush Justice Department had obtained a conviction of Stephen Knox for possessing child pornography, the new Clinton Justice Department reversed course and asked that his conviction be reversed. They did so based on their new interpretation of the child pornography statute that narrowed its application and weakened its enforcement.

Now, the U.S. Court of Appeals rejected that new position not once, but twice. This body, the U.S. Senate, unanimously rejected this reinterpretation of the child porn statute not once, but twice. Even President Clinton wrote Attorney General Reno saying he agreed with the Senate about the law's proper scope.

Yet you filed a brief for the ACLU and others on the side of Mr. Knox for the position that all three branches of the government—Congress, the courts, and the President—rejected. Seven of us on this Committee today were in the Senate in 1993 and voted to reject the position you embraced in that particular case. A few other members of this Committee were in the House at the same time and likewise voted to reject the position that you advanced or embraced.

In your brief you said that the position that we endorsed, Democrats and Republicans alike, about the scope of this child porn statute would be a "step backward," all the way back to the 1960s.

Now, is that the kind of approach the Justice Department will take toward enforcing the child pornography and anti-obscenity laws in the new administration? Are you going to take it upon yourself to give the laws a new twist to try to weaken their enforcement from what Congress intended to make—from what Congress really intended to make it harder to prosecute those who contribute to the exploitation of women and children by trafficking in obscenity and child pornography? So I need to have your answers on that.

Mr. OGDEN. Well, Senator, I appreciate the question and the opportunity to address the Knox brief and the related issue.

The first thing that I would just like to make very clear is that I believe that the child pornography laws, the laws against child pornography, are extremely important laws. I think that child pornography is abhorrent. I think the effort to exploit—the exploitation and the harming of children is—is abhorrent and it deserves the full sanction of the law, and—and—and—that is—that is my strong view.

The—I did not agree, even at the time it was filed, when I was not in the government, with the Justice Department's brief that you refer to. It took a very extreme view, I agree, of—of the law. I understand why the Senate and the House rejected it.

The brief that I submitted on behalf of the ACLU, the American Library Association, and the American Booksellers Association on behalf of librarians and booksellers made a different point. It made a point that I understand the Senate, and ultimately—that this body disagrees with and one that the court disagreed with, but it was a point that was important to them. They wanted just to know, have a clear line as between what was illegal and what was legal. The court decided not to accept that view, but it wasn't the view—the extreme view—that I myself rejected, that the Justice Department brief took.

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I fully intend to—to—if I am fortunate enough to be confirmed, aggressively enforce these laws. I have a record of doing so as the Assistant Attorney General for the Civil Division. I defended, as aggressively as I could, the Child Online Protection Act. I defended the Child Pornography Act at the time, and did so with full support.

Senator HATCH. I appreciate that.

I'll be a little bit over on this question. In your brief in *Roper* v. *Simmons*—thank you, Mr. Chairman. In your brief in Roper, you said that 16- or 17-year-olds are not mature enough to be held fully accountable for their decision to kill someone. But in your brief in *Hardigan* v. *Sabarez*, you said that even a 14-year-old girl is mature enough to weigh the pros and cons, risks and benefits, and can make the decision to have an abortion by herself without even notifying her parents.

Now, in each brief you said that the social science research proved your point. Now, is social science that unreliable that it produces such contradictions? How can you advance the two separate positions? Now, I understand that as an attorney you have an obligation to try and do the best you can for your client. But still, it seems to me they're very inconsistent positions.

Mr. OGDEN. Senator, I appreciate the question and I also appreciate your recognition that I was acting in those cases as a lawyer for different clients. In the—in the—in the Casey case, or Hardigan case, I was representing organized psychology, the American Psychological Association, and doing my best to present, with—in conjunction with the experts, the psychologists, the view of organized psychology on that issue.

In the—in the later case, much later case about, I believe, 14, 15 years later, I was representing Mr. Simmons, a person who had committed a terrible, heinous crime as a minor. The question was whether the death penalty could be imposed.

I think the positions—I understand the tension you identify. I think the positions actually can be reconciled in this case. In the—in the death penalty case, nobody was arguing—we didn't argue—that Mr. Simmons should not be fully accountable for his crime. He could get life in prison, he could be criminally convicted. Nobody was suggesting that he—that he was not responsible for that decision.

The question was whether, as a society, we are prepared to impose the ultimate penalty of death on somebody who was a minor when they committed the crime. In the other case, the question was, again, whether a mature minor could make a decision that could be respected by the courts. The view of the psychologist was that many of them can, and that was the point that we made. So I understand the tension that you identify. It was for different clients, and I think the issues were slightly different.

Senator HATCH. Mr. Chairman, I may not be able to return. Can I just ask one more?

Senator WHITEHOUSE. Senator Wyden.

Senator HATCH. Do you have any objection, Senator Wyden? Could I ask one more question?

Senator WYDEN. Absolutely.

Senator HATCH. I am going to try to return, but I may not be able to.

In your brief for the ACLU and the *Knox* v. *United States* case about child pornography—as you can see, I'm one of the authors of these bills so I take great interest in this. I take great interest in the Justice Department and this position that you're about to undertake. But in that case, *Knox* v. *United States*, you said judges should stick to the specific objective language of a statute and should not use their own subjective judgments or evaluations.

Yet, in briefs you've filed and an article you've written, you argue just the opposite about the Constitution. You urge the Supreme Court to reconsider social context, to reevaluate the Constitution based upon the latest social science research, to decide cases based on perceptions of the real world and a judge's compassion for vulnerable groups.

Now, I guess what I'm asking is, which is it?

Mr. OGDEN. Well, Senator, it is, No. 1, that the language of a statute or the Constitution has to be the starting point. It's critically important. That's where the Congress and where the founders put their emphasis and attempted to create law. So it is, affirmatively, the first.

I think there is an important role for social science evidence, and indeed, evidence, in helping apply the law, and in particular in constitutional interpretation, which is what some of the remarks I think you referenced were directed to. It is very—frequently very important in deciding whether a constitutional norm established by the language has been satisfied or violated, and specifically whether there is a sufficient justification, whether in fact the critical objectives that Congress may be seeking to achieve are actually achieved by a statute. That's a question judges have to decide often in deciding whether a bill, a law that restricts rights in certain ways will stand.

So what I've tried to say, and I've always attempted to be clear about this, although in a long career sometimes you can be a little fuzzy in what you say from time to time, and I recognize I may have been.

Senator HATCH. Really?

Mr. OGDEN. Well, I certainly am capable of it.

Senator HATCH. We up here are very capable, too.

Mr. OGDEN. I appreciate that, Senator. But what I've attempted to say, and what I firmly and strongly believe, and what I think I said to Senator Sessions once long ago when we had a discussion about this, is that I believe firmly, constitutional principles are fixed. I do think that courts need to look to the realities of evidence in order to decide how they apply in particular cases, and I hope that that's—I hope that my views on that are clear.

Senator WHITEHOUSE. Senator Wyden, thank you for accommodating our distinguished colleague with his extra time. You are recognized.

Senator WYDEN. Thank you, Mr. Chairman.

Welcome, Mr. Ogden. Along with Senator Whitehouse and Senator Hatch, I also serve on the Intelligence Committee, so we very often get into the area where intelligence policy and judicial policy intersect.

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I want to ask you some questions specifically with respect to interrogation. The issue with respect to interrogation, I think for most Americans—and it is extraordinarily important to me—comes down to how you handle the human ticking time bomb, the person who may have that information, that securing it may mean literally saving thousands and thousands of American lives.

I have been able to get the FBI on record saying that with their approaches it is possible to secure the information through interrogation of these human ticking time bombs without torture. Are you familiar with that, and do you largely share the views that interrogation techniques that are used by the FBI, used by the law enforcement community allows us to deal with these kinds of individuals who clearly represent a great threat to our country, but we can protect our Nation without resorting to torture?

Mr. OGDEN. Senator Wyden, I am familiar with that—with that view of the FBI. I also think that view is embodied in the Army Field Manual. Based on what I know at the present time, I believe it to be true. Obviously I've not been briefed in some time in a classified setting about issues like this.

Obviously I intend, if I am fortunate enough to be confirmed, to learn everything I can about the most effective ways of addressing that urgent problem: The national security, protecting Americans from terrorism, dealing with these urgent crises. Nothing could be more important and nothing could be more important than to keep an open mind about—about evidence and facts. But I certainly—that's my understanding, and it's my understanding that that's the view of others who have studied this.

Senator WYDEN. The second area I want to ask you is related to that, and I appreciate your answer there. I'm sure you're familiar with the Bybee amendment. This was the Department of Justice legal memo that argued that inflicting physical pain, short of organ failure, didn't constitute torture. If someone had brought you that opinion, how would you have reacted?

Mr. OGDEN. Well, I think I would have reacted with great surprise. I do think the opinion and its interpretation of Federal statutes really is very difficult to square with the language there, and I think it also was difficult to square with—with basic values. So certainly there would have been big questions. There would have been big push-back. I think that—if I—certainly if I'd been in the position of the Deputy Attorney General and I'd had an opportunity to see it, I would have objected strenuously to it.

Senator WYDEN. So when you say there would have been a lot of push-back, you would have told the fellow, or woman, whoever it was who wrote it, to go back and redo it? You would have taken it to others in the Department? How would you have pushed back?

Mr. OGDEN. I would have done just—I would have done just those things. I would have—I would have questioned the Assistant Attorney General closely on his reasoning. I would have wanted to get a full explanation as to his thinking about this and where he was coming from and the basis for it. I'm sure, to the extent I wasn't satisfied with that explanation and it didn't produce a change, I would have brought in others who were expert in the matter and sought their views and tried to get a dialog going in order to get to the right answer.

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My experience is that serious legal issues, if you push them, if you bring smart, good lawyers, people of goodwill into the discussion, people with expertise, you can avoid serious mistakes. I think that that process would—would have done that.

Senator WYDEN. I want to ask you a couple of questions with respect to the public's right to know. Certainly those of us who serve on the Intelligence Committee again see what the balance is really all about. For example, I feel very strongly about protecting operations and methods. That's absolutely key to ensuring that we protect these courageous people who gather intelligence and we protect our country with the information they're getting.

At the same time, I think that there are flagrant abuses of the classification system. In fact, in a lot of instances I think it's more for political security than national security. I think we've got to expand the public's right to know, and that it's possible to do that while at the same time fighting terrorism ferociously.

So my first question here involves the special court, the Foreign Intelligence Surveillance Court, that provides judicial oversight over sensitive intelligence activities. Now, this court does most of its work in secret. Most of its decisions are classified. Again, in terms of trying to strike a sensible balance, it seems to me it makes some sense to classify routine warrant applications that could contain sensitive information about intelligence sources, but there are a lot of important rulings that go to the meaning of surveillance law. I think that a lot of those kinds of judgments really could be redacted and declassified so that the country could be brought in in a more informed, a more complete way to these national security debates.

Chairman Rockefeller and I have written to the Attorney General, we've written to the Chief Judge of the Court. We've gotten a pretty encouraging response, certainly an interesting response, from the Chief Judge but we haven't gotten a response from the Attorney General.

If you are confirmed, would you be willing to look at these kinds of declassification issues anew and try to come up with a fresh policy that ensures that, while documents are classified when it deals with operations and methods and sensitive matters, that more of the issues relating to legal judgments and matters involving national security policy get into the public domain?

Mr. OGDEN. Senator, I absolutely will commit to take a fresh look at this issue, if I am confirmed. There are two great imperatives here. One is the imperative of protecting the national security. As you say, Senator—and you're a leader in—been a leader in this area—protecting the real secrets, the things we really need to protect, is critically important. At the same time, there's an imperative for open government and to let people know what's going on, to the extent we can, consistent with the first. I will certainly look at that and see if there's more that can be done.

Senator WYDEN. Can I ask one other question, if I might, Senator Whitehouse?

Senator WHITEHOUSE. Of course, Senator. Then I think we'll probably take a 5-minute recess, since the witness has been here now for well over an hour and a half, to allow him to refresh himself and then we'll continue with Senator Sessions.

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Senator WYDEN. Senator Sessions, is that all right if I ask one additional question?

Senator SESSIONS. Sure. Yes.

Senator WYDEN. Thank you.

I had one question.

Senator SESSIONS. Make it a good one.

[Laughter.]

Senator WYDEN. I'll make it a short one. I can't guarantee goodness.

One question that tells me a little bit about your judicial philosophy involves the tobacco issue, and particularly the tobacco industry settlement by the top Bush administration officials. In that particular case, the recommendation of the career DOJ prosecutors regarding the proper size of the settlement was overruled by, in effect, the Bush administration political appointees.

I'd be interested in knowing whether you're troubled by the case, but particularly, how do you feel about having recommendations of career prosecutors tossed out that way?

Mr. OGDEN. Well, I'm not—Senator, I appreciate the question. As you know, I was a participant in initiating the tobacco litigation in 1999. I wasn't a party to, and I don't know what the specific communications were within the Department. I don't know for a fact that recommendations were disregarded. I do know that the lawsuit has been pursued in the Bush administration, continued to be litigated, and has for this full 8-year period.

Obviously, the important, I think, part of the question—the end of your question where you focus on, what do you do about recommendations from career prosecutors, they're incredibly important. I think that the people who are on the ground and who make these recommendations and who have the expertise are the people you need to start with. When we brought the lawsuit we relied on recommendations from the career people as to what the right thing to do was, and that was really the basis for the decision, was a cross-departmental recommendation. So I think you've got to start with that, and I think it's critically important.

Senator WYDEN. I look forward to supporting your nomination.

Thank you, Mr. Chairman. I hope we didn't lose Senator Sessions.

Senator WHITEHOUSE. I think once the Senator was made aware that there would be a 5-minute recess, he took advantage of the break himself.

We will stand in recess for 5 minutes and reconvene at 2 minutes before the hour.

Mr. OGDEN. Thank you.

[Whereupon, at 10:53 a.m., the hearing was recessed.]

AFTER RECESS [11 a.m.]

Senator WHITEHOUSE. The hearing will come back to order, and the distinguished Senator from Alabama, a former U.S. Attorney himself, is recognized.

Senator SESSIONS. Thank you, Mr. Chairman.

I just really appreciate Senator Wyden's asking some good questions about terrorism and those issues, but I do want to just say something, Mr. Chairman, I feel strongly about, having been involved in this Committee and the Armed Services over these issues

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for some time. Not one single person held by the United States military was ever waterboarded. The people who abused those prisoners in Abu Ghraib were found by the military. They announced it to the world. They prosecuted them. Many of them went to jail for their abusive activities which were not in any way connected to an interrogation.

The final full review of what happened in Guantánamo concluded that one prisoner possibly—the acts on one prisoner may have constituted torture because they used six or seven different techniques. Any one of them would be OK, not constitutionally defective, but all together they constituted enough stress on the individual that it made it improper. So I just want to defend the U.S. military. We've gone and we've somehow got it in our minds that we've had a massive violation of some of the most dangerous prisoners the war—we've ever seen in any war, have been damaged. That's just not so. You and I talked about that.

Mr. OGDEN. And we agreed on it, Senator.

Senator SESSIONS. Thank you.

And I do think, and do you not agree, that the law—that the FBI, whose jurisdiction is domestic law enforcement, should—would naturally adhere to different standards of enforcement and inquiry in interrogation than might be necessary for a prisoner of war, a person who—a terrorist who had been captured in a military or terrorist attack against the United States?

Mr. OGDEN. Senator, I certainly agree that it may be that different interrogation methods are appropriate in different settings. That's one of the things I want to—I think it's very important that the government look at very closely. I haven't been exposed to the classified information yet.

Senator SESSIONS. Well, but look. Look——

Mr. OGDEN. And I think that may well be.

Senator SESSIONS. Well, look. The FBI—one of the things I think we learned from 9/11, do you not agree, that we cannot treat attacks on the United States by combatants, legal or illegal combatants—these were mostly—they were all illegal. They don't get the same protections in a war-time situation that an American citizen gets who's investigating—being investigated for robbery, or dope dealing, or even murder.

Mr. OGDEN. I do agree with that.

Senator SESSIONS. Mr. Ogden, I really—you know, I enjoyed talking with you and I think you're a good person and I think you have the ability to do this job.

Mr. OGDEN. Thank you, Senator.

Senator SESSIONS. But I've got to tell you, I just worry about some very important issues, to me. One, let's take this American Library Association brief that you filed. Was that on behalf of the ACLU?

Mr. OGDEN. I think—as I recall, the ACLU was one of the clients. Others were the Library Association and the Booksellers Association.

Senator SESSIONS. Who paid your fee?

Mr. OGDEN. You know, I—I think it's—I don't know how long, 15 years ago, and I just don't remember the details of that.

Senator SESSIONS. You don't remember who paid your fee?

Mr. OGDEN. I—I don't recall. I don't recall if——

Senator SESSIONS. You should be able to remember that.

Mr. OGDEN. Yeah. You'd think that would be the most important thing. But I don't recall. I don't even know for sure whether that was a brief that we were—it might have been a pro bono brief. It's possible. I just don't recall.

Senator SESSIONS. Well, basically the question was, there was a lot of consternation that libraries and the American Library Association was taking the view that they could not put a screen on the computer stations in the library that would block Internet hard core pornography, even if children might have access to it, because of the Constitution. I always thought that was not a sound view and was amazed by it.

So finally the U.S. Congress passed a law that said, well, if you continue to do that you're not getting Federal money. So you went—you represented, along with the ACLU, the Library Association, and contested that and said that the Library Association was right, and eventually lost in the Supreme Court.

So my first question is, do you accept the ruling of the Supreme Court and would you follow it even if you didn't agree with it?

Mr. OGDEN. Absolutely. And if I may just make one point of clarification, because I realize I misunderstood. In that case I represented, I think, the Cleveland Public Library and some—and some—and some library science Ph.Ds who had ideas about how libraries should be run. I don't believe the ACLU was a client in that—in that matter.

Senator SESSIONS. And I guess my next question is, what do you personally think about this? It would trouble me that that's your personal view, that the Constitution would say that a library was required to provide computers that would enable even minors to see the most hard-core pornography.

Mr. OGDEN. I appreciate the question, Senator. I think it's quite important that—that—that children be protected from exposure to material that's—that's obscene as to them. I think that's a different standard than what is obscene as to adults. I think it's appropriate for parents to want to have protections with respect to those materials. I think what's very important—of course, I respect the librarians' view on what they need to do, but——

Senator SESSIONS. Well, but the librarians didn't agree. The librarians said, we have to put this out and any child can watch it if they choose. That's what led to the conflict, did it not?

Mr. OGDEN. Well, my—and I—it's—we're going back a ways and I don't remember the details. But—but I think the situation was, they were concerned not about that principle, but about—but about the effect of the particular rule on—on adults' access to material. Often that's their concern. I think we can work hard to make sure children are protected and adults have appropriate access. I think that the courts have so ruled, and I entirely agree.

Senator SESSIONS. Well, it was a big issue and it was fought out here and your side lost on that question.

Mr. OGDEN. The side—that's correct.

Senator SESSIONS. And, you know, you were a young man and were honored to be selected by a Justice of the Supreme Court to be his law clerk, Justice Blackman. Justice Blackman, perhaps un-

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wisely, and perhaps a good example, opened all his records, including your memorandum to him, which I think is cause for pause. But that was his decision, he did it.

In one of your memos—and I raise this because of some of the pornography positions you've taken and some of your support for activists' court decisions. You said, I think, in the case before him, "I think this is a very important principle. It will prevent the 'morality'-based type of regulation at issue here from being employed to stop the advertisement of a host of products which the 'Moral Majority' types, or their successors in interests disapprove. If they are deprived of the offensiveness excuse, they will have to come up with more creative excuses."

Now, millions of Americans have moral standards. Most people, overall, have moral standards. In *Lawrence* v. *Texas*, however, Justice Kennedy flatly stated, as I recall it, that morality couldn't play a role in the Congress passing legislation. How do you feel about that, and does this statement you've made as a young lawyer to the court—how does that—is that still your view?

Mr. OGDEN. Well, it certainly is not, and I appreciate your asking me about it. I also appreciate your prefacing your question with the observation that I was a young lawyer, which I no longer am. When I said those things I was 29 or 28 years old, and I regret those—those remarks, and I'll tell you why I do. I regret it for two reasons.

First, I don't think it's sufficiently respectful of people and of opposing viewpoints, and certainly if I got a memorandum like that from a younger lawyer today I would take them aside and say this isn't appropriate, you need to be more respectful of people and you need to understand that people have legitimate points of view, and that moral views are held sincerely, and perhaps more sincerely than any other views and are worthy of respect. That's certainly how I view it today. That's what I would tell my children. That's what I would tell younger lawyers talking to me, I disapprove. I would disapprove.

Senator SESSIONS. The question I—Justice Kennedy's question—my time's up—was really that morality couldn't provide a basis for congressional statute. I guess thousands of years have taught us that certain things tend to be—have bad consequences and certain things tend to good, and Congress periodically considers those things. We may not have the American Psychological Association before us at that moment to divine what's right and what's wrong. We have to decide that.

So maybe I'll follow up with a written on that. I'd like to know a little bit more about it because I don't feel like you should be disqualified for representing pornography interests and taking positions that I don't agree with if you'll follow law and you understand some of the basic principles. I think that would not disqualify you.

We'll have a second round? Is that right?

Senator WHITEHOUSE. Of course.

Let me now recognize Senator Kaufman.

Mr. OGDEN. Mr. Chairman, may I just make a brief response or would that be out of order?

Senator WHITEHOUSE. No. You're welcome to. Then we'll turn to Senator Kaufman——

Mr. OGDEN. I just wanted to express—I'm sorry.

Senator WHITEHOUSE [continuing]. Who has been waiting patiently.

Mr. OGDEN. Senator, if I may just respond briefly to Senator Sessions.

Senator WHITEHOUSE. Be my guest. Sure.

Mr. OGDEN. Thank you.

I wanted to express my appreciation to you, Senator, for—for your—for your remarks and for your questions, and I—I certainly understand the reason that you would ask about—about these things. I'll be very pleased to respond, either in your second round or—or in written form to your questions on that—on that subject.

Senator WHITEHOUSE. Senator Kaufman.

Senator KAUFMAN. Mr. Ogden, congratulations.

Mr. OGDEN. Thank you, Senator.

Senator KAUFMAN. Really, thank you and your family for taking on this new position of public service.

However, I must say, looking at your record—extensive record in the Justice Department, this has got to be a wonderful opportunity for you to use the things you learned to try to do something about some of the incredible problems the country faces. So, thank you for coming. I'm sure you will do a good job.

Just to follow up. Can you point to some things in your record that would reassure us on how you deal with with children and families?

Mr. OGDEN. Well, thank you, Senator, for the question. I can assure you and—and—and—and the—and the Committee that issues of children and families have always been of great importance to me. One of the—one of the things I'm the proudest of in my legal career is a brief that I wrote in a case called Maryland Against Craig, which I wrote also for the American Psychological Association, in which the position of psychology there was to explain the way in which a direct confrontation between a victim of child sexual abuse and the alleged abuser in court would be psychological damaging—psychologically damaging and would actually tend to make their testimony less accurate. We argued that they should be allowed to testify in these important criminal matters by closed-circuit television. That brief was something that the court took very seriously and it helped them decide that issue. I think that was—that was important—important to me.

In the government, I worked, as I said, to defend major child pornography and child obscene, as to children, legislation and did so aggressively. I'm proud to have the support of the National Center for Missing and Exploited Children, who worked with me during those years, I think in large part because of the work that I did on those—on those cases.

Senator KAUFMAN. Let me confirm, what are going to be kind of your top priorities as Deputy Attorney General?

Mr. OGDEN. No. one, national security. We need to ensure that the American people are safe, that—that terrorism is combatted as aggressively and as effectively as it possibly can be. Number two, issues related to the rule of law, restoring nonpartisanship, ensuring the protection of criminal investigations from inappropriate influence, protecting career hiring from inappropriate influence, deal-

ing with transparency issues like some of those that have been discussed, all of which I group as any rule of law bucket.

Third, doing everything we can do, recognizing that we have budgetary limitations and recognizing the imperative of protecting the national security, to restore some of those core historic functions of the Department to the full effect, including criminal law enforcement in a range of areas: Financial crime, violent crime, civil rights, and a range of other priorities that have been ignored. So I guess I would say those, going in, are my priorities. But I—you know, we'll sit down with the Attorney General, we'll work with this Committee to—to try to refine those and—and just do the best we can.

Senator KAUFMAN. In the 1990s we did a great deal of help to State and local law enforcement, and then as a result, I think, affected a cause in the drop of crime. Do you have any thoughts about what you'll be doing, coming as Deputy Attorney General, to try to get back to some of the programs that worked in the 1990s?

Mr. OGDEN. It's absolutely critical that we restore the—the funding programs that supported State and local law enforcement, that supported—that created, really, a very strong working partnership between the Department of Justice and State and local law enforcement, and grants and the financial support of those programs is a critical part of that. We've fallen off there and I think we need to find a way to restore it, because it worked. I mean, you just have to—all you've got to do is look at the statistics, talk to the experts at the State and local level. Those programs worked, and I think we need to—to—to fully fund them.

Senator KAUFMAN. And I think we all agree the number-one priority should be national security, but there seems to be kind of—in the shift to do national security, maybe we haven't done as much as we would in the other areas you talked about, which are crime and finance. Could you talk a little bit about how we get back to, you know, doing the national security, but also fighting crime in the Department of Justice?

Mr. OGDEN. I think we need to look—thank you, Senator. I could not agree with you more, that we have to find a way to do both. We have to find a way to protect the national security, we have to find a way to do it in a way that respects the—the—the law and the constitutional rights, of course, but we've got to do it aggressively and absolutely effectively, and we've got to find a way to address these other critical priorities, the ones you've identified, in addition, civil rights, in addition, violent crime.

And how you do it? I think you've just got to—you've got to use common sense. You've got to bring in the people who were—who were running these programs. You've got to figure out where you can save, the things you can do that get the most bang for the buck, and the things you're maybe doing that get the least bang for the buck and try to put the—the—the effort on the things that work. And that's an inclusive process that's got to be driven from the top, but has got to take its input from the people who are—who are on the ground doing the work.

Senator KAUFMAN. You know, there's a lot of talk in the popular press about financial people that are committing financial crimes, or alleged financial crimes, so sometimes I think it's dismissed by

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people when elected officials talk about it as purely political. But I can tell you, talking to my colleagues, it comes right from the gut. People are really upset with the fact of what went on in Wall Street, and upset with the fact that the number of financial crimes that we dealt with in 2008 were considerably less than we dealt with in 2001.

Do you have any thoughts on how the Justice Department can—I don't want to go back. I want to look forward. I really do want—I think, you know, we have an incredible financial crisis. We've got to look forward. But I think part of looking forward, to most people, is how we go back and find out the ne'er-do-wells who helped us get to where we are today, and not in any pejorative way or any prejudiced way or anything else. How do we—do you have any thoughts about how we can go back and kind of deal with some of the crimes that were committed that led to this incredible financial crisis we have?

Mr. OGDEN. Well, I think we need—first of all, Senator, I agree with you entirely, that the—that if crimes were committed, and to the extent crimes were committed that contributed to the situation that we're in today, there needs to be an appropriate and strong law enforcement response. That will require resources to be devoted to it. I think we'll need to figure out the most effective way to do that. That's something I know the Attorney General is committed to. If I am confirmed, it's something I will be committed to.

I think we'll need to talk to the U.S. Attorneys, we'll need to talk to the FBI, we'll need to—we'll need to—to coordinate with State and local law enforcement because they may have an important role to play here to figure out what the most effective approach is and to make sure that people are held accountable if they committed crimes. I would say that—that—that serving jail time may well be an appropriate result that could—could be a big deterrent in the future, because—because that's what this is about.

Senator KAUFMAN. When we get down to that, could you keep the Committee informed? I would personally like to know what it is we're doing, and maybe not when you have the whole answer. But I just really think this is an important part of the healing that has to go on in the country. People are really hurting, and I think we need some kind of a program to try to—they feel that people are getting away with murder, or something short of murder, and anything you'd be doing in this area in a timely manner, realizing your other priorities, I would very much appreciate it.

Mr. OGDEN. Senator, I appreciate that, and absolutely. I think in the setting of priorities, that is an area where there ought to be an open dialog with this Committee.

Senator KAUFMAN. Thank you. Good luck.

Mr. OGDEN. Thank you. Thank you very much.

Senator WHITEHOUSE. The distinguished Senator from Arizona, Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

Welcome.

Mr. OGDEN. Thank you, Senator.

Senator KYL. And I'm sorry I wasn't here for some of the earlier questions, but I don't think they'll be too duplicative.

I understand you wrote a brief that opposed parental notification for 14-year-olds, and that one of the arguments you made in that brief is that girls that age have the capacity to make an abortion decision.

If you believe that 14-year-old girls have that capacity, then did you also believe that they do not require protection under child obscenity laws?

Mr. OGDEN. Well, first of all, Senator, I certainly believe that they deserve protection under child obscenity laws. So if I could start with the end of your question, I believe that the laws that protect minors from material that is obscene as to them—and that's a different category of material as to what's obscene as to adults—are constitutional and they're appropriate, and they need to be enforced.

The brief in question was filed, I think, in 1990 or something like that, in that timeframe, on behalf of the American Psychological Association, which was my client and—and hired me to—to file briefs in that case, and others. The purpose of those briefs, and the way we did it, was to sit down with experts who the Psychologists Association identified for us, who were expert in the relevant area. They helped us identify what the position of organized psychology was on these questions and to present the empirical evidence, the studies and the research that supported the positions that were taken.

Senator KYL. So let me just be clear.

Mr. OGDEN. And that was the view. That was what we did there, and that's what that brief was.

Senator KYL. You understand our time is kind of constrained here.

Mr. OGDEN. I'm sorry. I apologize.

Senator KYL. So if you could get to the point quickly.

So you would advocate a different standard then for 14-year-old girls who have the capacity relative to the abortion issue, but you say may not have the capacity relative to pornography. Is that, in effect, what you're saying?

Mr. OGDEN. I guess I would—I would—well, I don't think—I don't mean to say that because I don't mean to necessarily accept the first part of it, that is, or agree with it. That brief was a brief on behalf of—of a client that was presenting the views of organized psychology. They don't represent my—I'm not a psychologist and I don't—and I don't know about those views.

Senator KYL. But that was the argument that you made in the brief.

Mr. OGDEN. That was the argument that I made for psychologists.

Senator KYL. Okay.

Mr. OGDEN. But—but what I wanted to emphasize, Senator, was my commitment to protecting minors from material that is obscene as to them.

Senator KYL. Well, you understand the reason why we're asking some of these questions, because you're going to have a significant role in advising the Attorney General in policy at the Department of Justice. On behalf of that client you've taken some very extraordinary positions, some very left-leaning and unorthodox positions.

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If you're telling us that you didn't believe any of that, that's one thing.

But let me ask you about another very specific case. You submitted the amicus brief in *Knox* v. *United States*, correct? That's been discussed, I think, briefly here.

Mr. OGDEN. I did.

Senator KYL. And that case presented the issue, how to define child pornography under Federal pornography statutes, right?

Mr. OGDEN. That's correct.

Senator KYL. Now, the defendant in the case was convicted under those statutes after U.S. Customs intercepted foreign video tapes that he'd ordered labeled "Little Girl Bottoms" and "Little Blondes." And let me read you the description of the Third Circuit, which upheld the conviction and ask you if that's correct, to your recollection.

The tapes contained numerous vignettes of teenaged and preteen females between the ages of 10 and 17 striking provocative poses for the camera. The children were obviously being directed by someone off camera. All of the children wore bikini bathing suits, leotards, underwear, or other abbreviated attire while they were being filmed.

The government conceded that no child in the films was nude and that the genitalia and pubic areas of the young girls were always concealed by an abbreviated article of clothing. The photographer would zoom in on the children's pubic and genital area and display a close-up view for an extended period of time. Most of the videotapes were set to music.

In some sequences, the child subjects were dancing or gyrating in a fashion not natural for their age. The films themselves in the promotional brochures distributed by Nathir demonstrate that the videotapes clearly were designed to pander to pedophiles."

That is the description of the court. To your recollection, is that description accurate of the material?

Mr. OGDEN. I never saw the material, Senator. I remember that that's how the Third Circuit described it after—I was no longer in the case at that point, I believe. But that was what the Third Circuit said in describing the material.

Senator KYL. But you didn't see the material yourself?

Mr. OGDEN. I did not.

Senator KYL. But your brief argued that it didn't constitute child pornography. Is that not correct?

Mr. OGDEN. Yes. And the—and the—and the basis for the argument which was made on behalf of the librarians and the booksellers of this country was that—that they just wanted a clear line which they hoped would be of nudity, that you couldn't have child pornography unless there was nudity. That's what they argued for. That argument lost and—and that's not the law. I think that's—that's appropriate.

Senator KYL. Well, would you advocate as a policy for the Department of Justice that the standard that the court set out is accurate or is acceptable, or would you argue for a more liberal interpretation, for example, that nudity was required for it to be pornography?

Mr. OGDEN. I would argue for the interpretation that the court established and for the full enforcement of the law, as the courts have—have understood it. That was an argument made for a client. As—as the lawyer for the United States, I will aggressively and appropriately enforce the law of the United States to its full letter. And I have a record, Senator, of doing that.

Senator KYL. Well, let me ask you this, yeah, because this goes right—do you believe that the First Amendment permits prosecution for child pornography under the facts of the case that we're just now discussing?

Mr. OGDEN. I do.

Senator KYL. Let me ask you about foreign law, because you submitted a brief in *Roper* v. *Simmons* invoking foreign law in favor of an argument banning the death penalty for those convicted under age 18. How much weight do you believe foreign law should be given to interpretations of the United States' Constitution?

Mr. OGDEN. I think typically very little weight, Senator. I think it depends somewhat on the context, which—which provision. That was an Eighth Amendment case, and some Justices of the Supreme Court looked to practices in other countries in deciding what is cruel and unusual punishment. As a lawyer, I needed to make that argument. I think in most areas the governing law is—and really ultimately in all areas the governing law is the U.S. Constitution, the U.S. statutes, and that's where we should—should—should focus our attention.

Senator KYL. One of the questions asked of Chief Justice—of the Supreme Court, now Justice Roberts—I'll paraphrase. I don't remember the exact wording. But in effect it was, how would you rule in a case pitting a big corporation against the little guy, and the little guy may have been defined as someone who was relatively powerless. Do you remember that question and his answer to it?

Mr. OGDEN. I don't. But——

Senator KYL. Well, what would your view be of judging in a case pitting a big corporation—the reason I ask is because you have written some and talked about the need to employ human compassion and described a tension between the rule of law and human compassion in judging cases.

Mr. OGDEN. Well, I—if, again, as I said to Senator Hatch, it's certainly possible that I've said things that—that—that were not expressed well. And I certainly don't agree that—that in judging cases one should have a tension between the rule of law and anything else. The bottom line in a case between a big corporation and a—and a—and a relatively powerless person is the law, and the question is, how is the law written and what should—and—and—and what is the law as—as established? And that's my view. Frankly, I've represented parties on all sides. I've represented a number of big corporations in cases where, on the other side, were people who could be described as relatively powerless, and I think in those cases—and in all cases—the law should govern.

The role of compassion—my view of that, if I may, just to go on, because I know that's really the burden of—of—of the question, I think it's important, as I think the President does, that—that—that—that judges understand the circumstances of the people who

are in front of them and understand the consequences of their rulings. I think that's quite important. But in the end, the law has to guide legal judgment.

Senator KYL. Just a concluding comment, if I could, Mr. Chairman. You've, as a lawyer, taken positions on behalf of clients which I characterized as left-leaning or a bit, well, outside the mainstream. That's my characterization. As a representative of all of the people of the United States, it will be important to leave behind the positions taken on behalf of clients and to, as you just said, uphold the rule of law in all you do.

So, it's not so much a question, but a comment, that sometimes it's not easy to do. I used to represent clients too, and I've always been very careful. I've tried to be careful that I don't give them any extra break in matters of policy that come before me as a—as a legislator. I think the same thing needs to be true with regard to your approach to the law at the Department of Justice. I gather you would concur in that.

Mr. OGDEN. I concur strongly. And the only thing, if I—if I might add, is that I have experience with this, having been, for six and a half years, in the Federal Government, dealing with issues that related to issues that—that I had advocated on for clients previously. And I—and I'm quite proud of my record. I—I very consistently, I think, did that.

I had the support of—of—of people who were involved and—and saw me do that who—who I think will testify, and have spoken for me, that I do and have put the interests of the United States and the rule of law ahead of any other consideration.

Senator WHITEHOUSE. Indeed, that's one of the joys of government service.

Senator Cardin.

Senator CARDIN. Thank you very much, Mr. Chairman.

Mr. Ogden, welcome. We thank you very much for your willingness to serve in this very important public position.

Just so I complete the cycle, I think you said this, but in regards to child pornography, if I heard you correctly, you're saying you not only accept, but support, the court decisions and are prepared to enforce the law aggressively as it has been interpreted by the courts?

Mr. OGDEN. Absolutely, Senator.

Senator CARDIN. Thank you. I think that's the key point here. We certainly understand your position in representing clients. I appreciate that clarification for the record.

I want to talk a little bit about the U.S. Attorneys and the supervision of U.S. Attorneys. My colleagues have already brought up the politicization of the U.S. Attorney's Office under the former administration and how there was political involvement in decisions made as to types of cases which should be prosecuted.

I want to talk about what you see as the appropriate role in giving guidance to the U.S. Attorneys, but allowing the U.S. Attorneys to work with local government officials as to the priorities within the various jurisdictions. In the State of Maryland, we have a very close working relationship between our U.S. Attorney and our local government officials in setting priorities that are important for law enforcement in Maryland.

I want to hear what you believe is the appropriate role to be taken by your direction, or the direction of the Department of Justice, in the resources and priorities within the U.S. Attorneys, and how the U.S. Attorney can establish the priorities for that particular jurisdiction, working with the local officials.

Mr. OGDEN. I think—Senator, I appreciate the question. I think it's an extremely important issue as to—as to—to make sure that we both have a national approach to the legal issues that require a national approach and take appropriate account of the Federal issues that—that vary from jurisdiction to jurisdiction.

I think what it requires is identifying what the national priorities are and communicating those very clearly, at the same time having a dialog back and forth with the U.S. Attorneys that help us establish that. Obviously this is a Nation built of localities, and we need to know what's happening all across the country in setting those priorities.

At the same time, certain areas have certain specific issues that need to be addressed. The interaction with State and local law enforcement is important. I've addressed the need for a seamless, coordinated enforcement, mutual support. And so I think that a—that a dialog at the local level, setting priorities, is important at the same time that we have national direction with respect to national priorities.

Senator CARDIN. Clearly, terrorism—fighting terrorism was a national priority that, by necessity, received much more attention and requirements for the local U.S. Attorney's Office to devote its resources. Task forces were established so that we could have a common strategy involving local law enforcement. I think that was the right model to use to try to develop common strategies to deal with a national problem using the U.S. Attorney's Office and local law enforcement.

I would hope that you would have a transparent process so that the U.S. Attorneys are able to make their points in a comfortable setting so that we can take the limited resources that are available and use them in the best interests of the particular jurisdiction in which the U.S. Attorney operates, as well as the national priorities.

Mr. OGDEN. I appreciate that, Senator. I agree entirely that we need to have that kind of dialog and—and—and make it possible to really understand the problems each U.S. Attorney is confronting and support them appropriately.

Senator CARDIN. We also look to you to give us advice as to laws that may need to be changed in Congress in order for you to effectively carry out your law enforcement function. So let me mention the crack powder disparity issue and get your views on that. This Committee has had hearings on that subject, the disparities.

We know that the overwhelming percentage of people who are incarcerated on crack violations are African American and minorities. We know that there is a huge disparity between powder and crack as far as the minimum sentencing is concerned. I think it's, 5 grams will trigger a minimum sentence of 5 years for crack cocaine violations, whereas powdered cocaine, it's 500 grams, so you have a 100:1 disparity.

I want to perhaps get your view as to how you would go about making recommendations to Congress on changes in Federal crimi-

nal statutes in order to have more confidence among the community, that our laws are fair and are not discriminatory against any segment of our community.

Mr. OGDEN. Well, we need to have, as you say, laws that are in the—in the drug areas and others, that are tough and that are also fair and understood to be fair. And I think there's a consensus that's really growing, that the disparity between crack and cocaine, as you—powdered cocaine, as you say, a 100:1 disparity, needs to be changed and we need to address that promptly.

As far as the way that I would propose to go about it, if I were confirmed, certainly we need to consult with all the Federal authorities with respect to this. We need to look at what the Sentencing Commission's considerations are. We need to talk with this Committee, and there's a lot of expertise here on both sides. I know that a number of members of this Committee have very constructive thoughts about how to address these issues.

So we would engage there. We would look at—at—at all the—at all the potential options and then work closely with this Committee to try to develop an approach that—that—that eliminates the disparity, or at least reduces it very sharply.

Senator CARDIN. I just want to point out one more part on this disparity. And I'm not sure how these statistics are obtained, but the information that's been made available to this Committee indicates that the minority use of crack cocaine is much lower than the incarceration rate of minorities for violations of the crack cocaine statutes.

So that also raises questions as to the even-handedness of prosecution and going after those who violate our laws. So it's not only the underlying statute, which I do believe needs to be revisited, but also the way in which resources are used to prosecute those who violate our laws. I would hope that you would have recommendations to us as to how we can have more—establish more confidence that the laws are being enforced evenly and to all communities.

Mr. OGDEN. Senator, what you say about the statistics concerns me. I'm not familiar with them. I will certainly look into that issue. I agree with you. We need tough, firm, smart, but fair law enforcement at every level, from the—from the prosecutorial level, throughout our system.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Senator WHITEHOUSE. I think everyone has had a first round, so let me jump in at this point and first recognize your family who are here. I, too, married into a matriarchal clan, and so I share the appreciation that you and your son and your uncle must have for being surrounded by such a wonderful array of mothers, aunts, sisters, nieces. It is an impressive sight.

Mr. OGDEN. Thank you, Senator.

Senator WHITEHOUSE. And I want to let you know I thought the opening quote that you had in your testimony, "I have a special regard for the Department of Justice. I know it to be an essential bulwark of our democracy and our freedom. I am the proud son of a career Federal civil servant," puts you in what I consider to be about exactly the right place to do your job well.

Mr. OGDEN. Well, thank you.

Senator WHITEHOUSE. I have been a persistent and animated critic of what has happened to the Department of Justice under Attorney General Ashcroft, Attorney General Gonzales, and Attorney General Mukasey, to different degrees, obviously. But I do want to take this opportunity, since you're the candidate for Deputy Attorney General, to say a good word on behalf of your predecessor, Mark Filip. I've heard nothing but good things about him. He left a lifetime appointment to the Federal judiciary to come back to the Department's rescue.

Whatever my disagreements have been with Attorney General Mukasey, I have heard nothing other than that Deputy Attorney General Filip has discharged his responsibilities in the finest traditions of the Department. And since I am a persistent critic of the Department, I thought it was appropriate to provide recognition where I feel it was due, and I think it's appropriate given that you will be taking his position.

A couple of quick questions. OPR is going to be producing a report of its review of the Office of Legal Counsel in the coming weeks during the course of this administration. Senator Durbin and I have a letter from Marshall Jarrett, indicating that he will release that report to us.

Inspector General reports are presumptively public and are normally released, OPR reports, a little bit more discretionary. I'd like your commitment that you will honor the promise that Marshall Jarrett has made and release the OPR report when it is public, when it is completed.

Mr. OGDEN. Well, Senator, I agree entirely that—that public release of—of important reports by the Inspector General and by OPR is extremely important. I have high regard for Marshall Jarrett. I'm not familiar with the specific commitment he made to you, but if he feels it can be released, it seems to me that that must be the case.

Senator WHITEHOUSE. We'll send you the letter and follow up.

Mr. OGDEN. Thank you.

Senator WHITEHOUSE. Similarly, I had a question about the investigation of the interference with our U.S. Attorneys that has been transferred to Ms. Dennehy, the U.S. Attorney. There is an inconsistency between what the Office of Inspector General and the Office of Professional Responsibility asked for, which is to have a prosecutor appointed who could work with them to help them complete their public review of this with what took place, which is to have a U.S. Attorney authorized to proceed behind the veil of grand jury secrecy to see if there are criminal charges.

I don't know. I asked Attorney General Mukasey. I've never received an answer as to how that inconsistency has been resolved. It may very well be that Ms. Dennehy has been authorized and has sought the permission of the court to provide information to OIG and OPR so they could continue their report. It may be not. It may be that this was a giant exercise to push this whole scandal behind grand jury rule 6(e) until the election could be over and the administration could leave. That question is pending with the Department and I would like your commitment that you will, in due course and in a reasonable timeframe, answer it for me.

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Mr. OGDEN. You certainly have my commitment, Senator, that we'll look into those questions and make sure that the right thing is being done and get back to you with whatever we can possibly tell you about that.

Senator WHITEHOUSE. Thank you.

I am also concerned about the executive privilege assertions that have been made by the previous administration. As an Attorney General, as a Governor's legal counsel in Rhode Island, I've spent a fair amount of time on executive privilege on the executive side of the privilege, and never in my life would I consider making the assertions that this administration has made. I don't think they get past the laugh test, frankly.

Previous administrations have done essentially an executive privilege directive from the President. President Clinton did it, President Reagan did it. I would encourage that this administration do it, and I would ask that in preparing that, you, at a minimum, consult with this Committee and consult with the House Judiciary Committee to try to resolve as many of the pending issues related to executive privilege as possible.

If we can sort of cabinet down to an area of really legitimate disagreement, I think that would be a helpful public service. Right now, my belief is that executive privilege was used as a stonewall, and frankly they didn't care whether the theories were true or not as long as they were adequate to push the question beyond their term of office.

And so I think we have to kind of recalibrate, and I think doing it in a bipartisan way and doing it in a way that incorporates both executive and legislative views would be helpful. I'd like to hear your thoughts on that.

Mr. OGDEN. Well, you—you—Senator, I think it's a very interesting idea. You raised it in our—in our private conversation. I've thought about it some since then. I think it is an intriguing idea. It does seem to me, as I—as I said to Ranking Member Specter earlier, that the engagement with this Committee on oversight, and with the Congress as general on oversight, is very, very important and we need to narrow any differences as much as we possibly can so that this Committee can perform its functions.

Executive privilege is one of the issues there. I think we need to have a coherent and consistent approach, I think an approach that involves accommodation as much as we can, and communication. So I think it's a very interesting idea. I will discuss it with—with Attorney General Holder. I think ultimately that is probably his call.

Senator WHITEHOUSE. And White House counsel, I suspect, also.

Mr. OGDEN. And with Mr. Craig. But I like the idea. I think it's intriguing, and I like, in particular, the idea of a bipartisan engagement on it so that—so that we try to at least have all thoughts and ideas together as we—as we fashion our approach.

Senator WHITEHOUSE. A final question. As you do the damage assessment, which I think is a very important and very useful exercise, I suspect that things that we are not necessarily aware of now will be disclosed now that you are in the Department. There are people who are willing to bet their lives and their careers to become whistleblowers. There are people who are willing to give up

the job that they love to get away from an administration that is tainting the Department.

There are others who will simply hunker down until the storm is through, and when they believe they have legitimate management again, they will come back out and it'll be, hey, boss, I've had this memo in my, you know, drawer for 6 months. I hope that you will set up a process so that people who are doing that know where to go with it, and that you as managers have a repository where those sorts of new disclosures will go so that they can be properly analyzed and reviewed, added to the damage assessment, if necessary, and have appropriate action taken. I think if that's just left to the ordinary chain of command, it might get confused. I hope you'll consider specifying, whether the Attorney General will consider specifying within the Department how such disclosures are to be treated.

Mr. OGDEN. Well, I think that, again, that's a very important and interesting idea that you suggested to me in our private conversation. I am a big believer in whistleblowers and in the need to make sure that people feel comfortable coming forward to—to make complaints. And I will say—and to bring problems to—to the attention of management. I will say that I don't view that only as an exercise about people blowing the whistle on the past.

I think what we need is a process that encourages whistleblowing in this administration, and in any other administration going forward. This is—the business of making sure that we're doing the right thing is an ongoing business, and—and so my commitment will be that we will—I will work with the Attorney General, we'll talk with the career lawyers who have dealt with these kinds of issues, we'll try to fashion an appropriate process that encourages whistleblowers to—to raise issues that need to be addressed.

Senator WHITEHOUSE. Thanks, Mr. Ogden.

A vote will be going off shortly. Senator Sessions has asked for a second round. In the time that we have available, he's welcome to take that time.

Senator Kyl.

Senator KYL. Mr. Chairman?

Senator SESSIONS. I will yield to Senator Kyl.

Senator KYL. I just have one quick comment, and then a question. I do think if we're trying—I appreciated your response regarding executive privilege, but on behalf of good people who worked in the Bush administration I would disagree with the comment that the Bush administration didn't care whether theories were true or not. I am sure that the advice that was given by lawyers in the Bush administration and the Department of Justice relating to executive privilege were thought through carefully and that people were not unconcerned with the truth of them.

One of the things in our previous exchange—you alluded to the arguments you made on behalf of clients, but you also have said some things about your own personal views. I wonder how extensive they would be carried into your new position.

In a 1990 tribute to Justice Blackman, you praised the Justice's separate opinion in the affirmative action case, *Regents of the University of California* v. *Bakke*. His opinion not only endorsed the

factor approach to affirmative action that considers a wide variety of factors, including race, it also would have upheld the University of California's more sweeping approach that entailed outright set-asides and quotas, which is the approach the court struck down in Bakke.

You wrote, "To this day no other writing on the subject of affirmative action is so persuasive to me as the Justice's short Bakke concurrence." Does that remain your opinion today?

Mr. OGDEN. It is not my opinion today that quotas or a rigid approach to affirmative action is appropriate. What I think intended—and again, the failure of expression is entirely my fault. What I meant to articulate was that his—his statement that "we must take account of race to get beyond race for a time" was something that I found then to be very persuasive, and I think the court's approach, the multi-factored approach that you identify, which has found that to be appropriate in some circumstances, is really based on that idea. It's something that we wish we didn't have to do, but in limited circumstances we do. But I certainly don't think a rigid approach is appropriate and I don't agree with that way of going about affirmative action.

Senator KYL. Thank you.

And thank you, Senator Sessions.

Senator WHITEHOUSE. Does Senator Cardin wish a second round?

Senator SESSIONS. I was going to use the rest of his two and a half minutes he left me.

First, I want to say, another example about your memo to Justice Blackman indicates to me that judges are entitled to have private memorandums from their clerks about how they should think about a case. I don't think Senator Whitehouse wants a memorandum to him from his staff revealed every time somebody would like to peruse it and see what they told you. I think there is a legitimate basis for any administration to assert reasonable standards of confidentiality within its own house and within its own debate.

Do you think that's——

Senator WHITEHOUSE. I do agree with that, Senator.

Senator SESSIONS. Thank you. Very good.

Mr. OGDEN. And I'm on board, too.

Senator SESSIONS. OK. Good.

In *Simmons*, you argued that—this is a death penalty case which was a 17-year-old who committed brutal murder. Captured a lady, told people beforehand he was going to do it. Didn't even know her, I don't think. Taped her up, threw her off the bridge, and she drowned, and bragged about it afterwards.

Well, we can disagree on that, but you argued international law should be considered by the United States Supreme Court as part of evolving standards of decency, and that should impact the United States Supreme Court in interpreting the United States' Constitution, which I believe is a contract signed a number of years ago with the American people that has been amended formally on a number of occasions.

Do you think international law should have been a factor in that decision?

Mr. OGDEN. Well, I think it's—I think it's an interesting question, whether evolving standards of decency. And that's not my phrase, of course, Senator, that's the——

Senator SESSIONS. But I think you used that phrase in your brief.

Mr. OGDEN. I do, because that's the test that the Supreme Court has established in determining what is cruel and unusual punishment.

Senator SESSIONS. That is true, the phrase preceded you.

Mr. OGDEN. And a good lawyer always tries to tell the court that he wins based on the court's standard. And that is the court's standard, evolving standards of decency. The question whether practices in other countries should inform our view of what evolving standards of decency are, I think, is a difficult question. The court is divided on it. I think it's probably relevant in thinking about these issues, but—but it's really not so much foreign law as foreign practice.

But the fundamentally important thing is domestic law, domestic practice, because the evolving standards are our standards, the American people's standards.

Senator SESSIONS. Well, I think it's one thing to appreciate the logic of a court in the United Kingdom, but I'm not sure there's any relevance at all to an interpretation of United States Supreme Court what a Parliament of France, or China, or any other place did.

Mr. OGDEN. I—I agree with—I agree with you.

Senator SESSIONS. Isn't there a danger when you use—allow a judge to take a statute or constitutional provision and provide and interpret it in light of evolving standards of decency? Isn't that, in fact—isn't the danger in that that it is virtually a license? It gives the judge the ability to pick any standard, any news article or idea floating around the world to allow them to interpret the statute in a way that it wouldn't have otherwise been interpreted. Isn't that no standard at all? Isn't it basically allowing a judge to utilize their own personal values and opinions to color their interpretation of the statute?

Mr. OGDEN. I think as an initial matter it's quite—I think there's a danger. I think there's a danger with—with many, particularly, constitutional provisions, that—that there has to be great rigor in applying them to avoid just that kind of problem, and I think it's extremely important.

Senator SESSIONS. We're concerned about that. It's a dangerous trend. If you love this Constitution and you really respect it—I believe Professor Van Alsteen said, at Duke, you'll interpret it as it's written. You start playing around with it and interpreting it like somebody in a foreign country, their policies, then it erodes the very principles that protect us, protect our liberty in a very firm way.

Mr. OGDEN. I have one—one—I guess, I don't mean—I don't disagree with what you've just said. I do want to point out, in that case the first arguments we made were about U.S. practice and in trying to decide, what does America consider today to be cruel and unusual. The question there was whether it was cruel and unusual

to punish, with death, somebody who was a minor when they committed the crime. The——

Senator SESSIONS. Well, you're talking about politically, what people are doing politically today. But the Constitution allows things that might be rarely done, doesn't it?

Mr. OGDEN. Well, the——

Senator SESSIONS. If it allows an event and—and 50 percent statutorily—or 80 percent of the States statutorily constrict that power, which they may have a right to do, it doesn't mean that another State can't allow the traditional interpretation to continue.

Mr. OGDEN. Senator, I have—I—first of all, have—want to express my appreciation for your constitutional knowledge and scholarship. I don't want to—I don't want to take you on at all. I think the—in this area the word "unusual" is a word that is in the Constitution. Cruel and unusual punishment is prohibited. I think that's why——

Senator SESSIONS. Both—both cruel and unusual.

Mr. OGDEN. It must be both. I agree with you, it's got to be—and it says "and," it doesn't say "or." But it's because the Constitution speaks of unusual punishment that is cruel, being improper, that advocates for people challenging punishments talk about practices across the country and talk about them throughout the world. I think that's the reason for it. You may think that's not appropriate, and I think there are arguments to that effect, but it seems to me that's the reason that that's done.

Senator SESSIONS. I trust you'll enforce the death penalty according to the laws of the United States?

Mr. OGDEN. I will do so. And I'm pleased that I had the opportunity to talk with our District Attorneys about that and assured them of the same thing, and I'm pleased to have their support.

Senator SESSIONS. Thank you, Mr. Chairman.

Senator WHITEHOUSE. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

Senator WHITEHOUSE. For a second round.

Senator CARDIN. Just very briefly, I think that the points that Senator Sessions made are very valid points. The Constitution is not only loved and respected, it is the basis of the rule of law of our country. But I think it also incorporates the universal principles for a democratic state, so I think listening to what is developing internationally is important for us.

I think about how many times Senators write letters to public officials in other countries, telling them that some of the things that are happening in their court system or the laws that they're passing are inconsistent with commitments for democratic states.

So the United States is very actively involved in trying to establish international principles, and I think that's a good thing. I'm not disagreeing with that. But I think at times it appears to be one-sided to other countries. I think we need to listen to what's happening internationally, not to affect a court decision, because I agree with Senator Sessions on that issue, but to reflect as to whether the principles of our country are still mainstream in promoting what a democratic state should be doing, and the human rights agendas, and so many other areas.

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So I hope we're not tone-deaf to what is happening internationally. I think we need to be mindful of what is happening. I also think we need to make sure that we follow the principles of the rule of law of our own country, and it's up to the legislature, the Congress, to change those laws. I think we all agree on that. So I just—I thought that exchange was helpful and I must—I'm very confident.

I feel a lot more confident hearing your response, and I know that you'll be an incredible help to Attorney General Holder in the evaluation of what's happened in the Department of Justice and setting a new course to restore the confidence to the American people that the Attorney General's Office is the attorney for the country, not for any one person, and that it will recruit and retain the very best legal minds on behalf of the American people. I wish you well on your journey. I thank you for including us as your partners.

Thank you, Mr. Chairman.

Mr. OGDEN. Senator, thank you for those thoughtful comments.

Senator WHITEHOUSE. I think we are now at the conclusion of the hearing. I thank everybody who has attended. As a matter of final business, I will add into the record, without objection, letters of support for the nomination of David Ogden from Beth Brinkman, former Assistant to the Solicitor General; Bill Land Lee, former Assistant Attorney General of Civil Rights Division; Carolyn Lamb, former president of the District of Columbia Bar; Carter Phillips, former Assistant to the Solicitor General; Christine Gregwar, the Governor of the State of Washington and my former colleague as Attorney General of that State; Daniel Troy—Daniel Levin, former Acting Assistant Attorney General in the Office of Legal Counsel; Daniel Price, former Assistant to the President, Department of National Security Advisor; David Frederick, former Assistant to the Solicitor General; Duvall Patrick, the Governor of the State of Massachusetts and the former head of the Civil Rights Division of the Department of Justice; Doug Ganssler, the Attorney General of Senator Cardin's State of Maryland; H. Thomas Wells, the president of the American Bar Association; James Robinson, former Assistant Attorney General of the Criminal Division; Jamie Grellick, former Deputy Attorney General, a predecessor of yours; Janet Reno, former Attorney General; Joanne Harris, former Assistant Attorney General of the Criminal Division; John Bellinger, the former counsel for National Security Matters of the Criminal Division; Kenneth Geller, former Deputy Solicitor General; Larry Thompson, another predecessor, former Deputy Attorney General; Manis Cooney, former chief counsel of this Committee; Michael Horowitz, Commissioner of the United States Sentencing Commission; Paul Kapuccio, former Associate Deputy Attorney General; Peter Keisler, former Assistant Attorney General, former Acting Attorney General; Rachel Brand, former Assistant Attorney General for Legal Policy; Reginald Brown; Richard Taranto, former Assistant to the Solicitor General; Robert Hoyt, former Associate White House Counsel, former General Counsel to the U.S. Treasury Department; Seth Waxman, former Solicitor General; Stuart Gerson, former Assistant Attorney General in the Civil Division; Tom Miller, another former colleague of mine, as Attorney General of Iowa; Todd Stegerda, former Chief Counsel to the McCain Presi-

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dential campaign; Todd Zebler, former Deputy General Counsel to the McCain Presidential campaign; along with statements of support from the Federal Law Enforcement Officers Association, the Fraternal Order of Police; the Major Cities Police Chiefs Association; the National Association of Police Organizations; the National District Attorneys Association; the National Narcotics Officers Association Coalition; the National Sheriff's Association; the Police Executive Research Forum; the Community Anti-Drug Coalitions of America; the National Center for Missing & Exploited Children; the National Center for Victims of Crime; the Partnership for a Drug-Free America; the Anti-Defamation League; the Leadership Conference on Civil Rights; the National Women's Law Center, the American Psychological Association; the Boys & Girls Clubs of America; and our Judge Advocates General.

[The letters appear as a submission for the record.]

Senator WHITEHOUSE. We'll be keeping the record open formally for a week for written questions. The Chairman urges members, however, to send written questions as soon as possible, and no later than Monday by noon if at all possible, so that we do not delay in moving forward on this nomination and getting the Deputy in place managing the Department.

With that, I thank the witness for his presence here today. I thank his family and his children for their attendance.

The hearing is adjourned.

[Whereupon, at 12:02 p.m., the Committee was adjourned.]

[The biographical information of David W. Ogden follows.]

[Questions and answers and submissions for the record follow.]

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UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR DAVID W. OGDEN,
DEPUTY ATTORNEY GENERAL NOMINEE

PUBLIC

1. **Name**: Full name (include any former names used).

David William Ogden

2. **Position**: State the position for which you have been nominated.

Deputy Attorney General

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Current Office Address
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Current Residence
Arlington, VA

4. **Birthplace**: State date and place of birth.

November 12, 1953; Washington, D.C.

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

I am married to Anne Harkavy. She is an attorney and partner at Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Ave., N.W., Washington, D.C. 20006. She is currently on maternity leave. I have three children, Jonathan (age 19), Elaine (age 17), and Natalie (a newborn).

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School, September 1978 – May 1981. J.D., *magna cum laude*, May 1981.

61992.001

Johns Hopkins University, September 1977 – January 1978 (graduate program in English literature). Did not receive a degree; left to attend Harvard Law School.

University of Pennsylvania. September 1974 – May 1976. B.A., *summa cum laude*, May 1976.

Grinnell College, September 1971 – May 1973. Did not receive a degree; transferred to the University of Pennsylvania.

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Wilmer Cutler Pickering Hale and Dorr LLP. Partner and Attorney (2001-present).
Address: 1875 Pennsylvania Ave., N.W., Washington, D.C. 20006

Agency Liaison for the U.S. Department of Justice, Presidential Transition Team (2008-2009).
Address: 451 6th Street N.W., Washington, D.C. 20001

Washington Project for the Arts. Member of Advisory Board (2004-2007).
Address: 2023 Massachusetts Ave., N.W., Washington, D.C. 20036

Bruce J. Ennis Foundation. Member of Advisory Board (2002-2009)
Address: c/o Jenner & Block, 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001

U.S. Department of Justice. Assistant Attorney General for the Civil Division (2000-2001).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Acting Assistant Attorney General for the Civil Division (1999-2000).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Chief of Staff to the Attorney General (1998-1999).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Counselor to the Attorney General (1997-1998).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Justice. Associate Deputy Attorney General (1995-1997).
Address: 950 Pennsylvania Ave., N.W., Washington, D.C. 20530

U.S. Department of Defense. Deputy General Counsel and Legal Counsel (1994-95).
Address: The Pentagon, Room 3E980, Washington, D.C. 20301

Georgetown University Law Center. Adjunct Professor (1992-1995).

Address: 600 New Jersey Ave., N.W., Washington, D.C. 20001

Jenner & Block. Partner and Attorney (1988-1994).
Address: 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001

Ennis, Friedman & Bersoff. Washington, D.C. Partner and Attorney (1986-1988).
Firm no longer exists.

Ennis, Friedman, Bersoff & Ewing, Washington, D.C. Associate Attorney (1983-1985).
Firm no longer exists.

The Honorable Harry A. Blackmun, Associate Justice, United States Supreme Court. Law Clerk (1982-1983).
Address: United States Supreme Court, One First Street, N.E., Washington, D.C. 20543

The Honorable Abraham D. Sofaer, United States District Court Judge, Southern District of New York. Law Clerk (1981-1982).
Address: United States District Court, Southern District of New York, Foley Square, New York, N.Y. 10007

Maryland Legal Aid Bureau, Salisbury, MD. Summer Law Clerk (1981).
Address: 111 High Street, Salisbury, MD 21801

Harvard University. Research Assistant to President Derek Bok (1980-1981).
Address: Office of the President, Harvard University, Cambridge, MA 02138

Miller, Cassidy, Larroca & Lewin, Washington, D.C. Summer Associate (1980).
Firm no longer exists.

Choate, Hall & Stewart. Summer Associate (1979).
Address: Two International Place, Boston, MA 02110

Steptoe & Johnson. Paralegal (1978).
Address: 1330 Connecticut Ave., N.W., Washington, D.C. 20036

Brief employment as manual laborer through temporary agency in Atlanta, GA (1977).
Name and address of agency unknown.

Centro Americano, Bogota, Colombia. Instructor of English as a Second Language (1977).
Address unknown.

Hospital of the University of Pennsylvania. Ward Secretary (1976).
Address: 3400 Spruce Street, Philadelphia, PA 19104

61992.003

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I have never served in the United States Military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Recommended as a "litigation star" in Washington, D.C. in the 2nd edition of Benchmark Litigation's *The Guide to America's Leading Litigation Firms and Attorneys* (2008).

"Washington, DC Super Lawyer" in 2007 and 2008 by *Super Lawyers* magazine, for outstanding business litigation practice.

One of *Washington Business Journal's* four "Top Washington Lawyers" for corporate litigation (2006).

Consistently selected for inclusion in *The Best Lawyers in America* for commercial and mass tort litigation and business litigation.

National Law Journal Pro Bono Award (2006).

Fellow, American Bar Foundation (2002-present).

Edmund J. Randolph Award for Outstanding Service, U.S. Department of Justice (2001).

Attorney General's Medallion, U.S. Department of Justice (1999).

Department of Defense Medal for Distinguished Public Service (1995).

J.D., *magna cum laude*, Harvard Law School (1981); Editor, *Harvard Law Review* (1979-1981).

B.A., *summa cum laude*, University of Pennsylvania (1976); Phi Beta Kappa.

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association, member (1983-present); ex officio member and governmental representative, Council of the Section of Litigation (1998-2001).

American Bar Foundation, fellow (2002-present).

District of Columbia Bar, member (1983-present).

Virginia Bar, member (1986-present; since 1998, inactive status)

Advisory Committee on Civil Rules, Judicial Conference of the United States, Ex Officio Member and Representative of the U.S. Department of Justice (1999-2001).

First Amendment Lawyers Association, member (1991-1994); Secretary (1993-1994).

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia: I was admitted to the bar of the District of Columbia in 1983. My license to practice in the District of Columbia is in good standing, and my current status is active.

Virginia: I was admitted to the bar of the Commonwealth of Virginia in 1986. My license to practice in Virginia is in good standing; my current status (since 1998) is inactive.
In 1994, my license to practice in Virginia was suspended briefly and then reinstated under the following circumstances. At that time, Virginia required that lawyers complete 12 hours of continuing legal education annually. After beginning work as Deputy General Counsel for the Department of Defense in 1994, I found it difficult to meet that requirement. I completed the course work prior to the deadline and mailed my form to the Bar prior to the deadline, believing that I had complied in a timely fashion. Nevertheless, in November 1994, the bar notified me that because the forms had *arrived* at the bar offices after the deadline, my license to practice in Virginia had been suspended and would remain so until I paid the reinstatement penalty. I immediately paid the penalty and was reinstated as a routine matter.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Supreme Court—Admitted January 20, 1987

United States Court of Appeals for the District of Columbia Circuit—Admitted July 26, 1984

United States Court of Appeals for the First Circuit—Admitted September 12, 1989

United States Court of Appeals for the Second Circuit—Admitted November 9, 1993

United States Court of Appeals for the Fourth Circuit—Admitted July 7, 1986

United States Court of Appeals for the Fifth Circuit—Admitted September 6, 2000; inactive since 2006.

United States Court of Appeals for the Ninth Circuit—Admitted December 20, 2000

United States Court of Appeals for the Tenth Circuit—Admitted January 28, 1992

United States Court of Appeals for the Federal Circuit—Admitted August 8, 2006

United States District Court, Eastern District of Virginia—Admitted February 12, 1988

United States District Court, District of Columbia—Admitted August 8, 1984

Supreme Court of the State of Delaware—Admitted March 9, 2006

Supreme Court of Virginia—Admitted June 10, 1986

District of Columbia Court of Appeals—Admitted March 27, 1984

I am not aware that any of these admissions have lapsed. I have also been admitted *pro hac vice* in numerous courts over the years, limited to the handling of specific matters.

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Washington Project for the Arts (Corcoran) Advisory Board member (2004-2007).

Bruce J. Ennis Foundation, member of an advisory Board of Directors (2001-2009).

Donaldson Run Recreational Association (a swimming pool in Arlington, VA), where my family and I were members for a time in the 1990s.

International Club, Washington, D.C., membership approximately 1989-90.

Phi Beta Kappa Society. I do not believe that I have made any contributions to the Society since 1996, but it is possible that they nevertheless consider me to be a member.

Riverwood Citizen's Association (1997-2003)

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of

membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none.

13. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have done my best to identify published materials through searches of my personal files and publicly available electronic databases. I have located the following:

Co-authors, David W. Ogden, Stephen W. Preston, Karen F. Green, Jonathan E. Paikin, Jennifer M. O'Connor, Jonathan G. Cedarbaum, *Congress Considers Pro-Plaintiff Amendments to False Claims Act*, WilmerHale E-Mail Alert (June 25, 2008), *available at* http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8364.

Co-authors, David W. Ogden, Stephen W. Preston, Karen F. Green, Jonathan E. Paikin, Jennifer M. O'Connor, Jonathan G. Cedarbaum, *Supreme Court's* Allison Engine *Decision Clarifies Intent Requirement Under False Records and Conspiracy Provisions of False Claims Act*, WilmerHale E-Mail Alert (June 9, 2008), *available at* http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8352.

Co-authors, Gary Born, Steven P. Finizio, Richard A. Johnston, Mark C. Fleming, John V.H. Pierce, David Bowker, David W. Ogden, Rachael D. Kent, Ethan G. Shenkman, *Supreme Court Rejects Expanded Judicial Review of Arbitral Awards in* Hall Street v. Mattel, WilmerHale E-Mail Alert (April 3, 2008), *available at* http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=8286.

Co-author, David W. Ogden and Sarah Rapawy, *Discovery in Transnational Litigation*, in John Fellas (Ed.), *Transnational Litigation: A Practitioner's Guide* (March 2008).

Co-authors, WilmerHale PharmaBulletin (February 2007), *available at* http://www.wilmerhale.com/files/Publication/626c92f7-9180-442a-877b-b660723b675e/Presentation/PublicationAttachment/989018eb-b84c-499f-8f85-b79738a6b3f7/Pharma%20Bulletin_Feb2007.pdf .

Co-authors, Gary Born, Steven P. Finizio, David W. Ogden, Ethan G. Shenkman, Rachel D. Kent, John V.H. Pierce, David Bowker, Matthew Draper, Richard A. Johnston, Investment Treaty Arbitration: ICSID Amends Investor-State Arbitration Rules (April 14, 2006), *available at* http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=3165.

Co-authors, David W. Ogden & Randolph D. Moss, District of Columbia Prescription Drug Excessive Pricing Act of 2005 Successfully Challenged, Declared Unconstitutional, WilmerHale

E-Mail Alert (January 5, 2006), *available at* http://www.wilmerhale.com/publications/whPubsDetail.aspx?publication=3026.

Letter to the Editor re: "The Brains Behind Blackmun" By David J. Garrow, *Legal Affairs*, May/June 2005, *available at* http://www.legalaffairs.org/issues/May-June-2005/feature_response_mayjun05.msp.

Co authors, David W. Ogden & Joel A. Nichols, *The Right to Anonymity Under the First Amendment*, 49 Fed. Law. 44 (2002)

The Federal Government's Perspective on Post-Lexecon Multidistrict Litigation, Aviation Lit. Quarterly, Fall/Winter 2000, at 10 (American Bar Association, Section of Litigation).

Carriers, Insurers, and the United States in International Air Carrier Litigation: Nothing in Common?, Lawyer-Pilots Bar Assoc. Journal, Volume XXII, No. 3, at 23 (Fall 2000).

Co-authors, Jerald A. Jacobs & David W. Ogden, *Managing Legal Risks: Key Issues for Association Volunteers*, Leadership (1996).

Co-authors, Jerald A. Jacobs & David W. Ogden, *Legal Risk Management for Associations: A Legal Compliance Guide for Volunteers and Employees of Trade and Professional Associations*, American Psychological Association Press, 1995.

Is There A First Amendment "Right to Remain Silent"?, Federal Bar News & Journal, Volume 40, No. 6, at 368-373 (July 1993).

Co-authors, Donald N. Bersoff and David W. Ogden, *APA Amicus Curiae Briefs: Furthering Lesbian and Gay Male Civil Rights*, American Psychologist, September 1991, at 950-956.

In Appreciation of Justice Blackmun, 1990 Annual Survey of American Law, at xxxiii-xxxix.

Does Sodomy Decision Give History Its Due or Does It Try To Fossilize the Constitution?, Legal Times, Vol. 9, No. 8 (July 21, 1986).

Case Comment, *State-Guaranteed Right to Speak in Privately Owned Shopping Centers*, 94 Harv. L. Rev. 169 (1980) (no formal attribution in law journal).

Case Comment, *Evidentiary Use of a Criminal Defendant's Reading Habits and Political Conversations*, 93 Harv. L. Rev. 419 (1979) (no formal attribution in law journal).

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify reports, memoranda, and policy statements through searches of publicly available electronic databases. I have located the following:

Letter from David W. Ogden, Chief of Staff to the Attorney General, to M. Peter Moser, Chair, ABA Ethics Comm. (Sept. 21, 1998), regarding the need for prosecutors to be able to speak with informants or whistle-blowers who want to talk with the prosecutors without knowledge of their lawyers. This letter was cited in Carl A. Pierce, *Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part II)*, 70 Tenn. L. Rev. 321 (Winter 2003) and Carl A. Pierce, *Variations on a Basic Theme: Revisiting the ABA's Revision of Model Rule 4.2 (Part III)*, 70 Tenn. L. Rev. 643 (Spring 2003). The full text of the letter was not published, and I do not have a copy of this letter in my files.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify testimony before the U.S. Congress through searches of my personal files and publicly available electronic databases. I have located the following:

Committee/Subcommittee	Subject	Date
Senate Judiciary	The Management of the Tobacco Litigation	September 5, 2001
Senate Judiciary	Compensation for Bataan POWs	June 28, 2000
Senate Judiciary	The Nomination of David W. Ogden to be Assistant Attorney General for the Department of Justice	August 4, 1999
Senate Judiciary	Tobacco Legislation: Is It Constitutional?	May 13, 1998
Senate Judiciary	The Civil Liability Portions of the Proposed Tobacco Settlement and the Food and Drug Administration's Advertising Regulations	February 10, 1998
House Judiciary	The Civil Liability Portions of the Proposed Tobacco Settlement	February 5, 1998
House Judiciary (Subcommittee on Immigration and Claims)	H.R. 1428, the Voter Eligibility Verification Act	June 25, 1997

While serving at the Department of Justice, I participated in several press conferences and the Department issued numerous press releases in which I was quoted. In answering this questionnaire, I have relied upon a search of publicly accessible electronic databases to locate

transcripts of these conferences and copies of these press releases. That search revealed those listed below; there are potentially others that I do not recall and for which I do not have copies.

Subject	Date
Settlement of claims with Caribbean Petroleum Corporation, MetLife Capital Corporation and Water Quality Insurance Syndicate related to a 1994 barge grounding that caused an 800,000 gallon oil spill	January 19, 2001
Settlement with Exxon Mobil to resolve claims under the False Claims Act and other administrative claims for underpayment of oil royalties on federal leases	January 8, 2001
Settlement with Quest Diagnostics, Inc. to resolve allegations of health care fraud relating to billing practices at Nichols Institute	January 3, 2001
Settlement with a Michigan osteopathic physician to resolve allegations that he and a corporation he controlled overcharged the Medicare and Medicaid programs	December 27, 2000
Settlement with National Healthcare Corporation to resolve allegations under the False Claims Act that the company submitted falsely inflated reports to Medicare	December 15, 2000
News Conference to Announce Settlement With Health Care Company Involving Government Fraud	December 14, 2000
Settlement with Adventist Health System Sunbelt Healthcare Corporation and three affiliated hospitals to resolve allegations that the hospitals overcharged Medicare	December 8, 2000
Announcement that the Department of Justice has intervened in a lawsuit filed against KPMG Peat Marwick in Tampa, Florida under the False Claims Act for preparing false hospital cost reports that were submitted to Medicare and Medicaid	December 4, 2000
Settlement with O'Gara-Hess & Eisenhardt Armoring Company to resolve allegations that it violated the False Claims Act on a contract to armor Hummer four-wheel drive vehicles for the Army and Air Force	November 21, 2000
Settlement with the Boeing Company and United Space Alliance to resolve allegations relating to false claims submitted to the government under the National Aeronautics and Space Administration's (NASA) Space Shuttle and Space Station Freedom programs	November 9, 2000
Settlement with Research and Development Laboratories, Inc. to resolve	November 6, 2000

claims that it overbilled the Air Force	
Announcement that the United States collected a record $1.5 billion in civil fraud recoveries in the 1999-2000 fiscal year	November 2, 2000
Settlement with Gateway, Inc. to resolve allegations that the computer manufacturer failed to give required price reductions to the federal government	October 31, 2000
Settlement with Quorum Health Group, Inc. and its subsidiary QHG of Alabama, Inc. to resolve claims that they defrauded Medicare	October 27, 2000
Settlement with Kerr-McGee Corporation to resolve claims under the False Claims Act and administrative claims that the corporation underpaid royalties due for oil produced on federal and Indian leases	October 24, 2000
Settlement with CSC Accounts Management Inc. to resolve allegations that it made false claims in connection with defaulted student loans under the Federal Family Education Loan Program and the William D. Ford Direct Student Loan Program	October 16, 2000
Settlement with Toshiba Corporation to resolve part of a class action suit in connection with the company's sale of defective laptop computers to government agencies	October 13, 2000
News Conference On The Funding Of The Federal Government's Civil Lawsuit Against The Tobacco Industry	October 5, 2000
Settlement with more than seventy medical centers and billing companies to resolve allegations that they submitted false claims for reimbursement to federally-funded health care insurance programs	September 8, 2000
Settlement with Tender Loving Care (TLC), its affiliate, Home Health Care, Inc., and its predecessor company, Staff Builders, Inc. to resolve allegations that the companies defrauded the Medicare program	September 5, 2000
Settlement with four emergency physician groups to resolve allegations that the groups received overpayments based on false claims submitted by their billing company	September 5, 2000
Settlement with Compaq Computer Corporation to resolve claims a company it had purchased inflated its labor costs on a Defense Department contract to install computer equipment	July 26, 2000
Settlement with GAMBRO Healthcare, Inc. and its subsidiary, GAMBRO Healthcare Laboratory Services, Inc. to resolve allegations of healthcare fraud	July 13, 2000

Announcement of judgment for the United States in the Bluebonnet Savings case	July 7, 2000
Sentencing of dietary supplement manufacturer for improper labeling of product	July 7, 2000
Settlement with North American Pipe Corporation to resolve allegations that the company supplied the government untested polyvinyl chloride pipe	June 15, 2000
Settlement agreement to pay former President Richard Nixon's estate $18 million for his presidential papers, tape recordings and other materials	June 12, 2000
Settlement with oil companies to resolve claims that they underpaid royalties due for oil produced on Federal and Indian leases	June 6, 2000
Settlement with a Newark, New Jersey medical partnership of cardiac surgeons to resolve claims that the practice submitted false claims to Medicare for the services of additional surgeons	April 25, 2000
Settlement with BP Amoco to resolve claims under the False Claims Act and administrative claims that the corporation underpaid royalties due for oil produced on federal and Indian leases	April 11, 2000
Announcement that the Department of Justice intervened in several lawsuits against Exxon-Mobil, Shell Oil Company and Burlington Resources Inc.	March 31, 2000
Settlement with Conoco to resolve claims under the False Claims Act and administrative claims that the company underpaid royalties due for oil produced on federal and Indian leases since 1988	March 27, 2000
Announcement that the United States filed suit in Yokohama, Japan, against the owner and operator of a waste disposal incinerator adjacent to the Atsugi U.S. Naval Air Facility	March 27, 2000
Settlement with Northrop Grumman Corporation to resolve claims arising from its failure to properly manufacture more than 5,000 replacement parts it made for use on military aircraft	March 13, 2000
Announcement that Sharon Y. Eubanks was named Director of the Tobacco Litigation Team	March 10, 2000
Settlement with Maxwell-Sierra and five of its present and former employees to resolve allegations that the company sold improperly tested electronic parts to the U.S. Department of Defense and the National Aeronautics and Space Administration for a number of military and	March 7, 2000

aerospace programs	
Announcement that more than $3 billion has been recovered in civil fraud cases brought under the whistleblower provisions of the False Claims Act, since the law was amended in 1986	February 24, 2000
Settlement with Page Avjet to resolve civil allegations it improperly used U.S. government funds to pay for foreign goods and services	February 18, 2000
Announcement that the United States intervened in a lawsuit filed against Columbia/HCA Healthcare Corporation in Miami under the False Claims Act for submitting false hospital cost reports to Medicare	February 15, 2000
Announcement of Criminal Pleas and Civil Settlements with National Medical Care	January 19, 2000
Settlement with Chevron Corporation to resolve claims under the False Claims Act and administrative claims that the corporation and certain affiliated companies underpaid royalties due for oil produced on federal and Indian leases since 1988	January 13, 2000
Announcement that the Department of Justice filed a civil lawsuit against Boeing North American, Inc., United Space Alliance and Rockwell International Inc. for concealing fraud by a subcontractor on contracts for the National Aeronautics and Space Administration Space Shuttle Program and Space Station Freedom Program	January 12, 2000
Immigration Litigation Bulletin	November 30, 1999
Settlement with Peabody Holding Company, Inc., one of its subsidiaries, and two former affiliates to resolve claims under both the False Claims Act and administrative claims that it underpaid coal royalties due the government	October 18, 1999
Settlement with an Oklahoma-based emergency physician billing company and its physician founder to resolve allegations of false billings to the Medicare, Medicaid, and TRICARE programs, as well as the Federal Employees Health Benefits Program	October 13, 1999
Decision in one of the savings and loan goodwill cases	October 1, 1999
Announcement that the Department of Justice filed a civil lawsuit against a Japanese electronics company, Kyowa Exeo, alleging that the company participated in a conspiracy that resulted in rigged bids on all contracts for operations and maintenance of United States military telecommunications systems in Japan	September 29, 1999

News Conference On The Federal Government's Civil Lawsuit Against The Tobacco Industry	September 22, 1999
Announcement that the Department of Justice filed a civil lawsuit against the largest cigarette companies to recover the billions of dollars the federal government spends each year on smoking-related health care costs	September 22, 1999
Settlement with Walgreen Co. to resolve allegations of falsely submitting prescription claims to state Medicaid programs, TRICARE Management Activity, and the Federal Employee Health Benefits Program	September 15, 1999
Arbitration panel's decision regarding how much the government will pay for the film of President John F. Kennedy's assassination	August 3, 1999
Announcement that Rocky Mountain Hospital and Medical Service and New Mexico Blue Cross and Blue Shield, Inc. pleaded guilty to two felony counts of obstruction of a federal audit and conspiracy to obstruct a federal audit after admitting they concealed evidence of poor performance from federal auditors	July 28, 1999
Settlement with Olsten Corporation and a subsidiary, Kimberly Home Health Care, Inc. to resolve allegations that both companies defrauded the Medicare program.	July 19, 1999
Settlement with Gottlieb's Financial Services, Inc. and its owner, Medaphis Physician Services Corporation, to resolve allegations that Gottlieb's submitted false claims to various federal health care programs	July 12, 1999
Settlement between the U.S. Consumer Product Safety Commission (CPSC) and McDonald's Corp. to resolve a dispute arising from enforcement of a 1995 Playground Equipment Reporting Agreement between McDonald's and the government	June 29, 1999
Settlement with Baker & Taylor, Inc. to resolve allegations that the federal government was overcharged in its own purchases as well as through purchases by local schools and libraries using federal funds.	June 28, 1999
Settlement with Allied Signal Technical Services Corporation to resolve claims that it misallocated labor charges on a contract to install electronic security systems at the Cape Canaveral Air Force Station	June 22, 1999
Announcement that the Department of Justice intervened in a lawsuit filed against Columbia/HCA Healthcare Corporation under the False Claims Act	May 25, 1999

Announcement of a district court decision agreeing with the position of the government in savings and loan goodwill case	April 16, 1999
Announcement of sentencing of Dan Dee International Inc., after it pleaded guilty to four counts of selling banned children's toys	April 9, 1999
Announcement that the Department of Justice entered into an agreement with the Minneapolis law firm Robins, Kaplan, Miller & Ciresi L.L.P., to retain the firm's services as consultants on tobacco litigation	April 6, 1999
Settlement with Novartis Pharmaceuticals Inc. to resolve claims that a New Jersey-based predecessor company overcharged the Department of Veterans Affairs	March 11, 1999
Settlement with Hunt Building Corporation to resolve housing construction fraud claims	March 5, 1999
Announcement that the Department of Justice filed suit against United Technologies Corporation, Pratt & Whitney Division, to recover approximately $75 million that it overcharged the Air Force for jet engines	March 3, 1999
Announcement that the Department of Justice intervened in a lawsuit against two oil companies	February 12, 1999

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.[1]

I have done my best to identify speeches through searches of my personal files and publicly available electronic databases. I have located the following:

WilmerHale Webinar on "Deciphering the New FDA Reform Legislation—What the FDA Amendments Act of 2007 Means for Research-Based Pharmaceutical Companies" posted on October 31, 2007. An audio recording of this Webinar is available at: http://www.wilmerhale.com/events/whEventsDetail.aspx?firmEvent=2189

[1] On October 31, 2008, *FDA Weekly* incorrectly reported that I gave a speech at the ninth annual Pharmaceutical Regulatory and Compliance Congress. I was originally scheduled to speak at this conference but was unable to do so, and my law partner, Scott Lassman, appeared in my place. *FDA Weekly* indicated it would issue a correction but to my knowledge has not yet done so.

Panel remarks on "State Litigation Over Innovative State Laws" at a Pharmaceuticals Conference held at Columbia Law School (435 West 116th Street, New York, N.Y. 10027) on May 10, 2007. I spoke about certain state legislative initiatives to regulate the pharmaceutical industry and constitutional issues related thereto. I do not have any text or notes of my remarks.

Speech on "Discovery in Transnational Litigation" at the American Bar Association Business Law Section's Spring Meeting. The speech was held on March 16, 2007 in Washington, D.C. I have attached an outline of the speech and accompanying PowerPoint presentation. The published version of this speech is included with my writings in response to Question 13(a).

Remarks at a WilmerHale half-day seminar on "Global Business Means Global Risks: Protecting Your Company from Foreign Litigation." The seminar was held on November 9, 2006. I do not have a transcript or notes from my remarks, but I have included the PowerPoint presentation that accompanied my remarks.

Remarks at a panel event of the District of Columbia Bar entitled "The Long Arm of Judicial Corruption: Problems with Rule of Law in Latin America and the Emergence of a New Threat to Corporate Assets in the United States." The panel was held in Washington, D.C. on May 10, 2006. I have attached talking points that I prepared for my remarks.

Speech on the role of the government lawyer at Northwestern Law School's Minor Moot Court Competition in Chicago, Illinois in 2001.

Speech on "Immigration Litigation At The Crossroads" at the Immigration Litigation Conference on May 24, 2000.

Speech on the Department of Justice's efforts to combat white collar crime, with a particular focus on the work of the Civil Division. The speech was given at the American Bar Association's White Collar Crime Committee meeting in Miami, Florida on March 2, 2000.

Speech on False Claims Act and Qui Tam enforcement at the Second Annual National Institution on the Civil False Claims Act and Qui Tam Enforcement on January 13, 2000.

Speech on the role of the Civil Division of the Department of Justice in First Amendment issues given while I was Assistant Attorney General for the Civil Division or Acting Assistant Attorney General for the Civil Division. I have enclosed a copy of the speech, but do not recall the date or to whom it was given.

Remarks as moderator of a panel on "The Good Lawyer?: Redefining Success in the Legal Profession" at a Department of Justice symposium entitled "Race, Ethnicity, and the Law: Challenges Facing the Legal Profession." The symposium was held at the Georgetown University Law Center in Washington, D.C. on June 8, 1999. My files contain incomplete notes from these remarks, which I have attached.

Remarks at a State Department consultation with American Indian tribes. The speech was given in 1997 or 1998 when I was serving as Counselor or Chief of Staff to the Attorney General.

Speech on the Justice Department's work in Indian Country at a meeting of the National League of Cities in Washington, D.C. on March 10, 1997.

Remarks at a seminar for judges and court officials from the Russian Federation on key issues in judicial administration, held in Washington, D.C. on September 3, 1996.

Presentation of a paper on "The Familiar and the Unknown in Arts Censorship: The First Amendment, the Police Power, and Manipulation of Public Subsidies" for the Illinois Arts Alliance Foundation and at a symposium at the University of Illinois School of Law, Champaign, Illinois in Spring 1991.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have tried to recall and search for all the times that I have been interviewed. In answering this questionnaire, I have relied upon a search of publicly accessible electronic databases to locate interview transcripts. That search revealed the interviews listed below; there are potentially other interviews that I do not recall and for which I do not have transcripts.

Program/Publication	**Subject**	**Date**
Inside Counsel	Federal Circuit decision in *Biotechnology Industry Organization v. District of Columbia*	November 2007
www.mytechnologylawyer.com Radio Program	Supreme Court Amicus Brief in *Paneiti v. Quarterman*	September 26, 2007
Washington Post	Supreme Court Signing Bonuses	May 15, 2006
Good Morning America	Shooting of Dean of Appalachian School of Law, Anthony Sutin, a Former Justice Department Official	January 17, 2002
South Florida Business Journal	Settlement of Health Care Fraud Case	September 29, 2000
C-SPAN	Reminiscences about Justice Harry A. Blackmun	March 6, 1999
Legal Times	Potential Settlement in the Meese Commission suit	November 3, 1986
Washington Times	Judicial ruling that the Library of Congress violated the First Amendment by stopping production of Braille editions of Playboy magazine	August 29, 1986
Washington Post	Judicial ruling that the Library	August 29, 1986

	of Congress violated the First Amendment by stopping production of Braille editions of Playboy magazine	
ABC World News Tonight	Federal Court Decision Ruling Against the Meese Commission	July 3, 1986
ABC World News Tonight	Supreme Court Decision in *Bowers v. Hardwick*	June 30, 1986

14. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

1981 – 1982 Law Clerk to the Honorable Abraham D. Sofaer, United States District Court Judge, Southern District of New York (appointed by judge)

1982 – 1983 Law Clerk to the Honorable Harry A. Blackmun, Associate Justice, United States Supreme Court (appointed by Justice)

1994 – 1995 Deputy General Counsel and Legal Counsel, United States Department of Defense (appointed by Secretary of Defense)

1994 – 1995 Governmental Representative
Federal Advisory Committee on the Investigative Capacity of the Department of Defense (appointed by the Acting General Counsel, U.S. Department of Defense)

1995 – 1997 Associate Deputy Attorney General, United States Department of Justice (appointed by Attorney General)

1997 – 1998 Counselor to the Attorney General, United States Department of Justice (appointed by Attorney General)

1998 – 1999 Chief of Staff to the Attorney General, United States Department of Justice (appointed by Attorney General)

1999 – 2000 Acting Assistant Attorney General and Deputy Assistant Attorney General, Civil Division, United States Department of Justice (appointed Acting Assistant Attorney General by President Clinton; Deputy Assistant Attorney General by the Attorney General)

2000 – 2001 Assistant Attorney General, Civil Division, United States Department of Justice (nominated by President Clinton)

I have never run for elective office nor unsuccessfully been nominated for appointive office.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Member of national voter protection legal advisory group for John Kerry's Presidential Campaign, May – November 2004.

Voter protection legal advisor to Democratic Congressional Campaign Committee, October – November 2006.

Member of senior legal coordinating committee for Barack Obama's Presidential Campaign, April 2007 – November 2008.

15. Legal Career: Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the Honorable Abraham D. Sofaer, United States District Court Judge for the Southern District of New York, from August 1981 – June or July 1982. I then served as a law clerk to the Honorable Harry A. Blackmun, Associate Justice, Supreme Court of the United States, from July 1982 – July 1983.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

In the summer of 1981, after graduating from law school, I served as a law clerk at the Legal Aid Bureau of Maryland, 111 High Street, Salisbury, MD 21801.

After my clerkships, I began my legal career as an associate attorney in October 1983 with a small Washington law firm called Ennis, Friedman, Bersoff & Ewing. I became a partner in that firm on January 1, 1986, and on the same date it changed its name to Ennis Friedman & Bersoff, due to the

departure of another partner. I continued as a partner in Ennis Friedman until July 1988. Ennis Friedman & Bersoff no longer exists.

In July 1988, I joined the Washington office of Jenner & Block as a partner. I was a partner in Jenner & Block from July 1988 through March 1994. Jenner & Block's current address is 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001.

From April 1994 – July 1995, I served as Deputy General Counsel and Legal Counsel at the Department of Defense. The address is Office of General Counsel, Office of the Secretary of Defense, The Pentagon, Washington, D.C. 20301.

From July 1995 – July 1997, I served as Associate Deputy Attorney General at the Department of Justice, first under Deputy Attorney General Jamie S. Gorelick, and then under Acting Deputy Attorney General Seth P. Waxman. The address of the Department of Justice is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

From July 1997 – May 1998, I served as Counselor to Attorney General Janet Reno.

From May 1998 – January 1999, I served as Chief of Staff to Attorney General Janet Reno.

From February 1999 – August 2000, I served as Acting Assistant Attorney General, Civil Division, United States Department of Justice.

From August 2000 – January 2001, I served as Assistant Attorney General, Civil Division, United States Department of Justice. I was recess appointed on August 3, 2000 and confirmed by the full Senate on December 15, 2000.

From June 2001 – present, I have been a partner at Wilmer, Cutler & Pickering, which following a merger became Wilmer Cutler Pickering Hale and Dorr (WilmerHale). The firm's current Washington address is 1875 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

ii. your typical clients and the areas, if any, in which you have specialized.

For more than a decade, from 1984 – 1994, my private practice included complex civil litigation, Supreme Court and appellate advocacy, First Amendment law, law and psychology, antitrust and other business law, and the law of trade and professional associations. A significant portion of this litigation involved the federal government as an opposing party or an allied party. In addition to litigation, I provided counseling to clients on the above subjects. My clients included professional associations (*e.g.*, the American Psychological Association, American Library Association), trade associations, particularly involving media interests (*e.g.*, the National Association of Broadcasters, American Booksellers Association), media and telecommunications companies (*e.g.*, MCI,

Playboy Enterprises, Inc.), individuals with personal injury or property rights claims, and local Washington, D.C. area businesses, nonprofit organizations, and associations.

As Deputy General Counsel and Legal Counsel at the Department of Defense in 1994 and 1995, I had overall responsibility for coordinating and supervising litigation activities for the Department, including the Office of the Secretary of Defense, the Military Departments, and the Defense Agencies. I worked closely with the Justice Department in connection with a wide variety of the most significant litigation handled by the Justice Department for the Department of Defense. In addition to these responsibilities, I handled a variety of special projects for the General Counsel, was the governmental representative to a federal advisory committee studying the investigative capacity of the Department of Defense, was chiefly responsible for developing policy on Alternative Dispute Resolution for the Department of Defense, and provided legal advice on subjects ranging from constitutional law to personnel security. I supervised a staff of three lawyers in my immediate office, four lawyers plus staff in the Department of Defense Standards of Conduct Office, and the seventy employees (including administrative judges and litigators) of the Defense Office of Hearings and Appeals.

As an Associate Deputy Attorney General from 1995 – 1997, I was senior deputy to the chief operating officer of the Department of Justice, with particular responsibility for oversight of the civil litigating divisions (Antitrust Division, Civil Division, Civil Rights Division, Environment and Natural Resources Division, and Tax Division) and the Department's Office of Tribal Justice, and served as the Deputy Attorney General's primary liaison with the Office of Legal Counsel and Office of the Solicitor General on civil issues.

As Counselor and then Chief of Staff to the Attorney General from 1997 – 1999, I was one of the senior advisors to the Attorney General. I counseled her on civil issues and special issues in other areas, including law enforcement and national security. As Chief of Staff I also supervised the Office of the Attorney General and her staff, and assisted the Attorney General with the management of the Department of Justice and all of its components.

As Assistant Attorney General and (before that) as Acting Assistant Attorney General, Civil Division, from February 1999 – January 2001, I supervised the Civil Division of the U.S. Department of Justice, which comprised more than 700 lawyers and more than 1,000 employees. As it does today, the Civil Division bore primary responsibility for the defense and advancement of the interests of the United States in many substantive areas of the law, including federal programs, government contracts, the False Claims Act, immigration, torts, environmental defense, and consumer protection. I supervised civil and criminal matters, and defense and enforcement matters. I supervised the initiation of the U.S. Government's lawsuit against the major manufacturers of cigarettes. And I argued cases in the U.S. Courts of Appeals.

As a partner at WilmerHale since 2001, I serve as co-chair of the Government and Regulatory Litigation Group, and have developed a complex litigation and crisis management practice focused on high-stakes civil litigation, constitutional and administrative law issues, and legal-business problems having policy or regulatory dimensions. Typical matters have included international legal issues and disputes, criminal and civil investigations, class actions and government litigation, cartel cases, and appellate and Supreme Court litigation. I also have had an active *pro bono*

practice, which has included representing inmates on death row. Representative clients include the American Legacy Foundation, the American Psychological Association, National Railroad Passenger Corp. (Amtrak), BP America, Citigroup, The Walt Disney Company and Walt Disney World Company, Fireman's Fund Insurance Companies, Lufthansa AG and Swiss International Airlines, Merck & Co., Inc., the Pharmaceutical Research and Manufacturers of America, Shell Oil Company, and a death row inmate in Virginia named Darick Walker.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
1. federal courts;
2. state courts of record;
3. other courts.

ii. Indicate the percentage of your practice in:
1. civil proceedings;
2. **criminal proceedings.**

In private practice, a high percentage of my practice—66% to 95% at any given time—has been in litigation, and I have appeared in court several times per year. A substantial majority of my practice has involved litigation in federal courts, a much smaller percentage in state courts, and rare litigation in arbitral forums. The substantial majority of such matters have been civil in nature, although a significant proportion have involved parallel criminal proceedings or the potential for such proceedings.

My government service involved a lower percentage of litigation and a far higher percentage of management (including management of litigators) and policy work. Much but by no means all of the litigation in which I was involved in the government was civil, and the balance was criminal. Almost all of the litigation was in federal court.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

While in private practice, I have participated in many cases that have gone to judgment either on motions to dismiss, summary judgment, or appellate decision. My best estimate of the number of such matters is 100-125, but I have no way to validate that estimate. They include matters in which I represented a party to the litigation and matters in which I represented an amicus curiae. Of these, my best estimate is that at least half (and far more than half my time) involved proceedings at the trial court level. In approximately 50% of these I have served as lead counsel and in approximately 50% as second chair or associate counsel. While many of these matters have involved taking and defending depositions and arguing motions or appeals, I was trial counsel in only two of those matters. At WilmerHale in the past seven years, I have been involved in

approximately 30 matters that went to judgment, and served as lead counsel in almost all of those, including one trial proceeding.

In the government, I played a role in literally thousands of cases at all levels of the federal system. At the Department of Defense, I was the senior lawyer with regular responsibility for overseeing litigation for the entire Department. In that capacity, I tried to ensure that the Department's interests were well represented in court and that its resources were appropriately deployed to support the Justice Department lawyers in conducting discovery and providing factual support and needed expertise. At the Justice Department, for four years my responsibilities included oversight of the litigating divisions, including involvement in much of the more significant litigation they were handling. As Assistant Attorney General for the Civil Division, I was actively involved in many cases, including approving civil investigative demands, the filing of affirmative civil enforcement suits and initiating criminal matters, the settlement of cases, and the presentation of defenses in major litigation. As Assistant Attorney General, I argued two cases in United States Courts of Appeals.

i. What percentage of these trials were:
1. jury;
2. non-jury.

All of the matters in which I participated in private practice were resolved by judges, rather than juries (although I have had some involvement in appeals of jury verdicts). The majority of the cases in which I participated in government were also non-jury matters, although there were a significant number of jury cases.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have argued one case in the Supreme Court, *Carey v. Saffold*, 536 U.S. 214 (2002), on February 27, 2002. A transcript of that argument is attached. Apart from cases during my government service, my name appears as counsel in seven cases under plenary consideration by the Supreme Court. While in private practice, I have also submitted a significant number of amicus briefs, petitions for certiorari, and oppositions to certiorari. During my tenure as Assistant Attorney General, my name appeared on a significant number of Supreme Court party briefs, amicus briefs, petitions for certiorari, and oppositions. Lists of all such matters in private practice and government service appear below.

In answering this questionnaire and seeking to collect all briefs filed in the Supreme Court in connection with my private and government practice, I relied upon searches of the Westlaw "Petitions" database (generally containing briefs filed in the Supreme Court in the petition for certiorari phase), the Westlaw "Briefs" database (generally containing briefs filed in the Supreme Court in the merits phase), and the Lexis-Nexis "U.S. Supreme Court Briefs" database (generally containing briefs filed in the Supreme Court in the merits phase), supplemented by a review of my incomplete personal files. This process generated the briefs listed below. Copies have been submitted together with this questionnaire. There may be other briefs for which I do not have and

have not found copies. The Westlaw "Petitions" database does not contain petitions for writ of certiorari or briefs in opposition filed prior to 1999, and my own personal files from that period are certainly not complete.

My name appeared on the following briefs filed in the Supreme Court in the merits phase:

1. *Panetti v. Quarterman,* No. 06-6407, Brief for Amici Curiae American Psychological Association, American Psychiatric Association, and National Alliance on Mental Illness in Support of Petitioner (February 21, 2007)

2. *Parents Involved in Community Schools v. Seattle School District No. 1,* Nos. 05-908, 05-915, Brief for Amici Curiae The American Psychological Association and the Washington State Psychological Association in Support of Respondents (October 10, 2006)

3. *Hill v. McDonough*, No. 05-8794, Brief for Amicus Curiae Darick Demorris Walker Supporting Petitioner (March 6, 2006)

4. *Clark v. Arizona*, No. 05-5966, Brief Amici Curiae for the American Psychiatric Association, American Psychological Association, and American Academy of Psychiatry and the Law Supporting Petitioner (January 30, 2006)

5. *League of United Latin American Citizens v. Perry,* Nos. 05-204, 05-254, 05-276, Brief for Amici Curiae League of Women Voters of the United States and League of Women Voters of Texas in Support of Reversal (January 10, 2006)

6. *Gonzales v. Oregon*, No. 04-623, Brief for Professors of Law Richard Briffault, William N. Eskridge, Jr., Philip P. Frickey, Elizabeth Garrett, Jerry L. Mashaw, Edward Rubin, David L. Shapiro, Peter L. Strauss, and Ernest A. Young as Amici Curiae Supporting Respondents (July 18, 2005)

7. *Mayle v. Felix*, No. 04-563, Brief of Amici Curiae Habeas Law Scholars Albert Alschuler, John H. Blume, Erwin Chemerinsky, Eric M. Freedman, Randy Hertz, James S. Liebman, and Ira P. Robbins in Support of Respondent (March 22, 2005)

8. *Bates v. Dow AgroSciences LLC,* No. 03-388, Brief for Respondent (November 24, 2004)

9. *Miller-El v. Dretke,* No. 03-9659, Reply Brief for Petitioner (November 23, 2004)

10. *Miller-El v. Dretke,* No. 03-9659, Brief for Petitioner (September 2, 2004)

11. *Roper v. Simmons,* No. 03-633, Brief for Respondent (July 19, 2004)

12. *United States v. American Library Ass'n, Inc.*, No. 02-361, Brief for Amici Curiae The Cleveland Public Library, The Rhode Island Library Association, and Thirteen Deans and Directors of University Schools of Library Science in Support of Respondents (February 10, 2003)

13. *Lawrence v. Texas*, No. 02-102, Brief for Amici Curiae American Psychological Association, American Psychiatric Association, National Association of Social Workers, and Texas Chapter of the National Association of Social Workers in Support of Petitioners (January 16, 2003)

14. *Sell v. U.S.*, No. 02-5664, Motion for Leave to file Brief for Amicus Curiae American Psychological Association and Brief for Amicus Curiae American Psychological Association (December 19, 2002)

15. *Scheidler v. National Organization for Women, Inc.*, Nos. 01-1118, 01-1119, Brief of Respondents (September 17, 2002)

16. *Miller-El v. Cockrell*, No. 01-7662, Reply Brief for Petitioner (August 30, 2002)

17. *State Farm Mut. Auto. Ins. Co. v. Campbell*, No. 01-1289, Brief of Dekalb Genetics Corporation as Amicus Curiae Supporting Petitioner (August 19, 2002)

18. *Miller-El v. Cockrell*, No. 01-7662, Brief for Petitioner (May 28, 2002)

19. *Republican Party of Minnesota v. Kelly*, No. 01-521, Brief of National Association of Criminal Defense Lawyers as Amicus Curiae in Support of Respondents (February 19, 2002)

20. *Newland v. Saffold*, No. 01-301, Respondent's Brief on the Merits (January 10, 2002)

21. *Booth v. Churner*, No. 99-1964, Brief for the United States as Amicus Curiae Supporting Respondents (January 19, 2001)

22. *United States v. Oakland Cannabis Buyers' Co-op*, No. 00-151, Brief for the Petitioner (January 11, 2001)

23. *Saucier v. Katz*, No. 99-1977, Brief for the Petitioner (January 8, 2001)

24. *Zadvydas v. Underdown*, No. 99-7791, Brief for the Respondents (January 5, 2001)

25. *Nguyen v. Immigration and Naturalization Service.*, No. 99-2071, Brief for the Respondent (December 13, 2000)

26. *Murphy v. Beck,* No. 00-46, Brief for the United Sates and the Federal Deposit Insurance Corporation as Amici Curiae Supporting Respondent (December 13, 2000)

27. *Lujan v. G & G Fire Sprinklers, Inc.,* No. 00-152, Brief for the United States as Amicus Curiae Supporting Petitioners (December 4, 2000)

28. *United States v. Hatter,* No. 99-1978, Brief for the United States (November 30, 2000)

29. *Reno v. Ma,* No. 00-38, Brief for the Petitioners (November 24, 2000)

30. *Shaw v. Murphy,* No. 99-1613, Brief for the United States as Amicus Curiae Supporting Reversal (November 13, 2000)

31. *United States Dept. of the Interior v. Klamath Water Users Protective Ass'n,* No. 99-1871, Brief for the Petitioners (November 9, 2000)

32. *Buckman Co. v. Plaintiffs' Legal Committee,* No. 98-1768, Brief for the United States as Amicus Curiae Supporting Petitioner (September 13, 2000)

33. *Bartnicki v. Vopper,* Nos. 99-1687, 99-1728, Brief for the United States (September 6, 2000)

34. *Traffix Devices, Inc. v. Marketing Displays, Inc.,* No. 99-1571, Brief for the United States as Amicus Curiae Supporting Petitioner (August 24, 2000)

35. *Cook v. Gralike,* No. 99-929, Brief for the United States as Amicus Curiae Supporting Respondents (August 14, 2000)

36. *Egelhoff v. Egelhoff,* No. 99-1529, Brief for the United States as Amicus Curiae Supporting Petitioner (August 11, 2000)

37. *United States v. Mead Corp.,* No. 99-1434, Brief for the United States (July 14, 2000)

38. *Eastern Associated Coal Corp. v. United Mine Workers of America, Dist. 17,* No. 99-1038 , Brief for the United States as Amicus Curiae Supporting Affirmance, (July 11, 2000)

39. *Legal Services Corp. v. Velazquez,* Nos. 99-603, 99-960, Brief for the United States (June 13, 2000)

40. *Sims v. Apfel,* No. 98-9537, Brief for the Respondent (February 28, 2000)

41. *Natsios v. National Foreign Trade Council,* No. 99-474, Brief for the United States as Amicus Curiae Supporting Affirmance (February 14, 2000)

42. *Mobil Oil Exploration and Producing Southeast, Inc. v. United States*, Nos. 99-244, 99-253, Brief for the United States (January 28, 2000)

43. *Norfolk Southern Ry. Co. v. Shanklin,* No. 99-312, Brief for the United States as Amicus Curiae Supporting Respondent (January 28, 2000)

44. *Village of Willowbrook v. Olech,* No. 98-1288, Brief for the United States as Amicus Curiae Supporting the Judgment (December 13, 1999)

45. *Wal-Mart Stores, Inc. v. Samara Bros., Inc.,* No. 99-150, Brief for the United States as Amicus Curiae Supporting Petitioner (November 18, 1999)

46. *United States v. Morrison,* Nos. 99-5, 99-29, Brief for the United States (November 12, 1999)

47. *Geier v. American Honda Motor Co., Inc.,* No. 98-1811, Brief for the United States as Amicus Curiae Supporting Affirmance (November 8, 1999)

48. *United States v. Locke,* No. 98-1701, 98-1706, Brief for The United States (October 22, 1999)

49. *United States v. Weatherhead,* No. 98-1904, Brief for the Petitioners (October 22, 1999)

50. *Vermont Agency of Natural Resources v. United States ex rel. Stevens,* No. 98-1828, Brief for the United States (October 22, 1999)

51. *Mitchell v. Helms,* No. 98-1648, Brief for the Secretary of Education (August 19, 1999)

52. *Reno v. Condon,* No. 98-1464, Brief for the Petitioners (July 15, 1999)

53. *Food and Drug Administration v. Brown and Williamson Tobacco Corp.,* No. 98-1152, Brief for the Petitioners (July 12, 1999)

54. *Shalala v. Illinois Council on Long Term Care, Inc.*, No. 98-1109, Brief for the Petitioners (July 2, 1999)

55. *Los Angeles Police Dept. v. United Reporting Publishing Corp.,* No. 98-678, Brief for the United States as Amicus Curiae Supporting Petitioner (April 30, 1999)

56. *Nixon v. Shrink Missouri Government PAC,* No. 98-963, Brief for the United States as Amicus Curiae Supporting Petitioners (April 12, 1999)

57. *Greater New Orleans Broadcasting Ass'n, Inc. v. United States,* No. 98-387, Brief for the Respondents (March 24, 1999)

58. *Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank,* No. 98-531, Brief for the United States (March 24, 1999)

59. *Snyder v. Trepagnier,* No. 98-507, Brief for the United States as Amicus Curiae Supporting Respondent (March 24, 1999)

60. *West v. Gibson*, No. 98-238, Brief for the Petitioner (February 25, 1999)

61. *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, No. 98-149, Brief for the United States (February 22, 1999)

62. *Grupo Mexicano De Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, No. 98-231, Brief for the United States as Amicus Curiae Supporting Respondents (February 16, 1999)

63. *Turner Broadcasting System, Inc. v. F.C.C.*, No. 93-44, Brief of Appellee National Association of Broadcasters (December 7, 1993)

64. *Knox vs. United States*, No. 92-1183, Brief of American Booksellers Foundation for Free Expression, Council for Periodical Distributors Associations, National Association of Artists' Organizations, Periodical and Book Association of America, Inc., Aperture Foundation, Inc., Freedom to Read Foundation, Magazine Publishers of America, American Civil Liberties Union and Law & Humanities Institute as Amici Curiae in Support of Petitioner (August 4, 1993)

65. *Burlington Northern Railroad Company v. Ford*, No. 91-779, Brief Amicus Curiae of the Associations of American Railroads in Support of Petitioner (March 12, 1992)

66. *Alexander v. United States,* No. 91-1526, Brief of Amici Curiae American Library Association, Freedom to Read Foundation, and Association of American Publishers, Inc. in Support of Petitioner (September 2, 1992)

67. *Planned Parenthood Of Southeastern Pennsylvania v. Casey*, Nos. 91-744, 91-902, Brief for Amicus Curiae American Psychological Association in Support of Petitioners (March 6, 1992)

68. *Quill Corporation v. North Dakota,* No. 91-194, Brief Amici Curiae of the National

Association of Manufacturers, The National Association of Broadcasters, The American Advertising Federation, The American Association of Advertising Agencies, Inc., The Industry Council on Tangible Assets, and Printing Industries of America, Inc. in Support of Petitioner (November 21, 1991)

69. *Rust v. Sullivan,* Nos. 89-1391, 89-1392, Brief for Amici Curiae American Library Association, Freedom to Read Foundation, People for the American Way, National Education Association, the Newspaper Guild, National Writers' Union, and Fresno Free College Foundation Supporting Petitioners (October Term 1990)

70. *Maryland v. Craig,* No. 89-478, Brief for Amicus Curiae American Psychological Association in Support of Neither Party (March 2, 1990)

71. *Fort Wayne Books, Inc. v. Indiana,* No. 87-470, Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of PHE, Inc. in Support of Petitioner (May 12, 1988)

72. *Patrick v. Burget,* No. 86-1145, Brief for Amicus Curiae American Psychological Association in Support of Petitioner (November 25, 1987)

73. *Virginia v. American Booksellers Association,* No. 86-1034, Brief for Amicus Curiae Freedom to Read Foundation in Support of Appellees (July 2, 1987)

74. *Hartigan v. Zbaraz,* No. 85-673, Brief for Amicus Curiae American Psychological Association in Support of Appellees (February 12, 1987)

75. *Pope v. Illinois,* No. 85-1973, Brief of Amici Curiae American Civil Liberties Union, ACLU of Illinois and PHE, Inc. in Support of Petitioners (November 20, 1986)

76. *Meese v. Keene,* No. 85-1180, Brief of Amici Curiae Playboy Enterprises, Inc. and American Booksellers Association in Support of Appellee (September 15, 1986)

77. *Bowers v. Hardwick,* No. 85-140, Brief of Amici Curiae American Psychological Association and American Public Health Association in Support of Respondents (January 31, 1986)

78. *Lockhart v. McCree,* No. 84-1865, Brief for Amicus Curiae American Psychological Association in Support of Respondent (December 23, 1985)

79. *Smith v. Sielaff,* No. 85-5487, Brief for Amicus Curiae American Psychological Association in Support of Petitioner (December 4, 1985)

80. *Bureau of Alcohol, Tobacco and Firearms v. Galioto,* No. 84-1904, Brief of Amicus Curiae American Psychological Association in Support of Appellee (October Term

1985)

I appeared on the following briefs in the petition for certiorari stage:

1. *Price v. Philip Morris Inc.*, No. 06-465, Brief for the American Legacy Foundation, Action on Smoking and Health, Campaign for Tobacco-Free Kids, Citizens' Commission to Protect the Truth, Consumer Federation of American, Lung Cancer Alliance, National African American Tobacco Prevention Network, National Association of Consumer Advocates, Public Citizen, Tobacco Control Legal Consortium, Tobacco Control Resource Center, and U.S. Public Interest Research Group in Support of Petitioners (November 1, 2006)

2. *Miller-El v. Dretke*, No. 03-9659, Petition for a Writ of Certiorari (April 1, 2004)

3. *Dekalb Genetics Corporation v. Bayer Cropscience, S.A.*, No. 03-916, Petition for a Writ of Certiorari (December 23, 2003)

4. *United States v. American Library Association, Inc.*, No. 02-361, Brief for Amici Curiae the Cleveland Public Library, the Rhode Island Library Association, and Thirteen Deans and Directors of University Schools of Library Science in Support of Respondents (February 2003)

5. *Dekalb Genetics Corporation v. Bayer Cropscience, S.A.*, No. 02-130, Reply to Brief in Opposition (September 4, 2002)

6. *Dekalb Genetics Corporation v. Bayer Cropscience, S.A.*, No. 02-130, Petition for a Writ of Certiorari (July 24, 2002)

7. *Reno v. Free Speech Coalition*, No. 00-795, Petition for a Writ of Certiorari (January 22, 2001)

8. *International Aircraft Recovery, L.L.C. v. United States*, No. 00-617, Brief for the United States in Opposition (January 19, 2001)

9. *Time Warner Entertainment Company, L.P. v. Federal Communications Commission*, No. 00-623, Brief for the Respondents in Opposition (January 19, 2001)

10. *J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, Brief for the United States as Amicus Curiae, No. 99-1996 (January 17, 2001)

11. *Belcher v. Gober; Smith v. Gober*, Nos. 00-739 and 00-754, Brief for the Respondent in Opposition (January 8, 2001)

12. *Tawfik v. Reno,* No. 00-526, Brief for the Respondents in Opposition (January 5, 2001)

13. *Humanitarian Law Project v. Reno,* No. 00-0910, Brief for the Respondents in Opposition (January 3, 2001)

14. *B&G Enterprises, LTD. v. United States,* No. 00-709, Brief for the United States in Opposition (January 2001)

15. *Atlantic Richfield Company v. Union Oil Company of California,* No. 00-249, Brief for the United States as Amicus Curiae (January 2001)

16. *Harris v. Garner*, No. 00-484, Brief for the United States (December 29, 2000)

17. *McDaniel v. United States Department Of The Interior,* No. 00-760, Brief for the Respondent in Opposition (December 28, 2000)

18. *Dionne v. Shalala,* No. 00-468, Brief for the Respondent in Opposition (December 27, 2000)

19. *Calcano-Martinez v. Immigration And Naturalization Service,* Brief for the Respondent, No. 00-1011 (December 22, 2000)

20. *WFAA-TV, Inc. v. Peavy*, No. 00-691, Brief for the United States (December 21, 2000)

21. *Rodriguez v. Immigration And Naturalization Service*, No. 00-753, Brief for the Respondent (December 13, 2000)

22. *Del Valle v. Reno*, No. 00-362, Brief for the Respondents in Opposition (December 11, 2000)

23. *International Business Machines Corp. v. United States,* No. 00-482, Brief for the United States in Opposition (December 2000)

24. *Fried v. United States,* No. 00-537, Brief for the United States in Opposition (December 2000)

25. *Reno v. Free Speech Coalition,* No. 00-795, Petition for a Writ of Certiorari (November 16, 2000)

26. *United States Postal Service v. Gregory,* No. 00-758, Petition for a Writ of Certiorari (November 13, 2000)

27. *Immigration And Naturalization Service v. St. Cyr,* No. 00-767, Petition for a Writ of Certiorari (November 13, 2000)

28. *Patterson v. United States,* No. 00-376, Brief for the United States in Opposition (November 13, 2000)

29. *Kansas v. United States*, No. 00-329, Brief for the Respondents in Opposition (November 1, 2000)

30. *Caguas Central Federal Savings Bank v. United States*, No. 00-448, Brief for the United States in Opposition (November 2000)

31. *Borneman v. United States*, No. 00-449, Brief for the Respondents in Opposition (November 2000)

32. *Reno v. Free Speech Coalition,* No. 00-795, Petition for a Writ of Certiorari (November 2000)

33. *Nextwave Personal Communications Inc. v. Federal Communications Commission,* No. 00-447, Brief for the Federal Communications Commission in Opposition (October 30, 2000)

34. *Rodriguez v. Reno,* No. 99-2085, Brief for the Respondents (October 27, 2000)

35. *Moore v. Valder,* No. 00-216, Brief for the Respondent in Opposition (October 6, 2000)

36. *Century Importers v. United States,* No. 00-196, Brief for the United States in Opposition (October 2000)

37. *Mariani v. United States*, No. 00-256, Brief for the Respondents in Opposition (October 2000)

38. *Shalala v. OHA: The Association For Hospitals and Health Systems,* No. 00-558, Petition for a Writ of Certiorari (October 2000)

39. *United States v. Swisher International, Inc.,* No. 00-415, Petition for a Writ of Certiorari (September 15, 2000)

40. *Marcum v. Apfel,* No. 00-29, Brief for the Respondent in Opposition (September 5, 2000)

41. *Nextwave Personal Communications, Inc. v. Federal Communications Commission,* No. 99-1980, Brief for the Federal Communications Commission in Opposition (September

2000)

42. *Molnar v. United States,* No. 99-2032, Brief for the United States in Opposition (September 2000)

43. *Alfarache v. Cravener,* No. 99-1789, Brief for the Respondent in Opposition (August 23, 2000)

44. *United States v. United Foods, Inc.,* No. 00-276, Petition for a Writ of Certiorari (August 18, 2000)

45. *O'v. Shalala; Terran v. Shalala.,* Nos. 99-1747 and 99-1749, Brief for the Respondent in Opposition (August 2, 2000)

46. *Federal Labor Relations Authority v. Luke Air Force Base, Arizon.,* No. 99-1939, Brief for the Respondent in Opposition (August 1, 2000)

47. *Massey v. Helman,* No. 99-1918, Brief for the Respondents in Opposition (July 31, 2000)

48. *United States v. Oakland Cannabis Buyers' Cooperative,* No. 00-151, Petition for a Writ of Certiorari (July 28, 2000)

49. *J.D. Behles & Associates v. Angel Project I, Ltd.,* No. 99-1907, Brief for the United States Trustee in Opposition (July 28, 2000)

50. *Kempker-Cloyd v. Reno,* No. 99-1900, Brief for the Respondent in Opposition (July 26, 2000)

51. *Navegar, Inc. v. United States,* No. 99-1874, Brief for the United States in Opposition (July 21, 2000)

52. *Campbell v. Clinton,* No. 99-1843 Brief for the Respondent in Opposition (July 19, 2000)

53. *Munoz v. Peters,* No. 99-1750, Brief for the Respondents in Opposition (July 2000)

54. *Westover v. Reno,* No. 99-1777, Brief for the Respondent in Opposition (July 2000)

55. *Botezatu v. Immigration And Naturalization Service,* No. 99-1627, Brief for the Respondents in Opposition (June 9, 2000)

56. *United States v. Hatter*, No. 99-1978, Petition for a Writ of Certiorari (June 8, 2000)

57. *Saucier v. Katz*, No. 99-1977, Petition for a Writ of Certiorari (June 8, 2000)

58. *Carnival Cruise Lines, Inc. v. United States; Princess Cruises, Inc. v. United States*, Nos. 99-1596, 99-1600, Brief for the United States in Opposition (June 2, 2000)

59. *Brewer v. United States*, No. 99-1671, Brief for the United States in Opposition (June 2000)

60. *Universal Management Services, Inc., v. United States*, No. 99-1517, Brief for the United States in Opposition (June 2000)

61. *Greenbrier v. United States*. No. 99-1577, Brief for the United States in Opposition (May 30, 2000)

62. *Brown v. United States*, No. 99-1416, Brief for the Respondents in Opposition (May 26, 2000)

63. *Alcoa Inc. v. Bonneville Power Administration*, No. 99-1556, Brief for the Respondent in Opposition (May 24, 2000)

64. *United States Department of the Interior v. Klamath Water Users Protective Association*, No. 99-1871, Petition for a Writ of Certiorari (May 22, 2000)

65. *S & M Enterprises v. United States*. No. 99-1563, Brief for the United States in Opposition (May 19, 2000)

66. *Sac & Fox Nation Of Oklahoma v. Cuomo*, No. 99-1486, Brief for the Federal Respondents in Opposition (May 8, 2000)

67. *Tefel v. Reno*, No. 99-1314, Brief for the Respondents in Opposition (May 8, 2000)

68. *Cal-Almond, Inc. v. United States Department of Agriculture*, No. 99-1347, Brief for the Respondent in Opposition (May 2000)

69. *Oglala Sioux Tribal Public Safety Department v. Babbitt*, Nos. 99-1239 and 99-1261, Brief for the Respondent in Opposition (April 26, 2000)

70. *Hanlon v. Shalala*, No. 99-1223, Brief for the Respondent in Opposition (April 24, 2000)

71. *Novato Fire Protection District v. United States*, No. 99-1209, Brief for the Respondents

in Opposition (April 19, 2000)

72. *Glover v. West,* No. 99-1191, Brief for the Respondent in Opposition (April 11, 2000)

73. *Ramos v. District Director, Executive Office for Immigration Review, Office of Immigration Judge,* No. 99-1259, Brief for the Respondent in Opposition (April 3, 2000)

74. *County of Los Angeles v. Shalala,* No. 99-1421, Brief for the Respondent in Opposition (April 2000)

75. *Abdullah v. Immigration And Naturalization Service,* No. 99-1162, Brief for the Respondent in Opposition (March 13, 2000)

76. *Ferrel v. Cuomo,* No. 99-1163, Brief for the Respondents in Opposition (March 13, 2000)

77. *Mafrige v. United States,* No. 99-1110, Brief for the United States in Opposition (March 3, 2000)

78. *Melka Marine, Inc., Petitioner, v. United States of America,* No. 99-1134, Brief for the United States in Opposition (March 3, 2000)

79. *Dole Food Company, Inc. v. United States,* No. 99-1246, Brief for the Federal Respondents in Opposition (March 2000)

80. *Forte v. Department of Veterans Affairs,* No. 99-941, Brief for the Respondent in Opposition (March 2000)

81. *New Prime Dba Prime, Inc. v. Owner-Operator Independent Drivers Association, Inc.,* No. 99-1169, Brief for the Federal Respondents in Opposition (March 2000)

82. *People's Mojahedin Organization of Iran v. Department of State,* No. 99-1070, Brief for the Respondents in Opposition (March 2000)

83. *United States v. Texas Southern University,* No. 99-1544, Petition for a Writ of Certiorari (March 2000)

84. *United States v. Mead Corporation,* No. 99-1434, Petition for a Writ of Certiorari (February 29, 2000)

85. *Dew v. United States,* No. 99-1089, Brief for the United States in Opposition (February 28, 2000)

86. *Richardson v. Reno,* No. 99-887, Brief for the Respondents in Opposition (February 25, 2000)

87. *Moghadam v. United States,* No. 99-879, Brief for the United States in Opposition (February 23, 2000)

88. *Datalect Computer Services, Ltd. v. United States,* No. 99-1049, Brief for the United States in Opposition (February 22, 2000)

89. *Central Green Co. v. United States,* No. 99-859, Brief for the United States in Opposition (February 18, 2000)

90. *Century Clinic, Inc. v. United States of America,* No. 99-1034, Brief for the United States in Opposition (February 18, 2000)

91. *Byrd v. Environmental Protection Agency,* No. 99-986, Brief for the Respondent in Opposition (February 9, 2000)

92. *American Federation Of Government Employees v. Clinton,* No. 99-959, Brief for the Respondents in Opposition (February 8, 2000)

93. *Mapoy v. Carroll,* No. 99-961, Brief for the Respondent in Opposition (February 7, 2000)

94. *Sebastian v. United States,* No. 99-977, Brief for the United States in Opposition (February 7, 2000)

95. *Public Citizen v. Carlin,* No. 99-782, Brief for the Respondents in Opposition (February 4, 2000)

96. *Primeaux v. United States,* No. 99-841, Brief for the United States in Opposition (January 18, 2000)

97. *White v. Lachance,* No. 99-629, Brief for the Respondent in Opposition (January 12, 2000)

98. *Laguerre v. Reno,* No. 99-418, Brief for the Respondents in Opposition (January 11, 2000)

99. *Lechuga, v. Perryman.,* No. 99-2082, Brief for the Respondent in Opposition (2000)

100. *Velazquez v. Legal Services Corporation,* No. 99-604, Brief for the United States in Opposition (December 8, 1999)

101. *Thomas v. Network Solutions, Inc.*, No. 99-605, Brief for the Federal Respondent in Opposition (December 8, 1999)

102. *Bartels v. Riley*, No. 99-540, Brief for the Federal Respondents in Opposition (December 6, 1999)

103. *Collins v. Montgomery County Board Of Prison Inspectors*, No. 99-270, Brief for the United States in Opposition (December 6, 1999)

104. *Armstrong v. Accrediting Council For Continuing Education And Training, Inc.*, No. 99-395, Brief for the Federal Respondent in Opposition (December 6, 1999)

105. *Richards v. United States*, No. 99-731, Brief for the United States in Opposition (December 1999)

106. *Witter v. Immigration And Naturalization Service*, No. 99-560, Brief for the Respondent in Opposition (December 1, 1999)

107. *Virginia v. Collins*, No. 99-380, Brief for the United States in Opposition (December 1999)

108. *City Of Los Angeles v. Department Of Transportation; Airports Council International-North America v. Department of Transportation*, Nos. 99-466, 99-500, Brief for the Federal Respondents in Opposition (November 22, 1999)

109. *Nature's Dairy v. Glickman*, No. 99-439, Brief for the Respondents in Opposition (November 17, 1999)

110. *Paulk v. United States*, No. 99-390, Brief for the United States in Opposition (November 03, 1999)

111. *United States v. Texas*, No. 99-774, Petition for a Writ of Certiorari (November 02, 1999)

112. *Hossain v. Immigration And Naturalization Service*, No. 99-340, Brief for the Respondent in Opposition (October 25, 1999)

113. *City Of New York v. United States*, No. 99-328, Brief for the Respondents in Opposition (October 22, 1999)

114. *Colon v. Department Of State*, No. 99-259, Brief for the Respondents in Opposition (October 13, 1999)

115. *Anker Energy Corporation v. United Mine Workers of America Combined Benefit Fund,* No. 99-262, Brief for the Commissioner of Social Security in Opposition (October 13, 1999)

116. *Nakamura v. Babbitt,* No. 99-265, Brief for the Respondent in Opposition (October 13, 1999)

117. *Mobil Oil Exploration And Producing Southeast, Inc. v. United States; Marathon Oil Company v. United States,* Nos. 99-244, 99-253, Brief for the United States in Opposition (October 12, 1999)

118. *Franklin Savings Corporation v. United States,* No. 99-208, Brief for the Respondents in Opposition (October 1999)

119. *Unity Real Estate Company v. Hudson,* No. 99-12, Brief for the United States in Opposition (September 27, 1999)

120. *Belli v. Immigration And Naturalization Service,* No. 98-2056, Brief for the Respondent in Opposition (September 22, 1999)

121. *McDaniel v. United States,* No. 99-2, Brief for the United States in Opposition (September 21, 1999)

122. *Hyundai Merchant Marine Company, Ltd. v. United States,* No. 99-142, Brief for the United States in Opposition (September 20, 1999)

123. *Bronco Wine Company v. Bureau of Alcohol, Tobacco and Firearms,* No. 99-119, Brief for the Respondents in Opposition (September 15, 1999)

124. *Kostmayer v. Department of the Treasury,* No. 99-71, Brief for the Respondents in Opposition (September 8, 1999)

125. *Fraternal Order of Police v. United States,* No. 99-106, Brief for the United States in Opposition (September 2, 1999)

126. *Yankton Sioux Tribe v. United States,* No. 99-34, Memorandum for the United States in Opposition (August 30, 1999)

127. *Paradissiotis v. Summers*, No. 99-44, Brief for the Respondents in Opposition (August 30, 1999)

128. *United States v. Texas Tech University,* No. 99-365, Petition for a Writ of Certiorari

(August 27, 1999)

129. *Benjamin v. Kerik,* No. 98-2042, Brief for the United States in Opposition (August 23, 1999)

130. *Dass v. Caplinger,* No. 99-176, Brief for the United States as Amicus Curiae Supporting Denial of the Petition (August 23, 1999)

131. *Commercial Energies, Inc. v. Danzig,* No. 98-1970, Brief for the Respondent in Opposition (August 23, 1999)

132. *Pfau v. Reed,* No. 98-1846, Brief for the Respondent in Opposition (August 11, 1999)

133. *Small v. United States,* No. 98-1979, Brief for the United States in Opposition (August 10, 1999)

134. *Sherman Park Apartments v. United States,* No. 98-1966, Brief for the United States in Opposition (August 9, 1999)

135. *Gresham v. Henderson,* No. 98-1968, Brief for the Respondent in Opposition (August 9, 1999)

136. *Foroglou v. Immigration and Naturalization Service,* No. 98-1951, Brief for the Respondent in Opposition (August 6, 1999)

137. *Boggs v. Summers,* No. 98-1785, Brief for the Respondents in Opposition (August 5, 1999)

138. *United States, v. SCS Business & Technical Institute, Inc.,* No. 99-213, Petition for a Writ of Certiorari (August 2, 1999)

139. *Bestfoods v. United States,* No. 98-1735, Brief for the United States in Opposition (July 29, 1999)

140. *Irving v. United States,* No. 98-1805, Brief for the United States in Opposition (July 23, 1999)

141. *Porter v. United States,* No. 98-1689, Brief for the United States in Opposition (July 21, 1999)

142. *Bianchi v. Walker,* No. 98-1860, Brief for the Federal Respondents in Opposition (July 19, 1999)

143. *Alexander v. Merit Systems Protection Board,* No. 98-1662, Brief for the Respondent in Opposition (July 14, 1999)

144. *Renteria-Prado v. Pasquarell,* No. 98-1698 Brief for the Respondents in Opposition (June 23, 1999)

145. *Bonneville Associates v. Barram,* No. 98-1688, Brief for the Respondent in Opposition (June 15, 1999)

146. *Wisconsin Department Of Transportation, Division Of Motor Vehicles v. Reno,* No. 98-1818, Brief for the Respondents (June 10, 1999)

147. *Mackey v. Milam,* No. 98-1564, Brief for the Respondents in Opposition (May 27, 1999)

148. *Sefick v. Gardner,* No. 98-1570, Brief for the Respondents in Opposition (May 27, 1999)

149. *State Of Vermont Agency of Natural Resources v. United States ex rel. Stevens, et al.,* No. 98-1828, Brief for the United States (May 26, 1999)

150. *Trafalgar Capital Associates, Inc., v. Cuomo,* No. 98-1568, Brief for the Federal Respondent in Opposition (May 26, 1999)

151. *Fitzgerald, v. Apfel,* No. 98-1595, Brief for the Respondent in Opposition (May 26, 1999)

152. *Mitchell v. Helms,* Nos. 98-1648 and 98-1671, Brief for the Secretary of Education (May 3, 1999)

153. *Patriot Portfolio, LLC v. Weinstein,* No. 98-1618, Brief for the United States (May 1999)

154. *United States v. Locke,* No. 98-1701, Petition for a Writ of Certiorari (April 23, 1999)

155. *Blankenship v. McDonald,* No. 99-672, Brief for the Respondents in Opposition (January 10, 1999)

156. *City of Chicago v. Shalala,* No. 99-898, Brief for the Respondents in Opposition (1999)

157. *City of Los Angeles v. Department of Transportation; Airports Council International-North America v. Department of Transportation,* Nos. 99-466, 99-500, Brief for the Federal Respondents in Opposition (1999)

158. *Gillespie v. City of Indianapolis*, No. 99-626, Brief for the United States in Opposition (1999)

159. *Sauvage v. Immigration And Naturalization Service,* No. 99-1932, Brief for the Respondent in Opposition (1999)

160. *Cruz v. Playboy Enterprises, Inc.*, No. 90-491, Brief in Opposition (October 16, 1990)
161. *Whitburn v. Addis*, No. 98-1041, Brief for the United States as Amicus Curiae
162. *Southern Pacific Transportation Co. v. Hernandez*, No. 91-293, Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of the Association of American Railroads in Support of Petitioner (September 18, 1991)
163. *Alden v. Maine*, No. 98-436, Reply Brief for the United States

16. Litigation: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Lorillard Tobacco Company v. American Legacy Foundation*, 903 A.2d 728 (Del. 2006); *American Legacy Foundation v. Lorillard Tobacco Company*, 886 A.2d 1 (Del. Ch. 2005). In a case against Lorillard Tobacco Company, I represented the American Legacy Foundation, a non-profit organization created by and funded under the 1998 Master Settlement Agreement ("MSA") between 46 states and the major cigarette manufacturers with the public health mission of reducing youth smoking. Lorillard charged that certain of the Foundation's public education advertisements violated the MSA because they constituted impermissible "vilification" or "personal attack," or because they targeted marketing activities of the tobacco industry and not the addictiveness, health effects, or social costs of tobacco products. When Lorillard advised the Foundation in January 2002 of its intent to sue, the Foundation preemptively filed suit against Lorillard in Delaware Chancery Court seeking a declaratory judgment that none of its ads violated the MSA; Lorillard in turn filed counterclaims. I was the lead counsel (or co-lead) for the Foundation throughout this litigation. In the Chancery Court, the case was heard by Vice Chancellor Stephen P. Lamb. I supervised the extensive fact and expert discovery process and argued two summary judgment motions. In August 2005, the Chancery Court ruled substantially in favor of the Foundation on the construction of provisions of the MSA and held that none of the Foundation's ads had violated the MSA. Lorillard appealed to the Delaware Supreme Court, which heard the case en banc. I

supervised the briefing and argued the appeal. In July 2006, the Delaware Supreme Court affirmed the Chancery Court's favorable ruling in its entirety.

My co-counsel at WilmerHale included then-partner John Payton, who is now the President and Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc., 99 Hudson Street, Suite 1600, New York, N.Y. 10013, 212-965-2200. Other co-counsel at WilmerHale included Paul R.Q. Wolfson, Stuart F. Delery, and Carey Bollinger, 1875 Pennsylvania Avenue, NW, Washington, DC 20006, 202-663-6000. Other co-counsel included David C. McBride, Young, Conaway, Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, DE 19801, (302) 571-6639; and Ellen Vargyas, General Counsel, American Legacy Foundation, 1724 Massachusetts Ave, NW, Washington, DC 20036, (202) 454-5555. Lorillard was represented by a number of lawyers, but its principal counsel was Jim W. Phillips, Jr., Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, 2000 Renaissance Plaza, P.O. Box 26000, Greensboro, NC 27420, (336) 271-3131.

2. *Shell Oil Co. v. Franco, et al.*, 2005 WL 6184247 (C.D. Cal. Nov. 10, 2005), and related cases. I was lead counsel for Shell Oil Company in litigation arising out of tort judgments entered against U.S. companies by courts in Nicaragua. On December 4, 2004, on Shell Oil's behalf, I filed a complaint for declaratory relief against 466 Nicaraguan individuals, seeking a declaration concerning the unenforceability of an approximately $489 million Nicaraguan court judgment entered against Shell Oil and other defendants for injuries allegedly related to the use of a pesticide in Nicaragua. On November 10, 2005, U.S. District Judge Nora M. Manella granted our summary judgment motion, holding that the Nicaraguan judgment was unenforceable against Shell Oil because the Nicaraguan court had lacked personal jurisdiction over it, consistent with principles of U.S. due process. The case involved extensive discovery and summary judgment briefing, supported by multiple expert reports. As lead counsel, I supervised a team of attorneys, developed legal arguments, provided strategic advice, conducted and supervised extensive discovery, revised motions and briefs, and argued the summary judgment motion. Among the many co-counsel who assisted me at WilmerHale were Ethan G. Shenkman, Jennifer M. O'Connor, and Thomas F. Connell, WilmerHale, 1875 Pennsylvania Ave., NW, Washington, DC 20006, (202) 663-6000. Lead U.S. counsel for the Nicaraguan defendants were Walter J. Lack, Engstrom, Lipscomb & Lack, 10100 Santa Monica Blvd., 16th Floor, Los Angeles, CA 90067, (310) 552-3800; and Thomas V. Girardi, Girardi & Keese, 1126 Wilshire Boulevard, Los Angeles, CA 90017, (213) 977-0211.

I also represented Shell Oil in several related litigated matters. Most recently, on August 13, 2007, a different group of approximately 200 Nicaraguan individuals brought suit against Shell Oil and other defendants in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, seeking to enforce an approximately $98 million Nicaraguan court judgment. On Shell Oil's behalf, we removed the case to federal court in the Southern District of Florida. On January 5, 2009, Judge Paul C. Huck issued an order granting summary judgment in favor of my client and another company, finding the Nicaraguan judgment unenforceable against those entities because the Nicaraguan court had lacked jurisdiction over them. *See Osorio, et. al., v. Dole Food Company, et al.*, Case No. 07-22693 (S.D. Fla., Jan. 5, 2009). Litigation is ongoing in this case with respect to other defendants. I was lead counsel in this case on behalf of Shell Oil, and I supervised a team of attorneys, developed legal arguments, provided strategic advice, and revised

motions and briefs. Other WilmerHale attorneys who represented Shell Oil included Ethan G. Shenkman, whose contact information is listed above. Many lawyers participated on behalf of the three other co-defendants. The following were the most active: Michael P. Foradas, counsel for the Dow Chemical Company, Kirkland & Ellis, 200 East Randolph Drive, Chicago, Illinois 60601, (312)-861-2308; Guy S. Lipe, Counsel for Occidental Chemical Corporation, Vinson & Elkins, First City Tower, 1001 Fannin Street, Suite 2500, Houston, TX 77002, (713) 758-1109; and Theodore J. Boutrous, Counsel for Dole Food Company, Inc., Gibson, Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, CA 90071, (213) 229-7804. Lead counsel for the plaintiffs was Steven C. Marks. Podhurst Orseck, 25 West Flagler Street, Suite 800, Miami, Florida 33130, (305) 358-2800.

3. *Biotechnology Industry Organization v. District of Columbia*, 505 F.3d 1343 (Fed. Cir. 2007); *Pharmaceutical Research and Manufacturers of America v. District of Columbia*, 406 F. Supp. 2d 56 (D.D.C. 2005). In these cases, my client, the Pharmaceutical Research and Manufacturers of America ("PhRMA") filed a complaint in the United States District for the District of Columbia on October 12, 2005, challenging a District of Columbia law that had the effect of imposing price caps—set by reference to prices in benchmark foreign countries—on patented prescription drugs. The Biotechnology Industry Association, represented by other counsel, later filed a similar action seeking similar relief. After briefing and argument, Judge Richard J. Leon entered final judgment in favor of PhRMA and BIO and enjoined enforcement of the D.C. law on the grounds that it was preempted by federal patent and prescription drug exclusivity laws and that the D.C. law's application to transactions outside of the District of Columbia violated the Interstate Commerce Clause of the U.S. Constitution. A Federal Circuit panel comprised of Judges William C. Bryson, Arthur J. Gajarsa, and S. Jay Plager later affirmed the district court's judgment on the ground that the D.C. law was preempted by federal patent law. I served as lead counsel for PhRMA in this case. In that role, I oversaw all of my firm's work on this matter, was primarily responsible for developing PhRMA's legal strategy, coordinated with counsel for BIO, was extensively involved in briefing the case in the District Court and Federal Circuit, and argued the case for both entities before the District Court and the Federal Circuit.

PhRMA was represented exclusively by my firm with respect to this matter. Randolph D. Moss, Anne K. Small, Catherine M.A. Carroll, and Thomas G. Saunders were the other lawyers from WilmerHale principally involved with this case. The address and telephone number for Mr. Moss, Ms. Carroll, and Mr. Saunders is: Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue, N.W., Washington, D.C. 20006, (202) 663-6000. Ms. Small's address and telephone number are: Anne K. Small, Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Avenue, New York, N.Y. 10022, (212) 230-8869. The Biotechnology Industry Association (plaintiff in the consolidated case) was principally represented by Daniel E. Troy, then of Sidley Austin LLP, and Eric A. Shumsky of Sidley Austin LLP. Mr. Troy's current address and telephone number are: Daniel E. Troy, Senior Vice President and General Counsel, GlaxoSmithKline, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101, (215) 751-6107. Mr. Shumsky's address and telephone number are: Eric A. Shumsky, Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, (202) 736-8496. Principal counsel for the District of Columbia in the Court of Appeals was William J. Earl. Mr. Earl's address and telephone number are: William J. Earl, Senior Assistant Attorney General, 441 4th Street, N.W., Washington, D.C. 20001, (202) 724-6152. Principal counsel for the District of Columbia in the district court were Andrew J. Saindon

and Ellen A. Efros. Their address and telephone number are Office of the Attorney General of Washington, D.C., One Judiciary Square, 441 4th Street N.W., Suite 1060N, Washington, D.C. 20001, (202) 727-3400.

4. *Lebanese American University v. National Evangelical Synod of Syria and Lebanon*, No. 04-5434 (RJH), 2005 WL 39917 (S.D.N.Y. Jan. 6, 2005); Preliminary Injunction Order, *Lebanese American University v. National Evangelical Synod of Syria and Lebanon*, 04 Civ. 5434 (RJH) (July 30, 2004). In this case, I was lead counsel for the United States-based and New York-state chartered Board of Trustees of the Lebanese American University, a leading institution of higher learning originally founded by the U.S. Presbyterian Church in Lebanon, which viewed its mission as "build[ing] a bridge of understanding between East and West in the Middle East," and which offered a U.S.-style college education "without regard to gender, race, nationality, faith or religious sect." As a result of an internal dispute, a sect based in Syria and Lebanon sought to use Lebanese courts to seize control of the University and its Beirut campus from the U.S.-based board, and obtained an injunctive order from that Lebanese court declaring that sect to be the rightful directors of the institution. In that posture, I filed this action in federal court in New York, and obtained an emergency injunction requiring that the sect cease and desist from pursuing its Lebanese suit, so that control of the institution could be determined conclusively by the courts of the United States, where the University was chartered. The court's finding of my client's probable success on the merits, coupled with its denial of the sect's motion to dismiss the complaint, essentially ended the dispute and facilitated a resolution that preserved control by the U.S.-based board.

My co-counsel at WilmerHale included Randy Goodman, Peter Vigeland, and Tonya Robinson, among others. The current address and telephone number for Mr. Goodman, and Ms. Robinson is 1875 Pennsylvania Avenue, NW, Washington, DC 20006, 202-663-6000. The current address and telephone number for Mr. Vigeland is 399 Park Avenue, New York, NY 10022, (212) 230-8807. Counsel for Lebanese American University was Cedar J. Mansour, 475 Riverside Drive, Suite 1846, New York, N.Y. 10115, (212) 870-2592. National Evangelical Synod of Syria and Lebanon was represented by the law firm of Dewey & LeBoeuf, 1301 Avenue of the Americas New York, N.Y. 10019, (212) 259-8000. The current address and telephone number for their lead attorney, A. Grant McCrea, are unknown.

5. *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Miller-El v. Cockrell*, 537 U.S. 322 (2003). In this pro bono case, I represented Thomas Joe Miller-El, a death-row inmate who had been convicted of murder and sentenced by a jury from which the prosecutors had struck 10 of 11 eligible African-American jurors without giving plausible non-racial justifications. The Supreme Court twice ruled for my client, and in so doing, reaffirmed and strengthened the constitutional prohibition against race discrimination in jury selection through improper use of peremptory challenges. In both cases, I played a substantial role in the development of the arguments made on behalf of our client, in the briefing, and in preparation for oral argument. In both cases, my partner Seth P. Waxman served as lead counsel and argued in the Supreme Court.

In addition to Mr. Waxman, my co-counsel from Wilmer Cutler Pickering and then WilmerHale who joined in representing Miller-El were Robin Lenhardt, Trevor Morrison, Shirley Woodward, Jonathan Cedarbaum, Nicole Herron, and Bruce Gottlieb. Mr. Waxman, Ms. Woodward, and Mr.

Cedarbaum are at WilmerHale, 1875 Pennsylvania Ave., N.W., Washington, D.C., 20006, (202) 663-6000. Ms. Lenhardt is now a professor at Fordham Law School, 140 W. 62nd Street, New York, N.Y., 10023, (212) 636-7608. Mr. Morrison is now a professor at Columbia Law School, 435 W. 116th Street, New York, N.Y., 10027, (212) 854-1997. Ms. Herron is now an attorney at the Alternate Defender Office, 627 Ferry Street, Martinez, CA, 94553, (925) 646-1740). Mr. Gottlieb is now Legal Advisor for Wireless and International Issues to Federal Communications Commissioner Michael Copps, 445 12th Street, S.W., Washington, D.C., 20554, (202) 418-2000. We were co-counsel with Jim Marcus, Elizabeth Detweiler, and Andrew Hammel of the Texas Defender Service. Mr. Marcus is now the co-director of the Capital Punishment Clinic at the University of Texas Law School, 727 E. Dean Keeton Street, Austin, TX, 78705, (512) 232-1475. Ms. Detweiler is now a staff attorney in the Chambers of U.S. District Judge Nancy F. Atlas, U.S. District Court for the Southern District of Texas, Houston Division, 515 Rusk Ave., Houston, TX, 77002, (713) 250-5407. Mr. Hammel is now Lecturer in Anglo-American Law, Heinrich-Heine-Universitat Dusseldorf, Universittatstrasse 1, 40225, Dusseldorf, +49 (0211) 81 10 621. Gena Bunn, of the Texas Attorney General's Office, argued the case both times for State. Her current address and telephone number are State of Texas Attorney General's Office, Law Enforcement Defense Division, 209 W. 14th Street, Austin, TX, 78701, (512) 463-2080.

6. *Roper v. Simmons*, 543 U.S. 551 (2005). In this case, after the Supreme Court granted a writ of certiorari, my colleagues at WilmerHale and I represented the respondent, Christopher Simmons, a death-row prisoner who had been convicted of a murder that occurred when he was 17 years old. I played a substantial role in the development of the arguments made on behalf of our client, in the briefing, and in preparation for oral argument. My partner Seth P. Waxman served as lead counsel for Mr. Simmons and argued the matter in the Supreme Court. The Court ultimately held that the Eighth Amendment forbids imposition of the death penalty on juvenile offenders. The Court endorsed our arguments that there was sufficient evidence of a national consensus against the death penalty for juvenile offenders, and that juvenile offenders' immaturity, vulnerability, and malleability created an unacceptable risk of wrongful imposition of the death penalty. In addition to Mr. Waxman, my co-counsel at WilmerHale was Danielle Spinelli. Their current address and telephone number are 1875 Pennsylvania Avenue, N.W., Washington, D.C. 20006, (202) 663-6000. Jennifer Herndon was also co-counsel for respondent. Her current address and telephone number are 224 Highway 67 North #122, Florissant, MO 63031, (314) 831-5531. Lead counsel for the petitioner was Missouri State Solicitor James R. Layton. His current address and telephone number are Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102, (573) 751-3321.

7. *Riley v. St. Luke's Episcopal Hospital*, 252 F.3d 749 (5th Cir. 2001) (en banc). I list this case because of its significance and also as representative of the major litigation in a wide range of areas I handled and supervised while serving as Assistant Attorney General for the Civil Division of the United States Department of Justice. In this case, the en banc United States Court of Appeals for the Fifth Circuit considered whether the qui tam provisions of the False Claims Act ("FCA"), which permit private citizens to pursue actions for fraudulent claims in the name of the federal government, violate the Constitution. After a panel of the Fifth Circuit found those provisions of the FCA to be unconstitutional, the United States intervened to defend the constitutionality of the qui tam mechanism before the en banc court of appeals. As Assistant

Attorney General, I led the government's intervention effort and argued the case on behalf of the United States at the en banc court. After argument, as we requested, the en banc court reversed the panel decision and upheld the constitutionality of the qui tam provisions. Specifically, the en banc court held that the qui tam provisions do not violate the constitutional doctrine of separation of powers because the FCA itself ensures that the Executive Branch retains significant control over any litigation brought by a qui tam relator. Likewise, the en banc court of appeals held that the FCA's qui tam provisions do not violate the Appointments Clause of the Constitution because qui tam relators do not qualify as "officers" under that Clause.

Among my co-counsel at the Department of Justice was Douglas Letter, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530, (202) 514-2000. Jim M. Purdue, Sr. argued for the plaintiff at the en banc court of appeals. His current address and telephone number are Purdue & Kidd LLP, 2727 Allen Pkwy, Houston, TX 77019, (713) 520-2500. William Joseph Boyce argued for the defendant Baylor College of Medicine at the en banc court of appeals. He is now a Justice on Fourteenth Court of Appeals of Texas. His current address and telephone number are 1307 San Jacinto, 11th Fl, Houston 77002, (713) 655-2800. Numerous other counsel represented amici curiae.

8. *Turner Broadcasting Systems, Inc. v. United States*, 512 U.S. 622 (1994); *Turner Broadcasting System, Inc. v. Federal Communications Commission*, 819 F. Supp. 32 (D.D.C. 1993); 810 F. Supp. 1308 (D.D.C. 1992). In this case, the cable television industry challenged the "Must Carry" provisions of the Cable Television Consumer Protection and Competition Act of 1992 (generally known as the "Cable Act") under the First Amendment. Those provisions require cable operators to carry local broadcast signals and to give them certain priority. I represented the National Association of Broadcasters ("NAB"), which intervened as a defendant to support the constitutionality of the provisions, from shortly before the Act was signed into law until I left Jenner & Block in 1994. The case was originally litigated before a three-judge district court in the District of Columbia, comprised of Judge Stephen Williams of the Court of Appeals for the District of Columbia Circuit, and District Judges Thomas Penfield Jackson and Stanley Sporkin. Because the United States initially declined to defend the constitutionality of these provisions, NAB became the lead defendant in these proceedings, where we prevailed based upon the legal theories advanced in NAB's briefs. The plaintiffs appealed this ruling to the United States Supreme Court, where NAB's legal theories again were vindicated and the matter was remanded to the District Court for further proceedings. Eventually, after motions for summary judgment in the district court and another appeal to the Supreme Court, the "Must Carry" provisions were upheld. I was second chair throughout the first round of proceedings—in the first district court proceedings and the first appeal to the Supreme Court. My primary responsibilities included development of our legal arguments and the briefing of those arguments. NAB's approach was largely adopted by both courts. I had left Jenner & Block to join the Defense Department by the time the first Supreme Court decision was handed down, and thus played no role in the proceedings on remand or the second round of Supreme Court litigation (although I played a major role in briefing the first Supreme Court case).

Lead co-counsel in the matter for NAB was Bruce J. Ennis, Jr. of Jenner & Block. Mr. Ennis passed away in 2000. Donald B. Verrilli, Jr. of Jenner & Block, 1099 New York Avenue, N.W., Suite 900, Washington, D.C. 20001, (202) 639-6095, also played a significant role as co-counsel.

Kathleen M. Sullivan, Stanley Morrison Professor of Law, Stanford Law School, Crown Quadrangle, 559 Nathan Abbott Way, Stanford, CA 94305, (650) 725-9875, was of counsel for NAB in the Supreme Court. Many lawyers participated in this matter for many parties. Among the most active were the following: for the United States at the trial court level, Theodore C. Hirt and John R. Tyler, Civil Division, U.S. Department of Justice, 601 E. St., N.W., Washington, D.C. 20530; for the Association of America's Public Television Stations, Mark H. Lynch, Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington, D.C. 20044 (202) 662-5544; for the Association of Independent Television Stations, the Honorable Rex E. Lee, deceased, and Carter G. Phillips, Sidley & Austin, 1501 K Street, N.W., Washington, D.C. 20005, (202) 736-8000; for Turner Broadcasting Systems, Inc., Bruce D. Sokler, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 701 Pennsylvania Avenue N.W., Washington, D.C. 20004, (202) 434-7303; for Time Warner, Robert D. Joffee, Cravath, Swaine & Moore, Worldwide Plaza, 825 Eighth Avenue, New York, N.Y. 10019, (212) 474-1000; for the National Cable Television Association, Joel I. Klein, now New York City Schools Chancellor, 52 Chambers Street, New York, N.Y. 10007, (212) 374-5141, and H. Bartow Farr, Farr & Taranto, 1150 18th Street, N.W., Washington, D.C. 20036, (202) 775-0184.

9. *Maryland v. Craig*, 497 U.S. 836 (1990). In this case, the United States Supreme Court upheld a Maryland statutory procedure in which children who are the victims of sexual abuse need not testify in open court and directly face their accusers, but may instead appear through live, one-way, closed circuit television. To invoke the procedure, the trial judge must "first determin[e] that testimony by the child victim in the courtroom will result in the child suffering serious emotional distress such that the child cannot reasonably communicate." The State Court of Appeals had voided a conviction based on such testimony, on the grounds that it violated the convicted defendant's rights under the Confrontation Clause of the Sixth Amendment. It also ruled that before the procedure may be invoked, the child must first take the stand and exhibit the emotional distress and inability to communicate required by the statute. In late 1989 and 1990, I was sole counsel in the case for the American Psychological Association ("APA"), which appeared as an amicus curiae, and argued that "the State has a compelling interest in protecting a vulnerable child victim-witness, . . . and that it is not necessary in every case to subject a young child victim-witness to the ordeal of attempting testimony face-to-face with the defendant before allowing the child to testify by means of one-way or two-way closed-circuit television." My brief presented a body of scientific literature that supported the contention that face-to-face testimony could be particularly psychologically damaging to a child witness who has suffered sexual abuse, and can be less valuable to the truth-seeking process than if the victim did not have to face the defendant in person. It also argued that experts can evaluate in advance the likely effect on a particular child witness of a face-to-face confrontation with his or her accused abuser. In an opinion by Justice Sandra Day O'Connor, the Supreme Court upheld the statute and reinstated the conviction. In the course of her opinion, at two critical junctures, Justice O'Connor relied explicitly on the APA's brief, as well as the authorities it presented and its reasoning. *See* 497 U.S. at 855, 857. I had no co-counsel on the brief. Counsel for other parties, as listed in the Supreme Court opinion, included J. Joseph Curran, the then-Attorney General of Maryland (current address and telephone number unknown), William H. Murphy, Jr., counsel for the defendant, 1 South Street, 23rd Floor, Baltimore, Maryland 21202, (410) 539-6500, and numerous other attorneys on behalf of other amici curiae.

10. *MacHovec v. Council for the National Register of Health Service Providers in Psychology*, 616 F. Supp. 258 (E.D. Va. 1985). In this antitrust action, several providers of mental health services sued the American Psychological Association ("APA") and another non-profit organization, which published a register of health service providers in psychology. The plaintiffs alleged that APA and the other organization had conspired to set anticompetitive standards for listing, which excluded plaintiffs in alleged violation of the antitrust laws. In 1984-1985, I represented APA, and after the conclusion of extensive discovery, I drafted and argued the APA's successful motion for summary judgment disposing of all allegations. Among the significant holdings in the case, Judge Cacheris concluded that the provision of accurate information about the credentials of health service providers likely enhanced competition, and in any event could not be judged under a per se rule of invalidity. *Id.* at 270-71. Co-counsel for APA included Donald N. Bersoff, now Professor of Law Emeritus at Villanova Law School, 299 North Spring Mill Road, Villanova, PA 19085, (610) 519-7000. Lead counsel for co-defendant National Register of Health Service Providers in Psychology was Clifford Stomberg of Hogan & Hartson, 555 Thirteenth Street, N.W., Washington, D.C. 20004, (202) 637-5600. Lead counsel for the plaintiffs was David Barmak, then of Sherman, Meehan, Curtin & Ain (current address and telephone number unknown).

17. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)**

Since November 2008, I have been on a sabbatical from my law firm pursuant to its established policies allowing lawyers who have worked at the firm for at least seven years to take up to a three month sabbatical at full compensation. During that period, I have served without remuneration as Agency Liaison to the U.S. Department of Justice for President-Elect Obama's transition team. In that capacity, I led a team of volunteers whose mission was to identify the major issues faced by the Department at this juncture and options for dealing with them. The team has met with Congressional staff, representatives of the public, the business community, non-profit organizations, and politically-appointed and career employees of the Department itself.

At WilmerHale since 2001, I have been a partner in the Litigation Department, and for much of that time have served as co-chair of the Government and Regulatory Litigation Practice Group or predecessors of that practice group. My practice has focused on high-stakes disputes with complex legal and policy dimensions and serious financial implications. Representative matters include national and international class actions and government enforcement actions under regulatory regimes such as the antitrust or competition laws, the False Claims Act, anti-discrimination laws, and export control laws; cases raising issues of public or private international law, such as enforcement of foreign judgments, anti-suit injunctions, and investor-state disputes; and litigation concerning the enforcement of federal or state statutes, including federal commerce clause, preemption, equal protection, due process, expropriation issues and the First Amendment.

During this period, I handled a significant number of litigation matters that either were resolved short of a judgment or did not involve litigation. For example, I represented Deutsche Lufthansa Airlines and subsidiaries in two antitrust suits, one of which was resolved by settlement and the second of which continues, though significant portions have been amicably resolved. In the first, Lufthansa and other carriers were sued by a class of U.S. travel agents who contended that the air carriers had conspired to eliminate certain agent commissions on air fares. After extensive litigation, Lufthansa reached a class settlement, which was upheld by the United States District Court for the Eastern District of North Carolina. In the ongoing matter, pending in the Eastern District of New York, a purported class of purchasers of air cargo services alleges that various air carriers, including my clients, conspired to fix the price of international air cargo in various ways. My client brought the underlying facts to the attention of U.S. and foreign competition authorities, including the U.S. Department of Justice, and has continued to cooperate with those authorities. Accordingly it is the "leniency applicant" in the U.S. antitrust action. I negotiated a settlement of all claims relating to commerce to, from, or within the United States, which is pending approval in the federal court. Pursuant to the proposed agreement, my client agreed to pay a substantial sum and to cooperate fully with the class as the litigation progresses. Aspects of this matter are also pending in other courts around the world, including Canada, the United Kingdom and Australia.

Other major matters have included:

- Joint criminal and civil investigations under the False Claims Act for financial services companies; the precise details and identities of the clients are subject to privilege, and the matters are ongoing.
- An investor-state arbitration on behalf of Shell Oil subsidiaries against Nicaragua, concerning the Nicaraguan courts' seizure of Shell Oil's intellectual property, including its trademarks, to pay enormous judgments entered by the courts there; following the filing of the arbitration, Nicaragua effectively confessed error and the appellate courts overturned the seizure.
- Representation of Merck and Co. with respect to a $200 million dispute pending in the courts of Ecuador.
- Defense of a putative class action brought against Fannie Mae in September 2002 alleging that its automated underwriting program had the effect of discriminating against African Americans; following initial discovery and a motion to dismiss, in November 2004 the named plaintiff voluntarily dismissed her suit.
- Advice to PhRMA about a range of federal law issues.
- Advice to Amtrak about a range of confidential legal matters and filing an as-yet unresolved arbitration on Amtrak's behalf against the Union Pacific Railroad for alleged breach of contractual commitments.
- Representation of Darick Walker, an inmate on death row in Virginia, in ongoing habeas litigation challenging the lawfulness of his sentence and related issues.

During this period, with co-authors I have written on various issues involving international law, including international discovery and investor-state arbitration.

Lobbying Activities: I was registered as a lobbyist in the State of Vermont from March 2007 to January 2008 on behalf of the Pharmaceutical Research & Manufacturers of America (PhRMA), because this was required under state law for me to contact the Attorney General's office about a pending legislative proposal similar to a D.C. statute I had successfully challenged as litigation counsel for PhRMA. See Item 3 in my response to Question 16.

At the Department of Justice from 1995-2001, I had the opportunity to pursue significant legal activities in several contexts. As Assistant Attorney General for the Civil Division and Acting Assistant Attorney General between February 1, 1999 and January 20, 2001, I directed the component that represents the United States Government, its departments and agencies, members of Congress, cabinet officers, and other federal employees in major litigation. The portfolio of the Division reflects the diversity of government activities, including the defense of challenges to federal statutes and executive action, national security issues, benefit programs, energy policies, commercial issues, fraud on the government, employment discrimination, accident and liability claims, and violations of immigration and consumer protection laws. The litigation I supervised primarily was conducted in federal district courts and courts of appeal throughout the United States. Among my duties were handling personnel issues, managing some of the more significant litigation handled by the division, determining whether settlements of claims of and against the government are in the best interests of the United States, deciding whether to recommend the appeal of adverse decisions in the federal courts, attempting to ensure that the Division is as responsive as possible to Congress when it seeks information about its activities, and arguing certain major appeals. I supervised the initiation of the U.S. Government's lawsuit against the major manufacturers of cigarettes in September 1999. As the Assistant Attorney General, I adopted a practice of regular meetings with the Relator and Defense Bars in False Claims Act matters, in order to improve communication concerning the operation of this vital statute. In addition, I served as the governmental representative on the Council of the Section of Litigation of the American Bar Association and on the Advisory Committee on the Civil Rules of the United States Judicial Conference.

As Chief of Staff to the Attorney General from 1998-99, I managed the Attorney General's office and assisted her in her management of the Department of Justice as a whole, including the criminal, law enforcement, civil and grant making components. In addition, as Chief of Staff and as Counselor to the Attorney General (from 1997-98), I advised the Attorney General on a range of legal and management issues. As Associate Deputy Attorney General from 1995-97, I played a similar role for Deputy Attorney General Jamie S. Gorelick and then-Acting Deputy Attorney General Seth P. Waxman. In these roles, I had primary responsibility for directing cross-component (and in some cases cross-agency) working groups that produced policy recommendations with respect to the Department's Indian Country Law Enforcement Initiative and Hate Crime Initiative, among other topics. I monitored significant matters in the civil litigating divisions, the Solicitor General's office and Office of Legal Counsel, and advised the Attorney General and Deputy Attorney General concerning those matters, as well as certain criminal and national security issues and matters. I also coordinated the Department's participation with respect to the proposed tobacco legislation in the first few months of 1998, and testified about the Administration's position in both the Senate and House Judiciary Committees.

Throughout my years at the Department of Justice, I had a leading role in working with the Bar and the Conference of State Chief Justices on issues of mutual concern, including the issues of contacts with represented parties and the rules of ethics that should apply in federal courts and to federal attorneys. For a discussion of my efforts, *see Who Can Lawyers Talk To?*, 84-Aug. A.B.A. J. 101 (1998); *Center Update*, 9 No. 3 Prof. Law 15,22 (1998); *Conference Draws Record Attendance*, 7 No. 4 Prof. Law 20, 23 (1996). I represented the Department in efforts to find common ground that would accommodate the special requirements and obligations of federal prosecutors while upholding the highest ethical standards of the profession.

As Deputy General Counsel and Legal Counsel at the Department of Defense, I coordinated and supervised litigation activities of the Office of the Secretary of Defense, the military departments, and the defense agencies. I participated in litigation as varied as the activities of the Department of Defense—including the defense of major personnel policies, cases involving national security and highly classified technology, environmental cases, Freedom of Information and Privacy Act cases; major procurement cases, and other issues. I had primary responsibility for advising the Secretary and Deputy Secretary of Defense, through the General Counsel, concerning legal issues related to personnel security, information and privacy policy, constitutional issues, ethics, the homosexual conduct policy and other areas. I was the Department's senior official responsible for policy related to Alternative Dispute Resolution, and put in place a policy and mechanism to support the more efficient and equitable resolution of disputes throughout DOD. I supervised the Defense Office of Hearings and Appeals, an agency with more than 70 employees, including administrative judges and attorneys, which adjudicates challenges concerning security clearances for contractor personnel. I also supervised the Department's Standards of Conduct Office. In addition, I handled special projects for the General Counsel, including personnel issues involving senior officials, oversight of the Federal Advisory Committee on the Investigative Capacity of the Department of Defense, and a congressional investigation into alleged intelligence agency abuses in Central America. In most of these pursuits, I worked closely with the Judge Advocates General of the Military Departments, as well as their General Counsels.

Prior to my government service, as a younger lawyer in private practice, I handled or assisted in handling a substantial number of matters that were resolved through negotiation. I represented both plaintiffs and defendants in personal injury cases. On the plaintiff side, I represented the survivors and estates of a New Jersey grandmother and her grandson who were killed when an engineer under the influence of marijuana caused a collision between the Amtrak train on which they were riding and the Conrail engines he was driving just northeast of Baltimore in January 1987. I achieved a multi-million dollar recovery for my clients. On the defense side, I handled the defense of a Washington, D.C. psychologist accused of malpractice. I took the deposition of the plaintiff, after which the case was resolved through a settlement my client viewed as favorable.

I had an active appellate and trial-level constitutional practice. In the Supreme Court, I frequently drafted amicus briefs on behalf of my client, the American Psychological Association, which presented "Brandeis brief" information reflecting the state of academic and professional knowledge in the field of psychology in an effort to shed light on the issues before the Court. Typically, I worked together with a panel of experts selected by the client to develop and present this information, together with legal authorities suggesting its significance to the issues before the Court. As noted above, some of these briefs appeared to be of assistance to members of the Court.

I also filed amicus briefs on behalf of media and pro-free-speech organizations such as the American Booksellers Association, the American Library Association, and the Freedom to Read Foundation, as well as for other organizations and corporations.

My litigation and appellate practice during 1983-1994 also involved First Amendment and other constitutional issues. Like most of the amicus briefs, these were fee-for-service matters, not pro bono representations. Examples included a successful suit on behalf of the American Council of the Blind, the American Library Association and Playboy Enterprises against the Librarian of Congress to enjoin defunding of the Braille edition of Playboy, *American Council of the Blind v. Boorstin*, 644 F. Supp. 811 (D.D.C. 1986); a largely successful suit on behalf of the American Booksellers Association and Playboy Enterprises against members of the Attorney General's Commission on Pornography to enjoin publication of a "blacklist" of retail businesses that sold Playboy Magazine, *Playboy Enterprises, Inc. v. Meese*, 746 F. Supp. 154 (D.D.C. 1990); 639 F. Supp. 581 (D.D.C. 1986); a successful lawsuit on behalf of PHE. Inc. challenging a Justice Department strategy of multiple simultaneous obscenity prosecutions, *PHE, Inc. v. United States Department of Justice*, 743 F. Supp. 15 (D.D.C. 1990); *United States v. PHE, Inc.*, 965 F.2d 848 (10th Cir. 1992); and lawsuits, with mixed success, on behalf of such clients as the American Library Association, the American Booksellers Association, the National Association of Artists' Organizations, and Penthouse International Ltd. challenging on First Amendment grounds federal recordkeeping requirements imposed on producers of sexually explicit images, *American Library Association v. Barr*, 713 F. Supp. 469 (D.D.C. 1989); 956 F.2d 1178 (D.C. Cir. 1992).

In the area of property rights, as a young lawyer I represented landowners who had helped develop an early commercial and entertainment complex known as "Underground Atlanta." That venture had failed and the City sought to condemn their property and turn it over to other developers for a new commercial project in the same location. We developed a challenge to this transfer of property from one private landowner to another, *Atlanta Peachtree Associates Ltd v. City of Atlanta*, Civil Action File No. D-21598, Superior Court of Fulton Co, Georgia, as well as to the financing arrangements that the City had developed for the new project. Eventually, we were able to negotiate a settlement with the City, under which our clients obtained an equity position in the new development.

I also handled a number of cases involving education, professional credentialing, accreditation and ethics. For example, in *Budwin v. American Psychological Association*, 24 Cal. App. 4th 875, 29 Cal. Rptr. 453 (Third Dist. 1994), I was lead counsel for the American Psychological Association in a suit brought by a member contesting an adverse ethics action based on false and misleading expert testimony in a child custody proceeding. The state court of appeals ruled that California law permits a private association to discipline its member for making misrepresentations in the course of an official proceeding and recognized the broad authority under California law of private membership organizations to adopt regulation as its membership sees fit.

In addition to litigation, I provided legal counseling and advice to many of my clients. For the American Psychological Association, for example, I advised the chief operating officer, general counsel, and Board of Directors of the Association on a variety of legal issues. I was principal counsel to the APA's accreditation and ethics offices, advising both on the operation of their administrative adjudicatory processes. I helped design new procedures for APA's ethics process.

I also presided as legal counsel at numerous disciplinary hearings conducted by the Ethics Committee of the Association to resolve complaints submitted against its members by patients, other psychologists, and members of the public, and advised the panelists on relevant legal principles. For the Accreditation Committee, I similarly advised on the handling of particular matters and assisted the Chair at accreditation hearings.

I was general counsel (at a reduced billing rate) to the Chesapeake Institute, a non-profit organization in Wheaton, Maryland, that provided therapy and counseling to the victims of child sexual abuse. In addition to advising the director concerning the gamut of legal issues faced by the Institute, I served pro bono as legal advisor to the Institute's "Sponsor-a-Child" program to develop a fund to support the provision of such services to child victims unable otherwise to afford them. This work was related by subject matter to the amicus brief I wrote for the American Psychological Association in *Maryland v. Craig*, discussed in answer to Question 16.

Finally, I co-wrote a book on the laws affecting trade and professional associations that was published in 1995, *Legal Risk Management for Associations* and a handful of articles on a variety of subjects, set forth above in response to Question 13.

18. Teaching: **What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.**

Between 1992 and 1995, I co-taught a seminar at Georgetown University Law Center called "Theories of Free Speech." We addressed major themes in First Amendment jurisprudence from the perspective of legal theory. I do not have a syllabus.

19. Deferred Income/ Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

If I am confirmed, I will resign as a partner of Wilmer Cutler Pickering Hale and Dorr LLP. Under the WilmerHale partnership agreement, I will be entitled to be fully compensated according to my shares in the Firm for whatever period of time I remain a partner. In April 2009, I will receive from the Firm a final distribution of my share of 2008 Firm profits ($358,247). In addition, the Firm will pay me a fixed amount of Firm income for 2009, calculated on the basis of the Firm's budgeted share value for 2009, and prorated for the number of days in 2009 that I am a partner in the Firm. The Firm will pay this 2009 income to me by April 15, 2009, but it will reserve $26,200 to cover taxes that may be due in Germany and other jurisdictions based on certain routine reconciliations performed by the Firm and foreign tax authorities over the next three years. At the end of the three-year period, if the Firm has paid less than $26,200 for taxes on my behalf, it will refund to me the difference between $26,200 and the taxes it has paid. Conversely, if the Firm pays more than $26,200 for taxes on my behalf, I will reimburse the Firm for the excess. The Firm

will also repay all of my paid-in capital to me in April 2009 ($413,408.35). In addition, upon my separation from the firm, the balance of my WilmerHale defined benefit plan investment (approximately $381,360) will be withdrawn from the plan and rolled over into a newly established Individual Retirement Account (IRA).

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see attached copy of financial disclosure report.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

23. **Potential Conflicts of Interest**:

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

24. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since joining WilmerHale in 2001, I have devoted nearly 1,400 hours to pro bono work (averaging more than 150 hours per year), including more than 60 hours of pro bono work in every year except for two. Selected pro bono matters include:

- Representing Christopher Simmons, a death-row inmate who had been convicted of a murder that occurred when he was 17 years old, in a successful Supreme Court challenge to the imposition of the death penalty on juvenile offenders. My representation of Mr. Simmons is described more fully in my answer to Question 16.

- Representing Thomas Joe Miller-El, a prisoner who had been convicted of murder and sentence to death by a jury from which the prosecutors had struck 10 of 11 eligible African-American jurors without giving plausible non-racial justifications, in the United States Supreme Court and the Texas state courts. My representation of Mr. Miller-El is described more fully in my answer to Question 16.

- Representing Tony Saffold, a prisoner in California, in a successful United States Supreme Court challenge to the district court's dismissal of his federal habeas petition, in which I presented argument to the Supreme Court.

- Representing Darick Walker, a death-row inmate in Virginia, in federal district court, the United States Court of Appeals for the Fourth Circuit, and the United States Supreme Court.

Prior to my government service and while at Jenner & Block, I also performed a significant amount of pro bono work. Representative pro bono matters included providing legal services at a reduced fee to the Chesapeake Institute, a non-profit organization located in Wheaton, Maryland, that provided therapy to the victims of child sexual abuse. In addition to this paid work, I served pro bono as legal counsel to the Institute's "Sponsor-a-Child" program, which sought to raise money to pay for therapy for sexually abused children not otherwise able to afford treatment.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		210	530	Other special debt			0
U.S. Government securities-add schedule			0	Notes payable to banks-secured			0
Listed securities-add schedule	2	151	732	Notes payable to banks-unsecured			0
Unlisted securities--add schedule			0	Notes payable to relatives			0
Accounts and notes receivable:			0	Notes payable to others			0
Due from relatives and friends			0	Accounts and bills due			0
Due from others			0	Unpaid income tax			0
Doubtful			0	Other unpaid income and interest			0
Real estate owned-add schedule	1	500	000	Real estate mortgages payable-add schedule		852	000
Real estate mortgages receivable			0	Chattel mortgages and other liens payable			0
Autos and other personal property		36	845	Other debts-itemize:			0
Cash value-life insurance			0				
Other assets itemize:			0	Total liabilities		852	000
Total Assets	3	899	107	Net Worth	3	047	107
CONTINGENT LIABILITIES				Total liabilities and net worth	3	899	107
As endorser, comaker or guarantor			0	GENERAL INFORMATION			
On leases or contracts			0	Are any assets pledged? (Add schedule)			NO
Legal Claims			0	Are you defendant in any suits or legal actions?			NO
Provision for Federal Income Tax			0	Have you ever taken bankruptcy?			NO

David Ogden and Household
Values as of 12/31/2008

Listed Securities Schedule

Quantity	Security	Market Value	
MUTUAL FUNDS			
Small Cap Value			
1,953	Harbor Small Cap Value Fund - Ret	$ 25,860.74	
		$ 5,273.04	*Spouse*
		$ 20,587.70	*Nominee*
Mid Cap Value			
2,325	CRM Mid Cap Value Fund	$ 43,375.45	Nominee
Mid Cap Growth			
3,094	Artisan Funds Inc Mid Cap Fund	$ 52,628.64	
		$ 27,066.85	*Spouse*
		$ 25,561.79	*Nominee*
Large Cap Value			
806	American Funds Washington Mutual Investmen	$ 17,215.51	Dependent 1
Large Cap Growth			
803	American Funds Growth Fund of America 529F	$ 16,329.26	Dependent 1
Balanced Funds			
2,373	Amer Funds The Income Fund of America 529F	$ 31,012.42	
		$ 12,217.86	*Dependent 1*
		$ 18,794.56	*Dependent 2*
Sector Investments			
13,533	Ivy Global Natural Resources Fund A	$ 143,319.74	
		$ 23,764.16	*Spouse*
		$ 119,555.58	*Nominee*
Global Investments			
7,618	Polaris Global Value Fund	$ 65,973.33	Nominee
Foreign Investments			
413	American Funds EuroPacific Grwth Fund 529F	$ 11,467.20	Dependent 1
15,665	ING International Value Fund A	$ 148,660.05	
		$ 35,553.03	*Spouse*
		$ 113,107.02	*Nominee*
1,942	Nicholas-Applegate International Growth Op	$ 34,524.42	Spouse
Emerging Market Inv			
7,287	Acadian Emerging Markets	$ 68,932.44	
		$ 44,562.56	*Spouse*

	$	*24,369.88*	*Nominee*
Alternative Inv Equity			
205 Ivy Asset Strategy Fund Class A	$	3,709.77	Spouse
Core Bonds			
4,691 Loomis Sayles Fds Strategic Income Y TR II	$	49,542.19	Nominee
Global Bonds			
4,809 Loomis Sayles Global Bond Fund	$	64,349.00	Nominee
Cash			
27,970 American Funds Cash Management Trust	$	27,970.31	Dependent 2
MUTUAL FUNDS Total	**$**	**804,870.47**	
COMMON STOCK			
Mid Cap Value			
264 iShares Tr S&P 400 BARRA Midcap Value	$	13,273.92	Joint
Mid Cap Growth			
243 iShares Tr S&P 400 BARRA Midcap Growth	$	13,474.35	Joint
Large Cap Value			
4,517 iShares Tr S&P 500 Barra Value Index Fund	$	204,078.06	Joint
Large Cap Growth			
2,960 iShares Tr S&P 500 Barra Growth Index Fund	$	132,992.80	Joint
Foreign Investments			
995 iShares Tr MSCI EAFE Index Fd	$	44,635.70	Joint
Common Shares			
16 International Business Machines	$	1,346.56	Nominee
COMMON STOCK Total	**$**	**409,801.39**	
MUNICIPAL BONDS			
Municipal Bonds			
25,000 Seattle Washington Mun LT & Pwr Series 2008 5.500% Due 04-01-22	$	26,338.25	Joint
25,000 Dallas Tex Indpt Sch Dist Series 2008 5.250% Due 02-15-26	$	25,802.25	Joint
Accrued Interest	$	113.19	
MUNICIPAL BONDS Total	**$**	**52,253.69**	
CASH AND EQUIVALENTS			
Cash			
Fidelity Cash Reserves	$	0.01	Nominee
Fidelity Municipal Money Market	$	91,235.76	Joint
CASH AND EQUIVALENTS Total	**$**	**91,235.77**	

OTHER ASSETS

Defined Benefit Plan

$ 305,497.00	Nominee
$ 13,696.00	Spouse

Firm Partner's Capital

$ 413,408.00	Nominee
$ 60,970.00	Spouse

OTHER ASSETS TOTAL	**$**	**793,571.00**
LISTED SECURITIES GRAND TOTAL	**$**	**2,151,732.32**

Cash Schedule

CASH ON HAND

Bank Accounts

Wachovia	$	103,790.00	Joint
Student Accounts (3) (Children in Household)	$	13,610.00	Dependents 1&2
Bank of America	$	56,143.00	Joint
BANK ACCOUNTS TOTAL	**$**	**173,543.00**	

Money Market Accounts

Wachovia	$	17,558.00	Joint
Bank of America	$	8,429.00	Joint
ING *approximate value*	$	11,000.00	Spouse
MONEY MARKET ACCOUNTS TOTAL	**$**	**36,987.00**	
CASH ON HAND GRAND TOTAL	**$**	**210,530.00**	

Real Estate and Personal Property Schedule

ASSET

Real Estate Value

Sole Property (Residence)	$	1,500,000.00
REAL ESTATE TOTAL	**$**	**1,500,000.00**

Auto Value

2005 Subaru Outback	$	12,670.00
2007 Toyota Prius	$	18,850.00
2001 Honda Accord	$	5,325.00
PERSONAL PROPERTY TOTAL	**$**	**36,845.00**
REAL ESTATE/PERSONAL PROP. GRAND TOTAL	**$**	**1,536,845.00**

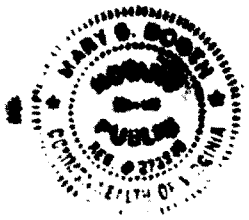
TOTAL ASSETS	*$*	*3,899,107.32*

AFFIDAVIT

I, David W. Ogden, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

14 January 2009
(DATE)

(NAME)



Mary S. Brooks
(NOTARY)

My commission expires Feb 28, 2011

QUESTIONS AND ANSWERS

Questions of Senator Tom Coburn, M.D.

"Nomination of David Ogden to be Deputy Attorney General of the United States"

United States Senate Committee on the Judiciary

February 5, 2009

General

1. Your legal career has included in both public service and private law practice. While practicing law in the private sector, were you, at any time, required to represent any of your clients, whether as a party in a case or as *amici*? If, at any time, you were not required to represent a client, is it correct to conclude, in those situations, you had the freedom to accept or reject any client who sought your services?

   Answer: Like any younger lawyer in private practice, earlier in my career I had relatively little choice regarding the clients I represented. It was my job to work for the clients my firm represented, generally the clients of more senior lawyers in my firm. In the past eight years, since my government service ended and while practicing at WilmerHale as a senior partner, potential clients more frequently have approached me directly about prospective representations, although in the nature of a partnership I have also continued to work on matters brought in by other partners. Of course, any lawyer, whether senior or junior, has the right within limits to refuse to accept certain assignments, or to quit his job and find another one. But like many lawyers in private practice, my approach generally has been to accept matters presented to me within my areas of competence and to do the best job for my clients that I can, consistent with the law and the ethical rules that govern attorney conduct. During his confirmation process, Chief Justice Roberts put this very well: "it was my view that lawyers don't stand in the shoes of their clients, and that good lawyers can give advice and argue any side of a case. [I]t has not been my general view that I sit in judgment on clients when they come to me. I viewed that as the job of the Court when I was a lawyer. And just as someone once said, you know, it's the guilty people who really need a good lawyer, I also view that I don't evaluate whether I as a judge would agree with a particular position when somebody comes to me for what I did, which was provide legal advice and assistance . . . ."

2. In the hearing, you stated that you disagree with statements you have made in the past regarding several issues, including the tension between reliance on compassion versus the rule of law in judicial interpretation, as well as the role of morality as a foundation for federal laws and the Constitution. Do you now personally disagree with any other position you have taken in the past during representation of a client (whether as a party or as *amicus*), pro bono work, speeches or writings? Please explain in detail how and why you changed your position?

   Answer: As Chief Justice Roberts observed during his confirmation hearing, "lawyers do not subscribe as a personal matter to the views they present on behalf of clients." Rather, as he explained well, a lawyer's job is to make reasonable arguments that advance the interests of his clients, whether or not he would agree with those arguments

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if he were the judge. For that reason, like other lawyers, I have doubtless made on behalf of clients many statements that did not reflect my personal views, either because as a judge I ultimately would not have adopted that approach but felt the actual judge might do so, or because – not ever having had to decide how I actually would have ruled if I had been the judge – I never developed a personal view on the question. As Chief Justice Roberts explained, that is not a practicing lawyer's role. In certain briefs, I have presented the views of a profession (such as psychology) or trade (such as the pharmaceutical industry or booksellers) or other experts on a question of science, law or policy. When I did so, I always attempted to make clear that these were the views of those professions, trades, or experts, and not personal views. Moreover, in light of developments in the law, there are doubtless arguments I have made on behalf of clients that I would not make today. Finally, over the course of a 30-year legal career, I am sure that there are things I have said in speeches or writings that, based on further experience and thought, I would clarify, modify or qualify today or with which I would now entirely disagree. I try to keep an open mind, listen to opposing viewpoints, take into account new developments, and be prepared to learn. I view that as a strength, and I am proud that many lawyers who have served both parties, including more than a dozen former senior officials in Republican administrations, support my nomination, and that many have specifically noted those characteristics in their submissions to this Committee on my behalf. It is not practicable to survey the entire volume of my work over the past 30 years to identify all such instances, but one example, identified in a question for the record propounded by Senator Specter, is found in a Case Comment relating to the Takings Clause that I wrote twenty-nine years ago as a twenty-six year old law student. In that case, with the benefit of greater life experience and a more fully developed understanding of the law, I simply disagree with my former analysis.

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Questions of Senator Tom Coburn, M.D.
"Nomination of David Ogden to be Deputy Attorney General of the United States"
United States Senate Committee on the Judiciary
February 5, 2009

Abortion

1. Mr. Ogden, in your brief for the American Psychological Association (APA) in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, you make several points about the effect of abortion on women. As a physician, I take issue with most of the statements you have made on this topic. You wrote, "*empirical research does not support the contention that abortion is a significant risk factor for detrimental psychological effects.*"[1] In addition, you also stated that "research shows that substantial adverse emotional and psychological consequences to having an abortion are very rare."[2]

    a. In fact, there are studies from a variety of sources, including the American Journal of Psychiatry, the Canadian Psychiatric Association, Archives of General Psychiatry, Congressional testimony by experts ,and a myriad of other sources that show (1) even if women may initially experience relief, those feelings are often followed by a period of emotional "paralysis;" (2) in the first few weeks after an abortion, between 40 and 60% of women report negative reactions; (3) half of teenage abortion patients suffer worsened psychosocial functioning within 7 months after an abortion; and (4) that there are from 5-10 years of denial when a woman will repress her feelings after the trauma of an abortion.
    b. In addition, a very recent 2008 study published in the *Journal of Psychiatric Research* found that,

        > "women who have abortions are at higher risk for various mental health disorders. Overall, mental disorders among women who had abortions were 17 percent higher than among women who did not have abortions. When researchers looked at specific disorders, the increased rate among women who had abortions ranged from 44 percent higher for panic attacks and 167 percent higher for bipolar disorder."[3]

    c. In light of research available at the time you authored your brief, and what has developed in recent years, do you personally maintain the views you expressed in the brief that abortion does not cause substantial psychological consequences in women? If so, why?

    Answer: The views expressed in briefs I filed on behalf of the American Psychological Association represented the views of my client, based upon its evaluation of the empirical evidence at that time, not my personal views. In connection with the *Casey* brief (filed

[1] Planned Parenthood of Southeastern Pennsylvania v. Casey, Nos. 91-744, 91-902, Brief for Amicus Curiae American Psychological Association in Support of Petitioners, at 4 (March 6, 1992) (1992 WL 12006399).
[2] *Id.* at 20.
[3] The Elliot Institute, "New Study Links Abortion to Wide Range of Mental Health Disorders," December 11, 2008.

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almost 17 years ago) – as with the other briefs I worked on for APA – our client identified psychologists with expertise in the relevant scientific area, and asked us to rely on them to identify the empirical data and articulate the Association's consensus view about its significance. Accordingly, our role as counsel was to set forth the views of APA on the questions addressed, with the assistance of the psychologists identified by name in that brief. The briefs presented the views as those of APA, not as the personal views of counsel. With respect to many of the positions in those briefs I did not then and do not now have a personal view. I did not then and do not today maintain as my own personal views the conclusions of APA set forth in the brief.

2. In your brief for the APA in *Casey*, you state that "it is grossly misleading to tell a woman that abortion imposes possible detrimental psychological effects when the risks are negligible in most cases, when the evidence shows that she is more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant (if not greater) risks of adverse psychological effects for some women depending on their individual circumstances."

    a. What are the medical bases for your conclusion?

Answer: The quotation you reference set forth the conclusion of the American Psychological Association. As explained above, it was not my personal conclusion. The scientific bases for the APA's conclusion are cited in the brief.

    b. Please explain, specifically, your personal rationale on how ending the life of an unborn child might bring a mother feelings of "relief and happiness."

Answer: The quotation you reference set forth the conclusion of the American Psychological Association, not my personal conclusion.

    c. You portray, through this statement and others, that a woman's consideration and experience of an abortion rarely yield dire results. Yet, in 2007, "a California abortion clinic was closed down temporarily by the city due to the high death rate and health hazards. Approximately 40 to 50 women had died from abortions at the clinic." Do you personally remain supportive of your statements in light of such occurrences? If so, why?

Answer: As noted above, the statements you reference reflected the conclusions of the American Psychological Association in 1992. It was not my personal conclusion at that time or today. I am not familiar with the 2007 events to which you refer.

3. Mr. Ogden, you stated in your brief for the APA in *Casey* that: "'informed consent' provisions are harmful because they require the physician…to recite and make available a specified list of information to every woman before obtaining her consent to an abortion."[4]

[4] Casey, Nos. 91-744, 91-902, Brief for Amicus Curiae American Psychological Association in Support of

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a. Do you personally maintain this position regarding informed consent laws?

Answer: No. The position you cite with respect to the informed consent provisions at issue in *Casey* was that of the American Psychological Association in 1992 and did not represent my personal view at that time or today. APA's *Casey* brief did not oppose the concept of informed consent. Rather, it maintained that the Pennsylvania statute at issue exceeded the traditional notion of informed consent by requiring the provision of non-medical information, and it expressed APA's view that some pregnant women "prefer to consider non-medical issues affecting this personal decision in private or with relatives or friends." Br. at 19. The brief also reflected APA's view that there is "no universal set of information that is appropriate for every patient" and that in each case information should be tailored by a health care professional to an individual patient's needs. Br. at 24.

b. Could you please explain why you believe this type of information to be harmful to a woman?

Answer: As noted, the *Casey* brief presented the views of the American Psychological Association on this subject in 1992, and not my personal views then or now. It maintained that requiring a doctor to provide the specific information mandated by the Pennsylvania statute may in certain cases prove harmful. APA's reasoning for that view was set forth in the brief.

c. Your statement appears to be a blanket opposition to any type of informed consent a doctor may give to a woman seeking an abortion. Do you personally believe that informed consent is inappropriate in every situation in which a woman may seek an abortion?

Answer: No. As noted above, the views in the *Casey* brief were those of the American Psychological Association in 1992, and do not represent my personal views. The APA's brief supported the provision of informed consent but took issue with how such consent was defined in the Pennsylvania statute. As a lawyer, I personally believe that informed consent should be obtained for all medical procedures. I am not a physician or other health care professional, and therefore do not have a view as to what specific information should be afforded in particular cases or in connection with particular procedures.

d. Do you personally believe that patients should be informed about the risks associated with medical procedures such as knee replacement surgery, triple bypass surgery or other similar operations?

Answer: Yes.

Petitioners (March 6, 1992) (1992 WL 12006399).

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e. Do you personally believe patients should receive this information, even if risks such as death or paralysis may be present or the discussion of which would clearly be upsetting?

Answer: Yes.

4. In your brief for the APA in *Hartigan v. Zbaraz*, you argue that a parental notification law was an unconstitutional burden on 14-year old adolescent girls seeking an abortion. You state that "empirical studies have found few differences between minors aged 14-18 and adults in their understanding of information and their ability to think of options and consequences when asked to consider treatment-related decisions." Yet, in *Roper v. Simmons*, you also argue for the APA that juveniles "lack the capacity for rational, mature judgment and for controlling their conduct that is a predicate to infliction of the death penalty."[5] You also note that "adolescents are reckless at least in part because they do not perceive and evaluate the costs and benefits of their actions in the same way that adults do."[6]

   a. How do you juxtapose these two viewpoints? Either minors have the capacity to evaluate the consequences of their actions and make rational, mature decisions or they do not.

Answer: In the two matters, I represented different clients in cases more than 17 years apart. In *Hartigan v Zbaraz*, the brief was filed in 1987, and our client was the American Psychological Association. As counsel, we presented the views of the national association of psychologists on empirical and scientific questions with the assistance of expert psychologists identified by the Association to work with us. In *Roper*, the brief was filed in 2004, and our client was Christopher Simmons, a death row inmate who had committed a terrible crime when he was 17 years old, and for which he had been sentenced to death. In representing Mr. Simmons, we were obligated to make all reasonable arguments in his favor.

Thus, the brief in *Roper* was based on the state of science and the law more than 17 years after we presented APA's views in *Hartigan*. The *Roper* brief's first argument made clear that "research in developmental psychology and neurology *over the last 15 years* has confirmed that 16- and 17-year olds differ from adults in ways that both diminish their culpability and impair the reliability of the sentencing process." Brief at 11 (emphasis added). That new research had not existed 17 years earlier in 1987 when the APA's *Hartigan* brief was prepared. In fact, as we explained in the *Roper* brief, the magnetic resonance imaging that formed the basis for the research discussed there "was not possible until the 1990s." Br. at 16.

In addition to being based on scientific understanding a full generation apart, the legal and scientific issues addressed in the two briefs were also different in important ways.

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[5] Roper, No. 03-633, Brief for Respondent, at 15 (July 19, 2004) (2004 WL 1947812)
[6] *Id.* at 17.

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The *Roper* brief did not maintain that adolescents are incapable of knowing right from wrong or of making moral choices for which they should be held criminally responsible. The brief made clear that "juveniles' immaturity does not excuse their crimes." The brief thus agreed that minors may be held legally responsible for their decisions, just as in *Hartigan* APA had argued that adolescents can make legally binding choices. The *Roper* brief argued, however – based on recent neurological and behavioral studies, including the MRI research made possible only several years after we filed the *Hartigan* brief – that because adolescents are less able to control their impulses and cope with strong emotions, they are *less* culpable than adults and therefore should not be subjected to the ultimate penalty, which the Supreme Court has held (*Atkins v. Virginia*, 536 U.S. 304, 319 (2002)), is reserved by the law for "a narrow category" of the *most* culpable of offenders. Br. at 13, 15-24. The *Hartigan* brief seventeen years earlier had focused instead on adolescents' cognitive capacity to make decisions related to medical and psychological treatment, and argued that they should be permitted to make legally binding decisions. It did not confront the question presented in *Roper* whether, though appropriately held responsible for their choices, adolescents have sufficient culpability to be subjected to the ultimate penalty when they commit a heinous crime. Br. at 15-18.

b. In *Casey*, you argued that "early adolescence is marked by emergence of the adult's capacity to form moral principles against which to judge one's behavior and decisions, and this capacity is fully developed by ages 14-15,"[7] such that a minor understands an abortion decision. Why wouldn't this logic apply to minors charged with capital offenses?

Answer: The *Roper* brief discussed new studies based on magnetic resonance imaging – studies "not possible until the 1990s," Br. at 16 – showing that full maturation of the portion of the brain associated with impulse and emotional control and moral decision making is typically not complete until age 18. Br. at 23. The specific scientific work in question was not published until 2001. The quotation in your question is from the APA's brief in *Hartigan*, not *Casey*, and the *Hartigan* brief was presented in 1987, long before that study and before the relevant MRI technology was even available. As noted above, in our representation of Mr. Simmons, we were responsible for advancing all reasonable arguments that could be made on his behalf, based upon current case law and the current state of scientific evidence and understanding.

c. If you believe that a minor aged 14-15 has the mental and moral capacity to end a life within herself—without consent or advice from her parents—why would that same minor not also be able to judge her behavior and decisions when it comes to taking the life of another?

Answer: As I have noted elsewhere, the views advanced on behalf of the American Psychological Association in the *Hartigan* brief represented APA's views as of 1987, not my personal views. In the *Roper* brief, we tried to advance arguments that could reasonably be made on behalf of our client, Mr. Simmons, without regard to whether we personally agreed with them. I am not a psychologist or a neurologist.

[7] Casey, *supra* note 1, at 15.

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I would also note that the *Roper* brief did *not* argue that a minor is unable to judge his behavior or decisions, that minors should not be held criminally responsible for their criminal acts, or that severe punishment should not be imposed on minors who commit heinous crimes. On Mr. Simmons' behalf, the brief argued only that the imposition of the most severe punishment, the death penalty, would be unconstitutional as applied to juveniles because minors' impulse and emotional control is less developed than that of adults.

d. In both of these briefs, you gave great consideration to social science in reaching your conclusion. Yet, in these two situations, social science seems to yield very different results.

i. Do you believe that social science is reliable?

Answer: The *Roper* and *Hartigan* briefs relied on both scientific and social science evidence, and the Supreme Court has, over the years, relied on such evidence when it considers it relevant to deciding the cases before it. The Supreme Court has relied on scientific and social science evidence in cases as diverse as *Brown v. Board of Education*, 347 U.S. 483, 494 (1954) (consulting sociological studies regarding the effect of segregation on educational opportunities), *Whitcomb v. Chavis*, 403 U.S. 124, 156-57 (1971) (consulting studies regarding the degree to which different districting and voting systems can achieve minority representation), *Lemon v. Kurtzman*, 403 U.S. 602, 616 (1971) (relying on social science studies regarding the degree to which religious doctrine is taught in parochial schools), and *Maryland v. Craig*, 497 U.S. 836, 855 (1990) (relying on "the growing body of academic literature documenting the psychological trauma suffered by child abuse victims who must testify in court"). As noted above, in the 17 years between the *Hartigan* and *Roper* briefs, new scientific research had been performed using new technologies. Although I am not a scientist or social scientist, I believe that scientific and social scientific research can be useful, particularly where a large body of work suggests consistent conclusions, and where those conclusions are made relevant by the established legal framework. But scientific and social scientific conclusions are always subject to modification with the passage of time and additional study.

ii. As Deputy Attorney General, you will inevitably be called on to give your legal opinion and advice on a myriad of issues. Will you also look to social science as a basis for your conclusions? If so, how much weight will you give to it in your legal analysis?

Answer: The authority with respect to the resolution of legal matters is the law, not science or social science. Social scientific or scientific evidence may be relevant with regard to certain issues; how much weight it should be given depends on the issue and the reliability of the evidence.

5. Mr. Ogden, during the 109th Congress, both the House and Senate considered the Child Interstate Abortion Notification Act. The Senate version of this Act amends the federal

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criminal code to prohibit transporting a minor child across a state line to obtain an abortion, and deems such transporting to be a de facto abridgment of the right of a parent under any law in the minor's state of residence that requires parental involvement in the minor's abortion decision. It makes an exception for an abortion necessary to safe the life of the minor. I was a co-sponsor of this legislation.

a. Although the Senate and the House passed versions of this legislation, a final bill was not agreed upon before the end of the 109th Congress. If similar legislation passed during your tenure as Deputy Attorney General and became law, would you have any problem enforcing such a law?

Answer: If I were confirmed, I would not have any problem enforcing any law as to which a reasonable argument could be made that it is constitutional, including laws similar to the legislation you describe. I cannot address the specific legislation without having the opportunity to review the text and to consult with experts in the Justice Department.

b. If Congress scheduled hearings on proposed legislation on this topic, and you were required, as the Deputy Attorney General, to testify before Congress, how would you represent the Justice Department's position on this issue?

Answer: If I were confirmed, in such a situation I would consult with relevant Department of Justice experts in the Criminal Division, the Civil Division, and other relevant components, as well as the Attorney General, and I would represent the Department's position as developed through that process.

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Questions of Senator Tom Coburn, M.D.
"Nomination of David Ogden to be Deputy Attorney General of the United States"
United States Senate Committee on the Judiciary
February 5, 2009

Constitutional Interpretation and Federalism

1. Mr. Ogden, as Deputy Attorney General, you will have extensive power within the Department of Justice. As DAG, you will have "all the power and authority of the Attorney General, unless any such power or authority is required by law to be exercised by the Attorney General personally."[8] You will also "assist the Attorney General in formulating and implementing Department policies and programs."[9]

    a. What role will international law and the decisions of foreign courts have on your policy development at the Justice Department?

    Answer: The best interests of the people of the United States, under the Constitution and laws of the United States, should be the exclusive determinant of policy development at the Department of Justice. If I am confirmed, I will do everything I can to ensure that that is the case. International law would play a role, for example, where the United States has elected to be bound by virtue of Senate ratification of a treaty or other international agreement; it thereby becomes a part of the laws of the United States. Circumstances in a foreign country, including its laws, may be relevant to decisions about extradition, repatriation, and the like. Foreign laws may be relevant to development of international crime-fighting policy – where the United States must work with its partners to combat international crime, including terrorism and narcotics – and other forms of international cooperation on economic regulation. Beyond such situations, the decisions of foreign courts applying foreign legal precepts will not guide the development of policy at the Department of Justice.

2. Given the divergent legal systems in countries around the world, as well as societal and cultural differences, in what situations (if any) do you believe the United States should adopt the laws and values of another country?

    Answer: The United States should adopt only laws and values that are appropriate for this country. It should never adopt laws or values simply because they are those of another country.

3. Does social science play a role in the interpretation of the Constitution, or any other statute? If so, why? How significant is that role?

    Answer: Social science should not play a role in the interpretation of the Constitution. The provisions of the Constitution should be interpreted according to their text, history,

[8] Code of Federal Regulations, Title 28, Section 0.15 (2007).
[9] *Id.*

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and purpose, in light of precedent. In an appropriate case, social science may help a court apply constitutional principles in a concrete context. As I noted above, in *Maryland v. Craig*, 497 U.S. 836 (1990), for example, the Supreme Court held that a criminal defendant's Sixth Amendment right to confront witnesses was not violated by procedures that allowed for the testimony of young children to be given via remote closed circuit television rather than live in the courtroom before the jury. In reaching that conclusion, the Court considered social scientific evidence presented in a brief I submitted for the American Psychological Association documenting the potentially harmful effects on young children that could result from requiring them to appear in the courtroom where they would be confronted by their alleged abuser, particularly in situations in which they were victims of sexual abuse or had suffered other serious harms.

4. You stated in your brief for *Roper v. Simmons* that "in the 15 years since *Stanford v. Kentucky* [where the court upheld the death penalty for those under age 18], advances in the scientific understanding of adolescent development and the consistent movement by legislatures and juries away from imposition of death on juvenile offenders, have demonstrated that capital punishment of those under 18 is inconsistent with our society's evolving standards of decency. The execution of juvenile offenders...is both disproportionate to their personal moral culpability and contrary to national and worldwide consensus."[10]

    a. Could you please explain why U.S. death penalty jurisprudence, or any other area of U.S. law, should reflect the values and decisions of other countries?

Answer: In *Roper*, we argued on behalf of our client that the death penalty should be deemed to be cruel and unusual punishment in violation of the Eighth Amendment when imposed on those under the age of 18 at the time they committed their crimes. Under the test long established in Supreme Court precedent, a punishment is considered "cruel and unusual," and therefore unconstitutional, if it violates the "evolving standards of decency that mark the progress of a maturing society." *Atkins v. Virginia*, 536 U.S. 304, 312 (2002) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). In prior cases applying this "evolving standards of decency" test, the Supreme Court had considered the practices of other countries. *See, e.g.*, *Atkins*, 536 U.S. at 316 n.21; *Enmund v. Florida*, 458 U.S. 782, 796 n.22 (1982). In advocating on behalf of our client in *Roper*, we were obligated to make all reasonable arguments on his behalf that might be persuasive to any of the Justices. Drawing from Supreme Court precedent that the practices of other countries could be relevant to the "evolving standards of decency" analysis, as the final argument in a lengthy brief, we demonstrated that the juvenile death penalty was rare throughout the world, as we had previously shown it was rare within the United States. These arguments were not based on my personal views or those of my co-counsel, which were irrelevant to the Supreme Court. They were based on the Court's own precedent. And the Court cited the international evidence in ruling in favor of our client. *See Roper v. Simmons*, 543 U.S. 551, 575 (2005).

[10] Roper v. Simmons, Brief for Respondent, at 10 (July 10, 2004) (2004 WL 1947812).

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b. In your brief, you cite, as support, the Convention on the Rights of the Child (CRC), which bars capital punishment for those under age 18. Yet, the United States has not even ratified the CRC. So, how do the policies in the CRC support your argument for U.S. death penalty jurisprudence? Doesn't the decision of the Senate and the President not to ratify the CRC suggest that the U.S. either doesn't agree with the CRC or that we have not, in fact, established a national consensus on this issue?

Answer: The *Roper* brief cited the CRC as one piece of evidence relevant to applying the "evolving standards of decency" standard. In the brief, we specifically noted that the United States and Somalia were the only two countries in the world that had not ratified the CRC, so the Justices of the Court knew it had not been ratified by the Senate and could decide on the Convention's relevance or lack thereof in light of that fact. I agree with you that the conclusions you suggest – that the U.S. either doesn't agree with the CRC or has not established a national consensus – are possible ones the Court could have drawn. We cited it because we had a duty to our client to identify evidence that, consistent with the Court's prior precedent, might persuade any Justice that the Court's test for violations of the Eighth Amendment was met. I would note that the Court cited the CRC in its analysis when ruling in favor of our client. *See Roper v. Simmons,* 543 U.S. 551, 576 (2005).

5. In Madison's Federalist No. 45, he states that "the powers delegated...to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." You seemed to recognize this important concept in your brief in *Gonzales v. Oregon* when you stated "[t]o stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. *It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.*"[11]

Yet, in *Roper*, you argue in your brief that there is a "national consensus" regarding the death penalty, despite states having had different standards of application.

a. Please give examples of other areas in which there has developed a "national consensus" that would lead you to believe that state prerogatives should be overridden.

Answer: The *Oregon v. Gonzalez* brief, like the others you have asked about, was submitted to present the views of my clients, and not my personal views. In that case, my clients were law professors with special expertise in matters of statutory interpretation. In my personal opinion, the principles of federalism are critical to preserving our system

[11] Gonzales v. Oregon, Brief for Professors of Law Richard Briffault, William N. Eskridge, Jr., Philip P. Frickey, Elizabeth Garrett, Jerry L. Mashaw, Edward Rubin, David L. Shapiro, Peter L. Strauss, and Ernest A. Young as Amici Curiae Supporting Respondents, at 24 (July 18, 2005) (2005 WL 1707466).

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of government and to the vitality of our country. As you note, the federal government and the Constitution establish certain national requirements, and beyond them the States are free to develop their own policies and rules. Situations in which the existence of a "national consensus" would restrict state prerogatives are a matter of constitutional law and I believe that they are rare, occurring only when that national consensus is reflected in an applicable constitutional norm or a federal statute, which as a constitutional matter is the supreme law of the land. The Supreme Court's Eighth Amendment jurisprudence, which applies an "evolving standards of decency" test, is one of those rare examples. As noted above, the Supreme Court has examined the practices of the several states in applying this test.

6. What theory of Constitutional interpretation do you believe is appropriate? In your role as Deputy Attorney General, will you use that theory to evaluate cases and determine whether they are appropriate for prosecution?

Answer: I do not have a single overarching theory of constitutional interpretation. My approach to issues of constitutional law is similar to the one Chief Justice Roberts described in his confirmation hearing. I begin with the Constitution's text and the precedent interpreting it, and in applying it take into account the particular factual and policy context. If confirmed I would of course consult as appropriate with those in the Department of Justice who have expertise regarding a particular constitutional issue.

7. At the hearing, you expressed that you no longer aligned yourself with statements you have made in the past about the role morality plays in our laws.

    a. Do you now personally believe there is an intersection between morality and the law? In other words, does morality have a role in the interpretation of the Constitution, federal laws or statutes? Why or why not?

Answer: I believe that there is an intersection between morality and the law. Duly enacted laws typically prohibit conduct the majority believes to be wrong, and often the majority's judgment will be based on considerations of morality. On the other hand, a judge's or government official's *personal* notions of morality should not play a role in his or her interpretation of the Constitution, federal laws or statutes. The Constitution and laws of the United States should be interpreted according to their text, history, and purpose, in light of precedent and other relevant considerations—which should not include the personal views of a judge or other government official.

8. The DAG also "coordinates[s] and control[s] the Department's reaction to civil disturbances and terrorism."

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a. Will international law and the decisions of foreign courts play a different or more authoritative role in your decisions affecting counterterrorism policy or sentencing of prisoners held at Guantanamo Bay? If so, how?

Answer: In my view, international law should play an authoritative role only to the extent it has become part of the domestic law of the United States by virtue of binding obligations reflected in treaties or other international agreements that the United States has duly ratified. Otherwise, international law and decisions of foreign courts will not play any authoritative role. As noted above, there may be situations in which foreign law or the decisions of foreign courts may affect our government's decision making. For example, if a foreign country's law or judicial decisions make clear that it will not detain a person the United States considers dangerous, that would likely affect the decision whether to repatriate that person to the country in question

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Questions of Senator Tom Coburn, M.D.
"Nomination of David Ogden to be Deputy Attorney General of the United States"
United States Senate Committee on the Judiciary
February 5, 2009

Death Penalty

1. Do you support the death penalty? If so, in what circumstances is it appropriate?

   Answer: I support administration of the federal death penalty in a manner that is consistent with federal law. The death penalty is appropriate in situations in which the law authorizes its imposition and a jury or judge imposes it after a fair trial.

2. In your brief for *Roper*, you state that "individualized sentencing cannot be expected to sort mature from immature juvenile offenders, because the very qualities that make 16- and 17-year-olds, as a class, less culpable also make individualized sentencing of juvenile offenders inherently unreliable."

   a. Do you believe that juries are not capable of weighing all the facts—including youth—in the evaluation of the death penalty as a punishment?

   Answer: I believe that juries are generally capable of weighing all the facts when evaluating whether death is an appropriate punishment for murder. In the brief in *Roper*, we made a very narrow argument for our client with respect to the special circumstances of a youthful offender, specifically, that with any juvenile offender there is a significant likelihood that there will be physical and emotional maturation between the time of the offense and the time of trial, which can be as long as two years after commission of the crime. In attempting to determine the defendant's maturity at the time of the *crime* – which would be the timeframe relevant to his culpability – we argued that the jury would be handicapped because the defendant in the courtroom would inevitably be more mature than he was at the time of the crime. This concern is not present in cases involving adults. As noted above, the brief contained arguments we thought might tend to persuade any Justice to support our client's legal position, and did not necessarily reflect my personal views.

   b. Would not some minors actually show enough maturity to make a difficult moral decision, such as whether to commit a crime like murder?

   Answer: Yes. Some minors certainly can show enough maturity to make difficult moral decisions, and the law appropriately holds those minors responsible for their actions. For a serious crime such as a pre-meditated murder, minors are subject to criminal punishment as severe as life imprisonment without the possibility of parole.

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3. In your brief, you recount the facts of *Roper*. On several occasions, the minor, Simmons, as well as other witnesses testified that Simmons told them of his plans to burglarize the home or to murder the occupants or both. Even if an individualized sentencing structure was not appropriate for juvenile sentencing, shouldn't these types of facts be considered by a jury in determining whether the juvenile pre-meditated the crime?

Answer: Yes.

c. Do you believe that pre-meditated murder warrants a death sentence?

Answer: Federal law recognizes that pre-meditated murder can warrant a death sentence.

d. Isn't it true that, even if it is possible that juveniles, as a class, are less culpable than adults, they are still able to execute a pre-meditated crime such as murder?

Answer: Yes.

e. If so, why wouldn't that crime deserve the punishment of death, as it would for an adult offender?

Answer: The Supreme Court concluded in *Roper* that although juveniles may have the ability to make reasoned moral choices and therefore may be subject to extremely serious penalties (including life imprisonment) when they commit serious crimes, they differ from adults in that they often lack full impulse control and emotional maturity, they are more susceptible to negative influences and outside pressures, and their character is "more transitory and less fixed." *See Roper v. Simmons*, 543 U.S. 551, 569 (2005). For these and other reasons, the Court held that juveniles should not be subjected to society's ultimate punishment.

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Questions of Senator Tom Coburn, M.D.
"Nomination of David Ogden to be Deputy Attorney General of the United States"
United States Senate Committee on the Judiciary
February 5, 2009

Obscenity and the First Amendment

1. Mr. Ogden, the Department of Justice is responsible for enforcing our nation's obscenity and child exploitation laws. Indeed, one of the things former Attorney General Alberto Gonzales undoubtedly got right was establishing the Department's Project Safe Childhood (PSC) initiative to protect children from online exploitation and abuse. During your career in private practice, you have litigated to repeal many laws Project Safe Childhood enforces, such as the Children's Internet Protection Act, the Child Protection and Obscenity Enforcement Act and the Child Protection Restoration and Penalties Enhancement Act.

    a. Will you enforce the Children's Internet Protection Act (CIPA)? Will you seek to make changes in the way CIPA is enforced? If so, how?
    b. Will you enforce the Child Protection and Obscenity Enforcement Act of 1988? Will you seek to make changes in the way this Act is enforced? If so, how?
    c. Will you enforce the Child Protection Restoration and Penalties Enhancement Act of 1990? Will you seek to make changes in the way this Act is enforced? If so, how?

    Answer: If confirmed, I will support enforcement of these three statutes. I am not familiar with the way they are presently enforced, and have no plans to recommend changes in that regard. If confirmed, in this area I would expect to consult with the relevant components, here the Criminal Division and Child Exploitation and Obscenity Section; the FBI; and any other components with relevant expertise, before making recommendations, if any, with respect to changes.

2. In a press conference last May concerning Project Safe Childhood (PSC), Deputy Attorney General Mark Filip stated, "[a]s long as there are predators out there acting on their perverse fantasies, creating and trading in these videos and photos, we will not relent. These cases will continue to be a priority for the Department of Justice -- we want these people to know that we are going after them and that they will pay a high price for their crimes."[12]

    a. Given your history of involvement in promoting the interests of groups such as Playboy and Penthouse, will that affect the priority you assign to increasing DOJ's efforts to fight issues such as on and offline child exploitation?

[12] Remarks Prepared for Delivery by Deputy Attorney General Mark R. Filip at the Project Safe Childhood Press Conference in Lexington, Kentucky, Wednesday, May 7, 2008 available at www.usdoj.gov.

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Answer: No. I have a record of representing and furthering the interests of the United States, as a public official, without regard to the interests or positions of entities that had been clients in private practice. The litigation I handled for the clients you specify preceded my government service. Subsequent to those representations I forcefully defended the laws against child pornography and child exploitation as Assistant Attorney General (my tenure was 1999-2001). Also subsequent to those representations, as set forth in the letter supporting my nomination from the National Center for Missing and Exploited Children (NCMEC), I worked constructively with NCMEC on these issues during my tenure as Chief of Staff and Counselor to Attorney General (1997-1999). I am proud to have NCMEC's support. Similarly, although I had filed briefs for the American Psychological Association opposing the Department of Defense's homosexual discharge policy in the 1980s, at DoD I worked closely with military attorneys to defend the Don't Ask Don't Tell policy enacted by Congress in 1993. I am proud that no fewer than 12 Generals and Admirals who ran the Judge Advocate General's Corps, based on that close collaboration, support me as "a person of wisdom, fairness and integrity, a public servant vigilant to protect the national security of the United States, and a civilian official who values the perspective of uniformed lawyers in matters within their particular expertise." Consistent with this strong and consistent record, if confirmed, I will vigorously represent the interests of the United States without regard to the interests of any of my past clients from private practice.

b. If an actual conflict or an issue conflict arises with respect to your duties to enforce the laws and positions you have taken in prior litigation, do you pledge to recuse yourself and designate—where possible—an appropriate Criminal Division attorney in your stead?

Answer: If a conflict arises, I will consult with Department of Justice ethics officers to determine whether my recusal is required. In the unlikely event that my recusal is necessary, I will ensure that an appropriate Department official is assigned to oversee that particular matter so that the Department's efforts are not adversely affected.

3. Mr. Ogden, last year I participated in legislation targeted at combating child exploitation and enhancing enforcement of child exploitation laws. The SAFE Act "imposes enhanced criminal penalties for use of the Internet to violate child pornography or sexual exploitation laws." It also "expands the reporting requirements of electronic communication and remote computing service providers with respect to apparent violations of child sexual exploitation and pornography laws."

a. If confirmed as DAG, will you have any problem vigorously enforcing laws such as the SAFE Act?

Answer: No.

4. Mr. Ogden, you have advocated that 14-year-old girls have the maturity and capability of adults, such that they are perfectly capable of making a decision regarding whether to

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have an abortion. On the other hand, you have argued that 16- and 17-year-olds do not have the capacity for rational, mature judgment, nor the ability to control conduct that might lead to the death penalty.

a. Which argument do you apply to juveniles that may be solicited by pornography producers to participate in their publications?

Answer: As noted above, my briefs in *Hartigan* and *Roper* were filed on behalf of different clients 17 years apart, and did not in any event represent my personal views. With regard to pornography producers who solicit juveniles to participate in their publications, the law is clear: such conduct is a serious federal crime, and rightly so. *See* 18 U.S.C. § 2251.

b. Do you believe that pornography distributors should be required to verify that participants are over the age of 18?

Answer: Federal law requires that pornography producers must maintain records that include, *inter alia*, the date of birth of participants. *See* 18 U.S.C. § 2257. I believe that that is appropriate and am fully prepared to enforce that law. As I understand it, the law expressly does not include "activities that are limited to . . . distribution." *Id.* § 2257(h)(2)(B). I look forward to consulting with experts in the Department of Justice with regard to the efficacy of this and other laws aimed at protecting children.

5. Mr. Ogden, during the Clinton Administration Attorney General Janet Reno overruled the decision of the Solicitor General not to prosecute a defendant in the 1993 case of *Knox v. United States*. The solicitor general decided that on appeal to the Supreme Court, he was not going to uphold the government's successful prosecution of a man, Stephen Knox, who had purchased child pornography. Reno reversed this, stating that the Justice Department will seek to punish child pornographers "to the maximum extent possible." She also personally signed a brief stating that the defendant was properly convicted. Further, in late 1993, President Clinton instructed the Justice Department to "aggressively attack the scourge of child pornography," to seek new laws if necessary and to review the *Knox* case.

However, you filed a brief on behalf of several groups, including the ACLU, in support of Knox. In your brief, you stated that "permitting punishment for non-nude depictions of minors raises serious practical and constitutional concerns, and the risk of ruinous prosecutions, for the mainstream amici before this Court."[13] You also stated that "by not prohibiting simple nudity, the federal statute, like other state counterparts, would allow producers ample room to express an idea, convey a message or tell a story about the sexual conduct of children."[14]

[13] Knox v. United States, Brief for Amici Curiae in Support of Petitioner, No. 92-1183, at 8 (1993 U.S. Briefs 1183) (August 4, 1993).
[14] *Id.* at 20-21.

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Clearly, the Justice Department can make decisions affecting case law in the area of child pornography, request or decline to prosecute certain cases, as well as establish new laws and policies regarding prosecution of child pornographers.

a. Do you agree with President Clinton and Attorney General Reno's decision to "aggressively attack the scourge of child pornography," and punish child pornographers "to the maximum extent possible?"

Answer: Yes.

b. As the Number 2 official in the Justice Department, do you believe you could be called on to give advice in setting Justice Department policies regarding the official position of the Department on child pornography? If so, how will your position on *Knox*, the specific case that caused the Clinton Justice Department to step up its efforts against child pornography, affect your policy advice? If not, why not?

Answer: The amicus brief that we filed in *Knox* in 1993 would not in any way affect any policy advice I might give today as a government official. That brief reflected the views of my clients – including national associations of librarians, booksellers, artists, and periodical publishers – and not my personal views. I believe that child pornography is abhorrent and that its perpetrators can and should be prosecuted and incarcerated. Indeed, during my prior service in Department of Justice, as Assistant Attorney General for the Civil Division, I vigorously defended child pornography statutes – the Child Pornography Prevention Act of 1996 and Child Online Protection Act of 1998 – against challenges brought by some of the very clients on whose behalf I had earlier filed the *Knox* brief.

c. Do you believe you could be called on to give advice on whether the Justice Department should prosecute certain cases? If so, how will you advise the Attorney General and/or Solicitor General on cases and policies affecting child pornography? How will your position on *Knox*, the specific case that caused the Clinton Justice Department to step up its efforts against child pornography, affect your advice? If not, why not?

Answer: For the reasons stated above, the amicus brief that I submitted for librarians, booksellers, artists and publishers associations in *Knox* in 1993 would not affect my advice today as a government official in any way. In this area, as in all others, if confirmed I would consult with the relevant personnel in the Department responsible for enforcement and related considerations before formulating any advice. I favor vigorous enforcement of the laws against child pornography and exploitation of children.

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6. You stated in the hearing that child pornography laws are important, child exploitation is abhorrent and children deserve protection. You also drew a distinction between minors and adults, with respect to obscenity issues. Please further explain this distinction.

Answer: The Supreme Court has held that the government may prohibit the sale to minors of materials defined to be obscene for (or harmful to) minors, regardless of whether such material would be obscene for adults. *See Ginsburg v. New York*, 390 U.S. 629 (1968). Unless those materials are also obscene (or otherwise unlawful) as to adults, however, adults have a constitutional right to obtain them if they so choose. In addition, it is always unlawful under the child pornography laws to produce sexually explicit materials that involve minors, whereas the production of such materials involving only adults is unlawful, as a general matter, only if the material is obscene or otherwise contrary to law. *See New York v. Ferber*, 458 U.S. 747 (1982).

a. Do you personally believe that adult obscenity contributes to the sexual exploitation of children in any way? Why or why not?

Answer: I have not studied this issue and therefore do not have a personal belief.

b. Do you personally believe that adult obscenity contributes to the demand for prostitutes, and/or women and children who are trafficked into prostitution?

Answer: I have not studied this issue and therefore do not have a personal belief.

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Questions of Senator Tom Coburn, M.D.
"Nomination of David Ogden to be Deputy Attorney General of the United States"
United States Senate Committee on the Judiciary
February 5, 2009

Sexual Orientation

1. The Defense of Marriage Act (DOMA) amends the Federal judicial code to provide that no State, territory, or possession of the United States or Indian tribe shall be required to give effect to any marriage between persons of the same sex under the laws of any other such jurisdiction or to any right or claim arising from such relationship. It also establishes a Federal definition of: (1) "marriage" as only a legal union between one man and one woman as husband and wife; and (2) "spouse" as only a person of the opposite sex who is a husband or wife.

   DOMA passed in 1996 with 342 votes in the House and 85 in the Senate. It was co-sponsored by at least 13 Democrats, and signed into law by President Clinton. It clearly had bi-partisan support

   a. You have defended homosexuality as a "normal form of human sexuality...[which] is simply one normal variant of sexual identity."[15] In light of this and other positions you have advocated, as Deputy Attorney General, will you be able to enforce DOMA effectively?

   Answer: As a general matter, it is appropriate for the Department of Justice to enforce any law for which a reasonable argument can be made that it is constitutional. Under that standard, I would expect to be able to enforce DOMA.

2. Do you personally believe there is a federal Constitutional right to same-sex marriage? Why or why not?

   Answer: I have not studied this issue and therefore have not developed a personal view as to whether there is a constitutional right to same-sex marriage.

[15] Lawrence v. Texas, No. 02-102, Brief for Amici Curiae American Psychological Association, American Psychiatric Association, national Association of Social Workers and Texas chapter of the national Association of Social Workers in Support of Petitioners, at 1-2 (January 16, 2003) (2003 WL 152338).

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Questions from Senator Cornyn

1. Do you believe that the Supreme Court's decision in *Boumediene v. Bush*, which conferred constitutional habeas rights on aliens detained as enemy combatants at Guantanamo, was correctly decided?

Answer: I understand the Supreme Court's decision in *Boumediene v. Bush* to be the law of the land. I have not independently studied the underlying legal authorities, and thus do not have a personal view as to whether it was correctly decided.

2. Do you believe that the Supreme Court's decision in *Lee v. Weisman*, which held that a nonsectarian invocation at a public school graduation violated the Establishment Clause, was correctly decided?

Answer: I understand the Supreme Court's decision in *Lee v. Weisman* to be the law of the land. I have not studied the decision or made an independent study of the underlying legal authorities, and thus do not have a personal view as to whether it was correctly decided.

3. Do you believe that the Supreme Court's decision in *Zelman v. Simmons-Harris*, which ruled that school-choice programs that include religious schools don't violate the Establishment Clause, was correctly decided?

Answer: I understand the Supreme Court's decision in *Zelman v. Simmons-Harris* to be the law of the land. I have not studied the decision or made an independent study of the underlying legal authorities, and thus do not have a personal view as to whether it was correctly decided.

4. In *Kennedy v. Louisiana*, a case in which the Supreme Court ultimately struck down a Louisiana statute that allowed the death penalty for the aggravated rape of a child, a group of former law lords of the United Kingdom submitted an amicus brief. This brief cited the American Convention on Human Rights and statements of the United Nations Commission on Human Rights, the Inter-American Court of Human Rights, and the Inter-American Commission on Human Rights to argue that international law required that nations that retain the death penalty may not extend the death penalty to crimes to which it does not presently apply.

    a. Do you believe that international law forbids federal and state governments from broadening the application of the death penalty? Please explain your answer.

Answer: I have not studied the authorities relied upon in this amicus brief, and thus am not in a position to address the specific arguments advanced there. As a general matter, I understand that international law is binding on the United States to the extent it is embodied in treaties or other international agreements that have been duly ratified and thus have become the domestic law of this country. I also know that in the context of the Eighth Amendment's cruel and unusual punishments clause, Justices of the Supreme Court have on occasion looked to the practices of other countries as one guide to decision. But so far as I am aware neither a ratified treaty nor any other Eighth Amendment consideration compels the result suggested in your question.

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Written Questions of Senator Chuck Grassley to David Ogden to be Deputy Attorney General, U.S. Department of Justice

OBSCENITY PROSECUTIONS

If you are confirmed, given your extensive private law experience litigating obscenity and First Amendment cases, your legal opinions will greatly influence the Attorney General and the Justice Department's policies regarding the investigation, enforcement and prosecution of obscenity laws.

1. I think everyone would agree that protecting children and families from obscenity is a worthwhile objective. Do you concur that the Justice Department must continue to aggressively pursue criminal and civil litigation against those who violate federal obscenity laws? Why or why not?

   Answer: I entirely agree that protecting children and families from obscenity is a worthwhile objective. I concur that the Justice Department must continue to aggressively pursue criminal and civil litigation against those who violate federal laws, including obscenity laws.

   During my prior government service, as Assistant Attorney General for the Civil Division, I vigorously defended laws that protect children and families from obscene material. I led the constitutional defense of the Child Pornography Prevention Act of 1996 (CPPA), which expanded the ban on child pornography to cover virtual child pornography—sexually explicit images that appear to depict minors but were produced without using any real children, often using computer-generated imagery. The government's petition for certiorari that I submitted argued that the act "constitutionally advance[s] the government's compelling interest in the 'prevention of sexual exploitation and abuse of children.'" *Reno v. Free Speech Coalition*, No. 00-795, Petition for a Writ of Certiorari (November 16, 2000), at 12 (quoting *New York v. Ferber*, 458 U.S. 747, 757 (1982)). I also defended the Child Online Protection Act of 1998 (COPA), which aimed to protect children from harmful material on the Internet by requiring purveyors of prurient materials on the Internet to restrict their sites from access by minors.

   I respectfully note that the private law experience to which you refer in your initial comment largely preceded my period of government service, and thus dates from before 1994, or more than 15 years ago. As my career has developed, I have viewed myself as a generalist in the law, not as a specialist in any particular area. In the government from 1994-2001, I handled the full range of legal issues confronted by the United States. An important part of that work included the First Amendment litigation defending the federal anti-pornography statutes referenced above, but I also devoted my efforts to matters in a great many other fields, encompassing virtually the entire range of subject matter addressed in the government's civil and criminal litigation. At WilmerHale over the past eight

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years (2001-2009), I have not specialized in First Amendment matters. I have represented clients in a range of industries, including transportation (*e.g.* Amtrak, Lufthansa); insurance and financial institutions (*e.g.* Citibank, Fireman's Fund); petrochemicals (e.g., Shell and BP); and pharmaceuticals (e.g., PhRMA and Merck), in a broad range of legal contexts including antitrust, enforcement of foreign judgments and other international litigation, international arbitration, preemption, Commerce Clause litigation, lending discrimination matters, commercial disputes, federal investigations, and the False Claims Act.

2. Will you commit to seeing that obscenity prosecutions remain a top priority at the Justice Department?

   Answer: Yes. If I am confirmed, I will recommend that protecting children and families should be a top priority, including through the prosecution of those who violate federal obscenity laws, and expect that this will be the case.

3. Do you support the ongoing efforts of the Obscenity Prosecution Task Force? Why or why not? If confirmed, do you plan to recommend disbanding this task force?

   Answer: I support making efficient and effective use of the Department's resources to prosecute the crimes that threaten children and families. I am not specifically familiar with the work of the Obscenity Prosecution Task Force. If I am confirmed, I will confer with career professionals in the Department's relevant components, including the Criminal Division and its Child Exploitation and Obscenity Section, with state and local law enforcement, and with child advocacy organizations such as the National Center for Missing and Exploited Children, to ensure that the Department takes appropriate steps to protect children and families.

4. Do you believe that the Justice Department has adequate tools to effectively combat obscenity and child exploitation? Do you believe that further legislation is necessary to protect our children?

   Answer: I am not currently aware of shortcomings in the federal laws prohibiting obscenity, child pornography, and child exploitation. If I am confirmed, I will work closely with the career professionals in the Department, with state and local law enforcement, and with child advocacy organizations such as the National Center for Missing and Exploited Children and if shortcomings are identified, I will support efforts to address them.

You submitted an amicus brief in the 1993 case of *Knox v. United States*.

1. In your opinion, does the First Amendment permit prosecution for child pornography under the facts as presented in that case? Why or why not?

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Answer: Yes, and following the Third Circuit's ruling in *Knox* I understand that to be the law of the land.

2. If you are confirmed, would you endorse a more expansive definition of child pornography than you did in the brief you authored in the *Knox* case?

Answer: Yes. I would support the definition adopted by the Third Circuit in *Knox*.

In which, if any, of the following cases did you serve as pro bono counsel?

Answer: I worked on many of the cases cited below when I was a younger attorney, and did not have primary responsibility for accepting the representation as an initial matter, or for the terms of the representation (i.e., whether paid or pro bono). A number of them were before 1994 when I entered government service, and at a different law firm. In some cases, I cannot be certain of the terms of the representation, but have made my best guess. To the best of my recollection and belief, only the three cases in bold and underlined below involved pro bono representation.

Hartigan v. Zbaraz, 484 U.S. 171 (1987)
Casey v. Planned Parenthood of S.E. Pennsylvania, 505 U.S. 833 (1992),
Rust v. Sullivan, 500 U.S. 173 (1990),
Scheidler v. National Organization for Women, 537 U.S. 393 (2003),
Gonzales v. Oregon, 546 U.S. 243 (2006),
Lawrence v. Texas, 539 U.S. 558 (2003),
Bowers v. Hardwick, 478 U.S. 186 (1986),
Watkins v. United States Army, 875 F.2d 699 (9th Cir. 1989),
Commonwealth v. Wasson, 842 S.W.2d 487 (Ky. 1992),
State v. Schochet, 580 A.2d 176 (1990)
Minnesota v. Gray, 413 N.W.2d 107 (Mn. 1987),
State v. Stover, 350 S.E.2d 577 (Ga. 1986),
United States v. American Library Association, 539 U.S. 194 (2003),
American Library Association v. Thornburgh, 713 F.Supp. 469, 477 (D.D.C. 1989),
American Library Association v. Barr, 794 F. Supp. 412 (D.D.C. 1992),
American Library Association v. Reno, 33 F.3d 78 (D.C. 1994) and 47 F.3d 1215 (D.C. 1995),
American Council for the Blind v. Boorstin, 644 F.Supp. 811 (1986),
Playboy Enterprises, Inc. v. Meese, 746 F.Supp. 154 (D.D.C. 1990).
P.H.E., Inc., v. United States Department of Justice, 743 F.Supp. 15 (D.D.C. 1990),
United States v. P.H.E., Inc., 965 F.2d 848 (10th Cir. 1992),
Roe v. Meese, 689 F. Supp. 344 (1988),
Playboy v. Public Service Commission, 698 F. Supp. 401 (D.P.R. 1988) and 906 F.2d 25 (1st Cir. 1990).
Johnson v. County of Los Angeles, 865 F. Supp. 1430 (Cent.Ca. 1994),
Knox v. United States, 510 U.S. 375 (1993),

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Fort Wayne Books, Inc. *v. Indiana*, 489 U.S. 46 (1989),
Virginia v. American Booksellers Association, 484 U.S. 383 (1988),
Pope v. Illinois, 481 U.S. 497 (1987),
Meese v. Keene, 481 U.S. 465 (1987),

SUPREME COURT DECISION IN *HELLER*

This past year, the U.S. Supreme Court held in the *Heller* case that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." President-elect Obama stated that he supported an individual's right to possess a firearm and signaled his support for the *Heller* decision.

1. What is your personal opinion of the rights afforded by the Second Amendment?

   Answer: I have not had an occasion to litigate Second Amendment cases and I have not studied the matter. I understand *Heller* to recognize an individual right to bear arms. I view that as the law of the land and of course would uphold and enforce that right as articulated by the Supreme Court.

2. What is your personal opinion of the *Heller* case?

   Answer: See my response to 1, above.

3. If you are confirmed, will you commit to protect an individual's right to possess a firearm? If so, how?

   Answer: Yes. I will work to ensure that the requirements of the Second Amendment, as interpreted in *Heller* and succeeding decisions, are respected in the policy, litigation, and enforcement decisions of the Department of Justice.

CONGRESSIONAL OVERSIGHT

1. If confirmed, will you pledge to be responsive to all Congressional requests for information in a timely manner? Including requests for documents and witnesses for interviews?

Answer: Yes.

2. Will you work to ensure that responses are not held up due to lengthy "clearance" processes at subordinate agencies such as the FBI?

Answer: Yes.

OLC OPINION ON RANKING MEMBER ACCESS TO DOCUMENTS AND INFORMATION

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On December 5, 2001, the Office of Legal Counsel (OLC) issued a Letter Opinion to the General Counsel at the Department of the Treasury. The Opinion titled "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members," concludes that the Privacy Act "prohibits the disclosure of Privacy Act-protected information to the ranking minority member" of a congressional committee of jurisdiction that requests information from a Federal agency. The Opinion reached this conclusion despite the fact that the Privacy Act allows disclosures, "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." Nowhere in the statute does it define "committee" to mean only the Chairman and not the Ranking Member. Despite the plain language and the court interpretations to the contrary, this Opinion is used as a shield to prevent disclosure of information to Ranking Members.

1. Do you support the position taken by DOJ in this OLC Opinion?

Answer: I agree with the Attorney General's view of this matter. Like him, I fully respect Congress's important constitutional role, and if I am confirmed I will work to ensure that the Department operates in a manner consistent with Congress's legitimate oversight authority.

2. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

Answer: I agree with the Attorney General's view of this matter. Like him, I strongly believe in transparency and that the Department should, to the extent possible, cooperate with Congress and its members in the exercise of legislative oversight. As he also said, there may be occasions on which the executive branch must keep information confidential, as the courts have recognized.

3. In your opinion, couldn't the wording of the Privacy Act that allows disclosure "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof" be construed to allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

Answer: I have not had the opportunity to study the Privacy Act precedents and form an opinion as to whether it allows disclosure to particular members of Congress. Like the Attorney General, I believe that it is important for the Department to work with members of Congress to ensure legitimate and effective legislative oversight.

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4. Will you pledge to work with Ranking Minority Members of Committees on any oversight request, regardless of the OLC Letter Opinion?

Answer: Yes, I pledge to work with Ranking Minority Members of Committees on any oversight request.

FALSE CLAIMS ACT

1. If you are confirmed, will you vigorously enforce the False Claims Act?

Answer: Yes. I view the False Claims Act as a critically important tool for identifying fraud against the United States, recovering federal funds, and protecting the public fisc. I vigorously enforced the False Claims Act during my tenure as Assistant Attorney General of the Civil Division.

Given that commitment, I am gratified that in 2000, leading relators' counsel strongly supported my nomination to serve as Assistant Attorney General. In a letter to you, Senator Grassley, dated February 25, 2000, those ten counsel stated:

> "It is our firm belief, without qualification, that David Ogden, while serving as Acting Assistant Attorney General for the Civil Division, has effectively and enthusiastically implemented your *qui tam* amendments. . . . Whatever the outcome of any particular matter may have been, we all agree that the consideration we receive from Mr. Ogden is fair and unbiased. . . . We firmly believe that under David Ogden's leadership, the Department of Justice has now fully embraced the Congressional policy underlying the *qui tam* amendments."

I am also proud today to have the support of John Phillips, senior partner in the leading firm Phillips & Cohen. In a letter to you dated February 2, 2009, and enclosing the earlier letter from relators' counsel, Mr. Phillips states

> "I have had the opportunity to work with every Assistant Attorney General for the Civil Division dating back to 1986, the year the False Claims Act (Qui tam) amendment you sponsored was signed into law by President Reagan. I can report without qualification that David Ogden has more faithfully and effectively implemented your amendments than anyone else who has served in that position. He was always open and accessible to the whistleblower and their counsel when any problems arose. He made the bureaucracy work in ways I have rarely seen in my forty years of practicing law."

For your convenience, I am attaching this correspondence.

2. Will you oppose efforts by industry groups, including the health care industry and the defense industry, to weaken the False Claims Act and the *qui tam* provisions

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of the Act?

Answer: I will oppose efforts to weaken the False Claims Act and the *qui tam* provisions.

3. Do you have any question as to the constitutionality of the False Claims Act and its *qui tam* provisions?

Answer: No. I believe those provisions to be constitutional. While I served as Assistant Attorney General for the Civil Division, a three-judge panel of the Fifth Circuit struck down the *qui tam* provisions as violating the "Take Care" Clause and the separation of powers. *Riley v. St. Luke's Episcopal Hospital*, 196 F.3d 514 (5th Cir. 1999). I believed that defense of the *qui tam* provisions was extremely important. Consequently, I decided personally to argue the case before the Fifth Circuit en banc, and won a reversal sustaining the law. *Riley v. St. Luke's Episcopal Hospital*, 252 F.3d 749 (5th Cir. 2001). I have cited this case in my Committee questionnaire as one of the ten most significant cases I have litigated.

4. Do you anticipate any decrease in the budget for the Justice Department's Commercial Litigation section which is responsible for false claims prosecutions? In previous years, the Justice Department has specifically requested litigation support funds, including funding for accounting experts, for pending false claims cases. Are you committed to securing the funding necessary to successfully litigate False Claims Act cases?

Answer: I am committed to working with Congress to ensure that the Commercial Litigation Section has the funding, including litigation support funds, sufficient to successfully litigate False Claims Act cases, protect the public fisc, and deter fraud.

5. Will you support efforts to utilize the False Claims Act to recover government money lost to fraud or abuse of government bailout funds, including but not limited to funds expended under the Troubled Asset Relief Program and other direct infusions of Government money used to prop up the balance sheets of various financial institutions across the country? Why or why not?

Answer: Yes. I will support efforts to enforce the False Claims Act, consistent with its terms, to recover government money lost to fraud or abuse during the implementation of any program. The TARP and other economic recovery efforts must be vigilantly protected from fraud in order to protect the public fisc and ensure the integrity of these vital programs.

6. Recently, a lawsuit was filed alleging that the seal provision of the False Claims Act, codified at 31 U.S.C § 3730(b)(2), is unconstitutional. That provision requires that False Claims Act cases by *qui tam* relators be filed in camera and

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remain under seal for at least 60 days, and not be served upon the defendant until the court orders. This provision was designed to give the Government ample time to investigate an allegation before making the case public, while protecting evidence and the whistleblowers from undue harm or influence. The other benefit of the seal provision is that it allows frivolous complaints to remain under seal without causing harm to a defendant. In the past, I've been a critic of prolonged extensions of the seal. I believe the Justice Department should use the seal judiciously and not abuse its discretion. I also believe some transparency on the part of the Department would go a long way to dispelling questions about the seal. That said, I think the seal does a lot of good, especially in protecting whistleblowers against retaliation. Do you believe the seal provision of the False Claims Act is unconstitutional? Why or why not?

Answer: I agree that the provision allowing False Claims Act cases brought by *qui tam* relators to remain under seal for 60 days is useful, particularly to protect whistleblowers. I also agree that extending the period during which a case remains under seal for a prolonged period of time is usually not constructive and should be avoided. I have not studied issues relating to the constitutionality of the seal provision. If I am confirmed, however, I would expect to support the presentation of any reasonable argument in its constitutional defense.

7. Will you work cooperatively with me—and other members of this Committee—to ensure that legislation I introduced restoring the original intent of the False Claims Act is reviewed by the Department in a timely manner with constructive input?

Answer: Yes.

WHISTLEBLOWERS

1. Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistleblowers?

Answer: Like the Attorney General, if I am confirmed, I will work with the Judiciary Committee and the independent Office of Special Counsel, which investigates and prosecutes violations of law, including reprisals against whistleblowers, to provide timely and accurate information to the Congress.

2. I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI whistleblowers are not subject to retaliation, be if from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?

Answer: I share the commitment of the Attorney General not to tolerate unlawful retaliation against any Department of Justice employee, including FBI employees.

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If confirmed, I, too, will work with OPR and others in the Department to ensure that there are adequate safeguards and that whistleblowers receive all of the protections to which they are entitled by law.

3. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?

Answer: I will join the Attorney General in sending a clear signal to senior officials and managers in the Department, including the FBI, that unlawful retaliation against whistleblowers will not be tolerated and will be cause for discipline.

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Questions for David Ogden from Senator Orrin G. Hatch

1. At your hearing, you said: "I did not agree, even at the time it was filed...with the Justice Department's brief [in *Knox*]....It took an extreme view...of the law....The brief I submitted on behalf of the ACLU...made a different point." The Justice Department's brief argued that a "lascivious exhibition of the genitals or pubic area" in the definition of child pornography required a "substantial degree of genital or pubic visibility." Your brief argued that it was "Congress' unequivocal intent...to prohibit only exhibitions that...depicted genital or pubic nudity."

- What did you consider "very extreme" about requiring **substantial** nudity?
- If requiring substantial nudity was "very extreme", how would you characterize the even more extreme position, which you advocated in your brief, requiring **complete** nudity?
- What was the "different point" you made in your brief to which you referred in your hearing testimony?

Answer: In describing the Solicitor General's brief in *Knox* as taking a "very extreme view," I was referring to the Solicitor General's position that a conviction based upon material containing a "lascivious exhibition of the genitals or pubic area" of a child requires that "the material must depict a child lasciviously engaging in sexual conduct (as distinguished from lasciviousness on the part of the photographer or consumer)." Br. at 8. The Solicitor General's contention that this statutory provision applied only where the *child* acted with lascivious intent reflected an extreme view, one not advanced by my clients. I was concerned that this view might create a loophole that would allow pornographers to avoid enforcement simply by filming explicit footage of minors who did not have a lascivious intent. This view was properly rejected by the Third Circuit on remand. The "different point" that I referred to during the hearing was the position of my clients that the courts should clearly define the depictions that could violate the statute so that distributors like public libraries and mainstream bookstores, which carry a great many books and other materials created by others, could be sure they avoided all illegal images and did not inadvertently violate the law. I believe that the standard for which my clients advocated would have made it easier for the government to obtain convictions in most cases than the standard for which the government advocated.

2. At your hearing, you discussed the brief you filed in *United States v. American Library Association* challenging the Children's Internet Protection Act (CIPA). That statute required libraries receiving federal funds to block Internet access by everyone to obscenity and child pornography and access by minors to material that is "harmful to minors." You stated that you "absolutely" accept the Supreme Court's decision upholding CIPA. At the same time, however, you acknowledged only that children should be protected from exposure to what you called "material that's obscene as to them." You used that phrase several times. Do you understand these two categories – "harmful to minors" and "obscene as to minors" – to be identical? If not, explain your understanding of how they differ.

Answer: I understand these categories to be identical. In CIPA and in other statutes, Congress has defined "harmful to minors" in a manner that tracks the Supreme Court's definition of obscenity for minors. That is a category appropriately more expansive than what is obscene as to adults.

3. At your hearing, you stated that "in the government, I worked...to defend child pornography and...obscene as to children legislation." In the government, that was your job. As a private attorney, have

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you ever filed a brief on behalf of or represented a party defending any restrictions on sexually explicit material?

Answer: As a private attorney, my clients in First Amendment cases were often libraries, booksellers, or publishers – or their national associations – and when those clients came to me they typically wished to challenge new governmental restrictions on their activities on the grounds that those restrictions improperly chilled or burdened protected speech. As a lawyer representing those clients, my job was to advance their arguments to the best of my ability. I cannot recall an occasion on which a potential client approached me as a lawyer in private practice wishing to advance arguments defending such restrictions. To the best of my recollection, I never declined to accept such a representation.

Of course, a very substantial client with an interest in defending such restrictions is the United States, which enforces and defends the restrictions imposed by the Congress or federal agencies. For more than six years I had the privilege of representing the United States as my client, and then as you say my job was to advance the arguments that defended such restrictions to the best of my ability, and I did so. I led the constitutional defense of the Child Pornography Prevention Act of 1996 (CPPA), which expanded the ban on child pornography to cover virtual child pornography—sexually explicit images that appear to depict minors but were produced without using any real children, often using computer-generated imagery. Our petition for certiorari argued that the act "constitutionally advance[s] the government's compelling interest in the 'prevention of sexual exploitation and abuse of children.'" *Reno v. Free Speech Coalition*, No. 00-795, Petition for a Writ of Certiorari (November 16, 2000), at 12 (quoting *New York v. Ferber*, 458 U.S. 747, 757 (1982)). Our petition further noted that this interest "extends to all children who may be abused as a result of the dissemination of visual depictions of child pornography, not just children who are actually involved in the production of such material." *Id.* at 15. We argued that "[b]y prohibiting dissemination and possession of computer-generated images, the CPPA helps to stamp out the market for child pornography involving real children." *Id.* at 17.

I also defended the Child Online Protection Act of 1998 (COPA), which aimed to protect children from harmful material on the Internet by requiring purveyors of prurient materials on the Internet to restrict their sites from access by minors. While I was at the Civil Division, we argued that "COPA advances the government's compelling interest in protecting children from harmful to minors material on the World Wide Web and in aiding parents' efforts in doing the same, and it does so by means that are narrowly tailored to advance those interests 'without unnecessarily interfering with First Amendment freedoms.'" *ACLU v. Reno*, Third Circuit No. 99-1324, Brief for the Appellant (July 26, 1999) (quoting *Sable Communications v. FCC*, 492 U.S. 115, 126 (1989)).

With respect to protection of children specifically, I am proud to have the support of the National Center for Missing and Exploited Children. The Center's letter of support notes that "[d]uring his tenure as Chief of Staff and Counsel to the Attorney General, we worked closely with the Attorney General . . . in attacking the growing phenomenon of child sexual exploitation and child pornography. . . As counselor to the Attorney General, Mr. Ogden was intricately involved in helping to shape the way NCMEC responded to child victimization challenges and delivered its services."

4. At your hearing, you discussed the case in which you persuaded the Supreme Court to strike down legislation establishing the requirement that producers of sexually explicit material keep records regarding the age and identity of performers. Congress recently, as part of the Adam Walsh Act, expanded the

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recordkeeping and reporting requirement to depictions of simulated sexually explicit conduct. Do you believe that this extension of the reporting requirement is constitutional?

Answer: I would respectfully note that the case you cite was not before the Supreme Court but rather before the United States District Court for the District of Columbia. *See American Library Ass'n v. Thornburgh*, 713 F.Supp. 469 (D.D.C. 1989). Following that ruling, Congress amended the statute to remedy the court's constitutional concerns, and ultimately, as amended, that statute was largely upheld. I am comfortable with the rulings upholding the statutes and am fully prepared, if confirmed, to enforce them. Although I have not studied the Adam Walsh Act, I have no reason to believe that the expansion to depictions of simulated sexually explicit conduct is unconstitutional, and I would be prepared to advance all reasonable arguments in support of the constitutionality of the law.

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QUESTIONS FOR THE RECORD
DAVID OGDEN, NOMINEE TO BE DEPUTY ATTORNEY GENERAL
SENATOR KYL

Mr. Ogden, although your credentials are certainly impressive, I am troubled by some of the litigation positions that you have taken over a course of years — particularly with regard to matters of obscenity and child pornography. On the one hand, one ought not judge a lawyer by the legal needs of his clients. On the other hand, lawyers do choose whom they will represent. More importantly, I am sure that you yourself have noticed that lawyers also have a tendency in many cases to identify and sympathize with the viewpoints of their clients. When a lawyer has litigated in favor of a particular viewpoint for many years, one may reasonably suppose that the lawyer is at least sympathetic to that point of view.

I and other members of this committee have devoted considerable energy over recent years to the enactment of legislation that seeks to suppress child pornography in particular and sexual-abuse crimes against children generally. For example, in 2006 Congress enacted the Adam Walsh Act, Public Law 109-248, which aimed to create a national sex-offender registry, which increased the penalties for a variety of crimes against children, and which created new record-keeping requirements with respect to the ages of actors appearing in pornography. And just last year, Congress enacted legislation that broadened the jurisdictional predicates and substantive proscriptions of the two main child pornography statutes. *See* Public 110-358.

Many issues remain to be resolved with regard to the implementation of the Adam Walsh sex-offender registry, and Congress is, of course, eager to see that new prosecutorial tools are put to their full use. As Deputy Attorney General, you would play an important role in such questions.

Is there anything that you can cite in your past — any litigation that you have undertaken, other work that you have been involved in, or a speech that you have given or an article that you have written — that demonstrates a commitment to fighting child pornography or otherwise protecting children from sexual abuse?

> **Answer:** I am strongly committed to fighting child pornography and protecting children from abuse. There is much in my professional record that demonstrates my commitment. Before turning to specifics, however, I think it is important to consider the broader context of my career as a lawyer.
>
> As my career has developed, I have viewed myself as a generalist in the law, not as a specialist in any particular area or advocate for any particular set of clients. My work at WilmerHale over the past eight years, for example, has not centered on First Amendment litigation. I have represented corporate clients in a range of industries, including transportation (*e.g.* Amtrak, Lufthansa); insurance and financial institutions (*e.g.* Citibank, Fireman's Fund); petrochemicals (e.g., Shell and BP); and pharmaceuticals (e.g., PhRMA and Merck). In all of those areas, and with respect to the media organizations (including libraries, booksellers and publishers) I represented more than fifteen years ago (before my service at the Departments of Defense and Justice), if I am confirmed, I can and will view policy, enforcement and legal issues independently of any

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prior work and exclusively from the perspective of the United States. That would be my solemn duty as a public servant and as an attorney.

My previous government service demonstrates that I will enforce and defend federal law vigorously, irrespective of positions I may have taken on behalf of clients in private practice. Although I had filed briefs for the American Psychological Association opposing the Department of Defense's homosexual discharge policy in the 1980s, at DoD I worked closely with military attorneys to defend the Don't Ask Don't Tell policy enacted by Congress in 1993. I am proud that no fewer than 12 Generals and Admirals who ran the Judge Advocate General's Corps, based on that close collaboration, support me as "a person of wisdom, fairness and integrity, a public servant vigilant to protect the national security of the United States, and a civilian official who values the perspective of uniformed lawyers in matters within their particular expertise." I received the highest award the Department of Defense can bestow on a civilian -- the Department of Defense Medal for Distinguished Public Service -- which states that "[my] leadership, legal expertise, and masterful oversight of hundreds of actions proved indispensable in connection with a series of high-profile, contested cases arising from Department policy on homosexual conduct in the Armed Forces."

With respect to protection of children specifically, I am proud to have the support of the National Center for Missing and Exploited Children. The Center's letter of support notes that "[d]uring his tenure as Chief of Staff and Counsel to the Attorney General, we worked closely with the Attorney General . . . in attacking the growing phenomenon of child sexual exploitation and child pornography. . . As counselor to the Attorney General, Mr. Ogden was intricately involved in helping to shape the way NCMEC responded to child victimization challenges and delivered its services."

In addition, I vigorously defended the constitutionality of child pornography statutes during my tenure as Assistant Attorney General for the Civil Division. I led the constitutional defense of the Child Pornography Prevention Act of 1996 (CPPA), which expanded the ban on child pornography to cover virtual child pornography—sexually explicit images that appear to depict minors but were produced without using any real children, often using computer-generated imagery. The government's petition for certiorari argued that the act "constitutionally advance[s] the government's compelling interest in the 'prevention of sexual exploitation and abuse of children.'" *Reno v. Free Speech Coalition*, No. 00-795, Petition for a Writ of Certiorari (November 16, 2000), at 12 (quoting *New York v. Ferber*, 458 U.S. 747, 757 (1982)). Our petition further noted that this interest "extends to all children who may be abused as a result of the dissemination of visual depictions of child pornography, not just children who are actually involved in the production of such material." *Id.* at 15. We argued that "[b]y prohibiting dissemination and possession of computer-generated images, the CPPA helps to stamp out the market for child pornography involving real children." *Id.* at 17.

I also defended the Child Online Protection Act of 1998 (COPA), which aimed to protect children from harmful material on the Internet by requiring purveyors of prurient materials on the Internet to restrict their sites from access by minors. While I was at the

Civil Division, we argued that "COPA advances the government's compelling interest in protecting children from harmful to minors material on the World Wide Web and in aiding parents' efforts in doing the same, and it does so by means that are narrowly tailored to advance those interests 'without unnecessarily interfering with First Amendment freedoms.'" *ACLU v. Reno*, Third Circuit No. 99-1324, Brief for the Appellant (July 26, 1999) (quoting *Sable Communications v. FCC*, 492 U.S. 115, 126 (1989)).

Finally, in private practice, I am particularly proud of the brief I submitted for the American Psychological Association in *Maryland v. Craig*, which I have cited as one of the ten most significant cases I have litigated. There, the Supreme Court held that a criminal defendant's Sixth Amendment right to confront witnesses was not violated by procedures that allowed for the testimony of young children to be given via remote closed circuit television rather than live in the courtroom before the jury. Justice O'Connor relied expressly on the brief in holding that requiring a child to confront directly his or her abuser would further traumatize and harm the child. *See Maryland v. Craig*, 497 U.S. 836, 855 (1990). In the same period, prior to entering the government in 1994, on a reduced fee basis I represented the Chesapeake Institute, a clinic that provided therapy to child and adult victims of sexual abuse, and I volunteered my time to assist its "Sponsor a Child" program that sought to raise funds so that financially deprived victims could get needed treatment.

QUESTIONS FOR THE RECORD FOR DAVID W. OGDEN
SUBMITTED BY SENATOR JEFF SESSIONS

Library Internet Restrictions

1. At your hearing we discussed your brief on behalf of various library directors in *United States v. American Library Association*. You stated that, if confirmed, you will follow the Supreme Court's decision in the case, which requires public libraries receiving public funds for Internet service to filter out pornographic materials.

   Do you agree with the plurality's view that "a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right[?]" If not, will you commit to follow the law?

Answer: I agree with the plurality's view you identify and will commit in this matter as in all matters to follow, defend, and enforce the law.

Evolving Standards of Decency and International Law

1. To follow up on our discussion during your hearing, can you please clarify for me when you believe it is appropriate to use and/or look to international law when addressing constitutional issues? In which contexts within the Bill of Rights and/or the Fourteenth Amendment are international laws and norms relevant?

Answer: In general, I believe that foreign and international law typically has very little relevance in construing the Constitution (with the exception of English common law pre-dating American independence, which often provides insight into the Framers' understanding and intent). As I noted at the hearing, we argued on behalf of our client in *Roper v. Simmons* that the laws and practices of foreign countries were relevant there because the Supreme Court had, in prior cases applying the "evolving standards of decency" test, considered the practices of other countries. *See, e.g.*, *Atkins*, 536 U.S. at 316 n.21; *Enmund v. Florida*, 458 U.S. 782, 796 n.22 (1982). We had an obligation to advance all arguments in our client's behalf we believed might be persuasive to any Justice. I would note that the Court cited the laws and practices of foreign countries in ruling in favor of our client. *See Roper v. Simmons*, 543 U.S. 551, 575 (2005). Although I have not made a study of the matter, I do not believe that outside that context the Court generally does – or should – take into account foreign or international law in interpreting the United States Constitution. *See, e.g. Boos v. Barry*, 485 U.S. 312, 324 (1988) (noting that "the fact that an interest is recognized in international law does not automatically render that interest 'compelling' for purposes of First Amendment analysis").

2. In your personal view, are "evolving standards of decency" a one-way ratchet that can only limit – and not expand – the application of the death penalty?

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Answer: No. I understand the "evolving standards of decency" test as leaving open the possibility that society will come to view the death penalty as appropriate for additional classes of crimes or additional classes of defendants.

3. In *Kennedy v. Louisiana*, the Supreme Court rejected the death penalty for child rapists under the Eighth Amendment. President Obama was very critical of this decision. He told reporters: "I disagree with the decision. I have said narrow circumstances for the most egregious of crimes. The rape of a small child, 6 or 8 years old, is a heinous crime and if a state makes a decision that under narrow, limited, well-defined circumstances that the death penalty can be pursued, that that does not violate the Constitution."

   Do you personally agree or disagree with the standard put forward by then-Senator Obama on the applicability of the death penalty to child rapists?

Answer: I agree that the rape of a child is a heinous crime. If I were confirmed and Congress passed a statute applying the death penalty to that crime, I would support advancing all reasonable arguments in defense of the constitutionality of such a law.

4. How much effect, if any, will the views of the various states and the "international community" have on your death penalty advice and decisions as Deputy Attorney General? For example, if a plurality of states or the "international community" reaches a consensus that the death penalty should not be applied for certain crimes, e.g., terrorism, how will this impact the advice you give to the Attorney General regarding the Department of Justice's death penalty policy?

Answer: The views of the various states or the "international community" will not have an effect on my advice or decisions in this area. I believe the federal laws that authorize imposition of the death penalty for certain acts of terrorism are constitutional under controlling precedents and should be enforced. In formulating my recommendations to the Attorney General, I will apply the laws and Constitution of the United States to the facts of each case

Morality and the Law

1. In *Lawrence v. Texas,* Justice Kennedy, writing for the majority, dismissed legislation based on moral foundation and suggested that such legislation could not provide a rational basis to support the government's action. He wrote: "For many persons these [moral beliefs] are not trivial concerns but profound and deep convictions accepted as ethical and moral principles to which they aspire and which thus determine the course of their lives. These considerations do not answer the question before us, however. The issue is whether the majority may use the power of the State to enforce these views on the whole

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society through operation of the criminal law. 'Our obligation is to define the liberty of all, not to mandate our own moral code.'"[1]

a. Setting aside the specific issue in *Lawrence*, do you believe, like Justice Kennedy, that legislation based on moral foundation cannot provide a rational basis to support a law or government action?

Answer: No. I believe that legislation based on a moral foundation can, and typically does, have a rational basis that renders it constitutional.

b. If confirmed, do you commit to enforce federal statutes – like Internet gambling and obscenity regulation – even though they are based, in whole or in part, on moral and ethical principles?

Answer: Yes. I will enforce any federal law, including the ones you reference, for which a reasonable argument can be made that it is constitutional.

Fairness Doctrine

1. When Attorney General Holder testified before this committee I questioned him about his thoughts on the so-called "Fairness Doctrine." Specifically, I asked Mr. Holder whether he would support the "Fairness Doctrine" and if he thought it was constitutional.

You once wrote that "[I]t is often the very purpose of 'compelled speech' requirements to correct market flaws in the 'marketplace of ideas' and further the First Amendment's goal of maximizing communication and discovery of truth."[2]

Given your extensive practice experience in First Amendment speech issues and viewing your past statement in light of the "Fairness Doctrine," I am interested to hear whether compelling broadcast stations to present viewpoints they would not otherwise air fits your description; and whether you regard the "Fairness Doctrine" as a restraint on, or protection for, free speech.

Do you believe the "Fairness Doctrine," if revived, would pass constitutional muster under the First Amendment?

Answer: The decision about whether to revive the Fairness Doctrine would be one entrusted in the first instance to the Federal Communications Commission (FCC) or Congress, not the Department of Justice. I have not studied the policy ramifications of reviving the Fairness Doctrine and therefore do not have a personal view regarding whether it should be revived at this time.

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[1] *Lawrence v. Texas*, 539 U.S. 558, 571 (2003) (quoting *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 850 (1992)).

[2] David W. Ogden, *Is There a First Amendment "Right to Remain Silent"?*, Fed. Bar News & J., Vol. 40, No. 6, at 368, 370 (July 1993).

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For the same reason, and because I do not have specific statutory or regulatory language to which to refer, I am hesitant to express a view as to whether a new statute or regulation would survive First Amendment scrutiny. If confirmed as Deputy Attorney General, in this area as in others, I would support the Department's advancing any reasonable argument in defense of a statute's constitutionality.

In the article to which you refer about compelled speech, I identified viewpoint based mandates as a matter of particular constitutional concern. In *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), the Supreme Court declared this sort of mandate unconstitutional. The courts have indicated, however, that broadcasting presents special considerations because of the limited broadcasting spectrum. The Supreme Court upheld the constitutionality of Fairness Doctrine in *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367 (1969), before the FCC repealed it. I have not studied whether advances in broadcasting technology render some of those special considerations moot.

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Written Questions for David Ogden from Senator Specter

Attorney-Client Privilege

1. The Department of Justice's policy of seeking waiver of the attorney-client privilege from organizations under investigation originated under the memorandum that then-Deputy Attorney General Holder signed on June 16, 1999.

    a. Is there any real justification for having a waiver on anything other than a purely voluntary basis?

    Answer: Any waiver of the attorney-client privilege should be voluntary.

    b. Doesn't it undermine the voluntariness of a waiver when a company's representatives have reason to believe the charges against it will be reduced in exchange for such a waiver?

    Answer: Yes. It is for this reason that the United States Attorneys Manual states that "prosecutors should not ask for such waivers and are directed not to do so." U.S.A.M § 9-28.710. Prosecutors must make clear that a corporation will be viewed as cooperating with an investigation regardless of whether it waives attorney-client privilege so long as corporate representatives provide to the government "the facts known to the corporation about the putative criminal misconduct." *Id.*

    c. Should a refusal to waive the attorney-client or work product protections voluntarily ever be a factor prosecutors consider in deciding whether to indict a corporation?

    Answer: No. As noted above, a corporation should be deemed to have cooperated with an investigation regardless of whether it waives attorney-client privilege so long as corporate representatives provide to the government "the facts known to the corporation about the putative criminal misconduct." *Id.*

    d. Attorney General Mukasey stated in his hearing during discussion of this question, "Absent privilege, the right to counsel is nearly meaningless. You can't get counsel – you can't be expected to disclose the facts to your lawyer so as to get good counsel if what you think you're doing is disclosing them, ultimately, to the prosecutor." Do you agree with that statement?

    Answer: I believe the privilege is an essential aspect of the right to counsel because without it a client is less likely to be fully candid with his attorney, and such candor is the foundation of the attorney-client relationship.

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2. The Filip Guidelines are a substantial improvement over the Holder, Thompson, and McNulty Memos. Nonetheless, they are subject to change through unilateral executive branch fiat. Additionally, since the Filip Guidelines are found in the U.S. Attorneys' Manual, they do not bind other independent federal law enforcement and investigatory agencies such as the Securities and Exchange Commission and the Internal Revenue Service. Rather than await yet another change—at least the fifth in a decade—that could prove as temporary as its predecessors, isn't it preferable to have a uniform federal policy precluding waiver requests except in limited circumstances (e.g., in cases where the defendant asserts an "advice of counsel" defense or the prosecution has credible evidence that the fraud or crime exceptions to the privilege pertain)?

   Answer: I agree that a uniform policy would have benefits, and I understand the benefits of making the policy more permanent through legislation. On the other hand, embodying the policy in a statute would reduce the government's ability swiftly to correct for unforeseen circumstances and unintended consequences.

   Toward the goal of greater uniformity, although other federal agencies are not bound by the Department of Justice's polices, I note that there is an indication others will adopt guidance similar to the Filip Guidelines. For instance, the Securities and Exchange Commission has issued a revised October 6, 2008 Enforcement Manual that states that attorney-client privilege waivers should not be requested from corporations and should be strictly voluntary.

3. Do you support the Attorney-Client Privilege Protection Act legislation I introduced to end waiver requests and consideration of waivers as part of a cooperation matrix?

   Answer: I agree that prosecutors should not extract a waiver of the attorney-client privilege from a corporate defendant with a promise to reduce the charges against that defendant. Corporations should be deemed to have cooperated with an investigation regardless of whether they waive the attorney-client privilege so long as corporate representatives provide to the government "the facts known to the corporation about the putative criminal misconduct." I believe the Department of Justice's current policies and practices address this concern and I favor considering how those policies and practices function in operation to be sure they work as intended before considering changes or legislation.

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Executive Power

4. In November 1994, President Clinton's Assistant Attorney General for the Office of Legal Counsel, Walter Dellinger, signed an opinion letter to the White House Counsel in which he said the following:

> The President has enhanced responsibility to resist unconstitutional provisions that encroach upon the constitutional powers of the Presidency. Where the President believes that an enactment unconstitutionally limits his powers, he has the authority to defend his office and decline to abide by it, unless he is convinced that the Court would disagree with his assessment.[1]

   a. Do you agree with this statement?

Answer: I agree with the following comments of Attorney General Holder on this subject: "[T]he President's power is at its lowest ebb when he acts contrary to a statute duly enacted by Congress, but the Constitution is the supreme law of the land. There are circumstances where a President can refuse to comply with a statutory provision. These include a legislative veto, see INS v. Chadha, 462 U.S. 919 (1983), or a statute purporting to limit the President's removal power in certain circumstances, see Myers v. United States, 272 U.S. 52 (1926)."

5. A few months earlier, in July 1994, Deputy Attorney General Jamie Gorelick argued before the House Select Committee on Intelligence that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes. The Committee at the time was considering legislation to subject such searches to approval from the FISA court. That issue arose when attention was drawn to the practice of intelligence agents conducting clandestine searches within the United States. Such searches extended not only to foreign embassies, but to U.S. citizens within our borders. The warrantless searches of the office and home of Aldrich Ames, a U.S. citizen, in June and October 1993 gave rise to concerns that courts might strike down this practice.[2] Deputy Attorney General Gorelick's testimony before the Senate Intelligence Committee maintained, "the Department of Justice believes, and the case law supports, that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes and that the President may, as has been done, delegate this authority to the Attorney General." She stated further, "it is important to understand that the rules and methodology for criminal searches are inconsistent with the collection of foreign intelligence and would unduly frustrate the President in carrying out his foreign intelligence responsibilities." In the Department of Justice's view, she testified, it did not matter whether searches were "conducted for foreign intelligence purposes in the United

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[1] Memorandum for Abner J. Mikva, Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 U.S. Op. Off. Legal Counsel 199, 201, Nov. 2, 1994.

[2] Smith, *Administration Backing No-Warrant Spy Searches*, WASHINGTON POST, July 15, 1994.

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States or against U.S. persons abroad. . . . [w]e believe that the warrant clause of the Fourth Amendment is inapplicable to such searches."[3]

a. Do you agree with this statement?

Answer: I agree with the following comments of Attorney General Holder on this subject: "Consistent with judicial precedents, I do believe the President has the authority, in the absence of a conflicting statute like FISA, to conduct warrantless foreign intelligence surveillance under certain conditions. As the Second Circuit explained in United States v. Duggan, 743 F.2d 59, 72 (2d Cir. 1984), 'virtually every court that had addressed the issue had concluded that the President had the inherent power to collect foreign intelligence information, and that such surveillances constituted an exception to the warrant requirement of the Fourth Amendment.'"

6. In 2000, Assistant Attorney General Randolph D. Moss issued an opinion letter to the Office of Intelligence Policy and Review entitled "Sharing Title III Electronic Surveillance Material with the Intelligence Community," which addressed the statutory provisions governing wiretaps in criminal investigations. That opinion included the following language:

> [I]n extraordinary circumstances electronic surveillance conducted pursuant to Title III may yield information of such importance to national security or foreign relations that the President's constitutional powers will permit disclosure of the information to the intelligence community notwithstanding the restrictions of Title III. . . . Where the President's authority concerning national security or foreign relations is in tension with a statutory rather than a constitutional rule, the statute cannot displace the President's constitutional authority and should be read to be "subject to an implied exception in deference to such presidential powers." *Rainbow Navigation, Inc. v. Department of the Navy*, 783 F.2d 1072, 1078 (D.C. Cir. 1986) (Scalia, J.). We believe that, if Title III limited the access of the President and his aides to information critical to national security or foreign relations, it would be unconstitutional as applied in those circumstances.[4]

a. Do you agree with this statement?

Answer: I agree with Attorney General Holder's comments on this subject: "[A] statute cannot impermissibly infringe the President's constitutional powers, including his authorities in the areas of national security and foreign relations. Statutes that attempt to

[3] Statement of Jamie S. Gorelick, Deputy Attorney General, Before the Permanent Select Committee on Intelligence, U.S. House of Representatives, Concerning Warrantless Physical Searches Conducted in the U.S. for Foreign Intelligence, July 14, 1994.

[4] Memorandum for the Counsel Office of Intelligence Policy and Review from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, Sharing Title III Electronic Surveillance Material with the Intelligence Community, 2000 WL 33716983, *9, Oct. 17, 2000.

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restrict the President's ability to share critical national security information with his own intelligence agencies in extraordinary circumstances pose special concerns. At the same time, the President's powers are, as Justice Jackson explained, at their lowest ebb when he acts in a manner that conflicts with a congressional enactment."

United States v. Morrison

7. As Acting Assistant Attorney General for the Civil Division, you signed the brief for the United States defending the provision of the Violence Against Women Act that creates a private right of action for victims of gender-motivated violence under both the Commerce Clause and Section Five of the Fourteenth Amendment. That brief stated: "[B]ased on the extensive factual record documenting the States' failure to respond effectively to violent crimes against women due to the 'archaic prejudices' of 'those within the justice system,' 1993 S. Rep. 38, Congress could properly have concluded that violations of equal protection, under the standard set forth by this Court, were occurring repeatedly in state justice systems across the country."[5] Many Members of Congress were disappointed with the Supreme Court's denigrating statements regarding congressional competence to enact legislation and the Court's rejection of congressional findings supporting the Violence Against Women Act due to our "method of reasoning."[6] As the dissent noted, the Court's judgment is "dependent upon a uniquely judicial competence,"[7] which implicitly criticizes a lesser quality of congressional competence.

    a. Is there any real justification for the Court to denigrate Congress' "method of reasoning" in our constitutional structure of separation of powers where Congress has the authority to decide public policy on issues such as gender-based violence affecting interstate commerce?

Answer: As the brief I submitted for the United States in *United States v. Morrison* stated, Congress has both the authority and the institutional competence to determine issues of public policy based on its investigation into, and understanding of, economic and social conditions in this country. To be sure, the Supreme Court has the last word on whether a congressional enactment is consistent with the Commerce Clause in particular or the Constitution generally, and the Court's ruling in *Morrison* is the law of the land. Nevertheless, the Supreme Court should (and typically does) afford great deference to Congress's superior institutional competence to assess economic and social conditions in formulating legislation. As I argued for my client, the National Association of Broadcasters, in a brief filed with the Court December 7, 1993: "When Congress makes findings on essentially factual issues . . . those findings are of course entitled to a great deal of deference. That is because Congress is an institution better equipped to amass

[5] 1999 WL 1037259, **41-42.
[6] United States v. Morrison, 529 U.S. 598, 615 (2000).
[7] *Id.* at 638 (Souter, J., dissenting).

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and evaluate the vast amounts of data bearing on the issues." Br. at 45 (internal citations and quotations omitted). I agree with those sentiments.

b. Is there any possible basis for the Court's suggestion of "uniquely judicial competence,"[8] implicitly criticizing a lesser quality of Congressional competence?

Answer: I do not hold the view that Congress is less competent than the courts to assess economic and social conditions.

8. What is your assessment of the jurisprudence of *United States v. Lopez* and *United States v. Morrison*, which overturned almost 60 years of Congress' power under the Commerce Clause?

Answer: *United States v. Morrison* and *United States v. Lopez* are the law of the land, and therefore they define the limits of Congress's power with respect to the laws at issue in those cases – which involved violence against women in *Morrison* and the possession of handguns on or near school grounds in *Lopez*. That said, it is my view (and it has generally been the view of the courts for more than 60 years) that Congress has expansive authority under the Commerce Clause to enact legislation it deems necessary to address problems that are national in scope, and that courts should afford great deference to Congress's judgments in this regard.

Use of Foreign Law to Interpret the Constitution

9. In the brief you submitted in *Roper v. Simmons*, you invoked foreign law in your argument in favor of barring the death penalty for those convicted under the age of 18: "Almost without exception, the other nations of the world have rejected capital punishment of those under 18, confirming that the juvenile death penalty is contrary to Eighth Amendment standards of decency."[9] When asked during your hearing how much weight you give to foreign law, you replied, "typically very little weight ... it depends somewhat on the context, which provision."

a. If confirmed as Deputy Attorney General, you will have great influence over the policies of DOJ. Accordingly, you will have a major hand in counterterrorism policy, enforcement priorities, sentencing, and the decision whether to authorize federal prosecutors to seek the death penalty in appropriate cases. In what contexts would you give weight to foreign law in your new position?

Answer: Under the governing test in Supreme Court precedent, a punishment is cruel and unusual if it violates the "evolving standards of decency that mark the progress of a

[8] *Id.*
[9] 2004 WL 1947812, **47-48.

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maturing society." *Atkins v. Virginia*, 536 U.S. 304, 312 (2002) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)). In prior cases applying the "evolving standards of decency" test, the Supreme Court had considered the practices of other countries. *See, e.g.*, *Atkins*, 536 U.S. at 316 n.21; *Enmund v. Florida*, 458 U.S. 782, 796 n.22 (1982). In advocating on behalf of our client in *Roper*, we were obligated to make all reasonable arguments on his behalf that might be persuasive to any Justice. We therefore discussed the fact that few countries in the world permit the execution of people who were minors at the time of their offense. The Court expressly relied on this factor in its decision. *See Roper v. Simmons*, 543 U.S. 551, 575 (2005).

The best interests of the people of the United States, under the Constitution and the laws of the United States, should determine policy at the Department of Justice. International law would play a role where the United States has elected to be bound by virtue of Senate ratification of a treaty or other international agreement, thereby making it a part of the domestic laws of the United States. The laws or practices of foreign countries might also play a role, for instance, in the formulation of policies regarding when to transfer a detainee to a foreign country. In that circumstance, the laws of the country in question with regard to that government's ability to monitor, prosecute, incarcerate, and punish individuals accused of acts of terrorism might be relevant, as might be their laws and practices relating to the treatment of detainees.

b. If the "other nations of the world" believe the death penalty should not be applied for the crimes of terrorism, treason, or other federal capital offenses, what will you recommend to the Attorney General in such cases?

Answer: In formulating my recommendations to the Attorney General in federal capital cases, I will apply the laws and Constitution of the United States to the facts of the particular case. The beliefs of other nations will not affect my recommendations.

i. Will you give any weight to the norms of the world community in your recommendation?

Answer: I will apply the laws and Constitution of the United States to the facts of the particular case. I will not give the norms of the world community weight in making such recommendations.

c. When you are interpreting the Constitution, for which provisions besides the Eighth Amendment might you consider foreign law to assist your effort?

Answer: In general, I believe that foreign and international law has very little relevance in construing the Constitution and the Bill of Rights (with the exception of English common law pre-dating American independence, which often provides insight into the Framers' understanding and intent). As I noted at the hearing, we argued on behalf of our client in *Roper v. Simmons* that the laws and practices of foreign countries were relevant because the Supreme Court had, in prior cases applying the "evolving standards of decency" test, considered the practices of other countries. *See, e.g.*, *Atkins*, 536 U.S. at 316 n.21; *Enmund v. Florida*, 458 U.S. 782, 796 n.22 (1982). Although I have not made

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a study of the matter, I do not believe that outside that context the Court generally does – or should – take into account foreign or international law in interpreting the United States Constitution. *See, e.g. Boos v. Barry*, 485 U.S. 312, 324 (1988) (noting that "the fact that an interest is recognized in international law does not automatically render that interest 'compelling' for purposes of First Amendment analysis").

d. Would you ever give weight to other nations' restrictions on gun rights when interpreting the Second Amendment?

Answer: No.

Child Pornography

10. At your hearing, you concurred with Senator Cardin's statement that, with respect to child pornography, "you not only accept but support the court decisions and are prepared to enforce the law aggressively, as it's been interpreted by the courts." With respect to offering direction to U.S. Attorneys in the allocation of their resources, you endorsed the setting of "national priorities" and communicating them "very clearly." Will the enforcement of child pornography laws be among these priorities?

a. Where will it rank on your list of priorities?

Answer: Protecting children through aggressive enforcement of federal laws prohibiting the production, distribution, and possession of child pornography is among the Department's most important missions, and if I am confirmed it will rank very high on the list of priorities communicated to United States Attorneys' offices.

11. The amicus brief you filed in *Knox v. United States* on behalf of several organizations challenged federal child pornography statutes then in effect, as did the initial brief submitted in that case by the Solicitor General. As you know, both the Senate (by a vote of 100-0) and the House of Representatives (by a vote of 425-3) voted to reject the Justice Department's narrow interpretation of the child pornography statutes in that brief and implored it to protect our nation's children and enforce those laws. When this issue arose during your hearing, you put considerable distance between the position you took and the position of the Justice Department. You testified as follows in response to a question from Senator Hatch:

> I did not agree, even at the time it was filed, when I was not in the government, with the Justice Department's brief that you refer to. [The brief] took a very extreme view, I agree, of the law. I understand why the Senate and the House rejected it. The brief that I submitted on behalf of the ACLU, the American Library Association and the American Booksellers Association, on behalf of librarians and booksellers, made a different point. It made a point that I understand the Senate . . . disagrees with and one that the court disagreed with. But it was a point that was important to them. They wanted just to know, have

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a clear line as between what was illegal and what was legal. The court decided not to accept that view, but it wasn't the view—the extreme view that I myself rejected—that the Justice Department brief took.

The Solicitor General's brief argued that the Third Circuit's decision below failed to consider the following two requirements of what it called the statute's "plain meaning:" "(a) the material must include a visible depiction of the genitals or pub[]ic area of the body (as distinguished from a depiction of the clothing covering those areas); and (b) the material must depict a child lasciviously engaging in sexual conduct (as distinguished from lasciviousness on the part of the photographer or consumer)."[10] The government's argument, however, appears considerably less sweeping than that of your brief in at least two respects:

First, your brief construed the statute as "requir[ing] a nude depiction" and precluding "non-nude depictions."[11] The Solicitor General's standard of visibility was broader, stating: "some depictions make the genital or pubic area visible even though, as a technical matter, those body parts are not nude."[12] The government's brief further contended that a "lascivious exhibition of the genitals or pubic area" in the definition of child pornography only required "at least some substantial degree of genital or pubic visibility." That brief moreover conceded "that the materials in this case may in fact fall within the statute when judged according to the correct standard."[13]

Second, while both briefs ostensibly based their challenges primarily on grounds of statutory construction, your brief went further and asserted that the Third Circuit's construction created a "chilling effect on First Amendment rights" that was "obvious and vast."[14] The government's brief did not make that contention. Additionally, your brief went as far as to call for the Supreme Court to "affirm the longstanding requirement of 'nudity plus,' which alone is consistent with the statutory language, legislative history and the Court's precedents."[15] Your analysis of Supreme Court precedent noted that previously upheld restrictions included sexual conduct, not just nudity.[16]

a. Given the similarities and the contrasts between your brief and the government's brief, if the Solicitor General's brief took a "very extreme" legal position in that case, how would you characterize your brief?

Answer: In describing the Solicitor General's brief in *Knox* as taking a "very extreme view," I was referring to the Solicitor General's position that a conviction based upon material

[10] 1993 WL 723366, *8.
[11] *Id.* at **6-7, **17-18.
[12] 1993 WL 723366, *11.
[13] *Id.* at *13.
[14] 1993 U.S. S. Ct. Briefs LEXIS 719, *4.
[15] *Id.*
[16] *Id.* at **30-31.

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containing a "lascivious exhibition of the genitals or pubic area" of a child requires that "the material must depict a child lasciviously engaging in sexual conduct (as distinguished from lasciviousness on the part of the photographer or consumer)." Br. at 8. The Solicitor General's contention that this statutory provision applied only where the *child* acted with lascivious intent reflected an extreme view, one not advanced by my clients. In my view, this might have created a loophole that would have allowed pornographers to avoid enforcement simply by filming explicit footage of minors who did not have a lascivious intent. The Solicitor General's view was properly rejected by the Third Circuit on remand. As I testified, the position of my clients, a coalition led by the American Booksellers, was that the courts should clearly define the depictions that could violate the statute so that distributors like public libraries and mainstream bookstores, which carry a great many books and other materials created by others, could be sure they avoided all illegal images and did not inadvertently violate the law.

b. Do you agree that your brief, which "requir[ed] a nude depiction," advocated for a narrower definition of child pornography than the government's brief, which merely required a "substantial degree of genital or pubic visibility?"

Answer: My clients' brief advocated a bright line standard that would clearly have defined the depictions that could violate the statute so that distributors like public libraries and mainstream bookstores, which carry a great many books and other materials created by others, could be sure they avoided all illegal images and did not inadvertently violate the law. The definition advocated by my clients was narrower than that advocated by the government in the sense that "nudity" may be somewhat narrower than "substantial visibility." But the brief submitted by my clients advocated a broader definition of child pornography – one that would have included more images within the statute's prohibition than the one advocated by the government – in the sense that it would not have required that lascivious intent on the part of the child be demonstrated. With respect to explicit images that involve nudity, the standard advocated in my clients' brief would have been easier for the government to satisfy to obtain a conviction than the one advocated in the Solicitor General's brief.

c. Do you agree that if the Court had adopted the standard for which you advocated in your brief that *fewer* videos and other materials would qualify as pornography under the federal child pornography laws?

Answer: I believe that the standard for which my clients advocated would have made it easier for the government to obtain convictions in most cases than the standard for which the government advocated. I also believe that the standard for which the government advocated could have created a serious loophole in the child pornography laws, and thus was narrower in an important respect than the one for which my clients advocated. This is because the government's approach (but not my clients' approach) would have required the government to prove lascivious intent on the part of the minor. I agree that the standard

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ultimately adopted by the court – which rejected both the government's position and my clients' position – renders unlawful more materials than the standards advocated by my clients or the government in the *Knox* case. As I have testified, I would be entirely prepared to enforce the standard adopted by the court.

d. What aspect of the government's brief was the "extreme view that [you] rejected" in your brief and is this the same part of the government's brief with which you did "not agree?"

Answer: As discussed more fully above in answer to 11.a., in describing the Solicitor General's brief in *Knox* as taking a "very extreme view," I was referring to the Solicitor General's position that a conviction based upon material containing a "lascivious exhibition of the genitals or pubic area" of a child requires that "the material must depict a child lasciviously engaging in sexual conduct (as distinguished from lasciviousness on the part of the photographer or consumer)." Br. at 8.

First Amendment

In an unattributed Case Comment you authored entitled "State-Guaranteed Right to Speak in Privately Owned Shopping Centers." 94 HARV. L. REV. 169 (1980), you stated: "Enhancing free speech advances the long-range goal of the takings clause: ensuring fair distribution of benefits and burdens over the long run. . . . Fairness is an elusive concept, but its most meaningful formulation looks to the long-range impact of a property deprivation to determine whether it tends to assure all citizens a fair allocation of benefits and burdens over time. If it does, a property owner cannot argue that requiring him to shoulder the burden is unfair because he, like the rest of society, benefits over the long run from the improvement in fairness the change brings about." Can you explain what a "fair distribution of benefits and burdens over the long run" entails?

Answer: Upon re-reading the case comment, which I wrote 29 years ago as a 26-year old law school student, I find I do not agree with my former analysis. Of course, Takings Clause jurisprudence has evolved considerably since the Court decided the case that I wrote about, *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980). Upon re-reading the Case Comment, it appears that the point I was trying to make was that enhancing free speech expanded opportunities to participate in the political process and thus helped ensure that governmental decisions would fairly reflect the interests of the electorate. But in the passage you quote I failed as a law student to give appropriate weight to the question whether there is a permanent physical occupation, the investment-backed expectations of the property owner, and other Takings Clause considerations embodied in the Supreme Court's jurisprudence.

a. Do you agree with the Supreme Court's decision in *Kelo v. New London* holding that the Taking Clause poses no obstacle to the condemnation of private homes for transfer to private developers, solely in the name of economic development?

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Answer: I have not studied the *Kelo* decision or considered how it conforms to the relevant precedent. While I understand it to be the law of the land, I do not have a view on whether it was correctly decided.

13. In the same case comment, you argued that "state expansion of speech rights at the expense of property rights does not constitute a taking."

a. Would you reach the same conclusion with respect to state protection of religious rituals conducted by third parties on private property against the intention of the owner?

b. Would you reach the same conclusion with respect to Second Amendment rights?

c. Why or why not?

Answer: I would first note that upon re-reading this categorical statement from my 29-year-old Case Comment, written as a law student, I find that I no longer agree with it. Indeed, I understand that the state of the law is otherwise. In *PruneYard*, the Court did not apply such a categorical rule; rather, the Court held that whether a state law or regulation infringes upon property rights so as to constitute a taking "entails inquiry into such factors as the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations." 447 U.S. at 83. The Court has later held that a permanent physical occupation, including the granting of a permanent easement, inherently constitutes a taking, without regard to the above-referenced factors. *See Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). With regard to any state action that infringes upon property rights—whether designed to protect speech, religious exercise, gun rights, or any other activity—a court would first determine whether the state's action constitutes a permanent physical occupation. If so, a taking has occurred. If not, a court would then apply the above-referenced *PruneYard* factors.

14. Mr. Ogden, in one of your law review articles, you come out in favor of subjecting most forms of "compelled speech" to strict scrutiny under the First Amendment. However, among your exceptions, which would require only a lower standard of review, are the "imposition of common carrier obligations on telephone companies or 'must carry' obligations imposed on cable television [which] are intended to prevent private monopolists, in control of critical avenues of communication, from choking off speakers and messages dependent on those avenues for access to the public." What level of scrutiny would you favor for laws implementing the Fairness Doctrine?

Answer: The article you reference argued that the district court opinion under discussion took too broad a view of First Amendment protection because its rationale, if applied in other contexts, would inappropriately subject much "compelled speech" to strict scrutiny. I argued that strict scrutiny in compelled speech cases should be limited to specific circumstances, and that outside those circumstances a lower standard of review is appropriate. I noted that one circumstance where strict scrutiny is appropriate is in the

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case of viewpoint-based mandates. In *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), the Supreme Court declared this sort of mandate unconstitutional and applied strict scrutiny. The courts have indicated, however, that broadcasting presents special considerations because of the limited broadcasting spectrum. The Supreme Court upheld the constitutionality of the Fairness Doctrine in *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367 (1969). The FCC then repealed the Fairness Doctrine. Because I do not have the specific statutory or regulatory language of a reenactment of the Fairness Doctrine, I am hesitant to express a view as to whether a new statute or regulation would survive First Amendment scrutiny forty years after *Red Lion*.

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SUBMISSIONS FOR THE RECORD

January 21, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senator Leahy and Senator Specter:

I am writing to express enthusiastic support for the nomination of David W. Ogden to be Deputy Attorney General. We had the opportunity to work with Mr. Ogden during his earlier tenure at the Justice Department as Associate Deputy Attorney General, and particularly in his capacity as Chief of Staff and Counselor to the Attorney General in the late 1990s. He later served with great distinction as Assistant Attorney General for the Civil Division.

During his tenure as Chief of Staff and Counselor to the Attorney General, we worked closely with the Attorney General and Deputy Attorney General in attacking the growing phenomenon of child sexual exploitation and child pornography. Attorney General Janet Reno was a great friend and ally, and a fierce advocate for children. As Counselor to the Attorney General, Mr. Ogden was intricately involved in helping to shape the way NCMEC responded to child victimization challenges and delivered its services.

In 1998 Congress mandated that NCMEC host and operate the CyberTipline, the "9-1-1 for the Internet," handling reports of child sexual exploitation from citizens and Internet Service Providers. The mandate for ISP reporting was a particular challenge and resulted in extensive discussions and negotiations with senior Justice Department officials, including the then-Deputy Attorney General Eric Holder. We are deeply grateful for the tenacity and commitment of Mr. Holder and other senior officials, including Mr. Ogden.

I am convinced that Mr. Ogden's impressive career as a litigator, leader of the legal community and great public servant will serve the Justice Department, law enforcement and America's families well.

Sincerely,

Ernie Allen
President & CEO



February 13, 2009

Senator Patrick Leahy
Chairman United States Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senate Judiciary Committee Members:

The Alliance Defense Fund ("ADF") submits this letter in opposition to the Department of Justice nominees David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli. ADF is a legal alliance, composed of more than 1,200 attorneys, that focuses its activities around three legal issues: (1) guarding the sanctity of life; (2) protecting marriage and the family; and (3) defending religious freedom. ADF regularly litigates difficult and contentious cases involving both novel and complex constitutional issues. In doing so, ADF consistently advocates for an originalist interpretation of the constitution, with the goal of fostering long-term legal stability and adherence to the "rule of law."

President Obama's most recent nominees for top-level positions in the Department of Justice ("DOJ")—David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli—each subscribe to a results-oriented school of jurisprudence unmoored from a proper understanding of the constitution. Their legal philosophies depart from mainstream views, their professional careers reflect a far-left ideology, and their involvement in the DOJ will jeopardize the proper enforcement of federal law and development of constitutional doctrines. For the reasons expressed herein, ADF opposes each of their nominations and urges the Senate Judiciary Committee ("Committee") to do the same.

David Ogden

President Obama has nominated David Ogden to serve as Deputy Attorney General. Mr. Ogden's far-left jurisprudential background is truly astounding. He has repeatedly been an advocate of sexually oriented businesses, including distributors of hard-core pornography. He has represented a variety of clients seeking to strike down even slight restrictions on abortion, such as parental-consent laws, spousal-consent laws, and 24-hour waiting periods. And he has been a

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consistent advocate for the homosexual agenda. Perhaps most troubling of all, it appears that Mr. Ogden has been somewhat misleading in his testimony before this Committee. For these reasons, which will be more fully discussed herein, ADF urges this Committee to reject Mr. Ogden's nomination.

Throughout his career, Mr. Ogden has been a major defender of sexually oriented businesses and organizations. He has repeatedly represented major organizations within the pornography industry—including Playboy Enterprises, Playboy Programming Distribution Corporation, the Consenting Adults Telephone Rights Association, and PHE, Inc., which is the nation's largest distributor of hard-core pornography and other sexually oriented products. This industry is unique in its extreme degradation of women and disregard for human relationships.

In *United States v. American Library Association*, 539 U.S. 194 (2003), Mr. Ogden submitted an amicus brief on behalf of fifteen library directors, arguing that the federal constitution requires public libraries to remove internet pornography filters. In that brief, Mr. Ogden treated pornography like informative data, writing that "[i]mposition of mandatory filtering on public libraries impairs the ability of librarians to fulfill the purpose of public libraries—namely, assisting library patrons in their quest for information . . . ." In several other cases, including *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994), Mr. Ogden represented sexually orientated businesses and organizations in their quest to avoid any measure—however slight—of government regulation. His advocacy of expansive First Amendment rights for sexually oriented businesses rests on a revisionist understanding of the constitution.

Mr. Ogden has also been a staunch supporter of abortion, seeking to eradicate any state or federal law protecting unborn children or educating women about the harms of abortion. In *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), Mr. Ogden argued, in a brief for the American Psychological Association, that a parental-consent law violated the constitutional "right" of a 14-year-old girl to kill her unborn child. In that brief, Mr. Ogden argued that 14-year-old girls are mature enough to decide whether to abort their child, stating that "the decision to abort is one that . . . a reasonable adolescent[] could make." He also asserted that 14-year-old girls are just as capable of making abortion decisions as adults are:

> [E]mpirical studies have found few differences between minors aged 14-18 and adults in their understanding of information and their ability to think of options and consequences when asked to consider treatment-related decision. These unvarying and highly significant findings indicate that with respect to the capacity to understand and reason logically, there is no qualitative or quantitative difference between minors in mid-adolescence, i.e., about 14-15 years of age, and adults.

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Mr. Ogden's efforts to invalidate parental-consent laws conflict with citizens' sentiment in this country; nearly 70% of Americans favor laws requiring women under 18 to get parental consent for any abortion. *See* Gallup's Pulse of Democracy: Abortion, *available at* http://www.gallup.com/poll/1576/Abortion.aspx.

In *Casey v. Planned Parenthood of S.E. Pennsylvania*, 505 U.S. 833 (1992), Mr. Ogden argued, in an *amicus* brief for Planned Parenthood and the American Psychological Association, that spousal notification and a mandatory 24-hour waiting period violate the federal constitution. He reasoned that "compelled spousal notification places a substantial burden on a married woman's right to terminate her pregnancy" and "cannot be justified [by] the [government's] interest in promoting the integrity of the marital relationship." By taking this position, Mr. Ogden's brief advocated the invalidation of a spousal-notification law supported by 64% of Americans. *See* Gallup's Pulse of Democracy: Abortion, *available at* http://www.gallup.com/poll/1576/Abortion.aspx. He also insisted that a minimal waiting period of 24 hours "severely burdens a woman's right to choose." These absolutist positions on abortion are based on a flawed understanding of the constitution, wholly disconnected from the federalist principles upon which our great nation was founded. Mr. Ogden's views leave no room whatsoever for the state to advance its compelling interest in its future citizens and taxpayers.

Mr. Ogden has also been an unwavering advocate for homosexual activists. In *Lawrence v. Texas*, 539 U.S. 558 (2003), he served as counsel for the American Psychological Association and argued that the criminalization of sodomy violates federal constitutional rights. In that brief, he asserted that "homosexuality is a normal form of human sexuality." He also argued, despite abundant evidence to the contrary, that "the children of [same-sex couples] . . . demonstrate no deficits in intellectual development, social adjustment, or psychological well-being as compared to children of [opposite-sex couples]." He submitted a brief advocating similar positions in *Bowers v. Hardwick*, 478 U.S. 186 (1986).

Mr. Ogden supports the use of "strict scrutiny" for equal-protection challenges brought by persons involved in same-sex relationships. He has asserted that "gay men and lesbians constitute a discrete and insular minority deserving strict equal protection scrutiny." Donald N. Bersoff and David W. Ogden, "APA Amicus Curiae Briefs: Furthering Lesbian and Gay Male Civil Rights," American Psychologist, Vol. 46, No. 9, p. 950-56 (Sept 1991). This radical legal theory has been rejected by nearly every court that has addressed the issue. *See, e.g.*, *Hernandez v. Robles*, 7 N.Y.3d 338, 855 N.E.2d 1 (2006); *Andersen v. King County*, 158 Wash.2d 1, 138 P.3d 963 (2006); *Conaway v. Deane*, 401 Md. 219, 932 A.3d 571 (2007). The only judicial opinion adopting that approach—the California Supreme Court's decision in *In re Marriage Cases*, 43 Cal.4th 757, 183 P.3d 384 (2008)—has been resoundingly rejected by the people of California when they approved a

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constitutional amendment that effectively nullified the Court's decision. Mr. Ogden's advocacy of such radical constitutional jurisprudence lacks any basis in sound constitutional theory; instead, it is intended to further his favored political end, without regard for an originalist understanding of the document he purports to be interpreting.

And perhaps more troubling than Mr. Ogden's far-left jurisprudence is his lack of candor before this Committee. In a child pornography case, *United States v. Knox*, Mr. Ogden argued—on behalf of the ACLU, the American Library Association, and the American Booksellers Association—that the defendant had been improperly convicted under the federal child pornography statute. In that case, the Department of Justice adopted an "extreme" interpretation of the child pornography law, asserting that materials do not qualify as child pornography unless there is actual nudity, *i.e.*, the child's genitals or pubic area are fully or partially exposed. President Clinton publicly chastised the DOJ for its position, as did the Senate, by a vote of 100-0, and the House, by a vote of 425-3.

When questioned about this case during the Judiciary Committee's hearing, Mr. Ogden stated that he and his clients did not adopt what he characterized as the DOJ's "very extreme view . . . of the law." He stated: "The brief that I submitted . . . made a different point. . . . The court decided not to accept that view, but it wasn't the view—the extreme view that I myself rejected—that the Justice Department brief took." It appears, however, that Mr. Ogden's brief had in fact adopted the same "extreme" position put forth by the DOJ. The DOJ's brief asserted that "[d]epictions . . . come within the statute only if they show minors engaged in the conduct of lasciviously exhibiting their . . . genitals or pubic areas." Brief of Respondent United States at 13, *Knox v. United States*, No. 92-1183 (U.S.S.C. Sept 1993) (found at 1993 WL 723366). Similarly, Mr. Ogden's brief argued that "nudity was not only a requirement, but that nudity alone was insufficient. Something more, a 'lascivious exhibition of the genitals and public areas,' was required." Brief of *Amici* in support of Petitioner at 17, *Knox v. United States*, No. 92-1183 (U.S.S.C. Sept 1993) (found at 1992 U.S. Briefs 1183 (Lexis)). This lack of candor in Mr. Ogden's testimony further demonstrates that he is not fit to serve as a high-ranking DOJ official.

Elena Kagan

President Obama has nominated Elena Kagan to serve as Solicitor General. In her past, Ms. Kagan has shown open hostility towards the military's "Don't Ask, Don't Tell" policy, which is favored by a majority of Americans and, more importantly, by a majority of military servicemen and women. *See* Gallup's Pulse of Democracy: Homosexual Relations, *available at* http://www.gallup.com/poll/1651/Homosexual-Relations.aspx; Military Times Poll, *available at* http://www.militarycity.com/polls/2007activepoll_politics.php.

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While Dean of Harvard Law School, Ms. Kagan did not allow military recruiters on campus in protest to the military's "Don't Ask, Don't Tell" policy. In an email to the Harvard Law School community, she referred to this fifteen-year policy as "a profound wrong—a moral injustice of the first order." *See* Email from Elena Kagan, Dean Harvard Law School, to Harvard Law School Community (Oct 6, 2003, 9:04 EST), *available at* http://www.hlrecord.org/home/index.cfm?event=displayArticlePrinterFriendly&uStory_id=fb9b7e30-726c-45a1-ae9c-e74a7c5f655f.

Moreover, Ms. Kagan submitted an *amicus* brief challenging the Solomon Amendment, the federal law denying federal funding to an institution of higher education that has a policy or practice of prohibiting or preventing the military from gaining access to campuses for purposes of military recruiting. The *amicus* brief joined by Ms. Kagan and other law professors offered an implausible interpretation of the Solomon Amendment, which was rejected by a unanimous Supreme Court. *See Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006). In fact, the Court's opinion characterized Ms. Kagan's interpretation as one that would render the Solomon Amendment "largely meaningless." *Id.* at 57-58.

Ms. Kagan's proffering of an unsupportable interpretation of federal law to achieve her desired political result raises serious questions about her capacity to defend federal laws with which she personally disagrees. She appears driven by a results-oriented jurisprudence, unfitting for a high-ranking DOJ official who should not be tainted by an extremist ideology. Her outright hostility towards governing military policy and her inability to reconcile her personal views with her legal positions demonstrates that Ms. Kagan is ill qualified for the job of Solicitor General.

Dawn Johnsen

President Obama has nominated Dawn Johnsen to lead the Office of Legal Counsel within the DOJ. One need not explore far to see Ms. Johnsen's far-left legal background and jurisprudential theories. She was a staff counsel for the ACLU, and served as Legal Director for the National Abortion Rights Action League ("NARAL"). NARAL has adopted extreme, absolutist positions on abortion, opposing any attempt to restrict abortion on-demand. In line with its unwavering demands on abortion, NARAL has publicly condemned the federal law banning partial-birth abortions, *see* NARAL Pro-Choice American Press Release, "Senate Votes to Criminalize Safe, Legal Medical Procedures, Next Stop is President Bush" (Oct 21, 2003), *available at* http://www.commondreams.org/ news2003/1021-04.htm—a law supported by more than 72% of Americans. *See* Gallup's Pulse of Democracy: Abortion, *available at* http://www.gallup.com/poll/1576/Abortion.aspx.

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As a legal scholar, Ms. Johnsen has promoted radical legal positions concerning abortion. She has sharply criticized the creation of any legal rights for unborn children, asserting that this might have a deleterious effect on her desired end—a woman's unfettered access to abortion. *See* Dawn E. Johnsen, "The Creation of Fetal Rights: Conflicts with Women's Constitutional Rights to Liberty, Privacy, and Equal Protection," 95 Yale L.J. 599 (Jan 1986). In addition, she has adopted far-left feminist positions, arguing that "[f]etal rights laws would not only infringe on constitutionally protected liberty and privacy rights of individual women, they would also serve to disadvantage women as women by further stigmatizing and penalizing them on the basis of the very characteristic that historically has been used to perpetuate a system of sex inequality." *Id.* at 620. These radical legal theories are far outside mainstream legal thought; they are grounded in achieving her desired end—the widespread availability of abortion—and not in a proper understanding of constitutional doctrine. And again, they run contrary to the government's profound interest in promoting life.

Thomas Perrelli

President Obama has nominated Thomas Perrelli as Associate Attorney General. While in private practice, Mr. Perrelli represented Terri Schiavo's husband and worked closely with the ACLU to deprive Ms. Schiavo of food and water. His intimate involvement in that case and tireless efforts to ensure Ms. Schiavo's death show a calloused disregard for the sanctity of all life, including the lives of disabled individuals.

In fostering Ms. Schiavo's death, Mr. Perrelli advanced a legal position rejected by 80% of Americans. A poll completed after Ms. Schiavo's controversial death found that 80% of likely voters said that a disabled person who is not terminally ill or in a coma should not, in the absence of a written directive to the contrary, be denied food and water. *See* Zogby International Poll, *available at* http://www.zogby.com/search/ ReadNews.cfm?ID=982. Moreover, by a three-to-one margin, likely voters said that, when there is conflicting evidence on the wishes of a patient, elected officials should order that a feeding tube remain in place. *See* Zogby International Poll, *available at* http://www.zogby.com/search/ReadNews.cfm?ID=982. Mr. Perrelli's unwillingness to protect Ms. Schiavo's most important right—her inalienable right to life—raises serious questions about his ability to protect and defend the rights of other Americans.

Conclusion

ADF respectfully requests that the Committee reject the DOJ nominations of David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli. Their far-left, results-oriented jurisprudence is wholly unmoored from the constitution as drafted and understood by our Founders. Confirming them to high-level DOJ positions will wreak havoc on the "rule of law" in our country.

Respectfully submitted,
The Alliance Defense Fund

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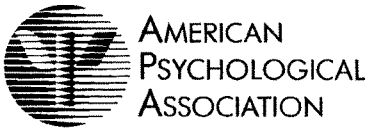

January 22, 2009

The Honorable Patrick Leahy
Chairman Ranking
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275
Via facsimile (202)224-5225

The Honorable Arlen Specter
Member
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275
Via facsimile (202)224-9102

Re: David W. Ogden, Nominee for Deputy Attorney General of the United States

Dear Chairman Leahy and Ranking Member Specter:

The American Psychological Association respectfully submits this letter to the Senate Committee on the Judiciary to express our strong support for the nomination of David W. Ogden, Esq. as the next Deputy Attorney General of the United States. The American Psychological Association (APA) is a nonprofit scientific and professional organization founded in 1892. The Association has more than 148,000 members and affiliates, including the majority of psychologists holding doctoral degrees from accredited universities in this country.

Among APA's major purposes is to increase and disseminate knowledge regarding human behavior and to foster the application of psychology to important public policy issues. Mr. Ogden has assisted APA in carrying out its mission during his years in private practice. In particular, Mr. Ogden has represented APA in presenting social science research on matters of public policy to the United States Supreme Court and appellate courts through amicus curiae briefs. Among the most significant briefs filed by Mr. Ogden on APA's behalf are:

- *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and the First Circuit case concerning the Lynn, Massachusetts school plan, setting forth scientific support regarding the use of affirmative action and race conscious tools in K-12 education.
- *Planned Parenthood v. Casey,* providing scientific research regarding the effect of spousal notification and informed consent provisions in the landmark case that upheld *Roe v. Wade.*
- *Lawrence v. Texas* and *Bowers v. Hardwick,* providing social science research supporting the rights of gay and lesbian persons.

- *Panetti v. Quarterman* (insanity defense), *Clark v. Arizona* (same), and *Sell v. US* (forced administration of psychotropic medications) supporting the rights of mentally ill and mentally retarded citizens.

In the 1990s, Mr. Ogden held key positions in the Department of Justice -- Assistant Attorney General for the Civil Division, Chief of Staff and Counselor to the Attorney General, and Associate Deputy Attorney General. Mr. Ogden has represented APA throughout his career in private practice both before and after public service. APA chose Mr. Ogden to represent the association in its most difficult and complex cases due to his excellent reputation with the courts and within the legal community, his exceptional legal skills and his passion for the law. These attributes all underscore why he will make a superb Deputy Attorney General.

We urge the Senate to confirm Mr. Ogden as Deputy Attorney General. If APA can be of any further assistance or if you have any questions, please contact Nathalie Gilfoyle, APA General Counsel at [redacted]

Respectfully yours,



Norman B. Anderson, Ph.D.
Chief Executive Officer

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GRAHAM M. CARNEY
REGIONAL OPERATIONS
ROBERT WOLFSON
WASHINGTON AFFAIRS
JESS N. HORDES
GENERAL COUNSEL
BETH B. ROBBINS



January 23, 2009

Chairman Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Anti-Defamation League, we write in support of President-Elect Obama's nomination of David W. Ogden to be the Deputy Attorney General of the United States.

Mr. Ogden demonstrated great leadership and interest in civil rights issues and hate crime prevention initiatives – a top domestic priority for the Anti-Defamation League – during his tenure as Chief of Staff and Counselor to the Attorney General and Associate Deputy Attorney General under Attorney General Janet Reno.

In the aftermath of the September 11 terrorist attacks, our nation has grappled with the appropriate balance between individual rights and national security interests. ADL has recognized that efforts to combat terrorism have required a recalibration between our security and civil liberties interests. Yet, the League has always urged the Administration, Congress, and the judiciary to adhere to the highest constitutional standards and due process in these efforts to combat terrorism. We believe that Mr. Ogden shares our view that our nation can be secure from terrorism while upholding Constitutional law and protecting individual rights.

In addition, we very much respect Mr. Ogden's commitment to public service and his commitment to the public interest bar. Along with other members of his firm, Mr. Ogden won the National Law Journal's 2006 Pro Bono Award for their work in the *Roper v. Simmons*, a landmark Supreme Court case in which the Court held that it was unconstitutional to impose the death penalty for crimes committed by juveniles.

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David Ogden has the integrity and experience necessary to help lead the Department of Justice at this crucial time. We urge the Committee to act promptly and favorably on his nomination.

Sincerely,

Glen S. Lewy
National Chair

Abraham H. Foxman
National Director

cc: Jess N. Hordes
Washington Director

John B. Bellinger, III
4026 North 25th Street
Arlington, Virginia 22207

January 22, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to urge the Committee's approval of David Ogden to be Deputy Attorney General.

I worked closely with Mr. Ogden while I served as Counsel for National Security Matters in the Criminal Division of the Department of Justice from 1997-2001, during which time Mr. Ogden served as Chief of Staff to the Attorney General and subsequently as Assistant Attorney General for the Civil Division. Subsequent to my tenure at the Department of Justice, I served as Legal Adviser to the National Security Council from 2001 to 2005, and then as Legal Adviser to the Secretary of State from 2005 until 2009. Prior to joining the Department of Justice, I served as Special Counsel to the Senate Select Committee on Intelligence, while Senator Specter served as Chairman.

Mr. Ogden had an outstanding reputation among the career staff of the Department of Justice. He proved himself to be sensitive to the concerns of the Criminal Division, especially with respect to national security cases. He was analytical, hard-working, and conscientious, and always willing to factor additional viewpoints into his recommendations and decision-making.

Based on this past experience, I have every reason to believe that Mr. Ogden would be an outstanding Deputy Attorney General, respectful of the recommendations of career Justice attorneys and sensitive to complex and competing national security concerns at this delicate point in our nation's history. I also believe that his prior experience as Deputy General Counsel to the Department of Defense would ensure that Mr. Ogden would take into account the concerns of our military; it would also be an important asset when Mr. Ogden, were he to be confirmed, participates in regular meetings of the Deputies Committee of the National Security Council on important national security issues, such as the disposition and prosecution of detainees, including suspected terrorists who may be captured by our military in the future.

I strongly support the Committee's and the full Senate's approval of Mr. Ogden's nomination.

Sincerely,

John B. Bellinger, III

Jeffrey M. Blum
Attorney - at - Law

January 21, 2009

The Hon. Patrick J. Leahy
Chair, Senate Judiciary Committee
423 Russell Senate Office Building
9516
by fax to (202) 224-~~3479~~

The Hon. Arlen Specter
Ranking Republican, Senate Judiciary Committee
711 Hart Building
by fax to (202) 228-1229

Attention: All Staff concerned with DOJ confirmation hearings

Dear Senator Leahy and Senator Specter:

As you may know, the Justice Department has developed a serious problem with its Assets Forfeiture and Money Laundering Section ("AFMLS") repeatedly engaging in a type racketeering by using an imaginary law against "structuring" to impersonate the actual law against structuring a single currency transaction, 31 U.S.C. § 5324(a)(3). The result has been repeated thefts of millions of dollars from legitimate cash businesses that are typically done by corrupting United States Attorneys's Offices ("USAO's) and getting them to engage in mixed schemes of fraud and extortion.

The telltale sign of this practice, which is fully described in a hundred page report on the web site stopDOJtheft.com, involves forfeiting millions of dollars of bank deposits on the sole ground of structuring (i.e., breaking up into parts) currency transactions without identifying any single transactions that have been structured. Omitting this little but essential detail of the actual law allows AFMLS to steal years worth of bank deposits on the ground that the business has repeatedly deposited cash in the bank. Owners, who are instructed only in the

7106 Meadow Ridge Drive
Louisville, Kentucky 40218
Phone (502) 495-1206
Fax (502) 749-4888

1 Stuyvesant Oval 8 D
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Phone (502) 494-2889

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actual law and not warned about DOJ racketeering, will sometimes surrender large amounts of assets in exchange for avoiding what the corrupted U.S. Attorneys describe to them as the lengthy prison terms that they will otherwise receive. On occasion federal judges have somehow been induced to cooperate and either ignore the "single transaction" requirement of the law altogether or state that it would "not be useful" to identify any single transactions. *See Ratzlaf v. United States*, 510 U.S. 135, 136 (1994) for clear statement of actual law's meaning, which is confirmed by the C.F.R. Part 103 regulations that are the primary source.

This letter makes two requests: first, that if at all possible, **this matter be brought up in Deputy Attorney General-designee Ogden's confirmation hearings**, and second, **that oversight hearings be scheduled to address this blatantly illegal practice.** Because the practice worsened and expanded considerably during the tenure of Alberto Gonzales, it is now very important that we have an Attorney General and Deputy Attorney General who respect and take seriously their oaths to uphold both the law and constitutional limitations on subject matter jurisdiction that prevent federal courts from issuing or attempting to sustain forfeitures without any genuine statutory factual basis. *See Libretti v. United States*, 516 U.S. 29, 42-44, 55-56 (1995).

With respect to Mr. Ogden, let me begin by saying that I have no specific knowledge that would allow me to do anything but hold him and Attorney General-designee Holder in the highest regard. But even if they are saints and heroes in every respect, they should be made aware of this problem before, or at the very least soon after, taking office. I do not know whether either is currently aware of it and have not yet been able to communicate with them.

Nevertheless, I am a little concerned based on some things that transpired (very possibly without either's knowledge) during President Clinton's second term when the two nominees were Deputy Attorney General and Assistant Attorney General in charge of the civil division. The "structuring" scams that now plague our legal system, especially in the Second and Sixth Circuits, began in 1992 and were thought to have been brought quickly under control by the two aforementioned Supreme Court decisions, legislation restricting forfeitures and by the Justice Department's Policy implemented in 1994 clearly requiring explicitly identified statutory bases for forfeiture. However, during the second Clinton term there appeared to be a visible shift away from compliance with these multiple

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sources of law toward allowing AFMLS to encourage USAOs it had already recruited to stonewall. Stonewalling has continued at most times through the Bush years, with AFMLS insisting it will only follow court decisions and then pressing USAOs to resist all attempts to get the courts to require any list of structured transactions. Regrettably, some judges have cooperated in this.

Through the long litigation history that I have witnessed there have been high officials in the Justice Department who have acted with integrity and attempted to bring AFMLS' lawless behavior under control. Each, however, has fallen short in the end and been unable to rein in the lawlessness. under control. Near the end of the Clinton Administration former Assistant Attorney General (Criminal Division) James K. Robinson ordered a review of the practice that was then discontinued when a new Assistant Attorney General took over. Attorney General Ashcroft and Deputy Attorney General Comey ordered a review of the illegal four million dollar "structuring" forfeiture of assets from Country Folk Art Shows, Inc. Associate Deputy Attorney General Catherine O'Neil conducted the review, concluded that there had been no factual basis for taking the money over and above collection of taxes (which had already been paid) and she succeeded in getting Division Counsel of the I.R.S. to conduct a similar review, preparatory to redressing the illegal forfeiture by granting long-pending tax refund claims for those assets. See attached transmittal letters from O'Neil dated July 25, 2005.

However, by this time Alberto Gonzales had been installed as Attorney General, Deputy Attorney General Comey and his associates had resigned and the Justice Department shifted to acting in the following manner:

1. Both the Justice Department and I.R.S. Division Counsel reviews, which documented the need for refunds, were to be suppressed using a bogus invocation of "attorney-client privilege" and hidden from public view.

2. The Justice Department and I.R.S. were to handle liability from the Country Folk Art Shows forfeiture by both agreeing to blame one another for it and to refuse to cooperate in any manner with attempts to have the conclusions of the reviews implemented. AFMLS was to be placed in charge of the matter and would use its influence in the courts to get judges to conclude that a list of structured transactions "would not be useful." (This is very similar to a shoplifter stating that showing receipts for merchandise in his possession "would not be useful..")

These decisions were accompanied by the sudden emergence of a spate of

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new cases in which the "structuring" scam was used to steal money, in one instance possibly approaching $22 million. *See* Report at web site stopDOJtheft.com.

Based on this history it would be useful to present the following questions to Deputy Attorney General-designee Ogden:

(1) Is he aware of problems with a purported law against "structuring" being used in place of the actual law against structuring a currency transaction, 31 U.S.C. § 5324(a)(3)?

(2) Is he aware of any ongoing abuses in the assets forfeiture area?

(3) Where reviews have been done by the Deputy Attorney General and the Internal Revenue Service showing a legal obligation of the United States to return forfeited assets, does he believe the government should act on the basis of what the reviews show, or is it permissible in some circumstances to suppress the reviews in order to evade repayment obligations?

(4) Does he acknowledge and will he in practice uphold the doctrine that forfeitures transacted without any statutory factual basis result in void judgments that must be set aside, hence it is improper to solicit judicial cooperation to evade this obligation?

(5) Given the presence of what appear to be severe and growing ethical problems within the Department of Justice that have spilled over into the judicial branch, does the prospective Deputy Attorney General agree with the position taken by the Senate Select Committee on Ethics that Senator McConnell relayed to me by letter dated September 26, 2008:

> [T]he Select Committee on Ethics of the United States Senate publishes guidance for U.S. Senators regarding requests for intervention related to agency adjudications, such as the reviews of your concerns by the IRS. The Ethics Committee advises Senators to refrain from intervening in court actions until the matter reaches a resolution in the courts, and it advises of "the most stringent limitations placed on congressional contacts involving pending agency adjudications,"

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Normally one would expect Department of Justice leadership to show great deference to such a committee, but in this instance AFMLS' reliance on this policy of non-intervention to continue subverting the law and Constitution seems to conflict directly with President Obama's recent declaration that pursuit of Department objectives should not be at the expense of the Rule of Law. Also, when AFMLS reaches the extreme of inducing judges to defy jurisdictional limitations the matter can never "reach a resolution in the courts" because there continues to be a mandatory duty to set aside the void judgment which some judges at district and appellate levels continue to defy.

Such a description defies credulity and would seemingly label me a paranoid fringe character but for one thing: it is undisputed in the Country Folk Art Shows case that the government has now gone sixteen years keeping four million dollars worth of lawfully earned assets on the sole ground that all were involved in "structured transactions," but has consistently refused to identify any structured transactions.

I hope that I have conveyed the seriousness of my concerns to you. This letter is intended to be shared with all committee members and their staffs. I request that you bring this letter to Mr. Holder's attention at some appropriate time and that it be introduced for questioning of Deputy Attorney General-designee Ogden when he appears for confirmation. Not only his outstanding qualifications, but also his intentions for the office should be subject to scrutiny. I also request that oversight hearings be held to address either the problem of abuse of forfeiture laws generally or the particular "structuring" scam that now appears to be proliferating. I will also convey this latter request to Chairman Conyers and to the new leadership of Henry Waxman's committee. If any of the above is done, I pledge to provide the greatest assistance possible to questioners and will be happy to travel to Washington for this purpose. Anyone involved should feel free to communicate back to me at the Louisville office at any time.

Respectfully Yours,

Jeffrey M. Blum
Harvard Law School 1980
Private counsel for owners of
Country Folk Art Shows, Inc.

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WILMERHALE

Rachel L. Brand

+1 [redacted] (t)
+1 [redacted] (f)
[redacted]

January 21, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I write in strong support of David Ogden's nomination to be Deputy Attorney General of the United States.

David's particular experience – including his years at several senior posts in the Department of Justice – makes him uniquely qualified for this post. As the Assistant Attorney General for the Civil Division, he oversaw litigation affecting virtually federal agency and involving the most pressing constitutional and statutory issues facing the U.S. government. His experience as Chief of Staff to the Attorney General exposed him to the full gamut of issues affecting the Justice Department. And his service at the Department of Defense gave him an appreciation for national security concerns that has become especially important since September 11, 2001.

In addition, based on my experience practicing law with him over the past year, I believe he has qualifications that cannot be judged from the paper record. As I observed during my own service in the Department of Justice, the two most important qualifications for a senior government official are integrity and sound judgment. David possesses both. In addition, he is incisive, serious about the law, measured, and reasonable.

I have no doubt that David will serve with distinction if confirmed as Deputy Attorney General.

Sincerely,

Rachel L. Brand

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SAN DIEGO, WASHINGTON, D.C.
DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

January 26, 2009

Writer's Direct Contact
[redacted]

By Hand Delivery

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: David W. Ogden, Nomination to be Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write in support of the nomination of David Ogden to be Deputy Attorney General of the United States.

David Ogden exemplifies the best of the legal profession. David's previous service at the Department of Justice speaks volumes about his dedication to public service and the best interests of this country.

I have known David for approximately 20 years, both at the Department of Justice where he was Assistant Attorney General for the Civil Division, Chief of Staff to the Attorney General, and Associate Deputy Attorney General, and also in private practice where we have practiced at different firms on related matters. I have always been impressed by David's outstanding legal representation of clients, both private and governmental, as well as by his high ethical standards, management skills, and leadership.

Those traits will make David a terrific Deputy Attorney General. The government would be very well served by his confirmation.

Sincerely,

Beth S. Brinkmann

dc-547711

WILMERHALE

Reginald J. Brown

+[redacted](t)
+[redacted](f)
[redacted]

February 2, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
433 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the nomination of David W. Ogden to be Deputy Attorney General.

I first met David in early 2005 when I rejoined WilmerHale after serving for several years as an Associate White House Counsel. David co-chairs WilmerHale's Government and Regulatory Litigation Group and is also a member of the firm's Public Policy and Strategy practice. We have worked together over the past three years on a wide range of client matters, ranging from public policy and regulatory projects to Department of Justice enforcement investigations. Based on first hand experience, I can tell you that David is a "lawyer's lawyer" who commands the respect of his co-workers as well as opposing counsel. He is an open-minded, practical and fact-driven decisionmaker, and a talented manager with a remarkable capacity for work. Based on my observation of David in connection with a number of matters, I also believe he is very well regarded by career employees of the Department of Justice, including career lawyers and support staff.

I've also had the good fortune to talk with David over the years about the major issues of the day. He is thoughtful and measured in his views, and always open to a respectful and genuine dialogue with those who have a different perspective. I believe his commitment to the Nation's security will be particularly strong, and that he understands the importance of providing consistent, clear and constructive advice to those who rely on the Department of Justice's legal judgments. David is also fully committed to operating a Department of Justice that is free from inappropriate political influence. President Obama could not have made a finer choice for Deputy Attorney General, and I very much hope that you will swiftly confirm David for this position with broad and bipartisan support.

Sincerely,

Reginald J. Brown

cc: The Honorable John Cornyn
517 Hart Senate Office Building
Washington, D.C. 20510

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NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

January 23, 2009

Senator Patrick Leahy
433 Russell Senate Office Building
Washington, DC 20510-4502

Senator Arlen Specter
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

We are writing to express our strong support for the nomination of David W. Ogden to become Deputy Attorney General of the United States. We worked with David during his tenure in the Justice Department during the Clinton Administration and can attest to his talent, integrity, and fair-mindedness.

Throughout his work as a public servant and in private practice, David has been an effective and powerful voice for issues of concern to women. We believe he will bring that commitment to the Department of Justice.

We thank the Committee in advance for taking our views into account in considering David Ogden's qualifications for office.

Sincerely,

Nancy Duff Campbell
Co-President

Marcia D. Greenberger
Co-President

NDC/MDG:nb

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TimeWarner

Paul T. Cappuccio
Executive Vice President
and General Counsel

January 23, 2009

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Bldg
Washington, DC 20510

Dear Senator Leahy:

I am writing to support strongly the nomination of David Ogden as Deputy Attorney General of the United States. I consider myself a judicial and legal conservative, and believe it is important to appoint high-quality individuals who will uphold the rule of law. In my view, David Ogden is a lawyer's lawyer -- a person of the highest talent, diligence and integrity. He is, in my view, an excellent pick to be Deputy Attorney General, and I strongly urge you to vote to confirm his appointment.

If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

Paul T. Cappuccio

Time Warner Inc. • One Time Warner Center, 12th Floor • New York, NY 10019-8016
T [redacted] • F [redacted] • [redacted]

Manus Cooney
8801 Bel Air Place
Potomac, MD 20854

January 23, 2009

The Honorable Patrick J. Leahy Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
SD-152 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman and Senator Specter:

I am respectfully writing in support of the nomination of David W. Ogden to be Deputy Attorney General. During my time on the staff of the Senate's Committee on the Judiciary, I had the opportunity to work directly with Mr. Ogden on numerous occasions when he served as Assistant Attorney General for the Civil Division and as the Chief of Staff and Counselor to the Attorney General. Mr. Ogden has not only the management skills and experience to serve as the Deputy Attorney General; he also has the highest legal competence and personal integrity. Whether in service to the public or in private practice, Mr. Ogden has excelled and has earned the respect of his colleagues in the process.

In public service, he clerked for Supreme Court Justice Henry Blackmun and served in the Department of Defense. As Chief of Staff to Attorney General Reno and as Associate Deputy Attorney General, Mr. Ogden earned respect in helping to oversee and direct the Department of Justice, including in particular the Antitrust, Civil, Civil Rights, Environment and Natural Resources, and Tax Divisions. As head of the Civil Division, Mr. Ogden directed the Justice Department's largest litigating unit and was responsible for representing virtually all of the federal agencies in major civil litigation. His service to the Department of Justice earned him the Edmund J. Randolph Award for Outstanding Service and the Attorney General's Medal.

Mr. Ogden's career in the private sector is well documented. He is a Partner in the prestigious law firm WilmerHale and a nationally recognized litigator. As Co-Chair of the firm's Government and Regulatory Litigation Practice Group, he has earned a Martindale rating of AV and the consistent selection by his peers as one of our Nation's top lawyers.

Mr. Ogden has proven himself to be a dedicated public servant and an excellent lawyer. He is also a man of his word. Mr. Ogden will serve the Justice Department and the public well. It is for these reasons that I am pleased to support the nomination of David Ogden to be our Nation's next Deputy Attorney General.

Sincerely,

Manus Cooney

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CADCA®

January 27, 2009

The Honorable Patrick Leahy
Chairman
Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20515

The Honorable Arlen Specter
Ranking Member
Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20515

Dear Chairman Leahy and Ranking Member Specter,

On behalf of Community Anti-Drug Coalitions of America (CADCA) and its 5,000 members nationwide, I am writing to express our enthusiastic support of David W. Ogden as Deputy Attorney General of the United States Department of Justice (DOJ). Given his vast experience in both the federal and private sectors, I have no doubt that Mr. Ogden is uniquely qualified for this position.

CADCA's primary mission is to strengthen the capacity of community coalitions in their effort to create and maintain safe, healthy and drug-free communities. As you are no doubt aware, substance abuse prevention has been severely under-resourced and under-funded at the federal level relative to its importance in reducing drug use and juvenile crime. We are therefore particularly pleased to know that under the direction of Mr. Holder and Mr. Ogden, DOJ will reinvigorate its efforts to ensure that substance abuse prevention strategies become a priority and that funding for the COPS program and other law enforcement initiatives that are proven to be successful are restored.

Mr. Ogden is highly regarded and has demonstrated a tremendous commitment and dedication to the judicial field. Having served as the Assistant Attorney General for the Civil Division; Chief of Staff and Counselor to the Attorney General; Associate Attorney General; and other high ranking positions, he has exhibited that he has superior legal skills and abilities, and his expertise as an effective leader is unmatched.

For these reasons, CADCA fully supports the nomination of David Ogden. I look forward to his speedy confirmation and to working with him in the future. Thank you for considering my views.

Sincerely,

Arthur T. Dean
Major General, U.S. Army, Retired
Chairman and CEO

Building Drug-Free Communities

Community Anti-Drug Coalitions of America
625 Slaters Lane, Suite 300, Alexandria, VA 22314
P 703-706-0560 **F** 703-706-0565 1-800-54-CADCA cadca.org



The Honorable Pat Leahy
Chairman
Judiciary Committee
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy, Ranking Member Specter, and Committee Members,

On behalf of Concerned Women for America's (CWA) 500,000 members nationwide, we write to respectfully request you oppose the nomination of David Ogden for Deputy Attorney General at the Department of Justice. Mr. Ogden has a long history of working to overturn laws on obscenity, abortion, and parental rights. His work jeopardizes children, women and families and undermines our system of American justice.

Mr. Ogden has a callous disregard for life. He denied the reality of millions of women by claiming in *Casey v. Planned Parenthood of S.E. Pennsylvania* that abortion rarely causes or exacerbates psychological or emotional problems. He has also supported assisted suicide, to which the disabled, elderly and defenseless are the most vulnerable victims.

In *Hartigan v. Zbaraz*, Mr. Ogden co-authored a brief arguing that parental notification, a measure that protects parents and minors, was an unconstitutional burden on 14-year old adolescent girls seeking an abortion. Mr. Ogden also co-authored the National Organization for Women's brief in *Scheidler v. National Organization for Women* that sought to use organized crime laws against pro-life advocates.

Mr. Ogden routinely represented pornographers against laws that protect children and women. He opposed the Children's Internet Protection Act, a law to protect children from obscene materials in public libraries, and the Child Protection and Obscenity Enforcement Act, which required producers of pornography to personally verify that models were not minors. By siding with pornographers, he has furthered the exploitation of women and children.

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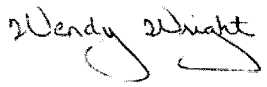
In a brief that Mr. Ogden co-authored to the Supreme Court in *Roper v. Simmons,* he argued that the Court should look to the laws, legal opinions, and decisions of foreign nations and international organizations regarding the death penalty. This argument should be an indicator that Mr. Ogden will look to international sources rather than relying on our Constitution and statutes. We simply cannot entrust him to enforce the laws of our country.

CWA firmly believes that Mr. Ogden's record and ideology makes it evident that Mr. Ogden would decline to enforce just laws and would argue cases in such a way as to undermine the Constitution. It is for the aforementioned reasons that we urge you in the strongest possible terms to oppose Mr. Ogden's nomination for Deputy Attorney General.

Sincerely,



Wendy Wright
President

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Department of Justice Nominations Statistics

- During the 107th Congress, the Judiciary Committee held 5 hearings for 9 nominees between January 1 and July 11, 2001. On average, those 9 nominees waited 59 days for a hearing.

- During the 109th Congress, the Judiciary Committee held 7 hearings for 11 nominees between January 1, 2005, and Chief Justice Roberts's hearing in September. On average, those nominees waited 394 days for a hearing.

Deputy Attorney General

- Since 1980, Members of the Judiciary Committee have been allowed, on average, 45 days to prepare for hearings for nominees to be Deputy Attorney General (from announcement to hearing).

- Mr. Ogden's hearing occurred 31 days after his nomination was announced on January 5th.

    - The Committee received Mr. Ogden's materials on January 23rd, including 2 ½ boxes of writings. (13 days before his hearing). Mr. Ogden supplemented his questionnaire on January 30th with audio tapes.

Solicitor General

- Since 1980, Members of the Judiciary Committee have been allowed, on average, 56 days to prepare for hearings for nominees to be Solicitor General.

- If Dean Kagan's hearing is held on February 10, it will be 36 days after her nomination was announced.

    - The Committee received Dean Kagan's questionnaire on January 26th, including approximately 2000 pages of writings (15 days before her hearing). She provided the Committee with audio files of 58 of her speeches on Feb. 4, and we are still reviewing over 60 hours of speeches.

Associate Attorney General

- Since 1980, Members of the Judiciary Committee have been allowed, on average, 55 days to prepare for hearings for nominees to be Associate Attorney General.

- If Mr. Perrelli's hearing is held on February 10, it will be 36 days after his nomination was announced.

    - Further the Committee just received Mr. Perrelli's questionnaire and accompanying materials on Friday, Jan. 30th at 3:30 p.m. (11 days before his hearing)



February 4, 2009

Dear Senate Judiciary Committee Member:

On behalf of the many families Eagle Forum represents nationwide, **I am writing to urge you to oppose the nomination of David Ogden for the post of Deputy Attorney General** during his confirmation hearing tomorrow, Thursday, February 5, 2009.

Mr. Ogden is well-known for his pro-abortion stance. He wrote and filed an amicus brief on behalf of *Casey v. Planned Parenthood (1992)* in which he argued:

"Abortion rarely causes or exacerbates psychological or emotional problems. When women do experience regret, depression, or guilt, such feelings are mild and diminish rapidly without adversley affecting general functioning. The few women who do experience negative psychological responses after abortion appear to be those with preexisitng emotional problems..."

and,

"In sum, it is grossly misleading to tell a woman that abortion imposes possible detrimental psychological effects when the risks are negligible in most cases, when the evidence shows that she is more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant (if not greater) risks or adverse psychological effects..."

In fact, David Ogden is so pro-abortion that he began his career as a law clerk to Justice Harry Blackmun, the Supreme Court Justice who wrote the majority opinion in *Roe v. Wade (1973).* He has taken radically pro-abortion positions in many more abortion cases on behalf of the National Organization for Women, the American Psychological Association, People for the American Way, as well as other liberal groups, arguing against parental notification, against spousal notification, and against limits on Title X fund recipients.

Your constitutents want to see that pro-life Senate Republicans are not allowing these radically pro-abortion nominees to slip through the committee hearing process unchallenged, without being confronted on their problematic policy positions. We urge you to oppose David Ogden's nomination by voting NO in committee.

Eagle Forum will be scoring this vote.

Faithfully,

Colleen Holmes
Executive Director

February 4, 2009

Senator
U.S. Senate
Washington, DC 20510

Dear Senator:

On behalf of Family Research Council (FRC) and the families we represent, I want to encourage you to vote NO on the confirmation of David Ogden to be President Barack Obama's Deputy Attorney General.

Mr. Ogden has built a career on representing views and companies that most Americans find repulsive. In *Hartigan v. Zbaraz*, 484 U.S. 171 (1987) he argued against parents being notified when their 14-year old daughter had an abortion, saying that "there is no qualitive . . . difference between minors . . . and adults." Despite overwhelming evidence to the contrary, in a brief filed in *Planned Parenthood* v. *Casey,* Mr. Ogden argued that woman who have had abortions suffer no detrimental consequences and instead should feel "relief and happiness" after aborting a child.

Mr. Ogden has also profited from representing pornographers and in attacking legislation designed to ban child pornography including the Children's Internet Protection Act of 2000 and the Child Protection and Obscenity Enforcement Act of 1988. The Department of Justice should not have a porn lawyer as its Deputy Attorney General, the person responsible for the most important decisions of the Department.

We urge you to oppose David Ogden for Deputy Attorney General. FRC will score this vote in our scorecard for the First Session of the 111th Congress.

Sincerely,

Thomas McClusky
Vice President for Government Affairs

FAMILY RESEARCH COUNCIL
801 G STREET NW, WASHINGTON, D.C. 20001 • 202-393-2100 • 202-393-2134 *fax* • (800) 225-4008 *order line* • www.frc.org

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Defense Criminal Investigative Service
Naval Criminal Investigative Service
OIG
EDUCATION - OIG
ENERGY -OIG
ENVIRONMENTAL PROTECTION AGENCY – CID & OIG
FEDERAL DEPOSIT INSURANCE CORPORATION – OIG
GENERAL SERVICES ADMIN.-OIG
HEALTH & HUMAN SERVICES
Food & Drug Administration & OIG
HOMELAND SECURITY
Border Patrol
Coast Guard Investigative Service
Immigration & Customs Enforcement
Federal Air Marshal
Federal Emergency Management Agency
Federal Protective Service
US Secret Service
Transportation Security Administration
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INTERIOR
Bureau of Indian Affairs
Bureau of Land Management
Fish & Wildlife Service
National Park Service
OIG
U.S. Park Police
JUSTICE
Bureau of Alcohol, Tobacco, Firearms & Explosives
Drug Enforcement Administration
Federal Bureau of Investigation
US Marshals Service
OIG
U.S. Attorney's Office-CI
LABOR- OIG & Racketeering
NATIONAL AERONAUTICS & SPACE ADMIN. - OIG
NUCLEAR REGULATORY COMMISSION - OIG
POSTAL SERVICE-OIG & Inspection
RAILROAD RETIREMENT BOARD - OIG
SECURITIES & EXCHANGE COMMISSION - OIG
SMALL BUSINESS ADMINISTRATION - OIG
SOCIAL SECURITY ADMINISTRATION - OIG
STATE DEPARTMENT
Bureau of Diplomatic Security & OIG
TRANSPORTATION-OIG
TREASURY
FINCEN & OIG
Internal Revenue Service - CI
TIGTA
U.S. COURTS (JUDICIAL)
Probation, Parole & Pretrial Services
VETERANS AFFAIRS -OIG

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Executive Vice-President
NATE CATURA
Vice President - Operations
LAZARO COSME
Vice President – Agency Affairs
CHRIS SCHOPPMEYER
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JOHN RAMSEY
Secretary
MARIA COSCIA
Treasurer
JAMES OTTEN JR
Vice President – Legislative Affairs
DUNCAN TEMPLETON
National Chapters Director
RASHEED TAHIR
National Awards Director
SHANON MAST-MCPHERSON
Immediate Past President
ART GORDON
Legislative Counsel

January 26th, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

As the National President of the Federal Law Enforcement Officers Association (FLEOA), a 26,000 member nonprofit, nonpartisan organization representing federal law enforcement officers, I am writing to you in support of the appointment of David Ogden for the position of Deputy Attorney General.

FLEOA's membership includes criminal investigators and officers from the Federal Bureau of Investigation, Bureau of Alcohol Tobacco and Firearms, Department of Justice, Office of the Inspector General, United States Marshals Service and many others. All of our members serving in these agencies have sacrificed a great deal while supporting their agency's formidable mission. They are the frontline of our nation's defense, and we need to ensure that they are led by a qualified team of professionals who have consummate experience in law enforcement issues.

David Ogden has served as Janet Reno's Chief of Staff and was integrally involved in senior policy-making regarding law enforcement issues. FLEOA is certain we can expect the same level of responsiveness from Mr. Ogden as we received during Janet Reno's service as Attorney General.

As the Assistant Attorney General for the Department of Justice Civil Division, David Ogden was the official charged with defending Federal law enforcement officers in civil actions. During that time Mr. Ogden showed a sincere appreciation for what Federal law enforcement officers go through on a day-to-day basis.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

I am optimistic that David Ogden possesses the requisite knowledge, experience and and leadership ability that will serve as an asset to the Department of Justice and to the American people.

Please don't hesitate to call should you require any additional input from FLEOA regarding the qualifications of David Ogden. We look forward to working with him and other senior members of the Department of Justice in the coming year.

Respectfully submitted,

for J. Adler
National President

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KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.
SUMNER SQUARE
1615 M STREET, N.W.
SUITE 400
WASHINGTON, D.C. 20036-3209

(202) 326-7900
FACSIMILE:
(202) 326-7999

January 21, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of David W. Ogden to be Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write in support of David Ogden's nomination to be Deputy Attorney General. I have known David for more than a dozen years. Throughout that time, during our service together at the Department of Justice and subsequently in private legal practice, I have known him to be a skilled lawyer and person of integrity.

At the Department of Justice, David was a highly-regarded staff lawyer to the Attorney General and Deputy Attorney General, and, toward the end of the Clinton Administration, as Assistant Attorney General in charge of the Civil Division. He carefully considered the views of career lawyers and sought to base his recommendations and judgments on all relevant viewpoints. To my knowledge, he was well respected in all aspects of his service to the Department.

In private practice, David has earned a reputation as a lawyer who thoroughly and comprehensively works legal problems for clients. He has represented many large corporations on matters of significant economic interest to them. I have litigated against David in the Supreme Court, in *Bates v. Dow AgroSciences*, in which David was on a team led by Seth Waxman in arguing in favor of preempting claims by farmers for crop damage caused by negligently designed pesticides. Although our side was fortunate to prevail in the case, upholding the longstanding rights of farmers to bring claims against pesticide manufacturers for crop damage against a preemption defense, I saw first-hand the skill of the legal work that David and his other partners brought to bear in the case.

I have no doubt that, if confirmed by the Senate, David will help restore respect and integrity to the Department of Justice.

Sincerely yours,

David C. Frederick

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

[redacted]
FACSIMILE NO.

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

[redacted]
WRITER'S DIRECT DIAL NO.

January 27, 2009

Chairman Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

I write to express my support for the nomination of David W. Ogden to the position of Deputy Attorney General of the United States.

Mr. Ogden's qualifications and credentials are exceptional. His 25 years of litigation experience, including his service as Assistant Attorney General for the Civil Division of the United States Department of Justice, Chief of Staff and Counselor to the Attorney General, Associate Deputy Attorney General, and Deputy General Counsel and Legal Counsel at the United States Department of Defense, make him extremely well qualified to be Deputy Attorney General. In each of these positions, Mr. Ogden demonstrated the legal ability, character, and effectiveness that are needed for the post.

Recently, as part of a broader delegation of Attorneys General being briefed by the presidential transition team, I had the privilege of hearing Mr. Ogden outline the President's vision for the Department of Justice. He impressed me as thoughtful, well informed, and obviously committed to the priorities and objectives being defined for the Department by the new administration. In addition, I have spoken with many people who know Mr. Ogden well. Without exception, they have described him as a brilliant and ethical lawyer with all the requisite capabilities to help lead the Department of Justice and restore its independence and integrity.

I am confident that David Ogden will make an outstanding Deputy Attorney General. Thank you for your consideration of this letter of support.

Sincerely,

Douglas F. Gansler
Attorney General

DFG:mmp

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Kenneth S. Geller
Direct Tel [redacted]
Direct Fax [redacted]

January 22, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of David W. Ogden to be Deputy Attorney General

Dear Senators Leahy and Specter:

I am writing to support the nomination of David Ogden to be Deputy Attorney General of the United States.

I was privileged to work in the Department of Justice from 1973 to 1986, in both Republican and Democratic Administrations. From 1979 until 1986 I served as Deputy Solicitor General. I know from personal experience that it is exceptionally important to place persons of unquestioned integrity and good judgment in the highest positions in the Department. This is especially true of the Deputy Attorney General, who traditionally has overseen day-to-day management of the Department, and it is especially true today, when public confidence and morale in the Department is so low.

I have known David Ogden for more than a decade and am confident that he would fill the position of Deputy Attorney General with distinction. Not only is David a man of unquestioned integrity, good judgment and superb academic achievement, but he also has had great experience as a lawyer, including as Assistant Attorney General in charge of the Civil Division and as Deputy Associate Attorney General.

I hope that your committee will move swiftly to approve David's nomination as Deputy Attorney General.

Sincerely,

Kenneth S. Geller

Mayer Brown LLP operates in combination with our associated English limited liability partnership and Hong Kong partnership (and its associated entities in Asia).

STUART M. GERSON

[redacted]

January 22, 2009

By hand

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Mr. Chairman and Senator Specter:

It is most gratifying to be able to write in support of the confirmation of David Ogden, Esquire to be Deputy Attorney General. I have known David for many years in both of our varying private and public enterprises and have found him to be a superior lawyer and a man of excellent temperament and judgment. He should be confirmed promptly.

As you both are aware, I am a former federal prosecutor and also served in a number of senior political positions at the Department of Justice itself in several administrations. And in private practice, I regularly am engaged in DoJ matters. I thus have had a chance to observe the Department in depth from both the inside and outside. Among other things, I believe that the Department is in need of restoration of direction, consistency and intensity, and David Ogden is well-equipped to help provide it.

David ran the Civil Division with great skill from 1999-2001, and had previous experience in the offices of the Attorney General and the Associate Attorney General. Both the political and, most importantly, the career staff always responded enthusiastically to his direction. Indeed, the re-energizing of the career staff is, in my view, the essential element in assuring the diligence and success of the Department of Justice in the new administration. David Ogden has the integrity, the skill and the knowledge of the law that is required to lead its various components successfully.

I gladly support him.

Sincerely,

Stuart M. Gerson

WILMERHALE

January 23, 2009

Jamie S. Gorelick

+[redacted] (t)
+[redacted] (f)
[redacted]

The Honorable Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

I am writing in support of the confirmation of David Ogden to serve as Deputy Attorney General of the United States. I have known David since he was a law student, whom I recruited to work as a summer associate at my law firm. I was so impressed with him then, and as his career progressed, that when I became General Counsel of the Department of Defense, I asked him to serve as Deputy for Legal Counsel, the person who coordinates with the Department of Justice all of the actual or threatened litigation involving the Defense Department. Thereafter, David joined my staff at the Department of Justice as an Associate Deputy Attorney General, providing oversight of the civil litigation of the Department. After I left, he went on to serve as Chief of Staff to the Attorney General and later as head of the Civil Division. Since 2003, when I joined Wilmer Cutler Pickering Hale and Dorr, David and I have been partners and have worked together closely.

Based on this long experience, I can assure you that David Ogden will be a superb Deputy Attorney General. He has the intellect and rigor to deal with the most vexing issues. He has the deep knowledge of the Department necessary to ensure the smooth functioning of its many elements. He is sensitive to all of the Department's many missions, from its civil and criminal litigation, to its national security responsibilities, its law enforcement role, its advice and counsel to the President and its coordination with Congress. He has a strong sense of the Department's most important values and its traditions. A man of unusual breadth and depth, David is as well-prepared to help lead the Department as anyone who has come in at the outset of a new administration can possibly be.

Perhaps most important, as you will see, David Ogden is a lovely colleague. He is thoughtful, honest, straight-forward and trustworthy. You will, I predict, enjoy working with him, as will your staffs. It goes without saying that I wholeheartedly endorse his nomination and urge his confirmation.

Sincerely yours,

Jamie S. Gorelick

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CHRISTINE O. GREGOIRE
Governor

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

January 26, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Committee:

It is my great pleasure to write to you in support of President Obama's nomination of David Ogden as Deputy Attorney General. Mr. Ogden ranks among our nation's finest litigators and most distinguished public attorneys. I have complete confidence that Mr. Ogden will prove himself to be an invaluable asset to the Department of Justice and Attorney General Holder.

When I was Washington State Attorney General, I led the settlement negotiations with the tobacco industry that resulted in the landmark Master Settlement Agreement. Mr. Ogden was then the Chief of Staff and Counselor to Attorney General Janet Reno. During that time Mr. Ogden was intimately involved in our settlement negotiations and proved himself a creative, insightful and extremely hard-working partner. Throughout the course of our litigation, Mr. Ogden's leadership was essential to the successful resolution of one of the most complex cases in our nation's history. I am deeply grateful for the support Mr. Ogden provided to me personally as we worked together throughout that litigation.

Mr. Ogden later served as the Senate-confirmed Assistant Attorney General for the Civil Division, directing the Justice Department's largest litigation unit representing virtually all of the federal agencies in major civil litigation. For his distinguished service to the Department of Justice, he was awarded the Attorney General's Medal, and the Department of Defense bestowed their highest civilian honor, the Medal for Distinguished Public Service, on Mr. Ogden in appreciation of his work. President Obama could not have nominated a more dedicated lawyer or more accomplished public servant to this vital role.

Thank you for the opportunity to lend my support to Mr. Ogden's nomination. If I can be of any further assistance to you or the Committee, please do not hesitate to contact me.

Sincerely,

Christine Gregoire

Christine O. Gregoire
Governor

Jo Ann Harris
Attorney at Law
202 Riverside Drive, 6C
New York, NY 10025

Telephone [redacted]
Cell [redacted]

[redacted]

January 25, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: David W. Ogden for Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

The purpose of this letter is to support the nomination of David Ogden to be the Deputy Attorney General of the United States.

In a real sense, Mr. Ogden's career speaks for itself. He brings to the table broad experience within the Department, distinguishing himself as Assistant Attorney General for the Civil Division, as Chief of Staff to the Attorney General, and as Associate Deputy Attorney General.

As you know, the Deputy's office is the Grand Central of the Department. To occupy it well, the person selected should have a real hands-on sense of the Department's business and of its people. David is such a person. In addition, not only is he widely known and respected in the legal community, he has the confidence of the career ranks. I believe he can command the respect of the community-at-large so essential to the perception of justice in our country.

Respectfully submitted,

Jo Ann Harris
Former Assistant Attorney General
Criminal Division (1993-95)
United States Department of Justice

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January 23, 2009

BY HAND

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of David Ogden

Dear Senators Leahy and Specter:

I write in strong support of the nomination of David Ogden to be the next Deputy Attorney General of the United States.

As someone who served as an Assistant U.S. Attorney in the Southern District of New York (1991-1999), and in the Justice Department's Criminal Division during both the Clinton Administration (Deputy Assistant Attorney General and Chief of Staff, 1999-2000) and the Bush Administration (Chief of Staff, 2001-2002), I care deeply about the Department and believe that its leaders must have the extraordinary experience, judgment, integrity, and independence to be able to handle the difficult decisions with which they will be dealing everyday. Having worked with David while he was Assistant Attorney General of the Civil Division, he embodies all of those qualities. He was always well-prepared, unflappable, and brought careful and considered judgment to our discussions. And, most importantly, he cared only about what was the just and fair outcome; there was never an instance where politics was a factor in his decision-making.

As Deputy Attorney General, David would have a critical role in the Department's efforts involving corporate prosecutions and the attorney-client privilege. During my recent tenure as a Commissioner on the United States Sentencing Commission (2003-2008), I was deeply involved in those matters, and I am confident that David's experience in private practice, and

Michael E. Horowitz [redacted]

CADWALADER

his prior work at the Justice Department, have given him a profound appreciation of the need to aggressively pursue corporate wrongdoing while carefully protecting the rights provided by our Constitution.

In sum, I have the utmost respect for David's legal abilities and his integrity. I know that he will be an outstanding Deputy Attorney General, and I enthusiastically support his nomination.

Very truly yours,

Michael Horowitz

Michael E. Horowitz

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Robert F. Hoyt
[redacted]

February 4, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

I am writing to express my strong support for the nomination of David Ogden for the position of Deputy Attorney General. I have known David since 2001, when I helped to recruit him to become one of my partners at Wilmer, Cutler & Pickering (now known as Wilmer Cutler Pickering Hale and Dorr LLP). I did not know David well at the time, and proceeded mainly on his reputation for excellence, hard work, and integrity. He was widely admired in the bar, and among my partners who had worked with and opposite him during his time in government.

David and I practiced together at Wilmer, Cutler & Pickering for only four years before I left the firm to serve as an Associate White House Counsel and then General Counsel to the Treasury Department. But in those four years, David surpassed the stellar reputation he arrived with. In case after case, David won the confidence of the firm's clients, the admiration of his colleagues, and the respect of his opponents. He did this by bringing to his work an extraordinary combination hard work, creativity, and the most thoughtful analysis. He comes before the Committee as a lawyer who is renowned for his dedication to furthering his clients' interests through zealous advocacy, candid counseling, and wise judgment. In addition to all of that, David is a charming and enjoyable colleague to work with, and is respected as being an effective and caring supervisor and mentor to young lawyers.

I have every confidence that David's considerable talent and experience will be of enormous benefit to the Justice Department. He will provide able leadership and strong management of the Nation's most important and complex legal matters. I have every hope that he will be confirmed on a broad bipartisan basis.

Respectfully,

Robert F. Hoyt

61992.156

January 22, 2009

The Honorable Patrick Leahy,
Chairman
The Honorable Arlen Specter,
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Gentlemen:

We, the undersigned, write with reference to the nomination of David W. Odgen as Deputy Attorney General, U.S. Department of Justice. We are retired military officers each of whom served as the Judge Advocate General of his respective Service or in another senior uniformed lawyer position during the period of Mr. Ogden's prior government service (1994-2001).

Most of us worked closely with Mr. Ogden when he was Deputy General Counsel (Legal Counsel) of the Department of Defense, addressing a number of the most important and sensitive legal issues confronting the Department at that time. Some of us know him principally by reputation. All of us support the nomination, without regard to party affiliation, because we believe David Ogden to be a person of wisdom, fairness and integrity, a public servant vigilant to protect the national security of the United States, and a civilian official who values the perspective of uniformed lawyers in matters within their particular expertise.

We thank the Committee in advance for taking our views into account in considering Mr. Ogden's qualification for office.

Respectfully submitted,

Michael J. Nardotti, Jr.

MG Michael Nardotti, USA (Ret.)
The Judge Advocate General
United States Army
1993-1997

61992.157

MG Kenneth Gray, USA (Ret.)
Deputy Judge Advocate General
United States Army
1993-1997

RADM Harold Grant, JAGC, USN (Ret.)
Judge Advocate General
United States Navy
1993-1997

Maj Gen Nolan Sklute, USAF (Ret.)
The Judge Advocate General
United States Air Force
1993-1996

Maj Gen Andrew Egeland, USAF (Ret.)
Deputy Judge Advocate General
United States Air Force
1993-2000

BGen Michael Wholley, USMC (Ret.)
Staff Judge Advocate to the Commandant
United States Marine Corps
1993-1996

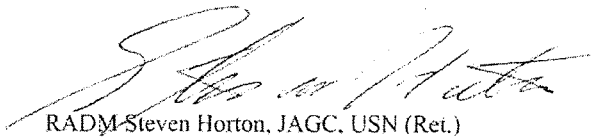
MG Walter Huffman, USA (Ret.)
The Judge Advocate General
United States Army
1997-2001

RADM John Hutson, JAGC, USN (Ret.)
Judge Advocate General
United States Navy
1997-2000

BGen Joseph Composto, USMC (Ret.)
Staff Judge Advocate to the Commandant
United States Marine Corps
1999-2001

RADM Donald Guter, JAGC, USN (Ret.)
Judge Advocate General
United States Navy
2000-2002

RADM Thomas Connelly, JAGC, USN (Ret.)
Assistant JAG (Civil Law)
United States Navy
1997-2000



RADM Steven Horton, JAGC, USN (Ret.)
Assistant JAG (Civil Law)
United States Navy
2000-2001

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SIDLEY AUSTIN LLP
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WASHINGTON, D.C. 20005
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(202) 736 8711 FAX

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January 23, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
433 Russell Office Building
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
711 Hart Office Building
Washington, DC 20510

Re: Nomination of David W. Ogden to be Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write to express my strong support for the nomination of David Ogden to be Deputy Attorney General.

I first met David when I was preparing to join the Department of Justice myself in June of 2002. I sought him out, and invited him to lunch, so that I could get the benefit of his counsel in connection with the responsibilities I was about to assume. It was evident to me from the moment we started talking that I had gone to the right person. David has a deep understanding of the Department and is thoroughly dedicated to its ideals and mission. He is also a terrific lawyer and a great professional. And he has been, and would be again if confirmed, an exceptionally effective and conscientious public servant.

I would add that these are not simply my own opinions. They are widely shared within the Department he would lead, particularly among the career attorneys in the Civil Division with whom he served as Assistant Attorney General and whom I later came to know well when I had the privilege to hold the same position. This is a very popular nomination within the Department, and with good reason. I am happy to recommend his confirmation, and I do so enthusiastically.

Very truly yours,

Peter D. Keisler

PDK/

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[redacted] [redacted]

January 21, 2009

VIA MAIL AND FACSIMILE

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: David Ogden, Nominee for Deputy Attorney General of the United States

Dear Senator Leahy and Senator Specter:

I write to recommend strongly your positive consideration of David Ogden as Deputy Attorney General of the United States. David is, in a word, a star. I have known David for years in the practice of law in the District of Columbia, both through my service as President of the District of Columbia Bar, on the Board of the Appleseed Foundation, and later, through various positions in the American Bar Association. We have worked together on numerous issues.

David is a brilliant lawyer. We worked together on a tax case challenging the constitutionality of certain legislation and I observed there his exceptional ability close up. The clarity of his legal analysis is superb. He is a quick thinker, logical and his judgment and advocacy are extraordinary.

David is tremendously organized and has demonstrated excellence in the top positions at the US Department of Justice that he already has held. He served in each position in exemplary fashion. In his positions at the Department of Justice, David had a stellar reputation and performed superbly. The lawyers he led have nothing but high praise for his work, organization, and management. Most importantly, he is a pleasure to work with. He has a very consensual approach and yet can make a decision in a principled way to move a team forward as necessary. David has led teams and argued on behalf of clients in some of the largest, most complex civil matters for a wide variety of clients. He is a tremendous advocate who is well regarded and respected by his peers. David's reputation is impeccable.

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The US Department of Justice and the United States would be fortunate, indeed, to have someone of David's caliber in the position of Deputy Attorney General. His legal analytical ability, judgment, temperament, and integrity are exceptional. I recommend him most highly and applaud his selection.

My very best regards.

Very truly yours,

Carolyn B. Lamm

Carolyn B. Lamm

cc: Eric Holder

Leadership Conference on Civil Rights

1629 K Street, NW
10th Floor
Washington, D.C. 20006

Phone: 202-466-3311
Fax: 202-466-3435
www.civilrights.org

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Dennis Van Roekel
National Education Association
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National Fair Housing Alliance
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Human Rights Campaign
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Service Employees International Union
John Trasvina
Mexican American Legal Defense and Educational Fund
Randi Weingarten
American Federation of Teachers
Mary G. Wilson
League of Women Voters
COMPLIANCE/ENFORCEMENT COMMITTEE CHAIRPERSON
Karen K. Narasaki
Asian American Justice Center
PRESIDENT & CEO
Wade J. Henderson

February 24, 2009

Senator Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Senator Arlen Specter
U.S. Senate
711Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Leadership Conference on Civil Rights, the nation's oldest, largest, and most diverse civil rights coalition, and the undersigned organizations, we write to express our strong support for the nomination of David Ogden to the position of Deputy Attorney General of the United States. Mr. Ogden is the right choice to work alongside Eric Holder to restore integrity and commitment to the rule of law absent from the Department of Justice over the past eight years.

Mr. Ogden has a firm record of support for civil rights. During his tenure at the Department of Justice from 1995-1999, as Associate Deputy Attorney General and Counselor and Chief of Staff to the Attorney General, Mr. Ogden worked with the leadership of the Civil Rights Division on the full range of civil rights issues including affirmative action, hate crimes, voting rights, racial profiling, clinic violence, single sex universities, the rights of the institutionalized, and police violence. He led the Department's hate crime initiative, resulting in the Clinton Administration's Hate Crimes legislation. He also directed the Department's Indian Country Law Enforcement initiative, which was designed to equalize the law enforcement resources available to reservations with the level that is available to the rest of the United States. In private practice, Mr. Ogden filed briefs or amicus briefs in high profile cases supporting the use of affirmative action and race conscious tools in K-12 education, the rights of women in cases involving the right to choose, the rights of gay and lesbian individuals, and the rights of mentally ill and mentally retarded citizens. Mr. Ogden has also worked on litigation to expand voting rights laws and to ensure the rights of defendants in capital punishment cases.

Mr. Ogden is currently a partner at Wilmer Cutler Pickering Hale and Dorr and served as the Department of Justice Agency Review lead for the Obama-Biden Transition Project. Previously, in addition to the various positions he held at the Department of Justice from 1995-1999, Mr. Ogden served as Assistant Attorney General in the Civil Division from 1999-2001. In this position, he directed the department's largest litigating unit, responsible for almost all federal agencies.

As Deputy Attorney General, Mr. Ogden will be responsible for overseeing the

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daily operations of the Department of Justice. Mr. Ogden's broad and diverse experiences serving in the Justice Department and in the private sector ensure that he will bring a sense of perspective and integrity to this position. Mr. Ogden's demonstrated ability to manage and oversee complex situations, his capacity to work cooperatively, and his background both in and out of the Department will enable him to restore independence and confidence to the Department.

In the past eight years, scandal and controversy have rocked the Department, politics has trumped impartial enforcement of the law, and ideology has undermined competence. The Department has been disrupted in its important work by turmoil, instability, politics, massive turnover, loss of experienced staff, and a lack of confidence. As Deputy Attorney General, Mr. Ogden will be needed to help re-establish the Department of Justice as an agency of integrity and dignity. We have confidence that Mr. Ogden is up to this task.

Sincerely,

Leadership Conference on Civil Rights
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
Americans for Democratic Action
Alliance for Justice
Asian American Justice Center
Association of Community Organizations for Reform Now
Black Leadership Forum, Inc.
Campaign for America's Future
Human Rights Campaign
Lawyers' Committee for Civil Rights Under Law
Mexican American Legal Defense and Educational Fund
NAACP Legal Defense & Educational Fund, Inc.
NARAL Pro-Choice America
National Abortion Federation
National Association for the Advancement of Colored People (NAACP)
National Congress of American Indians
National Health Law Program
National Partnership
National Senior Citizens Law Center
People For the American Way
The Judge David L. Bazelon Center for Mental Health Law

THE NATIONAL CENTER FOR
Victims of Crime

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January 21, 2009

Senator Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Senator Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510-3802

Re: Nomination of David Ogden for Deputy Attorney General

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my strong support for the nomination of David Ogden for Deputy Attorney General of the United States Department of Justice (DOJ). As you may know, I was privileged to serve in the Department of Justice with Mr. Ogden from 1998-2001 and have consistently been impressed with his integrity, intellectual honesty, and management abilities.

At the National Center for Victims of Crime, our mission is to forge a national commitment to help victims of crime rebuild their lives. The Department of Justice's fulfillment of its mission of ensuring justice for all is particularly critical for victims of both local and federal crime across the country and significantly impacts the work of victim advocacy organizations like the National Center.

As Deputy Attorney General, Mr. Ogden will oversee all federal criminal prosecutions, with direct oversight of the work of the Department's Criminal Division and indirect oversight of prosecutions in the Offices of the United States Attorneys across the country. As such, he will set the tone for victim inclusion and ensure that appropriate policies are in place.

Based on my personal experience as a colleague of Mr. Ogden, I believe that he will play a valuable and significant role in setting a high standard of quality, integrity, and efficiency at the Department of Justice.

We urge Mr. Ogden's swift confirmation in the interest of allowing the Department of Justice to resume its full functioning as our premier law enforcement organization.

Sincerely,

Mary Lou Leary

2000 M Street, NW • Suite 480 • Washington, DC 20036 • Tel. 202 / 467-8700 • Fax 202 / 467-8701 • www.ncvc.org

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
February 5, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee
Hearing On The Nomination Of David Ogden To Be Deputy Attorney General
February 5, 2009

On Tuesday, Eric Holder was sworn in as the 82nd Attorney General of the United States. The strong bipartisan support for his historic nomination, which was reported by this Committee 17 to 2 and confirmed by the Senate with a strong bipartisan vote, was a testament to Mr. Holder's character, integrity and independence. It is also a statement that it is time to restore the Justice Department and to restore the American people's confidence in Federal law enforcement.

Today, the Committee continues the work of restoring the Department. President Obama nominated David Ogden, a former high-ranking official at both the Justice and Defense Departments, to be the Deputy Attorney General, the number two position at the Department of Justice. The Deputy Attorney General is essential to the day-to-day management of the Department and, in the absence of the Attorney General, acts as the Attorney General.

It is the holdover Deputy Attorney General acting as Attorney General who had been in charge between Michael Mukasey's resignation and Attorney General Holder's confirmation. I want publicly to thank Mark Filip. He came from Chicago last year motivated by public service. He has done a commendable job, working with us to revise the McNulty memo and on many other important issues.

It was another Deputy Attorney General, an earlier one during the Gonzales era, who had direct supervisory authority over United States Attorneys during the scandalous firings for partisan political purposes. That Deputy Attorney General resigned during this Committee's investigation. The report by the Department's own internal oversight offices confirmed the findings of our investigation and concluded that he and former Attorney General Gonzales "abdicated their responsibility to safeguard the integrity and independence of the Department by failing to ensure that the removal of U.S. Attorneys was not based on improper political considerations." The Deputy Attorney General is important.

Mr. Ogden's nomination has received dozens of letters of support, including impressive support from nearly every major law enforcement organization. The National Association of Police Organizations wrote that "David Ogden has the experience and knowledge necessary to direct our Nation's law enforcement efforts." Chuck Canterbury, National President of the Fraternal Order of Police, wrote that Mr. Ogden "possesses the leadership and experience that the Justice Department will need to meet the challenges which lay before us." The National Sheriff's Association joined the law enforcement support for Mr. Ogden, writing that his "comprehensive background and experience in civil litigation compliments Attorney General Nominee Eric Holder's experience in criminal law, thus making him the ideal nominee for Deputy Attorney General."

David Ogden's nomination has received strong endorsements from Republican and Democratic former public officials and high-ranking veterans of the Department. Larry Thompson, a former Deputy Attorney General himself, describes Mr. Ogden as "a brilliant and thoughtful lawyer" who "has the complete confidence and respect of career attorneys at Main Justice ? David will be a superb Deputy Attorney General." I agree. David Ogden is a "lawyer's lawyer" with broad experience in government and private practice to continue this work.

In particular, I think his experience at the Department of Defense will be a key to his success in the years

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ahead. He previously serviced as Deputy General Counsel at Defense. A dozen retired military officers who served as Judge Advocates General have endorsed Mr. Ogden's nomination, calling him "a person of wisdom, fairness and integrity, a public servant vigilant to protect the national security of the United States, and a civilian official who values the perspective of unformed lawyers in matters within their particular expertise."

David Ogden is the kind of serious lawyer and experienced government servant who understands the special role the Department of Justice must fulfill in our democracy. He has the knowledge and ability to help restore it. He will be a critical asset for Attorney General Holder and can help restore the best traditions of the Department by ensuring that the career professionals at the Department are able to do their jobs and enforce the law without fear or favor. I commend him and his family for his willingness to serve.

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LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.
ATTORNEYS AT LAW
1330 BROADWAY, SUITE 1800
OAKLAND, CALIFORNIA 94612-2519

PHONE: [redacted] • FAX: [redacted]
SENDER'S E-MAIL: [redacted]

January 22, 2009

Chairman Patrick Leahy
Senate Judiciary Committee
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
Senate Judiciary Committee
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

RE: David Ogden's Nomination for Deputy Attorney General

Dear Chairman Leahy and Ranking Member Spector:

I submit this letter in support of the nomination of David Ogden for the position of Deputy Attorney General in the U.S. Department of Justice. I do so enthusiastically and without reservation.

I first met David when I was Assistant Attorney General for Civil Rights from December 1997 through January 2001. David initially oversaw the work of the Civil Rights Division as the Attorney General's Chief of Staff and point person on civil rights matters; later he was my colleague as Assistant Attorney General for the Civil Division.

We worked closely on a wide variety of civil rights enforcement issues, ranging from voting rights to hate crimes to racial profiling to police misconduct to affirmative action to disability rights to assuring the civil rights of federal employees. David led the Department's work on preparing hate crimes legislation and law enforcement in Indian Country, initiatives in which I and the Civil Rights Division played a significant role.

I can say without hesitation that David is fully committed to enforcement of our national civil rights laws and to making sure that the Civil Rights Division is able to do its job of enforcing the law faithfully and without fear or favor. He has a keen sense of the importance of the promise of equal treatment and fairness--embedded in our laws--is translated into an every-day reality for minorities, women, individuals with disabilities and all others protected by our civil rights laws.

David has not merely been a summer patriot. After he left the Department, in the midst of a busy private practice, he undertook the representation of several individuals on death row in cases raising important legal questions and filed amicus curiae briefs for the American Psychological Association and the League of Women Voters on important civil rights issues.

David of course is a superbly qualified candidate in every sense, but his sensitivity and dedication to issues of equality and fairness deserve special attention at this particular juncture.

I fear that the Department and Civil Rights Division have strayed from their mission in recent years. The incoming Deputy Attorney will have to work hard to restore the independence and integrity of the Department as well as the Department's reputation. Much of this work will involve restoring the work of the Civil Rights Division and ensuring that civil rights enforcement is once more a national priority. I believe that David Ogden's personal sensitivity and dedication to civil rights will enable him to do that work well.

If I can otherwise be of assistance to the Committee, please do not hesitate to contact me.

Sincerely,

Bill Lann Lee

61992.169

WHITE & CASE

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

Tel + 1 202 626 3600
Fax + 1 202 639 9355
www.whitecase.com

Direct Dial [redacted]

January 22, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, D.C. 20510-3802

Dear Sirs:

I am writing to express my enthusiastic support for David Ogden, President Obama's nominee for the position of Deputy Attorney General.

I have had the privilege to serve in the Deputy Attorney General's office and the Attorney General's office under Attorney Generals Thornburgh, Barr and Ashcroft. I am confident that Mr. Ogden would make an outstanding Deputy Attorney General. I know from personal experience and from my friends there that he has a sterling reputation within the Justice Department based on his prior service there. He is also extremely well respected by the bar. He is a brilliant lawyer with excellent leadership skills. He also has a deep understanding of, and profound respect for, the Justice Department and the rule of law. Moreover, he is also a genuinely warm person who cares deeply about the people he works with.

The position of Deputy Attorney General is an extremely demanding and important one. If handled well, it helps ensure the smooth functioning of the Justice Department and its ability to perform its many, diverse, and critical functions. If it is not handled well, it can lead to dysfunction throughout the Department. I have absolutely no doubt that Mr. Ogden has the intellect, skills and temperament to handle that critical position with distinction and in a way which will bring honor to the Department. I could not be more enthusiastic or unreserved in my support for his nomination.

Respectfully,

Daniel B. Levin

DBL:aw

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Suffolk Co., New York
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Vancouver, British Columbia
Virginia Beach, Virginia
Washington, DC
Winnipeg, Manitoba

January 25, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

On behalf of the Major Cities Chiefs, I am writing to support the nomination of David Ogden to become Deputy Attorney General. The Major Cities Chiefs represents the 56 largest jurisdictions across the Nation.

Mr. Ogden has a distinguished career and we welcome his pledge to strengthen the partnership between state and local law enforcement and the Department of Justice. We look forward to working with Mr. Ogden throughout his term and we look forward to working with you on issues like Byrne-JAG, COPS and other critical law enforcement issues.

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of David Ogden quickly through the confirmation process.

Sincerely,

R. J. Kerlikowske

Gil Kerlikowske
President



January 23, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Senator Leahy and Senator Specter:

I am writing to express support for the nomination of David W. Ogden to be Deputy Attorney General. As Chief of Staff and Counselor to the Attorney General in the late 1990s, Mr. Ogden was intricately involved in helping to shape the National Center for Missing and Exploited Children's response to child victimization and was responsible for effectively delivering its services. Boys & Girls Clubs across the country depend on NCMEC to help keep our 4.8 million children safe and have been a partner with NCMEC since its inception.

Mr Ogden is a firm believer in crime prevention programs like the Boys & Girls Clubs. Now, more than ever, it is important to work tirelessly to protect our country's youth and help them rise to meet the day-to-day challenges with which they are faced: to provide them with opportunities for academic success and character development; to encourage them to live healthy lifestyles; to nurture their developing leadership skills and inspire them to community service.

I am convinced that Mr. Ogden's career as a litigator, leader of the legal community and great public servant will serve the Justice Department, law enforcement and America's families well. That is why Boys & Girls Clubs of America is proud to add our name to the extensive list of supporters.

Sincerely,

Kevin R. McCartney
Senior Vice President Government Relations

Office of Government Relations • 1325 G Street NW, Suite 500 • Washington, DC 20005 • Tel (202) 478-6200 • Fax (202) 552-7407

THOMAS J. MILLER
ATTORNEY GENERAL

Department of Justice
February 4, 2009

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515/281-5164
FACSIMILE: 515/281-4209

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
Washington, DC

The Honorable Arlen Specter
Ranking Minority Member
Senate Committee on the Judiciary
Washington, DC

Dear Mr. Chairman and Senator Specter:

I am the Attorney General and chief law enforcement officer of Iowa and am writing to urge the Committee to act favorably on the nomination of David W. Ogden to serve as Deputy Attorney General.

Mr. Ogden is an accomplished attorney having handled complex litigation over a number of years in private practice. He is intimately familiar with the Department of Justice, having served as Chief of Staff to then Attorney General Janet Reno and as Assistant Attorney General for the Civil Division.

Mr. Ogden headed the Transition Team for the Department of Justice on behalf of then President-elect Obama and, in that capacity, spent significant time with representatives of the Attorneys General. I believe that he will be both a powerful advocate and a good listener. My goal as Attorney General is to establish a level of comity with the Federal government which allows us to work together when that is appropriate and, on the occasions when there are disagreements, to do so recognizing that although we may differ, we share the same client, the public.

I believe that David Ogden will work collaboratively with the state Attorneys General, that he will not tolerate petty disputes and that this will allow the Department of Justice and the state Attorneys General to focus on the task ahead.

Thank you for this opportunity. Please do not hesitate to call me if you have any questions.

Sincerely,

Thomas J. Miller
Attorney General of Iowa

61992.173

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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Executive Secretary
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WILLIAM J. JOHNSON
Executive Director

January 22, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Association of Police Organizations (NAPO), representing more than 241,000 law enforcement officers throughout the United States, I am writing to advise you of our endorsement of the nomination of David W. Ogden for Deputy Attorney General of the United States. As the deputy to the top law enforcement official in the nation, the Deputy Attorney General advises and assists the Attorney General in setting the policies and programs that dictate how the federal government relates to and works with state and local law enforcement. NAPO believes Mr. Ogden has the experience and knowledge necessary to help direct our nation's law enforcement efforts.

Mr. Ogden is a nationally recognized litigator with more than twenty-five years' experience, including six years with the Department of Justice (DOJ). In 1995, he left his post as Deputy General Counsel and Legal Counsel at the Department of Defense to become Associate Deputy Attorney General of the DOJ. After two years in that position, he was promoted to Chief of Staff and Counselor to Attorney General Janet Reno. During his time as Chief of Staff, Mr. Ogden played a significant role in the development and implementation of the Community Oriented Policing Services (COPS) program, established by the 1994 Crime Bill, which put over 100,000 law enforcement officers on the street. Mr. Ogden finished his distinguished career at the DOJ in 2001 as Assistant Attorney General for the Civil Division, in which he was responsible for representing virtually all of the federal agencies in major civil litigation.

As Deputy Attorney General, we believe Mr. Ogden will use his extensive experience to help make the Justice Department more efficient and effective. His knowledge and understanding of the COPS program and community policing will be essential to once again making state and local law enforcement a vital part of the national crime-fighting strategy. Therefore, we urge you to confirm the nomination of David Ogden for Deputy Attorney General. If you have any questions, please feel free to contact me, or NAPO's Director of Governmental Affairs, Andrea Mournighan, at (703) 549-0775.

Sincerely,

William J. Johnson
Executive Director

NATIONAL CONGRESS OF AMERICAN INDIANS

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Fallon Paiute Shoshone Tribe

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Tlingit

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202.466.7797 fax
www.ncai.org

February 4, 2009

The Honorable Patrick J. Leahy,
Chair, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter,
Ranking Member, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, D.C. 20510

Re: Nominations of David Ogden and Tom Perrelli

Dear Senators Leahy and Specter:

I am writing on behalf of the National Congress of American Indians, the nation's oldest and largest organization of American Indian and Alaska Native tribal governments, to express our support for the nominations of David Ogden and Tom Perrelli to serve as Deputy Attorney General and Associate Attorney General, respectively. Both Mr. Ogden and Mr. Perrelli are exemplary candidates, and we urge their swift confirmation.

The Department of Justice plays a vitally important role in ensuring public safety in Indian Country and safeguarding the federal trust relationship. Under federal law, many Indian communities are completely dependent on the Department for investigation and prosecution of violent crimes and other felonies committed on Indian reservations.

In 1999, President Clinton launched the President's Indian Country Law Enforcement Initiative in response to reports revealing that the rate of violent victimizations among Indians was more than twice that of any other population in the United States. The Initiative sought to enhance the efforts of federal and tribal law enforcement entities to address violence and crime in tribal communities. Mr. Ogden and Mr. Perrelli were instrumental in the development of this important and promising initiative.

Unfortunately, over the past eight years Indian Country crime has slipped down the list of federal priorities. As a result, crime in Indian Country continues to rise, even while crime rates nationwide have fallen. The incoming Administration has an opportunity to reverse this trend with swift action that will begin to restore public safety in tribal communities and confidence among tribal members in the federal government's commitment to providing justice for all Americans.

Prompt confirmation of Mr. Ogden and Mr. Perrelli, both of whom have demonstrated an understanding of the problems faced by tribal communities and an interest in working with tribal leaders to address them in a manner that recognizes the sovereign-to-sovereign relationship between the United States and tribal governments, will allow this important work to begin. Please contact myself or Virginia Davis, 202-466-7767 or vdavis@ncai.org, with any questions or for additional information.

Sincerely,

Jacqueline Johnson Pata

National District Attorneys Association
44 Canal Center Plaza, Suite 110, Alexandria, Virginia 22314
703.549.9222/703.863.3195Fax
www.ndaa.org

27 January 2009

The Honorable Patrick Leahy
U. S. Senate
711 Hart Senate Office Building
Washington, DC 20510

RE: Recommendation of David W. Ogden to be Deputy Attorney General

Dear Senator Leahy:

On behalf of the National District Attorneys Association, the oldest and largest national association of State and local prosecutors in the nation, I wish to convey our support for David W. Ogden to become the next Deputy Attorney General of the United States.

State and local prosecutors handle 95% of the criminal prosecutions nationally; yet too often we feel that our perspective is not heard in Washington. NDAA was very impressed in meetings with Mr. Ogden and members of the transition team he headed that they took the initiative to reach out to State and local prosecutors and other criminal justice professionals. His obvious sincerity in having the Department of Justice partner with NDAA to advance issues such as training at the National Advocacy Center and implementation of the John R. Justice Prosecutors and Defenders Act is a positive attribute.

Mr. Ogden's assurances to NDAA that he will apply the laws regarding capital punishment in a fair manner as the law of the nation are very important to our members and are a consideration in our endorsement.

Mr. Ogden's service as Associate Deputy Attorney General (1995-97), the Chief of Staff and Counselor to the Attorney General (1997-99) and Assistant Attorney General for the Civil Division of the US Department of Justice (1999-2001) gives him an institutional perspective of the management of the Department. Our 7,000 members urge the Judiciary Committee to confirm David W. Ogden as our next Deputy Attorney General.

Sincerely,

Joseph I. Cassilly
President
National District Attorneys Association

To Be the Voice of America's Prosecutors and to Support Their Efforts to Protect the Rights and Safety of the People

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

22 January 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Specter,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for the nomination of David W. Ogden to be the next Deputy Attorney General of the United States.

Mr. Ogden is a tremendous choice. Not only is he a fine and gifted attorney, but he possess the leadership and experience that the Justice Department will need to meet the challenges which lay before us. Mr. Ogden has an excellent record of public service, which began in 1994 when he left private practice to become the Deputy General Counsel and the Legal Counsel for the U.S. Department of Defense. He transitioned into the U.S. Department of Justice in 1995, serving as an Associate Deputy Attorney General until 1997 when he became Counselor to the U.S. Attorney General. From 1998 until 1999, Mr. Ogden served as the chief of staff to the Attorney General. He served as Acting Assistant Attorney General for the Civil Division in 1999, until being confirmed for the post by the Senate in 2000. Mr. Ogden left the Department in 2001 and joined one of the top law firms in Washington, D.C. We are fortunate that President Obama has asked him to return to public service, and we look forward to working with him in the years to come.

As you know, we have the highest regard for the President's choice to be the next U.S. Attorney General, Eric H. Holder, Jr. We believe that he deserves to have people in whom he can place his trust when he assumes leadership of the Department. Mr. Ogden is one such individual, and I believe that the President has made a fine choice in David W. Ogden to be the next Deputy Attorney General of the United States. On behalf of the more than 327,000 members of the Fraternal Order of Police, I urge you and your Committee to expeditiously confirm his nomination. If I can be of any further assistance in this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President

—BUILDING ON A PROUD TRADITION—

NATIONAL NARCOTIC OFFICERS' ASSOCIATIONS COALITION

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Narcotic Enforcement Officers'
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Drug Enforcement Assn., Inc.

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Louisiana Narcotic
Officers' Assn.

Minnesota State Assn.
of Narcotic Investigators

Mississippi Assn. of Drug Enforcement Officers'

Missouri Narcotic
Officers' Assn.

Montana Narcotic Officers' Assn.

Narcotic Officers' Assn. of Hawaii

National HIDTA Directors' Assn.

National Drug Enforcers Officers' Assn.

Nevada Narcotic Officers' Assn.

New England Narcotic Enforcement Officers'
Assn.

New Jersey Narcotic Enforcement Officers' Assn.

County Narcotic Commanders Assn. of New
Jersey

New Mexico Narcotic Officers' Assn.

New York
Organization of Narcotic Enforcers

North Carolina
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Narcotic Assn. of Regional
Coordinating Officers' of Ohio

Assn. of Oklahoma Narcotic Enforcers

Oregon Narcotics Enforcement Assn.

Pennsylvania Narcotic Officers' Assn.

Puerto Rico Narcotic Officers' Assn.

R.I.S.S. Projects

Tennessee Narcotic Officers' Assn.

Texas Narcotic Officers' Assn.

Utah Narcotic Officers' Assn.

Washington State Narcotics Investigators' Assn.

Wisconsin Narcotics Officers' Assn.

January 23, 2009

The Honorable Patrick Leahy
Chairman
The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Narcotic Officers' Associations' Coalition (NNOAC) and the more than 70,000 law enforcement officers we represent, I'm pleased to offer my full support for the nomination of David W. Ogden for the office of Deputy Attorney General of the United States.

As state and local law enforcement continue to battle home-grown criminals across America, we look forward to working with a Deputy Attorney General who appreciates the challenges we face. While serving in a number of positions within the Department of Justice in the past – including as Deputy Associate Attorney General, Chief of Staff and Counselor to the Attorney General, and as a Senate-confirmed Assistant Attorney General for the Civil Division - Mr. Ogden has built an impressive track record of policy and managerial experience within the Department of Justice and understands the importance of working closely with state and local law enforcement on issues that matter most to America's communities.

Mr. Ogden possesses an outstanding mix of legal, managerial and policy expertise desperately needed within the Department of Justice. The NNOAC are pleased with recent statements by President Obama and Attorney General Designee Holder on state and local law enforcement assistance – including the Byrne Justice Assistance Grant (JAG) program – and look forward to working with Mr. Ogden to ensure these commitments are met.

Mr. Ogden is a dedicated and well qualified professional and we can think of no one more qualified than he to serve as United States Deputy Attorney General. Please feel free to contact me at rbrooks@nca.hidta.net or (415) 748-0835 if you require further information as you work through the nomination process. Correspondence may be sent directly to me at PO Box 36102, San Francisco, CA 94102. Thank you again for taking time to review our position.

Sincerely,

Ronald E. Brooks
President

NATIONAL SHERIFFS' ASSOCIATION

1450 Duke Street • Alexandria, VA 22314-3490 • 703-836-7827 • Fax 703-683-6541
WWW.SHERIFFS.ORG • NSAMAIL@SHERIFFS.ORG

January 26, 2009 VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9516

The Honorable Arlen Specter, Ranking Member
Senate Judiciary Committee
711 Hart Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9102

Dear Senators Leahy and Specter:

On behalf of the National Sheriffs' Association (NSA), we are writing to express our support for David W. Ogden as the nominee for the Deputy Attorney General of the United States. The United States Department of Justice (DOJ) encompasses both criminal and civil matters. Mr. Ogden's comprehensive background and experience in civil litigation compliments Attorney General Nominee Eric Holder's experience in criminal law, thus making him the ideal nominee for Deputy Attorney General. We urge you to swiftly confirm his nomination.

Throughout his career, Mr. Ogden has maintained the highest levels of professionalism and integrity. Under the Clinton Administration, Mr. Ogden served his country both abroad and domestically. As Deputy General Counsel and Legal Counsel for the United States Department of Defense (DoD), he oversaw DoD's litigation in courts worldwide. For his service, he was bestowed with the DoD's highest civilian honor – the Department of Defense Medal for Distinguished Public Service.

Furthermore, under Attorney General Janet Reno, Mr. Ogden served in several prestigious capacities within the U.S. Department of Justice, as Associate Deputy Attorney General, Chief of Staff and Counselor Attorney General Janet Reno, and as Assistant Attorney General. Primarily, Mr. Ogden was responsible for defending the nation's federal agencies against civil litigations, including in such high profile cases as the Elian Gonzalez case and the tragedy at the Branch Davidian in Waco, Texas.

As the second in command at the Department of Justice, Mr. Ogden will play a critical role in maintaining the fair and impartiality of the agency. We believe that Mr. Ogden's record clearly demonstrates his commitment to placing the needs of this nation above the needs of all others, and would continue to do so as the Deputy Attorney General of the United States. We urge the United States Senate to quickly confirm his nomination.

Respectfully,

Sheriff David A. Goad
President

Aaron D. Kennard
Executive Director

Serving Our Nation's Sheriffs Since 1940

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Testimony of

David Ogden

February 5, 2009

Opening Statement of David Ogden

Mr. Chairman, Ranking Member Specter, and Members of the Committee, it is a great honor to be here today as the nominee to be the next Deputy Attorney General of the United States. I am grateful and humbled that President Obama and Attorney General Holder have placed such confidence in me.

I would like to thank the members of the Committee and their staffs for showing me every courtesy and providing me with the opportunity to meet with many of you. Each of those meetings has been instructive, and if I am fortunate enough to be confirmed, I will benefit from your guidance and, I hope, from continued dialogue on the full range of policy issues entrusted to the Department and within the responsibility of this Committee.

I want to thank former Senator John Warner and Senators Jim Webb and Mark Warner for their support today. My family of Virginians is very fortunate to have had and to continue to benefit from such fine representatives in this body.

I know you will recognize that I owe a great debt to my wife, Anne Harkavy, who has agreed that I may stand for this important job just one month to the day after she gave birth to our beautiful daughter, Natalie. Anne has been my law partner and will always remain my partner in life. The opportunity for public service presented to me by this appointment will impose many burdens on her, and her willingness to take them on speaks volumes about her love for our country and for her husband.

I want to thank my son Jonathan, who is a sophomore at The College of William & Mary, and my daughter Elaine, who is a high school senior and will soon be attending my alma mater, the University of Pennsylvania. I am immeasurably proud that they are such fine people, and grateful that they are such good friends. And though it is too soon for my newborn daughter Natalie to understand any of this, I also thank her for her sacrifices and hope she will read these words some day.

I am so glad that my mother, Elaine Ogden, is here today. I wish so much that my father, Hod Ogden, could be here too. From day one, my mom and dad taught me a lot of important things, among them to give the best of myself to my family, my community and my country; to be willing to take a personal risk to do what is right; and to say no when no is the right answer.

Like the other men and women who in recent memory have come before you to be considered for the position of Deputy Attorney General, I have a special regard for the Department of Justice. I know it to be an essential bulwark of our democracy and our freedom. I am the proud son of a career federal civil servant, and so it did not surprise me during my service in the Department to witness the great dedication and expertise of its career personnel. But I took something away when I left the Department that I did not take in with me: an understanding that the greatness of the institution is its dedicated career personnel, particularly those senior attorneys who have devoted their professional lives to the Department's legal missions and those law enforcement and national security professionals who put their personal safety at risk every day and night to defend our safety and our rights.

Those career professionals are a precious national resource who carry forward the Department's great traditions of independence, non-partisanship, vigilance, restraint, fairness, and service and fealty to the law. With proper support, they will continue to transmit those traditions across generations and administrations.

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I knew going in that the job of the Department's non-career leadership, including the Attorney General and Deputy Attorney General, is to provide strong management and clear direction about the Department's goals, and to ensure good communication up and down and across the many components that comprise the Department and with sister agencies. I hope I learned something about how to do those things. But it is the Department's career personnel who protect the public safety, the national security, the economy, the environment and the public fisc; safeguard our civil and constitutional rights; operate our federal prisons; and – as important as any mission in any agency – ensure that our federal government itself operates consistently with its own laws. So, while serving in the Department's leadership, I came to understand that leadership's real job, in everything it does, is to help the Department's career professionals do the Department's vital work. I also came to understand that the Department's leadership, including the Attorney General and Deputy, have another critical duty -- the duty to ensure that the Department's career professionals are able to pass along those living, non-partisan traditions to the next group that will, at some point, take their places. And to do that, the leadership must reinforce those traditions with every official act and statement.

It is the chance once again to help the Department's career professionals do those things that brings me here today.

I recognize that the challenges facing the Department may be as great as they ever have been. Since September 11, 2001, the Department has taken on a role at the heart of our national security during a war that has reached our homeland. Its role as the lead federal law enforcement agency is also urgent, because crime across a range of fronts threatens our communities, our economy, and our personal rights and security. The Justice Department's role as protector of the public fisc has never been more important, given unprecedented budgetary demands. And no less pressing are the Department's roles as protector – for Americans present and future – of the competitiveness or our economy and consumer rights in a time of economic upheaval; protector of the environment in a time of critical ecological challenges; and protector of the cherished civil rights and civil liberties that are the centerpiece of our political heritage.

I am confident that under Attorney General Holder's leadership and with your assistance and support, the Department of Justice will meet these challenges. If confirmed as Deputy Attorney General, I'll do everything I can to help.

Thank you again for the opportunity to appear before you today. I know that there is great expertise here, on both sides of the aisle. If confirmed, I hope to be able to call on you for guidance, and will do my best to ensure that the Department works closely with you. I look forward to your questions.

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U. S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

July 25, 2005

Jeffrey M. Blum
Attorney at Law
7106 Meadow Ridge Drive
Louisville, Kentucky 40218

Re: Country Folk Art Matter

Dear Mr. Blum:

I received your letter dated July 20, 2005. I was disappointed to see that your rhetoric has once again escalated and that your tone has become quite negative. I feel compelled to respond to the letter, which, under other circumstances, I would consider as warranting no response.

I want to make clear that the Department of Justice Asset Forfeiture and Money Laundering Section has reviewed the issues involved in the original forfeiture and determined that no further legal action is required in light of the Sixth Circuit's opinion. Nevertheless, because the facts underlying the forfeiture and your client's tax liability are so closely linked, this office has agreed to request that the Internal Revenue Service conduct a review of the validity of the pending refund claim and render a decision on whether any tax credit is warranted. Our request in this regard is in no way binding on the IRS, however.

I have no reason to doubt that Commissioner Jardini and the IRS staff will conduct a fair review and take the action they believe is appropriate in this case; should they still disagree with your assessment of the law or the facts, however, there is nothing further that I or the Department of Justice can do.

Please know that I have received and kept the volumes of correspondence you have sent to me in this matter, and I will provide the IRS with whatever materials are necessary to facilitate their review. Please also understand that my failure to respond to each and every letter you have sent should not be considered a tacit adoption of any of the statements contained therein. I have communicated my affirmative position to you in writing.

Sincerely,

Catherine M. O'Neil
Associate Deputy Attorney General

July 25 2005

Nancy Jardini
Chief, Criminal Investigation
Internal Revenue Service
1111 Constitution Avenue, NW
Room 2527
Washington, D.C. 20224

Re: Pending Tax Refund Claim of John & Virginia Long and
John & Rhonda Blakely, d/b/a Country Folk Art Shows, Inc.

Dear Ms. Jardini:

Counsel for the above-named taxpayers has contacted the Office of the Attorney General and this office to challenge a 1992 forfeiture of approximately $4 million, pursuant to a civil forfeiture action in the Eastern District of Michigan (*United States v. Real Property 6185 Brandywine Drive*, No. 92-CV-40157). This forfeiture action arose out of an investigation conducted by agents of the Internal Revenue Service.

The Criminal Division's Asset Forfeiture and Money Laundering Section has conducted a review of the matter and concluded that no further legal action is appropriate. However, in considering this case, this office has been mindful of the fact that the factual basis for the forfeiture appears to be closely linked with the facts underlying the $5.3 million tax liability of the taxpayers. Counsel for the taxpayers has advised us that he filed a refund claim with the Internal Revenue Service pertaining to that tax assessment on or about April 2, 2002.

As you and I have discussed, I am writing to suggest that your office undertake its own review of the facts of the pending refund claim and render a decision. I recognize that this request is in no way binding upon the Internal Revenue Service, however.

Should you require any additional information in connection with your review, the Department of Justice is available to assist. I appreciate your attention to this matter.

Sincerely,

Catherine M. O'Neil
Associate Deputy Attorney General



January 22, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Partnership for a Drug-Free America, I write to express support for the nomination of David Ogden for Deputy Attorney General. With his substantial experience in numerous posts at the Department of Justice, we believe that Mr. Ogden is an excellent choice to oversee the many components of the Justice Department and help shape policies, including those that address illicit drug use in America.

As an organization dedicated to preventing drug and alcohol abuse, the Partnership works with families to address the disease of addiction in preteens, teens and young adults. We have also worked closely in recent years with the Department of Justice on a program led by local law enforcement to help unite communities in finding effective solutions to address local drug epidemics. The Partnership has also collaborated closely with the Drug Enforcement Administration and other Department of Justice components on a number of endeavors and believes that law enforcement is an important partner in our work.

We share the values that the Obama Administration has already espoused regarding the importance of crime and drug prevention programs, support for state and local law enforcement, shutting down drug distribution networks, and reducing prescription drug abuse. As Deputy Attorney General, much of the responsibility of advancing these efforts will fall to Mr. Ogden and we are confident that those priorities will be in good hands. He will have our full support and cooperation.

For these reasons the Partnership for a Drug-Free America respectfully urges the Committee to confirm the nomination of David Ogden for Deputy Attorney General.

Sincerely,

Stephen J. Pasierb
President and CEO

405 Lexington Avenue • New York, NY 10174 • Phone (212) 922-1560 • Fax (212) 922-1570 • www.drugfree.org

DEVAL L. PATRICK
GOVERNOR

75 Hinckley Road
Milton, MA 02186

January 23, 2009

Dear Chairman Leahy:

I write in support of the nomination of David Ogden to the position of Deputy Attorney General in the United States Department of Justice.

I have known David since 1995, when he arrived at the Department of Justice and I was serving as Assistant Attorney General for Civil Rights in the Administration of President Clinton. David demonstrated a deep personal commitment to the fair enforcement of the nation's civil rights. David worked closely with me and my staff on issues such as hate crimes, voting rights, racial profiling, affirmative action, the rights of institutionalized persons, and police misconduct. I saw David's work ethic, integrity and fair-mindedness up close, and I liked what I saw.

I believe that David is superbly qualified to serve our nation in the second highest position in the Department. I urge the Committee to consider his candidacy favorably.

Sincerely,



SIDLEY AUSTIN LLP
SIDLEY

SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
(202) 736 8000
(202) 736 8711 FAX

[redacted]

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January 21, 2009

BY HAND DELIVERY

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of David W. Ogden to be Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write enthusiastically to endorse the nomination of David Ogden to be Deputy Attorney General of the United States.

I have known David personally and professionally for more than a decade. While David and I have had honest disagreements as to how best to resolve a particular dispute, I always have admired his openness to opposing points of view and the sound judgment and reasoning that are consistent trademarks of any decision that David makes. During the Clinton Administration, I had opportunities to work with and against David while he was in the Department of Justice as Assistant Attorney General for the Civil Division, as Chief of Staff to the Attorney General, and as Associate Deputy Attorney General. Since joining Wilmer, I also have handled cases with David and found him to be consistently insightful and demonstrate the kind of integrity that command respect within the private bar.

David Ogden is without question a "lawyer's lawyer." He understands the Department as an institution, and will provide the kind of leadership that will bring confidence to the quality of justice that we all legitimately expect from the federal government. I support David's nomination as Deputy Attorney General, and I commend him to you without reservation.

Very truly yours,

Carter G. Phillips

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POLICE EXECUTIVE
RESEARCH FORUM

Chuck Wexler
Executive Director

January 22, 2009

Sen. Patrick J. Leahy, Chairman
Sen. Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senators Leahy and Specter:

On behalf of the Police Executive Research Forum (PERF), I am writing to support President Obama's nomination of David W. Ogden to be Deputy Attorney General.

PERF is a Washington, D.C.-based professional association of police chiefs and other leaders of local and state police departments. PERF also serves as a research and consulting firm specializing in helping police agencies to improve their policies and operations. PERF is governed by a board of directors of leading police chiefs.

Mr. Ogden's strong intellect and work ethic have been evident for nearly 30 years, beginning with his brilliant career at Harvard Law School and his service as a clerk to Justice Harry Blackmun. Those of us in the world of policing are most impressed with his service as Attorney General Janet Reno's chief of staff in the late 1990s. That period was a strong one for local police when, year after year, crime rates across the nation were plummeting. This was due in no small part to the excellent support for local police coming from the U.S. Justice Department. We have no doubt that Mr. Ogden understands the views of big-city police chiefs, who believe that the experience of the 1990s proves that police can in fact bring crime rates down with the latest strategies such as CompStat, focused attention on crime "hot spots," and community policing.

On behalf of PERF, I urge you to give expeditious consideration to Mr. Ogden's nomination and to confirm his appointment to this critically important post in the Obama Administration.

Respectfully,

Chuck Wexler
Executive Director

WE PROVIDE PROGRESS IN POLICING

1120 Connecticut Avenue, NW Suite 930 Washington, D.C. 20036
Tel: 202-466-7820 Fax: 202-466-7826 TTY: 202-466-2670 www.PoliceForum.org perf@policeforum.org

DANIEL M. PRICE
[redacted]

January 22, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, D.C. 20510

Re: Nomination of David W. Ogden to be Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write in support of the nomination of David W. Ogden to serve as Deputy Attorney General of the United States.

I recently completed service in the Administration of George W. Bush as Assistant to the President and Deputy National Security Advisor for International Economic Affairs. I was responsible within the White House for coordinating Administration policy on international economic issues including international trade and investment, foreign assistance, humanitarian relief, and the international aspects of financial system reform, energy security and climate change. I also served as the President's personal representative to the G-8, the G-20 Financial Summit and the Asia-Pacific Economic Cooperation Forum and as the United States chair of various Cabinet-level bilateral economic dialogues including the Transatlantic Economic Council.

I have known Mr. Ogden for more than 25 years, beginning with our years together as law students at Harvard Law School and continuing through his work as a lawyer in Washington in both private practice and government service. He is a lawyer of exceptional ability; he is a man of extraordinary character and integrity. His commitment to the highest standards of the legal profession is manifest in the success of his private practice with Wilmer Hale. His commitment to public service can be seen in his prior distinguished service as Deputy General Counsel with the Department of Defense and his service in senior roles with the Department of Justice.

Mr. Ogden has always demonstrated a keen sense of fidelity to the law and advancing the public interest. He can be counted on to exercise independent and impartial judgment. He has also shown an appreciation for the interplay of international law and domestic law; of national security and international economic policy. From my recent experience at the White House, I

know that the challenges posed both to our national security and to our law enforcement by an increasingly globalized economy are many and real, and I had occasion to work closely with the Department of Justice to address these challenges. I believe Mr. Ogden can ably lead the Justice Department's activities in this area and make an important contribution to policy formulation and execution.

Mr. Ogden will also do a first rate job as a key manager of the Department. He will be a strong leader who can motivate others and build teams while bringing out the best from each individual. Like all natural leaders, he leads first and foremost by example: no one at the Justice Department will work harder or show greater commitment to serving the public than David.

I believe the Justice Department and our nation will be very well-served by Mr. Ogden's confirmation and I commend him to your favorable consideration without any reservation.

Your sincerely,

Daniel M. Price

RELIGIOUS ALLIANCE AGAINST PORNOGRAPHY

March 6, 2009

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

We write you as representatives of the Religious Alliance Against Pornography to encourage you to vote against the confirmation of David Ogden, President Obama's nominee for the position of Deputy Attorney General. In addition to this letter, we have written every one of your senatorial colleagues as well as the President to express our grave concern regarding this nomination.

The Religious Alliance is a broad association of faith leaders united by the desire to protect the citizens of our country from the harms of pornography. We represent one of the most diverse coalitions of the faith community ever assembled, with representatives from the Roman Catholic, Jewish, Muslim, Mormon, Orthodox, and Protestant communities. Collectively, we represent more than 100 million Americans.

In our roles as faith leaders, we see the destructive impact of pornography on a regular basis. Pornography images and the implicit messages those images convey undermine marriages, lead to sexual addiction, and harm the lives of millions of young people. American teenagers are some of the most sexually active in the industrialized world, a result, we believe, of the systematic mainstreaming of pornography and its messages regarding human sexuality. While we recognize that not all pornographic material is illegal given current First Amendment jurisprudence, obscene material and child pornography do not constitute protected speech. Federal laws are in place to prosecute those who produce and distribute such content, and these laws must be enforced for the welfare of this nation's families and children.

David Ogden's record speaks for itself; he has, for decades, defended pornographers—even child pornographers—and has opposed even the most reasonable regulations of pornography production and distribution. Given that record, we have strong doubts that the Justice Department will strive to protect our citizenry from illegal pornography, to the great detriment of our society, now and for years to come.

Senator Leahy, we are deeply disappointed by this nomination and strongly encourage you to vote against the confirmation of David Ogden, who is undoubtedly a brilliant attorney with impeccable professional credentials. However, for the second-highest ranking official in the Department of Justice to have such a record on the issue of pornography conveys the wrong message to the people—and particularly the youth—of our nation. It is within your power to send the right message by voting against confirmation, and it is our sincere hope that you will exercise that power when the nomination comes before the full Senate.

Respectfully yours,

William Card Keeler

Cardinal William H. Keeler
Archbishop Emeritus of Baltimore
Co-Chair, RAAP

Jerry R. Kirk

Rev. Dr. Jerry R. Kirk
Co-Chair, RAAP
Founder and Chairman
National Coalition for the
Protection of Children & Families

Rick Schatz

Rick Schatz
RAAP Executive Committee
President and CEO
National Coalition for the
Protection of Children & Families

800 Compton Rd., Suite 9224 ◆ Cincinnati, Ohio 45231 ◆ (513) 521-6227 ◆ (513) 521-6337 – Fax

Religious Alliance Against Pornography (RAAP)

William Cardinal H. Keeler
Co-Chairman, RAAP
Archbishop Emeritus of Baltimore

Reverend Jerry Kirk
Co-Chairman, RAAP
Chairman of the Board, NCPCF

Mr. Rick Schatz
President and CEO
National Coalition for the Protection of Children & Families

Reverend Arlene Allen
National Director Women's Ministries
Assemblies of God

Bishop George Bashore
United Methodist Church

Bishop William Frey
Episcopal Church U.S.A.

Commissioner Israel Gaither
National Commander of
The Salvation Army

Reverend Dwayne Hastings
Vice President for Press Communications
Southern Baptist Convention Rep.
Ethics & Religious Liberty Commission

Bishop James Leggett
General Superintendent
International Pentecostal Holiness Church

Bishop Paul S. Loverde
Bishop of Arlington
The Catholic Diocese of Arlington

Reverend John E. Maracle
Chief / President
Native American Fellowship A/G
North American Native Christian Council

Bishop George McKinney
Jurisdictional Prelate
Church of God in Christ, Inc.

Reverend Dr. Jesse Miranda
Professor
Vanguard University
President of Amen

Most Reverend George H. Neiderauer
Archbishop of San Francisco

Theo Nicolakis
Director of Information Technology
Greek Orthodox Archdiocese of America

Commissioner Kay Rader
The Salvation Army

Rev. Dr. James Scott
Assistant General Supervisor
VP of Regional Church Operations
The Foursquare Gospel

Imam Omar Shaheed
Muslim American Society
Masjid As-Salaam

Dr. Thomas Trask
Former General Superintendent
General Council of the Assemblies of God
Representative of the National Association of Evangelicals

Dr. J.K. Warrick
General Superintendent
International Church of the Nazarene

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January 22, 2009

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
United States Senate
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
United States Senate
711 Hart Building Office
Washington, DC 20510

Re: Nomination of David W. Ogden to be Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write strongly to support the nomination of David Ogden to be the next Deputy Attorney General of the United States.

As a former United States Attorney (Eastern District of Michigan 1977-1980) and a former Assistant Attorney General for the Criminal Division (1998-2001), I care deeply about the Justice Department. I share the view the two of you have both expressed publicly – that the new leadership of the Justice Department must restore the Department's credibility with the American people. I addressed this topic in the most recent issue of the Harvard Law & Policy Review. My article, "Restoring Public Confidence in the Fairness of the Department of Justice's Criminal Justice Function" [http://www.hlpronline.com/Robinson_HLPR.pdf], expressed the view that:

> "Ideally, the next Attorney General of the United States, as well as the Deputy Attorney General, Associate Attorney General and other presidential appointees in the Department would be men or women who are as close as possible to the 'Lawyer-Statesman' that former Yale Law School Dean Anthony Kronman sought to describe in his book *The Lost Lawyer: Failing Ideals of the Legal Profession*. Such a lawyer would be 'a devoted citizen

James K. Robinson Tel [redacted] Fax [redacted]

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The Honorable Patrick J. Leahy
The Honorable Arlen Specter
January 22, 2009

> [who] cares about the public good and is prepared to sacrifice his own well being for it, unlike those who merely advance their private ends.' He or she 'is a paragon of judgment, and others look to him for leadership on account of his extraordinary deliberative power.'"

In my view, David Ogden is such a person. It was my privilege to work closely with David during my tenure as AAG of the Criminal Division. At that time, David served first as Chief of Staff to the Attorney General and then as the Assistant Attorney General for the Civil Division. It has also been my privilege to serve with David on the Obama Justice Department transition team over the past several months.

I have witnessed first hand David's extraordinarily sound judgment, his commitment to the mission of the Justice Department, and his passion for restoring the morale of the Department's outstanding career employees, and the credibility of the Department. David is a person of utmost integrity and independence. I am confident that he has the necessary strength of character to "speak truth to power" whenever necessary--a critical requirement for top leaders of the Justice Department to guarantee that the nation's commitment to the rule of law will always be honored.

I am pleased to support David's nomination with great enthusiasm and without reservation.

Sincerely,

James K. Robinson

JKR/glt

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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

January 28, 2009

Mr. David W. Ogden
Partner
Wilmer Hale
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Dear Mr. Ogden:

As we discussed during your courtesy visit, I would appreciate it if you would review the applicable law and be in a position to comment on the extensive Congressional authority to conduct oversight on the Department of Justice at your upcoming nomination hearing.

This broad Congressional authority was summarized as follows in a 1995 Congressional Research Service analysis:

> [A] review of congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years from the Palmer Raids and Teapot Dome to Watergate and through Iran-Contra and Rocky Flats, demonstrates that DOJ has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in DOJ or elsewhere. A number of these inquiries spawned seminal Supreme Court rulings that today provide the legal foundation for the broad congressional power of inquiry. All were contentious and involved Executive claims that committee demands for agency documents and testimony were precluded on the basis of constitutional or common law privilege or policy.
>
> In the majority of instances reviewed, the testimony of subordinate DOJ employees, such as line attorneys and FBI field agents, was taken formally or informally, and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations and the surveillance and arrests of suspects, and documents presented to grand juries not protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, among other similar "sensitive" materials. Congressional Research Report, "Investigative Oversight: An Introduction to the Practice and Procedure of Congressional Inquiry", pp. 23-24 (April 7, 1995).

Thank you for your attention to this matter, and I look forward to discussing this and other maters with you next week.

Sincerely,

Arlen Specter

WILMERHALE

February 4, 2009

Todd R. Steggerda

Senator John McCain
United States Senate
241 Russell Senate Office Building
Washington, DC 20510

Dear Senator McCain:

I am writing to you in strong support of the nomination of David Ogden to be Deputy Attorney General of the United States. Before serving as Chief Counsel to your 2008 presidential campaign, I had the distinct privilege of working with David for several years in the Washington law office of Wilmer Cutler Pickering Hale and Dorr LLP. During this period of time, I came to know David as a brilliant and dedicated lawyer, possessing both the integrity and sound judgment that will be necessary to help lead the Justice Department in these difficult times. Most importantly, I do believe that David is deeply committed to the rule of law and will serve with great distinction if confirmed as Deputy Attorney General. I have been very proud to call David Ogden my Partner at WilmerHale, and I know the Nation will be well-served if he is confirmed.

Sincerely,

Todd Steggerda

cc: The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Judiciary Committee

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Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary

Honorable Arlen Specter
Ranking Member, U.S. Senate Committee on the Judiciary

Honorable Herb Kohl
Member, U.S. Senate Committee on the Judiciary

Honorable Dianne Feinstein
Member, U.S. Senate Committee on the Judiciary

Honorable Orrin G. Hatch
Member, U.S. Senate Committee on the Judiciary

Honorable Russell D. Feingold
Member, U.S. Senate Committee on the Judiciary

Honorable Charles E. Grassley
Member, U.S. Senate Committee on the Judiciary

Honorable Charles E. Schumer
Member, U.S. Senate Committee on the Judiciary

Honorable Jon Kyl
Member, U.S. Senate Committee on the Judiciary

Honorable Richard J. Durbin
Member, U.S. Senate Committee on the Judiciary

Honorable Jeff Sessions
Member, U.S. Senate Committee on the Judiciary

Honorable Benjamin L. Cardin
Member, U.S. Senate Committee on the Judiciary

Honorable Lindsey Graham
Member, U.S. Senate Committee on the Judiciary

Honorable Sheldon Whitehouse
Member, U.S. Senate Committee on the Judiciary

Honorable John Cornyn
Member, U.S. Senate Committee on the Judiciary

Honorable Ron Wyden

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Member, U.S. Senate Committee on the Judiciary

Honorable Tom Coburn
Member, U.S. Senate Committee on the Judiciary

Honorable Amy Klobuchar
Member, U.S. Senate Committee on the Judiciary

Honorable Edward E. Kaufman
Member, U.S. Senate Committee on the Judiciary

Dear Chairman Leahy, Ranking Member Specter, and Committee Members

We are writing on behalf of Americans who are concerned with the lack of scrutiny that could be applied to some of President Obama's most important nominees. As new nominations come before your Committee, we hope you will reject pressure from the White House or others to rubber stamp nominations. Instead, it is our hope that you will give the American people an opportunity to hear about nominees and their records.

If confirmed by the U.S. Senate to serve in high offices within the Department of Justice, Dawn Johnsen, David Ogden, and Thomas J. Perrelli could have a dramatic impact on the state of this nation's legal order. Each of these nominees has made public comments or has taken positions indicating strong support for a shift in national policy regarding the culture of life. Whatever one thinks of the culture of life, dramatic shifts in policy on such important national questions should not happen without serious deliberation.

Consider the following facts:

--David Ogden has been nominated for Deputy Attorney General. His hearing is next week, less than a month after his nomination. On behalf of the American Psychological Association, he filed a terrible amicus brief in Casey v. Planned Parenthood, and here are the relevant quotes:

(1) "The conclusions from the most rigorous scientific studies are consistent: for the overwhelming majority of women who undergo abortion, there are no long-term negative emotional effects..."
(2) "Abortion rarely causes or exacerbates psychological or emotional problems. When women do experience regret, depression, or guilt, such feelings are mild and diminish rapidly without adversely affecting general functioning. Those few women who do experience negative psychological responses after abortion appear to be those with preexisting emotional problems ...."
and

(3) "In sum, it is grossly misleading to tell a woman that abortion imposes possible

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detrimental psychological effects when the risks are negligible in most cases, when the evidence shows that she is more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant (if not greater) risks or adverse psychological effects ...."

--Dawn Johnson has been nominated to serve as head of the Office of Legal Counsel. She is the former Legal Director to NARAL and was a Staff Counsel Fellow for the ACLU Reproductive Freedom Project—a project which recently served as lead counsel in Ayotte v. Planned Parenthood of Northern England. This is absolutely stunning. For eight years, the Democrats and the Left complained that this office, charged with providing the government with objective opinions about the constitutionality of acts it wishes to undertake (this is the office that opined on detainees and interrogation, for example), had been politicized in an unprecedented way. And, now, without any debate or discussion, the Obama Administration is putting forward an absolute political zealot from two of the nation's most Leftist groups.

--Thomas Perrelli, nominated to serve as Associate Attorney General, is most infamous for his defense of Terri Schiavo's husband in the battle over withdrawing life-sustaining treatment. Perrelli even worked with pro-euthanasia attorney George Felos on the case, sending a clear message about his own end-of-life views. The appointment of Perrelli is hardly a surprise—President Obama voted with a unanimous Senate to pass the Schiavo bill, but now calls it one of his biggest mistakes.

Millions of Americans reasonably expect their elected representatives in the Senate to provide meaningful review of the President's nominees, particularly when they could dramatically change national policy. We urge the Committee to provide ample time for meaningful review to take place, and we urge members to ask probative questions of these nominees and demand serious answers so that the American people can continue to play a part in defining the cultural fabric of our nation.

Sincerely,

Kristan Hawkins
Executive Director, Students for Life of America

Tony Perkins
President, Family Research Council

David N. O'Steen, Ph. D.
Executive Director, National Right to Life Committee

Charmaine Yoest
President, Americans United for Life

Austin Ruse
President, Catholic Family and Human Rights Institute

Marjorie Dannenfelser
President, Susan B. Anthony List

Kris Mineau
President, Massachusetts Family Institute

Bradley Mattes
Executive Director, Life Issues Institute

Phyllis Schlafly
President, Eagle Forum

J. C. Willke, MD
President, International Right to Life Federation

Thomas Brejcha
President & Chief Counsel, Thomas More Society

Peter Breen
Executive Director & Legal Counsel, Thomas More Society

Joseph A. Brinck
President, Sanctity of Life Foundation

Jennifer Giroux
Executive Director, Women Influencing the Nation

Samuel B. Casey
General Counsel, Law of Life Project, Advocates International

Gary Bauer
President, American Values

Brian Burch
President of CatholicVote.org

David Bereit
National Director, 40 Days for Life

Phil Burress
President, Citizens for Community Values

Jill Stanek, RN

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WorldNetDaily columnist

Peggy Hartshorn
President, Heartbeat International

Michael Geer
President, Pennsylvania Family Institute

Bryan Kemper
President, Stand True- Christ Centered Pro-life

John T. Bruchalski, MD, FACOG
Divine Mercy Care

James Nolan
President, Crossroads Pro-Life

Marie Bowen
Executive Director, Presbyterians Pro-Life

Jennifer Kimball, Be.L.
Executive Director, Culture of Life Foundation

Jo Tolek
Executive Director, Human Life Alliance

Dean Nelson
Executive Director, Network of Politically Active Christians

Chris Slattery,
President, Expectant Mother Care-EMC FrontLine Pregnancy Centers, New York City

Rev. Louis Sheldon
Chairman, Traditional Values Coalition

Andrea Lafferty
Executive Director, Traditional Values Coalition

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TELEPHONE: (202) 775-0184 TELEFAX: (202) 223-8679

BY MAIL

January 21, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of David W. Ogden to be
Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write to endorse, with unalloyed enthusiasm, the nomination of David Ogden to be Deputy Attorney General of the United States.

David and I were law clerks together, in 1981-1982, for the Honorable Abraham Sofaer, United States District Court for the Southern District of New York. It was a joy and a constant education to serve with him. He was then, and remains now, not only a warm human being but meticulous, smart, knowledgeable, and intensely focused as a lawyer. For those reasons and because of his extensive experience at the top echelons of the Department of Justice, there is no one I would rather see assisting the Attorney General in the daily task of making difficult and delicate decisions on the vast range of legal issues that come before the Department. His work as Deputy Attorney General will be a model, and therefore an inspiration, to lawyers throughout the Department and beyond. The country could not do better.

Sincerely,

Richard G. Taranto

Richard G. Taranto

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WHITE & CASE

White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005

Tel + 1 202 626 3600
Fax + 1 202 639 9355
www.whitecase.com

[redacted]

February 19, 2009

VIA E-MAIL

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Re: Deputy Attorney General Nominee David W. Ogden

Dear Mr. Chairman and Ranking Member Specter:

I write to urge your favorable consideration of the President's nomination of David Ogden to the office of Deputy Attorney General of the United States.

While I first met Mr. Ogden some time ago, I have only recently had the opportunity to get to know him in greater depth and to appreciate matters of public record regarding his professional career. It is clear that he has outstanding professional credentials which render him well qualified to serve as Deputy Attorney General.

Having had the privilege of serving as Deputy Attorney General at the conclusion of my fifteen years of public service, I know that some of the greatest demands on a person serving in that high office are occasioned by its management responsibilities. Having had the opportunity to discuss informally this aspect of the Deputy's duties with Mr. Ogden, I am very impressed by his thoughtful and considered approach to these responsibilities.

For me, a most important consideration in assessing a nominee for Deputy Attorney General is whether the nominee's experience and qualifications provide a basis to conclude that the nominee will be a good and faithful steward of the Department as an institution. Given Mr.

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The Honorable Patrick J. Leahy
The Honorable Arlen Specter

February 19, 2009

Ogden's prior Department experience and his appreciation of its vital interests, I believe one can conclude that Mr. Ogden would seek to promote and protect the institutional interests of the Justice Department and its vital public service missions.

It is also apparent to me that I may not share much of the philosophical orientation on legal and public policy issues that may be ascribed to Mr. Ogden. Whatever the differences may be, for two reasons they do not cause me to hesitate in supporting his confirmation. First, his views, so far as I know them, do not seem to be outside the mainstream of contemporary thinking on many legal and public policy issues. One can acknowledge a reasoned basis for positions on such issues even as one may disagree, even strongly, with those positions. Second, assuming that his views may reflect the general philosophical orientation of the President who nominated him, the President enjoys the prerogative to nominate for this high office those who share his agenda and views on public and legal policy matters.

I have not had occasion to consider in any detail certain reported criticism or questions raised concerning positions Mr. Ogden may have taken in matters where he was acting as counsel for a client. As you, of course, know well, in performing the ethical duty to zealously represent a client's interests within the bounds of the law, a lawyer may be called upon to take positions with which he or she may not personally agree or be entirely comfortable. Having attorneys see to a client's interests without regard to the attorney's personal beliefs or philosophical leanings is, of course, a bedrock tenet of our legal system. Thus, I would note that, as a general proposition, attributing the views or positions taken by a lawyer on behalf of a client to the lawyer himself or herself may not be a reliable indicator of the lawyer's personal views.

Thank you for permitting me to express my views concerning Mr. Ogden's nomination.

Sincerely yours,

George J. Terwilliger III

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PEPSICO

700 Anderson Hill Road Purchase, New York 10577
Tel. (914) 253-3633 Fax (914) 253-3051

LARRY D. THOMPSON
SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS
GENERAL COUNSEL AND SECRETARY

January 23, 2009

Honorable Arlen Specter
United States Senate
711 - Hart Senate Office Building
2nd & C Streets, NE
Washington, DC 20510

Dear Senator Specter:

I am writing in support of the nomination of David Ogden to be Deputy Attorney General of the U.S. Department of Justice. I first met David while he was serving as an Associate Deputy Attorney General under Jamie Gorelick. David is a brilliant and thoughtful lawyer. More importantly, he has the complete confidence and respect of career attorneys at Main Justice. This is very important for the person who will be, in effect, the Chief Operating Officer of the Department of Justice. In other words, David will be a superb Deputy Attorney General.

David is also highly respected in the Bar. He is a person of honor who will, at all times, do the right thing for the Department of Justice and our great country. As a citizen, I am extremely grateful that a lawyer of David's caliber again offers himself for public service.

Sincerely,

Larry D. Thompson /FO

cc: Hon. Patrick J. Leahy ✓



GlaxoSmithKline
Daniel E. Troy
Senior Vice President
and General Counsel
One Franklin Plaza
P.O. Box 7929
Philadelphia, PA
19101-7929

[redacted]
www.gsk.com

January 21, 2009

The Honorable Patrick J. Leahy
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

I write to strongly endorse the appointment of David Ogden, Esq., to be the Deputy Attorney General of the United States. I had the opportunity to get to know David while we were litigating a case together. David was a pleasure to work with. He is smart, principled, courteous, fair, gracious – in short, everything that one could want in a co-counsel. He came up with innovative and powerful constitutional and other arguments challenging a law that would have significantly harmed the public health. He articulated them ably, both in writing and at oral argument. His preparation was meticulous; his openness to feedback was most welcome.

The President has made an excellent choice in nominating David for this august position. Before serving as the General Counsel of GlaxoSmithKline, I had the honor of serving as Chief Counsel of the Food and Drug Administration from 2001 until 2004. I also served in the U.S. Department of Justice in the Office of Legal Counsel. I believe that I know what is required to succeed in government service, and David has the mix of emotional and analytical intelligence that it takes to succeed. He has integrity, previous government service, and an open mien that will serve him and the Department well. Most importantly, perhaps, to reiterate a point I made before, I believe he will be perceived – accurately – as fair.

I strongly urge that you confirm him as early as possible. I would be happy to answer any questions you or the Committee may have.

Sincerely,

Daniel E. Troy

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United States Senate
Committee on the Judiciary

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Testimony of

The Honorable John Warner

Former United States Senator
Virginia
February 5, 2009

Introduction Statement by Senator John Warner

Chairman Leahy, Senator Specter, and Members of the Senate Judiciary Committee – it is my privilege to come before you today to introduce to you a long-time Virginian, Mr. David Ogden. David has been nominated by the President to serve as the Deputy Attorney General of the United States.
David is joined here today in support by members of his family, including his wife Anne; his son Jonathan who once served as a page for me; his daughter Elaine; his mother Elaine; his three sisters – Celia, Jessica, and Connie; Connie's two twin daughters; and his Uncle Bill, who had his own well respected legal career at the Washington, DC law firm of Steptoe and Johnson. I should also note that David and Anne just had a baby girl four weeks ago, Natalie, who is not here with us today.

The position of Deputy Attorney General of the United States is one of the most important positions in government. The Deputy Attorney General is the second-highest ranking official in the United States Department of Justice, and he or she oversees the day-to-day operation of the Department – a Department that has a more than $20 billion annual budget and more than 100,000 employees nationwide.

How fortunate America is to have someone as knowledgeable and experienced as David Ogden to step up and serve our great nation in this challenging role. David has been practicing law for more than a quarter of a century, and he has devoted more than a decade of this legal career to public service – mostly in various senior Department of Justice roles.

After graduating, summa cum laude and Phi Beta Kappa from the University of Pennsylvania, David attended Harvard Law School. He graduated from Harvard, magna cum laude, and as Editor of the Harvard Law Review in 1981.

Subsequent to law school, David served as a judicial law clerk – working for the Honorable Abraham Sofaer, a district court judge in the southern district of New York. Upon completion of this one year clerkship, David was selected to serve as a United States Supreme Court law clerk for the Honorable Harry Blackmun – a position David held from 1982-1983.

After completing his two clerkships, David entered private practice and was eventually promoted to partner at the well respected law firm of Jenner & Block. In 1994, he left private practice to serve as Deputy General Counsel and Legal Counsel at the United States Department of Defense. During his time at the DoD, David was awarded the Medal for Distinguished Public Service – the DoD's highest civilian award.

In 1995, David left the Department of Defense and began his service in the U.S. Department of Justice. At the Department, David worked in a variety of roles, including Associate Deputy Attorney General; Chief of Staff and Legal Counsel to the Attorney General, and as Assistant Attorney General for the Civil Division.

Since leaving government service in 2001, David has worked as a partner at the law firm of Wilmer, Cutler, Pickering, Hale and Dorr. At the firm, he is co-chair of the Regulatory and Government Affairs and Litigation Department.

I first met David nearly ten years ago when he was nominated to serve as an Assistant Attorney General. While I never had the pleasure of serving on the Senate Judiciary Committee during my thirty years in the United States Senate, David came to visit me, as his home state Senator, prior to his confirmation hearing. During that initial meeting it quickly became apparent to me – based on his stellar legal experience, his

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academic background, his reputation as a lawyer's lawyer, and his steady demeanor that this man was eminently qualified.
Consequently, I came before this Committee and introduced and recommended him. As you can see by my presence here today, I stand by that recommendation. In fact I am privileged to give it once again to this Committee.
David Ogden was deemed qualified to receive the Senate's confirmation nearly a decade ago, having had experience as an Assistant Attorney General, he is even more experienced to serve as Deputy Attorney General.

Mr. Chairman, as a part of my preparation for appearing at this hearing, I discussed with Mr. Ogden my view that the Department of Justice plays an integral role in protecting our national security. The duty to work with departments of state, defense, and intelligence community to keep our nation safe and deter the many diverse threats against out security while protecting our civil liberties. The gathering of intelligence relating to these threats is essential and that responsibility has rested, for many generations on the shoulders of the most dedicated, courageous public servants. Often their duties involve great personal risk. While no man is "above the law" they deserve the utmost of fair and objective consideration where facts support a finding that they acted in good faith, in reliance on court decisions and legal opinions, as they discharged their duties in collecting intelligence.

The Congressional Record of February 2, 2009 records the excellent debate in the subject. My views are consistent with those Senators, Republicans and Democrats, who spoke in support of Mr. Holder to be Attorney General. I quote from that record, "Senator Bond: 'I invite my colleagues to the following written assurance given by Mr. Holder to Senator Kyl about a week ago concerning the investigation of intelligence officials conducting interrogation activities. He said: "Prosecutorial and investigative judgments must depend on the facts and no one is above the law. But where it is clear that a governmental agent has acted in responsible and good faith reliance on Justice Department legal opinions authoritatively permitting his conduct, I would find it difficult to justify commencing a full blown criminal investigation, let alone a prosecution.'" President Obama has made similar public statements on this issue.

I thank the Committee, once again, for the opportunity to be here today to speak on the nominee's behalf and to offer him my unqualified support.

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United States Senate
Committee on the Judiciary

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Statement of

The Honorable Mark Warner

United States Senator
Virginia
February 5, 2009

STATEMENT OF HON. MARK WARNER, A U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Chairman Leahy, Senator Specter and my other distinguished colleagues on the Senate's Judiciary Committee,

I am pleased to support the nomination of one of my constituents and a longtime Virginia resident, David Ogden, to serve as Deputy Attorney General at the Department of Justice. I first met Mr. Ogden when I was Governor of Virginia at a fundraiser for the Appalachian School of Law and have had the opportunity to talk to him as a nominee for this position to discuss his vision for the Department of Justice, should he be confirmed. I am extremely impressed by his professional and academic achievements and, if he is confirmed, I will look forward to working with him on critical legal, criminal justice, and national security issues important to my state and the nation.

The Deputy Attorney General has a critical role advising and assisting the Attorney General in formulating and implementing Departmental policies and programs as well as supervising and directing all organizational units of the Department. Mr. Ogden will be well served by his experience serving five and a half years at the Department of Justice during the Clinton Administration, including in the office of the Deputy Attorney General, as well as more than a year before that as Deputy General Counsel at the Department of Defense. He has had an impressive career in the private sector, managing a range of complex matters in fields as diverse as antitrust, constitutional, fraud and false claims, and international disputes. He also has impeccable educational credentials, and served as a law clerk to two federal judges, including a justice of the United States Supreme Court.

Mr. Ogden's legal, managerial and policy experiences will serve him well at the Department. He is committed to making sure that the Department of Justice remains an independent fighter for the rights of all Americans.

I believe David Ogden will be an asset to the Department of Justice and I am pleased to indicate my support. I look forward to the Committee reporting his nomination favorably and hope there is a confirmation vote before the full Senate without delay.

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WILMERHALE

Seth P. Waxman

[redacted]

January 21, 2009

By Hand

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of David W. Ogden to be Deputy Attorney General of the United States

Dear Senators Leahy and Specter:

I write enthusiastically to endorse the nomination of David Ogden to be Deputy Attorney General of the United States.

I have known David personally and professionally for decades. He is a supremely gifted attorney, a man of great integrity and compassion, and a leader in every professional sense. We have been law partners for almost eight years; before that we served together in the Department of Justice for nearly seven years, during which time David distinguished himself as Assistant Attorney General for the Civil Division, as Chief of Staff to the Attorney General, and as Associate Deputy Attorney General.

David Ogden is truly a "lawyer's lawyer." He has a keen sense of the Department of Justice as an institution, and he is perfectly suited to provide the leadership it needs to thrive. David would be a marvelous Deputy Attorney General, and I commend him to you without reservation.

Yours sincerely,

Seth P. Waxman

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United States Senate
Committee on the Judiciary

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Statement of

The Honorable Jim Webb

United States Senator
Virginia
February 5, 2009

Statement of Senator Jim Webb
On the Nomination of
David Ogden to serve as Deputy Attorney General of the United States

Before the Senate Judiciary Committee
February 5, 2009

Mr. Chairman, today it is my distinct pleasure to introduce—along with my former colleague Senator John Warner—David Ogden, who has been nominated to serve as Deputy Attorney General of the United States.

The career of this nominee is impressive.

During almost 28 years in the practice of law, including nearly seven years of government service and two as a judicial law clerk, David Ogden has established a record of success in the critical areas that he would oversee as Deputy Attorney General. In the Department of Justice, he served with distinction as Chief of Staff and Counselor to Attorney General Reno, Assistant Attorney General for the Civil Division, and Associate Deputy Attorney General.

As Deputy General Counsel to the Secretary of Defense, Mr. Ogden earned the highest medal awarded to civilians for his exemplary national security service. In light of this impressive work at the Pentagon, Mr. Ogden is being supported by twelve admirals and generals from the Judge Advocates General Corps who headed the military legal departments in that period. His practice of working closely with and listening to our senior military lawyers will be of great value as he oversees the investigative and prosecutorial arm of America's national security apparatus.

Outside of government, Mr. Ogden has extensive experience as a senior counsel in antitrust, civil rights, criminal, environmental, and international law. As a litigator he has expertise in civil, administrative and constitutional law.

Mr. Ogden lives in Arlington, Va. with his wife, Anne and their three children. He has been a Virginia resident since 1983. Mr. Ogden earned a bachelor's degree summa cum laude from the University of Pennsylvania in 1976 and his law degree magna cum laude in 1981 from Harvard Law School.

I want to thank you Mr. Chairman for the opportunity to make these remarks about this outstanding Virginian. Again, it is with pride that I join Senator John Warner in introducing David Ogden to each of my colleagues on this committee and the entire United States Senate.

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MAYNARD COOPER [redacted] & GALE PC
ATTORNEYS AT LAW

H. Thomas Wells, Jr.
DIRECT [redacted]
EMAIL [redacted]

January 22, 2009

VIA FACSIMILE – (202) 224-3479

Senator Patrick J. Leahy
United States Senate
Russell Building
Washington, D.C.

Re: David Ogden

Dear Senator Leahy:

I write to endorse and support the nomination of David Ogden as Deputy Attorney General in my personal capacity, and not as President of the American Bar Association. I have known David both personally and by reputation for several years, mostly from our work together in the ABA's Section of Litigation, which I was privileged to chair in 1999-2000.

David's qualifications for the post of Deputy Attorney General are evident from his resume, but as importantly, his personal qualities and strong commitment to the rule of law likewise point to him being an excellent Deputy Attorney General. I urge you to confirm his nomination.

Very truly yours,

H. Thomas Wells, Jr.

HTW,Jr/psr

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WILMERHALE

February 4, 2009

Todd C. Zubler

+[redacted] (t)
+[redacted] (f)
[redacted]

Senator John McCain
United States Senate
241 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

I am writing to express my support for the nomination of David Ogden to be Deputy Attorney General of the United States. I am currently his law partner at Wilmer Cutler Pickering Hale and Dorr LLP and have practiced law with him since 2001 when he joined the firm. In 2000, I was honored to serve as deputy general counsel on your presidential campaign.

David unquestionably has the experience, intelligence, integrity, and judgment necessary to be Deputy Attorney General. His prior experience at the Department of Justice has exposed him to many of the substantive issues and managerial responsibilities he would now face as Deputy Attorney General. Such prior experience is important because of the Department of Justice's size and the vast scope of what it does. The Deputy Attorney General needs to be someone comfortable with the job's responsibilities from day one.

David is also a lawyer of great intelligence. He has a reputation within our firm for careful analytical thinking, and he would bring this intelligence to bear on the many complex legal and national-security issues that the Department of Justice must address. Finally, David is man of integrity and judgment. I have no doubts whatsoever about his ethics and commitment to the rule of law. Based on my personal experience, I am confident he would serve the Nation in this position with reasonableness, fair-mindedness, and respect for the principled application of law.

Sincerely,

Todd C. Zubler

Todd C. Zubler

cc: The Honorable Patrick Leahy
The Honorable Arlen Specter

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NOMINATION OF DAVID S. KRIS, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION; AND DAWN E. JOHNSEN, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL

WEDNESDAY, FEBRUARY 25, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:21 p.m., room SD–226, Dirksen Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senators Feinstein, Feingold, Durbin, Cardin, Whitehouse, Kaufman, Specter, Hatch, Sessions, Graham, and Cornyn.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. I'm going to begin this hearing. I know Senator Specter is voting now—we just had a vote at 2:00—and is on his way. I believe he has a time problem, so if I'm in the middle of my opening remarks I will let him go ahead and then finish my remarks when he concludes.

In today's hearing, we will hear from David Kris, who has been nominated to be Assistant Attorney General for the National Security Division, and from Dawn Johnsen, who is nominated to head the Office of Legal Counsel. Obviously, both are within the Department of Justice.

These are both extremely important positions. The National Security Division is the part of the Justice Department that handles all national security matters. It was created by Congress as part of the reauthorization of the PATRIOT Act in 2006, and it's responsible for the following: Investigating reports of terrorist activity, prosecuting people who threaten our national security, handling applications to the Foreign Intelligence Surveillance Act Court to conduct foreign intelligence surveillance, and advising the Attorney General on intelligence issues and national security policy matters.

David Kris is a nominee who has both figuratively and literally, written the book on national security. He has spent 11 years as a prosecutor in the Justice Department and he knows its national security functions well. During the Bush administration, he was As-

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sociate Deputy Attorney General for National Security, where he litigated national security cases and oversaw intelligence activities.

When Congress considered merging the Department's national security functions under a single office, Mr. Kris was one of the experts consulted. He is also the co-author of the most widely used legal treatise in this area. His book, titled *National Security Investigations and Prosecutions*, provides a step-by-step analysis of all the law that governs government activity in response to terrorist threats. In addition to his expertise, he has received high marks for his commitment to the rule of law.

This committee has received letters of support for the nomination from former officials like Larry Thompson, who was Deputy Attorney General during the Bush administration, and from David Cole, a Georgetown law professor who has written extensively on civil liberties. Cole described Kris as "genuinely committed to protecting both security and liberty."

Another important endorsement letter came from Stuart Baker, who was the head of the NSA under the first President Bush and under President Clinton. He described Kris as an official who knows that "the rule of law is consistent with an aggressive pursuit of the national security interests of the United States." By all accounts, Kris is a highly qualified nominee and we look forward to hearing from him today.

Our second nominee, Dawn Johnsen, has similarly strong experience. Professor Johnsen has been nominated to be the Assistant Attorney General for the Office of Legal Counsel. This office answers some of the government's most difficult legal questions and is responsible for providing objective legal advice to the entire executive branch of our government.

Ms. Johnsen knows this office well. She worked at OLC for 5 years during the Clinton administration and served as its acting head from 1997 to 1998. She knows its ins and outs and will be ready from day one.

As has been well documented, the OLC underwent a troubling transformation during the Bush administration. It became a rubber stamp for some of the administration's worst abuses of power. This is the office that issued the torture memo in 2002, advising the President that interrogation techniques were not torture unless they inflicted pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."

A month later, the office wrote that the President could use military force against Iraq without congressional or international support, based in part on a new theory of "anticipatory self-defense." In 2003, Jack Goldsmith, a respected conservative lawyer, came in to run OLC, but he found the problem so widespread that he resigned in less than a year, saying that he was "disgusted with the whole process."

Today, there are still over 35 secret OLC opinions from the 2000 to 2005 period that deal with important national security issues and that the Bush administration has refused, consistently, to release. One of these documents, for example, is believed to say that the Fourth Amendment does not apply to military operations on United States soil.

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President Obama is well aware of these problems and he has chosen Dawn Johnsen to restore the office to its position as "the conscience of the Justice Department." Johnsen has already demonstrated that she has plans for reform. In 2004, she published a statement with 18 other OLC officials called "Principles to Guide the Office of Legal Counsel." The statement lays out historical ground rules for how OLC should be run. Let me read you a few of these principles:

"OLC's advice should be thorough and forthright. It should reflect all legal restraints, including the constitutional authorities of the courts and Congress."

Second, "OLC should maintain internal systems and practices to help ensure that OLC's legal advice is of the highest possible quality and represents the best possible view of the law."

Finally, "OLC should publicly disclose its written legal opinions in a timely manner, absent strong reasons for delay or disclosure." Those three things are exact quotes.

These statements give me great confidence in Professor Johnsen, and I look forward to hearing more from her at the appropriate time about her plans today. But I want to commend both Ms. Johnsen and Mr. Kris for their willingness to take on their very critical positions.

We are still waiting for Senator Specter. I see Senator Bayh, who's going to make an introduction, has arrived.

Does any other member here wish to speak? Otherwise I will call on Senator Bayh.

Senator Cornyn.

Senator CORNYN. Madam Chairman, unfortunately I'm going to have to leave for a meeting with the White House counsel. I just wanted to say, I am pleased that we're having these hearings today. I'm going to be submitting questions for Ms. Johnsen. I have some very serious concerns about this nomination, and look forward to getting the answers to the questions. Hopefully that will help clear them up. I'll submit those for the record.

Senator FEINSTEIN. Fine.

Senator CORNYN. Thank you very much.

Senator FEINSTEIN. Thank you very much.

Senator FEINSTEIN. Senator Hatch.

Senator HATCH. No, that's all right.

Senator FEINSTEIN. OK. All right.

Senator Bayh, welcome to the Judiciary Committee.

PRESENTATION OF DAWN E. JOHNSEN, NOMINEE TO TO BE ASSISTANT ATTORNEY GENERAL OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE BY HON. EVAN BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Thank you, Madam Chairman. It is a personal pleasure for me to be here. My father had the privilege of serving on this Committee for 18 years, and so it has a special place in the hearts of all members of the Bayh family. So, thank you for your courtesy today.

Senator Hatch, it is good to be with you once again as well.

Madam Chairman, Senator Hatch, other distinguished members of the Committee, thank you for this opportunity today to introduce

an individual for whom I have great respect and confidence, Professor Dawn Johnsen. Professor Johnsen is an accomplished scholar and experienced government lawyer who is well-qualified to serve as Assistant Attorney General for the Office of Legal Counsel.

Her experience as Acting Assistant Attorney General under President Clinton means she will be ready to provide the President and the Attorney General with outstanding legal advice from day one. In particular, she already understands the challenge of providing advice that is grounded in the law, and mindful of the separation of powers enshrined in our Constitution.

As someone whose family suffered losses in the attacks on September the 11th, Professor Johnsen understands the serious and sobering challenges that threaten our Nation's security. But she also knows that we can defeat our enemies, no matter how determined they may be, without sacrificing our cherished American values and ideals.

Professor Johnsen has also demonstrated the intellectual heft required of this position. She is a graduate of Yale College and Yale Law School—which I suppose, if you can't go to Indiana University, is not half bad—where she served—let the record show, that was a humorous aside, Madam Chairman.

[Laughter.]

Where she served as editor of the Yale Law Journal.

As a professor of law at Indiana University, she has written extensively on constitutional law, the separation of powers, and legal constraints on executive power. There is no doubt that she has both the knowledge and expertise to help navigate the challenging matters of law and justice which confront our new President.

One of the most important qualifications for any high-ranking government lawyer is good judgment. Professor Johnsen demonstrated outstanding judgment when she married into one of Indiana's outstanding families. Professor Johnsen and her husband, John Hamilton, who is the nephew of former Congressman Lee Hamilton, with whom members of the Committee may be familiar, exemplified the best Hoosier values of family and community. Despite the many demands on her time, Professor Johnsen is a devoted mother of her two boys, Matthew and Eric, and teaches Sunday school at First United Methodist Church in Bloomington.

I have high confidence that, if confirmed as Assistant Attorney General for the Office of Legal Counsel, Professor Johnsen will be a valuable member of the new administration and will provide to our Commander in Chief outstanding legal advice that he needs to protect and defend our country.

Madam Chair, other members of this Committee, it is my distinct pleasure to present for this Committee's consideration Professor Dawn Johnsen.

Senator FEINSTEIN. Thank you very much, Senator Bayh. Your testimony is much appreciated, and your time as well. Thank you. If you would like to—I know you have a pressing calendar with other things. You're welcome to sit with the Committee, or if you have other—wish to be excused, that would be fine.

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Senator BAYH. Thank you, Madam Chairman. As much as I would love to stay, I have an appointment for which I am already 5 minutes late.

Senator FEINSTEIN. Thank you.

Senator BAYH. So I hope you will forgive me.

Senator FEINSTEIN. We will. Thank you so much.

Senator BAYH. Thank you.

Senator FEINSTEIN. And if the two nominees would come to the center table, we will begin.

Would you please stand to be sworn?

[Whereupon, the witnesses were duly sworn.]

Senator FEINSTEIN. Thank you very much. Please be seated.

We're joined by Senator Feingold. Senator, we're about ready to ask questions. Do you have an opening statement?

Senator FEINGOLD. I do not.

Senator FEINSTEIN. You do not. All right.

I think we want to hear from each nominee first. Ms. Johnsen, why don't we begin with you, and then we'll go to Mr. Kris. Then we'll open the questions.

STATEMENT OF DAWN E. JOHNSEN, TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL

Ms. JOHNSEN. Thank you very much.

If I may take a moment to introduce some family members.

Senator FEINSTEIN. Please.

Ms. JOHNSEN. May I do that? Thank you very much, Senator.

I have with me today—I'll try to speak fast because I have a very supportive, loving family. My husband, John Hamilton, and our sons, Matthew, age 12, and Eric, age 10; my mother, Carolyn Johnsen; my grandmother, Ruth Downd; my sisters, Jill Johnsen and Jennifer Johnsen; aunts and uncles, Edward and Lynnette Downd; Donella Cacciola, who's a long-time employee of the FBI, along with her husband Anthony; and other assorted relatives: Nancy Hamilton, Beverly Enjocky, Dawn Guarello, Joanna Downd, Marco Downd, Barbara and Sean Turner, my former boss at OLC, Walter Dellinger and his wife Ann, and I have many other good friends from law school, former colleagues, and I'll spare you hearing all the names. But I'm so grateful to them all for being here.

Senator FEINSTEIN. Thank you, and they are welcome. Mr. Dellinger is well-known to this Committee; we hold him in great respect. So, we thank him for being here as well.

Please proceed.

Ms. JOHNSEN. Thank you very much.

Senator Feinstein, Ranking Member Specter, members of the Committee, it's a tremendous honor for me to be here today. I'd like to thank each of you and your staffs for your time and your attention to my nomination. I'd also like to thank Senator Evan Bayh for that generous introduction and for his great service to the State of Indiana, and to the United States.

Thank you also for the opportunity to visit my family—to introduce to you my family. I would like to mention one person who could not be here, and that's my father, Don Johnsen, who passed away a few years ago. He worked very hard as a letter carrier for the U.S. Postal Service, and always a second job as well, to send

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me, and my sisters, and my brother all to college, and all beyond college, which was an opportunity he did not have. He took special pride in his service in the United States Navy. My father deeply loved his family and his country, and he would have—would have loved to see this. He's passed that love and patriotism on.

In 1976, the bicentennial year of our declaration of independence, I entered an essay contest. The subject was: "What Makes America Great?" I won a $100 savings bond, and I also had an opportunity to read that essay at the car place, 4th of July, fairgrounds.

I no longer have the essay and I've long spent the savings bond, but I am quite certain that I quoted Robert F. Kennedy as follows. It's from the poster I had hung on the bedroom wall of the room I shared with my sisters: "The future does not belong to those who are content with today. Rather, it will belong to those who can blend reason, vision, and courage in a personal commitment to the ideals and great enterprises of American society. I've endeavored throughout my life to do what I can to serve the ideals and the great enterprises of our great country.

I'm very mindful of the fact, as I sit here, that we are not all going to agree on all of the specifics, but I deeply believe that as Americans we share some bedrock commitments, including to respect conflicting viewpoints and understand that people of goodwill inevitably disagree, and that such debate makes us stronger and better, to protect the physical safety of the American people, especially today, from post-9/11 terrorist threats, to uphold our Constitution and our basic values, including our commitment to limited government that protects both our physical safety and fundamental liberties, and finally, commitment to uphold the rule of law.

Commitment to the rule of law is my overriding passion. It's the imperative that the government belongs to the people in our system and the officials who lead the government are not above the law. I had the great privilege of acting on that imperative when I served at the Office of Legal Counsel for 5 years, from 1993 to 1998.

As more often—does, 9/11 tested our commitment to the rule of law. Though Indiana is currently my home, I was born and raised in New York on Long Island. At the time of the attack, my sister Jennifer had a view of the Twin Towers from her lower East Side Manhattan apartment, where she still lives. My sister Jill, who teaches in New York City public schools, when the planes hit, she had a fourth grade class in her care. I have many friends—dear friends and relatives who live in New York and Washington, DC, some of whom did lose loved ones in that terrible attack on our country.

My thoughts and concerns, though first those were of course most powerfully of my family and friends who had suffered wrenching personal losses, but they are also professionally very much with the government lawyers who bear the tremendous responsibility of helping our government respond to those attacks, to keep our Nation safe from future attacks.

My service at OLC gave me some special appreciation, I believe, for what they confronted and for the outstanding work of countless dedicated women and men in the years since at OLC, and all throughout the government. My prior service also gave me a feeling

of special responsibility to speak up later on when, on several specific occasions, I believed that OLC's legal interpretations failed to live up to its best traditions.

In my work as an academic, I have sought to be constructive and to explore the proper scope of Presidential power and the proper role of government lawyers. Most notably, in 2004, as Senator Feinstein mentioned, I brought together 19 former OLC lawyers and we explored OLC's best nonpartisan traditions and drafted what we entitled, "Principles to Guide the Office of Legal Counsel." I have appended that same document to my written testimony that I've submitted to the Committee.

During my 5 years of service, I came to understand that, above all, OLC must provide the President and others with accurate, principled legal interpretations, and that my own personal views on the subject were not what mattered, that OLC must look to the Constitution and to the laws enacted by Congress, to judicial and executive branch precedent, and also to the career professionals throughout the government who bring the essential experience, expertise, and judgment.

I look forward, should the Senate confirm my appointment, to serving President Obama, Attorney General Holder, and the people of the United States in ways that will support the rule of law and that will protect our mission, and also will look forward, if confirmed, to working with all of you.

Thank you very much.

Senator FEINSTEIN. Thank you very much, Ms. Johnsen.

[The prepared statement of Ms. Johnsen appears as a submission for the record.]

[The questionnaire of Ms. Johnsen follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

   Dawn Elizabeth Johnsen

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General for the Office of Legal Counsel

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Indiana University Maurer School of Law-Bloomington, 211 S. Indiana Ave., Bloomington, IN 47405

4. **Birthplace**: State date and place of birth.

   August 14, 1961; Manhasset, New York

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   John Mark Hamilton
   President (community development finance executive)
   City First Enterprises
   1436 U St. NW
   Washington, DC 20009

   We have two dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Yale Law School, J.D., 1986, attended 1983-1986

   Yale University, B.A., 1983, attended 1979-1983

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Indiana University Maurer School of Law-Bloomington, 211 S. Indiana Ave., Bloomington, IN, Professor of Law, 1998-present

U.S. Department of Justice, Office of Legal Counsel, 950 Pennsylvania Ave., NW, Washington, D.C., Acting Assistant Attorney General, 1997-1998; Deputy Assistant Attorney General, 1993-1996

NARAL Pro-Choice America, 1156 15 St., NW, Suite 700, Washington, D.C., Legal Director, 1988-1993

American Civil Liberties Union, Reproductive Freedom Project, 125 Broad St., New York, NY, Staff Counsel Fellow, 1987-1988; Legal Intern July-August 1984

United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn St., Chicago, Illinois, Law Clerk to the Honorable Richard D. Cudahy, 1986-1987

Marshall Beil, Esq., 575 Madison Ave., New York, NY, legal assistance on brief, May-June 1986

Paul, Weiss, Rifkind, Wharton & Garrison, LLP, 1285 Avenue of the Americas, New York, NY, Summer Associate, June-August 1985

Becton Engineering Library, Yale University, 15 Prospect St., New Haven, CT, Library Assistant (part-time during school year), 1979-1985

Rosenman & Colin, 575 Madison Ave., New York, NY, Summer Associate, May-July 1984

Unpaid member of board of directors:
American Constitution Society for Law and Policy, 1333 H. St, NW, 11th floor, Washington, DC, 2004 to 2008

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

None

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9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Indiana University Trustees Teaching Award, 2004

U.S. Department of Justice, Edmund J. Randolph Award for Distinguished Service, 1998

Yale Law School: Article and Book Review Editor, Yale Law Journal

Yale College: Summa Cum Laude, Phi Beta Kappa, Distinction in Major (Economics and Political Science), Commencement Student Marshal, National Merit Scholar, Panhellenic Scholarship, New England Society in the City of Brooklyn Scholarship

Carle Place High School, Carle Place, New York, class salutatorian

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

District of Columbia Bar

Indiana Bar Association (by virtue of law school group membership)

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

New York, 1987

District of Columbia, January 12, 1990

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

U.S. Supreme Court, October 30, 1990

12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which

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you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

From 1998 to the present I have been a member of the congregation of First United Methodist Church, Bloomington, Indiana, where I currently teach three-year-olds Sunday School and in the past have taught first/second grade and fifth/sixth grade Sunday School. Prior to that I was a member of other congregations of the United Methodist Church, including Foundry United Methodist Church in Washington, D.C.

I served as a member of the Board of Directors of the American Constitution Society for Law and Policy (ACS) from 2004 to 2008. I completed my service on the board at the close of 2008 but continue to be a member of ACS, to serve as the faculty advisor of the chapter at Indiana University Maurer School of Law-Bloomington, and to serve as a cochair of the Separation of Powers/Federalism Issue Group. I served as a member of the Community Action Board of Planned Parenthood of Indiana from 2007 to 2008.

I believe I am a member, just by virtue of contributions, of the following organizations for various periods of time since law school (but no additional positions served): Sierra Club, Nature Conservancy, American Civil Liberties Union, Planned Parenthood, Indiana Historical Society, NAACP, WFIU & WTIU (local public broadcasting stations in Bloomington and prior to that those in other cities in which I have lived), Monroe County Democratic Women's PAC, Indiana Equality, NARAL Pro-Choice America, Human Rights Campaign, and Wonderlab Science Museum. I do not believe the other organizations to which I have made contributions are membership organizations, but I am not certain. I have not held any formal positions in these organizations, but on occasion have received from a few of them requests to provide informal advice on discrete questions on matters within my expertise.

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of these organizations discriminate or have discriminated on any of the listed bases (with the exception of the United Methodist Church).

13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

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I have done my best to identify all books, articles, reports, letters to the editors, editorials and other published material, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Department of Justice: Restoring Integrity and the Rule of Law, CHANGE FOR AMERICA: A PROGRESSIVE BLUEPRINT FOR THE 44TH PRESIDENT (Green & Jolin, eds., Basic Books, 2009)

Hamdan v. Rumsfeld: *Trying Enemy Combatants by Military Commission*, PRESIDENTIAL POWER STORIES (Schroeder & Bradley, eds., Foundation Press, 2009)

What's a President to Do? Interpreting the Constitution in the Wake of the Bush Administration's Abuses, 88 BOSTON UNIVERSITY LAW REVIEW 395 (2008)

The Progressive Political Power of Balkin's "Original Meaning," 24 CONSTITUTIONAL COMMENTARY 417 (2008)

Faithfully Executing the Laws: Internal Legal Constraints on Executive Power, 54 UCLA LAW REVIEW 1559 (2007) (publishing as appendix *Principles to Guide the Office of Legal Counsel*)

Lessons from the Right: Progressive Constitutionalism for the Twenty-First Century, 1 HARVARD LAW & POLICY REVIEW 239 (2007)

Foreword, War, Terrorism and Torture: Limits on Presidential Power for the 21st Century, 81 INDIANA LAW JOURNAL 1139 (Fall 2006)

Guidelines for the President's Legal Advisors, an introduction to *Principles to Guide the Office of Legal Counsel*, 81 INDIANA LAW JOURNAL 1345 (Fall 2006)

Abortion: A Mixed and Uncertain Legacy, in THE REHNQUIST LEGACY (Bradley, ed., Cambridge University Press, 2006)

Book Review, H. JEFFERSON POWELL, A COMMUNITY BUILT ON WORDS: THE CONSTITUTION IN HISTORY AND POLITICS (2002), 101 INDIANA MAGAZINE OF HISTORY (September 2005)

Should Ideology Matter in Selecting Federal Judges? Ground Rules for the Debate, 26 CARDOZO LAW REVIEW 463 (2005)

Functional Departmentalism and Nonjudicial Interpretation: Who Determines Constitutional Meaning?, 67 LAW & CONTEMPORARY PROBLEMS 105 (2004)

Principles to Guide the Office of Legal Counsel, December 2004 (with Walter Dellinger, et al.) (reprinted at 54 UCLA Law Review 1559 (2007), as appendix)

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Judicial Supremacy Two Centuries After Marbury: *The President and Congress and the Determination of Constitutional Meaning*, essay in *MARBURY V. MADISON*: 1803-2003: DEUX SIECLES DE CENSURE JUDICIARE SUR LES LOIS (2003)

Ronald Reagan and the Rehnquist Court on Congressional Power: Presidential Influences on Constitutional Change, 78 INDIANA LAW JOURNAL 363 (2003)

Presidential Non-Enforcement of Constitutionally Objectionable Statutes, 63 LAW & CONTEMPORARY PROBLEMS 7 (2000)

Executive Privilege Since United States v. Nixon*: Issues of Motivation and Accommodation*, 83 MINNESOTA LAW REVIEW 1127 (1999)

Maternal-Fetal Relationship: Legal and Regulatory Issues, 3 ENCYCLOPEDIA OF BIOETHICS 1413 (Reich, ed., rev. ed. 1995)

Shared Interests: Promoting Healthy Births Without Sacrificing Women's Liberty, 43 HASTINGS LAW JOURNAL 569 (1992), & chapter in ABORTION, MEDICINE AND THE LAW (Butler, ed., 4th ed. 1992)

From Driving to Drugs: Governmental Regulation of Pregnant Women's Lives after Webster, 138 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 179 (1989)

A New Threat to Pregnant Women's Autonomy, THE HASTINGS CENTER REPORT 33 (August 1987)

The Creation of Fetal Rights: Conflicts with Women's Constitutional Rights to Liberty, Privacy and Equal Protection, 95 YALE LAW JOURNAL 599 (1986)

Slate, *Law and Orders: How Should the President's Lawyers Advise a Reluctant White House* (June 8, 2007)

Slate, *The Outer Shell: The Hollowing out of Roe v. Wade* (Jan. 25, 2006), (also published in Philadelphia Daily News Jan. 30, 2006)

The following Slate posts appeared on a blog called "Convictions"

Slate, *Greetings* (March 16, 2008)

Slate, *Restoring Our Nation's Honor* (Mar. 18, 2008)

Slate, *Yet More on Cheney and Unitary Executive* (Mar. 19, 2008)

Slate, *Reducing Abortions* (Mar. 22, 2008)

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Slate, *More on Roe and the Republican Coalition* (Mar. 22, 2008)

Slate, *NYT? What's Bush's Excuse* (Mar. 27, 2008)

Slate, *Outrage at the Latest OLC Memo* (April 3, 2008)

Slate, *Devastating Racial Disparities* (Apr 24, 2008)

Slate, *A View on Crawford from Indiana* (Apr. 29, 2008)

Slate, *Surprise Agreement at Senate Hearing on Secret Law* (May 1, 2008)

Slate, *Blogging from ACS Convention re:* Boumediene (June 12, 2008)

Why the 2008 Election Matters for Reproductive Rights, Balkinization (Sept. 24, 2008)

Post on IntLawGrrls Blog, http://intlawgrrls.blogspot.com/, *On Investigation of Post-9/11 Waterboarding* (Feb. 11, 2008)

Would Roberts Respect Privacy, Salon (July 22, 2007)

Post for the American Constitution Society blog: I recall coauthoring a short blog post with Pamela Harris on *Gonzales v. Carhart*. I have been unable to locate the post, but recall it was part of a series that described cases then pending before the Supreme Court and covered similar material as in the following talk (a video of which is provided): *Supreme Court preview, Gonzales v. Carhart,* panel, Indiana University Maurer School of Law-Bloomington, Oct. 26, 2006.

Post on Georgetown Law Faculty Blog, *Untangling the Debate on Signing Statements* (July 31, 2006) (coauthored with David Barron, et al.)

The Arizona Politician with Old-Boy Connections: Sandra Day O'Connor, The First Woman on the Supreme Court, and Her Extraordinary Influence, Legal Times (Apr. 24, 2006) (book review)

Judge Alito, on the Record, New York Times, p. 24 (Jan. 5, 2006) (letter to editor)

How to Prevent Another "Torture" Memo, Wall Street Journal, p. A9 (Jan. 21, 2005) (with Neil Kinkopf) (letter to editor)

Post by Dawn Johnsen (Nov. 26, 2004) (weblog for Yale ACS conference, The Constitution in 2020)

Tipping the Scales, Washington Monthly (July/August 2002)

Choices Not Offered, Bloomington Herald Times (Mar. 5, 2002) (letter to editor)

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The Abortion Papers, The Washington Post (February 4, 1989) (with Kate Michelman) (letter to editor)

Civil Liberties (ACLU publication), *Boyfriends and Husbands Use Courts to Block Women's Abortions* (1988) (with Lynn Paltrow)

Act Threatens Religious Academic Freedom, National Law Journal (Mar. 14, 1988) (with Lynn Paltrow) (letter to editor)

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify all reports, memoranda or policy statements I have prepared that fall within the categories described in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

A Progressive Agenda for Women's Reproductive Health and Liberty on Roe v. Wade's *Thirty-Fifth Anniversary*, issue brief for the American Constitution Society (2008)

All The President's Lawyers: How to Avoid Another "Torture Opinion" Debacle, issue brief for the American Constitution Society (2007)

National Commission on America Without *Roe*, Facing a Future Without Choice: A Report on Reproductive Liberty in America (July 1992)

NARAL, Who Decides? A State-by-State Review of Abortion Rights (1989, 1991 & 1992 editions)

NARAL Report on then-nominee to the U.S. Supreme Court Clarence Thomas, referenced in *Judge Thomas's Anti-Privacy Views Are More Extreme than Those of Any Sitting Supreme Court Justice, New Report Says*, U.S. Newswire, September 4, 1991

NARAL, A Reproductive Rights Issue Manual (1990)

NARAL, The Voices of Women (no publication date on the document, but my recollection is it was around 1989)

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NARAL, Reproductive Rights: A Status Report, *Will Roe v. Wade Survive the Rehnquist Court?* (article by Dawn Johnsen & Marcy Wilder) (1989) (also published in the Nova Law Review)

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify all testimony, official statements and other communications that fall within the purview of this question, through a review of my personal files and searches of available electronic databases. I have located the following:

Restoring the Rule of Law, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, September 16, 2008 (submitted joint written testimony only; coauthored with Walter Dellinger, et al.)

Secret Law and the Threat to Democratic and Accountable Government, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, April 30, 2008, appending *Principles to Guide the Office of Legal Counsel* (2004)

Confirmation Hearings of Michael Mukasey to be Attorney General, Panel on the Department of Justice, Committee on the Judiciary, U.S. Senate, October 18, 2007

Proposed Legislation to Deny Citizenship at Birth to Certain Children Born in the United States, Subcommittee on Immigration and Claims, Committee on the Judiciary, U.S. House of Representatives, June 25, 1997

Improper Granting of U.S. Citizenship to Individuals with Criminal Records, Subcommittee on National Security, International Affairs and Criminal Justice, Committee on Government Reform and Oversight, and Subcommittee on Immigration and Claims, Committee on the Judiciary, U.S. House of Representatives, March 5, 1997 (appeared only to answer questions)

The Balanced Budget Amendment, Committee on the Judiciary, U.S. Senate, January 22, 1997 (submitted written testimony only)

Letter from Legal Scholars to Senate Judiciary Committee on H.R. 1592, The Local Law Enforcement Hate Crimes Prevention Act of 2007, July 9, 2007

Letter from Legal Scholars to Congressional Leaders on Congress's authority to limit the proposed surge in troops in Iraq, January 17, 2007

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Memorandum to The United States Senate Judiciary Committee, Judge David Souter's Testimony Regarding the Fundamental Right to Privacy, September 21, 1990

During my time at the Office of Legal Counsel, I worked on numerous legal memoranda and provide here copies of all (to the best of my knowledge) published memoranda that I signed while at OLC:

Waiver of Statutes of Limitations in Connection with Claims Against the Department of Agriculture, June 18, 1998

Coverage Issues under the Indian Self-Determination Act, April 22, 1998

Application of the Double Jeopardy Clause to Disgorgement Orders under the Federal Trade Commission Act, April 9, 1998

Interpretation of Phrase "Recommendation that Funds Be Put to Better Use" in Inspector General Act, March 20, 1998

Reimbursement of Expenses Under 5 U.S.C. § 5503(A)

Statute of Limitations and Settlement of Equal Credit Opportunity Act Discrimination Claims Against the Department of Agriculture, January 29, 1998

18 U.S.C. § 203 and Contingent Interests in Expenses Recoverable in Litigation against the United States, January 28, 1998

Application of Consumer Credit Reporting Reform Act of 1996 to Presidential Nomination and Appointment Process, December 11, 1997

Authority of Military Exchanges to Lease General Purpose Office Space, August 1, 1997

Administrative Assessment of Civil Penalties Against Federal Agencies under the Clean Air Act, July 16, 1997

Applicability of Executive Order No. 12976 to the FDIC, April 22, 1997

Personal Satisfaction of Immigration and Nationality Act Oath Requirement, April 18, 1997

Qualification Requirement for Aliens under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, March 27, 1997

Preemptive Effect of the Bill Emerson Good Samaritan Food Donation Act, March 10, 1997

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Revocation of Citizenship, March 3, 1997

Waiver of Oath of Allegiance for Candidates for Naturalization, February 5, 1997

Proposed Agency Interpretation of "Federal Means-Tested Public Benefits" under Personal Responsibility and Work Opportunity Reconciliation Act of 1996, January 14, 1997

Whether 18 U.S.C. § 603 Bars Civilian Executive Branch Employees and Officers from Making Contributions to a President's Authorized Reelection Campaign Committee, May 5, 1995

Review of 1988 Opinion Concerning the Applicability of § 504 of the Rehabilitation Act to Individuals Infected with HIV, July 8, 1994

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all speeches and talks I have delivered, through a review of my personal files and searches of publicly available electronic databases. Where I have been able to locate a video of the event, I provide it either on the accompanying CD or by way of link to internet site. Where I have been able to locate notes for the talk, I have provided them. For those for which I did not retain notes, I have provided a short summary. I would note that from 1987 to 1993, while I worked at NARAL and the ACLU, I participated in numerous debates and talks, primarily on college campuses, but have not been able to locate specific dates. I have located the following:

Release of *Change for America: A Progressive Blueprint for the 44th President*, Center for American Progress, panelist, Washington D.C., Nov. 12, 2008. Notes provided.

Meet at the Crossroads: Where Ideas Intersect, workshop, Planned Parenthood Central Region Conference, Indianapolis, Indiana, Nov. 8, 2008. Notes provided.

The Future of Sexual and Reproductive Rights, panel on *Roe's Future*, Yale Law School, Oct. 10-12, 2008. Notes provided.

Presidential Transition Discussion, Center for American Progress, Washington, DC, Sept. 16, 2008. Notes provided. I participated by phone from home.

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Advancing the Health of Women and Families, Planned Parenthood Federation of America, Policy Summit, Washington, DC, July 17, 2008. See notes for 11/8/08 Planned Parenthood talk, which I prepared by expanding notes for this talk.

Restoring Justice: The Politicization of the Department of Justice and How to Revive It, panelist, American Constitution Society, Lawyer Chapter for the Bay Area, Palo Alto, July 15, 2008, description at http://www.acslaw.org/node/6844 as follows: "On July 15, 2008, the Bay Area Lawyer Chapter presented a panel entitled 'Restoring Justice: How the Department of Justice Has Been Politicized and How To Revive It.' The panel featured three former high-ranking Department of Justice officials: Professor Dawn Johnsen, former Acting Assistant Attorney General, Office of Legal Counsel, and current Professor of Law, University of Indiana School of Law, Bloomington; Bill Lann Lee, former Assistant Attorney General, Civil Rights Division, and current Shareholder, Lewis, Feinberg, Lee, Renaker & Jackson, P.C.; and Michael Small, former Deputy Associate Attorney General, attorney in the Office of Legal Counsel, and current Senior Counsel, Akin Gump Strauss Hauer & Feld. Professor Johnsen discussed the so-called torture memo issued by the Office of Legal Counsel under the Bush Administration. She explained how the memo departed sharply not only from existing law but also from the traditional role of the Office of Legal Counsel, which has been to provide the President with accurate legal advice, not to advocate administration policies. Bill Lann Lee spoke about his experiences leading the Civil Rights Division and stressed the crucial role that career lawyers play in the enforcement of the civil rights law. Michael Small likewise noted the high quality of the career staff at the Department of Justice. All three panelists discussed the stark difference between the treatment of career staff, including the recent U.S. Attorney firings, under the current administration and prior administrations, both Democratic and Republican. Finally, the panelists expressed hope that the next administration, whether Republican or Democratic, will reestablish the DOJ's tradition of professionalism and political neutrality, and the challenges they will face in doing so."

Women's Law Day, Indiana University Maurer School of Law-Bloomington, panelist, March 27, 2008. Notes provided.

Preparing a Reproductive Rights Agenda for the Next Administration, National Partnership for Women and Families & National Women's Law Center, panelist, Washington, DC, March 20, 2008. See notes for 11/8/08 Planned Parenthood talk and 9/16/08 Center for American Progress talk, both of which I prepared by expanding notes for this talk; my comments included discussion of the use of presidential Executive Orders and other Presidential directives.

Update on the Roberts Court, meeting of the Indiana Civil Liberties Union, at the home of Larry Friedman, ICLU-Bloomington chapter president, Nov. 4, 2007. Informal presentation on the Supreme Court's previous Term. Notes provided.

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Faculty talk, Indiana University Maurer School of Law—Indianapolis, Oct. 29, 2007. Talk based on same material as Boston University panel of Oct. 11, 2007 (notes and ultimate published article provided for that).

The New Separation of Powers: Parties, Politics, and the Presidency, panelist, Yale Law School, Oct. 12, 2007. Video available at http://ylsqtss.law.yale.edu:8080/qtmedia/alumni2007/AW07NewSeparationPowers101207_s.mov

The Presidency in the Twenty-First Century, panelist on *Sources of Presidential Power*, Boston University, Oct. 11, 2007. Notes provided. My presentation provided the basis for the article *What's a President to Do? Interpreting the Constitution in the Wake of the Bush Administration's Abuses*, 88 BOSTON UNIVERSITY LAW REVIEW 395 (2008).

Principles to Guide the Department of Justice under the Next Attorney General, panelist, National Press Club, Washington, DC, Oct. 10, 2007. Transcript provided.

Constitution Day panel, Indiana University Maurer School of Law-Bloomington, Sept. 17, 2007. Video provided on accompanying CD.

Presidential Law Stories, Duke Law School, Sept. 14-16, 2007. Roundtable discussion of reactions to draft book chapters, which were circulated beforehand. My particular assignment for this meeting was to focus on comments on a chapter authored by Curtis Bradley. My chapter on *Hamdan* is provided on the CD under publications.

National Constitution Center Summer Teachers' Workshop, *Changing the Constitution: Politics and Law in American Constitutional Development*, lecture on *Presidential Constitutional Construction*, Philadelphia, Penn., Aug. 2, 2007. Notes provided.

Presidential Power in an Age of Terror, panelist, Indiana University Center on Law and Society and Culture, Apr. 5, 2007. Notes provided.

Norman Amaker Public Interest Law & Social Justice Retreat, speaker, Bradford Woods, Indiana, Feb. 24, 2007. Led discussion among student participants in retreat, after viewing of *Quiet Revolution*, video available at http://www.afj.org/for-students/quiet-revolution/watch-the-film.html

Constitutional Niches, panelist on Executive Power, UCLA School of Law, Feb. 2, 2007. Notes provided. My presentation provided the basis for the article *Faithfully Executing the Laws: Internal Legal Constraints on Executive Power*, 54 UCLA LAW REVIEW 1559 (2007).

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American Association of Law Schools, Annual Convention, *Emerging Issues in Reproductive Rights*, panelist, Washington, D.C., Jan. 4, 2007. This was what is called by the AALS a "hot issues" panel discussion (added late in the conference planning), in this instance on reproductive rights issues. I participated on a panel with Walter Dellinger, Jeff Rosen, and Reva Siegel. Professor Siegel organized the panel.

Supreme Court preview, Gonzales v. Carhart, panel, Indiana University Maurer School of Law-Bloomington, Oct. 26, 2006. Video provided on accompanying CD.

Quiet Revolution, panelist on release of film, Alliance for Justice/Center for American Progress, Washington, DC, Oct. 10, 2006, video available at http://www.afj.org/for-students/quiet-revolution/watch-the-film.html. Notes provided.

Signing Statements, Constitution Day Panel, Indiana University Maurer School of Law-Bloomington, Sept. 18, 2006. Video provided on accompanying CD.

Separation of Powers: Restoring the Balance Among the Branches, plenary panelist/moderator, American Constitution Society national convention, Washington, D.C., June 16, 2006. Transcript provided.

Presidential War Powers and Access to Government Information: Presidential Power in the 21st Century, talk to conference of government librarians, Indiana University Maurer School of Law-Bloomington, May 18, 2006. Notes provided.

American Freedoms in the War Without End, Indiana Civil Liberties Union, Unitarian Church, Bloomington, Mar. 29, 2006. Notes provided.

Equality and Reproductive Rights, moderator, Columbia Law School, Mar. 3-4, 2006. Introduced panelists and led questioning. No presentation.

Domestic Spying: Is it Justified?, Student Union Fireside Chat, Indiana University Maurer School of Law-Bloomington, Feb. 15, 2006. Notes provided.

Judging Alito, panelist, Indiana University Maurer School of Law-Bloomington, Jan. 12, 2006, Video provided on accompanying CD.

The Nomination of Samuel A. Alito, Jr., panelist, Center for American Progress/American Constitution Society, Washington, D.C., Jan. 4, 2006, video available at http://www.acslaw.org/node/2064

Replacing the Justice in the Middle: Selection Standards, Superprecedents and Constitutional Change, American Constitution Society chapters, University of

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North Carolina School of Law, Nov. 17, 2005, and Duke Law School, Nov. 16, 2005, video available at http://www.law.duke.edu/webcast/?match=Dawn+Johnsen

War, Terrorism and Torture: Limits on Presidential Power for the 21st Century, introductory speaker, Indiana Law Journal and American Constitution Society, Indiana University Maurer School of Law-Bloomington, Oct. 7, 2005.

The Constitution in the 21st Century, moderator, *Reproductive Rights in the 21st Century*, American Constitution Society national convention, July 28-31, 2005. No prepared remarks because I served as the moderator of the panel.

The Constitution in 2020, opening panel speaker, Yale Law School, Apr. 8-10, 2005. Notes provided.

The Rehnquist Legacy, panelist on *Abortion: A Mixed and Uncertain Legacy*, Indiana University Maurer School of Law-Bloomington, Apr. 1-2, 2005. Notes provided. My presentation provided the basis for my chapter in *Abortion: A Mixed and Uncertain Legacy*, in THE REHNQUIST LEGACY (Bradley, ed., Cambridge University Press, 2006).

Advising the Executive: Torture and the Office of Legal Counsel, panel, American Constitution Society chapter, University of Virginia School of Law, Nov. 2004. Building on my panel discussion at the University of Chicago (Oct. 22-23), the notes for which are provided, I discussed the (then-withdrawn) Office of Legal Counsel's 2002 opinion on the federal torture statute and why that opinion did not reflect the best traditions of the office. I later developed those views in *Principles to Guide the Office of Legal Counsel*, a document coauthored by a number of former OLC attorneys and published at 81 INDIANA LAW JOURNAL 1345 (Fall 2006) and 54 UCLA LAW REVIEW 1559 (2007).

Terrorism and the Rule of Law, panelist on *Does a Different Kind of War Demand a Different Constitutional Understanding?*, University of Chicago Law School, Oct. 22-23, 2004. Notes provided.

Interrogation, Detention, and the Powers of the Executive, panelist on *The Role of Lawyers in the War against Terrorism*, Duke Law School, Sept. 16-18, 2004, video available at http://www.law.duke.edu/webcast/?match=Dawn+Johnsen

Reproductive Rights: Framing the Agenda, panelist, American Constitution Society national convention, Washington, D.C., Aug. 1-3, 2003. Transcript provided.

Marbury v. Madison: 1803-2003: Deux Siecles de Censure Judiciare sur les Lois, panelist on *Judicial Supremacy Two Centuries After* Marbury*: The President and Congress and the Determination of Constitutional Meaning*, Centre de Droit Americain, University of Paris II, Feb. 28-29, 2003. Notes provided. My presentation provided the basis for my chapter in *Judicial Supremacy Two Centuries After* Marbury: *The President*

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and Congress and the Determination of Constitutional Meaning, essay in *MARBURY V. MADISON*: 1803-2003: DEUX SIECLES DE CENSURE JUDICIARE SUR LES LOIS (2003).

The Constitution and Other Legal Systems: Are There Progressive and Conservative Versions?, panelist on *Functional Departmentalism and Reproductive Rights*, Duke Law School, Dec. 13-15, 2002. Notes provided. My presentation provided the basis for the article *Functional Departmentalism and Nonjudicial Interpretation: Who Determines Constitutional Meaning?*, 67 LAW & CONTEMPORARY PROBLEMS 105 (2004).

National Strategy Conference on the Rehnquist Court Rollback of Civil Rights, panelist on *Congressional Power and Federalism*, Columbia Law School, Oct. 3-5, 2002. Notes provided.

Congress and the Court, panelist, Fifth Circuit Judicial Conference, Dallas, Texas, May 1-3, 2002. Notes provided.

The Assault of Federalism on Civil Rights: Developing New Strategies to Protect Civil Rights in a Conservative Era, panelist, Equal Justice Society, Harvard Law School, Apr. 5-6, 2002. Notes provided.

Congressional Power in the Shadow of the Rehnquist Court, panelist on *Implications for the Separation of Powers*, Indiana University Maurer School of Law–Bloomington, Feb. 1-2, 2002. Notes provided. My presentation provided the basis for the article in the symposium issue *Ronald Reagan and the Rehnquist Court on Congressional Power: Presidential Influences on Constitutional Change*, 78 INDIANA LAW JOURNAL 363 (2003).

Non-Consensual Testing of Pregnant Women: The Implications for Women's Equality of Ferguson v. City of Charleston, Duke Law School, Feb. 2001. Notes provided.

Executive Power after the Clinton Administration, panelist, ABA Administrative Law Section Annual Meeting, Washington, D.C., Oct. 12, 2000.

The Constitution Under Clinton: A Critical Assessment, panel on *Executive Authority*, Duke Law School, Sept. 23-25, 1999. Notes provided. My presentation provided the basis for the article *Presidential Non-Enforcement of Constitutionally Objectionable Statutes*, 63 LAW & CONTEMPORARY PROBLEMS 7 (2000).

Nixon *Now: Presidential Power and Executive Privilege Twenty-Five Years Later*, panel on *The Scope of the Doctrine(s) of Executive Privilege*, University of Minnesota Law School, Oct. 24, 1998. Notes provided. My presentation provided the basis for the article *Executive Privilege Since* United States v. Nixon*: Issues of Motivation and Accommodation*, 83 MINNESOTA LAW REVIEW 1127 (1999).

In addition to the above, and especially prior to 1993, I spoke at other events sponsored by law schools and universities, the American Bar Association, the District of Columbia Bar Association, the Women Judges' Fund for Justice, and public interest organizations

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including affiliates and chapters of the American Constitution Society, NARAL Pro-Choice America, the American Civil Liberties Union, and Planned Parenthood Federation of America. To the best of my recollection, the universities at which I spoke prior to 1993 (all on issues of reproductive rights) include American, Bucknell, University of California at Berkeley, Duke, Georgetown, Harvard, Hastings, Holy Cross, Indiana University-Bloomington, Minnesota, New York University, St. Louis University, and Yale. I have no record of the dates or notes.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all press interviews I have given through a review of my personal files and searches of publicly available electronic databases. I have located the following articles. In addition, I have created and submitted a CD with video recordings that I possessed of many of my television appearances (though I do not have any record of the dates of those recorded appearances).

Liberal legal group comes to the fore, Politico.com, December 28, 2008, Lisa Lerer

Liberal Legal Group Is Following New Administration's Path to Power, The New York Times, December 11, 2008, Charlie Savage

Legal Organization May Become Influential Beyond Its Dreams, The Washington Post, December 7, 2008, Michael A. Fletcher

Obama's Transition Team Gets To Work In D.C., National Public Radio (NPR), Show: Morning Edition, November 6, 2008

Vexing Legal Questions Await Next President, The National Journal, November 1, 2008, Shane Harris

Abortion debate central for some voters, USA TODAY, October 31, 2008, Joan Biskupic

Opinion Casts Light on Secretive Justice Dept. Office, The Washington Post, October 19, 2008, Carrie Johnson

Fate of 'Roe v Wade' abortion ruling hangs in election balance, The Irish Times, October 8, 2008

The Nation; Roe vs. Wade really could depend on this election; The Supreme Court majority for abortion rights has shrunk. The next president could change the ratio, Los Angeles Times, October 5, 2008, David G. Savage

Some Legal Activists Have Hearts Set on 'True Liberal', The Washington Post, July 20, 2008, Robert Barnes and Kevin Merida

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Obama strategy: Downplay Roe v Wade, Politico.com, July 14, 2008, Avi Zenilman, Carrie Budoff Brown

States News Service, May 1, 2008, States News Service, Bloomington, Indiana

Permissible Assaults Cited in Graphic Detail; Drugging Detainees Is Among Techniques, The Washington Post, April 6, 2008, Dan Eggen

AG Won't Probe CIA on Torture Laws Says Justice Dept. Memos Signed Off on Waterboarding, The Boston Globe, February 8, 2008, Charlie Savage

Bush asserts authority to bypass defense act Calls restrictions unconstitutional, The Boston Globe, January 30, 2008, Charlie Savage

Defense Bush approval; He said 4 sections infringe on his powers, Grand Rapid Press (Michigan), January 30, 2008

Lawmakers seeking war contract panel; Bush issued signing statement saying it could usurp authority; sponsor Webb moving forward, Richmond Times Dispatch (Virginia), January 30, 2008

Roe v. Wade: 35 Years Later, Rhode Island's Future, January 22, 2008

What might have been, still could be; Indianapolis law firm pondered pro bono possibilities for Guantanamo Bay detainees, The Indiana Lawyer, December 26, 2007, Michael W. Hoskins

Psychologists question U.S. torture policy at Indiana U., University Wire, December 3, 2007, Brian Spegele, Indiana Daily Student

IU Law prof testifies at hearing; Senate confirms former judge as Attorney General., The Indiana Lawyer, November 14, 2007, Michael W, Hoskins

Thompson Favorite for AG Job, But Does He Want It?, Cox News Service, November 13, 2007, Rebecca Carr

IU hosts Harris Lecture; British professor speaks in Bloomington about international law, The Indiana Lawyer, October 3, 2007, Rebecca Berfanger

Attorney posts remain vacant; Both districts will have acting U.S. attorneys, The Indiana Lawyer, September 19, 2007, Jennifer Mehalik

Indiana Law Professor Available to Comment on Mukasey Appointment, US Fed News, September 17, 2007, Bloomington, Indiana

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Ex-Georgian on short list to run Justice; 2-party rapport: Rejection of others may spur Bush to ask former U.S. attorney Thompson to replace Gonzales. But would he want the job?, The Atlanta Journal-Constitution, September 14, 2007 Rebecca Carr

Thompson Favorite for AG Job, But Does He Want It? Cox News Service, September 13, 2007, Rebecca Carr

Is the Bush administration ... right?, Salon.com, July 23, 2007, Alex Koppelman

Hill Panel Initiates Contempt Charges Against Miers; Executive Privilege Battle May Hit Courts, The Washington Post, July 13, 2007, Robert Barnes and Dan Eggen

Lawyer: Bush failing constitutional duty, UPI, July 12, 2007, Bloomington, Indiana

White House and Congress in Showdown Over Aides' Testimony, Cox News Service, July 9, 2007, Ken Herman and Rebecca Carr

Guantanamo Appeals: Experts Available to Comment, US Fed News, June 29, 2007, Bloomington, Indiana.

White House says "No" to Subpoenas, Cox News Service, June 28, 2007, Rebecca Carr and Ken Herman

Radio Interview with Ian Masters, referenced in LA Times, May 13, 2007

SCOTUS rules on abortion; Legal analysts predict wave of suits., The Indiana Lawyer, May 2, 2007, Michael W. Hoskins

Following the Beat of the Ban: After a loss in South Dakota, many in the anti-abortion movement reassess their legal strategy, American Bar Association, ABA Journal, February, 2007, 93 A.B.A.J. 32, Mark Hansen

The NewsHour with Jim Lehrer, The Alito Hearings, January 11, 2006

The Washington Times, December 13, 2005, Nation; Inside Politics, Greg Pierce

The Nation; Washington Outlook; Alito's Remarks on Roe May Not Be Fighting Words, December 12, 2005, Ronald Brownstein

Hoosiers see both sides of abortion debate, Gannett News Service, November 30, 2005, Maureen Groppe, Washington

Should Alito's philosophy be fair game?; Foes agree nominee is `bright, capable,' but not acceptable, Chicago Tribune, November 29, 2005, Frank James

Should Alito's philosophy be fair game?, Chicago Tribune, November 29, 2005, Frank James

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Still Standing; The resilience of Roe v. Wade., The New Yorker, November 28, 2005, Jeffrey Toobin

"A Pocketful of Dynamite," The National Journal, October 15, 2005, Eliza Newlin Carney

Indiana U. law professors weigh in on Roberts, University Wire, September 30, 2005, Michael Sanserino, Indiana Daily Student

Constitutional Dreaming As Conservatives Move to Consolidate Their Hold on the Court, Liberals and Progressives Look Ahead—Way Ahead—and Plan Their Strategy for Taking Back the Constitution, The Boston Globe, May 22, 2005, Dave Denison

Bush's most crucial judicial pick will be chief justice, Morning Call (Allentown, Pennsylvania), May 22, 2005, Opinion; Another View, Malcolm J. Gross

Chief Justice Scalia?; A hero to the legal right, and a lightning rod for the left, The Record (Bergen County, NJ), May 15, 2005, Opinion, Warren Richey

Advice for Counsel, Hartford Courant (Connecticut), February 14, 2005, Editorial, Lincoln Caplan

Battle over judges reaches crucial test; Democrats make ideology an issue, Chicago Tribune, September 16, 2002, Jan Crawford Greenburg

Indiana U. law professors discuss prosecution of terrorists, University Wire, February 7, 2002, Elizabeth Crosbie, Indiana Daily Student

Should a Fetus's Well-Being Override a Mother's Rights?, The New York Times, September 9, 2000, Linda Greenhouse

Delivers Remarks at the University of Minnesota School of Law, FDCH Political Transcripts, October 28, 1998, Kenneth Starr, Whitewater Independent Counsel, V Nixon Symposium

Starr Defends Executive Privilege During U of M Law Symposium; But Legal Right Supersedes Justice System, He Say, Saint Paul Pioneer Press (Minnesota), October 25, 1998, Scott Carlson

Attorney leaves Reno's cabinet for Bloomington campus, The Indiana Lawyer, September 16, 1998, Cary Solida

Immigrants' Rights Bills Create Strong Debate; Legislation Supporters Want to Deny Birthright Citizenship to Children of Illegal Immigrants and Require Voter Checks. Opponents Say Proposals are Unconstitutional, Los Angeles Times, June 26, 1997, Gebe Martinez

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00299 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC

61992.232

Illegals' babies is focus of hearing, The Orange County Register, June 26, 1997, Dena Bunis

Citizenship may be denied to children of illegal aliens; House bill aims to curb influx of illegals, The Washington Times, June 26, 1997, Ruth Larson

President's Proposals to End Abortions Restrictions Controversial, CBS News Transcripts, CBS MORNING NEWS, March 31, 1993, Monica Gayle, Bill Plante

House to Vote on Compromise Plan to Implement Clinton's Economic Plan, CBS News Transcripts, CBS MORNING NEWS, March 31, 1993, Paula Zahn, Bill Plante

Congressional Negotiators Reach Compromise on Economic Package, CBS News Transcripts, CBS MORNING NEWS, March 31, 1993, Harry Smith, Bill Plante

Supreme Court "up for grabs"; Some see swing to the middle, USA TODAY, March 22, 1993, Tony Mauro

Democrat gets 1st high court pick since LBJ, Chicago Tribune, March 21, 1993, Carol Jouzaitis and Michael Tackett

Abortion Rights Seen Getting Boost, Chicago Sun-Times, March 21, 1993, Rochelle Sharpe

Showdown in Russia, CNN, The Week in Review, March 21, 1993, Transcript # 50, Susan Rook, Bob Cain

Steady on the right, The Boston Globe, March 20, 1993, Gregg Krupa

Supreme Court puts abortion on back burner, The Boston Globe, March 16, 1993, Gregg Krupa

New York: Hayat Case "Unlikely to Set New Precedent, Abortion Report, March 10, 1993

Near-ban on abortion is rejected; Supreme Court declines to restore Louisiana law, The Dallas Morning News, March 9, 1993, Steve McGonigle

Doctor in Abortion Case To Appeal Assault Count, The New York Times, March 7, 1993, Richard Perez-Pena

The Stroke of a Pen, The National Journal, December 5, 1992, Viveca Novak

Abortion issues await Clinton; New president can settle many with a stroke of his pen, The Dallas Morning News, November 7, 1992, Jeffrey Weiss

Supreme Court Stages Oral Arguments on Abortion, CNN, October 6, 1992, Transcript # 184 - 2, Anthony Collings

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00300 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC

61992.233

The abortion ruling: Day Two // State laws getting reviewed, USA TODAY, July 1, 1992, Mimi Hall

Court's Ruling Assures More Abortion Litigation; 'Undue Burden' Awaits Judicial Definition, The Washington Post, July 1, 1992, Ruth Marcus

The Supreme Court, Long Battles Over Abortion Are Seen, The New York Times, June 30, 1992, Tamar Lewin

News Conference with NARAL Re: Supreme Court Decision in Pennsylvania Case Speakers: Kate Michelman, President, NARAL, Dawn Johnsen, NARAL Legal Director 1101 14th Street NW, Washington, DC, Federal News Service, June 29, 1992, transcript

Abortion could close court's term today, USA TODAY, June 29, 1992, Monday, final edition, Tony Mauro

Abortion: the great debate; Roe vs. Wade faces a radical overhaul by high court, The Houston Chronicle, June 14, 1992, Judy Wiessler

Between Parent and Child: When a Teenager Seeks an Abortion, Should Parents Be Told, The Washington Post, April 7, 1992, Cristine Russell

Abortion battle embroils D.C., Landmark 'Roe' ruling in question, USA TODAY, January 22, 1992, Tony Mauro; Mimi Hall

News Conference with NARAL Re: Supreme Court Decision to hear Pennsylvania Case Speakers: Kate Michelman, Executive Director NARAL Harrison Hickman, Hickman Brown, Public Opinion Research Dawn Johnsen, Legal Consultant, NARAL, Federal News Service, January 21, 1992, transcript

Revival of Texas anti-abortion law feared, The Houston Chronicle, January 8, 1992, Judy Wiessler

News Conference with NARAL Re: New Study Ranking the 50 States in Level of Protection Provided if Roe v. Wade is Overturned, National Press Club, Washington, DC, Federal News Service, January 7, 1992, transcript

Abortion waiting period upheld; Pa. ruling surprises both sides, USA TODAY, October 22, 1991, Mimi Hall

The Thomas Swearing-In; After Ordeal of Senate Confirmation, Views on Thomas's Court Opinions, The New York Times, October 19, 1991, Neil A. Lewis

Grace, Grit and Gutter Fight; Never Has Country Seen a Hearing Like This, The Washington Post, October 12, 1991, E.J. Dionne Jr.

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00301 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC

61992.234

Thomas: "Speech, Essay Indicate Thomas is Abortion Foe," The Hotline, July 3, 1991

Thomas's Conservatism Displayed in Speeches, Writings, The Washington Post, July 3, 1991, Ruth Marcus

Pro-choice group slams Thomas, The Washington Times, July 3, 1991, Dawn Ceol

Overturning 'Roe': Almost a question of when, not if, USA TODAY, June 28, 1991, Mimi Hall

High Court Has Several Options For New Look at Abortion Right, The New York Times, June 20, 1991, Tamar Lewin

Date is Set to Test Law on Abortion, St. Louis Post-Dispatch (Missouri), June 20, 1991

Abortion showdown looming, USA TODAY, June 20, 1991, Tony Mauro

Louisiana's Chief Vetoes Ban on Most Abortions, The New York Times, June 15, 1991, Roberto Suro

Md. Legislature enacts abortion-rights bill, United Press International, February 18, 1991

Maryland: Final Vote on Abortion Bill May Come Today, Abortion Report, February 15, 1991

Justices Again Asked to Reject Roe v. Wade, The Washington Post, September 8, 1990, Ruth Marcus

Pennsylvania: Parts of PA Law Voided—Next Roe Challenge?, Abortion Report, August 27, 1990

Pa. laws may be the test for 'Roe', USA TODAY, August 27, 1990, Mimi Hall

Pennsylvania Abortion Law's Key Parts Voided: Courts: The State Says It Will Appeal the Federal Judge's Ruling. Some Fear this Case and One from Guam will Be Used to Overturn Roe v. Wade, Los Angeles Times, August 25, 1990, David Treadwell

Souter may find queries on abortion unavoidable, The Boston Globe, July 29, 1990, Ethan Bronner

Pro-lifers demand Souter's views, too, The Washington Times, July 27, 1990, Joyce Price

Souter Nomination: Poll; Senate Questions; Cases & More, Abortion Report, July 26, 1990

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00302 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC

61992.235

Liberal groups ask senators to hold off backing nominee, The Boston Globe, July 26, 1990, Stephen Kurkjian

Souter Meets With Leaders of Senate In Session of Humor and Good Will, The New York Times, July 26, 1990, Linda Greenhouse

Hunting for Souter's 'Smoking Gun', The Washington Post, July 26, 1990, Dale Russakoff

Backers Push Louisiana Abortion Bill Toward Supreme Court Test, The New York Times, June 24, 1990, Roberto Suro

O'Connor: And Her Pivotal Role on the Bench, Abortion Report, May 8, 1990

Abortion Talk Foreshadows Races; Issue is already promising to dominate state legislative races in fall, Newsday (New York), May 6, 1990, By Debbie Tuma and Dele Olojede

Many waiting in the wings for the word on key cases, USA Today, May 1, 1990, Tony Mauro

Connecticut's Governor Gets Landmark Abortion Bill, Orlando Sentinel (Florida), April 28, 1990

Taste of Victory National Abortion-Rights Activists Cite Progress in State: Legislatures, St. Louis Post-Dispatch (Missouri), April 12, 1990, Martha Shirk

Louisiana: Court Rejects Reinstating LA Abortion Law, Abortion Report, January 29, 1990

Louisiana abortion ban rejected, Chicago Tribune, January 28, 1990, Associated Press

Federal Court Refuses to Reinstate Louisiana Antiabortion Law, The Washington Post, January 27, 1990, Ruth Marcus

The defenders of abortion win one, U.S. News & World Report, October 16, 1989, Jim Impoco, Dusko Doder, William J. Cook, Clemens P. Work, Don L. Boroughs, Ted Gest, Merrill McLoughlin

Louisiana Lawyers Move to Revive Invalidated Law Banning Abortions, The New York Times, October 7, 1989, Frances Frank Marcus

Florida Court Rules Against Abortion Curbs, The New York Times, October 6, 1989, Neil A. Lewis

ABC News Transcripts, World News Tonight - ABC, October 2, 1989

Louisiana Abortion Law Ruling Sought; District Attorney Moves to Reinstate Century-Old Criminal Statute, The Washington Post, July 11, 1989, Dan Balz

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00303 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC

61992.236

The Next Battleground On Abortion Rights; Groups Focus on State Constitutions, Courts, The Washington Post, July 10, 1989, Ruth Marcus

Justices allow teen's abortion, Chicago Tribune, May 19, 1989, Glen Elsasser

The Battle For the Unborn Of Nancy Klein; A Comatose Woman and a Bitter Abortion Fight, The Washington Post, February 11, 1989, Paula Span

High court to review Mo. abortion law; Step may affect landmark '73 ruling, The Boston Globe, January 10, 1989, Ethan Bronner

Abortion rights: "down the drain"?; possible reversal of Supreme Court position, The Hastings Center Report, December 1, 1988, Christine K. Cassel

States News Service, November 28, 1988, Anne Hazard

Bush Court Likely to Back Abortion Limits by States, Los Angeles Times, November 27, 1988, David G. Savage

The ACLU Averts Its Eyes, The Washington Post, August 7, 1988, Editorial, Nat Hentoff

Drama in the Woman: A Matter of Life and Death Winds Up In Court, Los Angeles Times, December 25, 1987

Analysis: Kennedy's Pivotal Vote, Associated Press, April 19, 2007, Gina Holland

At Long Last, Maybe a Liberal, The Associated Press March 21, 1993, Jill Lawrence

Supreme Court Declines to Revive Guam's Anti-Abortion Law, The Associated Press November 30, 1992, Richard Carelli

Abortion Fights Loom in Nine States While Focus Shifts to Congress, The Associated Press November 30, 1992, Arlene Levinson

Souter Treads the Middle Ground, The Associated Press March 21, 1991, Richard Carelli

Nominee Dismisses Questions on Decade-Old Abortion Letter, The Associated Press July 26, 1990, William M. Welch

Souter Urged Legislature Not to Involve Judges in Abortion Decisions, The Associated Press July 26, 1990, John King

Louisiana Abortion Ban Could Prompt Reconsideration of *Roe v. Wade*, The Associated Press July 10, 1990, William Welch

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00304 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC

61992.237

Abortion Bill Heads to Governor, The Associated Press April 28, 1990, Judd Everhart

Appeals Court Affirms Pregnant Women's Right to Set Medical Care, The Associated Press April 27, 1990, Jill Lawrence

Court Refuses to Let State Restore Anti-Abortion Law, The Associated Press January 27, 1990

The Associated Press November 29, 1989, Richard Carelli

Availability of Abortion May One Day Hinge on State Courts, The Associated Press October 30, 1989, Richard Carelli

Ruling Encourages States to Restrict Abortion, Activists Say, The Associated Press July 4, 1989

Don't Look for Quick Changes in Abortion Laws, The Associated Press July 3, 1989, Harry F. Rosenthal

Outside Abortion Context, Legal Rights of Fetus Expanding, The Associated Press April 23, 1989, Richard Carelli

High Court Considers Limiting Women's Right to Abortion, The Associated Press April 22, 1989, Richard Carelli

Brehm addresses torture controversy, The Herald Times, December 1, 2007, Mercedes Rodriguez

General meeting of the Bloomington Chapter of the ACLU of Indiana, The Herald Times, November 20, 2007

Could reform attorney general's office, Indiana University law professor says, The Herald Times, September 20, 2007, James Boyd Mukasey

Gonzales resignation brings sign of relief, The Herald Times, August 28, 2007, Mike Leonard

Possibility of dissent gets two tossed from speech, The Herald Times, April 15, 2007, Mike Leonard

Panel: Bush stretching credibility on surveillance, The Herald Times, January 20, 2006, Steve Hinnefeld

Exit stage right, The Herald Times, October 28, 2005, Andy Graham

Indiana friends cheer confirmation, The Herald Times, September 20, 2005, Deanna Martin

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00305 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC

61992.238

The law according to Rehnquist, The Herald Times, March 31, 2005, Steve Hinnefeld

Hamilton quits IDEM, may run in 8th District, The Herald Times, April 1, 1999, Steve Hinnefeld

News Release, Indiana University School of Law-Bloomington, May 1, 2008

Johnsen Testifies at "Secret Law" Hearing, Indiana Law, May 6, 2008

Film Features Dawn Johnsen Alongside Koh, Obama, Sunstein, Law Indiana, November 9, 2006

Fidler, Cate, Johnsen Weigh in on Controversial Constitutional Issues, Sept. 18, 2006

Johnsen Confronts Expanding Executive Power, Indiana Law, Fall 2008, Debbie O'Leary

Choosing Her Battles, Indianapolis Monthly, March 2006, Christine Speer

14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Deputy Assistant Attorney General, Office of Legal Counsel, Department of Justice, 1993-1996, appointed by Attorney General Janet Reno.

Acting Assistant Attorney General, Office of Legal Counsel, Department of Justice, 1997-1998, appointed by Attorney General Janet Reno.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

My husband, John Hamilton, unsuccessfully sought the Democratic nomination for Congress from Indiana's eighth district in 2000, but was defeated in the primary. I am a member of the Monroe County Democratic Women's PAC. I have never held an office in any political party or election committee. I have, however, served as an unpaid advisor to several political campaigns, including Barack Obama for President, Hillary Clinton for President, Bill Clinton for President, and Michael Dukakis for President.

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15. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I clerked for the Honorable Richard D. Cudahy on the U.S. Court of Appeals for the Seventh Circuit from September 1986 to August 1987.

ii. whether you practiced alone, and if so, the addresses and dates;

No.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Staff Counsel Fellow, American Civil Liberties Union, Reproductive Freedom Project, 125 Broad St., New York, NY, 1987-1988 (one-year fellowship)

Legal Director, NARAL Pro-Choice America, 1156 15 St., NW, Suite 700, Washington, D.C., 1988-1993

Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington, D.C., 1997-1998; Deputy Assistant Attorney General, 1993-1996

Indiana University Maurer School of Law-Bloomington, 211 S. Indiana Ave., Bloomington, IN, 1998-present

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

At the ACLU Reproductive Freedom Project, where I worked as a one-year fellow, my work primarily consisted of assisting with litigation aimed at protecting the right of individuals to make their own decisions regarding childbearing, free from governmental intrusion. While at NARAL, I occasionally authored or coauthored amicus briefs, typically in the U.S. Supreme Court in major reproductive rights cases, but the nature of my work shifted away from such a heavy focus on litigation to include, in addition, legislative, policy and public education work. While at OLC, I provided legal

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advice on a range of statutory and constitutional issues to the President and the various departments and agencies of the Executive Branch.

ii. your typical clients and the areas, if any, in which you have specialized.

I have specialized in constitutional law. Within constitutional law, my areas of specialization include executive authority, separation of powers more generally, and reproductive rights. As a law professor, I do not have clients. As a government lawyer at the Office of Legal Counsel my client ultimately was the United States, but more immediately I provided legal advice to executive branch officials and lawyers. My clients at NARAL included the organization itself, its members, and various amici I represented on briefs. My clients at the ACLU were the litigants and amici we represented in various lawsuits. For greater detail, see answer to questions 16 and 17.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:
1. federal courts;
2. state courts of record;
3. other courts.

ii. Indicate the percentage of your practice in:
1. civil proceedings;
2. criminal proceedings.

I would estimate that while at the ACLU more than ninety percent of my work was in litigation, but it was mainly brief writing and I never personally appeared in court. I would estimate that about seventy percent of my litigation work involved civil proceedings in federal courts and the remaining thirty percent was in state courts. While at NARAL, approximately one-quarter of my work involved litigation, overwhelmingly amicus brief writing, approximately ninety-five percent of which involved civil proceedings in federal courts (and the remaining five percent involved civil litigation in state court).

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None.

i. What percentage of these trials were:
1. jury;
2. non-jury.

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if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Since 1993 my principal legal work has been with the Office of Legal Counsel (five years) and as a law professor teaching and writing about issues of constitutional law (more than ten years). In those capacities I have not litigated (except for very occasional work, for example, commenting on a brief or helping to draft a portion of a brief). The litigation described below therefore all occurred early in my legal career and all involved reproductive rights litigation on which I assisted or served as amicus counsel during the year I worked as a staff counsel fellow at the ACLU Reproductive Freedom Project or while I served as legal director of NARAL. Where I could find recent contact information through electronic searches I included that information; otherwise, I included the information as it appeared on the brief or reported opinion (and noted that fact).

1. *Bowen v. Kendrick*, 487 U.S. 589 (1988). As part of my work for the ACLU Reproductive Freedom Project from 1987-88, I worked with Counsel of Record Janet Benshoof on a brief before the U.S. Supreme Court on behalf of several plaintiffs in their challenge to the constitutionality of the Adolescent Family Life Act, on the grounds that it violated the Establishment Clause. Plaintiffs included members of the clergy, the American Jewish Congress, and federal taxpayers.

a. I worked on this case from 1987 to 1988.
b. U.S. Supreme Court
c. Co-counsel representing plaintiffs were Janet Benshoof, Rachael Pine, Lynn Paltrow, then of the ACLU Reproductive Freedom Project, 125 Broad St., NY, NY 10004
Current contact information:
Janet Benshoof, President, Global Justice Center, 25 East 21 St. 10th floor, NY, NY 10010, 212-725-6530
Rachael Pine, 589 4th St., Brooklyn, NY 11215, 718-788-1498
Lynn Paltrow, National Advocates for Pregnant Women, 15 W. 36 St., Suite 901, NY, NY 10018, 212-255-9252

The statute was defended by Solicitor General Charles Fried, U.S. Department of Justice, Washington, DC 20530; currently Beneficial Professor of Law, Harvard Law School, 1563 Massachusetts Ave., Cambridge, MA 02138, 617-384-7817

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e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

Webster v. Reproductive Health Services, No. 88-605, Brief of Seventy-Seven Organizations Committed to Women's Equality as Amici Curiae in Support of Appellees

Webster v. Reproductive Health Services, No. 88-605, Brief for the Amici Curiae Women Who Have Had Abortions and Friends of Amici Curiae in Support of Appellees

Bray v. Alexandria Women's Health Clinic, No. 90-985, Brief of 29 Organizations Committed to Women's Health and Women's Equality As Amicus Curiae in Support of Respondents

Bowen v. Kendrick, Nos. 87-253, 87-431, 87-462, 87-775, Appellees' and Cross-Appellants' Brief

Bowen v. Kendrick, Nos. 87-253, 87-431, 87-462, 87-775, Cross-Appellants' Reply Brief

Gene Myers v. Shawn Kathleen Lewis, Carlton James Lewis v. Shawn Kathleen Lewis, No. 88-555, On Petition for a Writ of Certiorari to the Michigan Court of Appeals, Respondent's Brief in Opposition

Edward Andrew Conn v. Jennifer Ann Conn, No. 88-347, On Petition for a Writ of Certiorari to the Indiana Supreme Court, Respondent's Brief in Opposition

John Smith v. Jane Doe, No. 88-1837, On Petition for a Writ of Certiorari to the Indiana Supreme Court, Respondent's Brief in Opposition

United States Catholic Conference v. Abortion Rights Mobilization, No. 87-416, On A Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, Respondents' Brief in Opposition

Abortion Rights Mobilization v. United States Catholic Conference, Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

United States Catholic Conference v. Abortion Rights Mobilization, No. 87-416, On a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, Brief for Respondents

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date

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2. *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989). I was a principal author of two amicus briefs in this case, which at the time was widely watched for whether the Supreme Court would, as urged by the Solicitor General, overrule *Roe v. Wade*. It was the first case in which it seemed a majority of the Justices might favor that outcome. Both of my briefs urged the Court to reaffirm *Roe*. One brief was filed on behalf of a broad range of "Seventy-seven Organizations Committed to Women's Equality." The second brief was filed on behalf of 2,887 "Amici Curiae Women Who Have Had Abortions and [627] Friends of Amici Curiae," and was based upon letters written by these individuals describing personal experiences with both pre-*Roe* illegal abortions and post-*Roe* legal abortions.

a. The amicus briefs were filed on March 30, 1989.
b. U.S. Supreme Court
c. Co-counsel on the first brief:
Marcy Wilder, Hogan & Hartson, 555 13 St. NW, Washington, DC 20004, 202-637-5729
Judith Lichtman, Senior Advisor and Past President, National Partnership for Women & Families, 1875 Connecticut Ave. NW, Suite 650, Washington, DC 20009, 202-986-2600
Donna R. Lenhoff, Legislative and Policy Director, National Employment Lawyers Association, 1090 Vermont Ave, Ste. 500, Washington, DC 20005, 202-898-2880
Maxine Eichner, University of North Carolina School of Law, 5103 Van Hecke-Wettach Hall, Chapel Hill, NC 27599, 919-843-5670
Evan Caminker, Dean of University of Michigan Law School, 625 South St., Ann Arbor, Michigan, 734-764-0514
Marcia Greenberger, National Women's Law Center, 11 Dupont Circle, NW, #80, Washington, DC 20036, 202-588-5180
Lois Murphy, Director Governor's Action Team, SE Region, 200 Broad St., Philadelphia, PA 19102, 215-560-5830; as of Jan. 30, 2009 beginning new job: Heckscher, Teillon, 100 Four Falls, Suite 300, West Conshohocken, PA, 610-940-2600
Stephanie Ridder, George Washington University School of Law, 2000 H St. NW, Washington, DC 20052, 202-994-6261
Michael C. Small, currently of Akin, Gump, Strauss, Hauer & Feld LLP, 2029 Century Park East, Suite 2400, Los Angeles, CA 90067, 310-552-6645
Wendy Webster Williams, Georgetown University Law School, 600 New Jersey NW, Washington, DC 20001, 202-662-9000

Co-counsel on second brief:
Sarah Burns, currently of NYU School of Law, 40 Washington Square South, NY, NY 10012, 212-998-6000
Helen R. Neuborne, Senior Program Officer, Economic Development, Ford Foundation, 320 E. 43rd St., NY, NY 10017, 212-573-4906
Allison Wetherfield, McDermott, Will & Emery, 7 Bishopsgate, London EC2N 3AR, United Kingdom, 44-20-7577-3489

Principal counsel for parties:
William L. Webster, then-Attorney General of Missouri, unable to find current information

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Charles Fried for the United States, currently Beneficial Professor of Law, Harvard Law School, 1563 Massachusetts Ave., Cambridge, MA 02138, 617-384-7817
Frank Susman, Gallop, Johnson & Neuman, 101 S. Hanley, Suite 1700, St. Louis, MO 63105, 314-615-6000

3. *United States Catholic Conference v. Abortion Rights Mobilization*, 487 U.S. 72 (1988). I assisted counsel of record Marshall Beil in preparing Supreme Court briefs in this suit against the federal government seeking enforcement of statutory limits on the ability of tax-exempt organizations (here, the Roman Catholic Church in the United States) to engage in electoral activities on behalf of or in opposition to political candidates. The issue on which I worked was whether the plaintiffs had standing to raise this challenge; plaintiffs included five members of the clergy, voters, taxpayers, a political candidate, and a state political party official.

a. To the best of my recollection, I assisted in drafting portions of briefs immediately following law school graduation in May/June of 1986, and then again part-time while employed elsewhere, and in particular on a brief filed on March 11, 1988.
b. U.S. Supreme Court
c. Counsel of Record:
Marshall Beil, McGuire Woods, 1345 Avenue of the Americas, 7th floor, NY, NY 10105, 212-548-7004
Additional "of counsel" on one or more briefs:
Mark W. Budwig, retired, home info: 353 E. 83rd St., NY, NY 10028
Katharine S. Dodge, retired from law firm, 16 High St., Brattleboro, VT 05301, 802-254-2345
Gene B. Sperling, Council on Foreign Relations, 1777 F. St., NW, Washington, DC, 202-509-8401

Principal counsel for other parties:
Kevin T. Baine for petititioners; Williams & Connolly LLP, 725 12th St., NW, Washington, DC 20005, 202-434-5010
Alan I. Horowitz and Solicitor General Charles Fried for the United States
Current contact information:
Charles Fried, Beneficial Professor of Law, Harvard Law School, 1563 Massachusetts Ave., Cambridge, MA 02138, 617-384-7817
Alan I. Horowitz, Miller Chevalier, 655 Fifteenth St., NW, Suite 900, Washington, DC 20005, 202-626-5839

4. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993). I was counsel of record and co-authored an amici curiae brief filed in the U.S. Supreme Court on behalf of "29 organizations committed to women's health and women's equality," including NARAL. The brief described the impact of abortion clinic violence and blockades in support of respondents' argument, and the judgment of the lower courts, that anti-abortion protestors had violated 42 U.S.C. § 1985(3).

a. The amicus brief was filed May 13, 1991

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b. U.S. Supreme Court
c. On the amicus brief with me were: Lois Eisner Murphy, Marcy J. Wilder, NARAL
Current contact info:
Lois Murphy, Director Governor's Action Team, SE Region, 200 Broad St., Philadelphia, PA 19102, 215-560-5830; as of Jan. 30, 2009 beginning new job: Heckscher, Teillon, 100 Four Falls, Suite 300, West Conshohocken, PA, 610-940-2600
Marcy J. Wilder, Hogan & Hartson, 555 13 St. NW, Washington, DC 20004, 202-637-5729

Principal counsel for the parties:
Jay Sekulow, Chief Counsel, American Center for Law & Justice, P.O. Box 90555, Washington, DC 20090, 1-800-296-4529
John Schafer, retired from Covington & Burling, 1201 Pennsylvania Ave., Washington, DC, 20004, 202-662-6000

5. *Weeks v. Connick*, 733 F. Supp. 1036 (E.D. La. 1990). I was counsel of record on an amicus brief filed on behalf of my employer NARAL and fifteen other organizations in support of plaintiffs. Following the Supreme Court's 1989 decision in *Webster v. Reproductive Health Services* there was an effort to enforce Louisiana statutes, enacted in 1855 and 1920, to criminalize abortion. A federal district court judge requested supplemental briefing on a question that our amicus brief addressed: "What is the . . . effect on a statute which has been declared unconstitutional . . . if there has been a subsequent change in case law which implicates the earlier decision of unconstitutionality? Is the affected statute revived by the subsequent favorable case law, or must another statute be enacted?" My brief argued, among other things, that the court should not reach this question because the statutes at issue had been repealed in 1978; in any event remained unconstitutional under *Webster* (which did not overrule *Roe v. Wade*); and even if not unconstitutional would have to be reenacted before they could be enforced.

a. The amicus brief was filed on November 13, 1989.
b. U.S. District Court Eastern District of Louisiana, the Honorable W. Eugene Davis, Morely L. Sear, and Martin L.C. Feldman
c. Co-counsel for amici:
Marcy Wilder & Susan Lowry, then of NARAL
Marcy Wilder, Hogan & Hartson, 555 13 St., NW, Washington, DC 20004, 202-637-5729
Susan Lowry, unable to find current information
Gene B. Sperling, Council on Foreign Relations, 1777 F. St., NW, Washington, DC, 202-509-8401
Walter Dellinger, O'Melveny & Myers, 1625 Eye St., NW, Washington, DC 202-383-5300
Laurence H. Tribe, Carl M. Loeb University Professor, Griswold Hall 307, 1525 Massachusetts Ave., Cambridge, MA 02138, 617-495-1767

Principal counsel for the parties:

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Jennifer Schaye, Attorney for William J. Guste, Jr., Louisiana Department of Justice, Division of Risk Litigation, 626 N. Fourth St., Baton Rouge, LA 70804 (unable to find current information)
John S. Baker, Attorney for Harry F. Connick, Louisiana State U., Paul M. Habert Law Center, Baton Rouge, LA, 70803, 225-578-8846

Rachael Pine, Janet Benshoof, Lynn Paltrow, Kathryn Kolbert, then of the ACLU, 132 W. 43 St., NY, NY 10036
Current contact info:
Rachael Pine, 589 4th St., Brooklyn, NY 11215, 718-788-1498
Janet Benshoof, President, Global Justice Center, 25 East 21 St. 10th floor, NY, NY 10010, 212-725-6530
Lynn Paltrow, National Advocates for Pregnant Women, 15 W. 36 St., Suite 901, NY, NY 10018, 212-255-9252
Kathryn Kolbert, President, People for the American Way, 2000 M. St., NW, Suite 400, Washington, DC 20036, 202-467-4999

6. *In re A.C.*, 573 A.2d 1235 (D.C. 1990). I assisted in the representation of the interests of A.C., a woman who died following a court-ordered cesarean section that contributed to her death. The baby also died. The en banc D.C. Court of Appeals held that the trial court erred in the standards it applied in ordering the surgery: in particular, by balancing the woman's life against the fetus's life, rather than applying a standard that looked to the woman's own interests, or if incompetent, a procedure known as substituted judgment to ascertain her wishes.

a. I assisted on briefs filed 1987 to 1988.
b. District of Columbia Court of Appeals, en banc
c. Co-counsel:
Lynn Paltrow, National Advocates for Pregnant Women, 15 W. 36 St., Suite 901, NY, NY 10018, 212-255-9252
Janet Benshoof, President, Global Justice Center, 25 East 21 St. 10th floor, NY, NY 10010, 212-725-6530
Rachael Pine, 589 4th St., Brooklyn, NY 11215, 718-788-1498
Leslie A. Harris, Center for Democracy and Technology, 1634 I St. NW #1100, Washington, DC 20006, 202-637-9800
Robert E. Sylvester, 5402 Huntington Parkway, Bethesda, MD 20814, 301-654-3467 (unable to find current contact information)
Elizabeth Symonds, formerly of ACLU of the National Capitol Area, 1400 20th St., NW, Suite 119, Washington, DC 20005, 202-457-0800 (unable to find current information)
Arthur B. Spitzer, ACLU of the National Capitol Area, 1400 20th St., NW, Suite 119, Washington DC 20005, 202-457-0800

Principal counsel for the parties:
Barbara Mishkin, Hogan & Hartson, 555 13 St., NW, Washington, DC 20004, 202-637-5680
Vincent C. Burke, III, Furey, Doolan & Abell, LLP, 8401 Connecticut Ave., Suite 1100, Washington, DC 20815, 301-652-6880

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7. *Planned Parenthood v. AID*, 838 F.2d 649 (2nd Cir. 1988). I assisted in the drafting of an amicus brief arguing that the district court erred in finding that a challenge to the constitutionality of the Mexico City Policy presented a nonjusticiable political question. The Second Circuit reversed the district court, allowing the challenge to proceed.

a. The amicus brief was filed October 26, 1987
b. The U.S. Court of Appeals for the Second Circuit, the Honorable Judges Miner, Timbers, and Lasker
c. Co-counsel for Amici:
Janet Benshoof, President, Global Justice Center, 25 East 21 St. 10th floor, NY, NY 10010, 212-725-6530
Lynn Paltrow, National Advocates for Pregnant Women, 15 W. 36 St., Suite 901, NY, NY 10018, 212-255-9252
Rachael Pine, 589 4th St., Brooklyn, NY 11215, 718-788-1498

Principal counsel for the parties:
Roger Evans, Legal Director, Planned Parenthood Federation of America, 434 W. 33rd St, NY, NY 10001, 212-541-7800
Carolyn L. Simpson, Assistant U.S. Attorney (unable to locate current contact information)

8, 9 & 10. In 1988 while at the ACLU Reproductive Freedom Project, I was co-counsel on briefs in a series of cases that all involved attempts by men to enjoin particular women from having first trimester abortions, on the ground that the man was the prospective father and opposed the abortion. The Supreme Court had already resolved the legal issue, but these cases were part of an effort in 1988 to create a test case to bring to the Supreme Court to urge the Court to overrule its precedent. Among the counsel representing the men in all cases was James Bopp, the general counsel of the National Right to Life Committee, and the cases followed a "Father's Rights" litigation packet which encouraged such challenges. I was among the counsel representing the women in each case. In the end, the courts ultimately ruled in favor of the women. The spate of cases ended when the Supreme Court denied certiorari in two of the cases. Below is the information I have been able to gather and based on my best recollection about the three cases in which courts issued published opinions (and I have included information on a fourth case for completeness, because I believe—though am not certain—that represents all of the cases in this series).

Myers v. Lewis, on petition of writ of certiorari to the Michigan Court of Appeals, cert. denied, 488 U.S. 967 (1988)

a. 1988
b. Michigan Court of Appeals, U.S. Supreme Court (opposition to certiorari petition)
c. Co-counsel:
Janet Benshoof, Counsel of Record, President, Global Justice Center, 25 East 21 St. 10th floor, NY, NY 10010, 212-725-6530

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Lynn Paltrow, National Advocates for Pregnant Women, 15 W. 36 St., Suite 901, NY, NY 10018, 212-255-9252
Rachael Pine, 589 4th St., Brooklyn, NY 11215, 718-788-1498
Linda L. Pylypiw, 720 Church St., Flint, Michigan 48502, 810-234-0980
Shelley R. Spivak, 900 S. Saginaw St., Flint, Michigan 48502, 810-237-6130

Opposing Counsel:
Steven W. Moss, 404 N. Linden Rd, Flint, Michigan 48504, 313-230-0080 (unable to find current contact information)
Gene Myers, 1133 E. Bristol Rd., Burton, MI 48529
James Bopp, Jr., Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434
Richard E. Coleson, Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434

Conn v. Conn, 525 N.E.2d 612 (Ind. Ct. App. 1988), 526 N.E.2d 958 (Ind. 1988), cert. denied, 488 U.S. 955 (1988)

a. 1988
b. Indiana state courts, including Indiana Supreme Court, U.S. Supreme Court (opposition to certiorari petition)
c. Co-counsel:
Richard A. Waples, Counsel of Record, Waples & Hanger, 410 N. Auborn Rd, Indianapolis, IN 46219, 317-357-090
Janet Benshoof, President, Global Justice Center, 25 East 21 St. 10th floor, NY, NY 10010, 212-725-6530
Lynn Paltrow, National Advocates for Pregnant Women, 15 W. 36 St., Suite 901, NY, NY 10018, 212-255-9252
Rachael Pine, 589 4th St., Brooklyn, NY 11215, 718-788-1498

Opposing counsel:
James Bopp, Jr., Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434
Richard E. Coleson, Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434
Roger Wm. Bennett, Bennett, Boehning & Clary LLP, 415 Columbia St., Suite 1000, Lafayette, IN 47901, 765-742-9066
John P. Worth, 136 E. 2nd St., Rushville, IN 46173, 765-932-2242

John Doe v. Jane Smith, 527 N.E.2d 177 (Ind. 1988)

a. 1988
b. Indiana Supreme Court, 527 N.E.2d 177 (Ind. 1988), appeal from the Elkhart Superior Court, Room No. 2 Juvenile Division, Cause No. 20 D0288 05 JP 095, The Honorable Stephen E. Platt, Judge
c. Co-counsel

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Richard A. Waples, Waples & Hanger, 410 N. Auborn Rd, Indianapolis, IN 46219, 317-357-0903
John M. Hamilton, City First Enterprises, 1436 U. St., NW, Suite 404, Washington, DC 20009, 812-327-4311
Marie Waring-Mengel, Executive Director, Elkhart County Legal Aid Society, 330 W. Lexington, Elkhart, IN 46516, 219-294-2658

Opposing Counsel:
Robert J. Palmer, May, Oberfell, Lorber, 4100 Edison Lakes Parkway, Mishawaka, IN 46545, 574-243-4100
Steven J. Strawbridge, 201 N. Illinois St., Suite 1000, Indianapolis, IN 46244, 317-237-3800
James Bopp, Jr., Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434
Richard E. Coleson, Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434

Jane Doe v. John Smith, no reported opinion, Indiana Court of Appeals, No. 84 A01-8804-CV-00112, Appeal from the Vigo Circuit Court, Juvenile Division, Cause No. 84C01 8804 JP 185

a. 1988
b. Indiana Court of Appeals, No. 84 A01-8804-CV-00112, Appeal from the Vigo Circuit Court, Juvenile Division, Cause No. 84C01 8804 JP 185, The Honorable Robert H. Brown, Circuit Judge
c. Co-counsel:
Richard A. Waples, Waples & Hanger, 410 N. Auborn Rd, Indianapolis, IN 46219, 317-357-0903
John M. Hamilton, City First Enterprises, 1436 U. St., NW, Suite 404, Washington, DC 20009, 812-327-4311
Samuel E. Beecher, Jr., formerly of Terre Haute, Indiana (deceased)

Opposing Counsel included (unable to locate complete list):
James Bopp, Jr., Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434
Richard E. Coleson, Bopp, Coleson & Bostrom, National Building 1 South 6th St., Terre Haute, IN 47807, 812-232-2434

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

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For just over a decade, I have taught and written about issues of constitutional law, with a focus on presidential authority and especially executive branch lawyering. I have, for example, written about executive authority to interpret the Constitution and to issue signing statements, and about a President's dilemma and responsibility when confronted with an unconstitutional statutory provision. I have both been a critic of executive branch excesses, in particular the 2002 OLC opinion on the legality of torture (see, e.g, *Faithfully Executing the Laws: Internal Legal Constraints on Executive Power*, 54 UCLA LAW REVIEW 1559 (2007)) and a defender of legitimate and important presidential authorities such as the authority to interpret the Constitution and issue signing statements (see, e.g., *What's a President to Do? Interpreting the Constitution in the Wake of the Bush Administration's Abuses*, 88 BOSTON UNIVERSITY LAW REVIEW 395 (2008)). Most notably, I spearheaded the development of a document signed by nineteen former OLC lawyers that draws upon the best nonpartisan traditions to set forth principles that should guide OLC lawyers in advising the President on how lawfully to accomplish his policy objectives.

Prior to teaching, I served for five years at OLC, first as a deputy assistant attorney general (1993 to 1996) and from January 1997 to June 1998, as the Acting Assistant Attorney General heading that office. In that capacity, I provided legal advice (through delegated authority from the Attorney General) to the President and to executive branch departments and agencies, on the range of constitutional and statutory issues that confront the executive branch. OLC responds to legal questions from the Counsel to the President, the Attorney General, the General Counsels of the various executive departments and agencies, and the Assistant Attorneys General for the other components of the Department of Justice. Among its responsibilities, OLC resolves legal disputes between executive agencies, assesses the constitutionality of pending legislation, advises the President on whether to sign or veto legislation and drafts accompanying presidential statements, and assesses Executive Orders and other presidential directives for form and legality. The list of OLC opinions I signed during my five years at OLC listed under 13(c) provides a good indication of the typical work of OLC. My work to uphold *Roe v. Wade* while at the ACLU Reproductive Freedom Project and NARAL is captured in greater detail in my responses to Questions 15 and 16 above.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I am in my eleventh year of teaching at Indiana University Maurer School of Law-Bloomington. I regularly have taught constitutional law to first-year law students, a five-credit-hour course that covers issues of both structure of government and Fourteenth Amendment rights (2000, 2002, 2003, 2004, 2005, 2006, 2008). I also have regularly taught constitutional law II, which is a course on the First Amendment (both expression and religion) (1998, 1999, 2000, 2001, 2003, 2005, 2006). I also often have taught a seminar on the separation of powers, which explores the authorities of and relationship

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among the three branches of the federal government (1999, 2001, 2003, 2003, 2007, 2008), and on a few occasions a seminar on sexuality, reproduction and the Constitution, which explores governmental treatment of reproductive health and decisionmaking and sexual orientation (2006, 2007, 2008). I have included the two most recent syllabi for each of these courses.

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

My current employer, Indiana University, provides a defined contribution pension plan that includes a minor component (2.4% match of annual salary) that does not vest unless and until I reach age 55 as an employee of the University. If I am so employed at that future time, such benefits would vest. The current face value of these unvested contributions is approximately $30,000. See also answer to question 20 below.

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

None, though if I am confirmed I will ask my current employer, Indiana University Maurer School of Law-Bloomington, to give me a leave of absence which would allow me to return to my tenured position. I expect to ask for successive annual leaves, during which time my salary and benefits will not be paid, with the exception of an initial three months of life insurance that is provided as a matter of course and the option to continue health care benefits (which I may do for a few months, until my family can move to Washington, DC).

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Dawn E. Johnsen
Income

Sources of Income as of 1/16/09	**Amount**	**Year**
Indiana University School of Law - salary	$164,418	2008
Indiana University School of Law - salary	$13,500	2009

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Mutual Fund holdings - dividends (est.)	$2,200	2008
Mutual Fund holdings - dividends (est.)	$200	2009
Cash holdings – interest	$2,337	2008
Cash holdings - interest (est.)	$200	2009
Tax-exempt bond payments	$368	2008
Tax-exempt bond payments	$20	2009
Honorarium for authoring book chapter	$500	2008

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

23. **Potential Conflicts of Interest**:

    a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

    In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

    b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

    In the event of a potential conflict of interest, of this or any other kind, I would consult with the Office of Government Ethics and the Department of Justice's designated agency ethics official and comply with their guidance.

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Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Prior to joining the faculty at Indiana University Maurer School of Law-Bloomington, I have chosen legal positions either at nonprofit organizations or in government. Public service has been my overriding objective. My reproductive rights work has been aimed largely at upholding *Roe v. Wade*, which would disproportionately serve the disadvantaged because women with resources are far more likely to be able to navigate governmental restrictions on reproductive decisions. Since teaching, I have continued to work with nonprofits, foundations, and governmental entities (in particular, congressional staff) to promote legal and policy change that will disproportionately serve the disadvantaged (the amount of time varies greatly but I would estimate in the last five years it has averaged five to ten hours a week).

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FINANCIAL STATEMENT

NET WORTH
__as of 12/31/08__

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	128,245	Notes payable to banks-secured	0
U.S. Government securities-add schedule	0	Notes payable to banks-unsecured	0
Listed securities-add schedule	645,630	Notes payable to relatives	0
Unlisted securities--add schedule	7,000	Notes payable to others	0
Accounts and notes receivable:	17,000	Accounts and bills due	10,000
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid income and interest	0
Doubtful	0	Real estate mortgages payable-add schedule	113,800
Real estate owned-add schedule	230,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts-itemize:	0
Autos and other personal property	30,100		
Cash value-life insurance	16,873		
Other assets itemize:	0		
		Total liabilities	123,800
		Net Worth	951,048
Total Assets	1,074,848	Total liabilities and net worth	1,074,848
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	0	Are any assets pledged? (Add schedule)	NO
		Are you defendant in any suits	

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On leases or contracts	0			or legal actions?	NO		
Legal Claims	0			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	0						
Other special debt							

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FINANCIAL SCHEDULES
as of 12/31/2008

Johnsen, Dawn E.

LISTED SECURITIES

		(est.)
American Funds		
EuroPacific Growth Fund – B		$3,542
The Growth Fund of America - B		$3,459
Capital World Growth and Income Fund - B		$3,613
Capital Income Builder – B		$3,923
Sentinel Investments		
Sentinel International Equity Fund-A		$7,854
Sentinel Sustainable Core Opportunity-A		$8,565
Calvert Investments		
Calvert New Visions Small Cap Fund-A		$7,001
Calvert Capital Accumulation Fund-A		$6,036
Calvert New Vision Small Cap Fund-B		$5,619
World Values International Equity-B		$4,510
Calvert Social Index-B		$5,140
Calvert Large Cap Growth Fund-B		$4,971
Lincoln Financial Group		
LVIP Delaware Special Opportunities		$19,737
LVIP Delaware Social Awareness		$30,122
Indiana College Choice Advisor		
2016 Enrollment Portfolio Class A		$5,895
2013 Enrollment Portfolio Class A		$6,333
Indiana Public Employees' Retirement Fund		
S&P 500 Index Fund	*	$16,600
US Small Companies Fund	*	$23,000
Indiana Deferred Compensation Plan - Hoosier START		
Domini Institutional Social Equity Fund	*	$14,500
Vanguard Capital Opportunity - Admiral	*	$22,000
Domini Social Investments		
Social Equity Investors Shares		$58,898
Lincoln Investment Planning, Inc.		
AIM Global Small & Mid Cap Growth Fund - A	*	$3,000
American Funds Growth Fund of America - F	*	$3,200
Calvert Aggressive Allocation Fund - A	*	$6,000
TIAA-CREF		
TIAA CREF Social Choice Equity Fund - Rtl		$70,391
TIAA CREF International Equity Fund - Rtl		$30,263
TIAA CREF Large-Cap Grow Fund - Rtl		$19,076
CREF Growth		$57,951

CREF Global Equities		$65,620
TIAA CREF Social Choice Equity - Rtmt		$18,936
TIAA CREF Mid-Cap Gr-Rtmt		$17,255
TIAA CREF S&P Index-RTMT		$11,655
TIAA CREF Sm-Cap Eq-Rtmt		$18,628
TIAA Real Estate		$23,828
CREF Social Choice		$29,740
Indiana University Tax Exempt Revenue Bond, Ser 2008A		$8,769
TOTAL LISTED SECURITIES		**$645,630**

UNLISTED SECURITIES

City First Bank of D.C., NA		
Common Stock (book value; no public market)		$7,000
TOTAL UNLISTED SECURITIES		**$7,000**

REAL ESTATE OWNED

635 S. Woodlawn Ave., Bloomington, IN 47401 (primary residence)	*	$230,000
TOTAL REAL ESTATE OWNED		**$230,000**

AUTOS AND OTHER PERSONAL PROPERTY

1998 Plymouth Voyager Minivan	*	$5,100
General Household property (est.)	*	$25,000
TOTAL REAL ESTATE OWNED		**$30,100**

REAL ESTATE MORTGAGE PAYABLE

Peoples State Bank, Bloomington, IN for primary residence loan	$113,800

TOTAL REAL ESTATE MORTGAGE PAYABLE **$113,800**

* reflects estimate of 12/31/08 value

AFFIDAVIT

I, Dawn Johnsen, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

February 11, 2009
(DATE)

Dawn Johnsen
(NAME)

Vivian E. St. Cyr 2/11/09
(NOTARY)

VIVIAN E. ST. CYR
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires November 30, 2013

Senator FEINSTEIN. Mr. Kris.

STATEMENT OF DAVID S. KRIS, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, NATIONAL SECURITY DIVISION

Mr. KRIS. Senator, may I begin also by introducing my family?

Senator FEINSTEIN. Of course.

Mr. KRIS. Directly behind me is my wife, Jody Kris—oh. Excuse me. Directly behind me is my wife, Jody Kris. Directly behind her is my daughter Audrey. Next to my wife is my daughter Hannah—she's taking notes for a report to her second grade social studies class on this——

Senator FEINSTEIN. We will all be on our toes. Thank you.

Mr. KRIS. And next to her is my father, Tony Kris, who has traveled here from out of town. I do want to make reference to two people who could not be here, my mother, who passed away several years ago, and my stepmother, who unfortunately is unable to attend due to illness. Thank you.

May I proceed?

Senator FEINSTEIN. Please.

Mr. KRIS. Madam Chairman, Senator Hatch, and distinguished members of the Committee, it's an honor to appear before you. I'm grateful to President Obama for nominating me, to Attorney General Holder for supporting me, and to the Committee for considering me. I also appreciate very much the members who met with me prior to this afternoon, including this morning.

The National Security Division is a new, but vital, institution of government. To date, it has had only two Assistant Attorneys General, both of them, like me, originally career prosecutors. The most recent of these, Patrick Rowan, was enormously helpful during the Presidential transition period, and I want to take this opportunity to thank him again.

Pat's predecessor, Ken Wainstein, is currently teaching a law school class with me. Ken and I agree on some things, we disagree on other things, but we share a common respect and appreciation for professionalism and serious legal argument. As a result, we work well together, even when we differ. In fact, I think our students benefit from the diversity of views that we present. They get more from both of us than they would from either of us.

Together, Ken, Pat, and the men and women of NSD have done what I think is a remarkable job establishing the Division over the last 2 years, and I agree with many of the things that they have done, including NSD's basic organizational structure, its strong relationships with ODNI and the FISA court, and it's innovative enforcement of export controls, among others.

Of course, I have some ideas of my own about how to build on this foundation and move the Division forward. In keeping with my status as a nominee and as an outsider, these ideas are necessarily somewhat tentative, but I wanted to share with you nonetheless in an effort to inform your decision about whether or not to confirm me.

In the short run, if I were to be confirmed, I would hope and expect to focus on three procedural/structural issues and three substantive ones. With your permission, I'll just quickly lay those out.

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First, procedurally, I would like to begin by continuing to strengthen the connections between and among NSD's various components. I hope that this will generate even more coordinated operations and policy development within the Division, and also continue to foster a distinct DOJ National Security culture. Fundamentally, NSD exists because of potential synergies between its criminal lawyers and its intelligence lawyers, and if I were confirmed I would want to try to maximize those synergies.

Second, if confirmed, I will focus on NSD's relationships with the intelligence community and with the National Safety Council, in part, by continuing to develop the intelligence perspective and credentials of its lawyers, including its prosecutors. I will also try to respond appropriately and quickly to constitutional oversight and maintain strong, cooperative relationships with this Committee and other committees of Congress.

Third, I would hope to continue the very positive evolution of NSD's working relationship with the FBI, particularly at the operational level. I believe that this will help the FBI continue its transformation into a security service, and at the same time enhance protections for civil liberties.

Now, substantively, I also anticipate three areas of focus, if I am confirmed. First, of course, Guantánamo Bay and the detainees there. NSD has already briefed its senior career deputy to serve as executive director of the Gitmo task force, and I am sure will continue to support the task force, as needed.

Second, the FISA Amendments Act. This is a new statute, as the Committee is aware, and I do not yet know exactly how it functions. But I do know that it provides enormous authority to the government and underlies what I understand to be an enormously important collection program. If confirmed, I intend to learn in detail how it works.

Third, and finally, the FBI's domestic operations guidelines. In at least two ways, I think these guidelines reflect positive developments. In other ways, they raise some questions that I would like to explore further. If confirmed, I will want to know how the guidelines operate at ground level so that I can work with the Bureau, advise the Attorney General, and keep this Committee fully informed.

So again, I want to emphasize that these ideas are tentative, all six of them, and they will certainly yield to the ground truth. But they do reflect my current thinking from my current perspective, and I wanted to put them before you. I appreciate very much your holding this hearing, and I look forward to answering your questions.

Thank you.

[The prepared statement of Mr. Kris appears as a submission for the record.]

[The questionnaire of Mr. Kris follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (including any former names used).

   David Schaefer Kris.

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General for National Security.

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office addresses:

   Time Warner, Inc.
   800 Connecticut Ave., N.W., Suite 800
   Washington, D.C. 20006

   One Time Warner Center
   New York, NY 10019.

   Residential address:

   Bethesda, Maryland.

4. **Birthplace**: State date and place of birth.

   September 28, 1966.
   Boston, Massachusetts.

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Jody Ann Kris (Jody Ann Manier)
   Partner
   Wilmer, Cutler, Pickering, Hale & Dorr LLP
   1875 Pennsylvania Ave., N.W.
   Washington, D.C. 20006.

Two dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Harvard Law School (August 1988 to June 1991)
J.D. (June 1991).

Haverford College (August 1984 to May 1988)
B.A. (May 1988).

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

A. President-Elect Transition Team (November 2008 to January 20, 2009)
Member of the DOJ Agency Review Team.

B. Time Warner, Inc. (June 2003 to present)
One Time Warner Center
New York, NY 10019

and

800 Connecticut Ave., N.W., Suite 800
Washington, DC 20006.

Senior Vice President and Deputy General Counsel (February 2006 to present)
Chief Compliance Officer (November 2005 to present)
Vice President, Legal Department (June 2003 to November 2005).

C. Georgetown University Law School (January 2008 to present)
600 New Jersey Ave., N.W.
Washington, DC 20001

Adjunct Professor of Law.

D. Brookings Institution (2008 to present)
1775 Massachusetts Ave., N.W.
Washington, DC 20036

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Nonresident Senior Fellow.

E. United States Department of Justice (September 1992 to May 2003)
950 Pennsylvania Ave., N.W.
Washington, DC 20535

Associate Deputy Attorney General (July 2000 to May 2003)
Attorney, Criminal Division (September 1992 to July 2000).

F. Judge Stephen S. Trott, 9th Circuit (August 1991 to August 1992)
660 U.S. Courthouse
550 West Fort Street
Boise, ID 83706

Law clerk.

G. Professor Philip Heymann (December 1989 to June 1991)
Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 02138

Research Assistant.

H. Ropes & Gray (June 1990 to August 1990)
One International Place
Boston, MA 02110

Summer Associate.

I. Professor Laurence Tribe (October 1989 to February 1990)
Harvard Law School
1563 Massachusetts Ave.
Cambridge, MA 02138

Research Assistant.

J. Middlesex County District Attorney (June 1989 to August 1989)
40 Thorndike Street
Cambridge, MA 02138

Summer Intern.

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K. Dr. Craig Henderson (July 1988 to August 1988)
44 Binney Street
Boston, MA 02115

Intern.

L. Fidelity Investments (June 1988 to July 1988)
World Trade Center
568 E. First Street
Boston, MA 02127

Secretary.

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

None.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Attorney General's Award for Exceptional Service (2002 and 1999).
Assistant Attorney General's Award for Special Initiative (1998).
Awards for Special Achievement (various dates prior to 2000).

10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are of have been a member, and give the titles and dates of any offices which you have held in such groups.

I was a member of the American Bar Association from 1992 to 2003. I did not hold any office in the ABA.

11. **Bar and Court Admissions**

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reasons for any lapse in membership.

Massachusetts (1991).
New York (2003).
Maryland (2008).

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse

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in membership. Give the same information for administrative bodies that require special admission to practice.

State courts listed in 11a.
United States Supreme Court (1995).
United States Court of Appeals, First Circuit (2000).
United States Court of Appeals, Fourth Circuit (1992).
United States Court of Appeals, Fifth Circuit (admitted 1992, lapsed 2003 because admission not renewed; no misconduct involved).
United States Court of Appeals, Ninth Circuit (1992).
United States Court of Appeals, Tenth Circuit (1993).

12. Memberships:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Brookings Institution (2008 to present).

Palisades Pool Association (May 2007 to present).

Suburban Nursery School (September 2003 to present).

Westmoreland Hills Neighborhood Association (approximately 2000 to present).

Edward Bennett Williams Inn of Court (1995 to 2007).

I may have had a (free) membership in the Harvard Club shortly after graduating from law school.

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Not to my knowledge.

13. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including

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material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have done my best to identify books, articles, reports, letters to the editor, editorial pieces, or other published material through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Meet David S. Kris – Featured Author (October 2008).

West Key Authors, David Kris and Doug Wilson (date unknown but probably 2008).

Summary of amendments to the Foreign Intelligence Surveillance Act made after September 11, 2001 (July 2008).

David S. Kris, *A Guide to the New FISA Bill, Parts I-III* (June 21-25, 2008).

David S. Kris, *Modernizing the Foreign Intelligence Surveillance Act* (November 15, 2007). I recently submitted a revised version of this paper to Brookings, but it has not yet been published.

David S. Kris & J. Douglas Wilson, NATIONAL SECURITY INVESTIGATIONS AND PROSECUTIONS (August 2007). My co-author and I have done work on updates to this book, but the work is not yet complete.

David S. Kris, *Searching the Haystacks* (August 29, 2007);
David S. Kris, *Is Wiretapping at Embassies Off Limits Now* (August 29, 2007);
David S. Kris, *Continuing the Conversation* (August 30, 2007).

Response to Defense of Warrantless Wiretapping Program as Set forth in a Letter from the Department of Justice to Certain Members of Congress on December 22, 2005 and a Whitepaper Released by the Department of Justice on January 19, 2006 (March 2006).

The Rise and Fall of the FISA Wall, 17 Stan. L. & Policy Rev. 487 (2006).

Press Conference, Department of Justice, concerning the Foreign Intelligence Surveillance Court of Review's decision (November 18, 2002).

Collateral Review of Federal Criminal Conviction (monograph published internally by the Department of Justice) (1998).

Interpreting 18 U.S.C. § 2331 Under U.S. and International Law, 27 Harv. J. on Legis. 579 (1990).

Philip B. Heymann and David S. Kris, *And There Should be Other Prosecutions Too*, Washington Post, Page B7 (January 7, 1990).

I have testified before this Committee and other Committees of Congress, and my testimony is sometimes posted on Committee websites. See answer to part c.

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None that I can think of.

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify testimony, official statements, or other communications through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Statement of David Kris before the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the House Committee on the Judiciary Hearing on H.R. 3189, the National Security Letters Reform Act of 2007 (April 15, 2008).

Letter to The Honorable John D. Rockefeller IV and The Honorable Christopher S. Bond, Chairman and Vice-Chairman of the Senate Select Committee on Intelligence concerning Comments on the Foreign Intelligence Surveillance Modernization Act of 2007 (May 1, 2007).

Answers to Questions for the Record for David Kris, sent to Senator Specter (April 21, 2006).

Testimony of David S. Kris before the Committee on the Judiciary, United States Senate (March 28, 2006).

Emails exchanged with Courtney Elwood re NSA surveillance (December 2005 – January 2006), released by DOJ under the Freedom of Information Act.

Testimony of David S. Kris before the Senate Select Committee on Intelligence (May 24, 2005).

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Testimony of David S. Kris before the Subcommittee on Crime, Terrorism, and Homeland Security (April 28, 2005).

Interviews by Staff of the 9-11 Commission (January 15 and May 19, 2004), cited in the 9-11 Commission Report.

Statement of Associate Deputy Attorney General David S. Kris before the Senate Judiciary Committee Concerning the Foreign Intelligence Surveillance Act (September 10, 2002).

Testimony of David S. Kris before the Senate Judiciary Committee, Subcommittee on the Constitution, Federalism, and Property Rights (October 3, 2001).

Testimony of David S. Kris before the Senate Select Committee on Intelligence Concerning Legislative Proposals to Respond to Terrorism (September 24, 2001).

In addition to testifying before Congress, I have several times since 2001 briefed staff of the Judiciary and Intelligence Committees, typically on a bipartisan basis.

d. Please supply four (4) copies, transcripts or tape recording of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have done my best to identify speeches or talks through a review of my personal files and searches of publicly available electronic databases. I have located the following:

American University Law School (October 28, 2008). I guest lectured at Professor Dan Marcus's class. I also guest lectured there on September 1, 2005; October 12, 2006; and March 4, 2008. No notes or transcript available.

I have for several years guest lectured at a class on national security taught by Magistrate Judge Jamie Orenstein and District Judge John Gleeson at NYU Law School. As far as I can determine, I guest lectured on October 17, 2007; October 11, 2006; October 3, 2005; and September 21, 2004. I recall speaking to the class in the fall of 2008, but cannot determine the exact date. No notes or transcript available.

NYU Law School (October 8, 2008). I guest lectured at Professor Sam Rascoff's class on national security. No notes or transcript available.

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DOJ Cyber Deterrence Group, Department of Justice (July 10, 2008). I was invited by DOJ to a briefing and discussion of cyber deterrence issues. No notes or transcript available.

ABA Panel on Cyber Issues, Mandarin Hotel, Washington DC (June 19, 2008). I was part of a panel on cyber issues. No notes or transcript available.

RAND Conference on national security issues, Rand Office, Los Angeles, CA (May 5, 2008). I was part of a panel on privacy. No notes or transcript available.

University of California, Berkeley (April 14, 2008). I was part of a panel discussion on UK national security law with David Cole and John Yoo. No notes or transcript available.

University of Michigan Law School (April 2, 2008). I guest lectured on national security issues in Professor Joan Larsen's class and also spoke at an event sponsored by the Federalist Society. I gave a similar talk to Professor Larsen's class in 2007. I may do so again in 2009. No notes or transcript available.

ABA breakfast talk by Ken Wainstein et al., in which I asked a question from the audience (March 3, 2008), University Club, Washington, DC, as described in Ellen Nakashima and Paul Kane, *Wiretap Compromise in Works*, Washington Post at A3 (March 4, 2008).

Fordham Law School (February 20, 2008). I gave a talk on FISA modernization. No notes or transcript available.

Sentinel Society speech, New York Athletic Club, New York (January 24, 2008). I gave a talk on FISA modernization. No notes or transcript available.

AALS meeting in New York (January 4, 2008). I gave a talk on FISA modernization. No notes or transcript available.

ABA National Security Review (November 16, 2007). I spoke on a panel about surveillance law (substituting for Professor Jack Goldsmith). No notes or transcript available.

ABA breakfast talk, University Club, Washington, DC (September 27, 2007). I gave a talk on FISA modernization. Video available at http://www.c-span.org/Watch/watch.aspx?MediaId=HP-A-7243.

NCIX Counterintelligence and Cyber Threat Symposium, Park Hyatt Hotel, Washington, DC (October 19, 2007). I was part of a panel discussion on cyber issues. No notes or transcript available.

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ABA National Security Forum, Washington DC (October 18, 2007). I was part of a roundtable discussion on detainee issues. The roundtable produced a pamphlet. I was listed as an "Observer" in the pamphlet: *The following individuals participated as observers in the workshop and the views expressed do not reflect the official policy or position of the Department of Defense, the Joint Staff, the Department of Army, the United States Marine Corps, the U.S. Coast Guard, the U.S. government, or the attorneys representing the litigants in these issues.*

FISA modernization Seminar, Georgetown University Law Center's National Security Center (September 10, 2007). I co-hosted this one-day seminar. No notes or transcript available.

Washington Post Editorial Board. I met with the members of this board to discuss FISA modernization (September 7, 2007). No notes or transcript available.

Federal Bar Council, New York. I spoke on a panel with David Kelley (former U.S. Attorney, SDNY) and Judge Keenan (former Judge of the FISC) (April 12, 2007). No notes or transcript available.

American University, Washington DC (March 19, 2007). I was part of a panel discussion on surveillance and other national security issues. No notes or transcript available.

ACS Convention (June 17, 2006). I was part of a panel discussion on surveillance. Audio available at http://www.acslaw.org/node/3036.

I spoke to the House Homeland Security Committee at its retreat held at the Wye River Plantation (March 2005). I gave an exegesis of the movie, *Day of the Jackal*. No notes or transcript available.

Kennedy School of Government, Fellows Program (October 3, 2004). I spoke at Vicki Divoll's class on national security. In 2007, I also spoke at Jim Baker's Fellows Program at the Kennedy School, and guest lectured at his class at Harvard Law School, but have not been able to verify the exact dates. No notes or transcript available.

ABA Program on White-Collar Crime, Lawyer or Snitch? The New Rules (March 4, 2004). I was part of a panel. No notes or transcript available.

ABA Program on the Foreign Intelligence Surveillance Act and the Courts: What the Recent Decision Means for Intelligence Intercepts (December 11, 2002). I was part of a panel. No notes or transcript available.

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

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I have done my best to identify press interviews through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Katherine Shrader, *Bush Sees Legal Immunity for Telecoms*, Associated Press (August 31, 2007).

Tom Hamburger and Josh Meyer, *Loyalty to Bush, Cheney Shaped Policy and Advice*, Los Angeles Times (August 28, 2007).

Ellen Nakashima, *Telecom Firms Helped with Government's Warrantless Wiretaps*, Washington Post (August 24, 2007).

Matt Apuzzo, *Spy Court Gets New Home of Its Own*, Associated Press (August 21, 2007).

James Risen and Eric Lichtblau, *Concerns Raised on Wider Spying Under New Law*, New York Times (August 19, 2007).

Lead the Way, interview by Ethisphere Magazine regarding Time Warner's ethics and compliance program (date unknown but probably 2007).

Craig's Corner for Counsel: National Security, Metropolitan Corporate Counsel (July 2007).

I was interviewed by the producers of a PBS *Frontline* story on the NSA surveillance program in the summer of 2007, but was not part of the broadcast.

I discussed the post-September 11 environment with Eric Lichtblau in connection with his book, *Bush's Law*, and he sent me an e-mail based on that discussion on June 19, 2006. Similar material appears on pages 86-87 of the book.

Vanessa Blum, *Gonzales Mulls Need for Terror Reform*, Legal Times (June 3, 2005).

Eric Lichtblau, *A New Antiterror Agency is Considered*, New York Times (March 25, 2005).

National Public Radio, FBI Investigates Gorelick Death Threats (April 19, 2004). Audio available at http://www.npr.org/templates/story/story.php?storyId=1842206. I also recall speaking to ABC News on camera about this topic during this time period, but I could not find recordings of the interviews online; the gist of what I recall saying is consistent with views I later expressed in more detail in a law review article, *The Rise and Fall of the FISA Wall*, 17 Stan. L. & Policy Rev. 487 (2006), that is cited in part a, above.

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National Public Radio, Secret Search Warrants (September 20, 2002). Audio available at http://www.npr.org/templates/story/story.php?storyId=1150369.

Since leaving government in May 2003, I have given briefings to members of the media on legal issues relating to national security, and also in connection with the publication of my book in August 2007, but these generally were not on the record and did not result in published accounts.

14. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, including the terms of service and whether you were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

b. List all memberships and offices held and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was an advisor to the campaigns of Senator Barack Obama and Senator Hillary Clinton in 2008.

15. Legal Career: Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to The Honorable Stephen S. Trott, United States Court of Appeals for the Ninth Circuit (August 1991 – August 1992).

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

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United States Department of Justice (September 1992 – July 2000).
Attorney, Criminal Division, Appellate Section. During this period, I was also detailed to the U.S. Attorney's Office for the District of Columbia and spent several months prosecuting a series of cases in the United States District Court for the District of Montana.

United States Department of Justice (July 2000 – May 2003).
Associate Deputy Attorney General.

Time Warner, Inc. (May 2003 – present)
Senior Vice President and Deputy General Counsel (February 2006 – present). Chief Ethics and Compliance Officer (November 2005-present). Formerly Vice President, Legal Department (May 2003 – February 2006).

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From 1992 through July 2000, I served as an attorney in the Criminal Division, primarily in the Appellate Section. At various times, I also worked on complex criminal trials, such as the trials of the Montana Freemen. In my first or second year of service, I performed a detail of approximately six months in the Office of the United States Attorney for the District of Columbia as a trial attorney in the misdemeanor section.

From July 2000 through May 2003, the character of my practice changed because I became an Associate Deputy Attorney General. I became involved in national security issues, both at the operational and policy levels. During this period, after the September 11, 2001 attacks, I also testified before (and briefed) Congress.

From June 2003 through November 2005, I spent almost all of my professional time managing Time Warner's inside and outside lawyers and others in defending AOL in a criminal investigation undertaken by the United States Attorney for the Eastern District of Virginia and a parallel SEC enforcement action, and related civil actions brought by various private parties. By November 2005, when I became Chief Ethics and Compliance Officer, Time Warner had settled those investigations with both the Department of Justice and the SEC, and had resolved many of the civil cases with the private parties.

From November 2005 through the present, I worked to improve and maintain Time Warner's ethics and compliance program, advised management and the Audit Committee regarding certain compliance issues, supervised and coordinated compliance teams at all of Time Warner's Divisions, and supervised outside counsel in individual matters falling under my purview as Chief Compliance Officer.

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ii. your typical clients and the areas, if any, in which you have specialized.

I have had two clients in my career: The United States (law enforcement and national security), and Time Warner (securities law, corporate law, ethics and compliance, litigation).

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:

1. federal courts;

From 1992-2000, virtually all of my practice was in federal trial and appellate courts and the Supreme Court (I spent six months as a prosecutor in the D.C. superior courts). I appeared in court frequently, handling trials and arguing appeals.

From 2000-2003, I spent almost no time on individual pieces of litigation, with the significant exception of the time I spent litigating the FISA wall and Patriot Act issues in the FISA Court and the FISA Court of Review, and other issues before those courts.

From 2003-2005, almost all of my time was spent managing a large criminal investigation in the United States District Court for the Eastern District of Virginia and a related SEC investigation, and working on related civil litigation brought by private parties, although I was not counsel of record and did not enter an appearance on behalf of Time Warner in court; my main role was to manage inside and outside counsel.

From 2005-present, I also have not appeared in court; a minority of my time is spent managing matters pending or threatened in federal court litigation.

2. state courts of record;

I have never spent significant time litigating in state court; some of my work at Time Warner involves matters that could arise in state court, or with state Attorneys General or other state regulatory or law enforcement entities.

3. other courts.

When I was Associate Deputy Attorney General, as noted above, I worked on matters in the FISA Court and the FISA Court of Review.

ii. Indicate the percentage of your practice in

1. civil proceedings;

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2. criminal proceedings.

At Time Warner, I am concerned with both civil and criminal proceedings. When I was at the Justice Department, I was focused almost exclusively on criminal (or national security) proceedings.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:
   a. jury;
   b. non-jury.

When I was in the U.S. Attorney's Office, I tried several misdemeanor jury trials and non-jury trials, typically in cases involving guns, drugs, and violent crime. Typically, I would be the sole prosecutor on these cases. It has been many years, and I cannot remember how many, but I would estimate a dozen jury trials and two dozen or more non-jury trials. When I was in the Criminal Division, I worked as part of a team of prosecutors on three trials of the Montana Freemen.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never argued before the Supreme Court, but I contributed to writing merits briefs in the following cases when I was at the Department of Justice:

Jones v. United States, 99-5739

Felker v. Turpin, 95-8836

Carlisle v. United States, 94-9247

Libretti v. United States, 94-7427

Williamson v. United States, 93-5256

In addition, I contributed to writing certiorari petitions and/or briefs in opposition to certiorari petitions in many criminal cases when I was in the Criminal Division. The following are the certiorari petitions and briefs in opposition that I have been able to locate:

Ray v. United States, 92-5658

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Aguirre v. United States, 92-5256

Locke v. United States, 92-6012

Spencer v. United States, 92-5006

Vasquez v. United States, 92-6091

Laboy v. United States, 92-6137 (not found)

Cook v. United States, 92-6339

Helton v. United States, 92-563

Lamman v. United States, 92-6592 (not found)

Meek v. United States, 92-6605

Eisen v. United States, 92-919

Morganti v. United States, 92-968 (not found)

Cheng v. United States, 92-1129

Fishman v. United States, 92-1222

Elliott v. United States, 92-9235

Hernandez v. United States, 92-7377

Staples v. United States, 92-1441

Saraff v. United States, 92-7641

Drake v. United States, 92-7978

Dean v. United States, 93-5224

DeLaGarza v. United States, 93-6098 (not found)

Green v. United States, 93-9105

Shields v. United States, 93-618

Reed v. United States, 93-6741

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Coyne v. United States, 93-6627

Davis v. United States, 93-900

Byars v. United States, 93-7126

Vickery v. United States, 93-7477

Fonville v. United States, 93-7612

Hunnewell v. United States, 93-8037

Adams v. United States, 93-1348

Pierce v. United States, 93-8126

Bryant v. United States, 93-8463 (not found)

Gastiaburo v. United States, 93-8903

Freeman v. United States, 93-8967 (not found)

Bennett v. United States, 93-1508

Barnes v. United States, 93-8563

Gary v. United States, 93-9400

Wessels v. United States, 93-9021

Witherspoon v. United States, 94-5042

Reilly v. United States, 94-160

Russell v. United States, 93-9553

Hightower v. United States, 94-5881

Damerville v. United States, 94-5990

Trevino v. United States, 94-5294

Mitchell v. United States, 94-5499

Moore v. United States, 94-642

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Napoli v. United States, 94-717

Ingram v. United States, 94-6500

Piper v. United States, 94-6876

Turner v. United States, 94-6776

Salcido v. United States, 94-7122 (not found)

Libretti v. United States, 94-7427

Blair v. United States, 94-7630

Wingo v. United States, 94-7980

Werth v. United States, 94-8196 (not found)

McCullough v. United States, 94-8314

Rutledge v. United States, 94-8769

Manarite v. United States, 94-1641

Tabas v. United States, 94-8845

Carlisle v. United States, 94-9247

Pierce v. United States, 95-6474

Williams v. United States, 95-6104 (not found)

Homrich v. United States, 95-6659

Delamotte v. United States, 95-5750

Cox v. United States, 95-5499

Breeland v. United States, 95-7025

Weir v. United States, 95-6393

Burden v. United States, 94-9255

Carlisle v. United States, 94-9247

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Box v. United States, 95-5164

Corces v. United States, 95-1206

Breeland v. United States, 95-7025

Simon v. United States, 95-6966

Hunter v. United States, 96-5017

Jackson v. United States, 95-7436

Lowe v. United States, 95-1659

Salemo v. United States, 96-5539

Embrey v. United States, 96-7325

Durham v. United States, 96-7329

Zarnes v. United States, 96-1324

Tagbering v. United States, 96-8598

Rybar v. United States, 96-1738

Kirk v. United States, 96-1759

Sidali v. United States, 97-399

Jones v. United States, 97-6203

Davis v. United States, 97-7173

Romero v. United States, 97-6863

Spruill v. United States, 97-6467

Jones v. United States, 99-5739

Diaz v. United States, 99-6903

Flores v. United States, 99-6240

Farhad v. United States, 99-7127

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Nesbeth v. United States, 99-8081

Kumar v. United States, 99-1283

Okolie v. United States, 99-1043

16. Litigation: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. I briefed and argued before the Foreign Intelligence Surveillance Court in *In re All Matters, 218 F.Supp.2d 611* (FISC 2002), and was the principal author of the briefs (but did not lead the oral argument – that was done by Ted Olson, Solicitor General) in the appeal of that decision before the Foreign Intelligence Surveillance Court of Review in *In re Sealed Case* 310 F.3d 717 (FISCR 2002). These cases concerned the FISA wall and the USA Patriot Act. The government lost in the FISC (where I argued the case) but won in the Court of Review (where Ted Olson primarily argued the case). The ACLU (and other groups) and the NACDL each filed briefs in the Court of Review (but did not appear at oral argument). The lead lawyer on the ACLU brief was Ann Beeson, ACLU, 1400 20th Street, NW, Suite 119, Washington, D.C., telephone 202-457-0800. The lead lawyer on the NACDL brief was John Cline, Jones Day, 555 California Street, 26th Floor, San Francisco, CA 94104, telephone 415-875-5812.

2. I was the principal author of the briefs, but did not argue, *United States v. McGuire*, 307 F.3d 1192 (9th Cir. 2002) (I participated in the trial for the government). This was an appeal from the prosecution of the Montana Freemen. The government prevailed on appeal. The judges on the panel were Circuit Judges Hawkins and Gould, and District Judge Ware (sitting by designation). The defense lawyers were Edmund F. Sheehy Jr., Cannon & Sheehy, 2801 Russell Street, Missoula, Montana 59801-8538, telephone (406) 549-8760; and Brian K. Kohn, Esq., 301 North 27th Street, Billings, MT 59101, telephone (406) 252-1269.

3. I briefed and argued *United States v. Prigmore*, 243 F.3d 1 (1st Cir. 2001) (I was not trial counsel for the government). This case involved charges of fraud in the manufacture of medical devices and oversight by the FDA. The government lost on

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appeal. The judges on the panel were Circuit Judges Selya, Coffin, and Stahl. The lead defense lawyer was Richard Taranto, Farr & Taranto, Suite 800, 1220 19th Street, N.W., Washington, DC 20036-2435, telephone (202) 775-0184.

4. I briefed and argued *United States v. Holland*, 214 F.3d 523 (4th Cir. 2000) (I was not trial counsel for the government). This case involved an award of attorney's fees and costs to a criminal defendant under 18 U.S.C. § 3006A. The government lost on appeal. The judges on the panel were Circuit Judges Luttig and Motz, and District Judge Moon (sitting by designation). The defense lawyers were James C. Roberts, Troutman Sanders LLP, Troutman Sanders Building, 1001 Haxall Point, Richmond, VA 23219, telephone (804) 697-1280; and Hunter W. Sims Jr., Kaufman & Canoles, 150 West Main Street, Post Office Box 3037, Norfolk, Virginia 23514-3037, telephone (757) 624-3272.

5. I briefed and argued *United States v. Lombera-Camorlinga*, 206 F.3d 882 (9th Cir. 2000) (en banc). This case involved application of the Vienna Convention on Consular Relations. The government won on en banc appeal. The judges on the en banc panel were Circuit Judges Hug, Browning, Schroeder, Boochever, Kozinski, O'Scannlain, Kleinfeld, Thomas, Mckeown, Wardlaw, and W. Fletcher. The defense attorney was Benjamin Coleman, Federal Defenders of San Diego, Inc., 225 Broadway Street, Suite 900, San Diego, California 92101-5008, telephone (619) 234-8467.

6. I briefed and argued *United States v. Romero*, 189 F.3d 576 (7th Cir. 1999) (I was not trial counsel for the government). This case involved the kidnapping of a child, and the use of expert testimony at trial. The government won on appeal. The judges on the panel were Circuit Judges Ripple, Manion, and Evans. The defense lawyer was John L. Sullivan, Madgison and Sullivan, Chicago IL (I cannot locate his telephone number).

7. I briefed and argued *United States v. Bailey*, 123 F.3d 1381 (11th Cir. 1997) (I was not trial counsel for the government). This case involved convictions for fraud and firearms offenses. The government won in part and lost in part (on sentencing) on appeal. The judges on the panel were Circuit Judges Birch and Godbold and Senior District Judge O'Kelley (sitting by designation). The defense lawyer was Robert E. Sanders, Washington, DC, 7125 16th Street, NW, Washington, DC 20012, telephone (202) 723-2998.

8. I briefed and argued five cases involving the constitutionality under the Commerce Clause of the Child Support Recovery Act. In each, I was not trial counsel for the government and the government won on appeal. Those cases were as follows: (A) *United States v. Crawford*, 115 F.3d 1397 (8th Cir 1997). The judges on the panel were Circuit Judges McMillian, Henley, and Morris Shepard Arnold. The defense lawyer was Donald G. Kelly, Kelly, Townsend & Thomas, 137 St. Denis Street, Natchitoches, LA 71457-4635, telephone (318) 352-2353. (B) *United States v. Johnson*, 114 F.3d 476 (4th Cir. 1997). The judges on the panel were Circuit Judges Widener, Murnaghan, and Phillips. The defense lawyer was Dale Warren Dover, Suite 210, 228 S. Washington Street, Alexandria, VA 22314-5404, telephone (703) 519-0000. (C) *United States v. Bailey*, 115 F.3d 1222 (5th Cir. 1997). The judges on the panel were Circuit Judges

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Politz, Smith, and Duhe. The defense lawyer was Henry Joseph Bemporad, Federal Public Defender's Office, 727 E. Durango Blvd., San Antonio, Texas, telephone (512) 229-6700. (D) *United States v. Mussari*, 95 F.3d 787 (9th Cir. 1996). The judges on the panel were Circuit Judges Noonan and Thomson, and District Judge Hagen (sitting by designation). The defense attorneys were David Lee Titterington and Sigmond G. Popko, Assistant Federal Public Defenders, 850 W Adams Street, Suite 201, Phoenix, AZ 85007, telephone (602) 382-2700. (E) *United States v. Hampshire*, 95 F.3d 999 (10th Cir. 1996). The judges on the panel were Circuit Judges Kelly, Logan, and Briscoe. The defense attorney was Timothy J. Henry, Federal Public Defender, 850 Epic Center, 301 N Main Street, Wichita, Kansas 67202-4800, telephone (316) 269-6445.

9. I briefed and argued *In re Grand Jury*, 103 F.3d 1140 (3d Cir. 1997) (I was not trial counsel for the government). This case involved the validity of an evidentiary privilege for parent-child communications. The government won on appeal. The judges on the panel were Circuit Judges Mansmann, Greenberg, and Garth. The defense lawyers were Gordon C. Rhea, Richardson, Patrick, Westbrook & Brickman, L.L.C., 1037 Chuck Dawley Boulevard, Building A, Mount Pleasant, SC 29464, telephone (843) 727-6656; Charles M. Oberly III, Oberly, Jennings & Rhodunda, P.A., 800 Delaware Avenue, P.O. Box 2054, Wilmington, DE 19899-2054, telephone (302) 576-2000; and George H. Seitz III, Seitz, Van Ogtrop & Green, P.A., 222 Delaware Avenue, Suite 1500, Wilmington, DE 19801, telephone (302) 888-7602.

10. I briefed and argued *United States v. Nevers*, 7 F.3d 59 (5th Cir. 1993) (I was not trial counsel for the government). This case involved a challenge to the constitutionality of the federal conflict-of-interest statute. The government won on appeal. The judges on the panel were Circuit Judges Johnson, Wiener, and DeMoss. The defense lawyer was George McCall Secrest Jr., Bennett & Secrest, L.L.P., The Neils Esperson Building, 24th Floor, 808 Travis Street, Houston, TX 77002, telephone (713) 757-0679.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) or whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note: as to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

At Time Warner, apart from privileged matters, my responsibilities include the following:

- Oversee internal investigations, interactions with governmental enforcement authorities, and related matters, and report to senior management and the Board of Directors.

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- Counsel senior management and the Board of Directors concerning legal risk in several areas, including acquisitions and dispositions, major transactions, quarterly financial certification, reporting and disclosure issues, and corporate governance and other requirements under the Sarbanes-Oxley law and NYSE listing requirements.

- Oversee company-wide ethics and compliance program, spanning Time Warner's seven operating divisions with offices in more than 50 countries.

- Manage the Legal Department's budget and related administrative and personnel matters as a member of the Legal Department's Operations Committee.

At the Department of Justice, apart from classified or privileged matters and litigation, my responsibilities included the following:

- developing and implementing national security law and policy, conducting oversight of the Intelligence Community, and representing the Department of Justice in the National Security Council and other inter-agency settings;

- briefing and testifying before Congress, in open and closed sessions, to support proposed legislation and respond to oversight requests;

- supervising national security wiretapping and related investigatory matters, including use of the Foreign Intelligence Surveillance Act of 1978 (FISA);

- devising and implementing an extensive national security curriculum and training program for more than six thousand FBI agents and Department attorneys who work on foreign intelligence matters.

18. Teaching: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I have taught National Security Investigations and Litigation at Georgetown University Law Center (January – May 2008). I am teaching it again in 2009, but I have recruited two co-teachers in case I need to drop out if I am fortunate enough to be confirmed. The syllabus is attached. As explained in question 13, I have guest lectured at other law schools.

19. Deferred Income/Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in

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the future for any financial or business interest.

I expect to be paid a bonus in 2009 by Time Warner for work performed in 2008. I also have stock options and restricted stock, some of which is already vested and some of which vests in early 2009. I receive small royalties from West for sales of my book. For additional detail, see attached SF-278 referred to in the answer to Question 21.

20. Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I am a Nonresident Senior Fellow at Brookings. This does not require any work, but I may have to resign under Brookings' conflict-of-interest policies. I am teaching at Georgetown now, but I have recruited two co-teachers in case I need to drop out if I am fortunate enough to be confirmed. I also expect to update my book (my co-author and I have done work on updates to the book, but the work is not yet complete).

21. Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978 may be substituted here.)

See attached.

22. Statement of Net Worth: Please complete the attached net worth statement in detail (add schedules as called for).

See attached.

23. Potential Conflicts of Interest:

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I could have a conflict of interest, or the appearance of a conflict, if the National Security Division becomes involved in litigation, e.g., concerning FISA, with AOL (or perhaps Time Warner Cable until its separation from Time Warner is complete), both of which are providers of communications services, at least until I have been paid my bonus or otherwise severed my financial ties to Time Warner.

I could have a conflict of interest, or the appearance of a conflict, with respect to prepublication review by the National Security Division of updates to my book under 28

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CFR § 17.18. I would expect to ask the Deputy Attorney General, or another official who does not report to me, to conduct and/or supervise the review if necessary.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow governing rules concerning conflicts of interest and, if confirmed, will be guided by the determinations of ethics professionals at the Department of Justice. With respect to matters for which I know conflicts exist, I would inform relevant personnel that I am recused from such matters. As future matters arise, if I become aware that a potential conflict exists, I would consult with DOJ ethics professionals to determine the appropriate action and will be guided by their determinations.

24. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount o time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

In recent years, my pro bono work consists primarily of writing, teaching, and speaking on issues of public policy, particularly national security, as detailed in question 13. Without compensation, I have taught (and am teaching) at Georgetown, and have guest lectured at other law schools, given talks, spoken on panels, and briefed and testified before Congress several times. I have written articles and a book, sometimes for no compensation and sometimes for little compensation. And I have spoken to members of the news media about unclassified national security legal issues in an effort to help make their stories more legally accurate.

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Kris Family Statement of Net Worth as of December 31, 2008*

Assets		Liabilities	
Cash on hand and in banks	45,332.00	Notes payable to banks - secured	0
U.S. Government Securities (see Schedule A)	301,287.00	Notes payable to banks - unsecured	0
Listed securities (see Schedule B)	393,163.00	Notes payable (as trustee) to trust (for benefit of a relative)	161211
Unlisted securities	0.00	Notes payable to others	0
Accounts and notes receivable		Accounts and bills due	12220
Due from relatives and friends	0.00	Unpaid income tax	52600
Due from Time Warner (estimated contractual bonus earned in 2008, due to be paid in February 2009)	250000-350,000	Other unpaid income and interest	0
Estimated Tax refund due from NY	20,000.00	Real estate mortgages payable (see Schedule E)	443130
Real estate owned (see schedule C)	2,416,640.00	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0.00	Other debts	0
Autos and other personal property (est)	273,785.00		
Cash value - life insurance	0.00		
Other assets (itemize)			
Retirement accounts	547,374.00		
WilmerHale Capital Account	130,565.00		
Education 529 Plans	42,448.00		
Mortgage escrow balance	2,145.00		
Vested stock options issued by Time Warner (see attached)	0.00		
Unvested Restricted Stock issues by Time Warner (see Schedule D)	469,429.78		
		Total liabilities	669161
			4,223,008.00 -
		Net worth	4,323,008.00
	4,892,169 -		4,892,169 -
Total Assets	4,992,169	Total liabilities and net worth	4,992,169

Contingent Liabilities		General Information	
As endorser, comaker or guarantor	0	Are any assets pledged	No
On leases or contracts	0	Are you a defendant in any suits or legal actions?	No
Legal claims	0	Have you ever taken bankruptcy?	No
Provision for federal income tax (est.)	52,600		

SCHEDULE A
U.S. Government Securities

	Mkt val
Money Market US Treasury Cash Reserves, held in portfiolio of David and Jody Kris at Welch & Forbes	288933
Money Market US Treasury Cash Reserves, held in portfiolio of Hannah Kris Minority Trust at Welch & Forbes	8612
Money Market US Treasury Cash Reserves, held in portfiolio of Audrey E. Kris Minority Trust at Welch & Forbes	3742
	301287

SCHEDULE B
Listed Securities

	Market Value of All Equities and Fixed income instrument
Welch & Forbes Account 756000529 (David and Jody Kris)	305392
Welch & Forbes Account 7550017963 (Hannah Kris Minority Trust)	11109
Welch & Forbes Account 7550024492 (Audrey Elizabeth Kris Minority Trust Account)	49412
Fidelity Investments (David Kris Time Warned vested stock)	27250
	393163

SCHEDULE C
Statement of Real Estate Owned

	Total value	Beneficial share held by David Kris
[redacted]	1166640	1166640
Owned as tenants by the entireties by David Kris and Jody Kris		
Last tax appraisal, January 1, 2008		
Partial Interest in		
[redacted]		
Held in trust	5,000,000	1,250,000
Total	6166640	2416640

AFFIDAVIT

I, David S. Kris, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2-9-09
(DATE)

(NAME)

(NOTARY)
Comm. exp. 8.14.201

Senator FEINSTEIN. Thank you very much, Mr. Kris and Ms. Johnsen. We'll now proceed with questions. We'll have 7-minute rounds, and I'll follow the early bird rule.

Mr. Kris, let me begin with you. You mentioned Guantánamo. As we know, President Obama has created the working group you referred to. There are reportedly three categories of detainees at Guantánamo: (1) Those who pose no threat and are eligible for release; (2) those who will be charged, either in Federal court—court marshal, or military commission; and (3) those who pose a real threat to the national security, but for whom there is not sufficient or admissible evidence to be prosecuted.

I'm particularly concerned about this third category, and I want to ask you a question about the legal authority to hold somebody in this category. It is my understanding that if an individual is found by a tribunal to be an enemy combatant, that the treaties, the laws of war, will permit that individual to be continued in custody until the conflict is over.

Is this adequate to hold those people who are a security threat to this Nation?

Mr. KRIS. Thank you very much, Senator. I appreciate the question. There is no more difficult and important matter than this for the American people right now, and for the new administration. As you point out, the executive order anticipates and directs a comprehensive review, and especially from where I'm sitting now, of course, I don't want to prejudge the results of that review, and certainly, if confirmed, I would look forward to supporting it, as directed by the Attorney General.

I agree with you about the categories of detainees that may exist. Of course, I haven't seen the information, so I don't know. And I also agree with you that I think there is authority to hold enemy combatants, and I'm thinking particularly of the Supreme Court's decision on the *Hamdi* case, which said exactly what you said, that in keeping with the authorization to use military force and the laws of war and traditional understandings of the Law of Armed Conflict, there is authority, at least in the circumstances described there, to hold enemy combatants for the duration of the conflict. The court obviously also mentioned the importance of due process review, and there's a lot of detail there. But I do agree with your basic point, yes.

Senator FEINSTEIN. Thank you very much.

Now, a question for Mrs. Johnsen. Approximately 40 OLC memos that were written between 2001 and 2005 are still secret today. You wrote in the "Principles to Guide the Office of Legal Counsel" that OLC should publicly disclose its written opinions in a timely manner, absent strong reasons for delay or nondisclosure.

What do you believe is a reasonable period of time for OLC to wait before disclosing these opinions?

Ms. JOHNSEN. Thank you, Senator. The amount of time, I think, would vary with the opinion. I think in the normal case it would not need to be any longer than the time it takes for OLC to consult with the requesting agency to see if they have concerns about release of the opinion, and whatever time it takes to process the opinion.

There may be other opinions, though, where there is classified information in the opinion that would need to be redacted, or that prevent the opinion from being released at all at that particular point in time, but with the passage of time, release may become appropriate. So, it would be a case-by-case determination. The principles, as you say, call for a presumption in favor of disclosure, absent compelling reasons to the contrary. National security clearly would provide one of the most compelling reasons.

Senator FEINSTEIN. Well, if I understand what you're saying, it is very vague and imprecise. Would that be correct?

Ms. JOHNSEN. Well, I can say a little more about what would help guide whether an opinion should be released or not, and I'd be happy to talk more about that.

Senator FEINSTEIN. Please.

Ms. JOHNSEN. I would also say that I think it is important for the Office of Legal Counsel and Department of Justice itself to be clear about the guidelines so that Congress and the public know, what are the standards being applied in deciding whether to release opinions. But it will, by necessity, be a case-by-case analysis.

One class—category of opinions about which I have expressed particular concern in the past, concern about the failure to release, if not the opinion itself, the fact of its existence and a description of the legal analysis involves OLC interpretations of Federal statutes where OLC determines not to comply with the statute or interprets the statute in a way for better—for want of a better phrase, in a way that would surprise Congress.'

We are seeing a few important examples of that in the prior administration where, in effect, the government was claiming the authority not to comply with a duly enacted statute and not letting Congress know about that for months or years. So that's a category that I would say is a special category. I would say that Congress and the American people have a special need to know how the executive branch is interpreting and applying, or not applying, Federal statutes.

Senator FEINSTEIN. Do you believe that torture can ever be legally justified under United States or international law?

Ms. JOHNSEN. No, Senator, I do not.

Senator FEINSTEIN. Do you believe that waterboarding is torture?

Ms. JOHNSEN. Yes, Senator.

Senator FEINSTEIN. Do you believe that torture yields reliable information and intelligence?

Ms. JOHNSEN. Senator, that is not an issue on which I have any expertise, and it also is not an issue that would be for me to say anything about in the position to which I have been nominated. My role would be to inform the President and the policymakers of the legal constraints.

Senator FEINSTEIN. Thank you. Thank you very much, both of you.

Senator Hatch.

Senator HATCH. Well, thank you, Madam Chairman.

Mr. Kris, you've written, testified, and otherwise advocated lowering the so-called "wall" between traditional law enforcement and intelligence. You appeared before the Intelligence Committee, upon which both the distinguished Chairman and I serve, less than 2

weeks after the 9/11 terrorist attacks in your capacity as Associate Deputy Attorney General, and you advocated this position.

Now, here we are, nearly 7½ years later, and there has not been another terrorist attack in America. So, first, I'd like your brief assessment of that infamous wall. Had it come down, what would have been the results? What else needs to be done?

Mr. KRIS. Thank you very much, Senator. I think the wall is down. As a legal matter, it came down in November of 2002 with the decision of the FISA Court of Review, and then was reaffirmed in fact as a statutory matter by the reauthorization of the PATRIOT Act by Congress. So I think legally the wall is down.

Senator HATCH. Do you agree with that?

Mr. KRIS. I beg your pardon?

Senator HATCH. Do you agree with that?

Mr. KRIS. Yes, I do.

Senator HATCH. Okay.

Mr. KRIS. I'm aware, obviously, of one decision in Oregon that has gone the other way, but I think the weight of authority in that decision is on appeal. But I think the weight of authority is that the wall is down.

Institutionally, or bureaucratically, as it were, the National Security Division is, in a way, a reflection of the demise of that wall because it brings together even one organizational unit within the Justice Department, both the law enforcement officials, counterterrorism and counterespionage prosecutors who formerly resided in the Criminal Division, and intelligence lawyers who formerly resided in the Office of Intelligence Policies and Review.

I think, as I mentioned in my opening, one of the first things that I would like to focus on is continuing to strengthen the internal connections between those two groups in order to reap the synergies that I think underlie NSD's creation.

Senator HATCH. Madam Chairman——

Senator SPECTER. No, you finish your time.

Senator HATCH. I can defer.

Senator SPECTER. You finish.

Senator HATCH. Okay. Thank you.

Well, I appreciate your answer. At the same time, you've coauthored the book, National Security Investigations and Prosecutions. Other experts in this field, some of whom have testified before this and other congressional committees, have called this work literally "the book" on the subject. I personally believe you've done an excellent job.

Mr. KRIS. Thank you. I very much appreciate that.

Senator HATCH. But in this book you distinguish between national security investigations and law enforcement investigations. What's the difference? Why is the difference important? How can we reconcile lowering the wall and maintaining the distinction?

Mr. KRIS. Well, I think—I guess, two points I would make. The first, is that in a way the key insight that's associated with lowering the wall is that prosecution of spies and terrorists from other nations, security threats, is not an end in itself, but is another means to the end of protecting against those threats. It's another tool in the toolbox.

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That does not mean, however, that there is no distinction between, say, ordinary law enforcement against ordinary criminals—say, a prosecution of Bonnie and Clyde for bank robbery or something like that, and the use of law enforcement techniques against genuine national security threats, like spies and terrorists.

I think the wall and the demise of the wall had to do really with the latter category, the ability to bring together all of the Justice Department's tools that can be deployed against these kinds of threats, the national security threats, but really wasn't about the use of FISA or other intelligence collection methods against ordinary criminals committing ordinary crimes. That really is, I think, distinct and resides still in the Criminal Division.

Senator HATCH. Now, in Chapter 15 of your book you write that, "The President has authority, under Article 2 of the Constitution, to conduct foreign intelligence electronic surveillance, including surveillance of U.S. citizens inside the United States without a warrant, even during peacetime, at least where he has probable cause that the target of surveillance is an agent of a foreign power."

Do you still believe that? How does this differ from what the previous administration was doing?

Mr. KRIS. Yes, I do believe it. I think that the courts—to the extent that the Courts of Appeals have addressed this question—obviously, the Supreme Court came closest to this in the Keith decision but did not address it head on. The lower courts have, to the extent they have decided it squarely, all decided in favor of allowing such surveillance in the absence of the statute. That is different from the question of whether a president may violate a statute. But in the absence of a statutory restriction, the line of cases—and you're familiar with this, Senator—culminating in Tron, do, I think, uphold the President's authority there.

Senator HATCH. Right.

Recently, a group of judges from around the world issued a report objecting to the notion that there is a "war" on terrorism, and argued "the criminal law is the primary vehicle to be used to address terrorism." Do you agree with that?

Mr. KRIS. No, I don't think I do. I'm with the Attorney General. I think we are at war. I think the Law of Armed Conflict applies. In my answer to Senator Feinstein I referred to the *Hamdi* decision and the authority to detain, in keeping with the Law of War. So I don't think I agree with that statement, if I understand it correctly.

Senator HATCH. The Attorney General did say, "There is no question but that we are at war." I'm happy to have your testimony.

I assume you're familiar with the system of the Foreign Intelligence Surveillance Court of Review. It was considered last month—last August, I guess, but made public about a month ago.

Mr. KRIS. Yes, sir.

Senator HATCH. The court held that the Protect America Act of 2007, which allows warrantless foreign intelligence surveillance, is constitutional. Now, I wanted to note the court's holding: "We hold that a foreign intelligence exception to the Fourth Amendment's warrant requirement exists when surveillance is conducted to obtain foreign intelligence for national security purposes and it's di-

rected against foreign powers, or agents of foreign powers, recently believed to be located outside the United States."

Now, what do you believe is the significant—what is the significance of this decision, both for what the government has been doing up to this point and from what the new administration will be doing?

Mr. KRIS. I think the decision—and I have read it when it was released publicly—is significant. It does interpret the Protect America Act, which is the predecessor statute to the FISA Amendments Act, but I think much of it—much of its analysis would be applicable to the FISA Amendments Act.

I will say that there are portions of the opinion that are redacted that I have not seen, and I would want to see those and understand more fully what was going on there. I hope, if I am confirmed, that I will have that opportunity.

So I guess those are some of the concerns and caveats I have about the opinion, but I do think it's a well-written opinion and I do think it does stand for the proposition that the Protect America Act is constitutional.

Senator HATCH. Well, Mr. Kris, I've limited myself to these few questions, but I'm well familiar with your work and I'm well familiar with what you've done. I'm going to support you for this position. I think you're not only capable, I think you're an extremely honest and extremely intelligent man. So, I'm just grateful that people like you are willing to come out and work with the administration. I think it's important. I think you'll be a great asset to the Attorney General, and I wish you well.

Mr. KRIS. Thank you very much, Senator. I greatly appreciate that.

Senator FEINSTEIN. Thank you very much, Senator Hatch.

The Ranking Member of the Committee, Senator Specter, was unavoidably delayed and is here now, so I'm going to interrupt and give him an opportunity to make an opening statement.

Senator SPECTER. Thank you very much, Madam Chairwoman. I congratulate Ms. Johnsen and Mr. Kris on their outstanding academic record, their very impressive undergraduate degrees and law degrees, and on their nominations here.

I begin with you, Ms. Johnsen. I have noted in the staff memo which has been prepared for me that you have written, regarding the role of the Office of Legal Counsel, "The courts under-enforce constitutional rights and the political branches have an obligation to fill constitutional gaps, and uphold rights beyond those that the court will enforce."

I would disagree with that. The political branch, Congress, has the authority to establish public policy and decide what the laws ought to be within constitutional bounds. But when the reference is made there, as it appears to be, that the Office of Legal Counsel is going to fill in the gaps, I have a sharp question, really, of disagreement. You have criticized John Yoo and the Bybee memo, and they have been characterized as on the extreme side. A number of your writings, which I'll come to in a moment, are about as far from the center of the other end of the political spectrum.

The question that I have at the outset is, isn't it true that we accept the constitutional interpretation of the courts, really the Su-

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preme Court or whatever other courts may interpret the Constitution on paramount authority and the authority of Congress to legislate, and perhaps to fill in constitutional gaps as they see it, subject to being overruled by the court.

But it is not the rule of the Office of Legal Counsel to extend the Constitution beyond what the courts have said, or the Congress supplementing, plus what the Congress determines is public policy on legislation.

Ms. JOHNSEN. Thank you, Senator, for that opportunity to—to clarify what I was talking about there. And this is a subject that is also just in the Principles to Guide OLC. There are some instances in which the executive branch acts where it is unlikely that there will ever be a court case. When the Supreme Court speaks, absolutely, that decision was the law of the land and is binding on Office of Legal Counsel. And if I'm confirmed, in advising the executive branch, I will be bound by, and follow, certainly, the opinions of the Supreme Court.

But as the Principles note, there are some questions where the courts are reluctant to decide the issue or there just won't be anyone with standing. The court might say it's a political question. In those instances, as we write in the Principles, the Office of Legal Counsel and the President have a special obligation to ensure they're acting within the law, including protecting individual rights and enforcing rights that the courts may never have the opportunity to adjudicate.

And even if the courts do reach the question, they may do so—I think I wrote this in this particular article—in a way that's very deferential to the President's determinations because it's a matter of national security, for example, so deference is appropriate in that kind of situation. So, that's what I had in mind, Senator.

Senator SPECTER. Well, in your writings you go pretty far to one end of the political spectrum. The positions you've taken on Pro-Choice—I'm Pro-Choice, and I agree with that doctrine. Some of the Supreme Court decisions don't please me, but that's the law, they say. But when I read in your writings that abortion bans go beyond the Thirteenth Amendment, which bans slavery, and that "forced pregnancy requires a woman to provide continuous physical service to the fetus in order to further the State's asserted interests," it seems to me just, candidly, beyond the pale to say that that's a violation of the Thirteenth Amendment against slavery.

Do you stand by that statement?

Ms. JOHNSEN. Thank you, Senator, for that opportunity to clarify. I was, I have to say, shocked when I saw the—the National Review article that made certain claims about what I had written yesterday.

Senator SPECTER. You did not write that?

Ms. JOHNSEN. I have never—I did write the part that you quoted, absolutely. I have never argued that there's a Thirteenth Amendment violation when the government restricts abortion. That—I was shocked when I saw that, and it took me a while to search and find what they were referring to. They made other claims that were clearly false.

Here, they—I did write a brief 20 years ago, and footnote 23, I found, makes a suggestion that there may be an analogy between—

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not what this article said, pregnancy, which I've been blessed with twice and have two wonderful sons, but forced childbirth.

This is a brief that I filed arguing that the right to privacy protects the right of women and their families to make these choices, and that *Rowe* v. *Wade* should be upheld. This was in 1989. It made no Thirteenth Amendment argument, and I will say categorically I do not believe the Thirteenth Amendment is relevant at all. It was a straight Fourteenth Amendment argument.

Senator SPECTER. Well, my question was whether you wrote that, and I have listened to your answer and I do not understand it. But I'll take a look at footnote 23. I don't have a whole lot of time here.

You have written that the nomination of Thomas, Roberts, and Aleto is "a stealth attempt to radically remake constitutional law." Those nominees come with the Presidential prerogative. The nominations by President Obama, well within his range, could be said to be at the other end of the spectrum. Not that I disagree with him. I may be closer to his end of the—well, I won't comment about that.

[Laughter.]

Strike that. I shouldn't venture into that field when I'm questioning you. I shouldn't make any admissions, so to speak.

But let me come to one final question for you, Ms. Johnsen. That is, in your notes you have suggested that Roberts and Aleto may have violated ethical standards in their hearing, stating in your notes for a speech, "Remember: In Roberts and Aleto hearings, took to new level, worse than not answering, suggested violations."

Do you have any evidentiary base for saying that Roberts and Aleto were guilty of ethical violations?

Ms. JOHNSEN. Senator, I have a vague recollection. I think what you're referring to is a blog post that I wrote about—I'm very happy to take a look at it, but I am quite certain that I did not accuse them of an ethical violation. I think what I said was, they suggested that by giving more specificity in their answers, they themselves might have violated an ethics restriction. And I was pointing out——

Senator SPECTER. They said they may have violated an ethics restriction?

Ms. JOHNSEN. That they—I probably shouldn't say too much because I'm not sure exactly what you're referring to. But my recollection is, I did not accuse them of violating any ethics restriction, and I certainly do not believe they did.

Senator SPECTER. Would you——

Ms. JOHNSEN. They—excuse me.

Senator SPECTER. Go ahead. I don't want to interrupt you.

Ms. JOHNSEN. Yeah. I believe what I—what they—what was at issue was, there was lots of back-and-forth about whether it would be inappropriate and somehow an ethics violation for a nominee to answer questions at a certain degree of specificity, and I was urging more transparency and views.

I was arguing that they did have the ability, certainly not to say how they would decide cases, but to talk about their legal views and judicial philosophies. I was saying, if we now say that it's some ethics violation and wrong for a nominee to talk about their legal views on particular matters, how about all the nominees that came

before that did? I believe that was my essential point in that blog posting.

Senator SPECTER. Well, let me conclude by asking you to take a look at these notes.

Ms. JOHNSEN. Yes, I will.

Senator SPECTER. And also the Thirteenth Amendment slavery issue.

Ms. JOHNSEN. Yes.

Senator SPECTER. And be more specific, with more time to prepare, in your response. I think I'm within my opening and first round. I only have a couple more questions.

But rhetorically, you show substantial evidence of your Phi Beta Kappa key, which I do not see you wearing, or your *Yale Law Journal* credentials, having been an officer of the *Journal*, which are high merits. Now a Haverford grad and Harvard law grad. Just a couple of questions.

Mr. KRIS. Yes, sir.

Senator SPECTER. We have had long debates here. Many that I've had with the Chairman of the—now-Chairman of the Intelligence Committee about the range of the Foreign Intelligence Surveillance Act and Article 2 of the Commander in Chief power. We've gone around and around on that subject.

Are you willing to give an opinion as to whether warrantless wire tapping, which violates the mandate of the Foreign Intelligence Surveillance Act, is saved under Presidential authority by his powers as Commander in Chief under Article 2?

Mr. KRIS. Well, Senator, I remember testifying before you on the constitutionality of the TSP some time ago, and in that testimony I think I said I agreed with you, that I was effectively agnostic on the constitutionality of the TSP because it didn't have——

Senator SPECTER. You were what? You agreed with me?

Mr. KRIS. Agnostic. Yes. I think I agreed with you.

Senator SPECTER. You were agnostic?

Mr. KRIS. And I said I couldn't—I could not evaluate the——

Senator SPECTER. Could not?

Mr. KRIS. Could not evaluate the constitutionality of the TSP without the facts. And I think it's a fact-intensive question.

Now, as I understand FISA, especially after the FISA Amendments Act and the new version of the exclusivity provision, it represents a clear statement from Congress that the President may not violate the statute, and is an assertion of congressional power against the President's Article 2 constitutional authority.

That places any effort by the President to violate FISA in the third category, in Justice Jackson's famous three-part analysis from the *Steel Seizure* case. There, his power is at the lowest ebb, as you know. As far as I am aware—I—I do not claim to be a constitutional scholar. But as far as I am aware, the Supreme Court has never upheld an assertion of Commander in Chief power in that third category. It doesn't mean it's the null set. It doesn't mean there's no content to that third category. There are situations where the President may disregard a statute.

Senator SPECTER. Senator Feinstein and I claim to be constitutional scholars, by the way.

Mr. KRIS. Well, I'm happy to defer to you.

Senator SPECTER. And when you say it's fact-intensive, I'll accept that answer.

Mr. KRIS. Very well.

Senator SPECTER. You may be read into it soon, so maybe you'll be in a better place to comment, if you're confirmed of course.

Mr. KRIS. Right. I'm hopeful.

Senator SPECTER. And I would suggest that every effort be made to get the Supreme Court to decide this question. The Detroit Federal judge said it was unconstitutional, the warrantless wire tapping. The Sixth Circuit ducked it on standing grounds, which could just have easily have gone the other way. Now, the Supreme Court denied cert. They really ought to lend some clarity to what Senator Feinstein and I have been battling with on this issue for about 4 years now.

We'll submit some other questions in writing, with particular emphasis on the immunity issue for the telephone companies and what you think ought to be done as that case is pending.

Mr. KRIS. Yes, sir.

Senator SPECTER. Thank you very much, Madam Chairwoman, for letting me tack my time.

Senator FEINSTEIN. Well, you're very, very welcome. And I'd like to continue this on the second round, but Senator Feingold has been waiting. You are up next, Senator.

Senator FEINGOLD. I thank the Chair.

Ms. Johnsen, thank you for meeting with me this morning. I want to congratulate you on your nomination. You are extraordinarily well-qualified for this position and I'm very glad about that, because you've got a big job ahead of you. The reputation of the OLC suffered greatly during the last administration. It put itself at the service of political masters and failed in its most important duty, to provide, as you have put it, an "accurate and honest appraisal of applicable law."

I want to commend you for the constructive effort that you undertook after the torture memo became public, not only to criticize the reasoning of that particular memo, but to ask how such a memo could have been written, and carefully consider what needed to be done to make sure that such a devastating mistake would not happen again.

When you set out to develop the *Principles to Guide the Office of Legal Counsel* back in 2004, I don't know if you had in the back of your mind the thought that you might someday have the opportunity to put those principles in place. But now you do, and I think OLC and the American people will benefit greatly from your effort.

Several of the principles you laid out in 2004 underline the importance of transparency, of making the opinions of the OLC public, and of disclosing to Congress whenever the office reaches the conclusion that a statute should not, or cannot, be enforced, as you alluded to earlier.

Recognizing that there are certainly some situations where secrecy is warranted, can you explain why that transparency is so crucial?

Ms. JOHNSEN. Yes. Thank you, Senator. Transparency, absolutely, is critical, and especially in the category of opinions you've described, where the executive branch is interpreting how, and

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whether, in some cases, it will comply with Federal statutes. If, on the other hand, as has happened on rare occasion, but important occasion, the executive branch acts contrary to statutes in secret without notifying even Congress, let alone the American people, that, I believe, goes right to the heart of what makes our great constitutional democracy work.

In this system, we as Americans are all proud of the fact that the government is responsive to us and we—we, the people, are—are the government through our representatives in Congress. If Congress does not know that the executive branch is either not enforcing a statute or is interpreting it in a way that would be shocking to Congress, obviously Congress can't do its job. It can't decide whether it needs to enact new legislation, it can't do appropriate oversight of the executive branch.

Senator Feingold, you—I mean, you know all this and have spoken eloquently about this, and I thank you for—for that leadership. So for that category of cases, I do think it is imperative that there be immediately notification to Congress.

Senator FEINGOLD. Thank you. I find it somewhat ironic that there are commentators and critics out there who oppose your nomination because they feel you have a political agenda and will seek to put the imprimatur of OLC on your personal view of the law. Those critics were awfully quiet over the last 8 years when that's exactly what happened. It seems to me your principles are designed to prevent that from happening. Am I right? Can you explain how they'll do that?

Ms. JOHNSEN. Yes, Senator. That was the fundamental goal behind the principles. And frankly, my work as an academic over the last year—8 years, a central theme has been to help develop proper standards and processes for the government, and government lawyers in particular, to enforce the rule of law, to ensure that individuals at the Office of Legal Counsel or elsewhere could not promote their own personal views or pursue particular outcomes at the expense of the rule of law.

And I would also point out that the principles reflect the best practices of OLC. The 19 of us didn't just come up with, you know, what's our ideal in the abstract. We looked to the best principles that governed Republican and Democratic administrations alike. When I was at OLC for 5 years in the 1990s, I was very pleased at the quality of opinions issued under many prior Republican heads—Ted Olson—tremendous reputation for living according to those principles. And so this is not a partisan issue at all and one that I'm very pleased the principles have received praise from Republicans and Democrats alike.

Senator FEINGOLD. Thank you, Ms. Johnsen. I have limited time, but I do appreciate your answers.

Mr. Kris, congratulations to you as well. I do need to say on the record, though, that I am concerned about the exchange you had with Senator Specter. When it comes to Category 3 under the *Steel Seizure* case, I do not accept the characterization that the inquiry is fact-intensive, if we know the statute was violated. That is what I believe the question was—if what the President is doing is contrary to the statute. I don't think the question is whether it's fact-intensive. Whether it violates the statute, I think, maybe fact-in-

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tensive, but if the conduct violates the statute, the catagory 3 analysis is not.

But if we leave that room there, I am concerned that this undercuts the very core of Justice Jackson's test, which you correctly pointed out has never been ruled upon in favor of the executive government. So, this isn't so much about you, but about this ongoing debate that is so critical to all these issues. It's one of the most central issues in the future of our constitutional history, so I simply want to put that on the record.

We had an opportunity earlier today to discuss, in a classified setting, specific concerns I have about how the FISA Amendment Act has been implemented. Without discussing those specifics in an open hearing, do you agree that there are serious problems that need to be corrected?

Mr. KRIS. Senator, I do appreciate very much the meeting we had this morning. You raised a number of concerns that I, as an outsider, had not appreciated. You certainly got my attention. I have been thinking about it since we met. If it's even possible, you increased my desire, if I were to be confirmed, to get to the bottom of the FISA Amendments Act. I hope, if I am confirmed, that I can take advantage of your learning and that of others on the Committee, and the Intelligence Committee, to see how best to make any necessary improvements.

Senator FEINGOLD. I hope that you'll work with me to develop modifications to the statute that would potentially address these problems. I realize you need to——

Mr. KRIS. I will——

Senator FEINGOLD [continued]. Get all that detail first.

Mr. KRIS. Senator, I will look forward to working with you, very much.

Senator FEINGOLD. Thank you.

We also had an opportunity to talk about important information concerning the PATRIOT Act that I believe should be declassified. Do you agree that this information is important to the public debate on the reauthorization of these authorities, and will you consider the declassification I have proposed?

Mr. KRIS. Yes, I will certainly take a look at that, if I am fortunate enough to be confirmed. Yes.

Senator FEINGOLD. Thank you. DNI Blair stressed to the intelligence community the importance of checks on the government's authority to collect and disseminate personal information on Americans, even when it's available online. He said, "It is one thing for a private company to have detailed private information. It is another for the U.S. Government, with all its power and authority, to have the same information."

Do you agree with the DNI? If so, do you think we may need new statutes and regulations to ensure that personal information that people post online or give to private companies does not end up being collected and stored by the U.S. Government?

Mr. KRIS. If I understand it correctly, I think I do agree with the DNI, as a policy matter, if not a legal one, the government having information may very well be different. So I think it is important to think about that issue and I hope to have an opportunity to do so, if I am confirmed, yes.

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Senator FEINGOLD. Thank you so much. I am over my time.

I thank the Chair.

Senator FEINSTEIN. Senator Sessions, you are up next.

Senator SESSIONS. Thank you, Madam Chairman.

Ms. Johnsen, with regard to torture, you were asked about that, and is that illegal. Of course, it is. Would you explain, simply, the most basic reason that torture is illegal?

Ms. JOHNSEN. Most simple, is that the Congress of the United States has said that it is—it is a crime.

Senator SESSIONS. Right. And it defined torture, did it not?

Ms. JOHNSEN. Yes, it did.

Senator SESSIONS. And does it use the words that it prohibits the infliction of severe physical or mental pain, or something, on someone?

Ms. JOHNSEN. That sounds correct.

Senator SESSIONS. Is that basically correct?

Ms. JOHNSEN. I was thinking, was it severe, serious? But that sounds——

Senator SESSIONS. Well, that's the reason I——

Ms. JOHNSEN. I'm sure you're right.

Senator SESSIONS. That's the reason I think that—and our colleagues here, Democratic and Republican, voted for that——

Ms. JOHNSEN. Yes.

Senator SESSIONS [continued]. Legislation——

Ms. JOHNSEN. Yes.

Senator SESSIONS [continued]. Before I got to the Senate. But I would just note that Attorney General Mukasey declined to answer the question in the fashion you did because he had not been informed on explicitly how waterboarding was carried out, and that he had not researched the law, and he thought he should do that before he made an opinion. I'd just share that with you.

With regard to Mr. Goldsmith and his leaving the Department, he raised a significant issue. This is so important, and I know he wrestled with it. He said he—the fact was that a mere 9 months after he'd been in office, he had reversed and rescinded more OLC opinions than "any of my predecessors."

Now, he was selected by Attorney General Ashcroft. He was asked to review these matters, and he reversed a number of them. He went on to say, "Many of the men and women who were asked to act on the edges of the law have lost faith in me. What else might I withdraw, and when? In light of all that I had been through and done, I did not see how I could get their faith back, and so I quit."

He also goes on to say that every day—he talks about the difficulties agents have trying to protect this country in very hostile environments. He says, "Every day they and their clients are exposed to a buzz-saw of contradictory commands: Stay within the confines of the law, even if the law is maddeningly vague, or you will be investigated and severely punished; but also be proactive and aggressive and imaginative, and push the law to its limit, don't be cautious, prevent other attacks at all costs, and you will also be investigated and punished." He goes on to say that he felt his actions had contributed to a problem, and goes on.

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But do you see the tension and the importance of easy decisions made in the OLC that could have ramifications on great men and women whose lives are at risk this very day, trying to preserve and protect this country and the security of Americans?

Ms. JOHNSEN. Yes, Senator, I certainly agree with everything you're saying. Yes. I have no disagreement. I think those men and women deserve/need clear legal guidance. And Jack Oldsmith came to OLC at a very difficult time. I think one thing that should be done, is what's being done now, taking a hard look at these incredibly difficult, important questions ahead of time, as President Obama has now directed.

Senator SESSIONS. Well, I think that's true. And I think Mr. Yoo was basically asked something he probably shouldn't have been asked, which was, how much power does the executive branch have? Attorney General Mukasey wisely said, in the same position you're sitting, that not only was it a mistake, it was unnecessary. I think he said, "It was not only a mistake, but worse, it was unnecessary." So he made a mistake, I think, in trying to anticipate non-fact situations and by making broad opinions about it.

Ms. JOHNSEN. I agree with that.

Senator SESSIONS. That was withdrawn as an opinion.

With regard to the question about Justice Roberts and Alito and Thomas and the statement Senator, I believe, Specter asked you about, those nominees being "a stealth attempt to radically remake constitutional law," is that your—was that your statement, and do you stand by that statement?

Ms. JOHNSEN. Yeah. I'm sorry, Senator, I do not recall that precise statement.

Senator SESSIONS. Did you counsel and advocate the opposition of Justices Roberts and Alito to the court?

Ms. JOHNSEN. I was asked some specific questions by Senate staffers for, I think, a couple of Senators on issues of Presidential power, to help give them guidance to inform their questioning of those nominees.

Senator SESSIONS. Did you take a position or advocate that they be rejected as "being a stealth attempt to remake radically constitutional law"?

Ms. JOHNSEN. I remember clearly that I spoke about concerns I had about Justice Alito and positions he had taken. I cannot recall doing the same with Chief Justice Roberts.

Senator SESSIONS. Well, I would just say that I think that Roberts and Alito represent two of the finest exponents of a classical interpretation of law, a classical view of the role of a judge, I have ever seen, and it troubles me that you would think that they wouldn't be—that they would be somehow setting about to radically remake the Constitution.

Ms. JOHNSEN. Senator, if I may respond, briefly. My chief point, and I know a few blog posts and at least one *Law Review* article, was arguing that it was appropriate for both the President and the Senate to inquire into the legal views and judicial philosophy of judicial nominees. That was my—my essential point. And I was concerned at the time that——

Senator SESSIONS. One of your——

Ms. JOHNSEN. Yes?

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Senator SESSIONS. You used the word "ideology" and say ideology is significant. But really, you used philosophy then. I think that's a better word.

Ms. JOHNSEN. I do, too.

Senator SESSIONS. I think Justices Alito and Roberts have firm classical judicial philosophies——

Ms. JOHNSEN. Yes.

Senator SESSIONS [continued]. That would really trouble me if somebody thought they were unfit for the bench——

Ms. JOHNSEN. Yes.

Senator SESSIONS [continued]. Or somehow set about to radically remake the Constitution. It's the activists that are remaking the Constitution, not the classical judicial jurists.

Ms. JOHNSEN. Senator, I actually remember writing that we should just banish the word "ideology" from our vocabularies because it's thrown around from all sides, and talk in terms of legal views and judicial philosophy, because ideology has different meanings and is usually used with negative connotations. I urge dialog about what are precisely the standards and appropriate kinds of questions to be asked. That was my main concern.

Senator SESSIONS. Well, it's such an important position that you're seeking. You do have experience in the office, and you have also been an activist, blogging and advocating, and testifying, and making speeches that are, I think, as Senator Specter suggested, on perhaps the other side politically, an activist position.

So in this office of Office of Legal Counsel, it's an extremely important position. Do you understand that it is your commitment to serve the law and not to be an advocate for progressive ideas, but to faithfully and dutifully submit yourself to the rule of law and carry out your office in that fashion?

Ms. JOHNSEN. Yes, Senator, I do. Thank you. I think that is the most important question in thinking about this, and something that I did while I was there for 5 years, including as the acting head of the office. I'd respectfully ask that you look at the letters of support of people who worked with me while I was in that capacity, and something since I have written and spoken about extensively, the importance of that office promoting a neutral, principled view of the law.

Senator SESSIONS. Thank you.

Senator FEINSTEIN. Thank you very much, Senator Sessions.

The order is: Senators Kaufman, Whitehouse, and Cardin.

Senator Kaufman.

Senator KAUFMAN. Thank you, Chairman.

Professor Johnsen, Mr. Kris, I want to thank you for taking on this responsibility and this service. I know it's daunting, but I think it's very rewarding. I think we're very pleased that you're considering doing this.

Professor Johnsen, what do you think the Attorney General Eric Holder should do to ensure—you've been there, you know—to ensure the independence of the OLC and its own ability to exercise a legal check on claims of executive power without a legal basis?

Ms. JOHNSEN. I would say, adopt some version of the principles that I helped draft with the former—19 former OLC lawyers, and have a comprehensive set of principles. And I would say, also, to

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have regular contact with OLC and regular meetings, to be informed about what the office is doing in addition to following the principles.

Senator KAUFMAN. Well, in that regard, what do you believe should happen when you have a disagreement with a White House counsel and the President's chief of staff, if they strongly disagree with your legal conclusions? How do you think that should be handled?

Ms. JOHNSEN. I think the answer to that is clear, and traditionally and legally absolutely clear, that the—it is the role of the Department of Justice to issue binding legal interpretations, and that authority—that responsibility has been delegated to the Office of Legal Counsel. So, that is not for the counsel to the President. Many of the issues decided at OLC do come from the counsel to the President, but it is OLC that issues the authoritative ruling.

Senator KAUFMAN. To follow up on some of Senator Sessions' questions, can you set examples from your prior service at OLC that demonstrates your ability to provide sound legal advice that's not outcome driven?

Ms. JOHNSEN. Yes. Thank you, Senator. In the—and it came up all the time. We did follow the principles, and it wasn't any question that we would follow what the Constitution and relevant statutory provisions dictated. One particular example that comes to mind is an opinion—actually, two opinions I signed, where there was—there were some meritorious claims of racial discrimination against black farmers, where the Department of Agriculture, and the administration generally, wanted to settle these—these otherwise meritorious claims.

But I signed a pair of opinions that said that they did not have the authority to do that because the Statute of Limitations had run, and Congress—only Congress could authorize the expenditure of money in that kind of situation. That had a happy ending because Congress subsequently enacted a statute that—that allowed for—for that settlement, as one example.

Senator KAUFMAN. Can you talk a little bit about Presidential signing statements? You have written that: "The President should refuse to enforce a statement he believes unconstitutional only when he is specifically situated to protect important constitutional norms without undermining the integrity of the lawmaking process."

Can you give the Committee a better sense of when you think it's appropriate for the President not to enforce the statute, or not to enforce part of a statute?

Ms. JOHNSEN. Yes, Senator. I've written several things and thought extensively about both the issue of signing statements and non-enforcement of statutes. I come out pretty much where the executive branch has been and the tradition has been, going back to Thomas Jefferson. That is that I've been very critical of some instances where I believed that Presidents have improperly refused to comply with statutes and have issued signing statements inappropriately, and abused signing statements, but that there are rare circumstances where it is appropriate—and as I said, back to Thomas Jefferson—where a President—you know, short answer is, where a President clear—thinks that a provision of law is clearly

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unconstitutional and it actually is clearly unconstitutional and Supreme Court precedent backs that up, if there is such precedent, or the text of the Constitution itself, there may be rare instances like that where the President's duty to take care that the laws are faithfully executed means he enforces the Constitution over the statute. In those situations he must go to Congress, let Congress know, try to amend and fix the statute.

Ideally, this would never come up because Congress and the President would work together beforehand during the process of evaluating bills for constitutional defects and the problem will be fixed before the bill lands on the President's desk.

Senator KAUFMAN. You talked in earlier questioning about the power of the OLC. Can you see a situation where the OLC would ever impose legal limits on Presidential power that a court would not require?

Ms. JOHNSEN. I'm sorry, Senator. Could you say that again?

Senator KAUFMAN. Could you see a situation where the OLC would ever impose legal limits on Presidential power that a court would not require?

Ms. JOHNSEN. Yes. And that actually is addressed in the Principles, too, because there are situations where a court would find the issue to be unjusticeable, or nobody would have standing to challenge. In those situations, OLC's obligation is just as strong, and you might even say stronger, to inform the President of what the law requires. The goal is to tell the President what the rule of law requires. I think one way of saying it is not what he can get away with, because a court wouldn't order him to do otherwise.

Senator KAUFMAN. Okay. Thank you very much.

Senator FEINSTEIN. Thank you, Senator Kaufman.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Madam Chair, and thank you to both of our witnesses for embarking on their upcoming experiences in public service. It promises to be extremely interesting and challenging for both of you, and I appreciate that you've been willing to put yourself into these roles.

Mr. Kris, as you will recall, we've spoken in classified session about two matters that I consider to be of sufficiently grave concern to merit the attention of the Attorney General, and perhaps even the President. I want your assurance here, now that we're on the record, that you will address yourself to those two matters expeditiously so that they can benefit from your legal analysis on them, if you are confirmed.

Mr. KRIS. Senator, yes, you have my assurance on both matters. Absolutely.

Senator WHITEHOUSE. Perfect. I wish you well. You have much work ahead of you, and you have my confidence and my support.

Mr. KRIS. Thank you.

Senator WHITEHOUSE. Ms. Johnsen, you actually probably have the hardest job of all, based on what has become of OLC in recent years. I'm one of its most—have been one of its most ardent critics. I've described it as Dick Cheney's "Little Shop of Legal Horrors." And if you look back at some of the work that has been done, as we discussed when I had the chance to speak with you in my office, it runs the gamut from decisions that I think are just wholly

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flawed and are written at what I've also publicly described as a "fire-the-associate" level of legal research and responsibility, to otherwise legitimate opinions into which specific little, you might call them like a climber climbs a mountain, he hammers a little piton into the rock to hold himself up as he climbs.

They're assaulted with these little ideological pitons that later can be looked back at to say, well, in a previous decision we said this, so now we can do this, sort of like building an ideological ladder into the future. And I'm sure there are some that are wholly legitimate and have not been assaulted with those little ideological tidbits for later use.

And I think that whole question requires a fairly thorough review of where we've been. Some of these opinions have already been withdrawn and thrown out already. What is your view on what procedure would be appropriate for the office to undertake to go back and see what needs to be made right in these opinions?

Ms. JOHNSEN. Thank you, Senator. That is—that's an important, and I think difficult, question. I do want to say that, as I'm listening, the thing that goes through my mind is there are many brilliant, principled career lawyers at OLC who have written many excellent opinions in the last administration. We talk about the very important category of opinions about which I've expressed concern, and I know you've been a leader in—in expressing concern.

Part of the problem is, many of these opinions haven't been made public, so we're not sure how many we're talking about. I haven't had access, yet, to them. But I do want to make the point that it's a relatively small number of the dozens and dozens of noncontroversial, routine opinions the office issues. I have actually worked with some of the very senior career lawyers there and have—have great confidence in them.

But looking at that very important category of opinions that deal with——

Senator WHITEHOUSE. And it's not that small. I mean, when I went over to the old Executive Office building to read the superclassified opinions that related to the warrantless wire tapping, there was a stack——

Ms. JOHNSEN. Yes.

Senator WHITEHOUSE [continued]. This high.

Ms. JOHNSEN. Yes.

Senator WHITEHOUSE. And that's just one topic. And then there are a whole other bunch that relate to Article 2 authority, and there are a whole other bunch that relate to torture and interrogations.

Ms. JOHNSEN. Yes.

Senator WHITEHOUSE. I think, you know, when we talk about a small number, that may be relevant to the library of work that OLC did in this period. But just as a body of work itself, it's a pretty considerable—it's not an afternoon's read, by any stretch of the imagination.

Ms. JOHNSEN. Uh-huh. Right. Right. So, yeah. Maybe I should have said relatively small number of areas, but hugely important. And as I've said, I haven't had the opportunity—and I hope I will—to see—to see those classified nonpublic opinions.

With regard to those, I do think it's critical to start with the ones that may have ongoing application, because an OLC opinion doesn't go out of effect in any way at the end of an administration. It continues to inform the actions of executive branch officers and employees, as you well know.

So, given the quantity that you're—you're describing, you know, I think it's going to be kind of a triage kind of thing, where you—the office will need to start with the ones that are actually still in effect and guiding ongoing matters, and—and then after that I would say those that are relevant to new questions that come to OLC from the counsel to the President, or the Attorney General, the CIA, Department of Defense, from wherever, and so in the normal course, other opinions and the reasoning, even if the actual bottom line is no longer relevant to ongoing activity, some you describe the reasoning may need to be recalibrated.

Senator WHITEHOUSE. Let me jump in and make my point a little bit more——

Ms. JOHNSEN. Yes.

Senator WHITEHOUSE [continued]. A little bit more clearly.

There's obviously a certain amount of kind of back-and-forth between administrations that relates to legal philosophy. In my view, this strayed well outside the bounds of that. This was an effort to, for want of a better word, corrupt the office so that it would do what it was told rather than provide legal advice that was dispassionate and honest.

And I think it's important that there be some credibility about this review that marks this as something different, because otherwise we'll end up with a situation in which somebody comes back to do this again, and the frame that people put on this, and the argument that is made in public, is, oh, well, you know, when the Republicans were in charge they had one way of looking at the world, one philosophy, and then the Democrats came and they took their liberal philosophy and they made it different, and we can kind of legitimately go back and forth between those two theories. This isn't that, and I think it's important that there be a benchmark of some kind.

So, I would encourage you to look to either veterans of the office of both parties who have great loyalty and great ability, or, you know, deans and leading scholars to participate in this, not only to lighten the load on your staff, which have all the ongoing work to do in addition to the look-back, but also to provide that additional element of credibility and of professional credence so that nobody can come back later on and say, oh, that's just one team, and then the other team. Because this really was different. This was something that was out of bounds, and badly out of bounds.

Ms. JOHNSEN. Thank you, Senator, for those suggestions. It reminds me, when we did meet and talk privately, we talked also about the fact, if you can make more of these opinions public, the leading scholars will weigh in in the articles and speeches and such. And we've seen——

Senator WHITEHOUSE. I'm over my time, so——

Ms. JOHNSEN. Oh, I'm sorry.

Senator WHITEHOUSE. So let me stop there.

Ms. JOHNSEN. Yes. Yes.

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Senator WHITEHOUSE. But in a second round, perhaps, we'll go to classification.

Senator FEINSTEIN. In a second round, for sure. Thank you, Senator Whitehouse.

You're up next, Senator Graham.

Senator GRAHAM. Thank you, Senator Feinstein.

To pick up on the point about philosophy, it is obvious to me that you and I probably have different political philosophies, and that is Okay. It seems like you are a very experienced lawyer, academically gifted, and elections have consequence, and I expect the administration to pick people more in line with their philosophy than I would have chosen for them.

But I think what Senator Whitehouse is saying is that one thing that we want to make sure of is that the law has some meaning beyond politics. And it is, in theory, the last bastion where 50-plus-one—you know, the thing I like most about the law is that even the most unpopular among us will have their day in court. We need to preserve that and not overly politicize it. And I think when you look back in this past administration—and I am sure others—there has definitely been some of that going on.

Now, I want to look forward because I think your shop in the Justice Department, along with the White House Counsel and the Department of Defense, are going to have to make some really tough decisions here. I support closing Guantánamo Bay, not because I think it is a place where people are being tortured; I think it is a chance to start over. And it would probably do the country some good to start over when it comes to detention policy, and no better way to start over than changing the location.

But having said that, once you close Guantánamo Bay, you have to decide where you put these prisoners and how they will be disposed of. And we have talked in my office—Ms. Johnsen, we have talked about sort of the framework that I have in mind, and I would just like to ask you a few questions in line with what we talked about privately.

Do you agree with the proposition that when Congress passed—I guess it is the Military Commissions Act, we designated certain organizations "enemy combatants." If you are a member of this organization, you are no longer just a common criminal, you are basically an unlawful enemy combatant at war with the United States.

Do you accept that proposition as being legitimate?

Ms. JOHNSEN. Senator, I want to be careful in my answer. I would say generally I do, but I am reluctant to give a blanket yes, not knowing the particular legal question.

Senator GRAHAM. Well, do you think people who are members of al-Qaeda are enemy combatants?

Ms. JOHNSEN. Yes, there is no question.

Senator GRAHAM. OK, and that we are at war with people like that.

Ms. JOHNSEN. Yes, we are. Congress made that clear.

Senator GRAHAM. Right, Okay. That was my fault. And that is important to me because if you view this process through criminal law, you have got a problem. Would you agree with me that under criminal law there is no process to detain someone indefinitely without trial?

Ms. JOHNSEN. Yes, Senator.

Senator GRAHAM. Nor should there be.

Ms. JOHNSEN. Right.

Senator GRAHAM. But would you agree with the proposition that under the law of armed conflict, if someone has been properly designated as an enemy combatant, under the law of armed conflict they can be held off the battlefield as long as they present a danger?

Ms. JOHNSEN. Yes. The Supreme Court has so held.

Senator GRAHAM. Okay. Now, when it comes to the disposition of the detainees at Guantánamo Bay, I am urging the administration to continue with the process of closing Guantánamo Bay, but let's work our way through this problem, believing that we are at war. And when it comes to Article III courts to try detainees, it seems to me that you would be shifting your theory.

Are you familiar with the military justice system at all?

Ms. JOHNSEN. A little bit, Senator.

Senator GRAHAM. I would encourage you to talk to our judge advocates.

Ms. JOHNSEN. Yes, absolutely.

Senator GRAHAM. I personally have a lot of confidence in the men and women who administer justice in our military. They have, I think, in many ways been the conscience of the Nation when it came to detainee policy. And my belief is that the military justice system would be the proper venue to deal with someone who is accused of being a war criminal. Does that strike you as being out of the mainstream?

Ms. JOHNSEN. I would just say that my role, if I am to be confirmed, would not be to make that kind of judgment, and it is not within my expertise. But I certainly share your admiration for the military court of justice. But it is not my expertise.

Senator GRAHAM. Will you have input as to what kind of legal system we will use to deal with people at Guantánamo Bay?

Ms. JOHNSEN. To the extent that it involves questions about the legality of the options, I would, and I dealing with absolutely in the principles highlight the need to include experts from the military in examining such questions.

Senator GRAHAM. One of the ideas that I have is that it is important for us to let the world know that if someone is detained in a prison, wherever you may locate it, it is not an arbitrary decision, and that the system I would envision is that the military would have the first crack as to whether or not the individual is an enemy combatant, with better due process than we provide now; but eventually that there would be an Article III panel of judges, an independent judiciary would also be required to make that determination. And my belief is that if you had an independent judiciary listening to the facts and hearing the evidence, it would legitimize in the eyes of the world, quite frankly, that the person is being held by a process that is not arbitrary. Does that make sense?

Ms. JOHNSEN. Absolutely. The appearance and reality of independence is essential to those kinds of——

Senator GRAHAM. And one of the problems I have with the past administration is that they had this theory of Executive power, the

power of the Executive, that basically their view was that they could do everything in-house. From your point of view, it would be OK to share power with an Article III court when it comes to whether or not a person is an enemy combatant. The executive branch would be willing to share power with the judiciary to make that decision?

Ms. JOHNSEN. I am generally very in favor of the branches working together and sharing power and think that generally leads to stronger outcomes.

Senator GRAHAM. Okay. Well, I look forward to talking with you more about this as we try to find out the disposition path forward when it comes to detainees that are too dangerous to be released and there is no country that will take them and how to try them. I wish you well in your new job.

Thank you.

Senator FEINSTEIN. We will have a second round, but to finish this round, Senator Durbin is next. I will recognize you now, Senator.

Senator DURBIN. Thank you very much, Madam Chairman, and thanks to both the witnesses.

I would like to ask Ms. Johnsen: You have written about the appropriate role of the Office of Legal Counsel, and I thought one of the statements that you made was very insightful. You said, "If the President desires only a rubber stamp, the Office of Legal Counsel will have to struggle mightily to provide an effective check on unlawful action. In addition to being prepared to say no, therefore, Presidential lawyers must be prepared to resign in the extraordinary event the President persists in acting unlawfully or demands that the OLC issue opinions to help legitimize unlawful activity."

You have also written that the OLC must emphasize "accuracy over advocacy," and that their "advice should reflect all relevant legal constraints."

There was recently an article in Newsweek Magazine relative to the results of an OPR investigation which Senator Whitehouse and I requested, which we have yet to see—and I hope we do soon. But relative to that, as you know, in 2002 the head of the Office of Legal Counsel, Jay Bybee, now a Federal judge, issued the infamous torture memo which narrowly defined torture as limited only to abuse that causes pain equivalent to organ failure or death. The memo, which was written by then-OLC Deputy John Yoo, also concluded that the President as Commander in Chief has the right to violate the anti-torture statute.

In your opinion, in your view, did that torture memo reflect relevant legal constraints?

Ms. JOHNSEN. Senator, I have written very critically of that opinion and, in fact, made clear that the writing of the principles was a response to the view that that opinion was not written in the best traditions of the office and did not reflect the first principle, which is that legal advice should be impartial, independent, accurate, and principled. And so I believe that the opinion did not represent those best traditions.

Senator DURBIN. In 2005, Steven Bradbury, who was then acting head of OLC, reportedly signed two OLC legal opinions approving

abusive interrogation techniques. According to the New York Times, then-Attorney General Alberto Gonzales approved one of the opinions over the objections of the Deputy Attorney General Jim Comey, who said the Justice Department would be "ashamed" if the memo became public.

The other opinion reportedly concluded that abusive interrogation techniques such as waterboarding do not constitute cruel, inhuman, or degrading treatment. This opinion was apparently designed to circumvent the McCain torture amendment, an amendment which passed on the floor of the Senate with 90 votes, which I cosponsored and had wide bipartisan support, which prohibited cruel, inhuman, and degrading treatment.

I know you cannot comment on specific classified OLC opinions that you have not reviewed, but you have written about the obligation to notify Congress if the executive branch does not fully comply with a Federal statute. Could you elaborate on this in light of the opinion and the McCain statute, which had been signed into law by the President?

Ms. JOHNSEN. Yes, Senator, you are absolutely right, I have not seen those classified opinions, and so I want to make clear I am not saying anything about them. But, again, I would emphasize the need for Congress to know the way in which the executive branch is interpreting and in some cases refusing to fully comply with Federal statutes.

In some cases, the opinions may involved classified material, and so it may be necessary—and I do not think there is any disagreement about this—to do it in a non-public way or to redact certain parts of the opinion, or to prepare some alternative document, not provide the opinion itself but some alternative way of explaining how it is that the executive branch is interpreting the meaning of statutes.

Senator DURBIN. I asked Mr. Bradbury at an earlier hearing, and I quote, "In your personal opinion, is it legally permissible for U.S. personnel to subject a detainee to waterboarding?" And he refused to answer. Now, I know that Senator Feinstein has asked you that question.

I also asked Mr. Bradbury, "Would the torture statute be unconstitutional if it conflicted with an order issued by the President as Commander in Chief?" He refused to answer that question. He said, and I quote, "I would not attempt to define in the abstract the limit of a President's constitutional powers."

What is your view?

Ms. JOHNSEN. Well, I guess I do agree in the abstract with his statement, and that is one of the principles we discussed, that it is best not to answer very broad questions about the constitutionality of things without having the specific facts. And I think you get into trouble—we talked about this a little earlier—when OLC tries to write opinions that address matters that are not actually necessary to address and to broadly describe the scope of the President's Commander in Chief power to the extremes and better to focus on precisely what it is a policymaker is contemplating.

Senator DURBIN. Well, I guess I would go to the bottom-line question now. I want to make sure I understand your answer.

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Would the torture statute be unconstitutional if it conflicted with an order issued by the President as Commander in Chief?

Ms. JOHNSEN. That is the exact question, I think, in the August 2002 memo issued by OLC. They concluded that the President had the authority to direct that the torture statute not be complied with. And I think that is absolutely wrong and that Congress clearly has the authority to make torture a crime.

Senator DURBIN. Okay. Mr. Kris, I do not know if you have been asked about Guantánamo, and if you have, I do not want to return to that issue. Has that been asked?

Mr. KRIS. Senator Feinstein and I had a discussion about it, yes.

Senator DURBIN. Then I am going to yield back my time. I will take a look at her questions and your answer.

Thank you very much, both of you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator.

Senator Hatch, if he is here, has asked to go next. I do not see him. So we will begin a second round.

Ms. Johnsen, this is only my view. I listened to an Attorney General come before us and say that he wore two hats. One was to staff the President, and the other was to be the lawyer for the people. I believe most people on this Committee believe that the Department of Justice has to be separate from the White House, and that the Department of Justice represents the people. And we have had some real problems in the Office of Legal Counsel believing—at least this is my belief—that the office went far right and really gave overdue bearance to the Executive and what the Executive wanted to do in its legal opinions.

I do not want this office now to go way left and do the same thing. And in reading, you have been a real activist, a professor, but your writings are very clear in proposing one point of view. And you said that you realize that when you went in the door, you gave all of that up. My question to you is: Can you do that? You have got such a pronounced, definitive record of stating your views very freely in all kinds of different forums—written and verbal—and I do not want to come back in 4 years or 5 years and see that the OLC has just gone contra to what it was in the Bush administration.

Can you respond to that, please? Because I really need some assurance that that is not going to be the case.

Ms. JOHNSEN. Yes, Senator. Thank you for that opportunity to address this. I think that is the most important thing to look for in the head of the Office of Legal Counsel, is commitment to the rule of law and recognition that, you know, my view—the principles set forth the right way to do it. And, again, I do not mean to take credit for that. It was an attempt to look at the best traditions and write it down so that it would provide guidance to everybody across administrations, throughout the Office of Legal Counsel.

I have absolutely no hesitancy in saying I pledge my full commitment to doing exactly what you describe needs to be done. I know I can do it because I did it for 5 years when I was there from 1993 to 1998, and without any difficulty at all. And I would urge and hope that you and others would take a look at some of the letters that were written on my behalf by the top lawyers and other officials at places like——

Senator FEINSTEIN. All those letters will go into the record, both for you and for Mr. Kris, along with any statement of any member. And I have a statement here from the Chairman of the Committee, Senator Leahy, which will also go in the record.

Ms. JOHNSEN. Excellent. Thank you, Senator.

But as I said in my opening, my greatest passion is for the rule of law. The lawyers at OLC are sometimes described as "lawyers' lawyers," those who get into the nitty-gritty of the great difficult legal questions, and also incredibly boring arcane statutory interpretation. And that is—I love it. I mean, that is a highlight of my career, working at OLC, and having the privilege of serving the country in that way for 5 years. So I know how it needs to be done, and I pledge to do it.

Senator FEINSTEIN. Okay. That is fine. Now let me ask a second question. On April 1, 2008, the Justice Department released a March 2003 opinion written by Mr. Yoo. That memo asserted that the President had unlimited power to order brutal interrogations to exact information from detainees. That memo references, on page 8, Footnote 10, another OLC memo written by the same person in October of 2001, and it concluded that the Fourth Amendment had no application to domestic military operations so that civilians had no Fourth Amendment guarantee of reasonable search and seizure.

I have been asking for the October 2001 memo to be released for almost 1 year now. It remains classified. Last April, I asked former Attorney General Mukasey about it, and he said publicly that releasing it was a priority, but to date, the memo has not been released. This is a very troubling proposition that the Fourth Amendment which gives the right to reasonable protection against search and seizure does not apply to any domestic military operation that might take place on our soil.

I want to ask you if you will look into this opinion. I want to find out if it is operative, and if it is, I would ask the question that you rescind it. And will you provide the opinion, this opinion, to Congress?

Ms. JOHNSEN. Senator, I remember reading that memo and that footnote in particular, and if confirmed, I will look forward to reading the full opinion just as soon as I can. And I pledge to make it a priority to read that opinion and—I cannot pledge absolutely to release it not knowing what is in it, but certainly to get back to you very quickly with the status——

Senator FEINSTEIN. Well, let me ask you the question. Do you believe that the proper interpretation of law is that the search and seizure protections of the Fourth Amendment are null and void when it comes to a domestic military operation in the United States?

Ms. JOHNSEN. That certainly sounds wrong to me, and that was the reaction when I read the footnote. But—and I hate to—I do not mean to equivocate, but I do feel that I would very much like to read the full opinion and have the benefit of that before saying anything more.

Senator FEINSTEIN. Okay. Thank you.

Senator Whitehouse.

Senator WHITEHOUSE. Thank you so much, Chairman.

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Following up on this question of classification of these opinions, back to the day that I went to read the warrantless wiretapping opinions—and they were, you know, a stack this high—everything was so classified that they took my notes away, and I was only allowed to read my own notes over in the secure confines of the Intelligence Committee. My notes said things like—I ultimately had these phrases declassified. These were phrases from the opinion.

The President is not bound by executive orders. He has the ability to depart from them, and when he does, he does not violate them; he just waives them.

The President has the Article II authority to define what his own Article II authority is. The Department of Justice is bound by the President's legal determinations.

You know, for the life of me I could not figure out how those things needed to be classified. Those are legal propositions that are highly debatable. I think the second one runs afoul of *Marbury* v. *Madison*, and the third one runs—that is the David Frost line from "Frost/Nixon": The President says what the law is—which is nice if you are the President who broke the law, but not very helpful in a country like ours.

I really think a whole new look has to be taken at how much of this stuff needs to be classified. I believe very strongly that the heavy classification of a lot of this legal analysis served to protect it from scrutiny, not for national security reasons but because it would have been embarrassing to the people who wrote it because it was so badly done. It would not have survived the scrutiny of review.

One example is that the opinions related to the warrantless wiretapping program were not provided to the lawyers at NSA. NSA is running the program. It is not like it is a secret over there. Why NSA is running the program but its lawyers cannot see the legal justification, it just makes no sense from a national security perspective. It makes a world of sense if the national security lawyers are going to take a look at this and say, "What, are you guys kidding?"

So I strongly support the comments that have been made by my colleagues that we need to review this question of classification. It lends itself to enormous abuse, and I think it has, in fact, been associated with that kind of abuse in recent years.

The OPR report is coming up at some point. Senator Durbin, who was here a moment ago, and I have asked from the very beginning that we be provided a copy of the report when it was finished. Marshall Jarrett said that he would provide it to us. We have renewed that request. I gather the report—from public media attention to this, the report has been put through some kind of a process at the Department of Justice where the Attorney General did not want it released and he wanted the subjects of it to have a chance to comment on it, maybe even write a chapter of their own. It strikes me as a novelty that the subject of an OPR investigation would get an opportunity to become a coauthor of it, but we will see exactly how that all turns out.

My question for you is: Can you see—well, what I would like you to do is to take no step of any kind that would interfere with the release of that OPR report, notwithstanding that it talks about, as-

suming you are confirmed, your agency. Do you have any intentions to take any steps to inhibit or interfere with or try to prevent or stop the release of that OPR report when it is ultimately ready for publicity—or conclusion, I guess, would be——

Ms. JOHNSEN. Senator, all I know is what was in the article you are describing, so I want to make clear I have no personal knowledge. And I do not think it obviously would be appropriate for me to try to speculate about what is in it where I have no information and it is pending before, according to the press report, the Attorney General. But I absolutely have no intention to interfere with the release of that report. That never crossed my mind.

Senator WHITEHOUSE. Very good. I appreciate that. My final question has to do with something that we may find is covered by that report. The problems with OLC are partly problems of a failure of scholarship and integrity, in my view, but I think they are also partly a problem of firewall failure. There is at least some evidence that the Office of the Vice President, and perhaps other offices in the White House, had significant input into some of these decisions and, indeed, may have directed them.

If this question is not addressed in the OPR report, or even if it is addressed but not to your satisfaction, will you take a look not only at what went wrong in terms of why this legal opinion is defective, but why it went wrong, and work with this Committee to recommend safeguards that might prevent that from happening again? This Committee is familiar, as the Chairman so well knows, with the firewall, the general firewall between the Department of Justice and the White House that first Attorney General Ashcroft and then Attorney General Gonzales knocked down, so that people like Attorney Addington in Dick Cheney's office and Karl Rove in the White House had access to prosecutors and career staff from the Department of Justice to talk about ongoing cases and investigations. And I have many disagreements with Attorney General Mukasey, but to his credit, he put that firewall back up. He put it back, I think, better than ever, and he is entitled, I think, to much credit for that.

There may be something like that that is necessary on OLC, and I ask your agreement to both look at that question and work with us in finding an appropriate response, noting that the firewall actually was first created in a letter between the Department and this Committee, in fact, to then-Chairman Hatch.

Ms. JOHNSEN. Yes, you absolutely have my commitment. I think looking at possible failures in process is critical, and I have been keenly interested in that over the last several years, and I think working together with this Committee is also critical

Senator FEINSTEIN. Thank you very much.

Senator WHITEHOUSE. Thank you, Chairman.

Senator FEINSTEIN. I believe this is going to conclude our hearing. I would like to ask members to get their written questions in as soon as possible. The record generally stays open for a week. The reason for asking this is that Mr. Kris' nomination is on a sequential referral, and so it will go to the Intelligence Committee next, and we obviously want to process it and get it done as quickly as possible, so concluding it here is really important.

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I want to thank both of you for being here. I want to thank you for your offer of public service. It is a most interesting arena, and these are two key and critical positions, so thank you very much. And there are no further questions, so I am going to adjourn the Committee.

Ms. JOHNSEN. Thank you.

Mr. KRIS. Thank you.

Senator FEINSTEIN. Thank you.

[Whereupon, at 4:20 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record.]

QUESTIONS AND ANSWERS

QUESTIONS FOR DAWN JOHNSEN FROM SENATOR CORNYN

1. In *Boumediene v. Bush*, the Supreme Court arrived at its ruling that the Guantanamo detainees have the habeas corpus privilege based on an evaluation of three factors: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." A crucial factor in their decision was that the United States has maintained complete, uninterrupted, and indefinite control of Guantanamo for over 100 years, even though Cuba still officially owns the land.

Currently, there are 600 or more detainees being held by U.S. forces at the Bagram air base in Afghanistan. Like the detention center at Guantanamo Bay, Cuba, the prison at Bagram is controlled by the United States. Recently, lawyers representing these detainees have argued that Bagram is essentially the same as Guantanamo and that prisoners there ought to have the same rights as those at Guantanamo. The cases of these detainees are being argued before the U.S. District Court.

a. Do you believe that the detainees at Bagram are also entitled to the writ of habeas corpus?
b. Do you believe that a legitimate distinction can be made from *Boumediene* regarding "the nature of the sites where apprehension and then detention took place?"
c. Do you personally agree with last week's filing by the Justice Department that reaffirmed the litigation position taken by the Bush Administration with respect to habeas claims from Bagram detainees?

Answer: I have not studied this issue and do not have a position on it. If I am confirmed and if the issue were presented to OLC, I would follow the traditional OLC processes to respond, including researching the relevant facts and law and consulting with other components of the Department of Justice and with the Department of Defense and other agencies that have relevant expertise.

2. Several former Clinton Administration officials have stated that the practice known as extraordinary rendition was regularly practiced during that administration. Richard Clarke, the counterterrorism coordinator for the National Security Council, wrote that renditions-which he defined as "operations to apprehend terrorists abroad, usually without the knowledge of and almost always without public acknowledgment of the host government"- "were becoming routine" by "the mid-1990s." He added that "[s]ometimes FBI arrest teams, sometimes CIA personnel, had been regularly dragging terrorists back to stand trial in the United States or flying them to incarceration in other countries." Mr. Clarke stated that "President Clinton approved every snatch" - another term for rendition - "that he was asked to review. Every snatch CIA, Justice, or Defense proposed during [Clarke's] tenure as [Counterterrorism Security Group] chairman, from 1992 to 2001, was approved.

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"Former CIA Director George Tenet asserted the following in 2002: "In conjunction with the FBI, CIA had rendered 70 terrorists to justice around the world" prior to September 11. "Al-Qa'ida might have been able to operate freely in Afghanistan, but the terrorists knew they were fair game elsewhere."

In a March 11, 2005 op-ed in the *New York Times* entitled "A Fine Rendition," Michael Scheuer, the Clinton-era Chief of the CIA'S bin Laden unit, asserted that officials in the Clinton White House and Justice Department:

> ". . . knew that taking detainees to Egypt or elsewhere might yield treatment not consonant with United States legal practice. How did they know? Well, several senior C.I.A. officers, myself included, were confident that common sense would elude that bunch, and so we told them - again and again and again. Each time a decision to do a rendition was made, we reminded the lawyers and policy makers that Egypt was Egypt, and that Jimmy Stewart never starred in a movie called 'Mr. Smith Goes to Cairo.' They usually listened, nodded, and then inserted a legal nicety by insisting that each country to which the agency delivered a detainee would have to pledge it would treat him according to the rules of its own legal system."

a. During your tenure in the Clinton Administration Office of Legal Counsel, to what extent were you aware of participation in the practice of extraordinary rendition by the Clinton Administration generally, and by the FBI or other components of the Justice Department specifically?

b. Did you ever authorize the practice of rendition or otherwise express an opinion endorsing the legality of the practice? If so, do you believe you made the correct decision?

c. Do you believe that the Clinton Administration's practices with respect to rendition were lawful? Do you believe they were otherwise consistent with American values?

Answer: I know that the practice of rendition did not begin with the Bush Administration and my belief is that it is not in all cases unlawful. I have not engaged in any study of the Clinton Administration's rendition practices that would allow me to comment on their legality or advisability. President Obama has ordered reviews of detention and rendition policies. It would be inappropriate for me to answer these questions that would require me to disclose nonpublic legal advice that I provided during the course of my service at OLC. Moreover, the subject matter is such that, if such advice was given, it likely would have been classified.

3. In July 1994, Clinton Administration Deputy Attorney General Jamie Gorelick argued before the House Select Committee on Intelligence that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes. The Committee at the time was considering legislation to subject such searches to approval from the FISA court. That issue arose when attention was drawn to the practice of intelligence agents conducting clandestine searches within the United States. Such searches extended not only to foreign embassies, but to U.S. citizens within our borders. The warrantless searches of the office and home of Aldrich Ames, a U.S. citizen, in June and October 1993 gave rise to concerns that courts might strike down this practice.

Deputy Attorney General Gorelick's testimony before the Senate Intelligence Committee maintained, "the Department of Justice believes, and the case law supports, that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes and that the President may, as has been done, delegate this authority to the Attorney General." She stated further, "it is important to understand that the rules and methodology for criminal searches are inconsistent with the collection of foreign intelligence and would unduly frustrate the President in carrying out his foreign intelligence responsibilities." In the Justice Department's view, she testified, it did not matter whether searches were "conducted for foreign intelligence purposes in the United States or against U.S. persons abroad. . . . [w]e believe that the warrant clause of the Fourth Amendment is inapplicable to such searches."

a. Do you agree with this statement?

b. Were you aware of this position during your tenure in the Justice Department?

Answer: I was generally aware of this issue and of Deputy Attorney General Gorelick's position. Although I had not (and still have not) carefully studied the question, I had no disagreement with her position and understood it to be the position of most of the federal courts that had addressed the question in a related context.

4. If you "do not believe the 13 th Amendment is relevant at all" to the questions before the Supreme Court in *Webster v. Reproductive Health Services*, then why did you cite the 13th Amendment in footnote 23 of the brief that you filed in that case? Do you believe that the Amendment informs the 14th Amendment analysis in cases related to abortion?

Answer: As I testified at my hearing, I do not believe that abortion restrictions violate the Thirteenth Amendment. My longstanding view is that the right at issue is protected by the Fourteenth Amendment, as *Roe v. Wade* held and as the Court has since reaffirmed. The brief does not argue that abortion restrictions violate the Thirteenth Amendment, and I am quite certain that I have never made that argument anywhere else. I cannot say more about what the footnote intended because, until I was told of the *National Review* article about it, I did not recall it nor do I remember its genesis. I would note that eleven lawyers signed that brief and it was written on behalf of seventy-seven organizations, which I do recall led to a great deal of negotiation among counsel and organizations about the content of the brief.

Senator Lindsey Graham
Dawn Johnsen Questions for the Record

1. You clearly and publicly supported the Supreme Court's decision in *Boumediene*. In *Maqaleh v. Gates*, the Department of Justice has adhered to the Bush administration's position that detainees held at Bagram airbase in Afghanistan lack the right to challenge their confinement in federal courts. Do you agree with the Department of Justice's stated position that detainees held at Bagram lack habeas corpus rights?

Answer: I have not studied this issue and do not have a position on it. If I am confirmed and if the issue were presented to OLC, I would follow the traditional OLC processes to respond, including researching the relevant facts and law and consulting with other components of the Department of Justice and with the Department of Defense and other agencies that have relevant expertise.

2. You have said of ideological conservatism and originalist constitutional interpretation—

> Ideological conservatives hold themselves out as faithful and strict constructionists and argue for their chosen interpretive methodologies—principally 'textualism' and 'originalism'—as a principled search for constitutional 'truth' unrelated to particular substantive outcomes. They depict those who hold different legal views—progressives, liberals, moderates, indeed all those in the mainstream of legal thought— as unprincipled judicial activists, inappropriately driven to reach outcomes that coincide with 'policy' preferences. Conservatives effectively shift focus away from particular substantive issues on which progressives often enjoy popular support to more abstract questions of theory, such as calls for 'judicial restraint,' 'originalism,' and 'federalism,' which conservatives apply selectively to reach desired outcomes.[1]

Do you believe that Chief Justice John Roberts is out of "the mainstream of legal thought?" If not, please give some examples of ideological conservatives you view as outside "the mainstream of legal thought."

Answer: I do not believe that Chief Justice John Roberts is outside the mainstream of legal thought. My intent here was not to suggest that anyone is outside the mainstream of legal thought, but to say that many who are criticized as "unprincipled judicial activists" are within the mainstream of legal thought. Although I did not draft this as artfully as ideal, I did not purport to name anyone as out of the mainstream and would not do so now.

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[1] Dawn Johnsen, *Lessons from the Right: Progressive Constitutionalism for the Twenty-first Century*, 1 Harv. L. & Pol'y Rev. 239, 241 (2007).

3. You have written that "the courts underenforce constitutional rights, and the political branches have an obligation to fill constitutional gaps and uphold rights beyond those that the Court will enforce."[2]

   In your estimation, which constitutional rights do the courts underenforce? Do the courts underenforce all constitutional rights, or just selected ones?

Answer: The Supreme Court has fashioned a variety of doctrines (such as deference to the judgment of the political branches, justiciability, and others) that may lead a court to underenforce constitutional rights, a subject on which there exists an expansive body of academic literature. These doctrines apply to virtually all constitutional rights. The Court has also explained that some of its substantive doctrines, such as rational-basis equal protection review, are designed to be deferential to the political branches at least in part on the theory that those branches will themselves provide enforcement of the constitutional rights in question.

4. You called the Indiana Voter ID law, which was recently upheld by the Supreme Court, "excessive and indefensible," writing—

   > The point for some is that they really don't want certain kinds of people to vote, that they even feel if people won't take the 'trouble' to manage the logistical and financial barriers our state has erected (which pose no problem for most), then they simply don't deserve to vote. Of course, everyone is against fraud, but who really thinks this is about fraud?[3]

   Do you agree that voter fraud can corrupt the democratic process by skewing elections? Do you believe that it is reasonable for legislatures to take steps to mitigate potential voter fraud? If, as you wrote, the Indiana Voter ID law and other similar measures are not "about fraud," what do you think they are designed to do and what is the motivation of their proponents?

   Answer: If confirmed I, of course, will apply the Supreme Court's decision in *Crawford* whenever it is relevant to an issue before the office. That will be the extent of my involvement on the issue of Voter ID laws. I agree that where fraud exists, it clearly is legitimate and appropriate for a legislature to take steps to mitigate voter fraud in order to prevent the corrupting of the democratic process. In the short blog post from which you quote, I expressed the view that we should strive to make new voters feel welcomed and encouraged to participate in our great democracy. I noted I was reacting to stories I had heard and read in Indiana that suggested that "many, but by no means all" supporters of the Court's decision

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[2] Dawn Johnsen, *Post by Dawn Johnsen*, The Constitution in 2020, Nov. 26, 2004, http://constitutionin2020.blogspot.com/2004/11/post-by-dawn-johnsen.html.
[3] Dawn Johnsen, *A View on Crawford From Indiana*, Slate, April 29, 2008, http://www.slate.com/blogs/blogs/convictions/archive/2008/04/29/a-view-on-crawford-from-indiana.aspx.

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might not be bothered by the fact the law might discourage some people from voting. Again, my role at OLC would be to apply the *Crawford* decision were it ever relevant to a legal issue before the OLC, regardless of my personal views.

WRITTEN QUESTIONS OF SENATOR CHUCK GRASSLEY TO DAWN JOHNSEN TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

1. Many times an Administration will not agree with a particular statute, even though the language and intent of Congress are crystal clear. In addition, many times an individual who has been appointed to enforce the laws may not personally agree with a particular statute on the books. Yet, you will be called on to enforce and defend the laws as written by the legislative branch, regardless of your own personal and philosophical views. If you are confirmed, will you commit to enforce and defend the laws and the Constitution of the United States, regardless of your personal and philosophical views on a matter?

> Answer: Yes. I enforced and defended the laws and the Constitution of the United States, regardless of my personal and philosophical views, during my prior five years of service at the Office of Legal Counsel. Those who worked with me during that time—from throughout the Department of Justice and also top lawyers and officials from the CIA, the National Security Council, the Secret Service, and the Departments of Defense, Education, and Health and Human Services—have attested to that fact. If confirmed I would so again.

2. I think everyone would agree that protecting children and families from obscenity is a worthwhile objective. Do you concur that the Justice Department must continue to aggressively pursue criminal and civil litigation against those who violate federal obscenity laws? Why or why not?

> Answer: I agree that obscenity falls outside the protection of the First Amendment and that laws designed to keep obscenity out of the hands of minors are important and must be enforced.

3. This past year, the U.S. Supreme Court held in the *Heller* case that the Second Amendment protects an individual's right to possess a firearm, regardless of their participation in a "well regulated militia." President-elect Obama stated that he supported an individual's right to possess a firearm and signaled his support for the *Heller* decision. What is your personal opinion of the rights afforded by the Second Amendment?

> Answer: *Heller* holds that the Second Amendment protects an individual right to bear arms. If confirmed, I would certainly accept *Heller* as having answered that question and would provide legal advice consistent with that precedent.

4. What is your personal opinion of the *Heller* case?

> Answer: I do not have a personal view because I have not studied the Second Amendment or the *Heller* case in any detail.

5. If you are confirmed, will you commit to protect an individual's right to possess a

firearm?

Answer: Yes.

6. Do you have any question as to the constitutionality of the False Claims Act and its *qui tam* provisions?

Answer: In general, I have no question about the constitutionality of the False Claims Act or its *qui tam* provisions. As with any statute, it is possible that particular applications could raise constitutional questions, but I hasten to add that I am not aware of any such applications of the False Claims Act. As you know, during the time I served at OLC, the office reversed a prior opinion that did raise broad concerns about the constitutionality of *qui tam* statutes.

7. Recently, a lawsuit was filed alleging that the seal provision of the False Claims Act, codified at 3 1 U.S.C § 3730(b)(2), is unconstitutional. That provision requires that False Claims Act cases by *qui tam* relators be filed in camera and remain under seal for at least 60 days, and not be served upon the defendant until the court orders. This provision was designed to give the Government ample time to investigate an allegation before making the case public, while protecting evidence and the whistleblowers from undue harm or influence. The other benefit of the seal provision is that it allows frivolous complaints to remain under seal without causing harm to a defendant. In the past, I've been a critic of prolonged extensions of the seal. I believe the Justice Department should use the seal judiciously and not abuse its discretion. I also believe some transparency on the part of the Department would go a long way to dispelling questions about the seal. That said, I think the seal does a lot of good, especially in protecting whistleblowers against retaliation. Do you believe the seal provision of the False Claims Act is unconstitutional? Why or why not?

Answer: I have not yet had occasion to study that decision or the constitutionality of the seal provision of the False Claims Act, so I do not have an informed view regarding whether that provision is constitutional.

8. When we met a couple weeks ago, we discussed a December 5, 2001, Letter Opinion issued by the Office of Legal Counsel (OLC) to the General Counsel at the Department of the Treasury. The OLC Opinion titled, "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members," concludes that the Privacy Act "prohibits the disclosure of Privacy Act-protected information to the ranking minority member" of a congressional committee of jurisdiction that requests information fiom a Federal agency. The OLC Opinion reached this conclusion despite the fact that the Privacy Act allows disclosures, "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." Nowhere in the statute does it define "committee" to mean only the Chairman and not the Ranking Member.

Courts have also held views contrary to that of the OLC Opinion. For instance, the D.C. Circuit Courts of Appeal held that members of Congress have "constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information." *Murphy v. Dep't of the Army,* 613 F.2d 1151, 1157 (D.C. Cir. 1 979). Further, the 2nd Circuit held that information sent to a congressman in his official capacity as a *member* of a subcommittee fell "squarely within the ambit of § 552a(b)(9)". *See Devine v. United States,* 202 F.3d 547, 551 (2nd Cir. 2000).

Despite the plain language and the court interpretations, this opinion is often used as a shield to prevent disclosure of information to Ranking Members. Instead of citing case law, the OLC Opinion relies upon the "longstanding executive branch practice on this question," and, perhaps more surprisingly, the dicta from Congressional Research Service memorandum, to reach this conclusion.

a. Do you support the position taken by DOJ in this OLC Opinion?

> Answer: In general, I believe strongly that cooperation between the Department of Justice and Congress is appropriate and desirable, and I also have written extensively about the need for greater Executive Branch transparency. I have not yet had occasion to study the particular question addressed by the memorandum, and would need to do so at OLC in accordance with the traditional processes there, so I am not able to take a position on it at this time.

b. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

> Answer: I believe as a general matter that agencies should endeavor to cooperate with and provide appropriate information to Congress. As noted above, I have not studied whether there is a legal basis for distinguishing between a ranking minority member of a Committee and the Chairman, so I am not able to take a position at this time.

c. In your opinion, couldn't the wording of the Privacy Act that allows disclosure "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof' be construed to allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

> Answer: I have not studied the OLC opinion, nor have I read the statute, and have not had the benefit of OLC's traditional processes for evaluating such a question, so I am unable to offer an informed response to this question at this time.

d. If you are confirmed, will you pledge to revise this OLC Opinion to allow disclosure to Ranking Members? Why or why not?

> Answer: It would be improper for me to pledge to overrule or revise any OLC opinion. I can pledge that if I am confirmed and this question comes before OLC, I will carefully review the matter, using OLC's traditional and appropriate procedures.

Questions from Senator Orrin Hatch

1. Your career has devoted to using the judicial system to pursue a specific agenda. In your writings, you have mapped out what you call a "progressive constitutional agenda." And yet the Department of Justice in general, and the Office of Legal Counsel in particular, must be free from political or ideological agendas or influence. What can you offer to satisfy me that with your long record of advocacy and politically-driven decision making you are fit for a position that must be completely non-political?

Answer: I completely agree that the Office of Legal Counsel must be protected from harmful political or ideological agendas or influences. Maintaining the independence of the office—protecting its analysis and advice from corrupting influences—is the single most important responsibility of those who lead OLC. I believe that my five years of service in a leadership position at OLC—three and a half years as Deputy Assistant Attorney General and a year and a half as acting Assistant Attorney General—demonstrate my commitment to the independence and integrity of the office.

Since leaving OLC, much of my scholarship has examined the importance of keeping the office free from harmful political or ideological behavior, and has explored concrete ways of preventing such harm. I would cite in particular to my work developing and promoting the "Principles to Guide the Office of Legal Counsel," the first principle of which essentially captures the spirit of your question: "OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies. The advocacy model of lawyering . . . inadequately promotes the President's constitutional obligation to ensure the legality of executive action.'" Dawn Johnsen, 54 UCLA Law Review 1559 (2007) (quoting the Principles).

I believe all my work in the leadership of the Office of Legal Counsel from 1993 until 1998 demonstrate that I made decisions not according to any political or ideological preferences, but according to the law. Letters written on behalf of my nomination by the people with whom I worked closely during those years attest to my commitment to the rule of law, including from throughout the Department of Justice and also top lawyers and officials from the CIA, the National Security Council, the Secret Service, and the Departments of Defense, Education, and Health and Human Services. To cite just one specific example, clearly counter to the policy preferences of all involved, I advised that the Clinton Administration could not unilaterally waive a congressionally enacted statute of limitations in order to pay what it viewed as meritorious claims against the government for racial discrimination against African-American farmers. My opinion also pointed out that new legislation would be required to authorize the expenditure, and Congress in response enacted such legislation. I pledge to this Committee that I will continue to honor the critical independence from policy preferences and party politics that is indispensable to the Office of Legal Counsel.

2. In that same vein, in your article titled *Lessons from the Right,* you include the Republican Party and the Federalist Society in *the Right.* I am a member of both. You accuse the Right of hypocrisy and "insidious rhetoric designed to mislead and obfuscate." You have denounced the "utter hypocrisy of the radical right," accused previous Republican administrations of arrogance and the "complete disrespect" for either Congress or the courts, and elsewhere have used similar rhetoric to make similar accusations. Much of your work exhibits a disturbing degree of animosity toward approaches, viewpoints, or arguments with which you might not agree. What can you offer to satisfy me that you will not lead the OLC with the approach you frequently take in your writings and speeches?

> Answer: I would point to my years of service in the leadership of OLC during the Clinton Administration as demonstrating my commitment to maintaining the integrity of that Office and my ability to do so. Furthermore, I have always endeavored to seek common ground where possible and to proceed respectfully where it is not. For example, I recently worked in a bipartisan fashion with former Associate Counsel to President George W. Bush, Brad Berenson, at the request of Senators Feingold and Brownback, to draft legislation to bring greater transparency and integrity to OLC, which resulted in the introduction of the OLC Reporting Act of 2008.

3. In "Tipping the Scale" on washingtonmonthly.com in 2002, you said that "the Rehnquist court is also noteworthy - to many, notorious - for its direct role in resolving a presidential election in the way likely to lead to a strengthening of the court's new direction." The clear implication of your statement is that at least four Justices voted to consider that case, seven voted to find a constitutional violation, and five voted for a remedy intentionally to facilitate election of a President who might appoint judges with a particular judicial philosophy. Do you believe that such considerations played any part in the decisions by those Justices?

> Answer: In this passage, I was commenting on the fact that the effect of the Supreme Court's decision in *Bush v. Gore* was to resolve the outcome of a presidential election, which in turn influenced the future composition of the Supreme Court. I did not in any way suggest, or mean to suggest, anything about the motivations of any of the Justices, something about which I have no information.

4. Nominees will often say that regardless of their personal views they will follow the law and acknowledge that Supreme Court decisions are the law of the land. But you wrote just last year that "progressives should agree - and should endeavor to persuade others - that restrictive abortion laws do violate women's constitutional rights, *whether or not the Court protects those rights*." It appears that your judgment about what is or is not constitutional is driven by progressive politics as well as by the Supreme Court's decisions. Vice President Biden spoke at Attorney General Holder's investiture and referred to the mission statement of the Department of Justice. He said: "There is no

mention in that mission statement of politics. There is no room in that mission statement for ideology. And that's how it should be. Because there is no place for politics or ideology in this building." How are your statements, like the one I quoted, consistent with what the Vice President said?

> Answer: I agree with Vice President Biden's statement. My statement reflects the fact that nearly everyone who studies public law believes that the Supreme Court sometimes gets decisions wrong (though sometimes disagreeing about which decisions were in error). I noted that even if a case like *Roe* were overruled, progressives should still rely on the principles enshrined in the Constitution as a way of persuading their fellow citizens that they should work to protect those rights in the legislatures.
>
> But that was advice for citizen advocates and legislators. The Office of Legal Counsel, in determining the law governing the executive branch, follows decisions of the Supreme Court, and that is what I will do if I am confirmed as head of OLC. My role at OLC would be to apply the law according to decisions of the Supreme Court—regardless of how I personally thought the cases should have been decided.

5. You were on a panel at a conference on terrorism and the rule of law at the University of Chicago in October 2004. In your notes, you wrote that "this is a different kind of war, *if war at all*." Your notes indicate that saying we are at war is using "an imperfect analogy." At his confirmation hearing, however, Attorney General Holder said that "there is no question but that we are at war." Do you agree with the Attorney General that we are unequivocally at war? If so, what has changed in your thinking since October 2004 when you questioned whether we are at war and considered war simply an imperfect analogy?

> Answer: As I testified at my hearing, there is no question that we are at war with Al Qaeda. The remarks to which you refer addressed the broader question whether it was useful to speak generally of a "War on Terror." Specifically, I recounted hearing former Congressman Lee Hamilton speak about the findings of the 9-11 Commission, on which he had just finished serving as vice chair. I noted his explanation that our Nation was caught unprepared by the 9-11 attacks because we had not adjusted our understanding of national security to the new demands and threats we were (and are) facing. I further noted that the Commission had recommended several urgently needed changes to our national security apparatus, including in the areas of threat identification, intelligence, and international relations. And I emphasized the Commission's bottom-line conclusion; namely, that the radically changed nature of the threat we face as a nation demands a dramatically different understanding of the requirements of our national security. It was in this context that I pointed out that, despite their direct and serious engagement with these issues, neither Representative Hamilton nor the Commission's Report had generally used the language of "war" or a "War on Terror." I suggested that—following the Commission's lead—it might be a wise

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choice not to use this language when talking about constitutional questions related to the new national security threats we face, because war has a long history of specialized constitutional meaning. It might be better, I suggested, to try to describe more precisely the radically new national security threats our nation faces. With respect to our conflict with Al Qaeda, or our conflicts in Iraq and Afghanistan, however, I do not consider "war" to be an imperfect analogy at all. Rather, as the Attorney General stated, it is an accurate description of the nature of those conflicts.

6. You met with the Columbia Law School's Human Rights Institute about their recommendations for the war on terror. They say that the two choices for handling the terrorists detained at Guantanamo Bay are release or criminal prosecution in domestic courts. Do you agree with that?

Answer: No, I do not agree that release or criminal prosecution in domestic courts are the only two possible dispositions for individuals held at Guantanamo Bay. The President's executive order of January 22, 2009 concerning closure of Guantanamo recognizes the possibility of other dispositions. That order has set in motion an interagency process for determining how each of the Guantanamo detainees should be handled.

7. At her confirmation hearing, Solicitor General nominee Elena Kagan said that under military law there is no requirement to let captured enemies go back to the war. Do you agree?

Answer: Yes, I do agree with Dean Kagan's statement that under traditional military law, enemy combatants may be detained for the duration of the conflict. That is what the Supreme Court said as well in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

8. Attorney General Holder said at his confirmation hearing that if there is evidence that a detainee is dangerous, then "I don't think.. .that that is a person who we can release." Do you agree with him or with those who say that these detainees should be either released or tried in civilian courts as criminals?

Answer: As indicated above, I do not believe that release or criminal prosecution are the only possible dispositions for detainees. The President's review of the appropriate disposition of each of the detainees is underway.

9. The *Washington Post* reported on Friday, February 20, that the Pentagon, at President Obama's direction, has reviewed treatment of detainees at Guantanamo Bay and concluded that it meets the requirements of the Geneva Convention. Are you aware of this and what do you think is the significance of this finding?

Answer: I have seen the *Washington Post* story. I have not seen the Pentagon report. In his executive order of January 22, 2009 concerning the closure of the

detention facility at Guantanamo Bay, the President directed that all detainees there be treated humanely and in accord with Common Article 3 of the Geneva Conventions. I understand the Pentagon investigation was undertaken in order to ensure compliance with that portion of the executive order.

10. In the book *Change for America*, you wrote that the practice of rendition should "immediately end." During his confirmation hearing, CIA Director Leon Panetta said that the practice of rendition should not be ruled out. Who is right?

Answer: I did not, in *Change for America* (or anywhere else), call for an "immediate end" to the practice of rendition. There thus is no conflict between what I wrote there and what you quote Leon Panetta as having said at his hearing. I do not oppose the practice of rendition, which public sources reveal did not begin in the Bush administration. What I wrote is: "Guantanamo, secret black sites, and extraordinary renditions to countries known to use torture also are stains on the United States' reputation as a champion for the rule of law and human rights. All should immediately end." The rest of the paragraph calls, not for an end to the practice of rendition, but for a review of detention and rendition policy to ensure that the United States does not transfer detainees to other countries where they will be tortured. President Obama has ordered that review.

11. In a 1989 article, you wrote that the state's interest in protecting the life of children before birth is *never* enough to outweigh a woman's right to have an abortion, even after viability. This is inconsistent with *Roe v. Wade's* trimester framework as well as how that framework was later revised in *Planned Parenthood v. Casey*, a decision you have also criticized. Do you still believe what you wrote, that the state's interest in protecting the life of children before birth can never overcome a woman's right to an abortion?

Answer: I am unsure of the statement to which you are referring, but your description is inconsistent with the way I have talked about and understood the issue for decades including in 1989. I believed then, and continue to believe, that *Roe v. Wade* was correctly decided, including in its core holding that prior to the point of viability, the ultimate decision whether or not to continue a pregnancy is for the woman, in consultation with her family, her physician, and the religious advisors she chooses to consult. After the point of viability, the government may ban abortion as long as it includes an exception where the woman's health or life is at stake. I believe *Roe* struck the right balance and that after the point of viability the state can overcome the woman's interests and impose a criminal ban on abortion, with necessary exceptions for life and health. If confirmed as the head of OLC, my advice on constitutional and other legal matters will be based on the Supreme Court's decisions, not my own views.

12. In the brief you wrote in *Webster v. Reproductive Health Services*, a case that did not involve a ban on abortion, you argued that statutes curtailing a woman's abortion choice "are disturbingly suggestive of involuntary servitude, prohibited by the Thirteenth Amendment." When Senator Specter asked you about this at your hearing on February

25, you acknowledged writing the brief but said: "I have never argued that there is a Thirteenth Amendment violation when the government restricts abortion....I will say categorically I do not believe the Thirteenth Amendment is relevant at all." Yet that was not the only time you have made this argument. In an interview with *Glamour* magazine in 1989, you said: "Any move by the courts to force a woman to have a child amounts to involuntary servitude."

- Do you believe that restrictions on abortion force women to be pregnant?

- If, as you said at your hearing, you now believe that the Thirteenth Amendment and involuntary servitude are irrelevant to abortion, please explain how you came to reject the previous positions cited above?

  Answer: *Webster v. Reproductive Health Services* was a case in which the Court was urged to overrule *Roe v. Wade.* It was widely believed at the time that the Court might do so, or at least substantially limit *Roe*. As I testified at my hearing, I do not believe that abortion restrictions violate the Thirteenth Amendment. My longstanding view has been that the right at issue is protected by the Fourteenth Amendment, as *Roe v. Wade* held and as the Court has since reaffirmed. The brief does not argue (nor does the quote in *Glamour*) that abortion restrictions violate the Thirteenth Amendment, and I am quite certain that I never have made that argument anywhere else. The brief to which you refer argues throughout that the Court should reaffirm *Roe* based on the Court's holding there that the Fourteenth Amendment protects the right of a woman to decide whether or not to continue a pregnancy prior to the point of fetal viability. I believe that if the government were permitted to prohibit abortion prior to fetal viability, such an abortion restriction could force women to continue to be pregnant (or resort to an illegal abortion procedure), and that would violate the Fourteenth Amendment. I cannot say more about what the footnote intended because, until I was told of the *National Review* article about it, I did not recall it nor do I remember its genesis. I would note that eleven lawyers signed that brief and that it was written on behalf of seventy-seven organizations, which I do recall led to a great deal of negotiation among counsel and organizations about the content of the brief.

13. In an op-ed just a few years ago, you argued that abortion restrictions as a reasonable compromise, "perhaps to help make abortion 'safe, legal, and rare' - proves nonsensical." The phrase "safe, legal, and rare" that you criticized was the position of the Clinton administration, during which you served in the same position to which you have now been nominated. Do you still believe that the Clinton approach to abortion was nonsensical? How do you square your opposition to reasonable compromise with your opening statement at your hearing about finding common ground approaches?

  Answer: I would note first that this is an issue of policy, which will be no part of my work if I am confirmed to head OLC. While people of good will disagree on abortion, I believe we can all agree that it is desirable to reduce the number of abortions, and I believe that reducing the number of unintended pregnancies is an

important way to achieve that goal. I have always strongly favored common-ground approaches that reduce the number of abortions by reducing the rate of unintended pregnancy and by supporting women who decide to bear children by giving them the resources necessary to bear healthy babies. In the quotation to which you refer, I was criticizing certain abortion restrictions, not the phrase "safe, legal, and rare." In my writings as an advocate and academic, I have criticized abortion restrictions that are designed to look like reasonable compromises, but that have the effect of disproportionately harming the most vulnerable of women, in particular poor and low-income women who suffer most from dramatically decreasing availability of abortion services.

14. One book describes your work with the National Abortion Rights Action League and says that you drew a hard line against restrictions even such as parental involvement in a minor's abortion decision. It says that you told NARAL: "Do not, as part of an affirmative legislative strategy, introduce even a liberalized version of a parental consent or notification law." Do you still believe that?

Answer: I was speaking there, in my position as an advocate, of what was best as a matter of legislative strategy, in particular the appropriate strategic response to the risk of bad amendments substantially changing a bill once a particular subject was raised. It has been a long time since I have been involved in such legislative work and I do not have a judgment about what should be done now with respect to the same issues of legislative strategy. I do remain opposed to laws that mandate parental consent or notice, though I believe minors generally should involve their parents. This is all, of course, a matter of policy, which would not be my role at OLC. If I were to be confirmed to head OLC, I would in giving legal advice adhere to all Supreme Court decisions, including those that upheld parental notice and consent requirements.

15. In the brief you filed in *Webster*, you argued that abortion restrictions violate the Constitution's guarantee of equal protection by having a disparate impact on women. Do you still believe that? Please explain how women and men are similarly situated with respect to pregnancy and childbirth.

Answer: The *Webster* brief did not argue that abortion restrictions violate the Constitution's guarantee of equal protection, but instead—as the Court held in *Roe* and reaffirmed in *Casey*—that such restrictions violate the Fourteenth Amendment's guarantee of liberty. At a few points, the brief noted, as the Supreme Court itself has, that the interpretation of women's liberty interests should be informed by equality concerns. The brief does not rest upon any notion that men and women are similarly situated with respect to pregnancy, which they of course are not.

16. In the brief you filed in *Bray v. Alexandria Women 's Health Clinic*, you characterized abortion clinic protesters as "politically motivated mob violence" engaged in "terrorist" behavior. Do you acknowledge that some people who protest abortion or

encourage women to give birth to rather than abort their babies do so out of a genuine belief that abortion kills preborn children and a genuine desire to help women who may not otherwise believe they are able to care for a child?

> Answer: Yes, I absolutely believe and know that to be true. I appreciate this is an issue that divides Americans, and even families. I have close friends, family, and members of my church who strongly differ on this issue, as is true I would expect of most of us. That is why I support so strongly the search for common-ground approaches that reduce abortions by reducing unintended pregnancies and provide support for healthy childbearing and healthy families.

17. In a blog posting on Slate.com in April 2008, you attacked the Supreme Court's decision in *Crawford* v. *Marion County Election Board.* You said the Indiana voter identification requirement upheld in that case discourages voting and is actually intended to prevent certain groups from voting. This is yet another example of intemperate and political dismissal of positions or arguments you may not agree with. Many people believe that protecting the integrity and validity of the voting process by ensuring that those who cast votes are legally entitled to do so is essential to our democracy. You may not share that belief, but to say that those people are lying to hide a secret objective to disenfranchise certain groups sounds like politics or ideology blinding you to the facts. Are you aware that Indiana and Georgia, with the strictest voter ID laws in country, had the two highest increases of Democratic voters in the country in the 2008 election. In Georgia, the African American share of the vote increased more than twice as much as it did in the neighboring state of Mississippi, which has no voter ID requirement. The facts directly contradict your prediction. Were you aware of these results and do they change your evaluation of that decision, and the motivation behind the voter ID requirement?

> Answer: I share your belief that protecting the integrity and validity of the voting process by ensuring that those who cast votes are legally entitled to do so is essential to our democracy. My post did not say anything to the contrary, nor did it accuse anyone of lying. Rather, it described my view that we should strive to make voters feel welcome and encourage them to participate in our great democracy. As the post mentioned, I was reacting to stories I had heard and read in Indiana that suggested that "many, but by no means all," supporters of the Court's decision might not have been bothered by the fact that the law might discourage some people from voting. It seems to me that the high overall Democratic voter turnout in Indiana or elsewhere does not necessarily prove any particular effect of voter ID requirements, though that certainly is a subject for study. If confirmed I will of course apply the Supreme Court's decision in *Crawford* whenever it is relevant to an issue before the office.

QUESTIONS FOR THE RECORD FOR DAWN JOHNSEN SUBMITTED BY SENATOR JEFF SESSIONS

Presidential War Powers

Two of the deputies within the Office of Legal Counsel, Marty Lederman and David Barron, have already been hired.

Before they were hired, then-Professors Lederman and Barron published two law review articles in the *Harvard Law Review* in January 2008 in which they questioned the exclusivity of the President's Commander in Chief powers relative to the legislature. In their articles, they expressly reject as "unwarranted" the "view expressed by most contemporary war scholars — namely that our constitutional tradition has long established that the Commander in Chief enjoys substantive powers that are preclusive of congressional control, especially with respect to the command of forces and the conduct of [military] campaigns[.]"

- Do you share the views of Mr. Barron and Mr. Lederman regarding the limited power of the Executive Branch in wartime?

- Do you agree with Mr. Lederman and Mr. Barron's rejection of "the argument that tactical matters [in wartime] are for the President alone[?]"

  o Do you believe Congress has the constitutional authority to prescribe legislatively the military's tactics during wartime?

  o Setting aside the constitutional considerations, do you believe Congress has the ability - both in terms of information and nimbleness - to legislate tactics during a military campaign?

Mr. Lederman and Mr. Barron conclude their second article, *The Commander in Chief at the Lowest Ebb - A Constitutional History,* with advice to future Executive Branch lawyers. They write that such lawyers "should resist the urge to continue to press the new and troubling claim that the President is entitled to unfettered discretion in the conduct of war."

- Do you believe you should resist the urge to give President Obama discretion to conduct military operations in Afghanistan? In Iraq?

Answer: I have not carefully studied these very lengthy articles, so cannot answer questions regarding their specific content. My recollection of these articles is that their inquiry is directed at a specific question, namely whether there is a firm

historical basis for the contention that Congress lacks all authority to determine specific uses of America's war powers. In that regard, I believe that Steven Bradbury was correct when he wrote in an OLC memorandum two months ago that although the President has broad authority as Commander in Chief to take military actions in defense of the country, Article I, section 8 of the Constitution grants significant war powers to Congress, as well. *See* Memorandum for the Files, from Steven G. Bradbury, Principal Deputy Assistant Attorney General, Office of Legal Counsel, *re: Status of Certain OLC Opinions Issued in the Aftermath of the Terrorist Attacks of September 11, 2001*(Jan. 15, 2009), available at http://www.usdoj.gov/opa/documents/memostatusolcopinions01152009.pdf. When Congress enacts a statute pursuant to its Article I war powers, it is generally the case that that the law limits what the President could otherwise do as Commander in Chief (which is not to say there may not be exceptions). As best I can recall their articles, Professors Barron and Lederman demonstrate that this has been the consistent understanding of both political branches throughout most of our Nation's history. Thus, I agree with President Obama, who wrote during the campaign that "[t]he President is not above the law, and the Commander-in-Chief power does not entitle him to use techniques that Congress has specifically banned as torture." *See* Charlie Savage, *Barack Obama's Q&A,* The Boston Globe (Dec. 20, 2007), available at http://www.boston.com/news/politics/2008/specials/CandidateQA/ObamaQA/. I also agree that there are many cases in which Congress does not have sufficient information or dispatch to try to regulate tactics by statute in the midst of war—which is why Congress does not often try to do so.

Al Qaeda

At his confirmation hearing, Attorney General Holder stated that not only is the U.S. at war with al Qaeda, but that the nation was probably late in recognizing the existence of that state of war. In response to a question from Senator Graham, Attorney General Holder stated: "I think our nation didn't realize that we were at war when, in fact, we were. When I look back at the '90s and the Tanzanian -- the embassy bombings, the bombing of the Cole, I think we as a nation should have realized that, at that point, we were at war. We should not have waited until September the 11th of 2001, to make that determination."

- Do you agree with Attorney General Holder's statement? In your view, what is the earliest period prior to 2001 (if any) that President Clinton would have been justified in using military force against al Qaeda?

The U.S. military frequently undertakes military action, including detention measures, against persons and organizations associated with, but not members of, al Qaeda.

- In your view, are members of terrorist organizations other than al Qaeda that threaten or have attacked U.S. interests (including through association with al Qaeda) lawfully subject to U.S. military action?

During Attorney General Holder's confirmation proceedings, I asked him about an account from Jack Goldsmith's book, *The Terror Presidency*. Mr. Goldsmith describes how "White House and Department [of Justice] lawyers opposed an unrestricted lethal operation against Bin Laden, and would authorize his killing only if it were necessary for self-defense in the course of legitimately arresting him." *Id.* at 95. This opposition came despite the fact "[t]he CIA had Bin Laden in its sights," and after the Office of Legal Counsel (OLC) had decreed that Executive Order 12333's assassination ban "did not apply to a military target, like Osama Bin Laden, who posed an imminent threat to the United States." *Id.* at 94-95. Mr. Goldsmith concludes by noting, "[f]ear of retroactive discipline, induced by cautious legal authorizations, led the CIA to forego the covert operation." *Id.* at 95.

- Did you advance any argument with regard to the legality of the CIA Operation against bin Laden described in Mr. Goldsmith's book? I would like to know whether you counseled in favor of a broad authorization consistent with the OLC opinion or backed the opposing view described in Mr. Goldsmith's book. I would also like to know your current view on this question.

Answer: I agree that al Qaeda engaged in hostilities against the United States prior to September 11, 2001, and that therefore that President Clinton was justified in concluding that he could use military force in response, as he did. I also believe that the President can take military action against other terrorist groups that have attacked U.S. interests and, in some cases, when they threaten to do so. Whether and under what circumstances the law allows the United States to engage in military action against groups based on their associations with al Qaeda is a complex, fact-intensive question that depends in large measure on the proper interpretation of Congress's Authorization for Use of Military Force against those organizations responsible for the 9/11 attacks, and on the longstanding law-of-war principles that the plurality decision in *Hamdi* indicated should inform interpretation of that law.

With respect to the question about the excerpt from Prof. Goldsmith's book regarding a CIA operation against Osama bin Laden, it would be inappropriate for me to answer that question to the extent it asks me to disclose nonpublic legal advice that I provided during the course of my service at OLC. The subject matter is such that, if such advice occurred, it likely would have been classified.

Executive Power

Do you agree that the Supreme Court's decision in *Medellin v. Texas*, 552

U.S. __ (2008), confirms that the President and the Executive Branch are not bound, as a matter of U.S. law, by provisions of treaties that are not self-executing, and that such treaties are not part of the "law" subject to Article II's Take Care Clause?

Answer: I am generally aware of *Medellin* and the issue that you have identified, but I have not had any occasion to study the implications of this decision. If I am confirmed, I will treat *Medellin*, and other Supreme Court cases involving treaty interpretation, as binding law when construing treaties.

FISA

In your view, does the Fourth Amendment's warrant requirement apply to surveillance activities directed toward non-U.S. persons overseas and designed to secure foreign intelligence and other national security information, including when non-U. S. persons subject to surveillance communicate with U.S. citizens in the United States? Do you believe that any provision of the FISA Amendments Act of 2008 is unconstitutional?

Answer: I have not studied the question in detail, but I am aware that last August, the Foreign Intelligence Surveillance Court of Review held that there is an exception to the Fourth Amendment's Warrant Clause with respect to at least certain forms of foreign intelligence surveillance directed at foreign powers and agents of foreign powers located abroad. The court further held that such surveillance remains subject to the Fourth Amendment's reasonableness test and that reasonableness will depend on the totality of the circumstances. I have not studied the FISA Amendments Act sufficiently to reach a judgment whether it is constitutional as applied in all possible circumstances.

Questions of Senator Tom Coburn, M.D.
"Nomination of Dawn Johnsen to be Assistant Attorney General, Office of Legal Counsel"
United States Senate Committee on the Judiciary
February 25, 2009

Abortion

1. Please review and respond to the attached documents addressing abortion's effects on women.

   Answer: I am not a psychologist or social scientist, but appreciate that research is ongoing regarding the impact of pregnancy, childbirth and abortion, including as reviewed in a 2008 American Psychological Association report on all peer-reviewed studies in the past twenty years.

2. Ms. Johnsen, you have written numerous articles and Supreme Court briefs, and have given many advocating abortion rights and opposing virtually all government attempts to regulate abortion.

   a. When do you believe life begins?

   Answer: The question when a human life begins has religious, philosophical, and scientific dimensions. It also has legal dimensions, of course. In my view, the legal dimension, which is what I have addressed in my work, should continue to be governed by the Court's decisions in *Roe v. Wade* and *Planned Parenthood v. Casey*.

3. You have stated in several articles that *"the fetus is a physical part of a woman"* and that this is an *"essential fact"* for limiting the government's actions with regard to promoting its interests. Please explain this view further.

   a. To say a fetus is merely "part of a woman," are you saying a growing child deserves no more recognition or respect from the state than a pancreas or gall bladder?

   Answer: No.

   b. Is there any circumstance in which you believe the law should recognize an unborn child as an individual, separate from the mother?

   Answer: I have written a few pieces about how law and policy treat the fetus in cases where the woman has chosen to bear a child. In such cases I have encouraged approaches that do not create an adversarial relationship, but instead

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(consistent with the positions of the major medical organizations to address these issues) seek to support women in acting responsibly and bearing healthy children. There are situations where the law could and should recognize the fetus, in ways that would not be create an adversarial relationship but actually support healthy childbearing.

c. Do you believe it appropriate for the State to recognize the fetus for the purposes of inheritance and probate law?

Answer: Yes.

4. In an article from last year, you called the term *"partial-birth abortion" "an invented and intentionally provocative political term previously unknown to the medical profession."*

a. Whatever you call the procedure, you acknowledge that it occurs when an unborn child is partially out of the woman's body?

Answer: Yes, I am aware that is how the laws typically are phrased.

b. In your view, at what point does that unborn child acquire a right to life? [Does it attach only when the child is completely out of the woman's body? Or some time thereafter? When?]

Answer: If by right to life you mean an interest that would support an abortion ban, that point is fetal viability.

c. If you are confirmed, do you feel you would be able to defend a partial-birth abortion ban?

Answer: It would not be my role as the head of OLC to do so, because I would not litigate. But to the extent I might be consulted, I certainly would have no problem advising that a law like the one the Court upheld in *Gonzales v. Carhart* could be defended, because the Court held it was not facially unconstitutional.

5. In your writings, you have made several references to "*the progressive agenda*" and remarked in the area of abortion jurisprudence that "*the progressive agenda would focus on the courts as the vehicles for desired change.*"[1]

a. On what basis do you believe that courts are an appropriate vehicle to enact a "progressive agenda?"

Answer: My statement reflects the fact that nearly everyone who studies public law believes that the Supreme Court sometimes gets decisions wrong (though they sometimes disagree about which decisions were in error). It is certainly

[1] *Id.* at *.

appropriate to attempt to persuade the courts to change their interpretations, based on a sincere belief that a court erred. But that advice applies to citizen advocates and legislators. The Office of Legal Counsel, in determining the law governing the executive branch, follows decisions of the Supreme Court, and that is what I will do if I am confirmed as head of OLC. My job if confirmed would be to apply the law according to decisions of the United States Supreme Court whenever the Court had spoken—regardless of how I personally thought the cases should have been decided.

b. How can we be sure you will not carry such an agenda into the Justice Department?

Answer: I deeply believe that the Office of Legal Counsel must be protected from harmful political or ideological agendas or influences. Maintaining the independence of the office—protecting its analysis and advice from corrupting influences—is the single most important responsibility of those who lead OLC. I believe that my five years of service in a leadership position at OLC—three and a half years as Deputy Assistant Attorney General and a year and a half as acting Assistant Attorney General—demonstrate my commitment to the independence and integrity of the office.

Since leaving OLC, much of my scholarship has examined the importance of keeping the office free from harmful political or ideological behavior, and has explored concrete ways of preventing such harm. I would cite in particular to my work developing and promoting the "Principles to Guide the Office of Legal Counsel," the first principle of which essentially captures the spirit of your question: "OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies. The advocacy model of lawyering . . . inadequately promotes the President's constitutional obligation to ensure the legality of executive action." Dawn Johnsen, 54 UCLA Law Review 1559, 1604 (2007) (quoting the Principles).

I believe all my work in the leadership of the Office of Legal Counsel from 1993 until 1998 demonstrate that I made decisions not according to any political or ideological preferences, but according to the law. Letters written on behalf of my nomination by the people with whom I worked closely during those years attest to my commitment to the rule of law. These letters come from officials throughout the Department of Justice, and also top lawyers and officials from the CIA, the National Security Council, the Secret Service, and the Departments of Defense, Education, and Health and Human Services. To cite just one specific example, I advised the Clinton Administration that, clearly counter to the policy preferences of all involved, it could not unilaterally waive a congressionally enacted statute of limitations in order to pay what it viewed as meritorious racial discrimination claims brought against the government by African-American farmers. My opinion also pointed out that new legislation would be required to authorize such

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an expenditure, and Congress in response enacted such legislation. I pledge to this Committee that I will continue to honor the critical independence from policy preferences and party politics that is indispensable to the Office of Legal Counsel.

6. Do you believe that anyone in good faith and upon careful reflection can arrive at the conclusion that the Constitution does not include the right to abortion and that *Roe* should be overturned?

Answer: Yes, I absolutely believe and know that to be true. I know this is an issue that divides Americans, and even families. I have close friends, family, and members of my church who strongly differ on this issue, as is true I would expect of most of us. That is why I support so strongly the search for common-ground approaches that reduce abortions by reducing unintended pregnancies and provide support for healthy childbearing and healthy families.

7. In *Webster v. Reproductive Health Services*, your brief on behalf of 77 women's groups presented the argument that abortion restrictions constitute disparate treatment between men and women since men do not endure the burdens of pregnancy. Is that your own view of the issue?

a. Your brief maintained that "the non-fatal health risks associated with legal abortion are very limited and substantially lower than those risks . . . created by continued pregnancy and delivery."[2] Another brief you submitted in that case on behalf of women who had had abortions asserts, "The experience is no longer traumatic; the response of most women to the experience is relief."[3] Now we know from multiple scientific studies to date that in fact abortion does cause significant psychological problems for many women. The Elliott Institute research survey alone references over two dozen studies on its website.[4] Don't your statements understate abortion's harm to women?

Answer: To the best of my knowledge, the statements were accurate.

b. Your brief continued that a state's restriction of abortion "curtails women's ability to participate equally with men in the public world."[5] Is it your view that pregnancy is a condition that renders women unequal to men? [How else do you explain the view that pregnancy must be able to be eliminated before running its natural course—otherwise women are not equal?]

Answer: The brief contended, and the Supreme Court observed in Casey, that government-compelled childbearing through abortion restrictions (*not* pregnancy) does curtail women's life options.

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[2] 1989 WL 1127689, *9.
[3] 1989 WL 1115239, **25-26.
[4] See http://www.afterabortion.org/reasmor.html.
[5] 1989 WL 1127689, *3.

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c. Your brief attacked in strong language the solicitor general's argument in *Webster* that "such options as abstinence and contraception" offer women a "meaningful opportunity" to avoid an unwanted pregnancy. You argued that the solicitor general's "factual premise that women who become pregnant have in some sense consented to the pregnancy belies reality." "[U]nderlying the Solicitor General's position," you continued, "appears to be the outmoded view that women ought not engage in sexual intercourse for reasons other than procreation and that those who do—unlike their male partners—deserve to be punished with an unplanned pregnancy."[6]

A. Your brief also includes the following comment: "Abstinence during the forty years a woman is fertile is not a viable way of life for most women."[7]

(1) Is that your personal view?

Answer: Yes.

(2) Since much of that period occurs when a female is a minor, it must follow that abstinence is not a viable way of life for girls who are adolescents or teenagers, correct?

Answer: No, I do not believe that follows. I believe abstinence should be part of sexuality education, but not the whole of it.

(3) Doesn't that message undermine the values of most parents, as well as the premise of most states' statutory rape laws?

Answer: No, I do not see how it could.

B. Your brief also rebukes governments for the problem of unwanted pregnancy: "By requiring women to sacrifice their bodies and their liberty in ways that the state never demands of men, state laws manifest the stereotype that it is women's 'natural role' to bear children."[8] The word "stereotype," of course, is a negative one; it suggests an attitude to be eradicated.

(1) But isn't it just a reality of nature that only one gender is capable of bearing children?

Answer. Yes, only women are capable of bearing children.

(2) Have I, by stating that fact, embraced a negative stereotype? [IF NOT] Aren't you saying that the practice of abortion is a necessary step to

[6] *Id.* at *6 n.5.
[7] *Id.*
[8] *Id.* at *25.

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remedying a defect of nature, and a state is only making matters worse by doing anything to restrict that practice?

Answer. No you have not thereby embraced a negative stereotype.

C. Isn't it also true that your comments diminish the capacity of women to exercise personal responsibility? [If not, are you saying that women do or do not bear responsibility for consensual activity when that activity results in an unwanted pregnancy?]

Answer. No, I believe women and men should exercise personal responsibility and the government should support such efforts through programs aimed at reducing the incidence of unintended pregnancy, including by supporting the availability of contraception.

8. You have written extensively about how the recognition of fetal rights infringes upon woman's autonomy.[9]

a. If you are correct that "women's autonomy" should trump the rights of the fetus in every instance, wouldn't it follow that the courts should permit abortion on demand up to the time of birth?

Answer: No, I have consistently and long supported the viability line drawn in *Roe* as the appropriate one.

b. Why should a woman's autonomy differ at all after the point of viability?[10]

Answer: I believe that *Roe v. Wade* was correctly decided, including in its core holding that prior to the point of viability, the ultimate decision whether or not to continue a pregnancy is for the woman, in consultation with her family, her physician, and the religious advisors she chooses to consult. After the point of viability, the government may ban abortion as long as it includes an exception where the woman's health or life is at stake. I believe *Roe* struck the right balance and that after the point of viability the state can overcome the woman's interests and impose a criminal ban on abortion, with necessary exceptions for life and health.

9. In an article from last year, you called the term "partial-birth abortion" "an invented and intentionally provocative political term previously unknown to the medical profession." You also lumped into the category of "wrongly decided cases" "decisions that upheld the exclusion of abortion from health care the government provided the poor, the prohibition of abortion services at publicly

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[9] For example, see Johnsen, Dawn, *The Creation of Fetal Rights: Conflicts with Women's Constitutional Rights to Liberty, Privacy and Equal Protection*, 95 YALE L. J. 599, 624 (1986).

[10] She argued in response to the Missouri solicitor general's argument that the interest is not compelling enough to override the woman's right even after viability. "*Webster* and Women's Equality," Johnsen, Dawn, Wilder, Marcy J. *American Journal of Law and Medicine*. Boston: 1989. Vol. 15, Iss. 2-3, p. 178.

funded medical facilities (even when no public funds subsidized the services), parental notice and consent requirements, and most recently, *Gonzales v. Carhart*."[11]

a. Is it safe to say that you do not believe any regulation of abortion beyond requiring medical professionals to perform them would be constitutional?

Answer: The Supreme Court has upheld many restrictions on abortion as constitutional, including parental notice and consent laws, funding restrictions, a federal ban on partial birth abortions, and waiting periods. If confirmed as the head of OLC, if ever asked to provide legal advice about the constitutionality of abortion restrictions, my advice would of course be based upon those Supreme Court decisions. You seem also to be asking about my own views, so I will say that I personally do not oppose laws that regulate providers of abortion services just as the government does other providers of medical services, when the purpose and effect is truly to protect the health of patients and the safety of the procedure.

b. A majority of the Supreme Court has consistently held it permissible to deny the use of public funds or public facilities to perform abortions. Do you believe that the distinction between such a regulation and a law restricting what private parties can do with their own money is a constitutionally significant one?

Answer: I recognize the Court has so held and if confirmed would fully abide by those rulings.

c. If you are confirmed, do you feel you would be able to defend a partial-birth abortion ban that resembled the one the Supreme Court upheld in *Gonzales v. Carhart*?

Answer: As I stated above, it would not be my role as the head of OLC to do so, because I would not litigate. But to the extent I might be consulted, I certainly would have no problem advising that a law like the one the Court upheld in *Gonzales v. Carhart* could be defended, because the Court held it was not facially unconstitutional.

10. In your 2006 article entitled "How *Roe* will go," you had sharp criticism for the notion that abortion should be "safe, legal, and rare." You wrote, "The notion of legal restrictions as some kind of reasonable 'compromise'—perhaps to help make abortion 'safe, legal, and rare'—proves nonsensical."[12] Yet it was the platform, or at least the rhetoric, of both of the last two pro-choice presidents, Clinton and Obama, to try to keep abortion rare.

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[11] *A Progressive Agenda for Women's Reproductive Health and Liberty on Roe v. Wade's Thirty-Fifth Anniversary*, issue brief for American Constitution Society (2008) at 1, 5.
[12] How Roe will really go, Philadelphia Daily News (January 30, 2006).

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a. Are you on board with President Obama's goal of reducing abortions – of keeping them rare?

b. [If she retreats from her rhetoric] So you concede the goal of reducing abortions is desirable? Why is this goal desirable? [if not because an innocent human life is at stake]

Answer: I would note first that this is an issue of policy, which will be no part of my work if I am confirmed to head OLC. While people of good will disagree on abortion, I believe we can all agree that it is desirable to reduce the number of abortions, and I believe that reducing the number of unintended pregnancies is an important way to achieve that goal. I have always strongly favored common-ground approaches that reduce the number of abortions by reducing the rate of unintended pregnancy and by supporting women who decide to bear children by giving them the resources necessary to bear healthy babies. In the quotation to which you refer, I was criticizing, not the phrase "safe, legal, and rare" but certain abortion restrictions. In particular, I have criticized abortion restrictions that are designed to look like reasonable compromises, but that have the effect of disproportionately harming the most vulnerable of women, in particular poor and low-income women who suffer most from the dramatically decreasing availability of abortion services.

c. According to William Saletan, your opposition to requiring parents' involvement in the abortion decisions of their teenage daughters was strong enough that you urged NARAL: "Do not, as part of an affirmative legislative strategy, introduce even a liberalized version of a parental consent or notification law."[13] Do you remain opposed to such laws?

Answer: I was speaking there, in my position as an advocate, of what was best as a matter of legislative strategy: in particular the appropriate strategic response to the risk of bad amendments substantially changing a bill once a particular subject was raised. It has been a long time since I have been involved in such legislative work and I do not have a judgment about what should be done now with respect to the same issues of legislative strategy. I do remain opposed to laws that mandate parental consent or notice, though I believe minors generally should involve their parents. This is all, of course, a matter of policy, which would not be my role at OLC. If I were to be confirmed to head OLC, I would in giving legal advice adhere to all Supreme Court decisions, including those that upheld parental notice and consent requirements.

[13] WILLIAM SALETAN, BEARING RIGHT 289 (University of California Press , August 20, 2003)

**Senator Specter's Written Questions for Dawn E. Johnsen,
Nominee to be Assistant Attorney General, Office of Legal Counsel**

1. You were featured in a 2006 Alliance for Justice advocacy film entitled "Quiet Revolution," which asserted that Republicans were engaging in a "stealth revolution" to appoint judges who would "rob Congress of its power to enact federal legislation that it believes it necessary to protect the American people." In that film, you asserted that judges such as Chief Justice Roberts and Justices Thomas and Alito are the instruments by which the "radical right" intends to implement its "incredibly extreme" agenda. Then, at a panel discussion introducing the film, you criticized Republicans and their judicial nominees, accusing them of "a stealth attempt to radically remake constitutional law." You added: "[O]ne of our main objectives has to be the object of this film, to unmask what is really going on and to show them for the hypocrites they are." You further stated that the appointment of conservative judges is a "strategy for implementing radicalism."

    a. Do you believe Chief Justice Roberts and Justice Alito are "radical" nominees bent on implementing an "incredibly extreme" agenda?

Answer: No, I do not. I would also point out that I have reviewed *Quiet Revolution* and nowhere in that film do I make any assertion at all about Chief Justice Roberts or Justice Alito, or even mention them. The film does include comments of mine, along with comments of many other lawyers and officials critical of some opinions of the Court and of President Bush's view of executive power, including then-Senator Barack Obama, Senator Lindsey Graham, and many prominent law professors.

2. In your notes for the panel discussion of that same film, you state: "Remember in roberts and alito hearings ... Took to a new level. Worse than not answering-suggest ethical viol ...." When I asked you about these notes at your hearing, you stated that you "believe what was at issue was alot of back-and-forth about whether it would be inappropriate and somehow an ethics violation for a nominee to answer questions at a certain degree of specificity."

    a. Why do you believe it is "worse than not answering" for a nominee to "suggest" that it might violate the Judicial Canons of Ethics for him or her to answer a question about an issue that might come before the court to which he or she is nominated?

    b. Do you think it is appropriate for a judicial nominee who is a current judge to comment about a case that is currently pending before the Court to which he or she is nominated?

Answer: I do not believe that it is appropriate for a judicial nominee to comment on a pending case. I have written, and do believe, that it is appropriate for

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Senators to ask a judicial nominee to address his or her judicial philosophy and legal views. This will from time to time involve a delicate balance, but I believe it is the correct one in that it allows the Senate to fulfill its constitutional role of providing meaningful advice and consent. My point in the statement you quote was that some Supreme Court nominees who preceded Chief Justice Roberts and Justice Alito have spoken quite expansively about their judicial philosophy and their legal views, and not inappropriately so. I believed it was harmful and wrong to suggest that by doing so, those nominees may have violated an ethical obligation.

3. You stated during a panel discussion of the film "Quiet Revolution:" "I think the recent Supreme Court confirmation hearings were tremendously disappointing. And we saw in the film clip after clip where they were able - the nominees - to get away with saying over and over again the same exact phrases, and nobody effectively called them on it. You know, they certainly are disciplined. The phrase 'I have no quarrel with' must mean something very different than any of us think it means." Are you suggesting Chief Justice Roberts and Justice Alito misled this Committee with their testimony?

   a. To what extent should judicial nominees be required to explain their views and positions on constitutional issues to the Senate to ensure we do not confirm "stealth" nominees?

   b. Do you agree with the statement: "The kind of inquiry that would contribute most to understanding and evaluating a nomination is . . . discussion first, of the nominee's broad judicial philosophy and, second, of her views on particular constitutional issues?"

   c. Following the first President Bush's nomination of David Souter to the Supreme Court, you were quoted as demanding that the White House reveal the nominee's views "on the issue of privacy." You asserted, "We are telling senators that [President Bush] ought not to be able to use this process to hide this information from the Senate and the American people." Do you believe that nominees to the Supreme Court should disclose their views to the Senate on the issue of privacy?

Answer: I will first mention that OLC has no role in judicial nominations or appointments. I do believe that the Senate is entitled to examine the judicial philosophy and legal views of a Supreme Court nominee as a component of its constitutional advice-and-consent role. I believe that as part of that process, Senators may ask nominees about their views on the issue of the constitutional right to privacy, and nominees should answer those inquiries. I noted at the time of Justice Souter's confirmation that there was a special reason for asking for his views on this issue: the Republican Party Platform had called for the appointment of judges who would overrule *Roe*, and the balance on the Court was such that it seemed the next appointment might determine that outcome. In contrast, it would

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never be appropriate for a Senator to seek to extract any kind of commitment as to how a nominee would decide a particular case or specific question that might come before the Court.

4. During the Presidential campaign at a Planned Parenthood conference, then-Senator Obama said: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges." Do you agree with these criteria for selection of judges?

   a. Do you think that it is ever proper for judges to indulge their own subjective sense of empathy in determining what the law means? If so, under what circumstances?

Answer: I do not believe that judges ever should be guided only by a sense of empathy, nor should such empathy ever interfere with their interpretation of what the law requires.

5. In a 2007 speech before the Indiana Civil Liberties Union, you discussed some of the decisions of the "Roberts Court" and focused on some of the dissents to those opinions. In your notes for that speech, you state that the authors of those dissents are Justices who are "left of center-I hesitate to call them liberal, [because] they only are relative to the rest of the Court." You then proceeded to discuss Justice Ginsburg's dissent in the Lilly Ledbetter case. Do you include Justice Ginsburg as a "left of center" Justice who is only liberal "relative to the rest of the court?"

   a. Prior to Justice Ginsburg's confirmation to the Supreme Court, she wrote on a number of women's issue. She had written that the age of consent for women should be 12, that prisons should house men and women together in order to have gender equality, that Mother's and Father's Day should be abolished because they stereotype men and women, and that there is a constitutional right to prostitution. Do you believe these are merely "left of center" positions?

   b. Do you agree with these positions? If not, with which ones do you disagree?

   c. Justice Ginsburg said that there should be Federal funding for abortion. Do you agree? Is that a merely "left of center" position?

Answer: I do not recall ever hearing that Justice Ginsburg expressed any of the positions you describe. I am reluctant to comment on them without knowing more, but as you describe them in section (a), I do not agree with any of them. I continue to believe that Justice Ginsburg has been a centrist or left-of-center Justice, regardless of how one might characterize the views she expressed before

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becoming a judge. If confirmed, I will follow the decisions of the Supreme Court and not views I expressed as an academic or advocate. For example, I support public funding of abortion services as part of general programs providing the poor with medical care, but I fully recognize and would absolutely apply Supreme Court precedent upholding policy choices not to fund abortions. Indeed, during my prior five years of service at OLC, I applied just such precedent.

6. In response to a question from Senator Sessions, you testified at your hearing, that you gave certain Senate staffers "guidance to form their questioning" of Supreme Court nominees John Roberts and Samuel Alito. To the best of your knowledge, information and belief, and to the best of your ability to reconstruct the facts, to whom did you volunteer guidance and what questions did you advise them to ask?

   Answer: I recall receiving questions and requests from senior staff working for four Senators who served on the Senate Judiciary Committee in connection with one or both of those nominations. They involved questions of constitutional law and government practices about which I had some knowledge based on my teaching, study, and work in the government. I believe that most of the questions related to issues of presidential power and more generally separation of powers; some related to congressional authority to enact legislation; some related to the right to privacy; and there may have been other areas as well. I do not recall that I ever advised any Senator to ask any particular question; I may have reviewed some draft questions prepared by senior staff, but am almost certain I did not draft any questions myself. I believe these conversations should be viewed as confidential, as comparable conversations with senior advisors to the President would be, and that disclosing them without a Senator's specific approval might chill the ability of Senators to solicit valuable advice in the discharge of their constitutional advice-and-consent responsibilities.

7. In an article you wrote last year, you asserted that "Progressives need to rethink the theoretical underpinnings of *Roe*—and what is left of *Roe* after [*Planned Parenthood v.*] *Casey* and [*Gonzales v.*] *Carhart*—and also situate access to abortion, contraception and reproductive health care within a broader progressive constitutional vision." What about the Supreme Court's current jurisprudence in this area do you feel is deficient?

   a. You also made several references to "the progressive agenda" and remarked in the area of abortion jurisprudence that "the progressive agenda would focus on the courts as the vehicles for desired change." On what basis do you believe that courts are an appropriate vehicle to enact a "progressive agenda?"

   b. In what areas other than abortion do you believe the courts should be vehicles for change?

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Answer: I believe that clearly courts should not be driven by the pursuit of an ideological agenda. That said, the Constitution specifically enshrines principles of liberty and equality, and it is proper for the judiciary to vindicate these principles. For example, the Supreme Court rendered significant constitutional change in deciding *Brown v. Board of Education* and overruling its decisions accepting of the doctrine of "separate but equal." I do believe it is appropriate for advocates to work on litigation that vindicates constitutional principles in a way that is consonant with their own conceptions of how those principles should be applied. I have exhorted progressive groups to this task. My response below to question ten describes why I recommend situating abortion within a broader conception of reproductive liberty and health.

8. In your notes from "Talk at Planned Parenthood Midwest Conference, Indianapolis, IN, 11/8/08" you state "OLC does range of issues . . . to domestic issues such as const of fed funding to faith based entities to affirm action. Several abortion issues when I was there." To which abortion issues were you referring?

   a. What abortion issues do you anticipate the Office of Legal Counsel could handle in the next four years?

Answer: It would be inappropriate for me to reveal the specifics of nonpublic legal advice that I provided during the course of my service at OLC. It is public knowledge that, as a general matter, OLC reviews pending legislation for constitutional compliance and assists in the preparation of the Executive Branch's views on legislation, with an eye toward working with Congress to correct any constitutional defects prior to passage. In that capacity, bills regulating abortion have comprised, and I would expect would continue to comprise, a very small percentage of the numerous bills sent to OLC for review each year. For example, restrictions on federal funding for abortion have been included in appropriations bills. When presented with any issue, I would (as I was during my five years of prior service at OLC) be guided by Supreme Court precedent, including those upholding abortion restrictions.

9. In your writings and speeches, you have argued for the highest level of scrutiny for abortion regulations and opposed what some would call mild regulations as failing to meet that standard. For instance, you were quoted during the litigation of *Planned Parenthood v. Casey* as analogizing Pennsylvania's 24-hour waiting period prior to having an abortion to "a law saying newspapers have to wait 24 hours before publishing a story." As you know, the Court sustained that waiting period and has sustained other regulations on abortion under a different standard of scrutiny-the "undue burden" test.

   a. Do you believe the Court erred by adopting something less than a strict scrutiny standard?

   b. Given your statement implying that a restriction on the right to abortion is

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analogous to a restriction on a newspaper exercising its First Amendment rights, do you believe the Court should apply strict scrutiny to other restrictions on specifically enumerated rights such as the Second Amendment? Why or why not?

Answer: Although I personally have criticized the change in standard from *Roe*'s "strict scrutiny," if confirmed and if the issue arises, I of course will apply the *Casey* "undue burden" standard in evaluating the constitutionality of abortion restrictions. The undue burden standard has been the governing standard for more than fifteen years. I understand that in *Heller* the Supreme Court held that the right to bear arms protected under the Second Amendment is an individual right, but that the Court did not identify the level of scrutiny to be applied to gun restrictions. However, I have not ever studied or written about the Second Amendment and do not have a personal opinion on the appropriate standard of review. If confirmed, I would apply *Heller* whenever it is relevant to an issue presented to OLC.

10. In your 2006 article entitled "How *Roe* Will Go," you had sharp criticism for the notion that abortion should be "safe, legal, and rare." You wrote, "The notion of legal restrictions as some kind of reasonable 'compromise' – perhaps to help make abortion 'safe, legal, and rare' – proves nonsensical." Yet both of the last two pro-choice presidents, Clinton and Obama, asserted that the goal should be to keep abortion rare. Do you agree with the goal of striving to keep abortion rare?

    a. Your article decried the "incremental evisceration of *Roe*" which has manifested itself through "such benign-sounding requirements as waiting periods, informed consent, physical specifications for buildings . . . , and special hospital privileges" which are "designed to sound reasonable while also limiting the number of abortions performed." Other than perhaps requiring doctors to perform the procedure, you seem to oppose virtually every regulation of abortion, no matter how reasonable and benign many of us find them (including many of us who are pro-choice), as a matter of constitutional law. Is that correct?

Answer: I would note first that issues of policy will be no part of my work if I am confirmed to head OLC. While people of good will disagree on abortion, I believe we can all agree that it is desirable to reduce the number of abortions, and I believe that reducing the number of unintended pregnancies is an important way to achieve that goal. I have always strongly favored common-ground approaches that reduce the number of abortions by reducing the rate of unintended pregnancy and by supporting women who decide to bear children by giving them the resources necessary to bear healthy babies. In the quotation to which you refer, I was criticizing certain abortion restrictions, not the phrase "safe, legal, and rare." In my writings as an academic and an advocate, I have criticized abortion restrictions that are designed to look like reasonable compromises, but that have the effect of disproportionately harming the most vulnerable of women, in

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particular poor and low-income women who suffer most from the dramatically decreasing availability of abortion services. I do not personally oppose laws that regulate providers of abortion services just as the government does other providers of medical services, when the purpose and effect is truly to protect the health of patients and the safety of the procedure. The Supreme Court has upheld many restrictions on abortion as constitutional, including parental notice and consent laws, funding restrictions, a federal ban on partial birth abortions, and waiting periods. If confirmed as the head of OLC, if ever asked to provide legal advice about the constitutionality of abortion restrictions, my advice would of course be based upon those Supreme Court decisions.

b. According to William Saletan, your opposition to requiring parents' involvement in the abortion decisions of their teenage daughters was strong enough that you urged NARAL: "Do not, as part of an affirmative legislative strategy, introduce even a liberalized version of a parental consent or notification law." Do you remain opposed to such laws?

Answer: I was speaking there, in my position as an advocate, of what was best as a matter of legislative strategy: in particular the appropriate strategic response to the risk of bad amendments substantially changing a bill once a particular subject was raised. It has been a long time since I have been involved in such legislative work and I do not have a judgment about what should be done now with respect to the same issues of legislative strategy. I do remain opposed to laws that mandate parental consent or notice, though I believe minors generally should involve their parents. This is all, of course, a matter of policy, which would not be my role at OLC. If I were to be confirmed to head OLC, I would in giving legal advice adhere to all Supreme Court decisions, including those that upheld parental notice and consent requirements.

11. In your 2006 Slate article "The Outer Shell," you wrote that the "conventional wisdom now counsels" that the demise of *Roe* and the "likely backlash" could "cause Republicans political harm-possibly severe harm. In the long run, this could benefit many women." Would you explain what that conventional wisdom is and how exactly the demise of the Republican party will "benefit many women?"

Answer: The "conventional wisdom" to which I alluded was not that the demise of the Republican party would benefit women. I in no way meant to suggest any such thing, either as an expression of the "conventional wisdom" or my own views. It was, rather, the "conventional wisdom" that an overruling of *Roe* would mobilize pro-choice voters which in turn would both harm the Republican Party and benefit women, because voters would be more likely then to vote for Democrats and to more likely protect womens right to choose through political action. In the article you quote, I then took issue with this scenario, saying "I would hesitate to suggest that possibility. The ultimate political and practical consequences are unknowable."

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12. Do you believe the United States has the power to preventively detain terrorist suspects?

    a. Must such detentions occur in the United States?

    b. Does the United States have no authority to detain except after Article III court determinations?

        i. What in your view constitutes the minimum of due process that should be required for tribunals that authorize or affirm detentions?

        ii. Would detainees before those tribunals enjoy a presumption of innocence or of guilt?

        iii. What evidentiary threshold would have to be met in those tribunals that review such cases? A preponderance of the evidence? Clear and convincing evidence? Beyond a reasonable doubt?

        iv. Would you authorize the admission of evidence in such tribunals not admissible in civilian courts? How would you go about departing from the evidentiary rules that govern civilian courts?

        v. Would detainees have to be either released or brought to the United States?

Answer: Some of the important questions you raise concern matters of policy, as to which OLC would not be the decision-maker. With respect to the legal questions, I have not studied them sufficiently to form an opinion. If the questions were presented to OLC for resolution, I would follow OLC's traditional methods of interagency consultation before rendering an opinion. I would note that in a January 22, 2009 Executive Order, President Obama established an interagency Special Task Force on Detainee Disposition "to identify lawful options for the disposition of individuals captured or apprehended in connection with armed conflicts and counterterrorism." The Special Task Force is co-chaired by the Attorney General. The Task Force has been directed to report to the President on these issues within 180 days of its establishment. Through its work, the Task Force may provide answers to some of the questions you raise.

13. You also had this to say in *Change for America* regarding the Bush Administration's policies regarding detainees and the war on terror: "Notwithstanding the Court's repudiation of some unlawful and harmful policies, many others remain in need of correction." What other policies do you feel are in need of correction, and how do you think they should be corrected?

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Answer: As a former Deputy Assistant Attorney General and then Acting Assistant Attorney General, my concern about the Bush Administration's actions in the war on terror has focused on OLC and rule-of-law, not policy, issues. My principal criticism has been the failure of the Bush Administration, most notably on issues of torture and domestic surveillance, to comply with valid laws enacted by Congress pursuant to its ample authority under Article I of the Constitution. My strongest objections were aimed at those occasions when the Bush Administration failed to notify Congress when it asserted the authority not to comply fully with a statutory requirement. That was the impetus for my development of the "Principles to Guide the Office of Legal Counsel," as well as my work last summer with former Associate Counsel to President George W. Bush, Brad Berenson, at the request of Senators Feingold and Brownback, to draft legislation that resulted in the introduction of the "OLC Reporting Act of 2008."

14. In your notes for a 2004 panel discussion hosted by the American Constitution Society, you wrote about the war on terror: "Because this is a different kind of war, if war at all, and war has a long history of specific constitutional meaning, I think it is better to describe more precisely just what we are talking about, rather than use an imperfect analogy." (emphasis added)

a. In your view, are we at war?

Answer: Yes.

b. What do you mean by the "specific constitutional meaning" of war? Does the war on terror fail to meet this definition?

Answer: As I testified at my hearing, there is no question that we are at war. The remarks to which you refer above addressed the broader question whether it was useful to speak generally of a "War on Terror." Specifically, I recounted hearing Lee Hamilton speak about the findings of the 9-11 Commission, which he had just finished co-chairing. I noted his explanation that our nation was caught unprepared by the 9-11 attacks because we had not adjusted our understanding of national security to the new demands and threats we were (and are) facing. I further noted that the Commission had recommended several urgently needed changes to our national security apparatus, including in the areas of threat identification, intelligence, and international relations. And I emphasized the Commission's bottom-line conclusion—namely, that the radically changed nature of the threat we face as a nation demands a dramatically different understanding of the requirements of our national security. It was in this context that I pointed out that, despite their direct and serious engagement with these issues, neither Representative Hamilton nor the Commission's Report had generally used the language of "war" or a "War on Terror." I suggested that—following the Commission's lead—it might be a wise choice not to use this language when talking about constitutional questions related to the new national security threats we face, because war has a long history of specialized constitutional meaning. It

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might be better, I suggested, to try to describe more precisely the radical new national security threats our nation faces. With respect to our conflict with Al Qaeda, or our conflicts in Iraq and Afghanistan, however, there is no question that we are at war.

15. In *Guidelines for the President's Legal Advisors, an introduction to Principles to Guide the Office of Legal Counsel*, you stated that, among other things, OLC opinions should account for "the institutional traditions and competences of the executive branch as well as the views of the President who currently holds office." The OLC under President Clinton held that the president can go to war on his own authority; he can conduct the war as he sees fit; a war can exist between the United States and a non-state entity such as al Qaida; and Congress's ability to interfere is limited by the president's constitutional powers, including his Commander-in-Chief power.

a. In your view, do traditions that encompass broad war-making powers, as the Clinton OLC repeatedly noted, fall under the "institutional traditions" that you mention?

Answer: The "institutional traditions and competences of the executive branch" to which I referred would include the body of OLC precedents from earlier Administrations, including the Clinton Administration, and including opinions about the President's Commander in Chief powers.

b. The Obama Administration's position on several war-on-terror related legal issues so far (e.g., the state secrets privilege, extraordinary rendition, and targeted killing) has been in line with the Bush administration's position. Even on the largest issue of apparent difference - interrogation of terror suspects - the Obama Administration has left the door open to authorizing interrogation techniques beyond those in the Army Field Manual. As an outspoken critic of the Bush Administration, how will you reconcile your views with the present administration's positions if confirmed?

c. Do you still hold to all of your criticisms of the Bush Administration's conduct of the war on terror?

Answer: I am not currently aware of any views I hold in this area that differ from those of the Administration, but in any event, if I am confirmed my job will be to offer legal opinions as to what the law is or requires regardless of my personal views of the policies in question. As indicated in my answer to Question 13, my criticism of Bush Administration policies in the war on terror has consistently focused on the inappropriate methods used by OLC in rendering opinions on certain legal issues and on the deficient reasoning in those opinions. In particular, my criticism has focused on opinions concerning torture and the terrorist surveillance program and especially the administration's failure to comply—in

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some cases in secret—with valid federal statutes that limited executive branch action. The Bush Administration itself has withdrawn or disavowed many of the opinions I criticized. Yes, I still hold to those criticisms.

d. What criticisms, if any, do you have of the Clinton Administration's practices or policies regarding the same issues?

Answer: Again, my criticisms have been limited to matters of institutional procedure and legal reasoning, not policy. I do not have any specific criticisms of the Clinton Administration in these regards.

16. In *Change for America*, you also argued in criticizing Bush Administration policy that "extraordinary renditions to countries known to use torture" should "immediately end." Yet former officials of the Clinton Administration have stated that the practice known as extraordinary rendition was regularly practiced during that administration. Richard Clarke, the counterterrorism coordinator for the National Security Council, wrote that renditions-which he defined as "operations to apprehend terrorists abroad, usually without the knowledge of and almost always without public acknowledgment of the host government"—"were becoming routine" by "the mid-1990s." He added that "[s]ometimes FBI arrest teams, sometimes CIA personnel, had been regularly dragging terrorists back to stand trial in the United States or flying them to incarceration in other countries." Michael Scheuer, former chief of the CIA'S Bin Laden Unit, testified that when the CIA initiated a rendition program in 1995, President Clinton and several of his top advisors "made it clear that they did not want to bring those captured to the U.S. and hold them in U.S. custody." Mr. Clarke stated that "President Clinton approved every snatch" – another tern for rendition – "that he was asked to review. Every snatch CIA, Justice, or Defense proposed during my tenure as [Counterterrorism Security Group] chairman, from 1992 to 2001, was approved." Former CIA Director George Tenet asserted the following in 2002: "In conjunction with the FBI, CIA had rendered 70 terrorists to justice around the world" prior to September 11. "Al-Qa'ida might have been able to operate freely in Afghanistan, but the terrorists knew they were fair game elsewhere."

Moreover, in a March 11, 2005 op-ed in the *New York Times* entitled "A Fine Rendition," Mr. Scheuer asserted that officials in the Clinton White House and Justice Department:

> [K]new that taking detainees to Egypt or elsewhere might yield treatment not consonant with United States legal practice. How did they know? Well, several senior C.I.A. officers, myself included, were confident that common sense would elude that bunch, and so we told them - again and again and again. Each time a decision to do a rendition was made, we reminded the lawyers and policy makers that Egypt was Egypt, and that Jimmy Stewart never starred in a movie called 'Mr. Smith Goes to Cairo.' They usually listened, nodded, and then inserted a legal nicety by insisting

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that each country to which the agency delivered a detainee would have to pledge it would treat him according to the rules of its own legal system.

a. Ms. Johnsen, you served in the Office of Legal Counsel during this period. To what extent were you aware of participation in the practice of extraordinary rendition by the Clinton Administration generally, and by the FBI or other components of the Justice Department specifically?

b. Did you ever authorize the practice of rendition or otherwise express an opinion endorsing the legality of the practice? If so, do you believe you made the correct decision?

c. In retrospect, do you believe that the Clinton Administration's practices with respect to rendition were lawful? Do you believe they were otherwise consistent with American values?

Answer: I know that the practice of rendition did not begin with the Bush Administration and my belief is that it is not in all cases unlawful. I have not engaged in any study of the Clinton Administration's rendition practices that would allow me to comment on their legality or advisability. President Obama has ordered reviews of detention and rendition policies. It would be inappropriate for me to answer those questions that would require me to disclose nonpublic legal advice that I provided during the course of my service at OLC. Moreover, the subject matter is such that, if such advice was given, it likely would have been classified.

17. In November 1994, President Clinton's Assistant Attorney General for the Office of Legal Counsel, Walter Dellinger, signed an opinion letter to the White House Counsel in which he said the following:

> The President has enhanced responsibility to resist unconstitutional provisions that encroach upon the constitutional powers of the Presidency. Where the President believes that an enactment unconstitutionally limits his powers, he has the authority to defend his office and decline to abide by it, unless he is convinced that the Court would disagree with his assessment.

a. Did you participate in the preparation of this statement?
b. Do you currently agree with this statement?
c. Were you aware of this position during your tenure in the Justice Department?

Answer: Yes, I believe that all of the OLC leadership (as well as a few line attorneys) participated in the preparation of this memorandum, which has been publicly released. It involved a core question of presidential power and the separation of powers that OLC considered throughout my tenure there, and with which Congress and the Executive Branch continue to wrestle. I have continued

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to think and write about this issue. I generally agree with the statement as a whole, as well as with the way in which Attorney General Eric Holder and Deputy Attorney General-nominee David Ogden recently put it: "[T]he President's power is at its lowest ebb when he acts contrary to a statute duly enacted by Congress, but the Constitution is the supreme law of the land. There are circumstances where a President can refuse to comply with a statutory provision. These include a legislative veto, see INS v. Chadha, 462 U.S. 919 (1983), or a statute purporting to limit the President's removal power in certain circumstances, see Myers v. United States, 272 U.S. 52 (1926)." I further believe, consistent with past practice, that nonenforcement is appropriate only in relatively rare circumstances, and that the President should work with Congress to avoid the enactment of unconstitutional provisions and to repeal any that are enacted. Finally, as I have written and testified, I believe it is critical for the President to notify Congress whenever he determines not to comply fully with a statute (subject to protections for national security information).

18. A few months earlier, in July 1994, Deputy Attorney General Jamie Gorelick argued before the House Select Committee on Intelligence that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes. The Committee at the time was considering legislation to subject such searches to approval from the FISA court. That issue arose when attention was drawn to the practice of intelligence agents conducting clandestine searches within the United States. Such searches extended not only to foreign embassies, but to U.S. citizens within our borders. The warrantless searches of the office and home of Aldrich Ames, a U.S. citizen, in June and October 1993 gave rise to concerns that courts might strike down this practice. Deputy Attorney General Gorelick's testimony before the Senate Intelligence Committee maintained, "the Department of Justice believes, and the case law supports, that the President has inherent authority to conduct warrantless physical searches for foreign intelligence purposes and that the President may, as has been done, delegate this authority to the Attorney General." She stated further, "it is important to understand that the rules and methodology for criminal searches are inconsistent with the collection of foreign intelligence and would unduly frustrate the President in carrying out his foreign intelligence responsibilities." In the Justice Department's view, she testified, it did not matter whether searches were "conducted for foreign intelligence purposes in the United States or against U.S. persons abroad. . . . [w]e believe that the warrant clause of the Fourth Amendment is inapplicable to such searches."

   a. Do you agree with this statement?

   b. Were you aware of this position during your tenure in the Justice Department?

   c. Do you believe the warrantless searches of the office and home of Aldrich Ames were legal?

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Answer: I was generally aware of this issue and of Deputy Attorney General Gorelick's position. Although I had not and still have not carefully studied the question, I had no disagreement with her position and understood it to be the position of the majority of federal courts that had addressed the issue in a related context. I do not know enough about the facts of the Ames case to have a view on whether the searches were legal.

19. In 2000, Assistant Attorney General Randolph D. Moss issued an opinion letter to the Office of Intelligence Policy and Review entitled "Sharing Title III Electronic Surveillance Material with the Intelligence Community," which addressed the statutory provisions governing wiretaps in criminal investigations. That opinion included the following language:

> [I]n extraordinary circumstances electronic surveillance conducted pursuant to Title III may yield information of such importance to national security or foreign relations that the President's constitutional powers will permit disclosure of the information to the intelligence community notwithstanding the restrictions of Title III. . . . Where the President's authority concerning national security or foreign relations is in tension with a statutory rather than a constitutional rule, the statute cannot displace the President's constitutional authority and should be read to be "subject to an implied exception in deference to such presidential powers." *Rainbow Navigation, Inc. v. Department of the Navy*, 783 F.2d 1072, 1078 (D.C. Cir. 1986) (Scalia, J.). We believe that, if Title III limited the access of the President and his aides to information critical to national security or foreign relations, it would be unconstitutional as applied in those circumstances.

a. Do you agree with this statement?

Answer. I do not recall ever reviewing this particular opinion by Assistant Attorney General Moss. As a general proposition, though, and consistent with my answer to question 17, there are circumstances where a statute might be unconstitutional as applied. The President's authority would, however, be at its lowest ebb, as described by Justice Jackson in his important *Youngstown* opinion. If such circumstances arise, the Executive Branch should notify Congress of that fact and seek to obtain an appropriate statutory change. Communication with Congress is critical in such circumstances: It may well be that Congress simply did not contemplate that application, and where national security truly is endangered Congress and the President should work together to develop an appropriate statutory framework.

20. You stated in a posting on Slate.com that Indiana's voter identification law was "excessive and indefensible" and an effort by Republicans to suppress votes. The Supreme Court upheld Indiana's law as constitutional. There was no finding whatsoever that this law was an attempt to suppress votes as you claimed. In fact,

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according to an article in the *Wall Street Journal* on January 30, 2009, Indiana had the largest increase in turnout of Democratic voters of any state in the country at 8.32 percentage points in the November election.

a. Do you acknowledge that your claims about voter suppression were proven wrong?

b. If confirmed, will you pledge to comply with the Supreme Court's holding in *Crawford* and acknowledge that state voter identification laws such as Indiana's are constitutional and not "excessive and indefensible?"

Answer. If confirmed I will of course apply the Supreme Court's decision in *Crawford* whenever it is relevant to an issue before the office. It seems to me that the high overall Democratic voter turnout in Indiana or elsewhere does not necessarily prove any particular effect of voter ID requirements, though that is certainly a subject for study.

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ANSWERS TO QFRs FROM SENATOR SESSIONS

1. Mr. Wainstein and I were colleagues for years, and we are teaching a class together at Georgetown University Law Center. One of the class sessions is devoted to the modernization of the Foreign Intelligence Surveillance Act (FISA). Mr. Wainstein and I agreed that FISA needed to be modernized, but in explaining the reasons for that need, I believe I tended to put more emphasis on the problem posed by foreign-to-foreign e-mail (50 U.S.C. § 1801(f)(4)), while Mr. Wainstein tended to put more emphasis on the problem posed by the migration from satellite to fiber optic cable for carriage of transoceanic communications (50 U.S.C. § 1801(f)(2)-(3)). In part, that difference in emphasis may have reflected Mr. Wainstein's access to classified information as a Department of Justice employee at the relevant time. However, the gist of my testimony was not to highlight specific disagreements with Mr. Wainstein, but rather to point out that even when we differ, we work well together because of our common respect and appreciation for professionalism and serious legal argument.

2. When Congress was considering the Protect America Act and the FISA Amendments Act, I worked with bipartisan Congressional staff on many aspects of the legislation in my individual capacity, but I did not take a final position on the immunity provisions. I understand that the Justice Department has made clear its intent in litigation to support the retroactive immunity provided for in the FISA Amendments Act.

3. As a nominee who is not currently an employee of the Department of Justice, I do not have access to classified and other sensitive information regarding the use of the three authorities you cite. My general impression of them, based on public information, is that they are important investigative authorities that can, if subject to appropriate oversight and safeguards, be exercised in a manner protective of privacy and civil liberties. I note that the Attorney General testified before the Senate Judiciary Committee in his confirmation hearing that he "would probably be supportive of them" but that he would "examine how those provisions have worked, talk to . . . investigators and lawyers and get a sense of what they think has worked well with regard to these provisions, what perhaps needs to be changed." Similarly, if I am confirmed, I will consult with career employees in the Department of Justice and elsewhere in government familiar with the exercise of these authorities in an effort to better understand how they have been used. In particular, in deciding whether to support renewal of the three sunsetting Patriot Act provisions, among other things, I would want to consider any actual and possible use (and/or misuse) of the provisions in question since they were enacted; the relationship between the provisions and any recent amendments to FISA (e.g., in the FISA Amendments Act); the operational environment in which the provisions function and the continuing need or lack of need for them; and perhaps other factors. More generally, I would want to consult with career professionals in the government and consider the possible benefits of any legislative changes improving the statute against the possible costs in the form of disruption or uncertainty resulting from such changes.

Written Questions for Assistant Attorney General Nominee David Kris from Senator Specter

1. On August 22, 2008, the Foreign Intelligence Surveillance Court of Review (the FISA Court of Review) upheld a Foreign Intelligence Surveillance Court decision compelling an unnamed communications service provider to comply with surveillance directives issued by the Attorney General or Director of National Intelligence under the Protect America Act (which has since been replaced by the FISA Amendments Act). In its decision, the FISA Court of Review applied the "special needs" line of cases (e.g., *Terry v. Ohio,* 392 U.S. 1 (1968) (upholding pat-frisk for weapons to protect officer safety)) that create an exception to the Warrant Clause. Under this analysis, the FISA Court of Review held, "a foreign intelligence exception to the Fourth Amendment's warrant requirement exists when surveillance is conducted to obtain foreign intelligence for national security purposes and is directed against foreign powers or agents of foreign powers reasonably believed to be located outside the United States." Slip Op. at 17.

   a. Do you agree with this decision?

   Answer: I agree that the special needs doctrine supports an exception to the Fourth Amendment's Warrant Clause with respect to at least certain forms of foreign intelligence surveillance directed at foreign powers and agents of foreign powers located abroad. Although I have not seen the redacted portions of the Court of Review's opinion, and must reserve judgment on the impact of those portions, I am on record agreeing with other courts that have ruled similarly. See, e.g., *United States v. Bin Laden*, 126 F. Supp. 2d 264, 277 (SDNY 2000) (adopting the foreign intelligence exception to the warrant requirement for searches targeting foreign powers (or their agents) which are conducted abroad). As I explained in the book I co-wrote, prior to the Protect America Act and the FISA Amendments Act, the decision in *Bin Laden* is "very thoughtful" and "[t]his part of [its] reasoning and result ... is sound." *National Security Investigations and Prosecutions* at 16-4 to 16-5. As the book further explains, "there is very little doubt that the President has authority to conduct warrantless foreign intelligence surveillance of U.S. persons abroad. At least until Congress creates a warrant procedure by statute, and invests extraterritorial jurisdiction in some neutral and detached magistrate, the government will continue its long-standing historical practice of conducting searches and surveillance of U.S. persons abroad without a warrant." *Id.* at 16-5.

   b. If not, do you believe that this kind of surveillance is still constitutional based on other reasoning? (E.g., the border exception from *United States v. Montoya De Hernandez*, 473 U.S. 531 (1985))

   Answer: Please see answer above.

2. Last year, in passing the FISA Amendments Act of 2008, Congress approved retroactive immunity for telephone companies that *may* have broken the law by assisting the government in conducting warrantless surveillance. President Obama initially opposed retroactive immunity for telephone companies, although he ultimately voted in favor of the FISA Amendments Act. Plaintiffs have now challenged the immunity provision.

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i. Do you believe providing retroactive immunity to the telephone companies is constitutional?

Answer: I have not studied this question sufficiently to have an informed opinion, and as pointed out in the question, the constitutionality of the retroactive immunity provisions is currently pending in litigation. In light of those factors, I would want to consult with career staff and experts at the Department before taking a position on the constitutional question posed.

ii. Do you agree with Congress that providing retroactive immunity was the best solution? If not, what solution would you propose?

Answer: Please see answer above.

iii. If the courts do not uphold the immunity provision, what actions do you think the executive branch should take, if any, going forward?

Answer: Subject to the caveats in my answer to Part i of this question, I believe the government generally would appeal a lower-court decision striking down the immunity provision. I agree with Dean Elena Kagan, who testified before this Committee on February 10, 2009, that there are only two rare exceptions to the general rule that the government will defend a duly enacted federal statute: the first is where there is simply no basis to do so, and the second is where the statute infringes improperly on the powers of the President. I do not anticipate either exception applying here. If the Supreme Court were to strike down the statute, I would need to study the basis for the Court's decision and consult with career professionals within the Department of Justice to consider viable options.

3. In response to my question at your hearing as to whether warrantless wiretapping, which violates the Foreign Intelligence Surveillance Act, is nevertheless constitutional based on the President's authority as Commander in Chief under Article II, you responded that you would have to see the facts of the particular case. I agreed with that assessment. In your opinion, what facts would weigh in favor of constitutionality and what facts would weigh against when determining whether the President could violate a statute pursuant to his Article II powers under part three of Justice Robert Jackson's three-part analysis in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952)?

Answer: While I am unable to compile a complete list of factors, particularly in the absence of specific facts, among the factors, I believe, would be at least two operational questions. The first concerns the need to obtain the information sought (and the importance of the information as compared to the invasion of privacy involved in obtaining it). The second question concerns the reasons for eschewing the use of FISA (or another governing statute) in obtaining the information. There could be other factors that would be relevant to the issue as well.

4. In *Youngstown*, Justice Jackson said: "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that

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he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty." Last year, Sen. Kennedy and I introduced the State Secrets Privilege Act, a bill just reintroduced with Chairman Leahy. Our bill seeks to codify the standard for evaluating privilege claims, standardize the means for asserting the privilege, and require courts to examine the evidence subject to a claim of privilege.

a. Do you recognize the authority of Congress to legislate in this area?

Answer: I do believe that Congress has general authority to legislate in this area. See *United States v. Reynolds*, 345 U.S. 1 (1953) (addressing Fed. R. Civ. P. 34); Fed. R. Evid. 501. There may, of course, be limits on that authority as applied in particular situations, based on the Constitutional prerogatives of the other two branches of the federal government.

b. Do you agree there is a great benefit in having a uniform standard – including classified procedures – to allow for the evaluation of the state secrets privilege?

Answer: I have not studied this issue in sufficient detail to form an opinion. I recognize that there is a great deal of expertise on this issue both in the Committee and in the Department of Justice. If confirmed, I would look forward to working with both the Committee and the career professionals at the Department of Justice.

5. I recently met with representatives of the Markle Foundation, including former Senator and 9/11 Commissioner Slade Gorton, about a forthcoming report on the progress and shortcomings of information sharing within the Intelligence Community. If confirmed, what will you do to ensure continued improvements in information sharing, especially as it concerns Justice Department components like the FBI?

Answer: As I testified in my opening statement before the Committee, if confirmed I hope in the short run to focus on the very positive evolution of the National Security Division's working relationship with the FBI, particularly in operational matters. I believe that continuing evolution will yield many benefits, including improved information sharing. In addition, as the Department of Justice's primary liaison to the Director of National Intelligence (see 28 U.S.C. § 507A(b)(2)), if confirmed I hope to foster strong relationships between DOJ – including the FBI – and the rest of the U.S. Intelligence Community.

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SUBMISSIONS FOR THE RECORD

ALLIANCE DEFENSE FUND
Defending Our First Liberty

February 13, 2009

Senator Patrick Leahy
Chairman United States Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senate Judiciary Committee Members:

The Alliance Defense Fund ("ADF") submits this letter in opposition to the Department of Justice nominees David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli. ADF is a legal alliance, composed of more than 1,200 attorneys, that focuses its activities around three legal issues: (1) guarding the sanctity of life; (2) protecting marriage and the family; and (3) defending religious freedom. ADF regularly litigates difficult and contentious cases involving both novel and complex constitutional issues. In doing so, ADF consistently advocates for an originalist interpretation of the constitution, with the goal of fostering long-term legal stability and adherence to the "rule of law."

President Obama's most recent nominees for top-level positions in the Department of Justice ("DOJ")—David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli—each subscribe to a results-oriented school of jurisprudence unmoored from a proper understanding of the constitution. Their legal philosophies depart from mainstream views, their professional careers reflect a far-left ideology, and their involvement in the DOJ will jeopardize the proper enforcement of federal law and development of constitutional doctrines. For the reasons expressed herein, ADF opposes each of their nominations and urges the Senate Judiciary Committee ("Committee") to do the same.

David Ogden

President Obama has nominated David Ogden to serve as Deputy Attorney General. Mr. Ogden's far-left jurisprudential background is truly astounding. He has repeatedly been an advocate of sexually oriented businesses, including distributors of hard-core pornography. He has represented a variety of clients seeking to strike down even slight restrictions on abortion, such as parental-consent laws, spousal-consent laws, and 24-hour waiting periods. And he has been a

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consistent advocate for the homosexual agenda. Perhaps most troubling of all, it appears that Mr. Ogden has been somewhat misleading in his testimony before this Committee. For these reasons, which will be more fully discussed herein, ADF urges this Committee to reject Mr. Ogden's nomination.

Throughout his career, Mr. Ogden has been a major defender of sexually oriented businesses and organizations. He has repeatedly represented major organizations within the pornography industry—including Playboy Enterprises, Playboy Programming Distribution Corporation, the Consenting Adults Telephone Rights Association, and PHE, Inc., which is the nation's largest distributor of hard-core pornography and other sexually oriented products. This industry is unique in its extreme degradation of women and disregard for human relationships.

In *United States v. American Library Association*, 539 U.S. 194 (2003), Mr. Ogden submitted an amicus brief on behalf of fifteen library directors, arguing that the federal constitution requires public libraries to remove internet pornography filters. In that brief, Mr. Ogden treated pornography like informative data, writing that "[i]mposition of mandatory filtering on public libraries impairs the ability of librarians to fulfill the purpose of public libraries—namely, assisting library patrons in their quest for information . . . ." In several other cases, including *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994), Mr. Ogden represented sexually orientated businesses and organizations in their quest to avoid any measure—however slight—of government regulation. His advocacy of expansive First Amendment rights for sexually oriented businesses rests on a revisionist understanding of the constitution.

Mr. Ogden has also been a staunch supporter of abortion, seeking to eradicate any state or federal law protecting unborn children or educating women about the harms of abortion. In *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), Mr. Ogden argued, in a brief for the American Psychological Association, that a parental-consent law violated the constitutional "right" of a 14-year-old girl to kill her unborn child. In that brief, Mr. Ogden argued that 14-year-old girls are mature enough to decide whether to abort their child, stating that "the decision to abort is one that . . . a reasonable adolescent[] could make." He also asserted that 14-year-old girls are just as capable of making abortion decisions as adults are:

> [E]mpirical studies have found few differences between minors aged 14-18 and adults in their understanding of information and their ability to think of options and consequences when asked to consider treatment-related decision. These unvarying and highly significant findings indicate that with respect to the capacity to understand and reason logically, there is no qualitative or quantitative difference between minors in mid-adolescence, i.e., about 14-15 years of age, and adults.

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Mr. Ogden's efforts to invalidate parental-consent laws conflict with citizens' sentiment in this country; nearly 70% of Americans favor laws requiring women under 18 to get parental consent for any abortion. *See* Gallup's Pulse of Democracy: Abortion, *available at* http://www.gallup.com/poll/1576/Abortion.aspx.

In *Casey v. Planned Parenthood of S.E. Pennsylvania*, 505 U.S. 833 (1992), Mr. Ogden argued, in an *amicus* brief for Planned Parenthood and the American Psychological Association, that spousal notification and a mandatory 24-hour waiting period violate the federal constitution. He reasoned that "compelled spousal notification places a substantial burden on a married woman's right to terminate her pregnancy" and "cannot be justified [by] the [government's] interest in promoting the integrity of the marital relationship." By taking this position, Mr. Ogden's brief advocated the invalidation of a spousal-notification law supported by 64% of Americans. *See* Gallup's Pulse of Democracy: Abortion, *available at* http://www.gallup.com/poll/1576/Abortion.aspx. He also insisted that a minimal waiting period of 24 hours "severely burdens a woman's right to choose." These absolutist positions on abortion are based on a flawed understanding of the constitution, wholly disconnected from the federalist principles upon which our great nation was founded. Mr. Ogden's views leave no room whatsoever for the state to advance its compelling interest in its future citizens and taxpayers.

Mr. Ogden has also been an unwavering advocate for homosexual activists. In *Lawrence v. Texas*, 539 U.S. 558 (2003), he served as counsel for the American Psychological Association and argued that the criminalization of sodomy violates federal constitutional rights. In that brief, he asserted that "homosexuality is a normal form of human sexuality." He also argued, despite abundant evidence to the contrary, that "the children of [same-sex couples] . . . demonstrate no deficits in intellectual development, social adjustment, or psychological well-being as compared to children of [opposite-sex couples]." He submitted a brief advocating similar positions in *Bowers v. Hardwick*, 478 U.S. 186 (1986).

Mr. Ogden supports the use of "strict scrutiny" for equal-protection challenges brought by persons involved in same-sex relationships. He has asserted that "gay men and lesbians constitute a discrete and insular minority deserving strict equal protection scrutiny." Donald N. Bersoff and David W. Ogden, "APA Amicus Curiae Briefs: Furthering Lesbian and Gay Male Civil Rights," American Psychologist, Vol. 46, No. 9, p. 950-56 (Sept 1991). This radical legal theory has been rejected by nearly every court that has addressed the issue. *See, e.g.*, *Hernandez v. Robles*, 7 N.Y.3d 338, 855 N.E.2d 1 (2006); *Andersen v. King County*, 158 Wash.2d 1, 138 P.3d 963 (2006); *Conaway v. Deane*, 401 Md. 219, 932 A.3d 571 (2007). The only judicial opinion adopting that approach—the California Supreme Court's decision in *In re Marriage Cases*, 43 Cal.4th 757, 183 P.3d 384 (2008)—has been resoundingly rejected by the people of California when they approved a

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constitutional amendment that effectively nullified the Court's decision. Mr. Ogden's advocacy of such radical constitutional jurisprudence lacks any basis in sound constitutional theory; instead, it is intended to further his favored political end, without regard for an originalist understanding of the document he purports to be interpreting.

And perhaps more troubling than Mr. Ogden's far-left jurisprudence is his lack of candor before this Committee. In a child pornography case, *United States v. Knox*, Mr. Ogden argued—on behalf of the ACLU, the American Library Association, and the American Booksellers Association—that the defendant had been improperly convicted under the federal child pornography statute. In that case, the Department of Justice adopted an "extreme" interpretation of the child pornography law, asserting that materials do not qualify as child pornography unless there is actual nudity, *i.e.*, the child's genitals or pubic area are fully or partially exposed. President Clinton publicly chastised the DOJ for its position, as did the Senate, by a vote of 100-0, and the House, by a vote of 425-3.

When questioned about this case during the Judiciary Committee's hearing, Mr. Ogden stated that he and his clients did not adopt what he characterized as the DOJ's "very extreme view . . . of the law." He stated: "The brief that I submitted . . . made a different point. . . . The court decided not to accept that view, but it wasn't the view—the extreme view that I myself rejected—that the Justice Department brief took." It appears, however, that Mr. Ogden's brief had in fact adopted the same "extreme" position put forth by the DOJ. The DOJ's brief asserted that "[d]epictions . . . come within the statute only if they show minors engaged in the conduct of lasciviously exhibiting their . . . genitals or pubic areas." Brief of Respondent United States at 13, *Knox v. United States*, No. 92-1183 (U.S.S.C. Sept 1993) (found at 1993 WL 723366). Similarly, Mr. Ogden's brief argued that "nudity was not only a requirement, but that nudity alone was insufficient. Something more, a 'lascivious exhibition of the genitals and public areas,' was required." Brief of *Amici* in support of Petitioner at 17, *Knox v. United States*, No. 92-1183 (U.S.S.C. Sept 1993) (found at 1992 U.S. Briefs 1183 (Lexis)). This lack of candor in Mr. Ogden's testimony further demonstrates that he is not fit to serve as a high-ranking DOJ official.

Elena Kagan

President Obama has nominated Elena Kagan to serve as Solicitor General. In her past, Ms. Kagan has shown open hostility towards the military's "Don't Ask, Don't Tell" policy, which is favored by a majority of Americans and, more importantly, by a majority of military servicemen and women. *See* Gallup's Pulse of Democracy: Homosexual Relations, *available at* http://www.gallup.com/poll/1651/Homosexual-Relations.aspx; Military Times Poll, *available at* http://www.militarycity.com/polls/2007activepoll_politics.php.

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While Dean of Harvard Law School, Ms. Kagan did not allow military recruiters on campus in protest to the military's "Don't Ask, Don't Tell" policy. In an email to the Harvard Law School community, she referred to this fifteen-year policy as "a profound wrong—a moral injustice of the first order." *See* Email from Elena Kagan, Dean Harvard Law School, to Harvard Law School Community (Oct 6, 2003, 9:04 EST), *available at* http://www.hlrecord.org/home/index.cfm?event=displayArticlePrinterFriendly&uStory_id=fb9b7e30-726c-45a1-ae9c-e74a7c5f655f.

Moreover, Ms. Kagan submitted an *amicus* brief challenging the Solomon Amendment, the federal law denying federal funding to an institution of higher education that has a policy or practice of prohibiting or preventing the military from gaining access to campuses for purposes of military recruiting. The *amicus* brief joined by Ms. Kagan and other law professors offered an implausible interpretation of the Solomon Amendment, which was rejected by a unanimous Supreme Court. *See Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47 (2006). In fact, the Court's opinion characterized Ms. Kagan's interpretation as one that would render the Solomon Amendment "largely meaningless." *Id.* at 57-58.

Ms. Kagan's proffering of an unsupportable interpretation of federal law to achieve her desired political result raises serious questions about her capacity to defend federal laws with which she personally disagrees. She appears driven by a results-oriented jurisprudence, unfitting for a high-ranking DOJ official who should not be tainted by an extremist ideology. Her outright hostility towards governing military policy and her inability to reconcile her personal views with her legal positions demonstrates that Ms. Kagan is ill qualified for the job of Solicitor General.

Dawn Johnsen

President Obama has nominated Dawn Johnsen to lead the Office of Legal Counsel within the DOJ. One need not explore far to see Ms. Johnsen's far-left legal background and jurisprudential theories. She was a staff counsel for the ACLU, and served as Legal Director for the National Abortion Rights Action League ("NARAL"). NARAL has adopted extreme, absolutist positions on abortion, opposing any attempt to restrict abortion on-demand. In line with its unwavering demands on abortion, NARAL has publicly condemned the federal law banning partial-birth abortions, *see* NARAL Pro-Choice American Press Release, "Senate Votes to Criminalize Safe, Legal Medical Procedures, Next Stop is President Bush" (Oct 21, 2003), *available at* http://www.commondreams.org/ news2003/1021-04.htm—a law supported by more than 72% of Americans. *See* Gallup's Pulse of Democracy: Abortion, *available at* http://www.gallup.com/poll/1576/Abortion.aspx.

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As a legal scholar, Ms. Johnsen has promoted radical legal positions concerning abortion. She has sharply criticized the creation of any legal rights for unborn children, asserting that this might have a deleterious effect on her desired end—a woman's unfettered access to abortion. *See* Dawn E. Johnsen, "The Creation of Fetal Rights: Conflicts with Women's Constitutional Rights to Liberty, Privacy, and Equal Protection," 95 Yale L.J. 599 (Jan 1986). In addition, she has adopted far-left feminist positions, arguing that "[f]etal rights laws would not only infringe on constitutionally protected liberty and privacy rights of individual women, they would also serve to disadvantage women as women by further stigmatizing and penalizing them on the basis of the very characteristic that historically has been used to perpetuate a system of sex inequality." *Id.* at 620. These radical legal theories are far outside mainstream legal thought; they are grounded in achieving her desired end—the widespread availability of abortion—and not in a proper understanding of constitutional doctrine. And again, they run contrary to the government's profound interest in promoting life.

Thomas Perrelli

President Obama has nominated Thomas Perrelli as Associate Attorney General. While in private practice, Mr. Perrelli represented Terri Schiavo's husband and worked closely with the ACLU to deprive Ms. Schiavo of food and water. His intimate involvement in that case and tireless efforts to ensure Ms. Schiavo's death show a calloused disregard for the sanctity of all life, including the lives of disabled individuals.

In fostering Ms. Schiavo's death, Mr. Perrelli advanced a legal position rejected by 80% of Americans. A poll completed after Ms. Schiavo's controversial death found that 80% of likely voters said that a disabled person who is not terminally ill or in a coma should not, in the absence of a written directive to the contrary, be denied food and water. *See* Zogby International Poll, *available at* http://www.zogby.com/search/ ReadNews.cfm?ID=982. Moreover, by a three-to-one margin, likely voters said that, when there is conflicting evidence on the wishes of a patient, elected officials should order that a feeding tube remain in place. *See* Zogby International Poll, *available at* http://www.zogby.com/search/ReadNews.cfm?ID=982. Mr. Perrelli's unwillingness to protect Ms. Schiavo's most important right—her inalienable right to life—raises serious questions about his ability to protect and defend the rights of other Americans.

Conclusion

ADF respectfully requests that the Committee reject the DOJ nominations of David Ogden, Elena Kagan, Dawn Johnsen, and Thomas Perrelli. Their far-left, results-oriented jurisprudence is wholly unmoored from the constitution as drafted and understood by our Founders. Confirming them to high-level DOJ positions will wreak havoc on the "rule of law" in our country.

Respectfully submitted,

The Alliance Defense Fund

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ADL Anti-Defamation League®

October 8, 2009

The Honorable Harry Reid
Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader Reid,

On behalf of the Anti-Defamation League, we write to express strong support for Dawn Johnsen to serve as Assistant Attorney General for the Justice Department's Office of Legal Counsel (OLC). We believe Ms. Johnsen is an excellent choice to serve in this critically important Justice Department post because of her extensive experience, good judgment, and longstanding commitment to public service and the rule of law.

The Senate Judiciary Committee approved her nomination on March 19 – and we would urge you to now act expeditiously on her nomination. Opposition to Ms. Johnsen's confirmation has focused almost exclusively on her policy views – not lack of ability or qualifications. Senators may disagree on fundamental policy issues, but such disagreements do not justify any further delay of a vote on a nominee as capable and experienced as Ms. Johnsen. As long as the AAG position in the Office of the Legal Counsel remains unfilled, that office will continue to be seriously hampered in its effort to fulfill its essential mandate for the Administration.

Ms. Johnsen's scholarship, background, and experience make her extremely well qualified for this position. During her tenure in leadership posts at OLC from 1993-1998, she demonstrated a keen intellect, dedication, and commitment to the integrity of that office. Her support for greater transparency in OLC's work is welcome.

At this time of great opportunity and challenge, we believe that Ms. Johnsen is an excellent choice to serve as Assistant Attorney General for the Office of Legal Counsel.

We urge the Senate to act promptly and favorably on her nomination.

Sincerely,

Deborah M. Lauter
Director, Civil Rights

cc. Jess N. Hordes, ADL Washington Director

ANTI-DEFAMATION LEAGUE, 605 THIRD AVENUE, NEW YORK, NY 10158-3560 212-885-7700 FAX: 212-867-0779 WWW.ADL.ORG

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THE ASHCROFT GROUP, LLC

February 23, 2009

David S. Kris
Time Warner
800 Connecticut Avenue, NW
Suite 800
Washington, DC 20006

Dear David:

Congratulations on your nomination to be Assistant Attorney General for National Security. Your abilities, experience and judgment make you uniquely qualified for this important position, and I am very pleased for you and for the country. I hope that the Senate will confirm you quickly.

I remember our initial meeting in 2001, when you presented me with my first FISA applications. Over the years that followed, until your departure in mid-2003, Larry Thompson and I both came to rely on you heavily in a variety of sensitive areas. You were then, as you are now, an acknowledged expert in the field of national security investigations.

Looking back, I appreciated the way you combined certain qualities that do not often comfortably co-exist in one person. You brought to your work both analytic precision and pragmatism, a deep understanding of the theory and practice of law and government, an unwavering commitment to national security and civil liberties, and a refreshing willingness to search for creative solutions to serious problems. I saw these qualities at work in your efforts to lower the FISA Wall; in several other areas while you were at the Justice Department; and in the insightful treatise you wrote after leaving government. Your intelligence, scholarship, independence, and wisdom are valuable national assets. I am happy that President Obama has joined Presidents Clinton and Bush in drawing upon those assets and is asking you to serve in a high-level position at the Department of Justice.

Please feel free to share this letter with Members of Congress or others in connection with your nomination.

Sincerely,

John Ashcroft

John Ashcroft

1399 NEW YORK AVENUE • SUITE 950 WASHINGTON, D.C. 20005 MAIN: (202) 942-0202 • FAX: (202) 942-0216
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Stewart A. Baker
Washington DC 20006
January 29, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I am writing in support of David Kris's confirmation as Assistant Attorney General for National Security.

I have just completed three and a half years as the Assistant Secretary for Policy in the Department of Homeland Security under President George W. Bush. Before that, I had an active practice in the field of national security, law enforcement and technology, all growing out of my experience as General Counsel of the National Security Agency during the presidencies of George H.W. Bush and Bill Clinton. In that capacity, I came to know David Kris well. He was an acknowledged expert in my field, at a time when few knew anything about FISA, national security law, and its relationship to emerging technology.

David is a careful, thoughtful student of national security law. I support him for this high office because I am confident that he believes that the rule of law is consistent with an aggressive pursuit of the national security interests of the United States. No doubt there are issues on which we disagree, but I have every confidence in David's willingness to be fair-minded in evaluating the legal issues that will come before him.

I was the General Counsel of the WMD Commission that recommended creation of the National Security Division, and I am pleased that the President has nominated such a well-qualified lawyer to lead it. David has the background and attributes necessary to turn the Division into the force that it should be within the Department of Justice and the Executive Branch. He has the background and temperament to make sure we do not have another fatal division between law enforcement and intelligence, to build an effective partnership with the FBI's national security branch, and to ensure that the United States maintains a lawful and effective response to terrorism and other national security challenges.

One last point: as the 9/11 Commission reminded us, delays in confirming uncontroversial nominees meant that only many members of President Bush's national security team had been on the job only a few weeks when the terrorist threat was building in August and September of 2001. The Commission said, quite correctly, that we cannot afford such a laggardly pace in the future. It recommended that votes to confirm or reject national security nominees occur within 30 days of nomination. Now is the time to set a new tradition for such positions. For that reason, I urge you in the strongest possible terms not just to confirm David Kris but to do so as promptly as possible. As the 9/11 Commission emphasized, we cannot afford months of drift in such a critical position.

Very truly yours,

Stewart A. Baker

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Evan Bayh

United States Senator
Indiana
February 25, 2009

STATEMENT OF SENATOR BAYH
Madame Chair, Ranking Member Specter, and other distinguished members of the Judiciary Committee, thank you for this opportunity today to introduce an individual for whom I have great respect and confidence, Professor Dawn Johnsen.

Professor Johnsen is an accomplished scholar and experienced government lawyer who is well-qualified to serve as Assistant Attorney General for the Office of Legal Counsel. Her experience as Acting Assistant Attorney General under President Clinton means she will be ready to provide the President and the Attorney General with outstanding legal advice from day one. In particular, she already understands the challenge of providing advice that is grounded in the law and mindful of the separation of powers enshrined in our Constitution.

As someone whose family suffered losses in the attacks of September 11th, Professor Johnsen understands the serious and sobering challenges that threaten our national security. But she also knows that we can defeat our enemies – no matter how determined they may be – without sacrificing our cherished American values and ideals.

Professor Johnsen has also demonstrated the intellectual heft required of this position. She is a graduate of Yale College and Yale Law School, where she served as an editor of the Yale Law Journal.

As a professor of law at Indiana University, she has written extensively on Constitutional law, the separation of powers, and legal constraints on executive power. There is no doubt that she has both the knowledge and expertise to help navigate the challenging matters of law and justice which will confront our President.

One of the most important qualifications for any high-ranking government lawyer is good judgment. Professor Johnsen demonstrated outstanding judgment when she married into one of Indiana's great families. Professor Johnsen and her husband John Hamilton – who is the nephew of former Congressman Lee Hamilton – exemplify the best Hoosier values of family and community. Despite the many demands on her time, Professor Johnsen is a devoted mother to her two boys, Matthew and Eric, and teaches Sunday school at First United Methodist Church in Bloomington.

I have high confidence that, if confirmed as Assistant Attorney General for the Office of Legal Counsel, Professor Johnsen will be a valuable member of the new Administration and will to provide our Commander-in-Chief with the outstanding legal advice he needs to protect and defend our country.

Madame Chair and Ranking Member Specter, it is my distinct pleasure to present for this committee's consideration Professor Dawn Johnsen.

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John B. Bellinger, III
[redacted]

February 2, 2009

The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to support the nomination of David S. Kris as Assistant Attorney General for the National Security Division of the Department of Justice.

I worked very closely with Mr. Kris from 1997 until 2003, while Mr. Kris served in the Criminal Division of the Department of Justice and subsequently as Associate Deputy Attorney General. During this period, I served as Counsel for National Security Matters in the Criminal Division from 1997-2001 and subsequently as Legal Adviser to the National Security Council from 2001-2005. I subsequently served as Legal Adviser to the Secretary of State from 2005-2009, and I had previously served as Special Counsel to the Senate Intelligence Committee in 1996.

Based on these experiences, I can confidently say that I believe that there is no more qualified person to serve as Assistant Attorney General for the National Security Division than Mr. Kris. He possesses an unparalleled knowledge of intelligence and law enforcement laws and policies, especially with respect to foreign intelligence surveillance and wiretap laws. He has worked closely with the Intelligence Community, the Departments of State and Defense, and the National Security Council. While I served as Legal Adviser to the National Security Council, I placed great trust in Mr. Kris's judgment and counsel. While we served together at the Department of Justice, he was deeply respected by colleagues in all parts of the Department, including the Federal Bureau of Investigation, for his expertise, pragmatism, impartiality, and good humor. I personally know him to be a calm, non-partisan, and hard-working lawyer of the greatest integrity, who is capable of analyzing and balancing the requirements of national security and civil liberties.

Mr. Kris will also be an important resource for the Committee as it carries out its legislative and oversight functions. He has previously testified before Congress on a number of occasions, and the Committee will be able to rely on his expertise, candor, and integrity.

I strongly urge the Committee and the full Senate to approve Mr. Kris's nomination.

Sincerely,

John B. Bellinger, III

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January 30, 2009

Honorable Patrick Leahy, Chairman
United States Senate Committee on the Judiciary
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
711 Hart Building
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

As the Judiciary Committee considers the nomination of Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel, its members may wish to take into account a recent experience I had working with her on draft legislation related to that office. Although there is probably more publicly available information concerning her views on the proper role of the Office of Legal Counsel than any previous nominee for this position, I relate the additional information below in case it might be of assistance to the Committee in its deliberations.

On April 30, 2008, Professor Johnsen and I testified together in a hearing before the Subcommittee on the Constitution chaired by Senator Feingold in which we offered the Subcommittee our views on "Secret Law and the Threat to Democratic and Accountable Government," a subject which embraced many issues relating to the appropriate bounds of executive branch secrecy with respect to legal matters. She and I served as lawyers in different presidential administrations -- Prof. Johnsen in President Clinton's Justice Department and I in the White House of President George W. Bush -- and we represented somewhat different points of view on many of the topics under discussion. However, during the hearing, we agreed generally on the proposition that requiring some measure of additional inter-branch transparency with respect to a limited category of OLC opinions would serve the public interest, the separation of powers, and democratic accountability.

We were accordingly invited by Senators Feingold and Brownback to work together following the hearing to see if we could mutually agree upon legislative language that would accomplish this goal and appropriately balance the executive branch's legitimate need to receive confidential legal advice with Congress's legitimate need to know and understand how the laws it passed are being executed, interpreted, and applied. After several months of discussions and negotiations, which also involved Senate staff, Prof. Johnsen and I ultimately reached agreement

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on a draft bill that became the OLC Reporting Act of 2008, which Senator Feingold introduced and which passed unanimously out of the Committee at the end of the last Congress.

Throughout our negotiations, I found Prof. Johnsen to be fair and reasonable. When she made sound points, I compromised on issues and concerns that I had, and when I made sound substantive points, she responded in kind. In particular, Prof. Johnsen made important compromises in order to ensure that the needs and interests of the Executive Branch were protected and that the bill did not violate the separation of powers. One of the most difficult issues involved how to require more transparency and reporting about legal advice without invading the constitutionally-based legal privileges of the executive branch. Ultimately, we devised a solution that allowed the executive to minimize the scope of disclosure where necessary to protect privileged information. The narrower disclosure enables Congress to be made aware that advice has been given without compromising the privileged substance of that advice. This allows the normal tools of congressional oversight, and the various inter-branch accommodations that are an essential feature of that oversight, to determine the extent to which Congress is permitted access to information the executive believes is covered by privilege. In my opinion, this compromise was necessary to ensure that the bill was constitutional, and Prof. Johnsen prudently and responsibly agreed to it. She also acceded to certain compromises designed to guard against excessive reporting burdens and to protect classified national security information.

Overall, the attitudes and opinions she expressed during our negotiations, and the actions she took, reflected a balanced view of the separation of powers and an appropriate respect for the interests of the branch of government that will become her client if she is confirmed. Although clearly rejecting some of more aggressive views of executive authority espoused by the Bush Administration (which concluded the bill was unconstitutional and sent a senior adviser veto threat through Attorney General Mukasey when the bill reached the floor of the Senate), she also did not appear to me to be an adherent of extreme congressionalist views, either. Rather, based on our interactions on this subject, she struck me as a thoughtful lawyer motivated primarily by a concern for good government and a desire to see our democratic system work properly.

I hope these observations, limited though they are, will be of some use to the Committee as it considers her nomination.

Sincerely,

Bradford A. Berenson

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Michigan Law
University of Michigan Law School

Evan H. Caminker
Dean and
Branch Rickey Collegiate Professor

625 South State Street
Ann Arbor, Michigan 48109-1215
[redacted]

January 27, 2009

Chairman Patrick J. Leahy
Ranking Member Arlen Specter
Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Committee Members:

I am writing to express my enthusiastic and unreserved support for the nomination of Dawn Johnsen for the position of Assistant Attorney General in the Office of Legal Counsel, United States Department of Justice.

I have known Ms. Johnsen ever since we were classmates at Yale Law School in the mid-1980s. Over the past 25 years we have worked together or in parallel fashion in several different professional capacities, including collaboration on significant litigation projects, service in OLC in the 1990s (where I was a Deputy Assistant Attorney General just after Ms. Johnsen completed her stint as Acting Assistant Attorney General), and in the academy.

Ms. Johnsen is an extremely talented lawyer and dedicated public servant. She is very intelligent, insightful, and intellectually thoughtful, and she of course brings a wealth of experience to this position. She is a person of great integrity and high ethical standards: she will care about doing her job both well and right, and she will care about serving her client and the public interest. Ms. Johnsen is simultaneously an outstanding leader and a collaborative team player, both skills being equally required for this position.

I cannot imagine a better or more appropriate person to lead the Office of Legal Counsel at this time. She will serve the nation with great distinction and honor.

Sincerely,

Evan Caminker

Michael Chertoff
[redacted]

January 30, 2009

VIA REGULAR MAIL

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter and Members:

I am writing to give my strong support to the nomination of David S. Kris to serve as Assistant Attorney General for National Security.

As you know, I was Assistant Attorney General of the Criminal Division from 2001-2003. At that time, my responsibilities included those currently assigned to the National Security Division (which then did not exist). Accordingly, I am very familiar with the nature of the position for which Mr. Kris is being nominated.

During my tenure at the Justice Department, I worked regularly with David as he served in the office of the Deputy Attorney General. Generally, our area of focus involved national security law, policy and legislation.

During my tenure, I observed David to be an outstanding attorney with excellent judgment, strong knowledge of the national security subject matter and a balanced viewpoint. While evenly tempered, David is deeply committed to the Department of Justice in which he served for a decade. He is polite but firm in "doing the right thing." I respect him as a professional and think his background and experience make him ideally suited to lead the National Security Division.

Finally, David's close working experience with the FBI will be a particular asset in the position for which he has been nominated.

I strongly support David's nomination. Please contact me if I can assist you with this matter.

Very truly yours,

Michael Chertoff



Georgetown Law
Free University of Berlin
University of Fribourg (Switzerland)
Hebrew University of Jerusalem
King's College London
University of Melbourne
National University of Singapore
University of Sao Paulo
University of Tokyo
University of Toronto

February 6, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write in support of President Obama's nomination of David Kris as Assistant Attorney General for National Security. I know David through his public testimony and commentary on national security issues, and through his position as an adjunct professor at Georgetown University Law Center, where I am also a professor. (I teach and write in areas of Constitutional Law, National Security and Civil Liberties, and Criminal Justice, and have testified in Congress on these issues on many occasions. This year I am Co-Director of the London-based Center for Transnational Legal Studies, a joint venture of Georgetown and ten other law schools).

David is one of the country's most knowledgeable and thoughtful lawyers on issues of national security. He teaches a course in the subject at Georgetown, and has written an excellent and balanced casebook on the subject that is clearly informed by his extensive experience as a lawyer for the government and the private sector addressing these issues. He has always struck me as a lawyer's lawyer, careful in his assessments of legal questions, preferring sound analysis and nuanced argument over the rhetoric that too often mars debates in this area. He has served under both the Clinton and Bush administrations. After leaving the Justice Department, he showed substantial independence in assessing critically, in testimony before this Committee, the Department of Justice's arguments in defense of the National Security Agency's warrantless electronic surveillance program. At the same time, that

David Cole
Co-Academic Director, Center for Transnational Legal Studies
[redacted]

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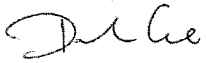
testimony was characteristically cautious in drawing conclusions, maintaining that without access to the facts regarding the full scope of the program, he could not draw a firm conclusion as to its constitutionality.

I am a strong defender of civil liberties, and I have not always agreed with every aspect of David's analysis of subjects touching on national security and civil liberties. However, the quality of his legal analysis means that his arguments must always be taken seriously. Perhaps most importantly, he has always struck me as open-minded and genuinely committed to preserving both security and liberty.

For these reasons, I enthusiastically support the President's nomination of David Kris.

Sincerely,



David Cole

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McGuireWoods LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030
Phone: 804.775.1000
Fax: 804.775.1061
www.mcguirewoods.com

Richard Cullen

McGUIREWOODS

Direct Fax: [redacted]

February 2, 2009

United States Senate
Committee of the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: David S. Kris

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I am writing to support the nomination of David Kris to be Assistant Attorney General for National Security.

I am Chairman of McGuireWoods and have worked with David Kris very closely while he was Senior Vice President and Deputy General Counsel of Time Warner Inc. Previously I served as United States Attorney for the Eastern District of Virginia after being appointed by President George H.W. Bush and as Attorney General of Virginia appointed by Governor George Allen.

David Kris is one of the brightest lawyers with whom I have dealt. But more importantly, he has tremendous judgment, is thoughtful, and posses the highest integrity. As an American and someone who is more identified with Republican administrations than Democratic ones, I was extremely pleased to learn that David Kris was being nominated for such a vitally important position as Assistant Attorney General for National Security. In our past discussions with him about national security, I have learned that David is pragmatic, thoughtful, respects liberty and security, and is essentially apolitical. From our past experiences I know that he is not afraid to make tough decisions, will never shy from speaking the truth to the Deputy Attorney General, the Attorney General, and to Congress. I have every confidence that the career attorneys and staff at the Department of Justice will be very pleased to work under such a professional as David Kris.

In summary, I believe that David Kris is the right person for what I believe is one of the most important nominations the President will make. I hope your Committee will recommend that he be confirmed.

Very truly yours,

Richard Cullen

RC:ngp

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Yale Law School

DREW S. DAYS, III
Alfred M. Rankin Professor of Law

February 9, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Senator Specter:

I am writing you to express my strong support for Dawn Johnsen who has been nominated by the President to serve in his Administration as Assistant Attorney General for the Office of Legal Counsel in the Department of Justice. Based upon my personal and professional association with Ms. Johnsen that now spands almost twenty-five years, I have every confidence that she is exactly the right person to fill the OLC post at this crucial juncture in the history of our Nation and of the Department of Justice.

My first contact with Ms. Johnsen was during the 1985-86 academic year at Yale Law School. I was a rather new member of the Faculty and Ms. Johnsen was one of the Article and Book Review editors of the Yale Law Journal. It proved to be my good fortune that she was assigned the job of editing one of my first articles for the Journal. While understandably deferential to me as a faculty member, Ms. Johnsen was, nevertheless, clear and firm, in expressing her views on how my draft might be improved. I think that both of use were pleased with the final result.

Since then, I have maintained contact with Ms. Johnsen in a number of different respects. First, I have read and relied upon, in my own teaching and writing, a number of Ms. Johnsen's scholarly publications on constitutional jurisprudence and Supreme Court practice. Second, I have either served with her, or been in the audience, at presentations on developments at the Supreme Court or in the Department of Justice. Third, during my tenure from 1993-1996 as the Solicitor General of the United States, I had frequent opportunities to discuss with Ms. Johnson and her boss, Walter Dellinger, the Assistant Attorney General, the work of the Office of Legal

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Counsel. In all of the foregoing respects, the personal qualities of Dawn Johnsen then were the same ones that I had admired in the student who had edited my Journal piece: extremely thoughtful, well-prepared, candid and direct, yet courteous and respectful, in presenting her views. It was apparent that she worked hard to consider seriously competing arguments before taking a final position on whatever matter might be at hand.

I would be remiss, however, if I left you with the impression that the only thing that OLC needs as Assistant Attorney General is someone with sterling professional qualifications and impeccable personal characteristics. They certainly are necessary but not sufficient, in my estimation. For, as you are fully aware, the Justice Department, in general, and OLC, in particular, have gone through a trying eight years in which their high standards of candor, accuracy and freedom from political influence have been severely undermined and flagrantly ignored. And the morale of the Department's career lawyers and other employees has reached an unprecedented low level, threatening the overall effectiveness of this crucial law enforcement agency.

Given these dire circumstances, the new leadership must be characterized, to the greatest extent possible, by prior experience with, and knowledge of, the proper workings of their respective components from the Attorney General on down. Insofar as OLC is concerned, it will take someone who can perform the delicate task, for example, of identifying those opinions of the former administration that need to be disavowed, or explicitly reversed, from those that should not. I cannot think of anyone more qualified than Dawn Johnsen to carry out this agenda with intelligence, expedition and firmness.

Sincerely,

Drew S. Days III

Drew S. Days, III



February 23, 2009

Chairman Patrick J. Leahy
Ranking Member Arlen Specter
Members of the Senate Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of David Kris

Dear Chairman Leahy, Ranking Member Specter and Members of the Senate Judiciary Committee,

On behalf of the United States Internet Service Provider Association (US ISPA), a national trade association representing many of the country's major Internet and network service providers, I write to express our support for the nomination of David Kris for Assistant Attorney General of the United States.

We are encouraged by Mr. Kris' previous service in the Justice Department and his extensive experience in the private sector. Throughout his career, Mr. Kris has shown that he is a professional with expertise in law enforcement and intelligence matters. Mr. Kris is an exemplary candidate, a smart and pragmatic attorney who is devoted to the Department of Justice and its personnel. We believe he will respect and uphold the rule of law and lead the National Security Division in balancing the needs of security and liberty.

Mr. Kris is a highly-qualified candidate to serve in the Department of Justice, and we believe he will work diligently to ensure the safety, security and liberties of the American people.

For these reasons, we respectfully urge the Committee to confirm the nomination of David Kris for Assistant Attorney General.

Sincerely,

Kate Dean
Executive Director

U.S. Internet Service Provider Association
700 12th Street, NW • Suite 700
Washington, DC 20005
(p) +1.202.904.2351 • www.usispa.org

March 18, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Nomination of Dawn E. Johnsen

Dear Chairman Leahy and Senator Specter:

The Senate's task in confirming nominees for senior Justice Department offices is always important and frequently difficult. Often, Senators can do no more than attempt to project from a nominee's past writings, speeches and positions some estimation of how that individual might perform in the position for which he or she has been nominated. In this instance, however, the guesswork has been eliminated: Dawn Johnsen spent nearly five years in major leadership roles in the Office of Legal Counsel, a year and a half of that time as its acting head. The views of those throughout the government with whom she worked, and the opinions published under her name, establish that she is an exceptional choice to head the office.

Sometime during the years that Dawn Johnsen served as Deputy Assistant Attorney General while I was head of the office, her colleagues in OLC's leadership and I adopted a simple motto to guide our deliberations: *"Dawn Johnsen Is Always Right."* This was offered only partially in jest. The senior officials of the office would debate complex issues among ourselves for days and finally realize, time and again, that Dawn's first answer was the right one after all. Finally, after many recurrences, we memorialized this pattern into a testament of tribute to Dawn.

Dawn's capacity to come to the right answer -- the answer that after much analysis, lengthy discussion and sober analysis others came to agree was the best rendering of the law -- was not just a product of her keen intellect and extraordinarily good judgment. There was more. Dawn's deep dedication to the rule of law allowed her to put aside immediately and emphatically the confounding influences of policy preferences, political partiality and pressure from important governmental clients desirous of getting the answer they wanted to hear. Because she brought such intellectual honesty to her work, she was able to see through to the right answer with a clarity that made her universally admired by those with whom she worked in government.

Senior officials from the FBI, the CIA, the Department of Defense, the National Security Administration, the Secret Service -- the list goes on -- have filed with this Committee statements that attest to the fact that Dawn, in the office for which she has been nominated, carried out her duties in a responsible, even-handed way. Her skill and dedication in both serving the interests of effective government and adhering to legal principle is attested to by these important officials and others who sought and relied upon her legal advice during her tenure.

The opinions she signed stand on their own as testaments to Dawn's adherence to the rule of law. Her opinions on the question of whether compensation could be paid to African-American farmers who were victims of discrimination in farm benefits are an example. Many hoped that the Attorney General's settlement authority could be used to get around the fact that these claims were barred by the statute of limitations. Even though Dawn's sympathies were no doubt strongly with the farmer plaintiffs, her view of the law compelled her to reject "the novel conclusion that the executive branch has the discretion to dispense with a congressional mandated statute of limitations in litigation or the compromise of claims."

In these and other matters that came before the Office of Legal Counsel, Dawn demonstrated that respect for the legitimate role of Congress in enacting legislation was an essential part of the rule of law. Laws enacted by Congress are not, in her view, to be lightly disregarded. Her more recent criticism of some OLC opinions reflects this basic approach. Her principal critique has been that some opinions took positions that unduly denigrated the constitutional role of the Senate and House in enacting legislation under Article I to regulate torture and wiretapping. At the same time, she has cautioned critics of the early Bush OLC opinions to "be precise with their objections and recommendations in order to avoid undermining future Presidents' legitimate authorities or otherwise undermining the proper balance of governmental powers." The positions she took when the controversial OLC opinions were released are now the positions widely agreed upon by leaders of the bar, by members of this Committee from both parties and by subsequent officials in the administration of President Bush. As usual, Dawn got it right, and got it right from the beginning.

Critics of Dawn's nomination have scoured every footnote from every brief and article and every scrap of paper, including handwritten notes for speeches, from Dawn's entire professional life in an effort to glean bits suggesting that she would be an irresponsible or partisan head of OLC. Such "predictions" of course seem entirely beside the point for one who has actually held a leadership position in the office. But even on their own terms, these shards amount to nothing. The canard that this Sunday school teacher of three year olds at the United Methodist Church in Bloomington and loving mother of two wonderful boys believes that "pregnancy is slavery" is false, as is the suggestion that she urged the Supreme Court to strike down abortion restrictions on the basis of the Thirteenth Amendment. The truth is that Johnsen was the lead lawyer on a reproductive rights brief filed in 1989 on behalf of seventy-seven organizations represented by twelve independent attorneys that included a footnote that made a rough analogy between government-compelled childbirth (not "pregnancy") and involuntary servitude. The brief did not ask the Court to invalidate the restrictions on any basis but *Roe v. Wade* and the Fourteenth Amendment.

Dawn's legal work at an earlier point in her career for a pro-choice advocacy organization, and her more recent work for the American Constitution Society have been raised against her. But the relevant question is not what causes or parties an individual has worked for in the past, but whether this is a person who can put those prior public service efforts aside when entering into the United States Department of Justice. Officials of both parties have shown that men and women of character do just that. For example, one of our most admired former Justice officials, Theodore B. Olson, has shown how it is done right. Before becoming head of OLC, after serving in that office, before becoming Solicitor General, and again after his service as Solicitor General, Ted Olson has been an active, committed and effective advocate for his political party and for conservative causes. But everyone who follows the administration of justice knows that when he assumed duties at the Department, he left his party and his politics at the door and advanced no interest other than the interests of the United States. Dawn's work at OLC shows that she is cut from the same cloth.

Because of her exemplary resume, her extraordinary legal credentials, her extensive body of scholarship exploring issues of separation of powers, and her substantial prior experience in the Office of Legal Counsel, Dawn comes to the leadership of OLC as the most highly qualified nominee in memory. One of Dawn's faculty colleagues at Indiana has written, "Dawn is level-headed, deliberate and thoughtful. She is never afraid to speak her mind, but chooses her words with care. She listens to opposing viewpoints. Dawn radiates integrity." Exactly.

I believe that Dawn Johnsen will be the best head of OLC in the history of the office.

Respectfully,

Walter Dellinger

Walter Dellinger
Assistant Attorney General
Office of Legal Counsel
1993-1996

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Dianne Feinstein

United States Senator
California
February 25, 2009

Opening Statement
Senate Judiciary Committee Confirmation Hearing
for David Kris & Dawn Johnsen

I want to welcome everyone to this afternoon's confirmation hearing.

In today's hearing, we will hear from David Kris, who has been nominated to be the Assistant Attorney General for the National Security Division, and from Dawn Johnsen, who is nominated to head the Office of Legal Counsel.

These are both extremely important positions.

The National Security Division is the part of the Justice Department that handles all national security matters. It was created by Congress as part of the reauthorization of the PATRIOT Act in 2006, and it is responsible for:

•Investigating reports of terrorist activity,

•Prosecuting people who threaten our national security,

•Handling applications to the FISA court to conduct foreign intelligence surveillance, and

•Advising the Attorney General on intelligence issues and national security policy matters.

David Kris is a nominee who has both figuratively and literally "written the book" on national security. He spent 11 years as a prosecutor in the Justice Department, and he knows its national security functions well.

During the Bush administration, he was the Associate Deputy Attorney General for national security, where he litigated national security cases and oversaw intelligence activities. When Congress considered merging the Department's national security functions under a single office, Kris was one of the experts consulted.

He is also the co-author of the most widely used legal treatise in this area. His book, titled National Security Investigations and Prosecutions, provides a step-by-step analysis of all of the law that governs government activity in response to terrorist threats.
In addition to his expertise, Kris has received high marks for his commitment to the rule of law.

The Committee has received letters of support for this nomination from former officials like Larry Thompson, who was the Deputy Attorney General during the Bush administration, and from David Cole, a Georgetown Law Professor who has written extensively on civil liberties. Cole described Kris as "genuinely committed to protecting both security and liberty."

Another important endorsement letter came from Stewart Baker, who was the head of the NSA under the

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first President Bush and under President Clinton. He described Kris as an official who knows that the "rule of law is consistent with an aggressive pursuit of the national security interests of the United States." By all accounts, Kris is a highly qualified nominee, and I look forward to hearing from him today.

Our second nominee, Dawn Johnsen, has similarly strong experience.
Professor Johnsen has been nominated to be the Assistant Attorney General for the Office of Legal Counsel. This office answers some of the government's most difficult legal questions and is responsible for providing objective legal advice to the entire Executive Branch.

Johnsen knows this Office well. She worked at OLC for five years during the Clinton administration and served as its acting head from 1997-1998. She knows its ins and outs, and will be ready from day one.

As has been well documented, OLC underwent a troubling transformation during the Bush administration. It became a rubber stamp for some of the administration's worst abuses of power.

This is the office that issued the "torture memo" in 2002, advising the President that interrogation techniques were not torture unless they inflicted pain "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death."

A month later, the office wrote that the President could use military force against Iraq without Congressional or international support, based in part on a new theory of "anticipatory self-defense."

In 2003, Jack Goldsmith, a respected conservative lawyer, came in to run OLC, but he found the problems so widespread that he resigned in less than a year, saying that he was "disgusted with the whole process."

Today, there are still over 35 secret OLC opinions from the 2001 to 2005 period that deal with important national security issues and that the Bush administration refused to release. One of these documents, for example, is believed to say that the Fourth Amendment does not apply to military operations on U.S. soil. President Obama is well aware of these problems, and he has chosen Dawn Johnsen to restore the office to its position as the "conscience of the Justice Department."

Johnsen has already demonstrated that she has plans for reform. In 2004, she published a statement with 18 other former OLC officials called "Principles to Guide the Office of Legal Counsel." The statement lays out historical ground rules for how OLC should be run.

Let me read you just a few of these principles:

•"OLC's advice should be thorough and forthright, and it should reflect all legal restraints, including the constitutional authorities of the . . . courts and Congress";

•"OLC should maintain internal systems and practices to help ensure that OLC's legal advice is of the highest possible quality and represents the best possible view of the law"; and

•"OLC should publicly disclose its written legal opinions
in a timely manner, absent strong reasons for delay or disclosure."

These statements give me great confidence in Professor Johnsen, and I look forward to hearing more from her today about her plans for OLC.

I want to commend both Ms. Johnsen and Mr. Kris for their willingness to take on these critical positions at the Department of Justice.

I will now yield to the ranking member of this Committee, Senator Specter.

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WILMERHALE

January 23, 2009

Jamie S. Gorelick

+1 [redacted]
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[redacted]

The Honorable Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

I am writing to endorse Dawn Johnsen, who has been nominated to serve as the Assistant Attorney General for the Office of Legal Counsel. Dawn played an important role in that Office when I was Deputy Attorney General and I have followed her work since that time. Having served at Justice, at the Department of Defense, on the 9/11 Commission and on the CIA's National Security Advisory Panel, I am acutely conscious of the critical role of the Office of Legal Counsel in ensuring that the President has all of the authority he needs and all that he may lawfully assert to protect the people of our country. Having seen the quality of Dawn Johnsen's legal analysis, her ability to listen to all sides of an issue, her desire to ensure that the President is able to act in the best interests of the country, I am confident that she will be a thoughtful steward of the Office and that its opinions will indeed ensure that the President has the authority he needs and be fully supported by the law and precedent. I am pleased to support her nomination and urge her confirmation.

Sincerely yours,

Jamie S. Gorelick

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WILMERHALE

February 2, 2009

Jamie S. Gorelick
[redacted] (t)
[redacted] (f)
[redacted]

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I am writing to support the confirmation of David Kris to lead the National Security Division at the Department of Justice. Uniquely, David brings the perspective of having served at the highest levels in the Department of Justice across the Clinton and Bush Administrations, contributing mightily through the most difficult period, post-September 11, 2001. He can bring to bear concrete knowledge of the authorities and the checks and balances necessary to keep us safe and free. He understands the challenges the Department faces in this area. If there need be any proof of this, it can be found in his comprehensive treatise on the subject of national security law. He is clearly the leading scholar and commentator in this area.

I have known David since 2004, when his expertise was brought to bear in connection with the work of the 9/11 Commission on which I served. Since then, I have consulted with him whenever I have been asked a difficult question on the subject of national security law. I have also seen David as a lawyer in the corporate arena, where he conceived of and implemented a world-class compliance program at TimeWarner. He is an excellent listener, a decisive executive, and a man who combines deep intellect and deep moral character.

It is hard to imagine a better steward for the National Security Division than David Kris. I endorse his confirmation without hesitation.

Sincerely,

Jamie S. Gorelick

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Woodrow Wilson
International
Center
for Scholars

LEE H. HAMILTON
President and Director

January 22, 2009

The Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I write in support of President Obama's nomination of Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel in the Department of Justice. I believe she will provide outstanding service to the administration and our country.

I know Dawn personally, as she married my nephew fifteen years ago. I also know her professional qualifications and her stellar reputation among leading constitutional scholars and veterans of the Justice Department.

We face daunting challenges as a country, to honor our deepest constitutional values while confronting and defeating determined enemies. Dawn has served our country ably and with distinction in providing cogent and practical legal advice to the executive branch in the 1990s. I am confident she will be a valuable member of the new administration as it moves our country forward.

In particular, Dawn has demonstrated a nuanced and practical understanding of how the Office of Legal Counsel should operate to ensure the executive branch achieves its strategic and tactical objectives while honoring and affirming the underlying constitutional values of our nation. She led a group of constitutional scholars to support a nonpartisan affirmation of key principles that should guide the operation of the Office of Legal Counsel, available at 81 Indiana Law Journal 1345 or http://www.indianalawjournal.org/articles/478/1/Principles-to-Guide-the-Office-of-Legal-Counsel/Page1.html.

Dawn has demonstrated the crucial ability to provide legal advice that is grounded in the Constitution and the law, and respectful of the roles of the various players in our democratic structure. Her reputation for openness and clarity are valuable as we build the common ground needed to sustain a national commitment to defeat our enemies while we protect our values.

Dawn is a prominent scholar and experienced government lawyer who understands executive power and democratic values, constitutional demands and practical realities. She is an outstanding appointment who will balance wisely the demands of the law with the realities of our country's responsibilities in the world. It is with the highest confidence that I endorse Dawn Johnsen's appointment as Assistant Attorney General for the Office of Legal Counsel.

Thank you for your attention to this letter. If I may provide any further information, I would be happy to do so.

With best wishes, I am

Sincerely,

Lee H. Hamilton

ONE WOODROW WILSON PLAZA, 1300 PENNSYLVANIA AVENUE, NW, WASHINGTON, DC 20004-3027 T 202.691.4000 F 202.691.4001 WWW.WILSONCENTER.ORG

Honorable Patrick Leahy
Chairman, U.S. Senate Committee on the Judiciary

Honorable Arlen Specter
Ranking Member, U.S. Senate Committee on the Judiciary

Honorable Herb Kohl
Member, U.S. Senate Committee on the Judiciary

Honorable Dianne Feinstein
Member, U.S. Senate Committee on the Judiciary

Honorable Orrin G. Hatch
Member, U.S. Senate Committee on the Judiciary

Honorable Russell D. Feingold
Member, U.S. Senate Committee on the Judiciary

Honorable Charles E. Grassley
Member, U.S. Senate Committee on the Judiciary

Honorable Charles E. Schumer
Member, U.S. Senate Committee on the Judiciary

Honorable Jon Kyl
Member, U.S. Senate Committee on the Judiciary

Honorable Richard J. Durbin
Member, U.S. Senate Committee on the Judiciary

Honorable Jeff Sessions
Member, U.S. Senate Committee on the Judiciary

Honorable Benjamin L. Cardin
Member, U.S. Senate Committee on the Judiciary

Honorable Lindsey Graham
Member, U.S. Senate Committee on the Judiciary

Honorable Sheldon Whitehouse
Member, U.S. Senate Committee on the Judiciary

Honorable John Cornyn
Member, U.S. Senate Committee on the Judiciary

Honorable Ron Wyden

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Member, U.S. Senate Committee on the Judiciary

Honorable Tom Coburn
Member, U.S. Senate Committee on the Judiciary

Honorable Amy Klobuchar
Member, U.S. Senate Committee on the Judiciary

Honorable Edward E. Kaufman
Member, U.S. Senate Committee on the Judiciary

Dear Chairman Leahy, Ranking Member Specter, and Committee Members

We are writing on behalf of Americans who are concerned with the lack of scrutiny that could be applied to some of President Obama's most important nominees. As new nominations come before your Committee, we hope you will reject pressure from the White House or others to rubber stamp nominations. Instead, it is our hope that you will give the American people an opportunity to hear about nominees and their records.

If confirmed by the U.S. Senate to serve in high offices within the Department of Justice, Dawn Johnsen, David Ogden, and Thomas J. Perrelli could have a dramatic impact on the state of this nation's legal order. Each of these nominees has made public comments or has taken positions indicating strong support for a shift in national policy regarding the culture of life. Whatever one thinks of the culture of life, dramatic shifts in policy on such important national questions should not happen without serious deliberation.

Consider the following facts:

--David Ogden has been nominated for Deputy Attorney General. His hearing is next week, less than a month after his nomination. On behalf of the American Psychological Association, he filed a terrible amicus brief in Casey v. Planned Parenthood, and here are the relevant quotes:

(1) "The conclusions from the most rigorous scientific studies are consistent: for the overwhelming majority of women who undergo abortion, there are no long-term negative emotional effects..."
(2) "Abortion rarely causes or exacerbates psychological or emotional problems. When women do experience regret, depression, or guilt, such feelings are mild and diminish rapidly without adversely affecting general functioning. Those few women who do experience negative psychological responses after abortion appear to be those with preexisting emotional problems ...."
and

(3) "In sum, it is grossly misleading to tell a woman that abortion imposes possible

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detrimental psychological effects when the risks are negligible in most cases, when the evidence shows that she is more likely to experience feelings of relief and happiness, and when child-birth and child-rearing or adoption may pose concomitant (if not greater) risks or adverse psychological effects ...."

--Dawn Johnson has been nominated to serve as head of the Office of Legal Counsel. She is the former Legal Director to NARAL and was a Staff Counsel Fellow for the ACLU Reproductive Freedom Project—a project which recently served as lead counsel in Ayotte v. Planned Parenthood of Northern England. This is absolutely stunning. For eight years, the Democrats and the Left complained that this office, charged with providing the government with objective opinions about the constitutionality of acts it wishes to undertake (this is the office that opined on detainees and interrogation, for example), had been politicized in an unprecedented way. And, now, without any debate or discussion, the Obama Administration is putting forward an absolute political zealot from two of the nation's most Leftist groups.

--Thomas Perrelli, nominated to serve as Associate Attorney General, is most infamous for his defense of Terri Schiavo's husband in the battle over withdrawing life-sustaining treatment. Perrelli even worked with pro-euthanasia attorney George Felos on the case, sending a clear message about his own end-of-life views. The appointment of Perrelli is hardly a surprise—President Obama voted with a unanimous Senate to pass the Schiavo bill, but now calls it one of his biggest mistakes.

Millions of Americans reasonably expect their elected representatives in the Senate to provide meaningful review of the President's nominees, particularly when they could dramatically change national policy. We urge the Committee to provide ample time for meaningful review to take place, and we urge members to ask probative questions of these nominees and demand serious answers so that the American people can continue to play a part in defining the cultural fabric of our nation.

Sincerely,

Kristan Hawkins
Executive Director, Students for Life of America

Tony Perkins
President, Family Research Council

David N. O'Steen, Ph. D.
Executive Director, National Right to Life Committee

Charmaine Yoest
President, Americans United for Life

Austin Ruse
President, Catholic Family and Human Rights Institute

Marjorie Dannenfelser
President, Susan B. Anthony List

Kris Mineau
President, Massachusetts Family Institute

Bradley Mattes
Executive Director, Life Issues Institute

Phyllis Schlafly
President, Eagle Forum

J. C. Willke, MD
President, International Right to Life Federation

Thomas Brejcha
President & Chief Counsel, Thomas More Society

Peter Breen
Executive Director & Legal Counsel, Thomas More Society

Joseph A. Brinck
President, Sanctity of Life Foundation

Jennifer Giroux
Executive Director, Women Influencing the Nation

Samuel B. Casey
General Counsel, Law of Life Project, Advocates International

Gary Bauer
President, American Values

Brian Burch
President of CatholicVote.org

David Bereit
National Director, 40 Days for Life

Phil Burress
President, Citizens for Community Values

Jill Stanek, RN

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WorldNetDaily columnist

Peggy Hartshorn
President, Heartbeat International

Michael Geer
President, Pennsylvania Family Institute

Bryan Kemper
President, Stand True- Christ Centered Pro-life

John T. Bruchalski, MD, FACOG
Divine Mercy Care

James Nolan
President, Crossroads Pro-Life

Marie Bowen
Executive Director, Presbyterians Pro-Life

Jennifer Kimball, Be.L.
Executive Director, Culture of Life Foundation

Jo Tolek
Executive Director, Human Life Alliance

Dean Nelson
Executive Director, Network of Politically Active Christians

Chris Slattery,
President, Expectant Mother Care-EMC FrontLine Pregnancy Centers, New York City

Rev. Louis Sheldon
Chairman, Traditional Values Coalition

Andrea Lafferty
Executive Director, Traditional Values Coalition

BARON P. HILL
9TH DISTRICT, INDIANA

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February 3, 2009

The Honorable Patrick Leahy, Chairman
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

I write to you today in support of Dawn Johnsen as President Obama's nominee for Assistant Attorney General, Office of Legal Counsel at the United States Department of Justice.

Dawn Johnsen is one of our nation's leading legal minds. She and her family currently live in Bloomington, Indiana, which is located within my Congressional District. Dawn has spent the last decade as a law professor at Indiana University there, where she continues to be a widely respected authority on many issues concerning the Constitution.

During my time in public service, I have come to know Dawn Johnsen and her family quite well. Not only do I consider her a personal friend, but I have also relied on her legal expertise when considering issues before Congress, most notably the debate in my district surrounding the Foreign Intelligence Surveillance Act (FISA). Her perspective brought to the discussion a critical legal opinion that focused not on individual views, but on individual civil rights as criteria for reaching a conclusion concerning this law. She is a consummate professional, and one I can count on to offer a sound legal opinion on issues regardless of her personal views and convictions.

I am honored to offer my recommendation for her appointment to the Department of Justice, and I respectfully urge her confirmation from the Committee on the Judiciary. If you have any further questions or would like to discuss Dawn's nomination further, please do not hesitate to contact me at (202) 225-5315.

Sincerely,

Baron P. Hill
Member of Congress

Cc: Senate Judiciary Committee Members

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WWW.WALKERTIPPS.COM

[redacted]

February 3, 2009

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Re: **Nomination of Dawn Johnsen**

Dear Senator Leahy:

I write in support of the nomination of Dawn Johnsen to become the Assistant Attorney General over the Office of Legal Counsel of the United States Department of Justice. I have known Ms. Johnsen for a number of years and had the pleasure of working with her when we served together in the Justice Department during the Clinton administration. Ms. Johnsen served as a Deputy and acting Assistant Attorney General over the Office of Legal Counsel while I was serving as the Assistant Attorney General over the Civil Division.

I can and do state unequivocally that Ms. Johnsen is a person of the highest moral character and integrity. She enjoys a stellar reputation throughout the United States legal community and will be dedicated to restoring the independence and integrity of the Department of Justice. She is highly regarded and respected by all who serve in the Department. Ms. Johnsen possesses a high intellect coupled with sound judgment. From personal observation , and my direct involvement, I assure you that her work is always of the highest quality shaped by following the law without regard to whatever the political consequences may be. She will make an outstanding Legal Counsel to the Department, and it is a pleasure for me to recommend her to you, the Judiciary Committee, and the United States Senate.

Thank you for giving this your consideration.

Respectfully yours,

Frank W. Hunger

FWH/sc

Opening Statement of Dawn E. Johnsen
Hearing before the United States Senate Judiciary Committee
Nomination, Assistant Attorney General, Office of Legal Counsel
February 25, 2009

Mr. Chairman, Ranking Member Specter, and Members of the Committee, it is a great honor to be here today. I would like to thank each of you and your staffs for your time and attention to my nomination. I also would like to thank Senator Richard Lugar and Senator Evan Bayh and my Representative, Baron Hill, and their staffs for their help during this process and for their service to Indiana and the United States.

I am so grateful to friends and family who have traveled to be at this hearing: my husband, John Hamilton and our sons, Matthew age 12 and Eric age 10, my mother Carolyn Johnsen, my grandmother Ruth Dalland, sisters Jill Johnsen and Jennifer Johnsen, Aunts and Uncles Edward and Lynette Dalland and Diana Cacciola (who is a longtime employee of the FBI, as is my uncle, her husband), other relatives Nancy Hamilton, Beverly Andracchi, Dawn Guarriello, Joanna Dalland, Michael Dalland, and Barbara and Shawn Turner, and close friends, Claudia and Luke Allen, Walter and Anne Dellinger, Shirley Brandman, Zack Shapiro, and Sue Todd.

One person who could not be here but who would have loved this day is my father, Don Johnsen, who passed away several years ago. My father worked hard for thirty years as a letter carrier for the United States Postal Service, and he always worked a second job as well, to provide for his family, to send me and my sisters and brother all to college and beyond, an opportunity that he did not have. He took great pride in his service in the United States Navy on a destroyer in the 1950s. My father deeply loved both his family and his country. He is very much in our thoughts today.

In 1976, the year of the bicentennial of the Declaration of Independence, at age 14, I entered an essay contest on what makes America great. I won a $100 savings bond, and the chance to read my essay aloud at the Fourth of July Fair on the grounds of the Carle Place public schools. I do not have a copy of that essay, and have long-since spent the savings bond, but I'm quite certain I quoted Robert F. Kennedy as follows, from my favorite poster then hanging on the wall of the bedroom I shared with my two sisters:

> The future does not belong to those who are content with today . . . . Rather it will belong to those who can blend vision, reason and courage in a personal commitment to the ideals and great enterprises of American Society.

I have endeavored throughout my life to do what I can to serve the ideals and great enterprises of our great country.

When I finished law school and my federal clerkship twenty-plus years ago, I loved the law and especially constitutional law. One of the most interesting and consequential issues at that time, involving the intersection of constitutional law and public policy, was the right to privacy, to reproductive liberty. It was a time when the Supreme Court

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seemed poised to overrule *Roe v. Wade*. I believed, then as now, that whether and when to bear a child is a highly personal and complex decision, not appropriate for the government. For my first job as a lawyer, I chose to work on issues of reproductive liberty.

I am deeply mindful of the fact that this is an area of great controversy over which there is profound disagreement in this country, an area in which I share the hope of President Obama that we can move toward common ground approaches. More broadly, I deeply believe that as Americans, we do share some bedrock values and commitments:

> to respect conflicting viewpoints and understand that people of good will inevitably disagree and that in our system such debate makes us stronger and better;
>
> to protect the physical safety of the American people, especially today from post 9/11 terrorist threats;
>
> to uphold our Constitution and our basic values, including our commitment to a limited government that is effective in protecting both our physical safety and our fundamental liberties;
>
> and finally, to uphold the rule of law.

Commitment to the rule of law is my overriding passion: love for our constitutional democracy and the imperative that the government belongs to the people, that the government officials who lead it are not above the law, but rather are entrusted with fulfilling and respecting the law as well as with making it.

I learned most intimately of that imperative when I served at the Office of Legal Counsel from 1993 to 1998, initially as a deputy to Walter Dellinger and the last year and a half as the acting head of OLC. During those five years I came to understand that above all, OLC must provide the President and officials throughout the Executive Branch with accurate, honest legal interpretations; that my personal views on a subject were not what mattered; and that OLC must look to the Constitution and to statutes enacted by this body, to judicial and executive branch precedent, and to the career professionals at OLC and throughout the government who bring essential experience, expertise and judgment. In the ten years since, as a law professor at Indiana University, I have focused much of my research and writing on issues of presidential power and government lawyering.

As war often does, 9-11 tested our commitment to the rule of law.

Indiana is now my home, but I was born and raised in New York, on Long Island where my mother still lives. My sister Jennifer had a view of the twin towers from her lower east-side Manhattan apartment. My sister Jill is an elementary school teacher in the New York City public schools, and when the planes hit she had in her care her class of fourth graders. I have many relatives and dear friends who live in New York and Washington,

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D.C., some of whom lost loved ones in that terrible attack on our country.

My thoughts and concerns those first days were of course most powerfully with my loved ones and others who suffered personal losses. They also were professionally very much with the government lawyers who bore the tremendous responsibility of helping our government respond, keeping our Nation safe from future attacks. My service at OLC I believe gave me a special appreciation for what they confronted, and for the outstanding work of countless dedicated men and women in the years since to protect our citizens, bring justice to perpetrators, and to show the strength of our democracy to the rest of the world.

My prior government service also gave me a feeling of special responsibility to speak out when, later, on a few occasions, I believed that OLC—the office that I know best—had failed to live up to its best traditions. I principally was concerned about what I saw as excessive Executive Branch claims of a right to act contrary to valid federal statutes, duly enacted by Congress, and to do so in secret. In particular, the federal statute prohibiting torture and the Foreign Intelligence Surveillance Act.

I therefore in my work as an academic have sought to be constructive and to explore the proper scope of presidential power and the proper role of government lawyers. I have urged caution and precision from those who would critique the prior administration, and have recently written that "Critics should be precise with their objections and recommendations in order to avoid undermining future Presidents' legitimate authorities or otherwise disrupting the proper balance of governmental powers." (88 Boston U. Law Review 395, 396 (2008)).

Most notably in 2004 I brought together 19 former OLC lawyers and led an effort to draft what we called "Principles to Guide the Office of Legal Counsel." We drew those ten principles from OLC's best nonpartisan traditions, though I have been quick to acknowledge that deviations from these best practices can be found in many administrations, of both political parties.

Over the last several years I have testified to this committee and I have written about the ten principles. I have submitted to this Committee a copy of the principles appended to my written testimony and will not review them all here, but will close with a brief description of the first principle.

As I wrote in a recent article, "[t]he Guidelines come down squarely on the side of accuracy over advocacy, and most of its ten principles follow from and elaborate on the [] first and most fundamental principle: 'OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies. The advocacy model of lawyering . . . inadequately promotes the President's constitutional obligation to ensure the legality of executive action.'" (54 UCLA Law Review 1559, 1580 (2007)).

The remaining nine principles describe processes aimed at ensuring this is achieved,

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including involving career professionals from around the government and notifying Congress any time the Executive Branch does not fully comply with a federal statute. I also worked last year with Senator Feingold's staff and with Brad Berenson, who served President George W. Bush in the White House Counsel's office, to help draft a bill that would require such reporting. We did so after Senators from both parties suggested in a hearing at which Brad and I testified that they would welcome such an effort.

I have had the great privilege of growing up in a loving, supportive, working class family and attending fine public schools and private universities. That allowed me to serve my country – its ideals and great enterprises – in humbling and gratifying ways.

Nothing exemplified that more than serving for five years at OLC, at the Department of Justice, a few blocks up Pennsylvania Avenue from here. In the mornings, as I would cross Pennsylvania Avenue to go to work, I would look down at the magnificent view of the Capitol and be reminded of the small but important part OLC plays in helping this great country achieve our goals.

I look forward, should the Senate confirm my appointment, to serving President Obama, Attorney General Holder, and the people of the United States in ways that support the rule of law, that protect our nation, and that enhance our constitutional democracy. Should I be so fortunate as to receive your support, I look forward to working with you toward those ends that we share. Thank you very much.

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Principles to Guide the Office of Legal Counsel
December 21, 2004

The Office of Legal Counsel (OLC) is the Department of Justice component to which the Attorney General has delegated the function of providing legal advice to guide the actions of the President and the agencies of the executive branch. OLC's legal determinations are considered binding on the executive branch, subject to the supervision of the Attorney General and the ultimate authority of the President. From the outset of our constitutional system, Presidents have recognized that compliance with their constitutional obligation to act lawfully requires a reliable source of legal advice. In 1793, Secretary of State Thomas Jefferson, writing on behalf of President Washington, requested the Supreme Court's advice regarding the United States' treaty obligations with regard to the war between Great Britain and France. The Supreme Court declined the request, in important measure on the grounds that the Constitution vests responsibility for such legal determinations within the executive branch itself: "[T]he three departments of government ... being in certain respects checks upon each other, and our being judges of a court in the last resort, are considerations which afford strong arguments against the propriety of our extrajudicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions seems to have been purposely as well as expressly united to the executive departments." Letter from John Jay to George Washington, August 8, 1793, *quoted in* 4 The Founders' Constitution 258 (Philip B. Kurland & Ralph Lerner, eds. 1987).

From the Washington Administration through the present, Attorneys General, and in recent decades the Office of Legal Counsel, have served as the source of legal determinations regarding the executive's legal obligations and authorities. The resulting body of law, much of which is published in volumes entitled Opinions of the Attorney General and Opinions of the Office of Legal Counsel, offers powerful testimony to the importance of the rule-of-law values that President Washington sought to secure and to the Department of Justice's profound tradition of respect for the rule of law. Administrations of both political parties have maintained this tradition, which reflects a dedication to the rule of law that is as significant and as important to the country as that shown by our courts. As a practical matter, the responsibility for preserving this tradition cannot rest with OLC alone. It is incumbent upon the Attorney General and the President to ensure that OLC's advice is sought on important and close legal questions and that the advice given reflects the best executive branch traditions. The principles set forth in this document are based in large part on the longstanding practices of the Attorney General and the Office of Legal Counsel, across time and administrations.

1. When providing legal advice to guide contemplated executive branch action, OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies. The advocacy model of lawyering, in which lawyers craft merely plausible legal arguments to support their clients' desired actions, inadequately promotes the President's constitutional obligation to ensure the legality of executive action.

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OLC's core function is to help the President fulfill his constitutional duty to uphold the Constitution and "take care that the laws be faithfully executed" in all of the varied work of the executive branch. OLC provides the legal expertise necessary to ensure the lawfulness of presidential and executive branch action, including contemplated action that raises close and difficult questions of law. To fulfill this function appropriately, OLC must provide advice based on its best understanding of what the law requires. OLC should not simply provide an advocate's best defense of contemplated action that OLC actually believes is best viewed as unlawful. To do so would deprive the President and other executive branch decisionmakers of critical information and, worse, mislead them regarding the legality of contemplated action. OLC's tradition of principled legal analysis and adherence to the rule of law thus is constitutionally grounded and also best serves the interests of both the public and the presidency, even though OLC at times will determine that the law precludes an action that a President strongly desires to take.

2. *OLC's advice should be thorough and forthright, and it should reflect all legal constraints, including the constitutional authorities of the coordinate branches of the federal government–the courts and Congress–and constitutional limits on the exercise of governmental power.*

The President is constitutionally obligated to "preserve, protect and defend" the Constitution in its entirety–not only executive power, but also judicial and congressional power and constitutional limits on governmental power–and to enforce federal statutes enacted in accordance with the Constitution. OLC's advice should reflect all relevant legal constraints. In addition, regardless of OLC's ultimate legal conclusions concerning whether proposed executive branch action lawfully may proceed, OLC's analysis should disclose, and candidly and fairly address, the relevant range of legal sources and substantial arguments on all sides of the question.

3. OLC's obligation to counsel compliance with the law, and the insufficiency of the advocacy model, pertain with special force in circumstances where OLC's advice is unlikely to be subject to review by the courts.

In formulating its best view of what the law requires, OLC always should be mindful that the President's legal obligations are not limited to those that are judicially enforceable. In some circumstances, OLC's advice will guide executive branch action that the courts are unlikely to review (for example, action unlikely to result in a justiciable case or controversy) or that the courts likely will review only under a standard of extreme deference (for example, some questions regarding war powers and national security). OLC's advice should reflect its best view of all applicable legal constraints, and not only legal constraints likely to lead to judicial invalidation of executive branch action. An OLC approach that instead would equate "lawful" with "likely to escape judicial condemnation" would ill serve the President's constitutional duty by failing to describe all legal constraints and by appearing to condone unlawful action as long as the President could, in a sense, get away with it. Indeed, the absence of a litigation threat signals special need for vigilance: In circumstances in which judicial oversight of

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executive branch action is unlikely, the President–and by extension OLC–has a special obligation to ensure compliance with the law, including respect for the rights of affected individuals and the constitutional allocation of powers.

4. OLC's legal analyses, and its processes for reaching legal determinations, should not simply mirror those of the federal courts, but also should reflect the institutional traditions and competencies of the executive branch as well as the views of the President who currently holds office.

As discussed under principle 3, jurisdictional and prudential limitations do not constrain OLC as they do courts, and thus in some instances OLC appropriately identifies legal limits on executive branch action that a court would not require. Beyond this, OLC's work should reflect the fact that OLC is located in the executive branch and serves both the institution of the presidency and a particular incumbent, democratically elected President in whom the Constitution vests the executive power. What follows from this is addressed as well under principle 5. The most substantial effects include the following: OLC typically adheres to judicial precedent, but that precedent sometimes leaves room for executive interpretive influences, because doctrine at times genuinely is open to more than one interpretation and at times contemplates an executive branch interpretive role. Similarly, OLC routinely, and appropriately, considers sources and understandings of law and fact that the courts often ignore, such as previous Attorney General and OLC opinions that themselves reflect the traditions, knowledge and expertise of the executive branch. Finally, OLC differs from a court in that its responsibilities include facilitating the work of the executive branch and the objectives of the President, consistent with the requirements of the law. OLC therefore, where possible and appropriate, should recommend lawful alternatives to legally impermissible executive branch proposals. Notwithstanding these and other significant differences between the work of OLC and the courts, OLC's legal analyses always should be principled, thorough, forthright, and not merely instrumental to the President's policy preferences.

5. OLC advice should reflect due respect for the constitutional views of the courts and Congress (as well as the President). On the very rare occasion when the executive branch—usually on the advice of OLC—declines fully to follow a federal statutory requirement, it typically should publicly disclose its justification.

OLC's tradition of general adherence to judicial (especially Supreme Court) precedent and federal statutes reflects appropriate executive branch respect for the coordinate branches of the federal government. On very rare occasion, however, Presidents, often with the advice of OLC, appropriately act on their own understanding of constitutional meaning (just as Congress at times enacts laws based on its own constitutional views). To begin with relatively uncontroversial examples, Presidents at times veto bills they believe are unconstitutional and pardon individuals for violating what Presidents believe are unconstitutional statutes, even when the Court would uphold the statute or the conviction against constitutional challenge. Far more controversial are rare cases in which Presidents decide to refuse to enforce or otherwise comply with laws they deem unconstitutional, either on their face or in some applications. The precise

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contours of presidential power in such contexts are the subject of some debate and beyond the scope of this document. The need for transparency regarding interbranch disagreements, however, should be beyond dispute. At a bare minimum, OLC advice should fully address applicable Supreme Court precedent, and, absent the most compelling need for secrecy, any time the executive branch disregards a federal statutory requirement on constitutional grounds, it should publicly release a clear statement explaining its deviation. Absent transparency and clarity, client agencies might experience difficulty understanding and applying such legal advice, and the public and Congress would be unable adequately to assess the lawfulness of executive branch action. Indeed, federal law currently requires the Attorney General to notify Congress if the Department of Justice determines either that it will not enforce a provision of law on the grounds that it is unconstitutional or that it will not defend a provision of law against constitutional challenge.

6. OLC should publicly disclose its written legal opinions in a timely manner, absent strong reasons for delay or nondisclosure.

OLC should follow a presumption in favor of timely publication of its written legal opinions. Such disclosure helps to ensure executive branch adherence to the rule of law and guard against excessive claims of executive authority. Transparency also promotes confidence in the lawfulness of governmental action. Making executive branch law available to the public also adds an important voice to the development of constitutional meaning–in the courts as well as among academics, other commentators, and the public more generally–and a particularly valuable perspective on legal issues regarding which the executive branch possesses relevant expertise. There nonetheless will exist some legal advice that properly should remain confidential, most notably, some advice regarding classified and some other national security matters. OLC should consider the views regarding disclosure of the client agency that requested the advice. Ordinarily, OLC should honor a requestor's desire to keep confidential any OLC advice that the proposed executive action would be unlawful, where the requestor then does not take the action. For OLC routinely to release the details of all contemplated action of dubious legality might deter executive branch actors from seeking OLC advice at sufficiently early stages in policy formation. In all events, OLC should in each administration consider the circumstances in which advice should be kept confidential, with a presumption in favor of publication, and publication policy and practice should not vary substantially from administration to administration. The values of transparency and accountability remain constant, as do any existing legitimate rationales for secret executive branch law. Finally, as discussed in principle 5, Presidents, and by extension OLC, bear a special responsibility to disclose publicly and explain any actions that conflict with federal statutory requirements.

7. OLC should maintain internal systems and practices to help ensure that OLC's legal advice is of the highest possible quality and represents the best possible view of the law.

OLC systems and processes can help maintain high legal standards, avoid errors, and safeguard against tendencies toward potentially excessive claims of executive

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authority. At the outset, OLC should be careful about the form of requests for advice. Whenever possible, agency requests should be in writing, should include the requesting agency's own best legal views as well as any relevant materials and information, and should be as specific as circumstances allow. Where OLC determines that advice of a more generally applicable nature would be helpful and appropriate, it should take special care to consider the implications for its advice in all foreseeable potential applications. Also, OLC typically should provide legal advice in advance of executive branch action, and not regarding executive branch action that already has occurred; legal "advice" after the fact is subject to strong pressures to follow an advocacy model, which is an appropriate activity for some components of the Department of Justice but not usually for OLC (though this tension may be unavoidable in some cases involving continuing or potentially recurring executive branch action). OLC should recruit and retain attorneys of the highest integrity and abilities. OLC should afford due respect for the precedential value of OLC opinions from administrations of both parties; although OLC's current best view of the law sometimes will require repudiation of OLC precedent, OLC should never disregard precedent without careful consideration and detailed explanation. Ordinarily OLC legal advice should be subject to multiple layers of scrutiny and approval; one such mechanism used effectively at times is a "two deputy rule" that requires at least two supervising deputies to review and clear all OLC advice. Finally, OLC can help promote public confidence and understanding by publicly announcing its general operating policies and procedures.

8. Whenever time and circumstances permit, OLC should seek the views of all affected agencies and components of the Department of Justice before rendering final advice.

The involvement of affected entities serves as an additional check against erroneous reasoning by ensuring that all views and relevant information are considered. Administrative coordination allows OLC to avail itself of the substantive expertise of the various components of the executive branch and to avoid overlooking potentially important consequences before rendering advice. It helps to ensure that legal pronouncements will have no broader effect than necessary to resolve the question at hand. Finally, it allows OLC to respond to all serious arguments and thus avoid the need for reconsideration.

9. *OLC should strive to maintain good working relationships with its client agencies, and especially the White House Counsel's Office, to help ensure that OLC is consulted, before the fact, regarding any and all substantial executive branch action of questionable legality.*

Although OLC's legal determinations should not seek simply to legitimate the policy preferences of the administration of which it is a part, OLC must take account of the administration's goals and assist their accomplishment within the law. To operate effectively, OLC must be attentive to the need for prompt, responsive legal advice that is not unnecessarily obstructionist. Thus, when OLC concludes that an administration proposal is impermissible, it is appropriate for OLC to go on to suggest modifications

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that would cure the defect, and OLC should stand ready to work with the administration to craft lawful alternatives. Executive branch officials nonetheless may be tempted to avoid bringing to OLC's attention strongly desired policies of questionable legality. Structures, routines and expectations should ensure that OLC is consulted on all major executive branch initiatives and activities that raise significant legal questions. Public attention to when and how OLC generally functions within a particular administration also can help ensure appropriate OLC involvement.

10. OLC should be clear whenever it intends its advice to fall outside of OLC's typical role as the source of legal determinations that are binding within the executive branch.

OLC sometimes provides legal advice that is not intended to inform the formulation of executive branch policy or action, and in some such circumstances an advocacy model may be appropriate. One common example: OLC sometimes assists the Solicitor General and the litigating components of the Department of Justice in developing arguments for presentation to a court, including in the defense of congressional statutes. The Department of Justice typically follows a practice of defending an act of Congress against constitutional challenge as long as a reasonable argument can be made in its defense (even if that argument is not the best view of the law). In this context, OLC appropriately may employ advocacy-based modes of analysis. OLC should ensure, however, that all involved understand whenever OLC is acting outside of its typical stance, and that its views in such cases should not be taken as authoritative, binding advice as to the executive branch's legal obligations. Client agencies expect OLC to provide its best view of applicable legal constraints and if OLC acts otherwise without adequate warning, it risks prompting unlawful executive branch action.

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The following former Office of Legal Counsel attorneys prepared and endorse this document:

Walter E. Dellinger, Assistant Attorney General 1993-96
Dawn Johnsen, Acting Assistant Attorney General 1997-98; Deputy AAG 1993-97
Randolph Moss, Assistant Attorney General 2000-01, Acting 1998-2000; Deputy AAG 1996-98
Christopher Schroeder, Acting Assistant Attorney General 1997; Deputy AAG 1994-96
Joseph R. Guerra, Deputy Assistant Attorney General 1999-2001
Beth Nolan, Deputy Assistant Attorney General 1996-99; Attorney Advisor 1981-85
Todd Peterson, Deputy Assistant Attorney General 1997-99; Attorney Advisor 1982-85
Cornelia T.L. Pillard, Deputy Assistant Attorney General 1998-2000
H. Jefferson Powell, Deputy Assistant Attorney General and Consultant 1993-2000
Teresa Wynn Roseborough, Deputy Assistant Attorney General 1994-1996
Richard Shiffrin, Deputy Assistant Attorney General, 1993-97
William Michael Treanor, Deputy Assistant Attorney General 1998-2001
David Barron, Attorney Advisor 1996-99
Stuart Benjamin, Attorney Advisor 1992-1995
Lisa Brown, Attorney Advisor 1996-97
Pamela Harris, Attorney Advisor 1993-96
Neil Kinkopf, Attorney Advisor 1993-97
Martin Lederman, Attorney Advisor 1994-2002
Michael Small, Attorney Advisor 1993-96

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The Honorable Harry Reid, Majority Leader
United States Senate
S-221 Capitol Building
Washington, DC 20510

Dear Senator Reid:

We are writing today to express our concern over the delay in confirming Dawn Johnsen, President Obama's nominee to head the Department of Justice's Office of Legal Counsel (OLC). Professor Johnsen was nominated for this critical position on February 11, 2009 and was favorably reported by the Senate Judiciary Committee on March 19, 2009. Yet to date, in the absence of a time agreement, Professor Johnsen's nomination has not been voted on by the full Senate. This delay is extraordinary and unacceptable.

As you know the Office of Legal Counsel performs a critical role in guiding executive branch activities, advising the President and his Administration on the constitutionality of proposed policies, legislation, and executive orders. It requires an individual of exceptional scholarship and unimpeachable integrity, someone with the strength of character and tough-mindedness to deliver unbiased advice without qualification.

No one is better qualified for this position than Professor Johnsen. She has extensive previous experience in the Office of Legal Counsel, including service as acting head of OLC for over a year in the Clinton Administration, and has demonstrated throughout her career an ability to work with others across the political spectrum in the interest of supporting the rule of law. She's received support from legal scholars – liberal and conservative alike - as well as endorsements from officials from the administrations of Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush. In 2004, after Bush administration OLC abuses came to light, she organized an impressive panel of former OLC lawyers which set forth a statement of principles to guide the office going forward. That document has been praised by Republican and Democratic officials alike. Doug Kmiec – the OLC head under Presidents Ronald Reagan and H.W. Bush -- has affirmed, during her previous service at OLC, Johnsen "repeatedly separated policy preference from rendered opinion."

Professor Johnsen's nomination, along with other executive branch nominations, has been delayed to an unprecedented extent. In the 60 years since the rules of the Senate were changed to allow debate on nominations to be brought to a close through a vote on cloture, there have been only 24 executive branch nominations on which cloture votes have been taken. Yet in just the first 9 months of the Obama Administration, the minority has already forced cloture votes on 5 nominees. Another 37 executive nominations are currently on the Senate's Executive Calendar, many of which have been pending for some time, raising the

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specter of yet more unprecedented and unnecessary cloture votes to fill key Administration positions. Indeed it is a full three months since a significant majority (65%) of these individuals was nominated. This degree of obstruction cannot be tolerated. It throws sand in the gears of executive branch departments and agencies that are serving critical public needs. And it defies the deference traditionally provided Presidents in shaping their Administrations, particularly with respect to sub-Cabinet level positions.

Professor Johnsen has the experience, the integrity, and the intellect to head this critical office. She should be confirmed without further delay. We understand the press of legislative business before the Senate. But further delay is untenable. We urge you to use the full force of your office to bring this nomination to a vote at the earliest possible date.

Sincerely,

Michael B. Keegan
People For the American Way

Wade Henderson
Leadership Conference on Civil Rights

Nan Aron
Alliance for Justice

Karen Narasaki
Asian American Justice Center

Andrew Imparato
American Association of People with Disabilities

Randi Weingarten
American Federation of Teachers

Michael J. Wilson
Americans for Democratic Action

Barry W. Lynn
Americans United for Separation of Church and State

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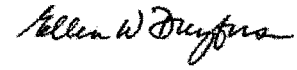
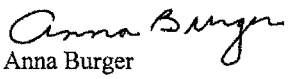
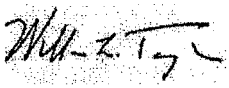


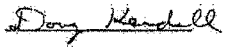
Rabbi Ellen Weinberg Dreyfus
Central Conference of American Rabbis



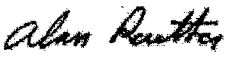
Anna Burger
Change to Win



William Taylor
Citizens Commission on Civil Rights



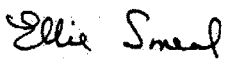
Doug Kendall
Constitutional Accountability Center



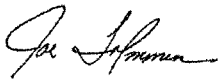
Alan Reuther
CWA-UAW Legislative Alliance



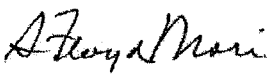
Eva Paterson
Equal Justice Society



Ellie Smeal
Feminist Majority



Joe Solmonese
Human Rights Campaign



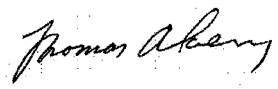
Floyd Mori
Japanese American Citizens League



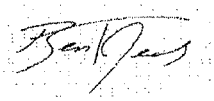
Barbara Arnwine
Lawyers' Committee for Civil
Rights Under Law



Irasema Garza
Legal Momentum



Thomas Saenz
Mexican American Legal
Defense and Educational Fund



Benjamin Jealous
National Association for the
Advancement of Colored People



John Payton
NAACP Legal Defense and Educational
Fund

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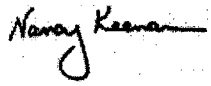
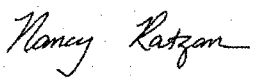
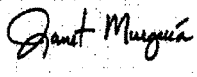


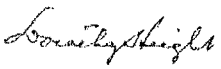
Nancy Keenan
NARAL Pro-Choice America



Nancy Ratzan
National Council of Jewish Women



Janet Murguía
National Council of La Raza



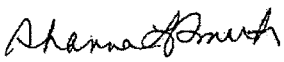
Dorothy Height
National Council of Negro Women



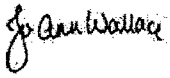
Dennis Van Roekel
National Education Association



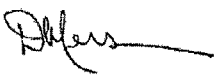
Terisa E. Chaw
National Employment Lawyers Association



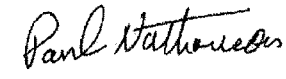
Shanna L. Smith
National Fair Housing Alliance



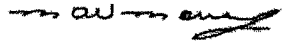
Jo-Ann Wallace
National Legal Aid & Defender Association



Debra Ness
National Partnership for Women and Families



Paul Nathanson
National Senior Citizens Law Center



Marc Morial
National Urban League



Marcia Greenberger
National Women's Law Center



Cecile Richards
Planned Parenthood Federation of America



Jamienne S. Studley
Public Advocates, Inc.

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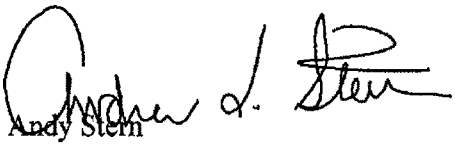
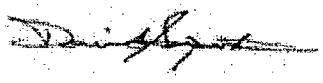


Andy Stern
Service Employees International Union



Rabbi David Saperstein
Union for Reform Judaism



Anne Ladky
Women Employed



Yale Law School

Harold Hongju Koh – *Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law*

January 26, 2009

Members of the Senate Judiciary Committee
United States Senate
Washington, DC.

Dear Senators:

I am Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School. From 1998-2001, I served as Assistant Secretary of State for Democracy, Human Rights and Labor. From 1983-85, I served as an Attorney-Adviser at the Office of Legal Counsel at the Department of Justice under then-Assistant Attorney General Ted Olson and Attorney General William French Smith.

I write to urge you to confirm the nomination of Professor Dawn E. Johnsen of Indiana Law School as Assistant Attorney General General for the Office of Legal Counsel (OLC). I have known Professor Johnsen since she was a Yale law student in 1986, and over the years I have read most of her written work, both in her scholarly capacity and while she served as acting head of the office that she has now been nominated to head. Of her many qualifications, let me single out three: her intimate knowledge of the Office and its unique role in our constitutional system of checks and balances; her lawyerly rigor and scholarly excellence, and her unimpeachable personal decency and integrity.

First, while OLC has had a most distinguished roster of leaders, including such outstanding lawyers as Hugh Cox, William Rehnquist, Antonin Scalia, Ted Olson, and Walter Dellinger, arguably none was as superbly qualified *at the time of nomination* as Professor Johnsen currently is to lead OLC. Professor Johnsen progressed from a brilliant academic record at Yale and Yale Law School to a top-flight appellate clerkship on the Seventh Circuit, to a leading general counsel position, along with many years of service as a staff lawyer and Deputy (and Acting) Assistant Attorney General in the Office of Legal Counsel. Having worked in that office myself, I know how intense the pressures are and how steep the learning curve, even for extraordinarily able lawyers. Professor Johnsen's deep understanding of her office would enable her to step in and hit the ground running on all issues. Her work during the past few years has given her unique insight into OLC's current condition: analyzing the extensive process failures that led to the infamous 2002 "Torture Opinion," compiling the critically important "Principles to Guide the Office of Legal Counsel" (published in the *Indiana Law Journal*), assessing the work of the office for the American Constitution Society, and most recently her point position for the Obama transition team investigating issues relating to the Office of Legal Counsel and Solicitor General's Office. She will need no on-the-job training to fulfill one of most challenging legal positions in government, and will quickly catch nuances, gaps in analysis, and missing constitutional arguments that would escape even other fine lawyers.

Second, Professor Johnsen is a superb lawyer, deeply steeped in federal statutory law, constitutional theory, scholarship, and practice. Although she has expressed strong views as an

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COURIER ADDRESS 127 WALL STREET, NEW HAVEN, CONNECTICUT 06511 • EMAIL [redacted]



Yale Law School

Harold Hongju Koh – ***Dean and Gerard C. and Bernice Latrobe Smith Professor of International Law***

academic--which our scholarly profession obliges good legal scholars to do--she remains fully aware that the credibility of her standing as a government lawyer turns on the thoroughness of her research, the integrity of her interpretations of the laws, and the sensitivity with which she balances her loyalty to her governmental client with her fidelity to the Constitution to which she takes her oath. Unlike some who have worked in OLC, Professor Johnsen will not work backward from desired outcomes. Nor will she bend to political pressure, ignore legal arguments contrary to her client's policy positions, or disrespect the views of seasoned career attorneys. Nor, most fundamentally, does she have any interest in weakening the presidency. Rather, she fully understands how a strong President should operate within a robust system of checks and balances, which protects our nation's security without ignoring the values and liberties the Constitution was established to secure.

Third and finally, Professor Johnsen is a human being of the highest humanity and decency. She has lived an utterly admirable life, modest and selfless, devoting herself only to a search for the truth and a desire to serve others. Some have criticized Professor Johnsen for being too outspoken in her criticism of the work of OLC over the past eight years. Others have suggested that her vigorous public rebuttal of those who would twist the Constitution betrays political bias or an intemperate spirit. Nothing could be further from the truth. Her strong voice shows only her courage to speak when others were silent. We want and need a head of OLC who will speak truth to power, and assume unpopular public positions when her conscience and considered legal judgment lead her there.

If confirmed, Dawn Johnsen would be genuinely judicious and would genuinely serve Justice. We need her desperately to tackle the critical job of keeping the new Administration on the path of law. Her appointment would greatly restore the public's shaken confidence in the rectitude of our Department of Justice. She will be remembered as an Assistant Attorney General for the Office of Legal Counsel of whom the Senate, and our country, will be justly proud. For all of these reasons, her appointment deserves your swift and enthusiastic confirmation.

Sincerely,

Harold Hongju Koh

Dean and Gerard C. & Bernice Latrobe Smith Professor of International Law

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Alan J. Kreczko
[redacted]

January 23, 2009

Chairman Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

I am writing to endorse the confirmation of Dawn Johnsen to the position of Assistant Attorney General, Office of Legal Counsel.

From senior legal positions in the State Department and National Security Council during the Reagan, Bush and Clinton Administrations, I have worked very closely with the Office of Legal Counsel on national security issues over the course of twenty years. I fully appreciate how vital it is, particularly in these times, that the head of that office be someone who is willing to both promote respect for US law throughout the executive branch and to defend the President's Constitutional authority to act vigorously in the national defense.

Having worked with Ms. Johnsen during the Clinton Administration for several years while she was at OLC and I was the Legal Advisor to the National Security Council, I am confident that she understands that the Constitution vests the President with broad authorities in the national security and foreign policy arena, and that she will vigorously defend those authorities. At the same time, I am confident that she appreciates that our Constitution does not give the President limitless authority, even in the national security arena. I know that she will identify those limitations when necessary, not to obstruct action but out of deep respect for our system of laws, and, in those situations, will work tirelessly on ways that the President can work with Congress to protect our national security.

Again, I heartily support Ms. Johnsen's nomination and urge your committee's positive consideration of it.

Sincerely,

Alan Kreczko

Opening Statement of David S. Kris
Nominated as Assistant Attorney General for National Security
Before the Senate Judiciary Committee
February 25, 2009

Madame Chairman, Senator Specter, and distinguished Members of the Committee, it is an honor to appear before you. I am grateful to President Obama for nominating me, to Attorney General Holder for supporting me, and to the Committee for considering me. I also appreciate the Members who met with me prior to this afternoon.

The National Security Division is a new but vital institution of government. To date, it has had only two Assistant Attorneys General – both (like me) originally career prosecutors. The most recent of these, Pat Rowan, was enormously helpful during the Presidential transition period, and I want to take this opportunity to thank him again.

Pat's predecessor, Ken Wainstein, is currently teaching a law school class with me. Ken and I agree on some things, and we disagree on others, but we share a common respect for professionalism and serious legal argument. As a result, we work well together even when we differ. In fact, I think our students benefit from the diversity of views; they get more from both of us than they would from either of us.

Together, Ken and Pat and the men and women of NSD have done a remarkable job establishing the Division. I support many of the things that they have done – including NSD's basic organizational structure, its strong relationships with ODNI and the FISA Court, and its innovative enforcement of export controls.

Of course, I have some ideas of my own about how to build on this foundation and move the Division forward. In keeping with my position as a nominee, and an outsider, these ideas are necessarily tentative. But I will share them nonetheless in an effort to inform your decision about whether or not to confirm me. In the short run, if I am confirmed, I would hope to focus on three procedural issues, and three substantive ones.

Procedurally, I would like first to continue strengthening connections among NSD's various components. I hope this will generate even more coordinated operations and policy development, and foster a more distinct DOJ national security culture. Fundamentally, NSD exists because of the potential synergies between its criminal and intelligence lawyers; I want to maximize those synergies.

Second, if confirmed, I will also focus on NSD's relationships with the Intelligence Community and the NSC, in part by continuing to develop the intelligence perspective and credentials of the Division's lawyers, including its prosecutors. I will also try to respond appropriately and quickly to Congressional oversight, and maintain strong, cooperative relationships with this and other Committees.

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Third, I would hope to continue the very positive evolution of NSD's working relationship with the FBI, particularly at the operational level. I believe this will help the FBI continue its transformation into a security service, and also enhance protection for civil liberties.

Substantively, I also anticipate three areas of focus if I am confirmed. First, GTMO and detainees. NSD has already bequeathed its senior career deputy to serve as Executive Director of the GTMO Task Force, and I am sure it will continue to support the Task Force as needed.

Second, the FISA Amendments Act. This is a new statute, and I do not yet know exactly how it functions, but I do know that it provides enormous authority and underlies an enormously important collection program. If confirmed, I intend to learn in detail how it works.

Third and finally, the FBI's Domestic Operations Guidelines. In at least two ways, I think, these new Guidelines reflect positive developments; in other ways, however, they raise some questions I would like to explore further. If confirmed, I will need to know how the Guidelines operate at ground level, so I can work with the Bureau, advise the Attorney General, and help keep this Committee fully informed.

Again I want to emphasize that these ideas are tentative, and will yield to the ground truth. But they do reflect my current thinking, from my current position, and I wanted to put them before you. I look forward to answering your questions.

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Leadership Conference on Civil Rights

1629 K Street, NW
10th Floor
Washington, D.C. 20006

Phone: 202-466-3311
Fax: 202-466-3435
www.civilrights.org

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National Partnership for Women & Families
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William L. Taylor
Citizens' Commission on Civil Rights
SECRETARY
William D. Novelli
AARP
TREASURER
Gerald W. McEntee
AFSCME
EXECUTIVE COMMITTEE
Barbara Arnwine
Lawyers' Committee For Civil Rights Under Law
Arlene Holt Baker
AFL-CIO
Caroline Fredrickson
American Civil Liberties Union
Kim Gandy
National Organization for Women
Ron Gettelfinger
International Union, United Automobile Workers of America
Marcia Greenberger
National Women's Law Center
Linda D. Hallman
American Association of University Women
Andrew J. Imparato
American Association of People with Disabilities
Benjamin Jealous
NAACP
Jacqueline Johnson
National Congress of American Indians
Kathryn Kolbert
People For the American Way
Floyd Mori
Japanese American Citizens League
Marc H. Morial
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Janet Murguia
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Debra Ness
National Partnership for Women and Families
Mary Rose Oakar
American-Arab Anti-Discrimination Committee
John Payton
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American Federation of Teachers
Mary G. Wilson
League of Women Voters
COMPLIANCE/ENFORCEMENT COMMITTEE CHAIRPERSON
Karen K. Narasaki
Asian American Justice Center
PRESIDENT & CEO
Wade J. Henderson

February 24, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Leadership Conference on Civil Rights, the nation's oldest, largest, and most diverse civil and human rights coalition, and the undersigned organizations, we write to express our strong support for the nomination of Dawn Johnsen to the position of Assistant Attorney General for the Office of Legal Counsel (OLC) at the Department of Justice.

The Office of Legal Counsel is of great importance to the civil and human rights community, as it frequently advises the White House and the federal agencies on a number of issues that directly affect the communities we represent. In recent years, for example, it has weighed in on important matters such as voting rights and congressional representation, criminal justice, immigration benefits and enforcement, religious discrimination, and torture. In addition, the OLC's opinions on matters such as executive privilege or Presidential appointments can also set important, even if more indirect, precedents that ultimately affect the missions of our organizations.

As such, we have a stake in ensuring that the OLC is run by highly-capable individuals who have demonstrated a strong commitment to the rule of law. We believe that Professor Johnsen's extensive prior experience in the Office of Legal Counsel, as well as her tenure as a constitutional law professor, makes her exceptionally qualified to lead this office.

Professor Johnsen's experience and preparation for this job are unparalleled. She served as deputy assistant attorney general at the Office of Legal Counsel from 1993 to 1996 and was named acting assistant attorney general from 1997 to 1998 – giving her a very strong familiarity with the office and its mission that will ensure a fast start after she is confirmed. Following her years with the OLC, Professor Johnsen joined the faculty of the Indiana University School of Law—Bloomington, where she teaches and writes about constitutional law – an experience that has further honed her research capabilities and her

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ability to listen to and weigh all sides of challenging issues, which will help to better ensure that she makes sound legal decisions.

In addition, since leaving the OLC, Professor Johnsen has remained a fierce advocate for protecting the integrity of the Office of Legal Counsel and has written extensively on this subject – including articles on the dangers of ideologically-driven decisions at the OLC and on the Bush administration's abuses of power. In 2004, she organized nineteen former OLC attorneys to jointly create a statement of principles for the OLC, which received praise from Republicans and Democrats alike. In addition, she helped craft legislation to bring greater transparency and integrity to the OLC. Professor Johnsen's continued concern for the office further demonstrates not only her long-term commitment to the OLC but also her exceptional qualifications for leading it now.

In an era where the Bush administration's Office of Legal Counsel often flouted legal constraints in an effort to advance its policies, Dawn Johnsen's nomination as the executive branch's top legal advisor is a sure sign that the Department of Justice will, once again, ensure adherence to the rule of law. Professor Johnsen's extensive experience in the office and her long-standing commitment to its integrity makes her well-qualified for the post.

For these reasons, we urge you to support Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel. Thank you for your consideration. If you have any questions, please contact Rob Randhava, LCCR Counsel, at [redacted] or Nancy Zirkin, LCCR Executive Vice President, at [redacted]

Sincerely,

Alliance for Justice
Asian American Justice Center
Campaign for America's Future
Citizens' Commission on Civil Rights
Human Rights Campaign
Leadership Conference on Civil Rights
Mexican American Legal Defense and Educational Fund
NAACP
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Women
National Council of La Raza
National Health Law Program
National Organization for Women (NOW)
National Partnership for Women & Families
National Senior Citizens Law Center
National Women's Law Center
People For the American Way

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
February 25, 2009

STATEMENT OF SENATOR PATRICK LEAHY
CHAIRMAN, SENATE JUDICIARY COMMITTEE
ON NOMINATIONS TO BE ASSISTANT ATTORNEYS GENERAL FOR THE OFFICE OF LEGAL COUNSEL AND NATIONAL SECURITY DIVISION
FEBRUARY 25, 2009

Today, the Senate Judiciary Committee will hear from two more of President Obama's highly-qualified nominees who have chosen to return to the Department of Justice, where they previously distinguished themselves. Dawn Johnsen and David Kris come before the Committee recommended for the critical positions to which they have been nominated by numerous letters of support from Republicans and Democrats alike.

Our renewed oversight efforts in the last two years brought into sharper focus what for years had been clear— that during the last eight years, the Bush administration repeatedly ignored the checks and balances wisely placed on executive power by the Founders.

In the wake of the tragic attacks on September 11, 2001, and toward the end of President Bush's first year in office, this country had an opportunity to show that we could fight terrorism, secure our nation, and bring the perpetrators of those heinous acts to justice, all in a way that was consistent with our history and our most deeply valued principles. A number of us reached out to the White House in an effort to craft a thoughtful, effective, bipartisan way forward. The White House, supported by the Republican leadership in Congress, chose another path. They diverted our focus from al Qaeda and capturing Osama bin Laden to war and occupation in Iraq. They chose to enhance the power of the President and to turn the Office of Legal Counsel at the Department of Justice into an apologist for White House orders—from the warrantless wiretapping of Americans to torture. In my view, that approach made our country less safe.

We are all too familiar now with the litany of disastrous actions by that administration: rejecting the Geneva Conventions – which the President's Counsel referred to as "quaint" – against the advice of the Secretary of State; establishing a system of detention at Guantanamo Bay in an effort to circumvent the law and accountability; attempting to eliminate the Great Writ of habeas corpus for any non-citizen designated by the President as an enemy combatant; setting up a flawed military commission process that took six years to result in its first trial of a terrorist after more than 80 had been tried successfully in our court system; and permitting cruel interrogation practices that in the worst cases amount to officially sanctioned torture.

Among the most disturbing aspects of those years was the complicity of the Justice Department, particularly the Office of Legal Counsel, which provided cover for the worst of these practices. Its secret legal memoranda sought to define torture down to meaninglessness, sought to excuse warrantless spying on Americans contrary to our laws and made what Jack Goldsmith, a conservative former head of OLC, rightly called a "legal mess" of it all. The costs have been enormous, to our core American ideals, the rule of law, and the principle that in America, no one – not even a President – is above the law.

We need to get to the bottom of what happened in those eight years -- and why -- so we make sure it never happens again. My desire to find a path to reach a reckoning for the actions of the past eight years has led me to suggest a commission of inquiry. We need a fair-minded pursuit of what actually happened. Sometimes the best way to move forward is getting to the truth, finding out what happened, so we can

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make sure it does not happen again. Today I am setting a hearing for next week to explore the idea so that we can find a way forward to a shared understanding of the failures of the recent past.

Of course, we have already taken a significant step forward by confirming Eric Holder as Attorney General. In his answer to my first question to him at his confirmation hearing, now Attorney General Holder declared that "waterboarding is torture" and that no one is above the law. It would not "depend on the circumstances" as the Bush Attorneys General maintained. I am confident that our new Attorney General will not sit in the room while others in our Government approve the secret wiretapping of Americans in violation of our laws, or approve torture.

Today we hear from two nominees for key positions to our national security team.David Kris has been nominated to head the National Security Division and Dawn Johnsen has been nominated to head the Office of Legal Counsel. We should be mindful as we consider these nominations of President Obama's call during his inaugural address for Americans "to reject as false the choice between our safety and our ideals."

The Office of Legal Counsel at the Justice Department is one of those institutions that was hijacked and must be restored. The role of OLC is to provide impartial and independent legal advice for the executive branch. I recall Professor Goldsmith's testimony about his efforts when he took over the office to ensure that the Bush administration complied with the law, which included rescinding several OLC opinions issued in secret by his predecessor predicated on extreme theories of executive power. His efforts were met with enormous resistance within the Bush administration, including the Vice President's office, which actively interfered with the normally independent role of the OLC. This led to one of the most shocking examples of this interference with OLC's independence, the now infamous visit by then-White House Counsel Alberto Gonzales and Chief of Staff Andrew Card to the hospital room of ailing Attorney General John Ashcroft. They sought to get him to reauthorize the administration's secret warrantless surveillance program, after being refused by Acting Attorney General, James Comey.

The new leadership at the Department, including the new head of OLC, must review and revise that office's legal work of the last eight years, when so much of that work was kept secret.

Dawn Johnsen, a five-year veteran of the office she has been nominated to lead and who served from 1997-1998 as Acting Assistant Attorney General in charge of the office, has a deep understanding of what such a review must entail. Indeed, when the excesses of the Bush administration's detainee policy were becoming horrifyingly clear in 2004 with the revelations about Abu Ghraib, Professor Johnson took action to try to protect OLC's integrity and processes. She brought together 19 former OLC attorneys and led them in the formulation of 10 "Principles to Guide the Office of Legal Counsel" based on longstanding practices of OLC under both Democratic and Republican administrations.

These are guidelines that stem from the fundamental principle that, as Professor Johnsen wrote, "OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies." If confirmed, Professor Johnsen would not be an advocate who would look at ways to circumvent the law and find loopholes, but would, instead, help return OLC to its non-ideological tradition of providing legal advice to help guide the actions of the President and the administration.

Professor Johnsen has worked in a bipartisan manner to help craft legislation that would bring greater transparency and accountability to OLC, garnering praise from Brad Berenson, a veteran of the Bush administration's White House counsel's office, with whom she worked on the legislation. Mr. Berenson described Professor Johnson as "fair and reasonable" and "a thoughtful lawyer motivated primarily by a concern for good government and a desire to see our democratic system work properly." Mr. Berenson wrote that the opinions Professor Johnsen expressed during the negotiations over that legislation "reflected a balanced view of the separation of powers and an appropriate respect for the interests of the branch of government that will become her client if she is confirmed."

Like Dawn Johnsen, David Kris is a highly-regarded veteran of the Department of Justice. He is former Federal prosecutor who spent eight years as a career attorney in the Criminal Division at the Department, handling complex cases in Federal trial and appellate courts, including the Supreme Court. Mr. Kris was then a political appointee under both President Clinton and President Bush, serving as Associate Deputy Attorney General from 2000-2003, supervising the government's use of the Foreign Intelligence Surveillance Act (FISA), representing the Justice Department at the National Security Council and in other inter-agency settings, briefing and testifying before Congress, and assisting the Attorney General in conducting oversight of the U.S. intelligence community.

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Like Professor Johnsen, Mr. Kris understands the role the Bush administration's excesses have played in undermining the Department of Justice and the rule of law. In 2006, Mr. Kris released a 23-page legal memorandum critical of the legal rationale offered by the Bush administration and in support of the legality of the National Security Agency's warrantless wiretapping program. Mr. Kris was an early advocate for the creation of the National Security Division he has now been nominated to lead, leaving a lucrative practice as in-house counsel for a major corporation to return to government service.

Mr. Kris' nomination has also earned support from both sides of the aisle. Former Bush administration Solicitor General Ted Olson, who worked with Mr. Kris at the Department, describes Mr. Kris as "a very sound lawyer," who "is committed to the defense of the United States and its citizens, and respects the rule of law and civil rights." Former Deputy Attorney General Larry Thompson, who asked Mr. Kris to remain in his post during the Bush administration, writes that he asked Mr. Kris to stay after finding that "he had a passion for national security issues but also a deep respect and appreciation for the related civil liberties concerns." Former Bush administration Homeland Security Secretary Michael Chertoff and former Attorneys General Janet Reno and John Ashcroft have all written in support of Mr. Kris' nomination.

I hope we can move quickly to consider and confirm Professor Johnson and Mr. Kris to their important positions at the Department. Before our recess, I had hoped the Committee could have moved quickly to report out the nomination of David Ogden to be the Deputy Attorney General, another critical national security post. Unfortunately some Senators did not get their follow up questions to him in time for the Committee to consider his nomination before recess I trust that when we consider his nomination at our business meeting tomorrow, along with the nominations of Elena Kagan to be the first woman confirmed as Solicitor General and Tom Perrelli to be Associate Attorney General, all Senators will be prepared to debate and vote on the nominations. The problems and threats confronting the country are too serious to delay. The Attorney General needs the other members of his Justice Department leadership team in place at the earliest opportunity.

Last night, the President reminded Americans and the world that, "to overcome extremism, we must also be vigilant in upholding the values our troops defend - because there is no force in the world more powerful than the example of America." President Obama reminded us that "living our values doesn't make us weaker, it makes us safer and it makes us stronger."

The nominees before the Committee today understand the moral and legal obligations to protect the fundamental rights of all Americans and to respect the human rights of all. They know as the President and the new Attorney General know that we must ensure that the rule of law is restored as the guiding light for the work of the Department of Justice.

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LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.
ATTORNEYS AT LAW
1330 BROADWAY, SUITE 1800
OAKLAND, CALIFORNIA 94612-2519

[redacted]

January 30, 2009

Chairman Patrick Leahy
Senate Judiciary Committee
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Ranking Member Arlen Specter
Senate Judiciary Committee
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

RE: Dawn Johnson's Nomination for Assistant Attorney General for the Office of Legal Counsel in the U.S. Department of Justice

Dear Chairman Leahy and Ranking Member Spector:

The purpose of this letter is to support the nomination of my former colleague Dawn Johnson for the position of Assistant Attorney General for the Office of Legal Counsel in the U. S. Department of Justice. I do so enthusiastically and without hesitation.

As Assistant Attorney General for Civil Rights in the Clinton Administration, I worked with Dawn when she previously served in the Office of Legal Counsel on the interpretation and construction of the civil rights laws. Her advice and counsel were impartial, nonpartisan and first rate in terms of accurately and fairly stating the law and the scope of governmental authority. While we did not always agree, I believe I and everyone else walked away with the firm impression that Dawn heard everyone out and was rendering advice that was in the best interests of the United States consistent with the rule of law. Whatever the result, I believe that Dawn showed a fundamental commitment to the strong enforcement of the civil rights laws that Congress has required.

As you know, Dawn has been forceful in arguing that the Office of Legal Counsel in recent years had lost its way in rendering advice on the torture of detainees as part of the war on terrorism. Congress ultimately repudiated the interpretations that Dawn criticized. In speaking out, Dawn argued appropriately on behalf of the need for integrity and independence in the operation of the Office of Legal Counsel.

Attorney General Reno was fond of pointing out that the duty of the Department was to enforce the law "without fear or favor", as inscribed on the walls of the Main Building of the Department of Justice. Dawn, in my opinion, has amply demonstrated that she will interpret and construe the laws of the United States, including the civil rights laws, without fear or favor.

If I can be of further assistance to the Committee, please feel free to contact me.

Sincerely,

Bill Lann Lee

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RONALD D. LEE
[redacted]

February 3, 2009

Chairman Patrick J. Leahy
Ranking Member Arlen Specter
Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write in enthusiastic support of President Obama's nomination of David S. Kris, of Maryland, to serve as the Assistant Attorney General, National Security Division, U.S. Department of Justice. This position is at the core and the crossroads of our nation's continuing efforts to achieve greater collaboration, information-sharing, and effectiveness across the national intelligence, law enforcement, homeland security, and public safety communities while enhancing our commitment to the rule of law under the Constitution and laws of the United States. I am confident that Mr. Kris is well-qualified by character, experience, training, and temperament to meet these challenges and that he will ably fulfill the duties entrusted to him.

For the purpose of identification only, I am a partner at Arnold & Porter LLP in Washington, D.C., practicing in the areas of national security and government contracts and data security and privacy. As an Associate Deputy Attorney General in the Department of Justice from 1998 to 2000, I met and worked with Mr. Kris, first when he was a trial attorney in the Criminal Division of the Department of Justice and then when he moved to the Office of the Deputy Attorney General, also serving as an Associate Deputy Attorney General. Mr. Kris achieved important results in some of the most difficult issues in law enforcement, national intelligence, counterterrorism, and counterespionage because of his law enforcement background, rapid mastery of national security authorities, investigations, and processes, and ability to lead people with very different agency perspectives toward agreement. The challenges of bringing the law enforcement and intelligence communities closer together while safeguarding civil liberties of course intensified, although they did not

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change in character, after the terrorist attacks of September 11th. Based on publicly available information, Mr. Kris made valuable and essential contributions to the protection of our nation and to the rule of law during his tenure at the Department of Justice.

Since leaving the government in May 2003, Mr. Kris has been an insightful Congressional witness, commentator and scholar on important national security topics. His work at AOL Time Warner has deepened his understanding of the private sector's important role and perspectives in law enforcement and national security matters. He has acquired a wide-ranging knowledge of the areas under the responsibility of the Assistant Attorney General, National Security Division.

Mr. Kris is a talented colleague, leader, and supervisor. He treats his colleagues with fairness and respect. He is easy to work with. His devotion to the Constitution and the law, and his respect for the roles of the Congress and the judiciary under the Constitution, his integrity, and his ability to safeguard the nation's national security information are well-established and beyond question.

In summary, if confirmed by the United States Senate, Mr. Kris will serve the U.S. Department of Justice and our nation with distinction and integrity. I hope that the Committee will act favorably and quickly on his nomination.

Sincerely,

Ronald D. Lee

[redacted]
February 3, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I am writing to express my strong support for David Kris for the position of Assistant Attorney General for the National Security Division. I worked with Mr. Kris when he was an Associate Deputy Attorney General and can say without hesitation that he is an outstanding selection for this important position and one who will serve with distinction.

Mr. Kris is a brilliant lawyer whose knowledge of national security law is unparalleled. He is also an individual of the utmost integrity and is well respected throughout the Department of Justice and the intelligence community. He is able to balance the needs of the intelligence community and the important civil liberties concerns implicated by actions in this area. He also understands the agencies involved and is well positioned to serve as an honest broker in helping resolve the disputes that inevitably arise between and among them. I cannot imagine a better or more qualified choice for the position. If you or your staff have any questions please do not hesitate to contact me at [redacted].

Respectfully,

Daniel Levin

SCHOOL OF LAW
THE UNIVERSITY OF TEXAS AT AUSTIN
727 East Dean Keeton Street • Austin, Texas 78705 • (512) 471-5151 • Facsimile (512) 471-6988

February 17, 2009

Untied States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Dawn Elizabeth Johnson as Assistant Attorney General of the United States

Dear Chairman Leahy, Ranking Member Specter, and the Members of the Senate Judiciary Committee:

I want to indicate how very delighted I was at President Obama's nomination of Prof. Dawn Elizabeth Johnson to serve as the head of the Office of Legal Counsel within the Department of Justice. I have known her for at least six or seven years. We share a common general interest in the institutional mechanisms by which the Executive Branch pays due heed to its constitutional obligations, as well as a more particularized interest in the articulation by the OLC of views on the permissibility of various means of interrogation, including torture.

I have, of course, read her work with interest and admiration. We have also participated in several scholarly conferences together, including one that she organized several years ago at the University of Indiana Law School. I know of very few people—they include, for what it is worth, the two newly appointed principal deputies within the OLC, David Barron and Martin Lederman—who have devoted as much intellectual energy to thinking through the truly difficult questions involved when trying to delineate the responsibilities of OLC attorneys. She is, I am fully confident, well aware of the peculiar importance of the OLC in setting legal boundaries for the entire Executive Branch. Even if the institutional judiciary will, in some instances, actually review OLC determinations, that inevitably will take significant time, and in the meanwhile executive officials will structure their conduct around the legal advice (or permissions) they have received from the OLC. This is an awesome responsibility, greater, in many ways, than that held by almost any given federal judge. One wants, as head of the OLC, someone not only "learned in the law," but also possessed of a strong moral compass that will generate good judgment. I am absolutely confident that Prof. Johnson possesses both qualities—sheer intellectual ability plus complete trustworthiness, in every way—and I unequivocally recommend her prompt confirmation.

Sincerely,

Sanford Levinson
W. St. John Garwood and
W. St. John Garwood Jr.
Centennial Chair in Law,
University of Texas Law School

ROBERT S. LITT
[redacted]

January 28, 2009

Hon. Patrick Leahy
Chair, Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

Hon. Arlen Specter
Ranking Member, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510-3801

Dear Chairman Leahy and Senator Specter:

I am writing to provide my enthusiastic support for Dawn Johnsen's nomination to be Assistant Attorney General for the Office of Legal Counsel. I served in the Justice Department as Deputy Assistant Attorney General in the Criminal Division from 1994 to 1997, and Principal Associate Deputy Attorney General from 1997 to 1999, while Dawn was Deputy Assistant Attorney General and Acting Assistant Attorney General for OLC.

In my opinion Dawn is exceptionally well qualified and would be an outstanding leader of OLC. She is a brilliant, thoughtful and careful lawyer whose views were afforded great respect by all. Her past service in OLC has given her both a deep appreciation of the importance that body plays in the proper operation of our government, and the respect of the outstanding and dedicated career lawyers who staff it. Both of these attributes will be essential to the desperately needed task of restoring intellectual integrity and morale at OLC. I can think of no one better than Dawn to do that.

Between my service in the Justice Department in the last Administration, and my prior time as an Assistant United States Attorney, I have spent a major part of my professional career in law

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enforcement, and have, as well, considerable experience in matters of intelligence and national security. I appreciate the paramount importance of ensuring that the law enforcement and national security communities have the tools necessary to defend our nation at a time when we are under attack by vicious enemies, while at the same time preserving our values and our civil liberties. Having worked with Dawn for several years, and having read some of what she has written since leaving the Department, I have full confidence that she understands these concerns, and will ensure that executive authorities are interpreted in a manner that protects us all. I believe that the nation would be well served by her prompt confirmation.

Very truly yours,



Robert S. Litt

ROBERT S. LITT
[redacted]

February 3, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Judiciary Committee:

I believe there has rarely been a better qualified candidate for the position to which he has been nominated than David S. Kris for the position of Assistant Attorney General for the National Security Division. I hope that he will be swiftly confirmed to this position that is so central to protecting our Nation.

I have known David personally and professionally for over ten years. I first met him when he was a young lawyer in the Appellate Section of the Criminal Division, and even in that group of great lawyers, he stood out for his insight, thoughtfulness, balance, and lucidity. As a result, he was frequently relied upon for critical and sensitive matters, and his work was consistently outstanding.

David's three years as Associate Deputy Attorney General, both before and after the awful attacks on September 11, have given him a thorough knowledge of the nature of the dangers we face and of the tools that the Justice Department employs to combat those dangers. It is not an exaggeration to say that there is no one in the country who better understands the Foreign Intelligence Surveillance Act. He has thought and written extensively about these issues, and his work is relied upon by virtually everyone who works in this field. He is widely respected within the Federal Bureau of Investigation and the entire intelligence community, and I believe he is equally respected by Members of Congress and their staff.

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One of the reasons David is so well-regarded is that he is fair and non-partisan. He is neither ideological nor political; he served in the Deputy Attorney General's office with distinction in both the Clinton and Bush Administrations. He appreciates the importance both of strong intelligence capabilities, and of privacy and civil liberties, and of the need to balance them. He is a person of complete integrity who believes strongly in the Department as an institution. Perhaps most importantly today, he understands that all activities of the Government must be governed by the rule of law.

By virtue of David's ability, knowledge, judgment, and experience, I firmly believe that our Nation would be exceptionally well served were he confirmed as Assistant Attorney General. I urge his confirmation.

Very truly yours,

Robert S. Litt

AMERICAN UNIVERSITY
WASHINGTON, DC

DANIEL MARCUS
Phone: [redacted]
E-mail: [redacted]

January 30, 2009

Chairman Leahy
Ranking Member Specter
Members of the Senate Judiciary Committee
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Committee:

I am writing in support of the President's nomination of **David S. Kris to be Assistant Attorney General for the National Security Division**. I first met Mr. Kris when I served as Associate Attorney General in 2000-2001, and I have been in close contact with him since then because of our mutual involvement in national security issues. (I served as General Counsel of the 9/11 Commission and have taught National Security Law at the Washington College of Law, American University for the last four years.)

I can think of no-one better qualified by experience, intellect, and integrity for this important position at the Department of Justice at this critical time. Mr. Kris is a splendid example of the dedicated career Justice Department lawyer who rose to a key position in the Department - as Associate Deputy Attorney General for national security matters from 2000-2003. In the process, he gained the respect and admiration of the senior leadership of the Department in the Clinton and Bush Administrations, including Attorney General Reno and Deputy Attorney General Holder and Attorney General Ashcroft and Deputy Attorney General Thompson. During this crucial period (including the months following the 9/11 attacks), Mr. Kris worked closely and effectively with the intelligence community (including the CIA, NSA, and FBI), law enforcement agencies, the National Security Council, and the Foreign Intelligence Surveillance Court. And after leaving the Government for the private sector in 2003, he has continued to participate actively in the field, through his writings, teaching, Congressional testimony, and professional conferences. Mr. Kris is widely recognized in the profession and the academy as our leading expert on the Foreign Intelligence Surveillance Act and the recent statutes amending the Act.

I have gotten to know David Kris quite well during the last few years. I can assure the Committee that he has the personal qualities of honesty, integrity, and devotion to the ideals of our nation and our legal system that we look for in public officials. He is intimately familiar with the Department and the intelligence community and has the leadership and advocacy skills that will enable him to deal effectively with the rest of the President's national security team.

I urge you to recommend his confirmation to the full Senate.

Sincerely,

Daniel Marcus

WASHINGTON COLLEGE OF LAW
4801 MASSACHUSETTS AVENUE, NW SUITE 467 WASHINGTON, DC 20016-8181 202-274-4000 FAX: 202-274-4130

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Kate Martin
[redacted]

February 4, 2009

Chairman Leahy,
Ranking Member Specter, and
Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of David Kris

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write to strongly support the confirmation of David Kris to be the Assistant Attorney General, National Security Division, Department of Justice. I have known Mr. Kris for several years, have discussed and debated the law, national security and government operations with him and carefully read many of his writings and speeches. I am the Director of the Center for National Security Studies, a civil liberties think tank and advocacy organization. I have spent the last twenty years as a lawyer, analyst, and writer on issues relating to national security and civil liberties, always starting with the premise that both national security and civil liberties interests must be protected and that they can and must be reconciled.

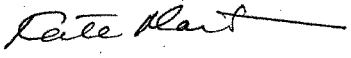
I came to know Mr. Kris mostly through my work on government surveillance issues since 9/11. I first met him when he was with the Department of Justice and have appeared before committees when he was also testifying. I have closely followed his views on national security issues, including surveillance under the Foreign Intelligence Surveillance Act. His treatise on National Security Investigations is an invaluable resource as a clear and objective analysis of that very complex statute. I've had the pleasure of many in-depth discussions with him concerning legal intricacies and broader policy questions. Sometimes, we have disagreed about what the law should be or what the Constitution requires. We have agreed more often about what questions should be asked on a particular controversy. We have always agreed on the importance of respect for the Fourth Amendment, transparency and accountability in government, and government officials' responsibility to follow the law.

I strongly support Mr. Kris' confirmation as I believe that he would do a superb job as head of the National Security Division at the Justice Department. I know him as a

lawyer committed to following the law, protecting civil liberties and working for the security of our country. He is extremely conscientious and very smart. I believe that he would consider carefully the civil liberties concerns that arise in connection with many activities by the Division and that he would do his best to address those concerns, although I might not always agree with the final decision. I believe he would help restore the role of the Department of Justice as a voice within the Executive Branch for civil liberties and respect for the law. I believe that he would work to insure the greatest transparency possible consistent with national security interests, understanding both the necessity for public understanding of and trust in government and the necessity to keep secret particular information. I am certain that he would follow the law and have no hesitation in demanding that others do the same.

Thank you for considering my views. I would be happy to offer whatever further information might be useful. I can be reached at 202-669-7961 or the above e-mail address.

Respectfully,



Kate Martin

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LEWIS C. MERLETTI
Director
United States Secret Service (Ret.)

February 13, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Mr. Chairman:

I hope you and your family are well. These are difficult times, but I feel better knowing you are there still fighting the good fight.

I want to take just a moment of your time to pass along to you my sincere endorsement of President Obama's selection of Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel.

I had the privilege of working with Dawn when I was the Director of the United States Secret Service. Dawn is a true professional and has a thorough understanding of the importance of national and executive security. I found her to be keenly responsive, dedicated, and conscientious in applying herself to the highest standards of conduct.

As the Director of the Secret Service and now Senior VP at the Cleveland Browns, I have had the opportunity to work with many professionals at many different levels of authority and postion, and in many stressful situations requiring tact, diplomacy, and good judgment, Dawn is among the best of those professionals. I heartily endorse her nomination.

Warm regards,

Lewis C. Merletti

PLEASE STAY IN TOUCH, IT WOULD BE WONDERFUL TO GET TOGETHER SOMETIME.

michigan peaceworks!

Michigan Peaceworks Tuesday Working Group
120 ½ W. Liberty Street,
Ann Arbor, Michigan 48104

April 1, 2009

Senator Patrick J. Leahy
United States Senate
Washington, D. C.

Senator Arlen Specter
United States Senate
Washington, D. C.

Dear Senators of the Senate Judiciary Committee,

We write to support and endorse the nomination of Dawn Johnsen as head of the Office of Legal Counsel. Dr. Johnsen is an advocate for human rights in her professional as well as her personal life. Dr. Johnsen has worked for and headed the Office of Legal Counsel in previous administrations and understands that President Bush's attorneys in that office who wrote bogus legal opinions to discount our Constitution and "permit" the Bush Administration to torture prisoners were legally and morally wrong. She understands that the Office of Legal Counsel is entrusted with making sure the President obeys our laws. Dr. Johnsen expects the President and presidential lawyers to respect legal constraints or the rule of law. With her education and experience, we feel Dawn Johnsen is an excellent choice to head and improve the Office of Legal Counsel.

Thank you for your work on our behalf.

Very truly yours,

RANDOLPH D. MOSS
[redacted]

February 5, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of David Kris to be Assistant Attorney General

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write to offer my enthusiastic endorsement for the nomination of David Kris to serve as the Assistant Attorney General for the National Security Division.

I have known David for many years, in many different contexts. I first got to know David during the time that he served in the Criminal Division, where David was a legend for the speed and care with which he worked. I then had the privilege of working with David while he served as an Associate Deputy Attorney General—with responsibility for national security matters—and I headed the Office of Legal Counsel. Most recently, I have had repeated occasions to discuss various legal issues with David in his capacity as one of the Nation's leading experts on national security law.

It is difficult to imagine someone better equipped to lead the Department of Justice's National Security Division. David has an in-depth knowledge of the criminal law and the experience and perspective of a career prosecutor. He is widely respected as an expert on national security law—as the author of a leading treatise and balanced commentator and as someone with extensive practical experience. David also knows and loves the Department of Justice as an institution. Most significantly, David approaches issues of national security with the type of balance and professionalism that is required: he respects both civil liberties and the need to protect the public; he has enormous integrity; and he has the courage to make tough decisions.

The fact that David served in both the Clinton and Bush Justice Departments is a testament to the fact that David's client will be—and has been during all of his years of government service—the United States, and not a particular party or administration. He

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is widely respected across political lines and understands the need to work effectively with agencies throughout the Intelligence Community and the Congress.

In short, I recommend David enthusiastically and without reservation.

Respectfully,

Randolph D. Moss

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RANDOLPH D. MOSS
[redacted]

February 23, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Dawn E. Johnsen to serve as Assistant Attorney General

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write to offer my enthusiastic support for the nomination of Dawn E. Johnsen to serve at the Assistant Attorney General for the Office of Legal Counsel.

I served as the Assistant Attorney General for the Office of Legal Counsel from 2000 to 2001, and prior to that served as the Acting Assistant Attorney General. In addition, I worked with Dawn at the Office of Legal Counsel from February 1996 (when I joined the office) until July 1998 (when Dawn left to teach law at the University of Indiana). During the later portion of this time, Dawn served as the Acting Assistant Attorney General. As a result, I both understand the demands of the job and have had the opportunity to see first-hand how Dawn approaches the role of an OLC lawyer.

Based on this experience, I have complete confidence that Dawn would, if confirmed, do a superb job in leading the Office of Legal Counsel. Dawn's ability and integrity are impeccable. Although modest, she is a truly exceptional lawyer. She is also invariably honest and straightforward. Even those who disagree with Dawn on particular issues come to admire her for the way she approaches legal issues and debate. In addition, I know of no one who has thought more extensively and carefully about the role and duties of the Office of Legal Counsel. Most importantly, Dawn has an abundance of practical experience making the very hard decisions required of the Assistant Attorney General for the Office of Legal Counsel.

During her prior tenure at the Office of Legal Counsel, Dawn served as the "conscience of the office." She was the one who reminded all of us on a daily basis—through her words and actions—of our obligation to get the law right and that our client was the United States. She understood the role of a government lawyer and OLC's duty to protect both the rule of law and the authorities of the Executive Branch. She understood that her role was not as a policymaker, but as a lawyer. Dawn also brought to the job a profound respect for the Department of Justice and the institutions of

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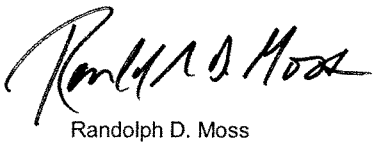
government. In short, Dawn not only understood, but exemplified, the traditions of the Office of Legal Counsel.

For all of these reasons, I believe Dawn is uniquely qualified to lead the Office of Legal Counsel.

Respectfully,



Randolph D. Moss

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DAVIS POLK & WARDWELL

450 LEXINGTON AVENUE
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212 450 4000
FAX 212 450 3800

MENLO PARK
WASHINGTON, D.C.
LONDON
PARIS
FRANKFURT
MADRID
TOKYO
BEIJING
HONG KONG

SCOTT W. MULLER
[redacted]

February 18, 2009

Re: Nomination of David Kris

Chairman Leahy
Ranking Member Spector
Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Spector and Members of the Senate Judiciary Committee:

I write in support of the nomination of David Kris to be Assistant Attorney General in charge of the National Security Division of the United States Department of Justice. I served as the General Counsel of the Central Intelligence Agency from late October 2002 until July 2004 and was in a position to observe David while he was working at the Department of Justice, to become familiar with his contributions as a lawyer to issues pending before the Foreign Intelligence Surveillance Court and to become familiar with David's reputation among national security professionals and fellow lawyers. Based on my personal dealings with and observations of David and the high regard in which he is held by lawyers and professionals in a position to see him at work, I urge the Committee to confirm President Obama's wise nomination. David is a lawyer of extraordinary talent and an individual of integrity. Most important, he has a keen understanding of the overriding importance of the rule of law in matters of national security and the personal and professional qualities to lead others. He will serve our Country well as Assistant Attorney General and you and your Committee will serve well to confirm him in that position.

I will be pleased to provide any further information you may find useful.

Sincerely yours,

Scott W. Muller

NCJW

National Council of Jewish Women

New York Office
475 Riverside Drive, Suite 520
New York, NY 10115
Tel 212 645 4048
Fax 212 645 7466
Email action@ncjw.org

Washington Office
1707 L Street, NW Suite 950
Washington, DC 20036-4206
Tel 202 296 2588
Fax 202 331 7792
Email action@ncjwdc.org

Israel Office
NCJW Research Institute for
Innovation in Education, Room 267
Hebrew University, Mt. Scopus
Jerusalem, Israel 91905
Tel 972 2 5882 208
Fax 972 2 5813 264
Email ncjwisrael@gmail.com

Web www.ncjw.org

March 31, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

Dear Senators:

On behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW), I am writing to urge your support for Dawn Johnsen's nomination as assistant attorney general for the Office of Legal Counsel (OLC). She is a highly qualified candidate who would serve with expertise and skill.

As a decades-long advocate for civil rights and liberties, NCJW understands the importance of the Office of Legal Counsel. The OLC regularly advises the White House and federal agencies on issues pertaining to human and civil rights, issues as varied and significant as criminal justice, voting rights, torture, immigration enforcement, and religious discrimination. This critical office must be led by someone skilled and experienced enough to take on these issues so central to our democracy.

Professor Johnsen is the right person for this position. She served as deputy assistant attorney general at the OLC from 1993-1996 and was acting assistant attorney general from 1997-1998. Since then, she has taught and written extensively about constitutional law, as a member of the faculty at the Indiana University School of Law. In her time outside of public service, she has been a strong advocate for following the rule of law in the Justice Department. In 2004, she organized nineteen former OLC attorneys to create a statement of principles for the OLC, which earned bipartisan praise and support. She is just the kind of leader that the office requires to restore discipline and public confidence after a troubling recent history.

NCJW is a volunteer organization, inspired by Jewish values, that works to improve the quality of life for women, children, and families and to ensure individual rights and freedoms. NCJW believes that Dawn Johnsen's record of public service and leadership, as well as her prior experiences in the Office of Legal Counsel and as a constitutional law professor and scholar make her an ideal choice to serve as assistant attorney general for the Office of Legal Counsel. I strongly urge you to support her nomination in committee.

Sincerely,

Nancy Ratzan

Nancy Ratzan
Cc: Members of the Senate Judiciary Committee

BETH NOLAN
[redacted]

February 24, 2009

Senator Patrick Leahy, Chair
Senator Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Professor Dawn Johnsen to serve as Assistant Attorney General, Office of Legal Counsel

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I am writing to offer my enthusiastic support for President Obama's nomination of Professor Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel (OLC). I urge the Committee to approve her nomination

Professor Johnsen served in OLC from 1993-1998, as both a Deputy Assistant Attorney General and as Acting Assistant Attorney General. I had the privilege of working directly with her when I was a Deputy Assistant Attorney General in that office (1996-1999), and also had come to know her work when I served as Associate Counsel to the President (1993–1995). Having also served as Counsel to the President (1999-2001), and early in my career as an Attorney-Advisor in OLC when Ted Olson headed that Office (1981-1985), I have had both a close-up view of Professor Johnsen as a lawyer and head of OLC, and a longer view of the importance of OLC to our President and the government, and the qualities that are important in one serving as its head.

As a legal scholar Professor Johnsen has addressed with deep sophistication and thoughtfulness the proper role of OLC in our constitutional system, as well as a range of difficult constitutional issues. Her academic experience and deep intelligence would by themselves qualify her for the position to which she has been nominated. But it is the way in which she has conducted herself as an OLC lawyer in the past that makes absolutely clear how ideally suited she is to undertake this important responsibility.

OLC doesn't get the easy questions. It is called upon to address questions that other lawyers in the Executive Branch can't answer on their

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own. It is called upon to address legal questions of the deepest significance for our country. What I know from working closely with Dawn Johnsen is that she is one of the most intelligent, tenacious, and thoughtful analyzers of complex legal problems I have ever seen. A legal conclusion from her comes only after thoughtful assessment of all relevant considerations, and reflects her best judgment on the applicable law, rather than on any policy preferences. Moreover, I have never seen Dawn take a shortcut or reach a conclusion that is "close enough." She insists on excellence—from herself, and from those with whom she works.

Dawn's deeply felt personal commitment to the rule of law is present in all her legal work. Under her leadership, all at OLC will understand the importance of that commitment to the work of the office, as it did when she served as its acting head.

In addition, Dawn will provide a great service to the government because of her outstanding practical ability to devise solutions to seemingly irresolvable conflicts, so that the parties are able to accomplish their objectives in full compliance with the law. When she has to say "no," however, she will do so—clearly and directly—and earn the respect of all who work with her. They will turn to her to solve problems, and accept her conclusions when a problem cannot be solved as the requestor would wish.

I urge the Senate to confirm Professor Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel. In these challenging and even perilous times, there is no one who is better suited to guide OLC in its critical role of assisting the President "to take care that the laws be faithfully executed."

Very truly yours,

Beth Nolan

GIBSON, DUNN & CRUTCHER LLP

LAWYERS

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1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306
(202) 955-8500
www.gibsondunn.com

[redacted]

February 9, 2009

Direct Dial
[redacted]
Fax No.
[redacted]

[redacted]

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
and Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *David Kris*

Dear Senators Leahy and Specter:

I am pleased to add my support to the confirmation for David Kris as Assistant Attorney General for National Security.

I had the opportunity to work directly with Mr. Kris during his service, between 2001 and 2003 while he was Associate Deputy Attorney General. At that time I was Solicitor General. We worked closely on several matters involving national security, intelligence, counter-terrorism and the Foreign Intelligence Surveillance Act (FISA).

I found David to be thoughtful, extremely conversant with our nation's laws and policies involving national security and intelligence matters, intelligent, hard working and articulate. He is a very sound lawyer, possesses good judgment, is committed to the defense of the United States and its citizens, and respects the rule of law and civil rights.

Mr. Kris is a fine choice to head this extremely important office up. I commend him to you.

Very truly yours,

Theodore B. Olson

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Richard D. Parsons

February 5, 2009

Chairman Leahy,
Ranking Member Specter and
Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

I am writing this letter in support of the nomination of David Kris to the position of Assistant Attorney General for National Security. I have known David for over 5 years, since he was first hired at Time Warner as our Chief Compliance Officer, while I was Chairman and Chief Executive Officer of Time Warner. During that time, I had the opportunity (and the pleasure) to work directly with David on an ongoing basis.

David is a lawyer's lawyer. He brings a careful, thoughtful and balanced approach to any issue that confronts him. He is also very diligent, careful and thorough; and he has the utmost integrity. David is a quiet leader. He is the sort of lawyer who brings great judgment, makes difficult decisions, and executes flawlessly. He leads by hard work and example. He is also unfailingly discreet. He is thoroughly nonpartisan; indeed, in all my dealings with him, I am not sure I even know his political views. Rather, he is the sort of person who can be trusted with the most sensitive material and issues, and be trusted to handle difficult situations with care, thoroughness, judgment and balance.

David is a great pick for Assistant Attorney General for National Security. It will be a great loss to Time Warner, but a great addition to the service of the Nation. I strongly urge you to support his nomination. If I can provide any further information, please do not hesitate to contact me.

Sincerely,

R.D.P.

[redacted]

DEVAL L. PATRICK
GOVERNOR

75 Hinckley Road
Milton, MA 02186

January 26, 2009

Dear Chairman Leahy:

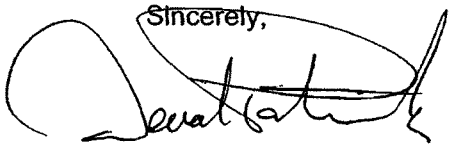
I have the privilege of writing in enthusiastic support of Dawn Johnson for confirmation to the position of Assistant Attorney General in the Office of Legal Counsel.

I have known Dawn for many years, since I served in the Civil Rights Division during the first term of the Clinton Administration. Dawn was unfailingly a good listener, a keen legal analyst, well spoken, unflappable, and an absolute delight to have as a colleague. We did not always agree but she brought to every matter -- some of which were highly controversial -- a clarity of thought, creativity and commitment to the public good that was a constant source of pride and inspiration.

As you know, Dawn has served with the ACLU Reproductive Freedom Project and was legal director of NARAL Pro-Choice America. She has also served on the board of the American Constitution Society for Law and Policy, on which I also served for a time. She is exceedingly well grounded in the human and civil rights issues of our time.

I recommend Dawn for confirmation without reservation, and respectfully urge the Committee to act favorably on her candidacy.

Sincerely,



OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
GENERAL COUNSEL
WASHINGTON, DC 20511

February 18, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write in strong support of the nomination of David Kris for Assistant Attorney General for National Security, Department of Justice.

David Kris is well qualified to serve as the next Assistant Attorney General for National Security. He has the strong background in national security law critical to the position. Mr. Kris has a deep knowledge of the issues relevant to the Intelligence Community. He has an extensive background in both national security and criminal law, having served in several positions in the Department of Justice, including as Associate Deputy Attorney General from 2000 to 2003, where he engaged in precedent setting work involving the Foreign Intelligence Surveillance Act (FISA). I became familiar with Mr. Kris during his time in the private sector, where he has distinguished himself as an author and widely respected authority on surveillance and national security law.

I have worked closely with the Department of Justice and the National Security Division while serving as the General Counsel to the first three Directors of National Intelligence, including the current Director, Dennis C. Blair. In my previous capacity as an Associate Counsel to the President and Special Assistant to the President, I worked on issues related to the transformation of the Intelligence Community, including extensive involvement in the drafting and negotiation of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), and supporting the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (Silberman-Robb Commission). Creation of the National Security Division was a key recommendation of the Silberman-Robb Commission. The National Security Division plays a critical role in working with the Intelligence Community to protect the Nation while ensuring the protection of the civil liberties and privacy of all Americans. My

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office interacts daily with the National Security Division, as do many elements of the Intelligence Community. In short, the National Security Division has become a key part of the country's national security team. I am confident that the Intelligence Community will benefit from the steady leadership that David Kris is prepared to provide, and that Mr. Kris will continue the progress the Division has made in providing leadership on national security matters critical to the Nation.

I believe David Kris has the talent, background, and leadership ability required to succeed in this important position. He also has a well established reputation in the legal community for integrity and hard work. I urge the Committee to recommend to the full Senate approval of his nomination.

Sincerely,

Benjamin A. Powell

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[redacted]

January 28, 2009

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing in support of the nomination of Dawn Johnsen to be the Assistant Attorney General for the Office of Legal Counsel (OLC) at the U.S. Department of Justice.

Currently in private practice, I was previously Principal Deputy General Counsel of the Department of Defense (DoD) (1993-1995), Deputy Assistant Attorney General in the Civil Division (1995-1998), and General Counsel of the Department of the Navy (1998-2000). While in government, I dealt with Ms. Johnsen from time to time when she was in OLC. In particular, I recall our working together when I was Acting General Counsel of DoD and she was Deputy Assistant Attorney General in OLC.

In my experience, Ms. Johnsen's work was characterized by great care and intellectual honesty, yielding opinions that were rooted in the law, as well as common sense. In matters of national security, I am aware of no instance in which she was other than diligent in seeking to safeguard the interests of the United States and solicitous of the positions of DoD and other agencies as appropriate.

Based on this experience, I am pleased to support Dawn Johnsen's nomination.

Very truly yours,

Stephen W. Preston

cc: The Honorable Arlen Specter, Ranking Member

February 1, 2010

The Honorable Senator Harry Reid
Senate Majority Leader
522 Hart Senate Office Bldg
Washington, DC 20510

Dear Senator Reid:

We, the undersigned, are professors of law at leading universities around the country.

We are writing out of concern for the delay in confirming Dawn Johnsen, President Obama's nominee to head the Department of Justice's Office of Legal Counsel (OLC). Professor Johnsen's nomination has been pending on the Senate's Executive Calendar since it was favorably reported by the Senate Judiciary Committee on March 19, 2009. To date, however, because of the minority's refusal to enter a time agreement, Professor Johnsen's nomination has not been voted on by the full Senate. This delay is extraordinary and unacceptable.

The Office of Legal Counsel plays a critical role in guiding executive branch activities, advising the President and his Administration on the constitutionality of proposed policies, legislation, and executive orders. It requires an individual of exceptional scholarship and unimpeachable integrity, someone with the strength of character and tough-mindedness to deliver unbiased advice without qualification.

Professor Johnsen is immensely qualified for this position. She has extensive previous experience in the Office of Legal Counsel, including service as its acting head for more than a year during the Clinton Administration. Doug Kmiec – the OLC head under Presidents Ronald Reagan and George H.W. Bush – has applauded Professor Johnsen's track record during that service, noting that she "repeatedly separated policy preference from rendered opinion."

Throughout her career, Professor Johnsen has demonstrated an ability to work with others across the political spectrum in support of the rule of law. She has been endorsed by officials from the administrations of Presidents Ronald Reagan, George H. W. Bush, Bill Clinton, and George W. Bush. In 2004, after Bush administration OLC abuses came to light, she organized an impressive panel of former OLC lawyers to develop a statement of principles to guide the office going forward. That document has been praised by Republican and Democratic officials alike.

The extraordinary obstruction of Professor Johnsen and other executive branch nominations must not be allowed to continue. In the 60 years since the rules of the Senate were changed to allow debate on nominations to be brought to a close through a vote on cloture, there have been only 36 executive branch nominations on which cloture motions have been filed. During the entire eight years of George W. Bush's presidency, cloture was filed on 15 nominees. Yet, as you know, in just the first nine months of the Obama Administration, you were forced to file cloture petitions on 10 nominees. Another 63 executive nominations are currently on the Senate's Executive Calendar, many of which have been pending for some time, raising the specter of yet more unprecedented and unnecessary cloture votes to fill key Administration positions.

This level of obstruction is simply unacceptable. It frustrates the ability of executive branch agencies and departments to serve critical public needs. And it defies the deference traditionally provided Presidents in shaping their Administrations, particularly with respect to sub-Cabinet level positions.

Professor Johnsen has the experience, the integrity, and the intellect to head this critical office. We urge you to bring this nomination to a vote at the earliest possible date.

Sincerely,

Harry Hopkins
University of Alabama School of Law

Paul Bender
Arizona State University Sandra Day O'Connor College of Law

Michael O'Connor
Phoenix School of Law

Kenneth Salzberg
California Western School of Law

Francine Lipman
Chapman University School of Law

Robert Calhoun
Golden Gate University School of Law

Drucilla Ramey
Golden Gate University School of Law

Rachel Van Cleave
Golden Gate University School of Law

John Schick
Humphreys College Laurence Drivon School of Law

Bridgit Lawley
John F. Kennedy University School of Law

Gary Williams
Loyola Law School Los Angeles

Donald Polden
Santa Clara University School of Law

Margaret Russell
Santa Clara University School of Law

David Sloss
Santa Clara University School of Law

Beth Van Schaack
Santa Clara University School of Law

Stephanie Wildman
Santa Clara University School of Law

Eric Wright
Santa Clara University School of Law

Patricia Cain
Santa Clara University School of Law

Marina Hsieh
Santa Clara University School of Law

Christopher Cameron
Southwestern Law School

Craig Christensen
Southwestern Law School

Janet Cooper Alexander
Stanford Law School

Thomas C. Grey
Stanford Law School

Pamela Karlan
Stanford Law School

Mark A. Lemley
Stanford Law School

Miguel Mendez
Stanford Law School

Michael Wald
Stanford Law School

Kathryn Abrams
UC Berkeley School of Law

Maria Blanco
UC Berkeley School of Law

Carolyn Blum
UC Berkeley School of Law

Christopher Edley
UC Berkeley School of Law

David Oppenheimer
UC Berkeley School of Law

Paul Schwartz
UC Berkeley School of Law

David Sklansky
UC Berkeley School of Law

Floyd Feeney
UC Davis School of Law

Lisa C. Ikemoto
UC Davis School of Law

Carlton F.W. Larson
UC Davis School of Law

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Carter C. White
UC Davis School of Law

Mark Aaronson
UC Hastings College of the Law

Naomi Roht-Arriaza
UC Hastings College of the Law

Carrie Hempel
UC Irvine School of Law

Richard Abel
UCLA School of Law

Grace Blumberg
UCLA School of Law

Robert Goldstein
UCLA School of Law

Clyde Spillenger
UCLA School of Law

John M Adler
University of San Francisco School of Law

Peter Jan Honigsberg
University of San Francisco School of Law

Michael Iglesias
University of San Francisco School of Law

Rebecca Brown
University of Southern California Gould School of Law

Kim S. Buchanan
University of Southern California Gould School of Law

Mary Dudziak
University of Southern California Gould School of Law

Niels Frenzen
University of Southern California Gould School of Law

Ariela J. Gross
University of Southern California Gould School of Law

Daria Roithmayr
University of Southern California Gould School of Law

Thomas Griffith
University of Southern California Gould School of Law

Gregory Keating
University of Southern California Gould School of Law

Lawrence Levine
University of the Pacific, McGeorge School of Law

John Sims
University of the Pacific, McGeorge School of Law

Melissa Hart
University of Colorado Law School

Scott Moss
University of Colorado Law School

Alan Chen
University of Denver Sturm College of Law

Nancy Ehrenreich
University of Denver Sturm College of Law

Justin Marceau
University of Denver Sturm College of Law

Paula Rhodes
University of Denver Sturm College of Law

Howard Rosenberg
University of Denver Sturm College of Law

Ann Scales
University of Denver Sturm College of Law

Kris Miccio
University of Denver Sturm College of Law

Melanie Abbott
Quinnipiac University School of Law

Jennifer Brown
Quinnipiac University School of Law

Sara Bronin
University of Connecticut School of Law

Timothy Everett
University of Connecticut School of Law

Richard Michael Fischl
University of Connecticut School of Law

Bruce Ackerman
Yale Law School

Lea Brilmayer
Yale Law School

Denny Curtis
Yale Law School

61992.428

Robert Gordon
Yale Law School

Judith Resnik
Yale Law School

Reva Siegel
Yale Law School

Stephen Wizner
Yale Law School

Nancy Abramowitz
American University Washington College of Law

Susan Carle
American University Washington College of Law

Angela Davis
American University Washington College of Law

Sean Flynn
American University Washington College of Law

Amanda Frost
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Ivan Bodensteiner
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Katherine Franke
Columbia Law School

Jack Greenberg
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Jamal Greene
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Elizabeth Scott
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Jane M. Spinak
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Kendall Thomas
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Eileen Kaufman
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Robert Strassfeld
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Ohio State University Moritz College of Law

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Ohio State University Moritz College of Law

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Margery Koosed
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Christopher Bryant
University of Cincinnati College of Law

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University of Cincinnati College of Law

Bert Lockwood
University of Cincinnati College of Law

Benjamin G. Davis
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Rebecca Zietlow
University of Toledo College of Law

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University of Tulsa College of Law

Michael Blumm
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Mark Peterson
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Gilbert Carrasco
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Anil Kalhan
Drexel University Earle Mack School of Law

Scott Burris
Temple University Beasley School of Law

Burton Caine
Temple University Beasley School of Law

Theresa Glennon
Temple University Beasley School of Law

David Kairys
Temple University Beasley School of Law

Muriel Morisey
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Margaret deGuzman
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Henry Richardson
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University of Pennsylvania Law School

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Jules Lobel
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Thomas Crocker
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Kali Murray
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R. Alta Charo
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University of Wisconsin Law School

Linda Greene
University of Wisconsin Law School

Caprice Roberts
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Michael Duff
University of Wyoming College of Law

**affiliations are for purposes of identification only.*

Harriet S. Rabb
Vice President & General Counsel
The Rockefeller University
New York City, New York 10065

January 22, 2009

Honorable Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Re: Dawn Johnsen

Dear Senator Leahy,

I write in support of the confirmation of Dawn Johnsen as Assistant Attorney General, Office of Legal Counsel. She is superbly suited to carry out the duties of the position by reason of her legal acumen, her judgment, and her fitness for the OLC role.

I met Ms. Johnsen in early 1993 when I was confirmed by the Senate to the position of General Counsel to the Department of Health and Human Services, a post I held until January, 2001. During those eight years, I worked in close collaboration with a number of divisions of the Department of Justice, including the Office of Legal Counsel, and, in particular with Ms. Johnsen. It is on the basis of my experience that I write this letter.

Ms. Johnsen has an unusually fine legal mind. Her career reflects her inherent capability as a lawyer and her commitment to excellence in the study and practice of the law.

Ms. Johnsen's experience in the law has honed her innate good judgment. She is thorough in her research and has the good sense to know when she and those she supervises have gotten to the core of legal issues. She is a natural leader.

Ms. Johnsen is particularly well suited to the position for which she has been nominated. In the course of her career, Ms. Johnsen has, at times, been an advocate, but when we worked together during the '93-'98 period, she was, instead, a lawyers' lawyer. When I requested OLC advice on difficult issues, Ms. Johnsen responded with full, clear and reliable statements of the law. No advocacy and no policy leanings were hidden in the legal reasoning. I knew that what I was learning from OLC was the basis on which sound policy could be made. Ms. Johnsen is a person of such unwavering integrity that the OLC, under her direction, will be an excellent, honest and forthright legal resource in service to the nation

I urge your confirmation of Dawn Johnsen to the position of Assistant Attorney General. She is a brilliant and upstanding lawyer and leader who will bring honor to the Department of Justice and to the Office of Legal Counsel.

Sincerely,

Harriet S. Rabb

Harriet S. Rabb

January 23, 2009

The Honorable Patrick Leahy
The Honorable Arlen Specter
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy, Senator Specter, and Members of the Senate Judiciary Committee:

I write to urge that you confirm Dawn Johnsen as Assistant Attorney General for the Office of Legal Counsel. In a Department full of outstanding lawyers, Dawn stood out as one of the very finest. She was a trusted colleague who never failed to provide cogent and wise counsel during the five years we worked together. She is an outstanding choice for this position.

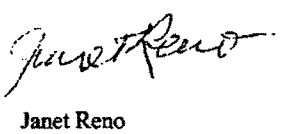
During my tenure as Attorney General, Dawn served as acting Assistant Attorney General for the Office of Legal Counsel for eighteen months. I worked closely with her virtually every day, dealing with the full range of issues and challenges at the Department. She served with great integrity and skill. Her counsel was always intelligent and helpful. Her good judgment was unsurpassed.

Dawn is unwavering in her commitment to the best traditions of the Office of Legal Counsel and the law. She demonstrated that consistently across areas of national security, civil rights, public safety, criminal prosecutions, executive and legislative interactions, and many more. Dawn is an outstanding lawyer, always helpful in devising strategies that would enable the executive to achieve its legitimate goals in ways that would conform to the law. And where the law imposed constraints on executive action, she was unwavering in her willingness to uphold those legal limits. In this way, Dawn embodied the honorable, nonpartisan tradition of the Justice Department and the Office of Legal Counsel in promoting the rule of law.

Dawn has proven exceedingly capable at affirming the rule of law, honoring the constitutional relationships among and within the branches of the federal government, and helping an administration achieve its objectives, from vigorously protecting our national security to advancing our common good. She unfailingly kept the national interest at the center of her focus, dedicating her talents to its service.

In my judgment, President Obama could not have chosen a better lawyer to head the Office of Legal Counsel. She has the skill, the judgment, the tenacity, the independence and the integrity to serve the new administration and the country with excellence. I urge that you confirm her to this critical position.

Sincerely,



Janet Reno

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February 1, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter and Members of the Judiciary Committee:

I am writing to support the confirmation of David S. Kris as Assistant Attorney General for National Security. I first met David when he was assigned to work on the prosecution of the Montana Freemen, a domestic terrorist group, in the 1990s. In 2000, he became an Associate Deputy Attorney General, where he worked with me and the Deputy Attorney General, Eric Holder, on intelligence-sharing and other national security matters.

David is a professional, with expertise in both national security and criminal justice. He is a lawyer's lawyer, with a strong analytic mind, but he also has operational experience, having been tempered by the crucible of September 11 and its aftermath.

He appreciates the importance of both liberty and security, and when there is a choice to be made between these competing values, he calibrates that choice in a thoughtful, balanced, and open manner. David is a lawyer who never forgets that his client is the United States, regardless of which political party is in power. He held important leadership positions at DOJ in the Clinton and Bush administrations, and received the Department's highest citation – the Attorney General's Award for Exceptional Service – from me and from John Ashcroft.

David loves the Department of Justice as an institution, and cares deeply about its people, having begun his career in the Honors Program. He has integrity, judgment, and expertise. I believe he would make an excellent Assistant Attorney General for National Security.

Very truly yours,

Janet Reno

Janet Reno

February 2, 2009

The Honorable Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

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

Dear Chairman Leahy and Senator Specter:

We are proud to support the nominations of Elena Kagan to be Solicitor General of the United States and of Dawn Johnsen to be Assistant Attorney General for the Office of Legal Counsel. No woman has ever been confirmed by the Senate to hold either of these crucial offices. Because these two offices carry the broadest immediate responsibility for constitutional law, the confirmations of these two women will represent an important milestone for the Department of Justice and for women in the legal profession.

Each of us has been the first woman, or among the first women, to hold her office in the Justice Department. Based on our experiences in the Department, we fully understand the demands of the offices to which Ms. Johnsen and Ms. Kagan have been nominated. We have no hesitation in concluding that each of them possesses the skills and character to excel in the position for which she has been nominated. We therefore urge their prompt confirmation.

The Department of Justice is one the nation's most significant legal institutions. Across the broad spectrum of practice areas, the Department handles some of the most consequential and complicated matters that confront our legal system. By opening its highest offices to outstanding lawyers without respect to race, creed or gender, the Department has long played a pioneering role in opening the practice of law to all. This openness has also allowed the Department to benefit from access to a diverse range of the finest legal talents the bar has to

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offer. By confirming Elena Kagan and Dawn Johnsen, the Senate will help the Department advance this honorable tradition.

Sincerely,

Janet Reno
Attorney General (1993-2001)

Jamie S. Gorelick
Deputy Attorney General (1994-1997)

Patricia Wald
Assistant Attorney General
Legislative Affairs (1977-1979)

Eleanor D. Acheson
Assistant Attorney General
Office of Policy Development (1993-2001)

Loretta C. Argrett
Assistant Attorney General
Tax Division (1993-1999)

Jo Ann Harris
Assistant Attorney General
Criminal Division (1993-1995)

Lois Schiffer
Assistant Attorney General
Environment and Natural Resources
Division (1993-2001)

INDIANA UNIVERSITY
MAURER SCHOOL OF LAW
Bloomington

January 29, 2009

Senator Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

I write to express the strongest possible support for Dawn Johnsen's nomination to head the Office of Legal Counsel in the Department of Justice. Professor Johnsen joined our faculty ten years ago, and I have worked with her, first as Associate Dean and then as Dean, during that entire time. Professor Johnsen's intellectual acuity is coupled with deep probity and excellent judgment. She has a love for the Office and an understanding of the importance of its role that is unparalleled. I do not believe there is a better lawyer in America for this position.

I have read all of Professor Johnsen's academic work, and have watched her make numerous presentations on the role of the OLC and the constitutional role of the Executive Branch. Professor Johnsen is a careful and brilliant legal scholar whose constitutional analysis is pragmatically grounded in her previous experience in OLC and her equally pragmatic and principled views on separation of powers. Her writing evidences her deep respect for constitutional values, and she has been particularly focused on the need for careful and precise analysis of the proper role of the Executive. In her presentations and her academic writing, Professor Johnsen has both joined widespread criticism of the recent OLC and cautioned against an overreaction to the Bush administration's expansive claims of Executive power. She has defended, appropriately, many aspects of Executive branch power such as Executive privilege and the Executive's role in constitutional interpretation of statutes, in nuanced and sophisticated writing that demonstrates her deeply grounded judgment.

She has also been a leader in thinking about the proper role of the OLC, and is widely recognized as such by the most respected legal scholars in the area of constitutional separation of powers. Her leadership is demonstrated through her role in producing the bipartisan "Principles to Guide the Office of Legal Counsel," 81 Indiana Law Journal 1348 (2006). A fair appraisal of all of Professor Johnsen's written work would note the consistency of each of her proposals with the principles that this piece outlines, particularly the requirement that legal advice "should provide an accurate and honest appraisal of applicable law" and "should reflect all legal constraints, including the constitutional authorities of the coordinate branches of the federal government."

Finally, Professor Johnsen's personal integrity is absolutely beyond reproach. Her life in Bloomington, Indiana, has been marked by her devotion of time and talent to the various communities that are lucky enough to count her as a member. She is an exemplary citizen and colleague, a gifted and careful lawyer, and absolutely a stellar choice for the position of Assistant Attorney General.

Yours truly,

Lauren Robel

Lauren Robel
Dean and Val Nolan Professor of Law

Office of the Dean 211 S. Indiana Avenue Bloomington, IN 47405-7001 [redacted]

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February 10, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of David S. Kris to be the Assistant Attorney General for the National Security Division

Dear Chairman Leahy, Ranking Member Spector and Members of the Senate Judiciary Committee:

I write to express my very strong support for the nomination of David S. Kris to be the Assistant Attorney General for the National Security Division.

I have dealt with the Department of Justice for over 40 years in a variety of roles, both inside and outside of the Department. It was my honor to serve in the Justice Department during the Carter Administration (as the United States Attorney for the Eastern District of Michigan 1977-1980) and in the Clinton Administration (as the Assistant Attorney General for the Criminal Division 1998-2001). I also served as President of the bipartisan National Association of Former United States Attorneys in the early 80s. I feel strongly that the Department is at a critical juncture in its history and that it requires the best and brightest leadership possible. I expressed these views in an article published in the most recent issue of the Harvard Law & Policy Review. See Robinson, Restoring Public Confidence in the Fairness of the Department of Justice's Criminal Justice Function, 2 Harv L & Pol Rev. 237 (2008). http://www/hlpronline.com/Robinson_HLPR.pdf

In my view, David Kris is the best possible person to lead the Department's relatively new National Security Division. I came to know David when I served as AAG of the Criminal Division where David was a highly respected prosecutor and appellate lawyer, and then when he served as an Associate Deputy Attorney General and senior national security advisor to the Attorney General and the Deputy Attorney General. David did an outstanding job in discharging these critical responsibilities and gained very valuable experience that will serve him well in his new position. I also had substantial dealings with David when he served as the Senior Vice President and Deputy General Counsel and Chief Ethics and Compliance Officer of Time Warner, Inc. I dealt with David in my capacity as the Independent Monitor of

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United States Senate
February 10, 2009

America Online (AOL), a wholly owned subsidiary of Time Warner, in connection with a Deferred Prosecution Agreement between the Justice Department and Time Warner as to AOL. During this assignment I came to appreciate David's outstanding ethical qualities and his sterling character and integrity. In addition, David is one of the country's leading experts on national security issues and the Foreign Intelligence Surveillance Act and thus is uniquely qualified for his new national security duties.

I am very pleased to support David's nomination as AAG of the National Security Division. I am confident he will serve the Department and the people of the United States in this important position with honor and distinction.

Sincerely,

James K. Robinson

JKR

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CADWALADER

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February 11, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Dawn Johnsen to be the Assistant Attorney General of the Office of Legal Counsel

Dear Chairman Leahy, Ranking Member Spector and Members of the Senate Judiciary Committee:

I write strongly to support the nomination of Professor Dawn Johnsen to be the Assistant Attorney General of the Office of Legal Counsel.

I have dealt with the Department of Justice for over 40 years in a variety of roles, both inside and outside of the Department. It was my honor to serve in the Justice Department during the Carter Administration (as the United States Attorney for the Eastern District of Michigan 1977-1980) and in the Clinton Administration (as the Assistant Attorney General for the Criminal Division 1998-2001). I also served as President of the bipartisan National Association of Former United States Attorneys in the early 80s. I feel strongly that the Department is at a critical juncture in its history and that it requires the best and brightest leadership possible. I expressed these views in an article published in the most recent issue of the Harvard Law & Policy Review. See Robinson, Restoring Public Confidence in the Fairness of the Department of Justice's Criminal Justice Function, 2 Harv L & Pol Rev. 237 (2008). http://www/hlpronline.com/Robinson_HLPR.pdf

I have worked with Professor Johnsen in a variety of capacities, including our work together on the Obama Administration's Justice Department Transition Team, on the Center for American Progress project concerning a Blueprint for the 44th President and on several programs sponsored by the American Constitution Society concerning the Justice Department.

In my opinion, Professor Johnsen brings exactly what is necessary to the position of Assistant Attorney General for the Office of Legal Counsel to assure this nation's commitment to the rule of law--outstanding academic credentials, strong OLC leadership experience and, most importantly, an unwavering commitment to the rule of law. As a former law school dean

James K. Robinson [redacted]
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United States Senate
February 11, 2009

(Wayne State University Law School 1993-1998) I have also admired Professor Johnsen's scholarly work on presidential power, and I am convinced that she will exercise her responsibilities with fealty to the Constitution and the rule of law at all times. I was particularly impressed with Professor Johnsen's work with other former OLC lawyers in preparing the Principles to Guide the Office of Legal Counsel. Following these Principles will go a long way to restoring OLC's credibility as the nation's independent source of constitutional and legal advice to the President and the entire Executive Branch.

I am pleased to lend my support to Professor Johnsen's nomination and I am confident that she will do an outstanding job as Assistant Attorney General of the Office of Legal Counsel.

Sincerely,

James K. Robinson

JKR

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Religious Action Center
of Reform Judaism

The Religious Action Center pursues social justice and religious liberty by mobilizing the American Jewish community and serving as its advocate in the nation's capital.

Rabbi David Saperstein
Director and Counsel

Mark J. Pelavin
Associate Director

Cheryl Gutmann
Chair
Commission on Social
Action of Reform Judaism

Rabbi Marla J. Feldman
Director
Commission on Social
Action of Reform Judaism

The Religious Action Center operates under the auspices of the Commission on Social Action of Reform Judaism, a joint instrumentality of the Central Conference of American Rabbis and the Union for Reform Judaism with its affiliates:

American Conference of Cantors

Association of Reform Zionists of America

Canadian Association of Reform Zionists

Early Childhood Educators of Reform Judaism

National Association of Temple Administrators

National Association of Temple Educators

Men of Reform Judaism

North American Federation of Temple Youth

Program Directors of Reform Judaism

Women of Reform Judaism

Arthur and Sara Jo Kobacker Building
2027 Massachusetts Avenue, NW
at Kivie Kaplan Way
Washington, DC 20036
202.387.2800
Fax: 202.667.9070
E-mail: rac@urj.org
Visit our website at www.rac.org

May 5, 2009

The Honorable Patrick Leahy
433 Russell Senate Office Building
District of Columbia 20510

Dear Senator Leahy,

On behalf of the Union for Reform Judaism, whose 900 congregations encompass nearly 1.5 million Reform Jews, I write to express support for the nomination of Dawn Johnsen to head the Office of Legal Counsel at the Department of Justice.

Ms. Johnsen is supremely qualified for this critical post. After a distinguished legal career, focused on reproductive rights, Ms. Johnsen served in the Office of Legal Counsel during the Clinton Administration, first as Deputy Assistant Attorney General from 1993 to 1996 and then as Acting Assistant Attorney General from 1997 to 1998. Since then, Johnsen has been a distinguished professor of constitutional law at the Indiana University Maurer School of Law in Bloomington. All of these experiences--particularly her familiarity with the OLC-- make her particularly well-suited for this appointment

Ms. Johnsen's nomination has been lauded by legal experts and officials from across the political and ideological spectrum, including Walter Dellinger, head of the OLC from 1993 to 1996 and United States Solicitor General from 1996-1997 under President Bill Clinton and Doug Kmiec, principal deputy in the OLC from 1985 to 1989 under President George H.W. Bush. Ms. Johnsen has garnered strong support from the civil rights, labor, human rights, women's and environmental communities.

The debate over Ms. Johnsen's nomination is not about her strong credentials or her expertise. Rather, critics have focused on her vocal opposition to torture and support for reproductive rights. However, these positions reflect Ms. Johnsen's commitment to individual rights and fundamental liberties under the law.

In early April, I sent a letter to you and other members of the U.S. Senate contending that Ms. Johnsen's confirmation should not be delayed by an ideological, partisan battle nor should she be blocked from office because of her support for reproductive rights. Today, I reiterate this sentiment and express full support for Ms. Johnsen's confirmation. Her appointment will begin the essential process of restoring integrity to the Office of Legal Counsel, specifically, and the Department of Justice as a whole.

Therefore, I urge you to ensure that a vote on Ms. Johnsen's nomination is not delayed and that her confirmation proceeds expeditiously. I strongly encourage you to vote in favor of her confirmation.

Sincerely,

Rabbi David Saperstein

WILMERHALE

Howard M. Shapiro
[redacted]

February 3, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

I write enthusiastically in support of the nomination of Dawn Johnsen to be Assistant Attorney General, Office of Legal Counsel.

I have known Dawn personally and professionally for many years. She is an extraordinarily capable and analytically gifted lawyer, a careful and precise counselor, and a deeply dedicated public servant. During most of her previous service in the Office of Legal Counsel I had the privilege to serve as General Counsel of the Federal Bureau of Investigation. I had many occasions to work closely with the Office of Legal Counsel on important law enforcement and national security issues. Under Dawn's leadership as Deputy Assistant Attorney General and Acting Assistant Attorney General the office ran smoothly and efficiently and provided consistently thoughtful, measured advice in both formal memoranda and many less formal interactions. In a department notable for the commitment and patriotism of its lawyers, Dawn nevertheless stood out as exceptional.

I know that Dawn is deeply committed to the rule of law and to our Constitution. She will work tirelessly to protect and defend the lawful prerogatives of the President in order to preserve the security of our nation in this dangerous time.

I support Dawn's nomination without hesitation and respectfully urge her confirmation.

Yours sincerely,

Howard M. Shapiro

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January 20, 2009

Senator Patrick J. Leahy
Chairman, United States Senate, Committee on the Judiciary
Senator Arlen Specter
Ranking Member, United States Senate, Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Leahy and Specter,

It is with the utmost pleasure that I convey my unqualified support for Dawn Johnsen to be confirmed by the Senate as the Assistant Attorney General for the Office of Legal Counsel, United States Department of Justice. Ms. Johnsen is the consummate professional. She is blessed with an exceptional intellect, the highest integrity, and an unshakable devotion to the law.

I had the honor of serving with Ms. Johnsen in the Office of Legal Counsel from 1993 through 1997. During that time, we both served as Deputy Assistant Attorneys General. For eleven years prior to that I served as a prosecutor in, at that time, State Attorney Janet Reno's office in Miami, Florida. At the end of 1997, I was appointed as the Deputy General Counsel for Intelligence in the United States Department of Defense. I remained in that position until January of 2003 when I was asked to serve as the Acting General Counsel of the Defense Intelligence Agency prior to my retirement in July of 2003. Since that time, I have remained active in the national security field both as a part-time contract consultant and as a law professor.

For most of my tenure at the Office of Legal Counsel, I was the Deputy principally responsible for national security matters and, of course, at the Department of Defense, I was occupied entirely by such matters. On every occasion with which I am familiar, including national security matters, Dawn Johnsen exhibited superb professionalism. Not only was her analysis trenchant, her logic impeccable, her research thorough, and her written exposition cogent, but she approached every matter free from ideological biases that might impede yielding the optimum resolution. I have no doubt that Ms. Johnsen will be an exemplary Assistant Attorney General, that the Office of Legal counsel will be well served by her leadership and that the Department of Justice, the White House and the entire executive branch will obtain the best possible legal advice from her efforts.

Most importantly, I believe the American people will be the ultimate beneficiaries of her wisdom and honesty.

If I can be of any further service to you and the Committee, please let me know.

Sincerely,

Richard L. Shiffrin
[redacted]

BINGHAM CONSULTING

Suzanne E. Spaulding
[redacted]

February 5, 2009

VIA U.S. MAIL & ELECTRONIC MAIL

Chairman Patrick Leahy
Ranking Member Arlen Specter
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write in strong support of the nomination of David Kris to head the National Security Division at the Department of Justice. David is uniquely well qualified for this position and the country will be extremely fortunate to have the benefit of his expertise, judgment, dedication, and integrity.

The first time I met David was in early 2006. He was sitting across from me at a conference table around which a small group of former national security officials had gathered. Conversation turned to role of the lawyer in the context of current national security challenges. Without revealing any specifics, David talked about his experience in those days, weeks, and months following the attacks of September 11, 2001. It is clear that he has been tested in the crucible of a crisis and emerged with a strong sense of the essential role of the national security lawyer in assisting decision makers as they respond to the urgent need for action.

Since then, I have had the good fortune to interact with David in a variety of contexts on issues that arise at the intersection of law and national security. Over those years, I have not only seen that same unwavering commitment to understanding what the law does and does not provide, but also have come to appreciate David's brilliant and extremely thoughtful analysis, the clarity of his writing, and the undeniably compelling nature of his advocacy. David is someone that policymakers at both ends of Pennsylvania Avenue, and on both sides of the aisle, have regularly called upon for advice. They know his advice is solidly grounded not only on a careful reading of the law but also an understanding of the policy implications; understanding that can only come from the kinds of experiences that David has had witnessing the real-world impact of decisions made by government lawyers.

The significant amount of time that David has spent working with and testifying before folks on Capitol Hill also is testament to his understanding of the important role of Congress in national security. He believes in the value of Congressional oversight and has been a constructive contributor to the legislative process. This respect for Congress' role will serve him and the country well if he is confirmed as head of the National Security Division.

Boston
Los Angeles
San Francisco
Washington

Bingham Consulting
Group LLC
150 Federal Street
Boston, MA 02110-1726

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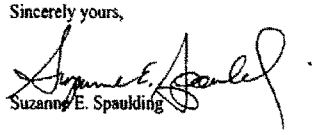
617.951.8870
binghamconsulting.com

David has earned the respect of lawyers across the political and ideological spectrum. He has accomplished this unusual feat by not letting politics or ideology govern his legal analysis. Instead, he listens carefully to the debates, works hard to understand the policy and legal implications, and is ultimately guided by his understanding of the statutory and constitutional imperatives.

As the author of a treatise on National Security Investigations that immediately became the "bible" for anyone inside or outside of government concerned with these issues, David's expertise is now widely known. However, those of us who knew David before he achieved this fame understand that his unique qualifications for this position go well beyond the tremendous substantive expertise reflected in that publication. There is no one better suited for this important job.

As a former staff member of both the Senate Judiciary and Intelligence committees, I know how heavily burdened the schedules of both must be at this time. Nevertheless, I urge you to move as expeditiously as possible to confirm David Kris so that the country can benefit from this incredibly fortuitous opportunity to have precisely the right person in the right place at the right time to assist the President in protecting our national security and our commitment to the rule of law.

Sincerely yours,



Suzanne E. Spaulding

cc Todd Hinnen (via email)

Bingham Consulting
Group LLC
binghamconsulting.com



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LARRY D. THOMPSON
SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS
GENERAL COUNSEL AND SECRETARY

February 4, 2009

Chairman Leahy, Ranking Member Specter
And Members of the Senate Judiciary Committee
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter and
Members of the Senate Judiciary Committee:

I am writing to strongly support the nomination of David S. Kris to be Assistant Attorney General for National Security. David is uniquely qualified for this important position. His experience in the Department of Justice and with national security issues is deep and extremely relevant to our times.

When I became Deputy Attorney General in May of 2001, I asked David to remain as an Associate Deputy Attorney General and become my chief advisor on FISA and related national security matters. Why did I do so? When I interviewed David, I found in him a professional who was thoughtful and balanced. He had a passion for national security issues but also a deep respect and appreciation for the related civil liberties concerns. David also has experience testifying before Congress on national security issues and clearly understands the role of Congressional oversight in this area.

We are fortunate that a lawyer of David's caliber will once again offer himself for public service.

Sincerely,

FORDHAM UNIVERSITY
THE SCHOOL OF LAW

OFFICE OF THE DEAN

WILLIAM MICHAEL TREANOR
DEAN

January 27, 2009

Chairman Patrick Leahy
U.S. Senate
433 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Arlen Specter
U.S. Senate
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

It is my privilege to write this letter in support of the nomination of Dawn Elizabeth Johnsen for the position of Assistant Attorney General for the Office of Legal Counsel. It is a post of the greatest importance, and I can think of no one better qualified to hold it. In every regard, Ms. Johnsen would be a superb Assistant Attorney General.

I am currently Dean of Fordham Law School, a post I have held since 2002. I am writing this letter in my personal capacity. I have known and greatly admired Ms. Johnsen since we were in law school. (I graduated a year before she did.) I am also very familiar with the work of the Office of Legal Counsel, having served as a Deputy Assistant Attorney General in the Office from 1998 until 2001. During the early part of my tenure with the Office, Ms. Johnsen was Acting Assistant Attorney General for the Office of Legal Counsel, so I had the opportunity to see her work heading the office. Finally, I have been in contact with her since my return to teaching in 2001 and have worked with her on academic and public service projects involving constitutional law and the Office of Legal Counsel.

Ms. Johnsen is a remarkable lawyer, a remarkable public servant, and a remarkable person. Having worked with her and known her for many years, I can testify to her deep and unshaking commitment to the rule of law and to the United States Constitution. She is superbly knowledgeable about constitutional law and has thought more carefully and more fully about the proper role of the Office of Legal Counsel than anyone. She has a brilliant legal mind, and I have never seen anyone with finer judgment, a critical factor given the significance of the decisions the Assistant Attorney General makes. She inspires the deepest respect from those who have worked with her, whether subordinates or superiors. The role of the Assistant Attorney General for the Office of Legal Counsel will be a crucial one in the years ahead. Ms. Johnsen is, quite simply, the best person for this job.

Please feel free to contact me if you or you staff have any questions. As I said at the outset, it is a privilege to write in support of Ms. Johnsen's nomination.

Respectfully,

William Michael Treanor

William Michael Treanor

WMT:as

140 WEST 62ND STREET, ROOM 110 NEW YORK, NEW YORK 10023 [redacted]

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April 21, 2009 VIA FACSIMILE

Re: *Nomination of Dawn E. Johnsen to be Assistant Attorney General for the Office of Legal Counsel, Department of Justice*

Dear Senator:

On behalf of the undersigned women's and reproductive health organizations, we write in strong support of the nomination of Dawn E. Johnsen to be Assistant Attorney General for the Office of Legal Counsel. The role of the Office of Legal Counsel (OLC) is to provide legal advice to the President and the agencies of the Executive Branch. OLC may well be called upon to address a broad array of legal issues, including constitutional and statutory rights of critical importance to women, under this as under any Administration. Accordingly, it is of the utmost importance that the Assistant Attorney General who leads this office possess not only outstanding qualifications but also a demonstrated commitment to the rule of law.

Professor Johnsen is eminently qualified for this position. She worked at OLC for five years under the Clinton Administration, including as Acting Assistant Attorney General. For the past ten years, she has been a tenured professor at Indiana University School of Law, focusing on complex constitutional issues including executive power and separation of powers.

In addition, Professor Johnsen has clearly demonstrated a commitment to the rule of law. She has written and commented extensively regarding the unique role, and the responsibility, of OLC to provide objective legal advice to the President and the Executive Branch. For example, in 2004, she worked with nineteen other former OLC attorneys, who served under both Democratic and Republican administrations, to create a statement of principles to guide the OLC, drawing upon longstanding best practices of that office. Moreover, she has worked in bipartisan fashion to bring greater transparency and integrity to OLC. Specifically, she worked with Brad Berenson, who had served in the White House Counsel's office during the administration of President George W. Bush, to craft legislation with that goal.

Some have opposed Professor Johnsen, despite her sterling credentials and extensive and highly relevant experience, because she has worked to support *Roe v. Wade*, a case consistently described as "settled law." This opposition presumably rests on the concern that this, or any other aspect of Professor Johnsen's prior career, might affect her work at OLC. But her writings and commentary about the unique role of that office, as well as her testimony before the Senate Judiciary Committee, clearly show that she unquestionably understands that her job as head of OLC will be to provide the President with objective, unbiased legal advice. For example, the first of the "OLC Principles" that she helped author states: "OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired

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policies. The advocacy model of lawyering...inadequately promotes the President's constitutional obligation to ensure the legality of executive action."

We note that, if approved by the Senate, Professor Johnsen would be the first woman confirmed to this important position in the Department of Justice. But more importantly, Professor Johnsen is uniquely qualified to lead OLC and has clearly demonstrated her dedication to the rule of law. Consequently, the undersigned organizations urge you to support her nomination to be Assistant Attorney General for the Office of Legal Counsel.

Sincerely,

American Association of University Women (AAUW)
Center for Reproductive Rights
Chicago Abortion Fund
Coalition of Labor Union Women
Commission on the Status of Women-Sarasota County
ERA Campaign Network
Feminist Majority
Frontera Women's Organization
Gender Perspectives
Greater New Haven Chapter of NOW
Idaho Women Lawyers, Inc.
Iowa Commission on the Status of Women
Law Students for Reproductive Justice
Legal Momentum
Middlesex County NOW-NJ
Myra Sadker Foundation
NARAL Pro-Choice America
National Abortion Federation
National Congress of Black Women, Inc.
National Council of Jewish Women
National Council of Jewish Women, California
National Council of Jewish Women, Connecticut
National Hook Up of Black Women, Inc.
National Organization for Women (NOW)
NOW-Mid-Suffolk Chapter (NY)
NOW-Sarasota Chapter (FL)
National Council for Research on Women
National Partnership for Women and Families
National Women's Law Center
Planned Parenthood Federation of America
Turning Anger into Change
YWCA of Binghamton and Broome County
YWCA Central Alabama
YWCA of Cortland (NY)
YWCA of Schenectday (NY)
YWCA of Titusville (PA)
Wider Opportunities for Women
West Virginia NOW
Women's Law Project
Women's Research & Education Institute (WREI)
Women Work/Southeast Technical Institute
www.gloriafeldt.com

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Michael Vatis
[redacted]

Hon. Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman,

I am writing in support of the nomination of Dawn Johnsen for Assistant Attorney General for the Office of Legal Counsel at the Department of Justice. I worked with Professor Johnsen at the Justice Department during the Clinton Administration, when she was Deputy Assistant Attorney General at OLC and I was an Associate Deputy Attorney General responsible for national security matters. In my experience, Professor Johnsen possessed an unshakeable allegiance to the rule of law, personal and professional integrity, and a firm understanding of not only the president's powers in the national security area but also the vital role of the separation of powers in our constitutional system. These attributes, combined with her experience running OLC as Acting Assistant Attorney General from 1997 to 1998, make Professor Johnsen uniquely qualified to serve as Assistant Attorney General for OLC in the Obama Administration.

Please do not hesitate to contact me if you have any questions or if I might be of any assistance regarding Professor Johnsen's nomination.

Sincerely,

Michael Vatis

Kenneth L. Wainstein

January 29, 2009

VIA EMAIL AND FIRST CLASS MAIL

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy, Ranking Member Specter and Judiciary Committee Members:

I write this letter in support of the nomination of David Kris for the position of Assistant Attorney General for National Security. I served in that position from 2006-2008, and I therefore have an appreciation for the demands of the job and the qualities that are needed to meet those demands. Having known David for over seven years and having seen him in a variety of roles and settings in the public and private sectors, I can say with complete confidence that David exhibits all of those qualities and that he would serve with great distinction as the leader of the National Security Division.

David has extensive experience and expertise in national security law and practice. He served for three years as the national security Associate Deputy Attorney General; he contributed significantly to the litigation in the Foreign Intelligence Surveillance Court of Review to eliminate the legal and procedural "wall" that had handicapped our counterterrorism efforts by segregating our law enforcement operations from our intelligence activities; he is a respected professor of national security law; and he is one of the leading scholars and commentators on the Foreign Intelligence Surveillance Act and national security investigations.

David would bring an understanding that the National Security Division must support the criminal prosecution of national security threats as well as the intelligence operations directed against those same threats. He recognizes that these are complementary aspects of our national security program; that both are necessary to maximize our defenses against spies and terrorists; and that the National Security Division plays a vital role in calibrating and coordinating the part that each plays in any particular investigation.

David has a keen appreciation for the imperative that our national security program always operate within the relevant Constitutional, legal and regulatory limits. He recognizes that operational effectiveness can co-exist with rigorous oversight, and he is a strong supporter of the existing oversight mechanisms within the Department and the

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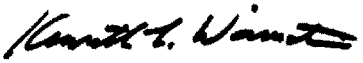
Executive Branch. He also has expressed his appreciation for the importance of Congressional oversight -- particularly as it relates to the conduct of intelligence activities -- and he recognizes the need to maintain open channels of communication between the National Security Division and its oversight committees.

I also want to emphasize that David is -- and is perceived as -- completely non-partisan in his approach to national security work. Given the nature of the Division's work and the scrutiny it receives, it is vitally important that the Assistant Attorney General is perceived as operating without regard to politics and that his or her decisions are based solely on the needs of the country. David has worked for administrations of both political parties, and he has numerous supporters from both sides of the aisle. He has the reputation of a non-partisan professional, and that reputation will serve him well as he addresses the sensitive issues that arise with frequency in the job for which he has been nominated.

In sum, I have complete confidence that David would be a very effective Assistant Attorney General and that his service would be a credit to the Department and the Nation. Please do not hesitate to contact me if I can provide additional information that would assist the Committee in its consideration of his nomination.

Sincerely,



Kenneth L. Wainstein

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WILMERHALE

Seth P. Waxman

[redacted]

January 29, 2009

By Hand

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of David S. Kris to be Assistant Attorney General for the National Security Division

Dear Chairman Leahy, Ranking Member Specter, and Members of the Committee:

I write enthusiastically to endorse the nomination of David S. Kris to be Assistant Attorney General for the National Security Division.

David and I worked together at the Department of Justice throughout my almost-seven-year tenure at the Department. Over that period, I came to know David's work both when he was a highly valued attorney in the Criminal Division and when he served as Associate Deputy Attorney General with responsibility for national security. I have the highest respect for his abilities and for his dedication to the Department of Justice as an institution.

David is genuinely a perfect nominee for this critical position. His experience on national-security issues derives from both his distinguished government service (in both the Clinton and Bush Administrations) and his widely respected scholarship. He is smart, hardworking, and a delight to work with. David has tremendous judgment, and he knows what it means truly to represent the interests of the United States – balancing the imperatives of national security and civil liberties, and harnessing appropriately the synergies between law-enforcement and intelligence.

I could readily go on and on. Let me simply underscore that he has my unqualified support, and I hope very much that you will see fit to recommend his speedy confirmation.

Yours sincerely,

Seth P. Waxman

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Seth P. Waxman

[redacted]

January 22, 2009

By Hand

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of Dawn Johnsen to be Assistant Attorney General

Dear Senators Leahy and Specter:

I write enthusiastically to endorse the nomination of Dawn Johnsen to be Assistant Attorney General overseeing the Office of Legal Counsel.

Dawn and I worked together at the Department of Justice for four years, between May 1994 and June 1998. During that period Dawn served first as a Deputy Assistant Attorney General in the Office of Legal Counsel, and then Acting Assistant Attorney General. In my duties as Solicitor General, and earlier as Acting Deputy Attorney General, Acting Solicitor General, and Deputy Solicitor General, I interacted with Dawn nearly every day. She is smart, professional, hardworking, levelheaded, collegial, scrupulously fair, and utterly devoted both to the rule of law and the prerogatives of the President in our constitutional structure. I am confident that, if confirmed, Dawn will bring great credit to an already venerable office. I commend her to the Committee enthusiastically and without reservation.

Yours sincerely,

Seth P. Waxman

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April 21, 2009

The Hon. Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

The Hon. Arlen Specter
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Senators Leahy and Specter and Members of the Senate Judiciary Committee:

I write to urge you to confirm Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel (OLC). Professor Johnsen's experience and writings demonstrate that she will work to uphold our constitutional system of checks and balances and endeavor to maintain and bolster America's commitment to the rule of law. As a Professor in the Maurer School of Law at Indiana University, she has clearly demonstrated a solid grasp of constitutional issues, particularly regarding separation of powers and civil liberties. These are critical qualifications for our nation's efforts to restore credibility to the OLC and to make the Department of Justice an enviable place to serve again for talented and capable people. When I left government in 2005, the morale of that department was as low as I have experienced it in 40 years.

I served for thirty-one years in the United States Army and, from 2002 to 2005, as Chief of Staff to Secretary of State Colin Powell. Since that time, I have devoted much of my work to promoting the rule of law, and to efforts to restore America's role in the world as a nation of laws and respected civil liberties. Although I do not know Professor Johnsen personally, I am familiar with her background and her writings. In particular, I am impressed by the words she has spoken with regard to "Guidelines for the President's Legal Advisors," as well as several other statements—all recorded and available at http://www.acslaw.org/search/node/dawn+johnsen.

In the "Guidelines," Professor Johnsen and her colleagues set forth principles to guide OLC in its proper role and in providing advice to the President on complying with the rule of law. In her introduction to the "Guidelines," Professor Johnsen noted that: "the constitutional text and structure, as well as longstanding practice, affirmatively obligate Presidents to ensure that their actions comply with all relevant constitutional, statutory, and other legal requirements." She further explained that in the "Guidelines" "Our principal aim is to restore and secure the vital role OLC traditionally has played in promoting presidential adherence to the rule of law." The ten principles for the President's advisors in OLC include one urging that OLC attorneys "should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies." This, in my view—and I hope in your view—is the very essence of what OLC should be.

I most strongly recommend that the Members of the Senate vote to confirm Dawn Johnsen to serve as Assistant Attorney General for the Office of Legal Counsel.

I'm grateful for your time.

Sincerely,

Lawrence B. Wilkerson

CUA
THE CATHOLIC UNIVERSITY OF AMERICA
Columbus School of Law
Office of the Faculty
Washington, D.C. 20064
202-319-5140

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February 16, 2010

Patrick Leahy, Chair

Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I write in strong support of the confirmation of the president's re-nomination of Dawn Johnsen to head the Office of Legal Counsel as an Assistant Attorney General.

As I detail in the attached commentary ("DOJ Appointments: The Case of Dawn Johnsen's Confirmation" which was posted two weeks ago on HuffingtonPost.com) Prof. Dawn Johnsen is a superb choice to lead the OLC.

As she has now waited almost a year since her first approval by the Judiciary Committee, I urge her immediate re-approval by the Judiciary Committee.

For the sake of Justice, I hope that she and the other DOJ nominees will be allowed a timely confirmation vote by the full Senate.

Sincerely,

Victor Williams

Assistant Professor of Law

[redacted]

February 16, 2010

This is the print preview: Back to normal view »

Victor Williams and Nicola Sanchez

Posted: February 3, 2010 12:37 PM

DOJ Appointments: The Case for Dawn Johnsen's Confirmation

Is Barrack Obama now ready to fight partisan confirmation obstruction against his nominees? When Ben Bernanke's reappointment was jeopardized, the president fully engaged the fight. Obama worked the phones himself to help Senate leadership line up 60 cloture votes. But what about the additional 300 critical federal executive, regulatory and judicial positions that remain empty?

At his question session during the Senate Democrat retreat, Obama was adamant that if "government is going to work for the American people" Republican confirmation obstruction "has to end."

Senate Majority Leader Harry Reid recently detailed national security dangers resulting from Republican obstruction of defense, intelligence and homeland security appointments. And, Sen. Tom Harkin is prioritizing labor-related confirmation fights. Of equal concern should be the growing number of Department of Justice vacancies, especially in those offices charged with establishing legal policy and vetting scores of other federal nominees, including judges.

Deputy Attorney General David Ogden's resignation effective early this month leaves the Justice Department without a permanent number two executive official. And the three recently renominated Assistant A.G.s (Dawn Johnsen, Christopher Schroeder, and Mary Smith) will rejoin the long queue of other Obama nominees waiting for a Senate floor vote. It is past time for the Senate majority and the Administration to fight for Justice.

Soliciting Bipartisan Advice, Receiving Partisan Contempt

A year ago seemed like such a hopeful time. Barack Obama entered the White House sincerely wanting to end the partisan confirmation wars. Obama actively solicited bipartisan senatorial advice and, at first, received well-deserved praise for his genuinely diverse, exceptionally qualified, and experienced nominees.

But by late spring, "partisan payback" was revealed as the Senate minority's watchword from January 20, 2009. As presidential poll numbers declined, Republican obstruction increased. Extreme slow walking was Senate summer sport and the abuse of individual Senate holds (mini-filibusters), the regular order of business.

In fall 2009, partisan procedural delay tactics had proven effective; hundreds of executive and regulatory vacancies still existed and Obama had benched only a dozen judges. On December 24, 2009, Republicans claimed yet another tactical victory by forcing several key nominees back to the White House.

Republican leaders refused to allow the traditional courtesy permitting pending nominations to carry over to the second Senate session. For the Obama nominees, whose lives were on hold for up to a year awaiting confirmation, it was an especially insulting lump of Republican coal in their stockings.

Among the rudely returned were three DOJ Assistant A.G. nominees (Dawn Johnsen for the Office of Legal Counsel, Christopher Schroeder for the Office of Legal Policy, and Mary Smith for the Tax Division). Also rejected was Craig Becker, Obama's nominee to Chair the quorum-challenged National Labor Relations Board.

Commentators from the left and right prematurely blogged: "Senate Returns Nominees: White House Rolls Over." Wrong!

Obama Fights Back but Sessions Targets Dawn Johnsen

First-year confirmation lessons may have been learned. President Obama stood by his women and men -- at both Justice and the NLRB. The nominations were sent back to the Senate with White House expectations that the respective Senate committees (Judiciary and Labor) would quickly reapprove the renominations so they could proceed to a floor vote.

Obama's bold act spurred Sen. Arlen Specter to finally commit to Dawn Johnsen for the OLC. Indiana Republican Richard Luger also reaffirmed his pledge to support the Indiana University law professor. For a few days it appeared

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Johnsen finally had the 60 cloture votes to unblock her year-old nomination. This whip count did not include Sen. Ben Nelson, the lone Democrat yet undecided on Johnsen.

But Obama's assertive renomination resulted in Johnsen being targeted for more obstruction. Sen. Jeff Sessions, a ranking Judiciary Committee member, demanded a second round of hearings for Johnsen and other renominated DOJ officials. Republicans also invoked committee rules to game out an additional week's delay. The three renominated DOJ officials join other nominees, including several judicial nominees, on the Thursday, February 4th agenda of the Judiciary Committee's latest executive schedule.

Meanwhile, Scott Brown's election confused the cloture whip count. Regardless of when Senator-elect Brown takes Ted Kennedy's Senate seat, Johnsen and all re-nominated DOJ officials should be quickly reapproved by the Judiciary Committee. Also, Chair Patrick Leahy should take the nominations to the Senate floor as soon as possible.

The 60 votes needed for cloture can be found. On February 1, Sen. Tom Harkin mustered exactly the 60 votes needed for cloture when he broke the GOP filibuster of Obama's nominee for Labor Department Solicitor.

As the Administration did for Bernanke, Barack Obama, Joe Biden, and the entire White House political operation must lobby for the 60 cloture votes for Justice and NLRB officials. Particular attention should be focused on Dawn Johnsen's appointment.

Johnsen: A Superb OLC Fit

Democrats and Republicans know the importance of the Office of Legal Counsel to national justice and the rule of law (if only by the damage it inflicted during the Bush years).

The OLC is the in-house lawyer for the Attorney General and the Justice Department. When an official needs high-level constitutional advice, the OLC can be consulted. An OLC opinion carries great persuasive authority but it also effectively insulates federal officials relying on the advice, from liability. When government factions disagree, the OLC is an important arbiter.

Doug Kmiec, OLC head for Ronald Reagan and George H.W. Bush, describes the OLC as the Justice Department's "conscience." Kmiec, who endured harsh party and church criticism for his 2008 support of Barack Obama, is well aware of the cost of conscientious conviction. Prior to his appointment as Ambassador to Malta, Doug Kmiec joined other legal stars of both parties in praising Dawn Johnsen.

He judged Johnsen's "spunk and independence of mind" as "just the right tonic for a once proud, but recently tarnished, office." Kmiec referenced her constitutional scholarship and past public service: "[W]e would be hard-pressed to identify any other comparable appointee for a Justice post who would be as well suited." (Authors' note: Doug Kmiec was our Dean at Catholic University of America's Columbus School of Law from 2001-2003.)

Most importantly, the OLC has a proud tradition of offering independent and tempered advice to the President and the White House. In Dawn Johnsen's words, "saying no" to the president is "the OLC's core job description."

Walter Dellinger, former OLC head, worked with Johnsen and went on to serve as U.S. Solicitor General, heralds Johnsen's "keen intellect and extraordinarily good judgment." Dellinger, a reported Obama Supreme Court short- lister, recommends Johnsen because of her "deep dedication to the rule of law."

By any measure, Johnsen is a superb choice for the job. She served in the OLC for five Clinton years; indeed, Johnsen was acting head of the OLC from 1997-1998. For over the past dozen years, she has been a leading scholar on Justice Department issues. Prof. Johnsen is certainly patient. She patiently waited a year for Senate confirmation for her to fulfill exactly the same role she did for over a year in the Clinton Justice Department.

Speaking Truth to Power, Too Often

Dawn Johnsen is a distinguished academic and advocate, championing privacy, reproductive choice, the rule of law, separation of powers, and DOJ integrity. So why have Republicans, like Sen. John Cornyn, blocked her appointment for over a year? Perhaps the scholar dared to speak truth to power once too often.

In her 2008, Slate commentary, Johnsen dissected the flawed reasoning of the infamous torture memos and other legal opinions written by then OLC attorney John Yoo. She dared connect the bloody dots from Yoo's poison pen directly to George W. Bush's oval office: "President Bush asked for this kind of distorted legal advice. Remember, from day one, the President sent his lawyers the express message that they were NOT to interpret the law impartially and straight up."

Time to Get Serious

Sen. John Cornyn represents the obstructionist wing of the Republican Party well in defaming Johnsen (using perhaps unintentionally sexist language) by claiming she lacks the "requisite seriousness" for the OLC job. Truth be told, Cornyn's real issue with Johnsen may be that the woman is just too serious a scholar and too smart a lawyer.

Were it not for his Senate power to individually block a nominee, it would be hard to take Cornyn's criticism seriously. Consider his recent Senate campaign ad featuring "Big John, Big Bad John" sporting an oversized cowboy hat, riding on a too pretty horse. The reelection ad's Zane Grey Theatre voice-over describes Senator "Big Johnnie" being thanked by a

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grateful populace for "doing the Lord's work for Texas," in an undisclosed location: "For that place out yonder needs more men like you, Who shoot straight, And talk straight, And enjoy a good brew. "

Perhaps most threatening to the junior senator from Texas, Johnsen has been too consistent in her principles. If Senate memory serves, it was long-time "up-or-down confirmation vote" advocate John Cornyn who stated: "What the American people want and expect is that we...will not degenerate into partisan finger-pointing or name-calling, nor obstruction." Sen. Cornyn also complained in a 2005 letter to the New York Times: "Senate practice and even the Constitution contemplate deference to the president and a presumption in favor of confirmation."

Are there at least two or three Republican senators who will join Democrats in a series of confirmation cloture votes for Justice's sake? Are none in the minority embarrassed by the blatant GOP hypocrisy in blocking Obama nominations, when such procedural tactics were so uniformly (even elegantly) criticized by the Republicans during the George W. Bush years?

Dawn Johnsen's appointment is a litmus test for the Senate confirmation process and for the recharged Obama political operation. If she does not receive a full Senate vote, Democrats must implement the Constitutional Option to return to the Framer's design of a simple majority confirmation vote.

And, independently, as I've argued before for presidents of both parties, President Obama should fully utilize the alternative recess appointment process to fully staff our national government. If Obama finds the will, Clause 3 of Article II, Section 2 will provide the constitutional way. All recess commissions signed over the President's Day Senate break would last until "the End of their next Session" – late 2011.

One appointment way or the other, the government must be fully staffed.

***Victor Williams** is an attorney in Washington D.C. and clinical assistant professor at Catholic University of America School of Law; **Nicola Sanchez** is an attorney with the U.S. Nuclear Regulatory Commission. The views expressed are the authors' alone and do not reflect those of CUA, the NRC or the federal government.*

Judith A. Winston
Former Undersecretary and General Counsel
U.S. Department of Education
1371 Kalmia Road NW
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Telephone: [redacted] *email:* [redacted]
Fax: [redacted]

January 27, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Dawn Johnsen

Dear Chairman Leahy:

I am delighted to have the opportunity to endorse the nomination of Dawn Johnsen for the position of Assistant Attorney General, Office of Legal Counsel in the Department of Justice. I have known Dawn Johnsen for more than two decades, both in government and outside of it, as a superb lawyer whose judgment and commitment to the rule of law makes her an ideal candidate for the position of Assistant Attorney General in the Office of Legal Counsel.

I served as the General Counsel of the U.S. Department of Education during both terms of the Clinton Administration (1993 -2001). In this capacity, I often worked with lawyers from the Justice Department including those in the Office of Legal Counsel. Frequently, Dawn Johnsen was responsible for advising me and my colleagues at Education on critical cases and important issues of federal law and policy. Without exception, her ability to listen to competing view points and interpretations, analyze the issues and craft legal advice that was universally accepted as unimpeachable among those involved was breathtaking. She is indeed a "lawyer's lawyer."

Ms. Johnsen's excellent legal skills and abilities are evenly matched by her personal qualities and her collegiality both with her peers and staff. She is a gentle woman in the best sense of this term. At the same time, she is analytically tough in the service of justice and fairness. She is thoughtful and decisive but never arrogant, abrasive or overbearing. Just the opposite, in fact, through her quiet and selfless manner, she engenders confidence in the positions she crafts by taking the time to explain in detail and with patience her reasoning and conclusions. During her time at the Justice Department and in my experience, Ms. Johnsen's approach to her responsibilities in advising the executive branch of the federal government represented the type of transparency and accountability that is both expected and desired from those occupying high legal positions and who interpret federal laws and policies.

For the foregoing reasons, I am able without reservation to recommend Dawn Johnsen to you and your colleagues on the Senate Judiciary Committee. I would be happy to respond to any questions you may have about my endorsement. Thank you for your time and attention to this letter.

Sincerely,

Judith A. Winston

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February 3, 2009

Chairman Patrick Leahy, Ranking Member Arlen Specter
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter, and Members of the Senate Judiciary Committee:

I write in strong support of the President's nomination of David S. Kris to be Assistant Attorney General for the National Security Division. I met Mr. Kris in 2002, when he was last in government and I was a working journalist, and I have worked with him over the years since in a variety of capacities: I helped recruit him to the Brookings Institution, where he has served as a non-resident senior fellow, and he has contributed energetically to a paper series I edit on the statutory architecture of American counterterrorism efforts. I am familiar with his work both in and out of government and can say without reservation that nobody in the United States is better qualified to lead the National Security Division.

Mr. Kris brings a unique combination of experience and an unusual degree of non-partisan credibility to the National Security Division. It is no accident that praise for his treatise on national security law has come from across the political spectrum; the diverse admiration for it, rather, reflects Mr. Kris's depth of scholarship, political independence, and granular experience of the operation of national security investigations and litigations. I knew Mr. Kris well for several years before I had any inkling as to his political views. He could work at the upper echelons of the Justice Department in the prior administration—as he did in the one before that. During a period in which Washington has become polarized on the very issues on which he works, Mr. Kris has engaged constructively with all sides, finding common ground with and incisively critiquing voices across the political map. He has consistently put craft above politics both in his career in government and in his commentary and scholarship.

Mr. Kris's diversity of experience also bears emphasis. Though not an academic, he is the leading scholarly authority on the Foreign Intelligence Surveillance Act. He has worked on the policy side of national security law. He has also prosecuted cases and given legal advice to FBI investigators in high stakes cases. He was instrumental in the government's 2002 appeal to the Foreign Intelligence Court of Review, which resulted in a large step towards breaking down the "wall" between intelligence and law enforcement investigations. Judge Laurence H. Silberman, who served on the FISA Court of Review at the time of this litigation, has described Mr. Kris's treatise as "bridging the gap between theory and practice." It is an apt account of Mr. Kris's career more broadly.

Mr. Kris, to put it simply, has devoted most of his professional life to protecting American national security and the civil liberties of Americans—precisely what the National Security Division was created to do. It is hard to imagine anyone better qualified—in background, temperament, experience, and depth of thinking—to lead it than he.

Sincerely,



Benjamin Wittes
Senior Fellow and Research Director in Public Law

[redacted]

January 26, 2009

Chairman Leahy, Ranking Member Specter and Members
of the Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing to endorse Dawn Johnsen, who has been nominated to serve as the Assistant Attorney General for the Office of Legal Counsel.

During thirteen years of government service, I served as Special Assistant to three Directors of Central Intelligence (William Webster, Robert Gates and James Woolsey), the Deputy Legal Adviser to the National Security Council, Executive Assistant to National Security Advisor Anthony Lake and as General Counsel and Deputy General Counsel of the U.S. Department of the Treasury under Secretaries Rubin and Summers.

In each of these roles I have worked with the Office of Legal Counsel. I very much appreciate how important it is, especially at this time, that the Assistant Attorney General for the Office of Legal Counsel, be someone who is committed to defending the President's authorities and prerogatives in support of the national security interests of the United States while promoting the rule of law and respect for our Constitution.

Having worked with Ms. Johnsen, while at the National Security Council and the Treasury in the 1990's, I am confident that her experience at OLC, her talent as a lawyer and as a manager, and her strong sense of the importance of the President's authorities and prerogatives, especially in the national security area, will serve her extremely well in the position for which she has been nominated.

I believe Ms. Johnsen, if confirmed, would be an excellent head of the Office of Legal Counsel. I enthusiastically support her nomination and urge her confirmation.

Sincerely yours,

Neal S. Wolin

EXECUTIVE NOMINATIONS

TUESDAY, MARCH 10, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, Pursuant to notice, at 2:32 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Herb Kohl, presiding.

Present: Senators Kohl, Feingold, Schumer, Cardin, Klobuchar, Kaufman, Specter, and Coburn.

OPENING STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator KOHL. Good afternoon to you all. We meet today regarding the nominations of three individuals to become Assistant Attorneys General to head vital components of the Justice Department: Lanny Breuer to head the Criminal Division; Christine Varney to head the Antitrust Division, as well as Tony West to head the Civil Division. We congratulate all three of you on your impressive credentials and today's nomination.

Mr. Breuer, the Criminal Division plays a critical role in prosecuting a wide variety of crimes from public corruption to gang violence, to child exploitation. Of particular note, if you are confirmed, you will work with the FBI and U.S. Attorneys around the country to prosecute crimes in the wake of our financial crisis, such as corporate, mortgage, and investment fraud, and white-collar crime.

Mr. West, the Civil Division has a critical function to represent and defend the United States, its agencies and departments, and Cabinet members in thousands of cases per year. Notably, we also rely on the Division to root out waste, fraud, and abuse in government contracting as well as to enforce consumer protection programs of the Food and Drug Administration, the Federal Trade Commission, and the Consumer Product Safety Commission.

As Chairman of the Antitrust Subcommittee myself, Christine Varney's nomination to head the Antitrust Division is of particular interest to me. Ms. Varney, your nomination comes at a particularly crucial time for antitrust enforcement. As our economy is buffeted by a severe recession, we depend on vigorous competition to spur economic growth. Only aggressive enforcement of our Nation's antitrust laws will ensure that competition flourishes and that consumers obtain the highest-quality products at the lowest possible prices.

Unfortunately, the record of the Antitrust Division during the previous administration was, in my opinion, deficient in many re-

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spects. Large mergers among direct competitors in highly concentrated industries affecting millions of consumers met no resistance from the Antitrust Division despite the reported objections of career staff. We also saw sharp declines of antitrust enforcement with respect to other business practices, threatening competition. The Antitrust Division even issued a report on monopolistic conduct that would dramatically close the door on antitrust enforcement against dominant firms that act to suppress competition, a position that drew the opposition of the Federal Trade Commission.

The Justice Department filed several briefs before the Supreme Court advancing a very restrictive view of antitrust law. At the Supreme Court, the Department went so far as to oppose the FTC's efforts to sue brand-name drug manufacturers who pay large sums of money to their generic competitors to keep the competition off the market. This sorry record of passivity and, at times, even hostility toward antitrust enforcement must now be reversed.

I thank all nominees who are here today for their dedication to public service and look forward to their testimony.

I now turn to introductions. We are going to listen to Jane Harman, who will introduce Christine Varney.

PRESENTATION OF CHRISTINE A. VARNEY, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE, BY HON. JANE HARMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Representative HARMAN. Thank you, Mr. Chairman. It is a pleasure to be back in this Committee hearing room. A long time ago, I spent hundreds of hours sitting in the back benches as Chief Counsel and Staff Director of what was then called the Judiciary Subcommittee on Constitutional Rights, working for former Senator John Tunney. All of you staffers have great jobs, and it is good to see this Committee hard at work.

Mr. Chairman, President Obama chose wisely when he nominated Christine Varney to be Assistant Attorney General of the Antitrust Division of the Department of Justice. She is my dear friend, a colleague for a quarter century, and a person whose intellect, loyalty, and judgment are exceptional. I am honored to introduce her to you today.

As the letters you have received in support of her nomination confirm, Christine is held in high esteem by her colleagues and established her antitrust credentials as a Federal Trade Commissioner and a partner at Hogan & Hartson, where she has headed its Internet practice since 1997.

Christine has also dedicated a good portion of her legal career to public service, first at the FTC from 1994 to 1997, and as Cabinet Secretary in the Clinton administration, where she was a leading voice on information technology and information privacy policy.

Christine and I practiced law together in the 1980s. I was the mentor, though she did not need much mentoring. She insists that she followed my early career, holding many of the jobs I did, like her stint in the White House, but she did it all much faster.

Our families are close. Christine and Tom's kids used our hand-me-down baby furniture. They, of course—the kids, that is—have

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grown into responsible young men. The younger son, Mickey, excelled as an intern in my congressional office and is now a freshman at USC—you guessed it—in Los Angeles.

Christine is superbly qualified to be the next Assistant Attorney General of the Antitrust Division. She is never ideological or doctrinaire and, if confirmed, I am confident she will put politics and personal views aside and examine the facts and the law on matters that come before her. She will be well prepared from day one in a job that giants, like Phillip Areeda, a favorite Harvard law professor of mine, held before her. As you noted, Mr. Chairman, antitrust enforcement is of critical importance in these tough economic times.

In conclusion, Christine will be an asset to the Department of Justice, the new administration, this Committee, and to our country. I look forward to the Committee reporting her nomination favorably and urge a confirmation vote before the full Senate without delay. You will be proud of her, as I am.

Thank you.

Senator KOHL. Thank you very much, Ms. Harman.

I would like to introduce Tony West, who is nominated to be Assistant Attorney General for the Civil Division. Mr. West was born in San Francisco, California, and grew up in San José. He earned his bachelor's degree from Harvard College and then went on to pursue a law degree at Stanford. Currently, Mr. West is a partner in the San Francisco office of the law firm of Morrison & Foerster, where he represents individuals and companies in civil and criminal matters.

Prior to joining that firm, he worked in public service for many years as a Special Assistant Attorney General in the California Department and Assistant U.S. Attorney for the Northern District of California, and as a Special Assistant to Deputy Attorneys General Philip Heymann and Jamie Gorelick. Before entering public service, Mr. West was an associate at the firm Bingham, McCutchen in California.

I would like to ask all of you nominees to come up and raise your right hand as I administer the oath of office—the oath before you testify. You are not in office yet.

[Laughter.]

We will see after this hearing is over.

Do you affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BREUER. I do.

Ms. VARNEY. I do.

Mr. WEST. I do.

Senator KOHL. Thank you. Be seated, please.

Senator Schumer is running a bit late. He wants to introduce Mr. Breuer himself, but we will do that when he comes.

At this time, Mr. Breuer, we would like to ask you to introduce your family, if you so wish, and make any public comments before we get to your questions.

Mr. BREUER. Thank you, Mr. Chairman, very much.

Mr. Chairman, let me take a moment and introduce my family. Behind me is my wife, Nancy, the love of my life and my life's part-

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ner; and my two handsome sons, Andrew over here, and behind him, Sam Breuer. They are just wonderful and bring us unbounded joy.

Senator KOHL. That is great, and before you start with your comments, I would like to ask Senator Schumer if he would like to make an introduction to us here today.

Senator Schumer.

PRESENTATION OF LANNY A. BREUER, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, BY HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Well, thank you, Mr. Chairman. I apologize to you and Senator Klobuchar and to the panel and audience that I am a little late here. And I want to say how pleased I am to introduce to the Committee Lanny Breuer, the President's nominee to be Assistant AG of the Criminal Division. And, Mr. Breuer, I congratulate you on your nomination and welcome the love of your life and the rest of your family as well. Very touching to hear you say that. Very nice.

Anyway, Senator Kohl will give you a chance to introduce—well, he did give you a chance to introduce the whole family. But I want to mention Lilo, who traveled here from Elmhurst, Queens, a neighborhood I very much love. I ride my bicycle through it on Saturdays sometimes. Lilo came to this country from Germany in 1939, Mr. Chairman. She came alone as a teenager, having lost her parents in the Nazi death camps. Seventy years ago, she was a frightened teenager in a new land, orphaned by a lawless and unjust government. Today she looks on as her son is considered by a U.S. Senate Committee for what is one of the most important jobs at the Department of Justice. What a quintessentially and great American story.

Mr. Chairman, Lanny Breuer has proven over a lifetime and a career that he has what it takes to serve honorably and effectively as Attorney General. He is a product of New York City Public Schools, P.S. 13, Newtown High School. Mr. Breuer also received his college and law degrees from Columbia. After law school, he served as assistant district attorney under the legendary Bob Morgenthau, who just announced his retirement. There he distinguished himself prosecuting cases involving murder, armed robbery, white-collar crime, and other offenses. And Mr. Morgenthau recently wrote to our Committee about his former protege's nomination. Here is what he wrote:

"Mr. Breuer is an outstanding choice for this position, will be a conscientious, highly intelligent, and principled Assistant Attorney General for the Criminal Division."

Mr. Morgenthau, as everyone here knows, is an incomparable legal legend who knows a thing or two about intelligence and principle.

So, then, what did Mr. Breuer do with all the street smarts he picked up in Queens? The scholarship he got at Columbia, the legal craft he honed at the Manhattan D.A.'s office, he brought it here to Washington, which I suppose can always use help from a smart New Yorker—or usually, anyway.

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In Washington, Mr. Breuer again distinguished himself in case after case as a lawyer at the prestigious Covington & Burling. He picked up countless accolades along the way, and he has always maintained through this his commitment to public service. He was vice chair of his firm's Public Service Committee, and he personally represented the poor. He has also had every type of client, from the President of the United States, to corporate boards, to the good people of New York City.

But whether he is representing the most powerful man in the world—Bill Clinton, at the time—or the most powerful arm in the world—Roger Clemens, at the time—or the least powerful and indigent defendant, Mr. Breuer has always distinguished himself with hard work, diligence and integrity. Those are the qualities we need in an Assistant Attorney General, and my staff has written more. They have waxed poetic here, but I am going to ask unanimous consent that the rest of the statement be put in the record, because I know time is important to you, Mr. Chairman.

Senator KOHL. Thank you, and without objection, it will be done, Senator Schumer.

Mr. Breuer, let us see if you can live up to that introduction.

[Laughter.]

STATEMENT OF LANNY A. BREUER, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. BREUER. Well, Mr. Chairman, I think now my mother thinks that Senator Schumer is her favorite person in this Senate room.

Senator SCHUMER. Because she does not know the other 99, I think is the reason.

Mr. BREUER. I want to begin by thanking Senator Schumer. I am deeply honored. Senator Schumer has given a lifetime as a remarkable public servant and Senator for the people of New York and for the people of the United States, and his words are very meaningful to me.

Mr. Chairman and members of this Committee, I am honored to appear before you today as President Obama's nominee to be the Assistant Attorney General for the Criminal Division.

I would like first to express my appreciation to the Committee's members and their staffs for considering my nomination. I am grateful for the courtesy that the Committee has afforded me during the nomination process, and, if confirmed, I will look forward to working with you on the many important criminal law enforcement issues facing our country.

I have, of course, introduced part of my family. I just want to also acknowledge my brother Richard; my in-laws Carol Robinson and Irwin Robinson; and my many friends who have come here today who have been with me, and their support has been unwavering throughout my life.

Mr. Chairman, my father, Robert, is no longer living, but he would have been so proud if he had made it to this day.

As Senator Schumer said, my parents have a quintessential American story. My mother, as the Senator said, did lose her parents in the Holocaust, came to this country, like my father, with nothing. But that did not stop them. They worked hard and forged

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a new life for themselves and for our family. And along the way, my parents, having witnessed the devastation of the Holocaust, instilled in me a distinctly American respect for fairness, the rule of law, and the pursuit of justice.

If I am confirmed to this important post, I will pursue wrongdoing vigorously, just as I did when I was a prosecutor in the Manhattan D.A.'s office, whether it is financial crime, public corruption, child exploitation, drug offenses, gang violence, or other crimes, I will steadfastly enforce our criminal laws. And because protecting our national security and fighting terrorism remain paramount, if confirmed, I also will work closely with the Department's leadership, the National Security Division, and the U.S. Attorneys' Offices around the country to ensure an effective strategy for combating terrorism.

As the head of the Criminal Division, it would be my true privilege to serve under Attorney General Eric Holder, for whom I have the utmost respect and admiration. And it would be an honor for me to serve alongside the career professionals at the Department, whose dedication and talent are vital to its mission. I also believe it is essential for the Criminal Division to have close and productive relationships with Federal law enforcement and regulatory agencies, as well as to partner with State and local law enforcement officials. All of these dedicated men and women help to keep our communities safe, and they are critical to the work of the Department.

In closing, let me assure this Committee and the American people that, if confirmed, I will work tirelessly to execute my duties with determination and resolve, ever mindful of the government's great power, but firm in my belief that those who violate our criminal laws—whether in the boardroom or the back alley—must be held to account.

Thank you very much, and I look forward to the Committee's questions.

[The prepared statement of Mr. Breuer appears as a submission for the record.]

[The questionnaire of Mr. Breuer follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR LANNY BREUER
ASSISTANT ATTORNEY GENERAL NOMINEE

PUBLIC

1. **Name**: Full name (include any former names used).

   Lanny Arthur Breuer

2. **Position**: State the position for which you have been nominated.

   Assistant Attorney General, Criminal Division

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: Covington & Burling LLP
   1201 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004

4. **Birthplace**: State date and place of birth.

   August 5, 1958; New York, New York

5. **Marital Status**: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married to: Nancy Robinson Breuer
   (Nancy Scott Robinson)
   Deputy General Counsel
   National Gallery of Art
   Fourth and Constitution Avenue, NW
   Washington, D.C. 20565

   Number of Dependents: We have two dependent children.

6. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Columbia University Law School - New York, New York

ORIGINAL

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1982 – 1985
J.D. awarded May 1985

Columbia College, Columbia University - New York, New York
1976 – 1980
B.A. awarded May 1980

7. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Partner
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
May 1999 – present

Special Counsel to the President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
February 1997 – April 1999

Partner/Associate
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Partner: October 1995 – February 1997
Associate: October 1989 – October 1995

Assistant District Attorney
Manhattan District Attorney's Office
One Hogan Place
New York, N.Y. 10013
August 1985 – August 1989

Summer Associate
Drinker Biddle & Reath
Philadelphia National Bank Building, 11th Floor
Broad & Chestnut Streets
Philadelphia, PA 19107
Summer 1984

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Summer Associate
Kobin & Meyer (firm no longer in existence)
610 South Alder Street
Portland, OR 97205
Summer 1983

Consultant
Political Communications Inc. (firm no longer in existence)
Washington, D.C.
Summer 1982

Teacher, Coach
The American School in Switzerland
CH 6926
Montagnola, Switzerland
August 1980 – May 1982

Board Memberships:

American Jewish Committee (Washington, D.C. Chapter)
1156 15th Street, N.W.
Suite 2101
Washington, D.C. 20005
Director: 2007 – present
No payment received

Council for Court Excellence
1111 14th Street, N.W.
Suite 500
Washington, D.C. 20005
Director: 2007 – present
No payment received

Columbia College Alumni Association
475 Riverside Drive, Suite 917
New York, N.Y. 10015
Director; Member, Executive Committee: 2007 – present
No payment received

Aufbau (newspaper, no longer in existence)
Member, Board of Trustees: 2001 – 2005
No payment received

American Alliance for Rights and Responsibilities (no longer in existence)
Member, Board of Advisors: 1993 – 1997

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Washington, D.C.
No payment received

8. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I have not served in the military.

9. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

a. *The Best Lawyers in America* (2006, 2007, 2008, 2009) (most recently listed in commercial litigation, corporate governance and compliance, health care, mass tort litigation, product liability, and white-collar criminal defense)

b. *Chambers Global* (2009) (international trade and FCPA)

c. *Guide to the World's Leading White Collar Crime Lawyers* (2008)

d. *The International Who's Who of Business Lawyers* (2008) (business crime)

e. *Legal 500 US* (2007, 2008) (white collar criminal defense)

f. *Chambers USA* (2006, 2007, 2008) (litigation, white collar crime and government investigations)

g. *Washingtonian*, "Big Guns" (December 2007) (thirty top lawyers in Washington) (part of "Top Lawyers")

h. American College of Trial Lawyers, inducted as a Fellow (2006)

i. *American Lawyer*, 45 Under 45 (January 2003) (the top 45 private lawyers under the age of 45 in the United States)

j. Servicemembers Legal Defense Network, Salute (1993)

k. Harlan Fiske Stone Scholar, Columbia University School of Law (1985)

l. International Fellow Certificate, Columbia University School of International and Public Affairs (1984)

m. Herbert Hawkes Scholar, Columbia College (1976-77)

n. Dean's List, Columbia College

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10. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups

American Bar Association
Member: 1987 – present

The District of Columbia Bar
Member, Litigation Section: 1990 - 1998, 2000 - present
Member, Criminal Law and Individual Rights Section: 1990 - 1998, 2000 - present
Steering Committee Member, Criminal Law and Individual Rights Section: 1995 - 1998

11. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

The District of Columbia Bar: December 9, 1988 – present

The New York State Bar: May 7, 1986 – present

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Federal Circuit
Admitted April 13, 2007

United States Court of Appeals for the Tenth Circuit
Admitted July 23, 2002

United States Court of Appeals for the District of Columbia Circuit
Admitted June 9, 1992

United States District Court for the District of Columbia
Admitted December 3, 1990

United States District Court for the District of Maryland
Admitted July 15, 1994

United States District Court for the Eastern District of New York
Admitted 1986

United States District Court for the Southern District of New York
Admitted 1986

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12. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Washington Hebrew Congregation
Member: 2008 – present

American College of Trial Lawyers
Fellow: 2006 – present

Temple Sinai
Member: 1999 – 2008

United States Holocaust Memorial Council
Member: 1999 – 2004
Member, Committee on Conscience: 2000 – present
Member, Executive Committee: 2000 – 2002
Member, Development Committee: 2001 – 2002

Edward Bennett Williams Inn of Court
Barrister: 1996 – present

Alpha Delta Phi (Columbia University Chapter)
Member, House Manager: 1978 – 1980

Please also see organizations listed in response to Question number 7.

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of these organizations have discriminated or do discriminate.

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13. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have tried to recall and identify all published writings and statements. The following list is based on my recollection, a review of my files, and a search of Lexis-Nexis databases.

1. "New Rule Will Require Contractors to Report Wrongdoing to the Government and Impose Stricter Ethics and Compliance Obligations," Covington E-Alert (12/8/2008), Co-Author

2. "Government Affairs Practice Group Post Election Analysis," Covington E-Alert (11/7/2008), Co-Author

3. "Common Government Theories in Criminal Public Corruption Prosecutions: Learning from the Abramoff Investigation," *PLI Conference Corporate Political Activities 2008: Complying with Campaign Finance, Lobbying & Ethics Laws* (9/2008), Co-Author

4. "Repairing America's Image Abroad Will Take Time," *Washington Times* (8/28/2008), Co-Author

5. "Managing Internal Expectations in an Investigation: Understanding, Communicating, and Minimizing the Most Disruptive, Time-Consuming and Costly Steps of Any Investigation," *IADC Corporate Counsel College Program* (8/24/2008), Co-Author

6. "FCPA — 2007 Enforcement Trends," Covington E-Alert (5/9/2008), Co-Author

7. "New Business Ethics Mandates Added to the Federal Acquisition Regulation," Covington E-Alert (12/18/2007), Co-Author

8. "When Congress Calls," *Legal Times* (8/13/2007), Co-Author

9. "Supreme Court Update: Rockwell International Corp. v. United States," Covington E-Alert (3/29/2007), Co-Author

10. "Pharmaceutical Product Liability Update: Rowe v. Hoffmann-La Roche Inc.," Covington E-Alert (3/29/2007), Co-Author

11. "Let the Berger Case Rest," *Washington Post* (2/24/07), Author

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12. "Justice Delayed Is Justice Denied: Second Circuit Rejects Government's Tardy Attempt to Intervene in Qui Tam Suit," Covington E-Alert (11/30/2006), Co-Author

13. "Congressional Oversight and Investigations in the 110th Congress," Covington E-Alert (11/16/2006), Co-Author

14. "Government Affairs Post-Election Analysis," Covington E-Alert (11/10/2006), Co-Author

15. "A Relator Reads the Newspaper: U.S. Supreme Court to Clarify Rules for Qui Tam Suits Based on Public Information," Covington E-Alert (10/5/2006), Co-Author

16. "Abandoning or Supporting Employees During Government Investigations – A New Balance?," Covington E-Alert (6/29/2006), Co-Author

17. "I Believe, Beyond a Reasonable Doubt, That We Should All Have One Set of Manners," *Beyond a Reasonable Doubt* (2006), Author

18. "Disgorgement of Profits Unavailable as Damages under the False Claims Act," *The Civil False Claims Act and Qui Tam Enforcement, An ABA-CLE Publication* (2006); *BNA Report, Federal Contracts* (2006), Co-Author

19. "Civil Case Issues – Is it Really Only About the Money? Concern Over Privilege and Obligations to the Public," *CLE International* (2/2005), Co-Author

20. "New York Appellate Division Unanimously Dismisses Talk Show Tort Case," *MLRC MediaLawLetter* (9/2004), Co-Author

21. "Responding to Fraud Allegations," *GC New York* (6/14/2004), Co-Author

22. "Focusing In On Fraud," *New York Law Journal Magazine* (10/2003), Co-Author

23. "Lawyers, Accountants and Other Capital Market 'Gatekeepers' Come Under Prosecutors' Scrutiny," *Legal Backgrounder, Washington Legal Foundation, Vol. 18, No. 34* (8/22/2003), Co-Author

24. "Cybersecurity: Risk and Liability in the New Information Environment," *E-Commerce Law & Business* (2003), Co-Author

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25. "Application of the Right in Specific Circumstances of Civil Litigation," *The Right Against Self-Incrimination in Civil Litigation* (American Bar Association, Section of Antitrust Law) (2001), Co-Author

26. "Congressional Contempt: Both House and Senate Can Pierce Privileges and Punish If You Plead Confidence," *Legal Times* (10/30/2000), Co-Author

27. "Lawyer as Crisis Manager: How to Serve Clients and Avert PR Fiascos When the Press Comes Knocking on Your Door," *Legal Times* (4/17/2000), Co-Author

28. "An Unreasonable Condition: Targets Seeking Leniency Are Increasingly Asked to Withdraw from Joint Defense Agreements," *Legal Times* (9/20/1999), Co-Author

29. "A Time for Ken Starr to Keep Quiet," *New York Times* (op-ed) (6/17/99), Author

30. "Qui Tam Actions," *CLE Conference, Cumberland School of Law of Samford County* (1996), Author

31. "The Statutory Asset Preservation Powers of the Federal Bank and Thrift Agencies," *International Conference of Money Laundering, Asset Forfeiture, and International Financial Crimes* (1993), Author [Copy unavailable]

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

1. "Journalists' Handbook to the Courts in the District of Columbia," Council for Court Excellence (forthcoming), Co-Chair

2. *1994 Complex Crimes Journal*, American Bar Association (1994), Co-Editor

3. While I was on the Steering Committee of the Criminal Law and Individual Rights Section of the D.C. Bar Association, the Section issued the following public statements:

Letter to Sen. Orrin G. Hatch (confirmation of James Klein)	1998-7-17

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Letter to Council Members Evans, Chavous, Brazil, Thomas and Mason (Truth-in-Sentencing Commission)	1998-5-11
Letter to Hon. Eugene Hamilton (court funding)	1998-4-17
Submission to Truth-in-Sentencing Commission	1997-12-19
Statement of William J. Mertens to Truth-in-Sentencing Commission	1997-12-9
Letter to Eric Holder (Truth-in-Sentencing Commission)	1997-10-13
Letter to Eric Holder (Truth-in-Sentencing Commission)	1997-9-10
Letter to John Aldock (comments on Local Rule 311(h))	1996-7-26
Letter to Sen. Orrin G. Hatch (exclusionary rule)	1995-7-11

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

While I was on the Steering Committee of the Criminal Law and Individual Rights Section of the D.C. Bar Association, the Section issued the statements on public policy or legal interpretation referenced above. During the impeachment trial of President Clinton, I defended the deposition of Sidney Blumenthal. In addition, the following are instances in which I have provided testimony. I have provided copies of all transcripts or copies I have been able to locate through searches of my files and electronic databases.

Body	Subject	Date
D.C. District Court	Alexander v. F.B.I.	2000-10-19 & 2000-10-31
Government Reform and Oversight Committee, House of Representatives	Campaign Finance Investigation	1997-11-07
Government Reform and Oversight Committee, House of Representatives [copy unavailable]	Campaign Finance Investigation (deposition)	1997-10-31
Governmental Affairs Committee, U.S. Senate	Campaign Finance Investigation	1997-10-29
Governmental Affairs Committee, U.S. Senate [copy unavailable]	Campaign Finance Investigation (deposition)	1997-10-17

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d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have tried to recall and search for speeches and talks that I have delivered. The following list is based on my recollection, a review of my files, and a search of Lexis-Nexis databases. For those speeches and talks for which I have prepared remarks, I have included four copies of the text. The majority of these speeches or talks, however, did not have written prepared remarks.

Title/Engagement	Location	Date
Organization for International Investment (OFII), General Counsels' Conference: Cross Border Prosecutorial Coordination; The Long Arm of U.S. Prosecution	Washington, D.C.	2008-10-23
PLI Conference and Panel: Corporate Political Activities 2008, Complying with Campaign Finance, Lobbying & Ethics Laws, Criminal Enforcement of Election Law	Washington, D.C.	2008-9-11 & 12
IADC Corporate Counsel College Panel: Internal Investigations: Corporate Misconduct, the Investigation, and Information Management Tips	Chicago, IL	2008-4-24
18th National Conference Foreign Corrupt Practices Act--Panel Moderator: Conducting Due Diligence of Foreign Third Parties to Minimize Liability Risks	Arlington, VA	2007-11-14
NITA Trial Skills Presentation, Georgetown University School of Law, Sponsored by American College of Trial Lawyers	Washington, D.C.	2007-5-17
ACI Pharma Antitrust Conference	New York, N.Y.	2007-5-15

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Organization for International Investment (OFII), General Counsels' Conference: Attorney-Client Privilege Between U.S. & Foreign Counterparts	Washington, D.C.	2006-10-19
National Institute on Civil False Claims Act and *Qui tam* Enforcement	Washington, D.C.	2006-6-15
The PR Consulting Group Litigation Communications Conference: Beyond "No Comment"	New York, N.Y.	2006-5-24
Enforcement Trends: Government Enforcement of Laws Regulating Corporate Political Activity	Washington, D.C.	2006-2-2
Beyond "No Comment"	New York, N.Y.	2005-11-9
Columbia University Class Reunion Panel: Serving in the White House	New York, N.Y.	2005-5-20
New York City Bar Association Panel: Political Lawyering	New York, N.Y.	2005-5-4
Working with the Press in High Profile Legal Matters	Washington, D.C.	2005-4-11
CLE International Conference: Internal Investigations Seminar: "Civil Case Issues -- Is it Really Only About the Money?"	San Francisco, CA	2005-2-18
Washington Legal Foundation Panel: Are Creative White Collar Prosecutions in the Public Interest?	Washington, D.C.	2003-1-29
Global Corporate Counsel Association, Keynote Address	Versailles, France	2002-6-25
PLI Session: Crisis Management & Business Recovery in the Post September 11th World	New York, N.Y.	2002-2-20
Pharma & Biotech Crisis and Regulatory Issues Management Workshop: "Handling Congressional Investigations or non-FDA Issues That Pose Public Relations Risks"	Princeton, N.J.	2001-12-11
Columbia Law School Reception for Boston Area Summer Associates	Boston, MA	2000-6-21

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Dinner Address, Corporate International Environmental Law Alliance	Washington, D.C.	2000-1-20, 21
Manufacturers Alliance/MAPI Public Affairs Council	Washington, D.C.	1999-12-10
National Congress on the Future of Pharmaceuticals in Medical Care Panel: Surviving Subpoenas, Search Warrants and Investigative Demands: The Internal Investigation	Arlington, VA	1999-12-8
Healthcare Fraud and Abuse: Compliance and Enforcement Panel: Role of Attorney-Client Privilege	Washington, D.C.	1999-11-12
Manufacturers Alliance/MAPI Law Council II Panel: Crisis Management in the Public Spotlight	Arlington, VA	1999-11-4
Columbia Law School Association of Washington, D.C., Lunch Speaker	Washington, D.C.	1999-10-26
Grocery Manufacturers of America: Serving as Special Counsel to the President	Washington, D.C.	1999-10-19
Manufacturers Alliance/MAPI Law Council I: Crisis Management in the Public Spotlight	Dana Point, CA	1999-10-1
Discussion Panel, University of Utah: Impeachment proceedings	Salt Lake City, UT	1999-9-22
CLE Program: Parallel Criminal, Civil, and Other Proceedings	Washington, D.C.	1999-6-7
Guest Lectures/Presentations (Class professor indicated parenthetically)		
George Washington University School of Law Lecture (Judge Leon)	Washington, D.C.	2008-10-28
Georgetown University Law Center Class Lecture (Hope)	Washington, D.C.	2008-4-8
Georgetown University Law Center Class Lecture (Podesta and Judge Leon)	Washington, D.C.	2008-3-17
Washington University School of Law Class Lecture (Clark)	Washington, D.C.	2006-2-27

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Washington University School of Law Class Lecture (Clark)	Washington, D.C.	2001-1-22
Georgetown University Law Center Class Lecture (Podesta and Judge Leon)	Washington, D.C.	2000-7-17
William & Mary School of Law (Judge Griffith)	Williamsburg, VA	1999-10-14
Georgetown University Law Center Class Lecture (Podesta and Judge Leon)	Washington, D.C.	1999-7-7
Catholic University Class Lecture (Professor unknown)	Washington, D.C.	Date unknown
I believe I have taught Judge Leon's class at George Washington University School of Law on other occasions, but I cannot recall the dates.		

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have tried to recall and search for interviews that I have given and other articles in which I have been quoted. The following list is based on my recollection, a review of my files, and a search of Lexis-Nexis databases. This list includes articles from primary sources in which I was quoted as a result of statements that had been disseminated to the press.

Publication/Program	**Headline**	**Date**
Legal Bisnow	Lanny Breuer on Baseball	2008-4-7
New York Times	U.S. and Canada Accuse Drug Maker of Fraud	2008-3-25
Washington Post	Congress Requests A Clemens Inquiry; Perjury Charges Will Be Considered	2008-2-28
Associated Press	Clemens on the Hill: Debate over whether the hearing had to happen	2008-2-16
CNN	Roger Clemens Under Oath	2008-2-13
New York Times	Damaging Evidence Is Said to Await Clemens Today	2008-2-13

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New York Times	Pettitte Is Among Those Excused From Testifying	2008-2-12
New York Daily News	Andy Escapes Hearings Jam. Left, Knob & Radomski Relieved from Testifying	2008-2-12
Washington Post	An insider's guide to the upcoming week	2008-2-11
New York Times	As Trainer Is Questioned, Clemens Meets and Greets	2008-2-8
Statement to Press	Roger Clemens	2008-2-7
Associated Press	Roger Clemens Says He Repeats Denials Under Oath to Congressional Lawyers	2008-2-6
Associated Press	McNamee's lawyer says Pettitte will corroborate HGH accusation against Clemens	2008-1-30
New York Times	Pettitte Will Discuss Clemens, Lawyers Hint	2008-1-30
Associated Press	FBI arrests lieutenant governor, senator of American Samoa	2007-9-11
Bisnow on Business	What's Up With Lanny	2007-7-9
Washington Post	White House Will Deny New Request In Attorneys Probe; Bush to Defy Congress, Sources Say	2007-7-8
New York Times	Prosecution by Logic Defeats a Defense In Shades of Gray	2007-3-7
The New Republic	Hearing Aid	2007-2-5
Statement to Press	Sandy Berger / Statement in response to the disclosure of the report of the Inspector General of the National Archives	2006-12-20
Washington Post	Power Elite Lean on House To Pass Bill	2006-11-7
Associated Press	White House to Release Entry Logs	2006-9-20
Vanity Fair	Washington Babylon	2006-8

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New York Times	Deal Maker Details the Art of Greasing the Palm	2006-8-6
New York Times	Russia Frees Ex-Nuclear Official on Bail in Corruption Case	2006-7-22
New York Times	Gabelli to Pay $130 Million to Settle Lawsuit	2006-7-14
Washington Post	Lobbying Firm Underreported Income; Some Clients Paid With Public or Tax-Exempt Funds in Bids for 'Earmarks'	2006-7-6
Associated Press	Russian Likely Won't Face U.S. Trial	2006-4-23
Corporate Crime Reporter	Covington's Breuer Goes Public in Defense of Gabelli	2006-3-20
New York Times	U.S. Plans to Take on Gabelli Suit	2006-3-9
CNBC, Squawkbox	[I have a record of appearing on this program. I believe it was to discuss the Gabelli case.]	2006-3-9 [no clips found]
Pittsburgh Tribune-Review	Ex-nuclear minister to be tried in Russia	2005-12-30
Pittsburgh Post-Gazette	Ex-Energy Minister Faces Trial in Russia, Not U.S.	2005-12-30
Washington Post	Russian Wanted In U.S. Sent Home By Swiss for Trial; Ex-Nuclear Minister Accused of Stealing	2005-12-30
Reuters	Swiss to extradite Adamov to Russia, not US	2005-12-29
Washington Post	Swiss Court Extradites Former Nuclear Head Back to Russia	2005-12-29
New York Times	In Swiss Court, Russian Avoids Extradition to U.S.	2005-12-29
Associated Press	Swiss court rules Russian ex-nuke minister sent home, not U.S.	2005-12-29

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Washington Post	Clinton Official Pleads Guilty to Reckless Driving Charge; Deal Could Affect Berger's Probation in Documents Case	2005-11-30
Washington Post	His Word vs. That of Reporters and Officials	2005-10-29
CNN Newsnight	Hunt for Osama bin Laden Impacted by South Asia Earthquake?	2005-10-10
Pittsburgh Tribune Review	Russian To Be Sent Back to U.S. For Trial	2005-10-4
Fox News Live	[I have a record of appearing on this program. I believe it was to discuss President Bush's second Supreme Court pick.]	2005-9-29 [no clips found]
The Hill	Abramoff Case Gives Justice Lawyers a Rare High Profile	2005-6-15
Associated Press	Swiss court orders release of former Russian nuclear minister	2005-6-10
ITAR-TASS	Adamov in Custody Again in Accordance with Extradition Request	2005-6-9
Associated Press	Swiss court orders release of former Russian nuclear minister, justice ministry appeals	2005-6-9
HTB.RU	Deputies of the Russian Duma want to find out how they missed Adamov at the border	2005-5-27
Statement to Press	Adamov	2005-5-19
ITAR-TASS	Ex-Minister Under Arrest in Switzerland Lodges Complaint	2005-5-19
Associated Press	Partner of former Russian nuclear official arraigned	2005-5-17
Statement to Press	Adamov	2005-5-17
First Channel	Adamov	2005-5-13
Associated Press	Legislator calls for killing ex-nuclear minister if he's not returned to Russia	2005-5-12

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Reuters	Adamov eyeing Russia over US extradition	2005-5-12
RIA	Arrested Ex-Minister's Lawyer Waits for Kremlin to Respond	2005-5-12
RIA	Arrested Ex-Minister Adamov's Business Partner Released on Bail	2005-5-11
Pittsburgh Tribune-Review	Indictments issued in $9m Russian aid scandal	2005-5-6
ITAR-TASS	Adamov not to agree to extradition to US not consulting lawyer	2005-5-5
ITAR-TASS	First hearings on Adamov case to be held in Switzerland	2005-5-5
ITAR-TASS	Charges against Russia's Adamov false – US lawyer	2005-5-5
Reuters	Russians' former atomic chief arrested, faces charges in US	2005-5-5
Wall St. Journal	U.S. Seeks Extradition of Russian Nuclear Official	2005-5-5
Associated Press	Russia's former nuclear energy head indicted in U.S.	2005-5-5
New York Times	Russian Accused of Stealing Millions, Lawyers Say	2005-5-4
Los Angeles Times	Berger Expected to Plead Guilty	2005-4-1
New York Sun	Berger Investigation Stretches into Second Year	2004-12-8
Washington Post	Haft Signed Document Affirming Bride's Control	2004-9-11
National Public Radio	Sandy Berger Facing Investigation for Removing Classified Documents from the National Archives	2004-8-9
Today Show	Lanny Breuer, Sandy Berger's attorney, discusses the controversy surrounding Berger taking documents from the National Archives and the investigation	2004-7-21

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Good Morning America	Sandy Berger Controversy Analysis	2004-7-21
CNN	Sandy Berger Made An "Honest Mistake" About Top Secret Documents	2004-7-21
CBS Morning News	Former National Security Adviser Sandy Berger Steps Down from the Kerry Campaign After it is Disclosed He took Classified Documents from the National Archives	2004-7-21
New York Times	A Kerry Advisor Leaves the Race Over Documents	2004-7-21
CNN	Former Clinton Aide Sandy Berger Under Criminal Investigation	2004-7-20
Washington Post	FBI Probes Berger for Document Removal; Former Clinton Aide Inadvertently Took Papers from Archives, His Attorney Says	2004-7-20
Wall Street Journal	Clinton Aide Berger Is Subject of Criminal Probe	2004-7-20
CBS Evening News	Former Clinton National Security Adviser Sandy Berger Under Investigation For Removing Items from the National Archives	2004-7-20
NBC Nightly News	Clinton and Kerry Adviser Under Investigation	2004-7-20
ABC World News Tonight	National Archives Document Inquiry	2004-7-20
Chicago Tribune	White House Braces for Leak's Fallout	2003-10-2
Fox News	[I have a record of having appeared on this program. I believe it was to discuss the independent counsel investigation.]	2003-9-30 [no clips found]
Washington Post	SEC Accuses 4 Former Executives At Merrill of Aiding Enron Fraud	2003-3-18

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Investment News	Is the Grip on White-Collar Crime Too Tight?: Execs Punished for Doing Then What's Illegal Now, Lawyers Say	2003-2-10
New York Daily News	Feds Say Fred Edelstein Cashed in on NFL Scams	2001-11-20
CNN, Crossfire	Political Parallels from the Past?	2001-7-11
Washington Post	Cost of Silence Escalates For Condit	2001-7-5
Washington Post	The Many Mistrials of a D.C. Murder Suspect; 3 Failed Prosecutions, 4th Attempt Make Case Courthouse Legend	2001-2-24
New York Times	Charles Ruff, White House Counsel Who Defended Clinton in Impeachment, Dies at 61	2000-11-21
Fox News	Political Headlines	2000-11-20
New York Law Journal	Crisis Management: Lawyers Say Getting Information Out is Crucial	2000-10-5
Christian Science Monitor	New Waco probe seeks elusive answers	1999-9-10
Associated Press (The panel discussion was also carried on local public broadcasting.)	Clinton Attorney Discusses Strategy for Senate Trial	1999-9-23
Associated Press	Lab supervisors admit doctoring data on gasoline tests	1999-9-3
Fox News, The O'Reilly Factor	Hillary Clinton Candidacy	1999-7-6
National Journal's CongressDaily	Outside Influences: Calling In The Cavalry	1999-6-23
Washington Post	Ruff Will Leave White House; Counsel Led Clinton's Defense in Impeachment Proceedings	1999-6-10
Legal Times	It was a White House Privilege	1999-4-12
Washington Post	The Bell Rings. Recess! And They're Outta Here	1999-2-13

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Washington Post	Clinton's Lawyers Arguing Both Sides Now	1998-10-7
Associated Press	Grand Jury Continues, as White House Lawyer Called	1998-9-24
CBS News, Face the Nation	White House Special Counsel Lanny Breuer Discusses Ken Starr's Report and It Being Made Public	1998-9-13
Arkansas Democrat-Gazette	Presidential appeal denied, 1 lawyer goes before jurors	1998-8-5
Baltimore Sun	Md. lawyer giving up Hill finance probe; Partisanship ruining his case, Bennett says	1998-5-26
Washington Times	White House general counsel plays key - and low-key - role	1998-3-16
Washington Post	Ickes Vowed to 'Follow Up' On Casino, Panel is Told	1998-1-26
Associated Press	Lawyer Testifies in Whitewater Case	1997-11-19
CBS News, Face the Nation	Attorney Lanny Breuer and Senators Susan Collins, Arlen Specter and Joseph Lieberman Discuss the Investigations into Campaign Fund-Raising Activities	1997-10-12
New York Times	Discovery of 44 Tapes Exposes Vulnerabilities of 2 Institutions	1997-10-12
CNN	Continuing Coverage of Senate Campaign Finance Hearing	1997-10-8
Los Angeles Times	Reno Summons White House Aide In Tapes Dispute	1997-10-8
Washington Post	White House Aides Describe Difficulty in Finding Videotapes	1997-10-8
Chicago Tribune	When Clinton Is On The Spit, It's The Lanny Boys Who Spin	1997-9-28
Washington Post	His Own Counsel: The White House's Lanny Breuer Wins Points for Integrity From Both Sides	1997-9-23

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Arkansas Democrat-Gazette	Fund Trail Leads to Buddhists in Asia	1997-8-1
Chicago Sun-Times	Panel vows to subpoena Clinton data	1997-7-31
Chicago Sun-Times	GOP prober mulls issuing subpoena to White House	1997-7-29
Los Angeles Times	Panel Wants Answers From Macao Developer	1997-7-29
Arkansas Democrat-Gazette	Subpoena on Lippo link taps connections of 2 LR lawyers	1997-3-15
Wilmington Star-News	Sailor's Reinstatement Might Help Gay Marine	1994-9-5
Associated Press	Military Commanders Given Guidelines to Homosexual Policy	1993-12-23
Chicago Sun-Times	The Details of 'Don't Ask'	1993-12-23
Associated Press	Judge Indicates Gay Marine Probably Will Win Case Against Government	1993-12-12
Associated Press	Judge Rules Gay Marine Can't Be Booted in Mid-Lawsuit	1993-12-11
Associated Press	Gay Marine Wins Order From Federal Judge	1993-11-01
Associated Press	Gay Marine Returning to Active Duty	1993-10-19
Washington Times	8 gay GIs returned to duty	1993-10-19
Associated Press	Gay Marine to be Returned to Active Duty	1993-10-18
Associated Press	Marine's Suit Says Military Has No Right To Discharge Homosexuals	1993-9-8
Associated Press	Gay Marine Sues Defense Secretary, Marine Corps Chief, Navy Secretary	1993-9-7
Associated Press	Marine Corps: Gay Sergeant Can't Stay in Service	1993-4-1

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14. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have never been a candidate for elected office, nor have I been nominated unsuccessfully for appointed office. I have never held an elected office. I served as Special Counsel to President Clinton from 1997 to 1999, and as a Member of the United States Holocaust Memorial Council from 1999 to 2004; both of these positions were public appointments.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Obama for America; vetting; 2008 (uncompensated)

Lawyers for Hillary; member; 2007 – 2008 (uncompensated)

John Kerry for President campaign, conducted vetting; 2004 (uncompensated)

Wesley Clark for President campaign; general advice and issue research; 2003 – 2004 (uncompensated)

Al Gore for President campaign; conducted vetting; 2000 (uncompensated)

Paul Tsongas for President campaign; volunteer; 1991 – 1992 (uncompensated)

15. **Legal Career**: Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a law clerk.

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ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced as a solo practitioner.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Partner/Associate
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Partner: October 1995 – February 1997, May 1999 – present
Associate: October 1989 – October 1995

Special Counsel to the President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
February 1997 – April 1999

Assistant District Attorney
Manhattan District Attorney's Office
One Hogan Place
New York, N.Y. 10013
August 1985 – August 1989

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

From August 1985 to August 1989, I was a prosecutor in the Manhattan District Attorney's Office. From 1989 to February 1997, I was in private practice at Covington & Burling LLP. From February 1997 to April 1999, I served as Special Counsel to President Clinton. In May 1999, I returned to Covington & Burling LLP and have practiced there since.

ii. your typical clients and the areas, if any, in which you have specialized.

As an Assistant District Attorney, I represented the people of the State of New York and tried state criminal cases.

As Special Counsel to President Clinton, I represented the President and White House staff in the presidential impeachment hearings and trial,

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independent counsel investigations, a Justice Department task force investigation, congressional oversight investigations, and in responding to subpoenas.

At Covington & Burling LLP, my practice involves white collar criminal and complex civil litigation, internal corporate investigations, and congressional investigations. I have represented corporations and individuals domestically and internationally across a broad array of subject matters, including corporate accountability, fraud and abuse, securities investigations and litigation, food and drug regulation, medical device health and safety, antitrust, environmental crimes, foreign corrupt practices, national security, and export controls.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an Assistant District Attorney, my practice was comprised entirely of prosecuting criminal cases, and I appeared in court frequently.

As Special Counsel to President Clinton, I provided counsel in the context of litigation and managed and executed various litigation-oriented tasks related to grand jury, congressional, and other proceedings. During this period, I did not appear in court. I did appear as trial counsel before the Senate sitting as a Court of Impeachment.

As a partner at Covington & Burling LLP, my practice includes white collar defense and investigations and civil litigation, and I appear in court occasionally.

i. Indicate the percentage of your practice in:

1. federal courts
2. state courts of record
3. other courts

All of my court appearances between 1985 and 1989 were in New York State court.

As Special Counsel to the President, I appeared before the Senate convened as a Court of Impeachment.

In my practice at Covington & Burling, my appearances have been in:

1. federal courts: 60%
2. state courts of record: 35%

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3. other courts: 5%

ii. Indicate the percentage of your practice in:

1. civil proceedings
2. criminal proceedings

While at the New York District Attorney's Office, 100% of my litigation practice was criminal in nature. As Special Counsel to the President, my time was evenly divided between civil and criminal proceedings.

At Covington & Burling, my practice consists of roughly 25% civil proceedings and 75% criminal proceedings.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 25 cases as chief counsel (of which approximately 7 have been in private practice), consisting of approximately 200 trial days.

i. What percentage of these trials were:
1. jury: 65%;
2. non-jury: 35%.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the United States Supreme Court as counsel of record on the merits, nor have I served as counsel on any petition for certiorari.

I have participated as an amicus party in one (1) amicus brief:

1. Rockwell Int'l Corp. v. United States (No. 05-1272)

16. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

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c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. In re Hewlett-Packard Company Derivative Litigation
Superior Court of the State of California – County of Santa Clara
Judge Kevin E. McKenney
October 2006
Lead Case No. 1:06CV071186 / 2006

Court of Chancery for the State of Delaware – New Castle County
Vice Chancellor John W. Noble
October 2006
Consolidated Case No. 2428-N / 2006

Counsel for Plaintiffs:

Joseph H. Weiss
Weiss & Lurie
551 Fifth Avenue, Suite 1600
New York, NY 10176
(212) 682-3025

Spencer A. Burkholz
Coughlin Stoia Geller Rudman & Robbins LLP
55 West Broadway, Suite 1900
San Diego, CA 92101
(619) 231-1058

I represented the Special Litigation Committee of Hewlett-Packard's Board of Directors in shareholder derivative suits filed in California and Delaware. Following an eight-month internal investigation into the plaintiffs' allegations, conducted by the Special Litigation Committee with our assistance, the parties entered into an agreement settling both the California and Delaware actions.

2. Special Counsel v. Perkins
Merit Systems Protection Board
Neil A.G. McPhie, Chairman; Mary M. Rose, Vice Chairman; Barbara J. Sapin, Member
July 2004
Docket No. CB-1216-04-0017-T-1 / 2004

Counsel for Petitioner:

Kristin L. Ellis
Office of Special Counsel
1730 M Street, NW, Suite 218

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Washington, D.C. 20036
(202) 254-3635

I defended Richard Perkins, the former Speaker of the Nevada Assembly, against charges that he violated the Hatch Act by running for reelection to the Nevada State Assembly while also serving as the Deputy Chief of Police for Henderson, Nevada. An administrative law judge granted our motion for summary judgment, dismissing all of the charges against Mr. Perkins. The Merit Systems Protection Board affirmed that decision on appeal.

3. United States ex rel. Taylor v. Gabelli
United States District Court for the Southern District of New York
Judge Paul A. Crotty
September 2004
No. 03 Civ. 8762 / 2003

Co-counsel (representing Mario Gabelli in his individual capacity):

William P. Frank
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
(212) 735-2400

Counsel for Relator:

Williams & Connolly
725 Twelfth Street, N.W.
Washington, D.C. 20005

Paul Gaffney
(202) 434-5803

Chris Manning
(202) 434-5121

Counsel for the United States:

David J. Kennedy
Assistant United States Attorney
Southern District of New York
86 Chambers Street - 3rd Floor
New York, NY 10007
(212) 637-2733

I defended individuals, telecommunications investors, and related corporate entities against allegations that they fraudulently certified their

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small business status in order to bid on discounted spectrum licenses in FCC auctions. The case was settled as to both the United States and the relator following extensive fact and expert discovery and a partial summary judgment ruling favorable to the defendants on damages.

4. United States v. Samuel R. Berger
United States District Court for the District of Columbia
Magistrate Judge Deborah Robinson
October 2003
Case No. 05-MJ-00175M-01

Counsel for the United States:

John J. Dion
Department of Justice
Chief, Counterespionage Section
1400 New York Avenue, NW
Washington, D.C. 20530
Phone: (202) 514-1187

Thomas P. Reilly
Trial Attorney
Counterespionage Section
(202) 305-7831

Judge Noel Hillman
(Former Chief, Public Integrity Section)
U.S. District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101
(856) 757-5057

Howard Sklamberg
(Former Trial Attorney, Public Integrity Section)
Deputy Chief, Fraud & Public Corruption Section
U.S. Attorney's Office, D.C.
555 4th Street, NW
Washington, DC 20530
(202) 514-6961

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I represented Samuel R. Berger in a criminal investigation jointly conducted by the Counterespionage and Public Integrity Sections of the Justice Department relating to the removal of classified documents from the National Archives. The representation resulted in a plea agreement pursuant to which Mr. Berger pled guilty to one misdemeanor violation of 18 U.S.C. § 1924 relating to the unauthorized removal and retention of classified information.

5. In re R.R.
Superior Court of the District of Columbia
Judge Arthur L. Burnett, Sr.
June 2003
Sealed case
Adoption Case No. A-408-'02 / 2002
Custody Case No. DR-174-'03 / 2003

Counsel for Birth Mother: E. Scott Frison, Jr.
P.O. Box 206
Greenbelt, MD 20768
(301) 526-6465
(Prior contact information)

Counsel for Custody Plaintiff:

Joel R. Curtis, Esq.
729 15th Street, N.W.
Suite 200
Washington, D.C. 20005
(202) 638-1136

I represented a foster mother, R.R., seeking to adopt a three-year old girl. The birth mother opposed R.R's adoption petition, and the girl's birth grandmother filed a petition for custody in the event that the mother's opposition to R.R.'s petition was unsuccessful. The case was one of the most protracted and contested adoption cases in the city's history. Following a three-week trial in which 30 witnesses testified, the adoption was granted.

6. Tammy Etheridge Litigation

Criminal Case:

United States v. Central Industries, Inc., et al.
United States District Court for the Southern District of Mississippi, Jackson Division
Judge Henry T. Wingate

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Criminal No. 3:00CR18WS
1999-2001 (approximate)

Counsel for the United States:

Brad Pigott
Pigott Reeves Johnson
775 North Congress Street
Jackson, MS 39202
(601) 354-2121

John M. Dowdy, Jr.
Chief, Criminal Division
United States Attorney's Office
Southern District of Mississippi
188 E. Capitol Street, Suite 500
Jackson, MS 39201
(601) 965-4480

Jeremy F. Korzenik, Senior Trial Attorney
U.S. Department of Justice
Environmental and Natural Resources Division
Environmental Crimes Section
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20026-3895
(202) 305-0325

Counsel for Central Industries, Inc.:

Frank W. Trapp
Phelps Dunbar LLP
111 East Capitol Street, Suite 600
Jackson, MS 39201
(601) 360-9333

Contested Sentencing:

United States v. Etheridge
United States District Court for the Southern District of Mississippi, Jackson Division
Judge Henry T. Wingate
Criminal No. 3:00cr156WS-001
February 2001

Counsel for the United States:

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Jeremy F. Korzenik (see above)

I defended Tammy H. Etheridge in a criminal case and contested sentencing hearing. The representation resulted in dismissal of an indictment charging Mr. Etheridge with a 20-year conspiracy and more than 50 counts of knowing violations of the Clean Water Act, and a plea agreement pursuant to which Mr. Etheridge pled guilty to three misdemeanor counts of negligent violation the Act. 33 U.S.C. § 1319(c)(1)(A). After a contested sentencing hearing, Mr. Etheridge was fined $300,000 and ordered to serve four months home confinement, three years probation and 200 hours to benefit the community.

7. In re Impeachment of President William Jefferson Clinton
United States Senate
The Honorable William H. Rehnquist
September 1998
145 Cong. Rec. 26, S1458-1460 (1999)

I was part of a team that defended President William Jefferson Clinton in impeachment hearings conducted by the House of Representatives and trial before the Senate, convened as an Impeachment Court, on charges that the President provided false testimony to a grand jury and obstructed justice. The President was acquitted.

8. Corey Moore Litigation

United States v. Corey Moore
Superior Court of the District of Columbia
Judge Susan R. Winfield
April 1995
Case No. F-10928-94 / 1994

Counsel for the United States:

Cynthia G. Wright
Assistant United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20530
(202) 514-7566

I represented Corey Moore in a criminal trial on counts of conspiracy, first degree (premeditated) murder while armed, obstructing justice, and threatening to injure a person. Following a lengthy trial, Moore was acquitted on all counts.

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United States v. Corey Moore
Superior Court for the District of Columbia
Judge Michael L. Rankin
April 1995
Case No. F-13290-93 / 1993

Counsel for the United States:

Margaret A. Flaherty
Assistant United States Attorney
555 Fourth Street, N.W.
Washington, D.C. 20530

Ms. Flaherty is no longer at the United States Attorney's Office.

I represented Corey Moore in a criminal trial on charges of armed robbery, assault with a dangerous weapon, and possession of a firearm during a crime of violence. Following trial, Moore was acquitted on all counts.

9. Elzie v. Aspin
United States District Court – District of Columbia
Judge Stanley Sporkin
1993-1995 (approximate)
841 F. Supp. 439 (D.D.C. 1993)

Counsel for Defendants: Vincent Garvey
Department of Justice
Federal Programs Branch
Washington, D.C. 20044
(202) 514-3449

I represented Justin Elzie in administrative discharge proceedings at Camp LeJeune, North Carolina, where the Marine Corps determined that he would be discharged based on his sexual orientation. Mr. Elzie had recently been accepted into an early retirement program, and the effect of the discharge would have been to deprive him of those benefits. I later represented Mr. Elzie in federal district court, where he challenged on constitutional grounds the Marine Corps' discharge ruling. He obtained a preliminary injunction preserving his ability to serve in the military during the pendency of the litigation and, after several years, a favorable settlement restoring his retirement benefits.

10. Medicaid Payment Litigation

Tioga Pines Living Center, Inc. v. Indiana State Board of Public Welfare

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61992.503

Hancock Circuit Court, State of Indiana
Judge Ronald L. Gottschalk
1990-1991 (approximate)
No published opinion at the trial court level; Supreme Court opinion found at 622 N.E. 2d 935 (Ind. 1993).

Counsel for Plaintiffs:

David F. McNamar
McNamar & Associates, P.C.
2780 Waterfront Parkway
East Drive
Suite 160
Indianapolis, IN 46214
(317) 299-0160

Hillhaven, Inc. v. State of Nevada
Second Judicial District Court of the State of Nevada – Washoe County
Judge William N. Forman
1992-1993 (approximate)
No. CV88-6222 / 1988

Counsel for Plaintiffs:

Philip M. Stone
Anderson, Pearl, Hardesty, Lyle, Murphy & Stone
50 West Liberty Street
Reno, NV 89501
(775) 827-1322

Thomas C. Fox
Reed Smith Shaw & McClay
1200 18th Street, NW
Washington, D.C. 20036
(202) 457-6100

I represented the states of Indiana and Nevada in challenges by nursing homes to the states' Medicaid rate-setting methodology for nursing homes. The cases, which went to trial, ultimately were resolved in a favorable manner for the state.

17. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

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As an Assistant District Attorney, I worked in one of the six traditional trial bureaus of the New York District Attorney's Office. I prosecuted various criminal cases, including murder, gang violence, armed robbery, child abuse, burglary, white collar crime, and larceny.

As Special Counsel to President Clinton, I advised the President and the White House staff on the White House's response to investigations conducted by Congress, the Department of Justice, and independent counsels. As discussed above, I also defended President Clinton in the impeachment hearings conducted by the House of Representatives and the trial conducted by the Senate.

As a partner and co-chair of the White Collar Practice Group at Covington & Burling, I have represented corporations and individuals in federal and international criminal investigations and complex civil litigation. These representations have included the following significant matters:

Since late 2005, I have represented the Lieutenant Governor of American Samoa in connection with a federal criminal investigation and, later, an indictment alleging that he defrauded the government of American Samoa. The case is currently scheduled for trial in the U.S. District Court for the District of Columbia in June 2009.

In 2005 and 2007, I represented, in separate cases, Bozzuto & Associates, Inc. and the Trammel Crow Residential Company in lawsuits filed in U.S. district court alleging violations of the Fair Housing Act and the Americans with Disabilities Act. Both cases were resolved through voluntary Consent Decrees entered by the parties. Under the Consent Decrees, my clients committed to developing a significant number of housing units that exceeded the requirements of the Fair Housing Act and the Americans with Disabilities Act.

From 2004 to 2005, I represented the Philippine Long Distance Telephone Company with respect to a criminal investigation by the Department of Justice Antitrust Division into allegations of price-fixing. The Department of Justice closed its investigation in 2005.

In 2004, Omeka, Ltd. retained me regarding allegations that the company and its principals embezzled funds allocated by the Department of Energy to improve security at nuclear power plants in the former Soviet Union. I was subsequently engaged by Dr. Yevgeny Adamov, one of Omeka's principals and Russia's former Minister of Atomic Energy, in connection with these allegations. Dr. Adamov was indicted by the United States Attorney in Pittsburgh in May 2005 and was arrested in Switzerland. The United States and Russia both sought Dr. Adamov's extradition. The Swiss courts determined that Russia's request should be given priority, and Dr. Adamov was extradited to Russia. The U.S. government's charges against Dr. Adamov remain pending.

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From 2002 to 2004, I represented an Egyptian citizen in connection with an investigation conducted by the Department of Justice into alleged violations of the Foreign Corrupt Practices Act. The case was resolved without any criminal charges against my client.

Since 2002, I have represented Hoffmann-La Roche Inc. and Roche Laboratories Inc. in a congressional investigation relating to its medication Accutane® and in subsequent product-liability lawsuits alleging harm from Accutane. Some of these lawsuits have been consolidated in a multidistrict litigation pending in the Middle District of Florida, others have been consolidated in a Mass Tort in the Superior Court of New Jersey (Law Division), and others have been filed in state courts around the country. These cases are at various stages. Many have been voluntarily dismissed, subject to defense judgments, or otherwise resolved. Several of these cases have proceeded through trial; the verdicts in some of these trials are now on appeal. Other cases remain pending with discovery ongoing.

Beginning in 2002, I represented Moody's Investors Services in connection with an SEC examination and a congressional investigation conducted by the Senate Permanent Subcommittee on Investigations. Both proceedings focused on the role of credit rating agencies in the U.S. financial markets generally and in the Enron collapse specifically. I subsequently represented Moody's in a number of congressional hearings on similar topics. I also represented Moody's with respect to the Justice Department's criminal investigation and prosecution of Enron's former senior officers.

From 1999 to 2003, I represented a major U.S. manufacturing company in connection with investigations conducted by the Departments of Justice and Commerce into whether certain transactions violated the U.S. foreign trade control laws of the United States. No enforcement action was taken against the company.

From 1999 to 2003, I represented a major foreign trading company in a criminal environmental action brought by the Department of Justice related to the company's gasoline-blending business. The case was resolved without any criminal charges.

In my private practice, I also have represented corporations and individuals in connection with Congressional investigations and hearings. Among the most significant of these in recent years are:

In 2008, I represented the Federal Home Loan Mortgage Corporation (Freddie Mac) in connection with an investigation by the House Committee on Oversight and Government Reform into various issues related to the financial crisis.

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In 2008, I represented Roger Clemens in connection with the investigation of the House Committee on Oversight and Government Reform into Mr. Clemens' alleged use of performance-enhancing drugs as set forth in the Mitchell Report.

In 2007 and 2008, I represented Yahoo! Inc. in responding to an investigation conducted by the House Foreign Affairs Committee into Yahoo! Inc.'s involvement with law enforcement activities in China and prior statements of Yahoo! Inc. in testimony before Congress.

From 2003 to 2005, I represented the University of California in a series of congressional and internal investigations relating to the University's management of Los Alamos National Laboratory. The investigations were conducted by the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations and related to whistleblower allegations of breakdowns in the handling of classified information, procurement fraud, and general mismanagement.

From 1999 to 2008, I represented various pharmaceutical companies, including Johnson & Johnson, Eli Lilly, and Hoffman LaRoche Inc., in connection with congressional investigations into product safety, sales and marketing, and related issues.

While at Covington & Burling, I have registered as a lobbyist for the following clients:

1. Yahoo!
   2007 - 2008 – Federal

   I registered as a lobbyist in connection with my above-described representation of Yahoo! Inc., a client for which my firm was already registered. In connection with the representation, I had communications with congressional staff regarding the client's activities in China.

2. University of California
   2003 - 2005 – Federal

   I registered as a lobbyist in connection with my representation of the University of California described above. Among other things, my representation of the University of California included speaking with congressional staff concerning the renewal of the University's contract to manage Los Alamos National Laboratory.

3. Schering-Plough Corporation
   2000 - 2001 – Federal

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I met with congressional staff regarding a General Accounting Office report on Food and Drug Administration approval times for certain pharmaceutical products.

4. Christie's, Inc.
2000 - Federal

I arranged and attended two meetings in the Executive Office of the President regarding appointments to the Cultural Property Advisory Committee. I also attended a meeting with representatives of the State Department regarding restrictions on antiquities trading, the importance of multi-lateral action, and potential legislation on the same subjects.

5. Sotheby's, Inc.
1999 - 2002 – Federal

I arranged and attended two meetings in the Executive Office of the President regarding appointments to the Cultural Property Advisory Committee. I also attended a meeting with representatives of the State Department regarding restrictions on antiquities trading, the importance of multi-lateral action, and potential legislation on the same subjects.

6. Product Anti-Tampering Coalition
1999 – Federal

I attended a meeting with Representative Conyers regarding legislation to limit the import of gray-market goods.

18. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

I have served as an occasional guest lecturer for various law school and law institution courses. Those guest lectures are listed in item 13(d) above. In addition, I have taught at the following institutions.

National Institute for Trial Advocacy
Trial Skills
Sponsored by the American College of Trial Lawyers at Georgetown University Law Center
May 17, 2007

The American School in Switzerland
World History, American History, the U.S. Presidency, Model United Nations
High School Level

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August 1980 - May 1982

19. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

    If I am confirmed, I will resign as a partner of Covington & Burling LLP and sever all financial ties with the firm. Upon my separation from the firm, and prior to assuming the duties of Assistant Attorney General for the Criminal Division, I will receive repayment of my partner capital account ($629,431), deferred compensation from the firm's prior fiscal year ($619,547), a pro rata share of partner compensation for work I performed in the current fiscal year ($656,792), and a separation payment to be paid prior to or immediately following my separation ($1,346,035).

20. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

    I have no plans for outside employment.

21. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

    Please see attached the financial disclosure report required by the Ethics in Government Act of 1978.

22. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

    See net worth statement.

23. **Potential Conflicts of Interest**:

    a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts of interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

        In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics

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official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow all relevant rules concerning conflicts of interests and, if confirmed, will be guided by the determinations of ethics professionals at the Department of Justice. With respect to matters for which I know conflicts exist, I would inform relevant personnel that I am recused from such matters. As future matters arise, if I become aware that a potential conflict exists, I would consult with DOJ ethics professionals to determine the appropriate action and will be guided by their determinations.

24. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Since 2003, I have served as Vice-Chair of Covington & Burling's Public Service Committee, which oversees the firm's pro bono programs. During my tenure, the firm's commitment to pro bono legal services has consistently been recognized by *American Lawyer* as one of the strongest in the country, and the firm has received numerous awards and recognition for its pro bono work.

I also previously served as the head of Covington's criminal justice practice for indigent defendants. In that role, I recruited firm lawyers to represent indigent clients in criminal matters in the District of Columbia. Aside from my role in this program, I have regularly supervised associates providing pro bono civil and criminal representation.

I also have handled a variety of public and confidential pro bono matters in my practice. My public pro bono matters have included, among others, the following matters that are described in detail in response to Question 16 above: Elzie v. Aspin, In re R.R., and United States v. Corey Moore.

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Lanny Breuer

FINANCIAL STATEMENT

NET WORTH
(AS OF 12/31/08)

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	$578,302	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities - Schedule A	$750,060	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable - Schedule C	$681,212
Real estate owned - Schedule B	$2,800,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	$225,000		
Cash value-life insurance			
Other assets itemize:			
Spouse's IRA	$61,587		
Spouse's Thrift Savings Plan	$293,251		
Nominee's Pension and Retirement Savings Plans	$1,517,771		
Investments in Real Estate LPs and LLCs	$1,100,000		
Nominee's Partner Capital Account	$629,432		
		Total liabilities	$681,212
		Net Worth	$7,274,191
Total Assets	$7,955,403	Total liabilities and net worth	$7,955,403
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	No
On leases or contracts		Are you defendant in any suits or legal actions?	No
Legal Claims		Have you ever taken bankruptcy?	No
Provision for Federal Income Tax			
Other special debt			

Schedule A

Listed securities (as of 12/31/08) for nominee, spouse, and immediate members of household:

1. Mutual funds held at Wachovia Investments ($4,043), SEI Private Bank ($55,100), and CollegeBound ($76,004);

2. Money market funds with Charles Schwab ($203,484); and

3. Common stock in the following companies:

Rambus (held by nominee directly, as well as in trust)	$188,700
General Electric Co. (in trust)	$19,440
Johnson & Johnson (in trust)	$35,898
3M (in trust)	$5,754
Walgreen Co. (in trust)	$4,934
Bank of New York (in trust)	$34,733
MetLife Inc. (in trust)	$34,860
PepsiCo Inc. (in trust)	$21,908
Procter & Gamble Company (in trust)	$37,092
Herbalife Ltd. (in trust)	$13,008
Citigroup Inc. (in trust)	$2,684
Automatic Data Processing, Inc. (in trust)	$11,802
The Walt Disney Company (custodial)	$340
Harley-Davidson, Inc. (custodial)	$34
Nike, Inc. (custodial)	$204
Starbucks Corporation (custodial)	$38

Schedule B

Real estate is my residence; stated value reflects approximation of current market value

Schedule C

Mortgage of $681,212 held by National City Mortgage

AFFIDAVIT

I, Lanny A. Breuer, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/13/09
(DATE)

(NAME)

(NOTARY)

My Commission expires 4.14.09

SF278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Form Approved:
OMB No. 3209-0001

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status (Check appropriate box)	Calendar Year Covered by Report	Termination Date (If Applicable) (Month, Day, Year)
	☐ Incumbent		☒ New Entrant, Nominee, or Candidate ☐ Termination Filer

Reporting Individual's Name	Last Name: BREUER	First Name and Middle Initial: LANNY A.
Position for Which Filing	Title of Position: ASSISTANT ATTORNEY GENERAL, CRIMINAL	Department or Agency (If Applicable): U.S. DEPARTMENT OF JUSTICE
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): COVINGTON & BURLING LLP, 1201 PENNSYLVANIA AVE., NW, WASHINGTON, D.C. 20004	Telephone No. (Include Area Code): (202) 662-6000
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held:	

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification

I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.

Signature of Reporting Individual: LA. Breuer — Date (Month, Day, Year): 1/28/09

Other Review (If desired by agency)

Signature of Other Reviewer — Date (Month, Day, Year):

Agency Ethics Official's Opinion

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments on the back below).

Signature of Designated Agency Ethics Official/Reviewing Official — Date (Month, Day, Year):

Office of Government Ethics Use Only

Signature — Date (Month, Day, Year):

Comments of Reviewing Official (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filers

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A—The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B—Not applicable.

Schedule C, Part I (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)—Show any agreements or arrangements as of the date of filing.

Schedule D—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

Superseden Prior Editions, Which Cannot Be Used. 278-112 Form Designed in Microsoft Excel 2000 NSN 7540-01-070-8444

SF278 (Rev. 03/2000)
5 C F R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A	Page Number
Lanny A. Breuer		2

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse report the source but not the amount of earned income of more than $1,000 (except report the actual account of any honoraria over $200 of your spouse).

None ☐

	Assets and Income	$1,001 - $15,000	$15,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	Over $1,000,000 *	$1,000,001 - $5,000,000	Over $5,000,000	Exempted Trust	Type: Dividends	Type: Interest	Amount: None (or less than $201)	Amount: $201 - $2,500	Amount: $2,501 - $15,000	Amount: $15,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Coastal Airlines Common		X							X			X							
	Doe Jones & Smith, Hometown, State																			
	Evergreen Equity Fund																			
	IRA: Heartland 500 Index Fund													X						
1	Covington & Burling LLP Washington, D.C.																		Partnership Income $1,111,638.20	
2	Covington & Burling LLP Deferred Compensation FY '07 and '08																		$1,273,882.00	
3	Covington & Burling LLP Partner Capital Account											X								
4	Covington & Burling LLP Partner Separation Payment											X								
5	Citibank (cash accounts)			X							X									
6	Schwab Money Market Fund (SWMXX)									X										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C F R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Lanny A. Breuer		3

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)									Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)											
										Type			Amount								
None ☐	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000 *	$1,000,001 - $5,000,000 *	$5,000,001 - $25,000,000 *	Over $25,000,000 *	Exempted Trust	Dividends	Interest	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	Over $1,000,000 *	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Wellington Trust Bank (CD)													X										
2 Rambus Inc. (RMBS) Stock													X										
3 Wachovia (cash accounts) (in trust)												X			X								
4 General Electric Co. (GE) Stock (in trust)											X				X								
5 Johnson & Johnson (JNJ) Stock (in trust)											X				X								
6 3M Co. (MMM) Stock (in trust)		X									X		X										
7 Walgreen Co. (WAG) Stock (in trust)		X									X		X										
8 Bank of New York (BK) Stock (in trust)											X				X								
9 MetLife Inc. (MET) Stock (in trust)											X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

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Reporting Individual's Name: Lanny A. Breuer

SCHEDULE A continued
(Use only if needed)

Page Number: 4

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

#	Assets and Income (BLOCK A)	$1,001 - $15,000	$50,001 - $100,000	$250,001 - $500,000	Over $1,000,000 *	$5,000,001 - $25,000,000	Over $50,000,000	Excepted Trust	Type: Dividends	Type: Interest	Type: Rent	Amount: None (or less than $201)	$1,001 - $2,500	$5,001 - $15,000	$50,001 - $100,000	Over $1,000,000*	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	PepsiCo Inc. (PEP) Stock (in trust)								X										
2	Procter & Gamble Co. (PG) Stock (in trust)								X										
3	Rambus Inc. (RMBS) Stock (in trust)		X									X							
4	Herbalife Ltd. (HLF) Stock (in trust)	X							X										
5	Citigroup Inc. (C) Stock (in trust)	X							X			X							
6	Automatic Data Processing Inc. (ADP) Stock (in trust)	X							X										
7	Goldman Sachs Structured Large Cap Growth Fund (GLCCX) (in trust)	X							X										
8	Wachovia (cash account) (spouse's IRA)	X								X		X							
9	Novartis AG (NVS) Stock (spouse's IRA)								X										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

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Reporting Individual's Name: Lanny A. Breuer

SCHEDULE A continued
(Use only if needed)

Page Number: 5

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

#	Assets and Income (BLOCK A)	$1,001 - $15,000	$50,001 - $100,000	$250,001 - $500,000	Over $1,000,000 *	$5,000,001 - $25,000,000	Over $50,000,000	Excepted Trust	Type: Dividends	Type: Interest	Type: Rent (or less than $201)	Amount: $1,001 - $15,000	$1,001 - $15,000	$50,001 - $100,000	$50,001 - $100,000	Over $1,000,000*	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	XTO Energy Inc. (XTO) Stock (spouse's IRA)								X										
2	Goldman Sachs Structured Large Cap Growth Fund (GLCCX) (spouse's IRA)	X							X										
3	Rhode Island Higher Education Savings Trust (CollegeBound Funds) (CBF Aggressive Portfolio 1993-95)		X						X				X						
4	Covington & Burling Ret. Savings Plan Dodge & Cox Stock Fund (DODGX)								X				X						
5	Covington & Burling Ret. Savings Plan American Funds Grth Fund of Amer R5 (RGAFX)								X				X						
6	Covington & Burling Ret. Savings Plan American Beacon Small Cp Val Inst Fund (AVFIX)								X										
7	Covington & Burling Ret. Savings Plan Rainier Small/Mid Cap Equity Fund (RIMSX)								X		X								
8	Covington & Burling Ret. Savings Plan Thornburg International Value I Fund (TGVIX)								X										
9	Covington & Burling Ret. Savings Plan Lazard Emerging Mkts Equity Inst. Fund (LZEMX)								X										

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Assets and Income BLOCK A	Valuation of Assets at close of reporting period BLOCK B									Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. BLOCK C										
	None ☐	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000 *	$1,000,001 - $5,000,000 *	Over $5,000,000 *	Royalty Trust	Type: Dividends	Type: Interest	Amount: None (or less than $201)	Amount: $1,001 - $2,500	Amount: $2,501 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000 *	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Covington & Burling LLP Defined Benefit Plan (cash balance plan)													X								
2 Univest Finance Loan												X									
3 Univest Management Loan												X				X					
4 I-95 Dale, LLC (Commercial real estate development in Prince William County, VA)					X															Preferred Distribution $4,178.08	
5 Twinard L.P. (Twinbrook Place in Rockville, MD; commercial real estate)					X															Preferred Distribution $21,369.91	
6 Battlefield PE L.P. (Fort Evans Plaza II in Leesburg, VA; commercial real estate)					X															Preferred Distribution $24,315.10	
7 I-81 Hollyhock, LLC (Shoppes at Hagerstown in Hagerstown, MD; comm'l real estate)																				Preferred Distribution $13,835.63	
8 SIMT S&P 500 Index Fund (SSPDI)											X										
9																					

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)								Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)									
	None ☐	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	$1,000,001 - $5,000,000	Over $5,000,000	Excepted Trust*	Type: Dividends	Type: Interest	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: Over $50,000*	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 SEI Inst Mgd Small Cap Growth Fund (SSCGX)		X								X		X								
2 SEI Inst Mgd Small Cap Value Fund (SESVX)		X								X		X								
3 SEI International Trust Equity Fund (SEITX)		X								X		X								
4 SEI International Emerg Mkts Equity Fund (SIEMX)		X								X										
5 SEI Tax-Exempt Intermed Muni Fund (SEIMX)		X								X										
6 Covington & Burling Ret. Savings Plan Pimco Total Return Inst. Fund (PTTRX)										X					X					
7 Rock Creek Opportunity Fund LLC (real estate investment fund)													X							
8																				
9																				

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Do not Complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

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Lanny A. Breuer		8

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)													
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of Divestiture
Example:	Central Airlines Common	X			2/1/99		X										
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260; and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source (Name and Address)	Brief Description	Value
Examples:	Nat'l Assn. of Book Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
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Part I: Transactions

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)														
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of divestiture
	Example: Central Airlines Common	x			2/1/99			x									
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* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances, and liabilities owed to certain relatives listed in instructions. See instructions for reporting charge accounts.

None [X]

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term of repayment	Category of Amount or Value (x)														
Example:	First District Bank, Washington, DC John Jones, 123 J ST., Washington, DC	Mortgage on real property, Delaware Promissory note	1991 1999	8% 10%	25 yrs. on demand															
1																				
2																				
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* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employer benefit plan (e.g. 401k, deferred compensation); continuation payment by a former employer (including severance payments); leaves of absence; and future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None [ ]

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service conferred through 12/99.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to firm partnership agreement, I will receive (i) repayment of capital account; (ii) payment of deferred compensation from prior fiscal year; (iii) share of firm profits from current fiscal year (based upon work performed through date of separation); and (iv) separation payment, based on standard methodology applicable to departing partners.	Covington & Burling LLP, Washington, DC	5/99
2	Continued participation in Covington & Burling Retirement Savings Plan; no additional contributions	Covington & Burling LLP, Washington, DC	5/99
3	Upon confirmation, Filer will receive a payout of his interest in Covington & Burling's Defined Benefit plan	Covington & Burling LLP, Washington, DC	5/99
4			
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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Homeserve, State	Law firm	Partner	7/85	1/00
1	Covington & Burling LLP, Washington, DC	Law firm	Associate (1989-1995) Partner (1995-1997; 1999-Pres.)	1989 1997	1997 Present
2	Council for Court Excellence, Washington DC	Civic organization	Director	2007	Present
3	Columbia College Alumni Association	Alumni association	Board member; member of Executive Committee	2007	Present
4	American Jewish Committee (DC Chapter)	Civic organization	Director	2007	Present
5	Committee on Conscience, United States Holocaust Memorial Council	Civic organization	Member	1999	Present
6	Irwin H. Robinson Trust (12/22/92)	Private trust	Co-trustee	12/92	Present

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Homeserve, State	Legal services
	Motley University (client of Doe Jones & Smith), Mooreytown, State	Legal services in connection with university construction
1	Covington & Burling LLP, Washington, DC	Legal services
2	Special Litigation Committee of the Board of Directors of Hewlett-Packard Company (client of C&B), Palo Alto, CA	Legal services
3	Eugene Melnyk	Legal services
4	Yahoo Corporation	Legal services
5	Johnson & Johnson	Legal services
6	Roger Clemens	Legal services

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None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
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Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

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None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
7	Eli Lilly and Company	Legal services
8	Trammell Crow Residential	Legal services
9	Federal Home Loan Mortgage Corp. (Freddie Mac)	Legal services
10	Charles Prince	Legal services
11	OMEKA, Ltd.	Legal services
12	The Bozzuto Group	Legal services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
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Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Mount University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
13	Samuel R. Berger	Legal services
14	The Hon. Lt. Gov. Ipulasi Aitofele Sunia	Legal services
15	University of California	Legal services
16	Alan Schulman	Legal services
17	Thomas Beyerl	Legal services
18		

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	1992	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	1985	1/00
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Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the service generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Alma Mater University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
19	Cisco Systems, Inc.	Legal services
20	Chenega Technology Services Corporation	Legal services
21	Koch Industries, Inc.	Legal services
22	Wells Fargo	Legal services
23	Microsoft Corporation	Legal services
24	Telephone and Data Systems Inc.	Legal services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY Doe Jones & Smith, Hometown, State	Non-profit education Law firm	President Partner	6/92 7/85	Present 1/00
1					
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Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization where you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you were an incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State Miami University (client of Doe Jones & Smith), Moneytown, State	Legal services Legal advice in connection with university construction
26	Goodyear Tire and Rubber Co.	Legal services
26	AstraZeneca	Legal services
27	ExxonMobil Corporation	Legal services
28	Satyam Computer Services Ltd.	Legal services
29	Dana Corporation	Legal services
30	Novartis Vaccines & Diagnostics	Legal services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Climbers, NY, NY	Non-profit education	President	0/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
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Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization where you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an incumbent, Termination filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Metropolis, State	Legal services in connection with university construction
31	GlaxoSmithKline	Legal services
32	John Kirkikou	Legal services
33	Pharmaceutical Research and Manufacturers of America (PhRMA)	Legal services
34	Jacob Friedman	Legal services
35	Hugh P. Barras/Compagnie Financiere	Legal services
36	Alpharma Inc.	Legal services

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Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Excludes positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/93	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
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Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Hometown, State	Legal services in connection with university construction
37	Alice M. Rivlin	Legal services
38	Gareth Kirkwood	Legal services
39	Sir Rod Eddington	Legal services
40	Mario Kricorian	Legal services
41	Martin Gabriel	Legal services
42	M. Shafik Gabr	Legal services

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Lanny A. Breuer		18

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Pack Collectors, NY, NY	Non-profit education	President	0/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and employers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services, regardless of the size of payment (please see instructions for additional reporting requirements).

Do not complete this part if you are an incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Metrotown, State	Legal services in connection with university construction
43	Innovative Federal Strategies LLC	Legal services
44	Bhaskar R. Patel	Legal services
45	Michael Kellen	Legal services
46	Stelios Patsiokas	Legal services
47	Paul Marko	Legal services
48	Craig Waldin	Legal services

Prior Editions Cannot Be Used.

Senator KOHL. Thank you, Mr. Breuer.
We now turn to Christine Varney.

STATEMENT OF CHRISTINE A. VARNEY, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. VARNEY. Thank you, Mr. Chairman and members of the Committee. I am deeply honored to be here today. As someone who has spent more than a decade working on antitrust matters and a lifetime in public service, I cannot begin to express my gratitude to the President for nominating me and this Committee for considering me to be the Assistant Attorney General for Antitrust.

If am fortunate enough to be confirmed, I look forward to working with all members and staff of this Committee in enforcing our antitrust laws and renewing our Nation's standing as the international leader in antitrust.

I am pleased that some of my family is here today and would like to take a moment to introduce them. First, the love of my life, my husband, Tom Graham, to whom I owe everything. As he is the one who spent hours on the financial disclosure forms, I can truly say I would not be here if it were not for him. Thank you.

[Laughter.]

We also have two handsome sons, but they are in college and could not get the day off, so they are watching on the web cam, I hope.

My other family members here include my father, Jack Varney, who actually served as an attorney in the Antitrust Division 50 years ago. I know he could not be prouder that you are considering my nomination. My sister Jackie and her husband, John, are here, along with my niece Molly. My other five siblings are here in spirit, including my brother, Brian, who is currently serving our country in Iraq.

Strong antitrust enforcement and respect for our competition laws underpin our free enterprise system. There are three main areas that, if confirmed, will be my focus.

First, we must rebalance legal and economic theories in antitrust analysis and vigorously enforce the law.

Second, we need renewed collaboration between the Antitrust Division and the Federal Trade Commission, whose policies and processes have unfortunately diverged too frequently in recent years. Policy and jurisdictional squabbles between the agencies are simply unacceptable. My friend and colleague, the Chairman of the Federal Trade Commission, Jon Leibowitz, is here, and I know he shares in my commitment to end that.

Third, we must continue our cooperation with worldwide antitrust authorities, discussing our differences respectfully, and engaging with emerging antitrust regimes.

In these tough economic times, more than ever, it is important to remember that clear and consistent antitrust enforcement—protecting competition and thus consumers while being conscious of the need for economic stability—is essential to a growing and healthy free market, both at home and abroad.

Working with the committed and talented career staff at the Division, I am sure these goals can be achieved. I believe that com-

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petition has allowed the American spirit to soar and made this country great. I firmly believe that antitrust is a cornerstone of our economic prosperity, and I am committed to recruiting the best, brightest, and most experienced antitrust minds in the country to work at the Department of Justice alongside the outstanding staff already there.

I sincerely appreciate that this Committee, along with the Antitrust Subcommittee led by Senators Kohl and Hatch, has been a consistent supporter of the Antitrust Division. I look forward to working with you in enforcing our antitrust laws and renewing our country's international antitrust leadership.

Thank you for the opportunity to be here today, and I look forward to your questions.

[The prepared statement of Ms. Varney appears as a submission for the record.]

[The questionnaire of Ms. Varney follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name: Full name (include any former names used).**

   Christine Anne Varney

2. **Position: State the position for which you have been nominated.**

   Assistant Attorney General for Antitrust, United States Department of Justice

3. **Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.**

   Hogan & Hartson LLP
   Columbia Square
   555 13th Street, NW
   Washington, DC 20004

4. **Birthplace: State date and place of birth.**

   December 17, 1955 in Washington, DC

5. **Marital Status: (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.**

   Married to Thomas J. Graham, entrepreneur, self-employed.

   Two dependent children

6. **Education: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.**

   Georgetown University, 1982-1986, J.D (1986).

   Syracuse University, 1978, MPA (1978)

   State University of New York, University at Albany, 1974-1977, B.A. (1977)

7. **Employment Record: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise,**

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with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Partner
Hogan & Hartson LLP
Columbia Square
555 13th Street, NW
Washington, DC 20004
1997 – present

Director
Exclusive Resorts LLC
1515 Arapahoe Street, Tower 3, Suite 300
Denver, CO 80202
2000 – present

Director
Ryder System, Inc.
11690 NW 105th Street
Miami, FL 33178
1998 – present

Director
Parity Communications, Inc.
56 Kearney Road
Needham, Massachusetts 02494
1997 - present

Personnel Counsel
Obama-Biden Transition Project
451 Sixth Street
Washington, DC 20004
11/2008 – 01/2009

Director and Chairperson
TRUSTe
55 2nd Street, 2nd Floor
San Francisco, CA 94105
1998-2007

Director
NDN
729 Fifteenth Street, NW, 2nd Floor
Washington, DC 20005
2003

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Director
Enterasys Networks
50 Minuteman Road
Andover, MA 01810
2001-2002

Director
CommonPlaces LLC
2 Village Green Rd, Ste B4
Hampstead, NH 03841
1999 – 2000

Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
10/1994 – 08/1997

Executive Office of the President
Cabinet Secretary
1600 Pennsylvania Avenue, NW
Washington, DC 20500
01/1993 –10/1994

Associate
Hogan & Hartson LLP
Columbia Square, 555 13th Street, NW
Washington, DC 20004
1991-1993

General Counsel
Democratic National Committee
430 South Capitol Street, SE Washington, DC 20003
1989-1992

General Counsel
1992 Presidential Inaugural Committee
Washington, DC
1992

Chief Counsel
Clinton Gore Campaign
Washington, DC
1991

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Associate
Pierson, Semmes & Finley
1054 31st Street, NW
Washington, DC, 2007 (former address)
1986-1989

Law Clerk
Wender, Murase & White
Washington, DC
1985

Law Clerk
Fulbright & Jaworski
801 Pennsylvania Avenue, N.W.
Washington, DC 20004
1985

Law Clerk
Clifford & Warnke
815 Connecticut Ave., NW
Washington, DC 20006
1985

Law Clerk
Surrey & Morse
1350 Eye Street, NW
Washington, DC (former address)
1984-1985

8. **Military Service and Draft Status: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.**

Not applicable.

9. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Washington, D.C. Super Lawyers (2008) (Super Lawyers selects award recipients based on peer nominations, a blue ribbon panel review, and independent research of candidates)

Chambers USA, Competition and Antitrust (2004-2008) (Chambers Guides, which includes Chambers USA, lists the top lawyers in 175 countries)

Chambers USA, Privacy and Data Security (2007-2008) (Chambers Guides, which includes Chambers USA, lists the top lawyers in 175 countries)

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Legal 500 U.S., Technology: Data Protection and Privacy (2007-2008) (the Legal 500 series provides a directory of legal services provides)

International Who's Who of Competition Lawyers and Economists (2004)

Distinguished Alumna Award in Political Science, State University of New York, University at Albany (2001)

Burton Award for Legal Achievement (2001) (the Burton Award is a national awards program dedicated primarily to rewarding effective legal writing; award recipients are selected from nominations by deans of all the law schools in America, as well as from nominations by managing partners of the 1,000 largest U.S. law firms)

Outstanding Alumna, Georgetown University (1998)

Outstanding Alumna, Corcoran High School, Syracuse, New York (1997)

Outstanding Alumni Award, Syracuse University (1994)

10. **Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.**

District of Columbia Bar Association member (1986 – present)

American Bar Association member (1986 – present)

- Election Law committee member and chair
- Antitrust Section member

11. **Bar and Court Admission:**

a. **List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.**

The District of Columbia Bar member (1986 – present)

New York State Bar member (1986 – present)

b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

None.

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12. **Memberships**:

a. **List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.**

Member, Vineyard Haven Yacht Club (2000 – present)

Member, Cleveland Park Club (1992 – present)

Member, Exclusive Resorts (2000-present)

Advisory Board Member, NDN (2002 – 2005)

Advisory Board, Aveo, Inc. (2000)

Advisory Board, The Industry Standard (2000)

Advisory Board, RealNames (1999)

Chairperson, Online Privacy Alliance (1998-1999)

Member, Technology Advisory Council (TAC), EarthLink Network, Inc. (1998-1999)

b. **Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.**

None of these organizations have discriminated or do discriminate.

13. **Published Writings and Public Statements**:

a. **List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.**

I have done my best to identify all requested articles, reports, etc. through a review of my personal files and searches of publicly available electronic databases.

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13(a) – Books, articles, reports, letters to the editor, editorial pieces, or other published materials		
Date	Title	Organization/Publisher
March 23, 1995	*Advertising and Unfair Competition: Federal Trade Commission Enforcement*	The American Law Institute
July 10, 1995	*Hung Up By the Telemarket Lobby*	Fortune 21
Summer 1995	*Antitrust and the Drive to Innovate: Innovation Markets in Merger Review Analysis*	American Bar Association
November 13, 1995	*FTC Takes the Initiative with Hart-Scott-Rodino, Innovations in the Antitrust Laws Proposed by the Commission Should Streamline Its Process*	The National Law Journal
March 6, 1997	*Vertical Issues in Federal Antitrust Law*	The American Law Institute
March 6, 1997	*Federal Trade Commission Advertising Enforcement*	The American Law Institute
1998	"The Role of Business and Governments in International Consumer Protection," Summary of Remarks, in *Gateways to the Global Market Consumers and Electronic Commerce*	OECD
January 1998	*Consumer Privacy in the Information Age: A View from the United States*	Practising Law Institute
June 1998	*You Call this Self-Regulation?*	Wired
March 15, 1999	*Regulation of Internet and E-Commerce Explored at Conference*	Communications Daily, Warren Publishing Inc.
April 1999	*Online Consumer Data Privacy Regulation in the U.S.*	Electronic Banking Law and Commerce Report
December 2000-January 2001	*The Death of Privacy*	Newsweek
March 2001	*e-Commerce Antitrust & Trade Practices; Practical Strategies for Doing Business on the Web*	Practising Law Institute
August 6, 2001	*Enforcement Actions*	The National Law Journal
November 12, 2003	*Privacy and Security Best Practices*	Liberty Alliance Project
May 2004	*Online Collection of Personal Information From Children*	Cyberspace Lawyer
December 2004	*Update: FTC Defines the "Primary Purpose" of Commercial E-mails*	Hogan & Hartson
September 13, 2006	*Privacy Update: FTC Announces Imposition of $1 Million Civil Penalty Against Social Networking Site for Violations of Children's Online Privacy Protection Rule*	Hogan & Hartson
January 31, 2007	*Privacy Update: Law Enforcement Settlement with Advertisers That Relied on Another Company's Deceptive Adware Programs to Deliver Ads*	Hogan & Hartson
May 28, 2007	Liberty Alliance Project (online discussion)	Legal Frameworks Guidance: Translating Between Legal and

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[3(a)—Books, articles, reports, letters to the editor, editorial boards, or other publications]		
Date	Title	Publication or Publisher
		Business Language
November 2007	*Privacy Update: FTC Examines Behavioral Advertising at Town Hall Meeting*	Hogan & Hartson
December 2007	*Privacy Update: FTC Staff Releases Draft Online Behavioral Advertising Privacy Principles for Comment*	Hogan & Hartson
February 2008	*Privacy and Data Security Briefing*	Hogan & Hartson
April 2008	*Privacy and Data Security Briefing*	Hogan & Hartson
May 2008	*Privacy Update: CAN-SPAM Discretionary Rule Released*	Hogan & Hartson
June 2008	*Privacy and Data Security Briefing*	Hogan & Hartson
July 2008	*CAN-SPAM Discretionary Rule Released*	Privacy & Data Security Law Journal
July 14, 2008	*Arbitration Works Better Than Lawsuits*	The Wall Street Journal
August 2008	*Privacy Update: Microsoft Internet Explorer 8 In Private Browsing May Affect Online Activities*	Hogan & Hartson
August 2008	*Privacy and Data Security Briefing*	Hogan & Hartson
October 2008	*Privacy and Data Security Briefing*	Hogan & Hartson
December 2008	*Privacy and Data Security Briefing*	Hogan & Hartson

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify all requested reports, memoranda and policy statements through a review of my personal files and searches of publicly available electronic databases.

[3(b)—Policy Statements]	
Date	Organization & Subject
August 1989	American Bar Association; Standing Committee on Election Law; Section of Individual Rights and responsibilities; Government and Public Sector Lawyers Division. *Report to the House of Delegates*
February 17, 1995	Letter from Steven M.H. Wallman, SEC Commissioner, to Thomasina Rogers, ACUS Chairperson (joined by Christine Varney)
April 1995	U.S. Department of Justice and Federal Trade Commission.

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	13(b) - Policy Statements	
	Date	Organization & Subject
		Antitrust Enforcement Guidelines for International Operations
	April 6, 1995	U.S. Department of Justice and Federal Trade Commission. *Antitrust Guidelines for the Licensing and Intellectual Property*
	July 24, 1996	Statement of Chairman Pitofsky and Commissioners Steiger and Varney. *In the Matter of Waterous Company, Inc./Hale Products, Inc.*, File No. 901-0061
	August 1996	U.S. Department of Justice and Federal Trade Commission. *Statements of Antitrust Enforcement Policy in Health Care*
	August 1996	Separate Statement of Christine Varney regarding *Statements of Antitrust Enforcement Policy in Health Care*
	February 7, 1997	Separate Statement of Chairman Pitofsky, and Commissioners Steiger and Varney. *In the Matter of Time Warner Inc.*, File No. 961-0004
	March 14, 1997	Opinion of the Commission by Varney, Commissioner, *In the Matter of International Association of Conference Interpreters*, Docket No. 9270
	April 7, 1997	Separate Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger, Roscoe B. Starek, III, and Christine A. Varney. *In Ciba-Geigy, Ltd.*, C-3725
	April 8, 1997	Federal Trade Commission and U.S. Department of Justice. *Horizontal Merger Guidelines*
	May 8, 1997	Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger and Christine A. Varney. *In the Matter of Cadence Design Systems, Inc./Cooper & Chyan Technology, Inc.*, File No. 971-0033
	May 16, 1997	Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger and Christine A. Varney. *In the Matter of American Cyanamid*, Docket No. C-3739
	July 1997	Statement of Chairman Robert Pitosky and Commissioners Janet D. Steiger, Roscoe B. Starek III and Christine A. Varney. *In the Matter of Boeing Company/McDonnell Douglas Corporation*, File No. 971-0051
	February 1998	American Bar Association Standing Committee on Election Law; Coordinating Committee on Immigration Law; National Asian Pacific American Bar Association; Hispanic National Bar Association. *Report to the House of Delegates*
	November 19, 1998	Online Privacy Alliance. *Privacy Guidelines Commentary*
	November 19, 1998	Online Privacy Alliance. *OPA White Paper: Online Consumer Data Privacy in the United States*
	February 1999	Report of the Standing Committee on Election Law Presented jointly with the Coordinating Committee on Immigration

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		Law, National Asian Pacific, American Bar Association and the Hispanic National Bar Association
	August 1999	Report of the Standing Committee on Election Law Presented jointly with the Section of Individual Rights and Responsibilities and the Government and Public Sector Lawyers Division
	February 2000	Report of the Section of Business Law Presented jointly with the Section of State and Local Government Law, Standing Committee on Ethics and Professional Responsibility and the Association of the Bar of the City of New York
	July 2000	Report of the Standing Committee on Election Law
	September 21, 2005	Liberty Alliance Project. *Deployment Guidelines for Policy Decision Makers*
	September 29, 2006	Letter to Donald S. Clark, Secretary, Federal Trade Commission
	Undated	Online Privacy Alliance. *Guidelines for Online Privacy Policies*
	Undated	Online Privacy Alliance. *Effective Enforcement of Self Regulation*
	Undated	Online Privacy Alliance. *Principles for Children's Online Activities*

c. **Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.**

I have done my best to identify all requested testimonies, official statements and other communications through a review of my personal files and searches of publicly available electronic databases.

Date	Organization	Subject
October 5, 1994	U.S. Senate Committee on Commerce, Science, and Transportation	Nomination of Christine A. Varney to Be a Member of the Federal Trade Commission
July 11, 1996	U.S. House of Representatives Commerce Committee, Subcommittee on Commerce, Trade and Hazardous Materials	*Hearing on H.R. 3553, the Federal Trade Commission Reauthorization Act of 1996 and H.R. 447, a bill to establish*

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			a toll-free number in the Department of Commerce to assist consumers in determining if products are American-made
	October 1996	U.S. House of Representatives Committee on Government Reform and Oversight	Deposition Transcripts from the Committee Investigation Into the White House Office Travel Matter
	February 1998	American Bar Association Standing Committee on Election Law, Coordinating Committee on Immigration Law, National Asian Pacific American Bar Association, Hispanic National Bar Association	Report to the House of Delegates
	February 10, 1998	U.S. Senate Committee on Commerce, Science, and Transportation	Internet Indecency *Statement of Christine Varney, Partner, Hogan & Hartson, Chair, Internet Online Summit*
	July 21, 1998	U.S. House Of Representatives Commerce Subcommittee on Telecommunications, Trade, and Consumer Protection	Electronic Commerce: Privacy in Cyberspace *Statement of Christine Varney, Executive Director, Online Privacy Alliance, et al.*
	February 20, 1999	ABA Standing Committee on Election Law	Report to the House of Delegates
	May 18, 1999	ICANN Board of Directors (On behalf of herself)	Comments on the May 7, 1999 Interim Report of the Advisory Committee on Independent Review
	May 27, 1999	U.S. House of Representatives Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary	Electronic Communication Privacy Policy Disclosure *Statement of Christine Varney, Senior Partner, Hogan & Hartson, on behalf of the Online Privacy Alliance*
	July 27, 1999	U.S. Senate Subcommittee on Communications of the Committee on Commerce, Science, and Transportation	*Statement of Christine Varney, Senior Partner, Hogan & Hartson, on behalf of the Online Privacy Alliance*
	August 1999	ABA Standing Committee on Election Law	Report to the House of Delegates, National Voter

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13(c) - Testimony, Official Statements, or Other Communications Relating to Matters of Public Policy or Legal Reform

			Registration Act
	2000	Aspen Institute Communications and Society Program and American Bar Association Standing Committee on Election Law	*Campaigns in Cyberspace: Toward a New Regulatory Approach*
	May 16, 2000	U.S. House of Representatives Government Reform Committee, Subcommittee on Government Management, Information, and Technology	*Hearing to Establish the Commission for the Comprehensive Study of Privacy Protection*
	May 25, 2000	U.S. Senate Committee on Commerce, Science, and Transportation	*To Review the Federal Trade Commission's Survey of Privacy Policies Posted by Commercial Websites* *Statement of Christine Varney, Senior Partner, Hogan & Hartson, on behalf of the Online Privacy Alliance*
	March 1, 2001	Congressional Privacy Caucus	*Testimony of Christine Varney before the Congressional Privacy Caucus*
	2003	TRUSTe Year in Review	*Trust Matters*
	February 27, 2003	American Hospital Association	Statement Presented by Former FTC Commissioner Christine Varney, Department of Justice and Federal Trade Commission Hearing, "Perspectives on Competition Policy and the Health Care Marketplace."
	November 12, 2003	Liberty Alliance Project	Privacy and Security Best Practices (editor)
	September 13, 2004	Motion Picture Association of American	Letter to The Honorable Donald S. Clark, FTC, re: CAN-SPAM Act Rulemaking, Project No. R411008
	July 20, 2005	U.S. Senate (signatory on letter entered into the congressional record)	Supporting confirmation of Judge John Roberts on the D.C. Circuit
	March 16, 2007	U.S. House of Representatives Energy and Commerce Committee	Commerce, Trade, and Consumer Protection Combating Spyware, Testimony on behalf of Zango, Inc.

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d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all requested speeches, talks, etc. through a review of my personal files and searches of publicly available electronic databases.

June 3, 1993	Year Round Syracuse	Keynote Speech at Induction Ceremony
September 1, 1993	59th Annual Women's Day Program Syracuse, NY	
April 21 – 22, 1994	Advisory Committee on Human Radiation Experiments, Washington, DC	Public Meeting
December 1, 1994	The Manufacturer's Alliance	"The Role of Competition Policy in Innovative Markets"
February 16, 1995	National Health Lawyers Association	"Competition Policy in Vertical Mergers and Innovation Markets"
February 22, 1995	District of Columbia Bar	"Antitrust Implications in Standard Setting"
March 15, 1995	Antitrust 1995 Conference	"Why Innovation Market Analysis Makes Sense"
March 23-24, 1995	ALI-ABA	"Vertical Merger Enforcement Challenges at the FTC"
March 27, 1995	National Association of Retail Druggists	"Responses to the Managed Care Revolution: A Competition Policy Perspective"
April 1995	Unavailable	Remarks for Government Enforcement Panel
April 3, 1995	American Telemarketing Association	"Telemarketing Rule"
April 5, 1995	American Bar Association	"Setting Federal Consumer Protection Policy for the 21st Century"

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April 6, 1995	American Bar Association	"Consumer Protection on the Information Superhighway"
April 12, 1995	Chicago Association Law Symposium	"Association Activity and Antitrust Liability"
May 2, 1995	Health Care Antitrust Forum	"New Directions at the FTC: Efficiency Justifications in Hospital Mergers and Vertical Integration Concerns"
May 4, 1995	Charles River Associates *1201 F Street, NW, Suite 700 Washington, DC 20004-1204* Conference on Economics in Legal and Regulatory Proceedings	"Antitrust in the Information Age" – No prepared remarks available
May 10, 1995	Citizens Fund Conference	"The Dangers of Health Industry Consolidation and Corporatization and the Effect on Quality, Cost and Access"
May 12, 1995	ABA Fundamentals	"Is the Merger Review Process Broken"
May 24, 1995	Automobile Original Equipment Manufacturers, Inc.	International Trade Policy Issues
June 2, 1995	Practicing Law Institute *810 Seventh Street New York, NY 10019*	"Vertical Merger Enforcement Challenges at the FTC"
June 6, 1995	Food Marketing Institute	"Ensuring Competition in the Food Marketing Industry"
July 10, 1995	Digital Interactive Systems International	"The Revised Telemarketing Rule"
July 17, 1995	Practicing Law Institute	"Vertical Merger Enforcement Challenges at the FTC"
July 25, 1995	APEC Committee on Trade and Investment	"Cooperation Between Enforcement Agencies: Building Upon the Past"
August 2, 1995	Morgan, Lewis & Bockius *1111 Pennsylvania Ave., NW Washington, DC 20004-2541* CLE Antitrust Luncheon	No Prepared Remarks
August 7, 1995	American Bar Association Antitrust Section	"Reforming and Strengthening the Merger Enforcement Process at the FTC"
September 18, 1995	American Association of Advertising Agencies *405 Lexington Avenue, 18th Fl. New York, NY 10174-1801*	"Consumer Protection at the FTC"
October 6, 1995	American Society of Association Executives	"Antitrust and Technology: What's on the Horizon?"

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October 12, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
October 13, 1995	American Bar Association	"FTC Franchise Rule Review"
October 17, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
October 18, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
October 19, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
October 23, 1995	SMS Health Executives Forum	"The Health Care and Antitrust Interface in an Era of Fundamental Industry-Wide Realignments"
October 24, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
October 25, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
October 26, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
November 1, 1995	Privacy & American Business Conference	"Privacy in the Electronic Age"
November 2, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
November 8, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
November 9, 1995	American Corporate Counsel Assn. *1250 6th Avenue San Diego, CA 92101*	"Town Meeting" – No prepared remarks
November 10, 1995	American Bar Association Section of Antitrust Law and the International Bar Association Antitrust and Trade Law Committee	"Getting the Deal Through a Competition Review: The Merger Review Process in the US and Abroad"
November 17, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
November 21, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
November 30, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
December 1, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition

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December 5, 1995	Association of Financial Services Holding Companies	"Privacy, Fraud and the Credit Card Industry"
December 12, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition (Index Exhibits)
December 13, 1995	Federal Trade Commission, Washington, DC	Hearings on Global and Innovation-Based Competition
January 14, 1996	NRF Executive Committee	Outline of Remarks Before the NRF Executive Committee
January 15, 1996	ALI-ABA	"Vertical Restraints Enforcement at the FTC"
January 16, 1996	ALI-ABA	"Advertising and Unfair Competition: FTC Enforcement"
January 24, 1996	Direct Selling Association	"Setting Federal Consumer Protection Policy for the 21st Century"
January 25, 1996	The Cosmetic, Toiletry & Fragrance Association	"FTC Consumer Protection Enforcement"
February 29, 1996	International Consumer Product Health and Safety Organization	"To Your Health: An FTC Review of Safety Related Marketing"
March 6, 1996	Credit Management Advisory Council	National Retail Federation – No prepared remarks
March 7, 1996	1996 Antitrust Conference	"Learning From the Global Competition Hearings"
March 14, 1996	U.S. Chamber of Commerce--Antitrust Council	"The New FTC: A Year of Open Exchange - What Have we Accomplished? What is Still to Come?"
March 28, 1996	American Bar Association Antitrust Section	"Recent Developments in Antitrust and Managed Care: A Government Perspective"
March 30, 1996	Electronic Privacy Information Center Conference	"Privacy and the Information Infrastructure"
May 6, 1996	Software Publishers Association	"Whose Law Applies to You? Jurisdictional Conflicts and Overlapping Regulation"
May 9, 1996	Wharton Conference on Electronic Commerce	"Beyond the Hope and the Hype: Creating a New Market Reality"
May 13, 1996	Hogan & Hartson Franchising Breakfast	"New Issues in Franchising"
May 14, 1996	Direct Marketing Association, Inc.	"Privacy in the Electronic Age"

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May 24, 1996	ABA Antitrust Section Network	"New Developments and Products and Emerging Antitrust Questions -- Applications in the Computer Industry"
May 24, 1996	Federal Circuit Bar Association	"The Intersection of Antitrust and Intellectual Property Law: Learning from the FTC Global Competition Hearings"
May 31,1996	Practicing Law Institute	"Government Antitrust Enforcement"
June 5, 1996	Federal Trade Commission, Washington, DC	Public Workshop on Consumer Privacy on The Global Information Infrastructure
June 13, 1996	International Franchising Institute	"Consumer protection and Antitrust Enforcement in the 21st Century" – No prepared remarks
July 1996	American Electronics Association conference	Online Commerce
August 3, 1996	American Bar Association *750 15th Street, NW Washington, DC 20005-1019* Annual Meeting	Remarks before the Business Law Section's Consumer Financial Services Committee – No prepared remarks
October 9, 1996	Privacy & American Business	"Consumer Privacy in the Information Age: A View from the United States"
October 17, 1996	Fordham Corporate Law Institute 23rd Annual Conference on International Antitrust Law & Policy	"The Federal Trade Commission and International Antitrust"
January 14, 1997	National Retail Federation *325 7th Street, NW, Suite 1100 Washington, DC 20004*	"Privacy Issues -- The View from Washington" - No prepared remarks
February 1997	Conference: Emerging Law of Cyberbanking and Electronic Commerce	Privacy Protections in Cyberbanking
February 6, 1997	Glasser LegalWorks	"Privacy Issues and FTC Jurisdiction"
February 24, 1997	Business Development Associates, Inc.	"FTC's Look at Online Advertising"
March 3-4, 1997	Organisation for Economic Co-Operation and Development – Committee on Consumer Policy	"Consumer Privacy in the Information Age"
March 6, 1997	ALI-ABA Product Distribution and Marketing	"Advertising and Unfair Competition: FTC Enforcement"
March 7, 1997	ALI-ABA Product Distribution and Marketing	"Vertical Issues - The Federal View"
March 10, 1997	American Corporate Counsel Association	"Government Regulation on the Information Superhighway"

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March 12-13, 1997	Computers, Freedom & Privacy '97	"Consumer Privacy in Cyberspace"
March 11 -14, 1997	Conference: Computers, Freedom and Privacy '97 San Francisco, CA	Panel: Social Issues raised by the Commercial Development of the Net - No prepared remarks
March 23-26, 1997	EDventure Forum Panel EDventure 1997 Platforms for Communications Forum	"The Living Web – Models & Metaphors" "Privacy and Identity" (No Prepared Remarks)
April 9, 1997	Brookings Institution *1775 Massachusetts Ave., NW Washington, DC 20036*	"Privacy in the Age of Electronic Commerce" (No Prepared Remarks)
April 8-12, 1997	American Bar Association Antitrust Section	"Innovation Markets and Competition Policy"
April 24-25, 1997	Markle Foundation/Aspen Institute Strategy Session *The Markle Foundation 10 Rockefeller Plaza, 16th Fl. New York, NY 10020-1903*	Conference Session – "Social Venture Capital for Universal Electronic Communications" (No Prepared Remarks)
May 1, 1997	Federal Reserve Bank of Chicago	"Financial Services in the Age of Electronic Commerce; Consumer Protection and Competition Policy"
May 2, 1997	Management Policy Council (McGraw-Hill)	"Consumer Privacy in Cyberspace"
May 14, 1997	The Food Group	"Remarks to the Food Group"
May 16, 1997	Georgetown University School of Business *Georgetown University Main Campus and Medical Center 37th and O Street, NW Washington, DC 20057 or Georgetown University Law Center 600 New Jersey Avenue, NW Washington, DC 20001*	Kick-off Remarks – "Privacy Issues in American Business Seminar Kick-Off" (No Prepared Text)
May 21, 1997	U.S. Chamber of Commerce/Wiley, Rein & Fielding Conference	"What Every Business Should Know About the Law of Cyberspace: An FTC Perspective"
June 3, 1997	Columbia University Graduate School of Journalism *2950 Broadway New York, NY 10027* First Amendment Leaders' Breakfast	Panel Discussion: "Will Journalism Survive Cyberspace" (No Prepared Remarks)

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June 3, 1997	Harte Hanks Data Technologies	"Consumer Privacy in Cyberspace"
June 11, 1997	PBS, Online NewsHour Transcript	What, if anything, should be done to ensure privacy online
July 24, 1997	Commonwealth Club and the Niehaus Ryan Group San Francisco, CA	"Privacy, Anonymity and Security: Who Holds the Keys?"
August 4, 1997	American Bar Association Annual Meeting (Intellectual Property Section)	"Intellectual Property and Competition Policy"
October 8, 1997	GartnerGroup Symposium/ITXPO 97	Panel: "Security and Privacy: Meeting the Internet Challenge"
November 14, 1997	Appraising Microsoft and Its Global Strategy Conference Washington, DC Sponsored by Ralph Nader	Panel: "Government Antitrust Enforcement Activities"
December 1 - 3, 1997	Internet Online Summit: Focus on Children Renaissance Hotel Washington, DC 999 9th Street, NW Washington, DC	Moderator of the Congressional and Summit Participants Round Table Discussion; introduction of V.P. Al Gore
February 18-20, 1998	Computers, Freedom and Privacy Conference, Austin, TX	E-Commerce and Personal Information
April 14, 1998	Online NewsHour	*Playing Monopoly*
May 18-19, 1998	IBM's Institute for Advanced Commerce Privacy Symposium, Armonk, NY	Panel: Private Sector Responses to Privacy Challenge
June 23, 1998	U.S. Department of Commerce *1401 Constitution Ave., NW Washington, DC 20230*	Internet Privacy Summit (no prepared remarks)
July 1998	Telephone Conference	Online Privacy Alliance
October 9, 1998	OECD Conference, Ministerial Meeting on Electronic Commerce, Ottawa, Canada	Panel: "Building Trust and Making It Work: Case Studies in Effective Implementation"
October 21, 1998	Press interview during Microsoft trial	Public remarks on Microsoft Trial (as attorney for Netscape)
October 26, 1998	Press interview during Microsoft trial	Public remarks on Microsoft Trial (as attorney for Netscape)

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1998	The Eighth Annual Conference on Computers, Freedom and Privacy Austin, TX	The latest developments in computer hacking, PICS, and the CDA (no prepared remarks)
January 11, 1999	Internet Content Coalition	Internet Content Concerns, Government's Role in Electronic Commerce
May 13, 1999	ZDNET.co.uk	*Web Survey Shows Privacy Shortfall*
September 13, 1999	Progressive Policy Institute	Panel: "Government and the Internet: Is There a Third Way?"
October 1999	IBM Multi-National Consumer Privacy Survey	Privacy Overview
October 13-15, 1999	Aspen Institute	"Campaigns in Cyberspace: The Promise and Practice of Digital Politics"
November 1999	Privacy & American Business Conference Arlington, VA	Privacy Legislation
December 14-16, 1999	eBusiness Conference and Expo New York, NY	e-Business Strategy and Implementation
May 26, 2000	Online NewsHour	*Internet Privacy*
September 19, 2000	U.S. Department of Commerce and The Internet Education Foundation	Online Privacy Technologies Workshop and Technology Fair
October 24, 2000	Catherine N. Stratton Lecture in Critical Issues, Massachusetts Institute of Technology *77 Massachusetts Avenue Cambridge, MA 02139-4307*	Panel: Privacy in the Age of Information (no prepared remarks)
November 1, 2000	Massachusetts Institute of Technology News Office	*Technology Makes Privacy Harder to Safeguard, Panel Notes*
May 22, 2001	Conference on "Information: Privacy, Property and Policy," sponsored by the University of Main School of Law's Technology Law Center	Panel: Internet privacy law and policies – No prepared remarks
June 19, 2001	Hogan & Hartson LLP (Denver) breakfast briefing	Panel: Recent medical and financial privacy laws, and employee phone and Internet monitoring – No prepared remarks

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Date	Name of Organization	Presentation
Sept. 19-21, 2001	World Intellectual Property Organization. Second International Conference on Electronic Commerce and Intellectual Property, Geneva	Presentation: *Privacy Overview*
March 5-6, 2002	Scientific American/Strategic & International Studies (CSIS) Summit on Privacy, Security and Safety: Preserving an Open Society in an Age of Terrorism	Panel: "Individual Privacy and Public Safety: Reconciling Competing Human Values" – No prepared remarks
November 12, 2002	W3C Technology and Society	"Future of P3P Workshop"
June 4 - 6, 2003	The Stanford Conference on Antitrust in The Technology Economy Palo Alto, CA	Module One: Market Power
June 6 – 11, 2003	BITS Aggregation & Authentication Forum, Chicago, IL *BITS* *1001 Pennsylvania Ave., NW* *Suite 500 South* *Washington, DC 20004*	"Authentication Prospects"
June 10, 2003	National Institute of Standards and Technology, Computer Security Resource Center, Information Security and Privacy Advisory Board Meeting, Rockville, MD,	Presentation: Liberty Alliance Project Update
October 21, 2003	Hogan & Hartson LLP and Association of Corporate Counsel Europe	"Data Protection: How Can Global Organizations Minimize the Risk?"
October 21, 2003	Hogan & Hartson LLP	"Data Protection Changing Goal Posts"
October 30-31, 2003	International Association of Privacy Professionals Privacy and Data Security Expo	Protecting consumer privacy – No prepared remarks

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13(d) – Speeches and Talks (including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and Q&A sessions) [illegible]		
[illegible]	[illegible]	[illegible]
January 27, 2004	Third Annual Information Industry Summit, hosted by SIIA, New York City *SIIA* *1090 Vermont Ave., NW* *Sixth Floor* *Washington DC 20005-4095*	Panel: "SIIA Panel: X-Factors Shaping the Business Environment for Information Content." Union League
June 15, 2004	Privacy Futures Conference	Advice on lobbying and negotiating with the Federal Trade Commission – No prepared remarks
September 29, 2004	The Connection (NPR program)	The Cost of Care
December 15, 2004	Washington, DC	The Fourth Estate and Third Sector Project of the University of Mississippi
2005	The Fourth Estate & The Third Sector, Marshall University School of Journalism and Mass Communications	Summary of Headlines to Write in 2005
January 24 -28, 2005	Liberty Alliance, Palo Alto, CA	Liberty Alliance Project Update
February 3, 2005	WMACCA	"What is Next? The FTC, Congress, Privacy and Security."
February 9, 2005	State of the Net Conference Hyatt Regency Washington, DC. *ICAC* *1634 Eye Street NW #1107,* *Washington DC 20006*	CNET: "Spyware, Spam & Scams: How Are Consumers Coping?" – No prepared remarks
March 7, 2005	New York Bar Conference *New York State Bar Assoc.* *1 Elk Street* *Albany, NY 12207*	"What to Expect; How to Stay Informed; How to be Heard."
March 30, 2005	ABA Spring Meeting Washington, DC *American Bar Association* *750 15th Street, NW* *Washington, DC 20005-1019*	"New Antitrust Legal Environment for Standard Setting: Dispatches from the Front Lines Program."
April 1, 2005	Berkeley Center for Law & Technology Cambridge, MA	"Symposium on Spyware."

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13(d) – Speeches and Talks (including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and Q&A sessions) Note: Please include readily available prepared texts of any such speeches or talks		
[redacted]	[redacted]	[redacted]
April 24, 2007	California	Panel: Ad-Tech: "Dispatch form DC: Big Brother is Watching"
June 12, 2007	American Bar Association Section of Antitrust Law	"Hot Topics in Privacy and Information Security: May 2007 Brown Bag"
August 22, 2007	Privacy Symposium Cambridge, MA	"Online Marketing: Industry Innovation and Government Enforcement Actions"
September 8, 2007	IBA Annual Competition Conference Fiesole, Italy *International Bar Association 10th Floor 1 Stephen St London W1T 1AT United Kingdom*	Unilateral Conduct in Global High-Tech Industries – No prepared remarks
September 27, 2007	29th International Conference of Data Protection and Privacy Commissioners Terra Incognita Forum Montreal, Canada	"Who do you Trust? A Look at Privacy Seals"
October 10, 2007	DAGA Panel Westin Hotel Boston, MA	Panel: Is Privacy the Next Superfund
November 29, 2007	CAP	"A Progressive Approach to Identification and Authentication" – No prepared remarks
March 27, 2008	American Bar Association Antitrust Section	"Special Problems in Internet Market Structure"- Impact of Behavioral Advertising on Competition and Privacy"
April 28, 2008	New York	Markle Meeting: "Taking Stock: Assessing the Current State of PII in an On-Line World" and "Responses: Can Anything Be Done to Address the Current Policy and Challenges?"
May 15, 2008	Advisory Committee to the Congressional Internet Caucus U.S. Capitol Washington, DC	Panel: Net Neutrality: Who's the Cop, and What Type of Stick Does He Carry?

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June 19, 2008	American Antitrust Institute National Press Club Washington, DC *2919 Ellicott Street, NW* *Suite 1000* *Washington, DC 20008*	Panel: "Re-Energizing Section 2 of the Sherman Act," available at http://www.antitrustinstitute.org/archives/files/20080619_pv_aai061908holemanbreakout_020320091323.mp3
September 15, 2008	Center for American Progress Action Fund 1333 H Street, NW, 10 Floor, Washington, DC	Panel: The Presidential Transition Best Practices in Transitioning to a New Government
September 21, 2008	IBA Annual Competition Conference, European University Institute Fiesole, Italy	Head-to-Head Debate: Google/Double-Click
September 22-24, 2008	IAPP 2008 Conference Walt Disney World Orlando, FL *IAPP* *170 Cider Hill Road* *York, Maine 03909*	Keynote Speaker: IAPP 2008 Privacy Academy Conference
September 30, 2008	CAP Roundtable Discussion Washington, DC	Public Panel on Best Practices for Presidential Transitions, available at http://www.archive.org/details/SEEPROGRESS-ThePresidentialTransitionProcess825
October 2, 2008	Law Seminar Panel Arlington, VA	"Closing Arguments: A Mock Trial of FTC v. N Data and the Scope of Licensing Obligations and the Application of These Rules to Non-Practicing Entities."
		Intellectual Property As A Source of Market Power

e. **Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.**

I have done my best to identify all requested interviews through a review of my personal files and searches of publicly available electronic databases.

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October 30, 1992	Washington Post. *Clinton Campaign Seeks Permission For Loan*
October 30, 1992	Associated Press. *Underdog Bush Campaign Seizes On Clinton Loan Request*
February 19, 1993	The Post-Standard. *Proposal Would Send Dollars to City Extra $4.5 Million Would Pay for Syracuse Projects*
March 7, 1993	The Post-Standard. *Syracusan Jumps at Clinton's Call. Christine Varney Links the President and The Cabinet*
April 24, 1993	National Journal. *A One-Man Band*
June 7, 1993	Time. *That Sinking Feeling*
August 1, 1993	Post Standard (Syracuse, NY). *The Real Women Of The Clinton Administration They're Upfront, Tough And On A Mission At The Center Of Power*
November 6, 1993	National Journal. *Cabinet Scorecard*
November 9, 1993	Cleveland Plain Dealer. *Clinton's Women Powered By Go-Get-'Em Attitude*
November 23, 1993	Washington Post. Union Ends Walkout At American; Both Sides Accept Arbitration After Clinton Intervenes
December 25, 1993	Dallas Morning News. *Annual Exclusive Gathering Becomes More So Clinton Presence Shrinks Size Of Social, Policy Retreat*
January 24, 1994	US News: The Cold War Experiments: Radiation Tests Were Only One Small Part of A Vast Research Program That Used Thousands of Americans as Guinea Pigs
April 14, 1995	The Wall Street Journal. *FTC Considers Need to Tighen Reins on Cyberspace Marketing*
May 21, 1995	Los Angeles Times. *Cyberspace for Sale; From Madison Avenue to Silicon Valley, Companies are Rushing to Market Products Over the Internet*
June 11, 1995	The Seattle Times. *Varney Prods FTC to Use Net for Consumer Education*
February 5, 1996	Business Week
February 22, 1996	"Off the Record" with Brian McWilliams
March 6, 1996	Computer Underground Digest. *Regulating Cyberspace, An Off the Record Interview with FTC Commissioner Christine Varney*
March 25, 1996	Computer Underground Digest. *An Off the Record Interview with FTC's Christine Varney*
April 25, 1996	The Orange County Register. *Eluding Their Gaze; The way to protect personal info is to leave no trace, but remember – the rules aren't in your favor.*
June 3, 1996	Dow Jones Newswires. *FTC to Hold Conference on Internet Privacy Issues*
January 1, 1997	ABA Banking Journal. *The Next Compliance Controversy: Privacy*

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March 23, 1997	*Christine Varney: Open Mind, Open Markets*, Release 1.0: Esther Dyson's Monthly Report
April 1, 1997	Village Voice. *Is eTRUST the Answer? The Privacy Wars*
April 7, 1997	CNET NEWS.COM. *Nailing Net Grifters*
April 21, 1997	The New York Times. *New Guidelines on Net Ads for Children*
June 11, 1997	Online NewsHour. *Regulating Internet Privacy*
June 11, 1997	The New York Times. *F.T.C. Opens Hearings on Computers' Threat to Privacy and Liberty*
June 13, 1997	Dallas Morning News. *FTC To Target E-Mail Fraud*
June 13, 1997	NPR, Morning Edition. *Internet Privacy Part IV*
July 9, 1997	Dow Jones Business News. *FTC Commissioner Varney to Resign, Plans Internet-Law Practice*
July 10, 1997	Wired. *Choosing a Private Path to Policy Goals*
July 16, 1997	Wired. *The Clinton-Gore Porn-Filtering 'Toolbox'*
July 28, 1997	Internet World. *From The Top, A View Of E-Commerce*
August 17, 1997	Morning Call. *Privacy is Easy to Invade on the Net; Computer Revolution Brings With it the Use and Abuse of Formerly; Confidential Information*
August 25, 1997	Time. *Character Assassination At Warp Speed*
October 13, 1997	Business Week. *Intel: The Feds Are Loaded For Bear*
October 21, 1997	San Jose Mercury News. *Microsoft Case Shows Technology Regulation Getting More Sophisticated*
November 22, 1997	National Journal. *A Shaky Deal on Internet Smut*
November 30, 1997	ABC News, Good Morning America Sunday. *Summit On Children And The Internet*
December 1997	Net Family News. The Sage Letter
December 12, 1997	Post-Standard. *The Vote that Crushed Out Joe Camel the FTC Commissioner Who Cast the Key Vote in the Decision to Ban the Cigarette Mascot Grew up in Syracuse. She Started Smoking Here, Too.*
December 19, 1997	CNNfn, Digital Jam. *Microsoft Hearings Begin*
December 20, 1997	Akron Beacon. *Judge Removes Browser From Windows System Federal Jurist Disputes Microsoft Contention*
December 20, 1997	Washington Post. *Court Conducts Its Own Browser Test; Proclaiming 'Uninstall' Success, Judge Sets Jan. Hearing in Microsoft Case*
December 23, 1997	San Francisco Chronicle. *Grove May Find Too Much Time*
December 24, 1997	San Francisco Chronicle. *Nonprofit Wants Web Sites to Protect your Privacy*
February 10, 1998	Wired. Eword: *Digital Diplomat*
March 22, 1998	Chicago Tribune. *Trustbusters Ride Again; Business Chafes; Consumers Call For Tougher Stance*

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April 10, 1998	Washington Post. *Microsoft Again Makes Concession on Browsers*
April 13, 1998	Associated Press. *A Microsoft contract, and the question of monopoly*
April 14, 1998	Online NewsHour. *Playing Monopoly*
May 18, 1998	Online NewsHour. *A Matter of Antitrust*
June 3, 1998	The Star-Ledger. *Companies on Web flout privacy guidelines*
June 3, 1998	Associated Press. *Little Privacy Found at Web Sites*
June 3, 1998	Washington Post. *Firms On Web Faulted on Privacy; Few Explain Use Of Data, FTC Says*
June 4, 1998	Associated Press. *FTC finds few privacy rules for children on Internet*
June 4, 1998	NPR, All Things Considered. *Internet Privacy Report*
June 8, 1998	NPR, All Things Considered. *Suit Filed Against Intel*
June 10, 1998	ZDNet.co.uk. *Analysis: FTC Action Against Intel Will Set Precedents*
June 22, 1998	NPR, All Things Considered. *Internet Privacy Conference*
June 23, 1998	Chicago Tribune. *Corporations Urge Privacy Policy to Protect Children Using Internet*
July 21, 1998	Newsbytes News Network. *Industry Presses for Online Privacy Self-Regulation*
July 21, 1998	Wired. *Ecommerce Gets One Last Chance*
July 21, 1998	Online Privacy Alliance. *Transcript of OPA Press Briefing*
July 22, 1998	The Wall Street Journal. *Computer-Industry Group Presents Plan to Regulate Consumer Privacy On-Line*
September 29, 1998	The San Francisco Chronicle. *High-Tech Lobby Getting Its Legislative Wishes in Washington; But the industry may be put on the defensive next year*
October 1, 1998	CNET News. *Subpoena Tips Microsoft Defense*
October 22, 1998	ZDNet.co.uk. *Microsoft on Trial: Tempers Grow Short in courtroom*
October 22, 1998	L.A. Times. *Microsoft Trial Gets Bogged Down Amid Cross-Examination; Courts: Firm's Attorney Resumes Meticulous Questioning Of Netscape Chief. And State Lawyers Move To Conduct Their Own Queries.*
January 11, 1999	CNet News. *Former Clinton Officials Address Net Issues*
January 15, 1999	Wired. *Truste Director Resigns*
January 18, 1999	InfoWorld. *Former Advisers Foresee Possible Net Regulations; Magaziner, Varney say pressure is on*
February 26, 1999	Online NewsHour. *Microsoft Trial Update*
March 3, 1999	Business Wire. *CommonPlaces Names Former FTC Commissioner Christine Varney to Board of Directors*

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March 15, 1999	PR Newswire. *AAF Releases Simplified Privacy Policies for Small Businesses; FTC, Online Privacy Alliance Endorse Initiative To Bring Small Businesses in Compliance*
March 16, 1999	Washington Post. *Companies Resist U.S. Proposals On Privacy*
March 25, 1999	Commercial Appeal. *Microsoft Offer To Settle Suit Rejected; Gates Proposal 'Inadequate'*
April 11, 1999	I Know What You Did Last Summer -- And Fall Corporations Mobilized Against the Threat of a Federal Internet Privacy-Protection Law
May 12, 1999	Business Wire. *Online Privacy Alliance Says Web Sweeps Confirm Significant Progress in Privacy Self-regulation*
May 12, 1999	Wired. *Survey: Web Privacy Improving*
May 12, 1999	Associated Press. *Study shows improvement on Internet privacy*
May 12, 1999	NPR, All Thing Considered. *Survey Of Privacy Policies On Web Sites Shows Web Sites Are Not As Secure As Everyone Thinks*
May 13, 1999	The Wall Street Journal. *New Internet Privacy Laws Appear Less Likely With Release of New Survey*
May 13, 1999	Washington Post. *More Web Sites Appear to Post Privacy Policies*
May 13, 1999	Los Angeles Times. *Consumer Privacy May Be More Secure Online Than Off*
May 13, 1999	Online Athens. *Study Shows Improvement on Internet Privacy*
June 6, 1999	Dayton Daily News. *Privacy Lost- Technology Makes Gathering, Storing and Disseminating Personal Information About You and Your Habits Extremely Easy... And That's Not Always Good*
July 12, 1999	Associated Press Online. *FTC: No New Internet Privacy Laws*
July 28, 1999	The Washington Times. *On-line Privacy Bill Premature, FTC, says*
August 9, 1999	The New York Times. *Investigator of Microsoft Unrelenting In His Pursuit*
September 14, 1999	Wired. *The Road Already Taken*
October 8, 1999	Silicon.com. *The US Federal Trade Commission (FTC) announced Thursday that it will step up its investigations into companies who violate their own privacy policies.*
October 8, 1999	Washington Business Journal. *Journal Profile: Christine Varney*

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Date	Publication
October 11, 1999	N.Y. Times. *Seizing the Initiative on Privacy; On-Line Industry Presses Its Case for Self-Regulation*
1999	Net Family News. *Web News Briefs – Privacy Progress*
Autumn 1999	PBS, Inside the Law, New York, NY, Episode Three: The Law and the Internet
November 9, 1999	CNNfn, Business Unusual. *Profiles of Internet Use*
November 17, 1999	San Jose Mercury News. *Microsoft Antitrust Case Gets Little Attention at Tech Trade Show*
December 7, 1999	NBC Nightly News. *Buying Online Is Convenient But Risky To Privacy*
December 14, 1999	ABC World News This Morning. *Hazards of Online Shopping*
January 3, 2000	Washington Post. *Hearsay: The Lawyers Column; Resolving the Year 2000*
January 31, 2000	Advertising Age. *Online privacy disputes reach FTC panel, courts ; Advisory group to weigh rights of consumers; DoubleClick sued in Calif.*
February 13, 2000	CNN&Time. *Visions 21, questions for the next century*
April 11, 2000	NPR Nightly Business Report
April 13, 2000	NPR Nightly Business Report
April 21, 2000	NPR Nightly Business Report
May 7, 2000	Washington Post. *Online Health Sites to Unveil Standards; New Guidelines on Ethics, Privacy Will Offer Consumer Safeguards*
May 15, 2000	Washington Post. *Hearsay: The Lawyer's Column; The Case for More Casual Workdays*
May 20, 2000	N.Y. Times News Service, reproduced in New Orleans Times-Picayune. *FTC Seeks To Bolster Net Privacy; Agency Wants Power To Impose Safeguards*
May 22, 2000	NPR Morning Edition. *FTC Expects to Take Steps to Increase Consumer Privacy on the Internet*
May 22, 2000	Associated Press. *Regulators ask for laws to oversee online privacy*
May 22, 2000	CBS Market Watch. *FTC calls for Web privacy law*
May 22, 2000	NPR Nightly Business Report
May 23, 2000	Associated Press. *Regulators ask for laws to oversee online privacy*
May 23, 2000	Communication Daily. *FTC Says Legislation Needed For Online Privacy Protection*
May 23, 2000	San Francisco Chronicle. *Privacy Proposal Rankles Internet Industry; FTC recommends federal laws to protect consumers*
May 23, 2000	Washington Post. *FTC Seeks Online Privacy Laws; Agency Says Internet Industry's Self-Regulation Falls Short*

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Date	Publication
May 25, 2000	The Industry Standard
May 26, 2000	Online NewsHour. *Internet Privacy: The Federal Trade Commission has Ruled That the Online Industry Failed to Protect Consumer Privacy*
June 5, 2000	Newsweek. *Guarding Online Privacy*
July 11, 2000	CNBC Early Today. *Recent Action By Toysmart In Offering To Sell Its Client Database And How It May Affect Future Online Shopping*
July 21, 2000	Washington Internet Daily. *Lawmakers Urge Industry To Help Draft Privacy Bill Next Year*
September 2, 2000	National Journal. *E-Commerce: Growing Concern in Cyberspace*
October 9, 2000	San Jose Mercury News. *Eye On Privacy Legislators Are Nearing A Consensus: Online Privacy Needs Protection*
November 2000	Wired. *The Truth, the Whole Truth, and Nothing But the Truth: The Untold Story of the Microsoft Antitrust Case and What It Means for the Future of Bill Gates and his Company*
November 13, 2000	Technology Publications. *The Persuader – Internet/Web/Online Service Information*
November 29, 2000	National Journal's Technology Daily. *State Of The Senate Clouds Privacy Debate*
December 4, 2000	Network World. *Online privacy law anticipated*
December 6, 2000	Associated Press. *Secure Site Part of Online Shopping*
December 17, 2000	Telegraph Herald. *Make Sure Privacy, Security are Part of Online Holiday Shopping; Take Care: Experts Trying to be Sure Shopping Online is Safe*
February 5, 2001	InternetWeek. *The Push For NetPrivacy – Companies take action as government weighs legislation*
February 12, 2001	Los Angeles Times. *Coalition to Urge Officials to Endorse Privacy Pledge; Legislation: The Group's Principles Include Requiring Disclosure of Data-Collection Practices, Consumer Input*
February 12, 2001	Washington Internet Daily
February 13, 2001	The Wall Street Journal. *Bush's Likely Antitrust Pick Takes Cautious Path*
March 1, 2001	Scripps Howard News Service. *Web Bugs Secretly Track You Online*
March 15, 2001	Washington Post. *Bugs That Go Through Computer Screens*
March 22, 2001	Business Wire. *Plurimus Corporation Launches, Introduces Online Marketing Intelligence Services*
April 5, 2001	Business Wire. *Plurimus Redefines Privacy on the Internet*

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May 22, 2001	Los Angeles Times. *Privacy Is Becoming Everyone's Business*
June 24, 2001	Time. *That Sinking Feeling*
October 7, 2001	NPR Weekend Edition Sunday: *Concerns among Internet privacy advocates as the US expands its investigation into terrorism*
November 26, 2001	Consumer Financial Services Law Report. *Industry groups respond to Muris' privacy agenda.*
February 1, 2002	NPR All Things Considered. *Federal Government Teams Up With Airlines to Develop New Security Technology*
January 31, 2003	The New York Times. *Microsoft to Alter Online System to Satisfy Europe*
February 11, 2003	PR Newswire. *TRUSTe Elects Former Federal Trade Commissioner Christine Varney Chairperson*
March 2003	TRUSTe Advocate. *Q&A with Chair Christine Varney*
October 15, 2003	Roll Call. *Lobbyists Boost Dean in D.C.*
November 1, 2003	Bioresearch Monitoring Alert. *Bush Considers New Law to Ensure Medical Records Privacy; HIPAA*
November 12, 2003	Newsbytes. *Liberty Alliance Releases Privacy Best Practices*
October 7, 2004	Communications Daily. *Personnel Changes at a Kerry FTC Wouldn't Alter Enforcement*
January 2005	ABA Journal Law News Now. *Who Pays Hefty Hospital Tabs?*
February 15, 2005	PR Newswire US. *Claria Assembles Team of Privacy Experts to Help Develop New BehaviorLink Advertising Network Model*
March 10, 2005	NPR Morning Edition. *Senate committee to hold hearing looking into the security of consumer information*
June 1, 2005	Market Wire, South Florida CEO. *The state of women on Florida's corporate boards*
February 9, 2006	Market Wire. *The Great Debate: National Privacy Legislation*
November 3, 2006	Market Wire. *Zango Response to FTC Settlement Agreement Announcement; Zango Meets Key Notice and Consent Standards Announced Today; Settlement Establishes Requirements to Protest Consumers; Marks Significant Step Forward for the Online Industry*

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	13(a) – Interviews (for newspapers, magazines, other publications, radio, or TV stations)	
	Date	Subject & Organization
	November 8, 2006	Privacy Piracy, KUCI Talk Radio, UC Irvine. *Christine Varney – Internet Practice Group, Hogan & Hartson*
	November 16, 2007	Law 360. *Q&A with Hogan & Hartson's Christine A. Varney*
	May 15, 2008	Dow Jones Factiva. *Disclosure Not Seen as Solution to Network Management Dispute*
	May 15, 2008	CBS News. *Can the Feds Enforce Net Neutrality? Maybe not*
	May 22, 2008	The New York Times. *Google Says It Will Defend Competitive Rationale of a Yahoo Deal*
	January 18, 2009	The Post-Standard. *Syracuse Native Wraps Up Her Work Vetting the New Cabinet*

14. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Federal Trade Commissioner (1994-1997): Appointed by President Clinton.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Personnel Counsel, Obama-Biden Transition Project (2008-2009)

General Counsel, Democratic National Committee (1989-1992)

General Counsel, 1992 Presidential Inauguration Committee (1992)

Chief Counsel, Clinton/Gore Campaign (1991)

15. Legal Career: Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i whether you served as clerk to a judge, and if so, the name of the judge,

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the court and the dates of the period you were a clerk;

I did not serve as a judicial clerk.

ii **whether you practiced alone, and if so, the addresses and dates;**

I have not practiced as a solo practitioner.

iii **the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.**

Law Clerk
Surrey & Morse
1350 Eye Street, NW
Washington, DC (former address)
1984-1985

Law Clerk
Wender, Murase & White
Washington, DC
1985

Associate
Pierson, Semmes & Finley
1054 31st Street, NW
Washington, DC, 2007 (former address)
1986-1989

Chief Counsel
Clinton Gore Campaign
Washington, DC
1991

General Counsel
1992 Presidential Inaugural Committee
Washington, DC
1992

General Counsel
Democratic National Committee
430 South Capitol Street, SE Washington, DC 20003
1989-1992

Associate
Hogan & Hartson LLP
Columbia Square, 555 13th Street, NW

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Washington, DC 20004.
1991-1993

Executive Office of the President
Cabinet Secretary
1600 Pennsylvania Avenue, NW
Washington, DC 20500
1993 -1994

Commissioner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
1994-1996

Partner
Hogan & Hartson LLP
Columbia Square
555 13th Street, NW
Washington, DC 20004
1997 – present

b. Describe the general character of your law practice and indicate by date when its character has changed over the years.

I am currently a Partner at Hogan & Hartson LLP in Washington, DC, where I head the firm's Internet practice group. This practice provides full service assistance to companies doing business globally, including providing advice on antitrust, privacy, business planning and corporate governance, intellectual property, and general liability issues.

Prior to joining Hogan & Hartson LLP, I served as a Federal Trade Commissioner from 1994 to 1997. I was highly involved in the government's effort to examine privacy issues in the information age, resulting in congressional and agency hearings, proposed industry standards, and increased government enforcement of laws protecting privacy.

Prior to becoming a Federal Trade Commissioner, I was an Assistant to the President and Secretary to the Cabinet. I was the primary point of contact for the 20-member Cabinet. I was responsible for the overall coordination of several major issues and initiatives between the White House and various agencies.

Before joining the Clinton Administration, I practiced law with Hogan & Hartson LLP from 1991-1993. In addition, I served as Chief Counsel to the Clinton/Gore Campaign (1991), General Counsel to the 1992 Presidential Inaugural Committee, and General Counsel to the Democratic National Committee from 1989 to 1992.

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Prior to this, I was an attorney at Pierson, Semmes & Finley in Washington, DC from 1986-1989. I was also a Law Clerk at the following law firms in Washington, DC: Wender, Murase & White (1985), Fulbright & Jaworski (1985), Clifford & Warnke (1985), and Surrey & Morse (1984-1985)

c. **Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.**

i. **Indicate the percentage of your practice in:**
   1. **federal courts;**
   2. **state courts of record;**
   3. **other courts.**

My practice is limited to counseling and agency investigations. Consequently, I do not appear in court.

ii. **Indicate the percentage of your practice in:**
   1. **civil proceedings;**
   2. **criminal proceedings.**

Not applicable; see 15(c)(i) above.

d. **State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

Not applicable; see 15(c)(i) above.

i. **What percentage of these trials were:**
   1. **jury;**
   2. **non-jury.**

Not applicable; see 15(c)(i) above.

e. **Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

Not applicable; see 15(c)(i) above.

16. Litigation: **Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the**

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nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

Not applicable; see 15(c)(i) above.

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

Not applicable; see 15(c)(i) above.

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Not applicable; see 15(c)(i) above.

17. Legal Activities: **Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)**

My practice is focused on Antitrust and Consumer Protection. I regularly counsel clients on compliance with all relevant laws. I also represent companies in merger investigations conducted by the Department of Justice, Federal Trade Commission, and State Attorneys General. In addition, I represent companies under investigation for compliance with consumer protection laws. These engagements generally involve representing companies when the FTC or State Attorneys General investigate various practices of my clients. To the best of my knowledge, all matters where I have represented a company that is a subject of either an antitrust or consumer protection investigation have concluded in no action or a settlement; none has gone to litigation. In addition, I have represented companies who may be witnesses in litigated matters.

From 2001-2006, I was a registered lobbyist for the Online Privacy Alliance. In that capacity, I appeared several times as a witness at various Congressional hearings.

18. Teaching: **What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.**

I have not taught any courses.

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19. **Deferred Income/ Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.**

    1. Hogan & Hartson LLP will pay me a lump sum upon my departure of approximately $877,546. That amount represents a return of my capital, payment of future pension discounted to present value, and the quarterly earnings I will have accrued prior to my departure, if confirmed.

    2. See Appendix 1.

20. **Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.**

    I do not have any outside plans, commitments, or agreements to pursue outside employment.

21. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

    See Appendix 1.

22. **Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).**

    See Appendix 1.

23. **Potential Conflicts of Interest:**

    a. **Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.**

    In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest

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will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow all relevant rules concerning conflicts of interests and, if confirmed, will be guided by the determinations of ethics professionals at the Department of Justice. With respect to matters for which I know conflicts exist, I would inform relevant personnel that I am recused from such matters. As future matters arise, if I become aware that a potential conflict exists, I would consult with DOJ ethics professionals to determine the appropriate action and will be guided by their determinations.

24. <u>Pro Bono Work</u>: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have devoted in excess of 40 hours of legal services annually to the various pro bono projects offered by my employer, Hogan & Hartson LLP. I spent a large portion of this time working with the Lawyers' Committee for Civil Rights Under Law, a nonpartisan, nonprofit organization, to protect and promote voter rights.

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AFFIDAVIT

I, Christine A. Varney, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2-11-09
(DATE)

Christine A. Varney
(NAME)

Marilyn Owendoff
(NOTARY)

Marilyn Owendoff
Notary Public, District of Columbia
My Commission Expires 02-28-10

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U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved:
OMB No. 3209 - 0001

Date of Appointment, Candidacy, Election, or Nomination (Month, Day, Year)	Reporting Status (Check Appropriate Boxes)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date (If Applicable) (Month, Day, Year)

Reporting Individual's Name	Last Name	First Name and Middle Initial
	Varney	Christine A
Position for Which Filing	Title of Position	Department or Agency (If Applicable)
	Assistant Attorney General, Antitrust Division	Justice Department
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code)	Telephone No. (Include Area Code)
	Hogan & Hartson, 555 Thirteenth Street NW, 13th Flr, Washington, DC 20004	(202) 637-8823
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	Committee on Judiciary	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Christine A Varney	2-23-09
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).		
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days _____) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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Reporting Individual's Name	SCHEDULE A	Page Number
Varney, Christine A		2 of 16

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual amount of any honoraria over $200 of your spouse).

None ☐

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common				x												x																
	Doe Jones & Smith, Hometown, State			x										x																		Ltd. Partnership Income $1,90,000	
	Kempstone Equity Fund					x								x										x									
	IRA: Heartland 500 Index Fund							x						x											x								
1	Fidelity Cash Reserves (FDRXX)		X											X			X					X											
2	Fidelity Cash Reserves (FDRXX)							X						X			X							X									
3	Fidelity Retirement MMMT (FRTXX) (Ryder Deferred Compensation)							X						X			X										X						
4	Fidelity Tax Free MMKT (FMOXX)	X												X			X					X											
5	Fidelity NYAMT Tax-Free MMKT (FSNXX)	X												X			X									X							
6	Fidelity Cash Reserves (FDRXX)							X						X			X				X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
Varney, Christine A		3 of 16

Assets and Income	Valuation of Assets at close of reporting period														Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.															
BLOCK A	BLOCK B																	BLOCK C												
																Type				Amount										
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Washington Dinner Club LLC -- An investment club for early stage companies, including:			X															X												$13,598.97	
2 - ObjectVideo, Reston, VA		X																													
3 Provider of intelligent video software for security, public safety & business intelligence gathering.																															
4 - Cigital, Inc., Dulles, VA		X																													
5 Software security and quality consulting firm for improving corporate software																															
6 - CodeRyte, Inc., Bethesda, MD		X																													
7 Technology for coding medical records to identify clinically relevant information.																															
8 - Defywire, Inc., Herndon, VA		X																													
9 Wireless middleware and mobile application provider.																															

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number 4 of 16

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)																	Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																				
																		Type					Amount															
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 - ServiceBench, Columbia, MD (bought by N.E.W. Customer Service Companies, Inc.)	X																	X						X												
2 Provider of extended service plans.																																				
3 Crosshill Financial Partnership (Providing loans and investment for equity and warrants):			X													X							X												
4 - Density Dynamic, Washington, DC (Loan and Warrants)		X																																		
5 Provider of data-throughput acceleration solutions for servers, networks and storage.																																				
6 - Scientigo, Inc., Charlotte, NC (Loan, Equity and Warrants)		X																																		
7 Provider of software applications that manage content and collaboration for management.																																				
8 - Top Layer Networks, Inc., Westboro, MA (Loan and Equity)		X																																		
9 Provider of network intrusion prevention solution.																																				

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Assets and Income	Valuation of Assets at close of reporting period																Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																	
BLOCK A	BLOCK B																BLOCK C																	
																	Type				Amount														
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust		Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 - Reginmaker Communications, Inc., Atlanta, GA (Loan and Warrants)		X																															
2 Provider of hosted voice service using VoIP.																																	
3 - Brickstream Corporation, Arlington, VA (Loan and Equity)		X																															
4 Provider of solutions to capture and analyze in-store consumer behavior.																																	
5 - 4GL School Solutions, Inc., Houston, TX (Warrants)		X																															
6 Provider of software, staffing and services for special education programs.																																	
7 - Acorn Systems, Inc., Houston, TX (Warrants)		X																															
8 Provider of profit optimization costing software solutions.																																	
9 - BroadNet, Inc., Reston VA (Warrants)		X																															

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)																		Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																			
																			Type					Amount														
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Provider of all optical switching for use in telecommunications networks.																																				
2 - Cognio, Inc., Boston, MA (Warrants)		X																																		
3 Provider of chipsets and software for wireless applications using lower power consumption.																																				
4 - DWL USA, Inc., Atlanta, GA (Warrants)		X																																		
5 Provider of customer data integration software.																																				
6 - SOALogix, Inc., Reston, VA (Warrants)		X																																		
7 Provider of solutions to represent data and analysis in graphical format.																																				
8 - Little Optics, Inc., Columbia, MD (Warrants)		X																																		
9 Provider of integrated optical components for wavelength management for telco market.																																				

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Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																
BLOCK A	BLOCK B															BLOCK C															
																Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 - Next Generation Broadband, Inc. Washington, DC (Warrants)		X																													
2 Provider of enterprise class software for broadband operators.																															
3 - Phlo Corporation, Jacksonville, FL (Warrants)		X																													
4 Provider of biotechnology applicable to liquids, beverages and food.																															
5 - Polymerix, Inc., Piscataway, NJ (Warrants)		X																													
6 Providers of biodegradable polymers.																															
7 - Previstar, Tampa, FL (Warrants)		X																													
8 Providers of comprehensive software for first responders.																															
9 - Rivermine Software, Inc., Fairfax, VA (Warrants)		X																													

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Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.															
BLOCK A	BLOCK B															BLOCK C															
																Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Provider of enterprise management software for telecommunications.																															
2 - Silverpop Systems, Inc., Atlanta, GA (Warrants)		X																													
3 Provider of advanced media messaging through content delivery systems.																															
4 - Splashpower Limited, Cambridge, UK (Warrants)		X																													
5 Provider of an agnostic recharging device for mobile devices.																															
6 - Square Loop, Inc., McLean, VA (Warrants)		X																													
7 Provider of location-based services platform for alert delivery.																															
8 - Taproot Systems, Inc., Morrisville, NC (Warrants)		X																													
9 Provider of embedded software for wireless consumer product companies.																															

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)																Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																		
																	Type					Amount													
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 - Viesta Corporation, Atlanta, GA		X																															
2 Provider of financially focused supply chain planning capabilities.																																	
3 Office.com LLC (50% Equity interest) (S)								X																									
4 Web-based communication and collaboration software.																																	
5 Cash distribution from Office.com (S)																									X								
6 Saltworks.com LLC (100% Equity interest) (S)								X												X													
7 Bath and beauty products company.																																	
8 Fidelity Cash Reserves (FDRXX)		X											X			X				X													
9 Exxon Mobile Corporation (DC)		X														X				X													

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Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
																Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Hogan & Hartson Partnership Income -- 2008 Share earnings																														$1,254,750	
2 Hogan & Hartson Partnership Income -- Bonus 2008																														$250,000	
3 Hogan & Hartson Partnership Income -- 2009 Actual																														$40,000	
4 Hogan & Hartson Partnership Income -- 2009 Expected as of 03/31/09																														$97,635	
5 Hogan & Hartson Partner's Unfunded Retirement Plan (Non-qualified)																														$553,558	
6 Plan amount discounted to present value and valued as of 03/31/09																															
7 Hogan & Hartson Capital Account						x														x											
8 Residential property, Vineyard Haven, MA							x									x						x									
9 Parity Communications, Inc.			x																	x											

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Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.															
BLOCK A	BLOCK B															BLOCK C															
																Type				Amount											
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Parity makes i-card, a Web personal information management device																															
2 Ryder 2009 Director Compensation Receivable																														$45,000	
3 Ryder Stock Plan (4,413 shares) Receivable estimated at $30/shr																														$132,390	
4 Ryder Restricted Stock (9,068 shares) Receivable estimated at $30/shr																														$272,040	
5 Ryder Restricted Stock (643 shares) Receivable estimated at $30/shr																														$19,020	
6 Exclusive Resorts LLC (Equity interest and Directors salary)						X																								$35,413	
7 Exclusive Resorts LLC is a destination resorts club.																															
8																															
9																															

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Reporting Individual's Name	SCHEDULE A continued (Use only if needed)	Page Number
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Assets and Income	Valuation of Assets at close of reporting period															Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item.																
BLOCK A	BLOCK B															BLOCK C																
																Type				Amount												Date (Mo., Day, Yr.) Only if Honoraria
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	
1																																
2																																
3																																
4																																
5																																
6																																
7																																
8																																
9																																

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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x) $10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 St., Washington, DC	Promissory note	1999	10%	on demand					x						
1	Wells Fargo Home Mortgage	Mortgage on residential property, Vineyard Haven, MA 02568	2003	5.75%	25 yrs.					X						
2																
3	Barclays Capital Loan - $100,000/Interest Only	Loan to pay Hogan & Hartson Capital Account	2003	1.75	5 yr auto renewal				X							
4	Barclays Capital Loan - $87,550/Interest Only	Loan to pay Hogan & Hartson Capital Account	2006	1.75	5 yr auto renewal			X								
5																

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to partnership agreement, will receive Partner's Unfunded Retirement Plan payment.	Hogan & Hartson LLP	01/98
2	Pursuant to partnership agreement, will receive a Capital Account distribution.	Hogan & Hartson LLP	1/98
3	Pursuant to partnership agreement, will receive partnership income for Q1 on March 31, 2009.	Hogan & Hartson LLP	1/98
4	Pursuant to Director Compensation Agreement will receive prorated compensation for 2009 service.	Ryder Systems, Inc.	2/98
5	Pursuant to Director Stock Plan will receive 4,413 shares of Ryder six months after end of service.	Ryder Systems, Inc.	2/98
6	Pursuant to Director Compensation Agreement will receive 9,068 shares of Ryder after end of service.	Ryder Systems, Inc.	2/98

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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (*Name and Address*)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)										
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10%	on demand					x						
1																
2																
3																
4																
5																

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Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to Director Compensation Agreement will receive 634 shares over a 10 year period	Ryder Systems, Inc.	2/98
2	Pursuant to Deferred Compensation Plan, payout of 1998 distribution in 4 annual installments, starting 1/2010 (Current value of all Deferred Compensation is currently $878,343.57)	Ryder Systems, Inc	2/98
3	Pursuant to Deferred Compensation Plan, payout of 1999-2001 distribution in 15 annual installments, starting 1/2010 (Current value of all Deferred Compensation is currently $878,343.57)	Ryder Systems, Inc.	2/98
4	Pursuant to Deferred Compensation Plan, payout of 2002, 2004-2009 distribution in lump sum on 1/2010 (Current value of all Deferred Compensation is currently $878,343.57)	Ryder Systems, Inc	2/98
5	Pursuant to Director Compensation Agreement, will receive a $500,000 charitable award payable at death to a charity of choice. Charity can be redirected annually if so desired.	Ryder Systems, Inc	2/98
6	I will retain my Hogan & Hartson LLP Retirement Savings Plan. However, neither I nor Hogan & Hartson will make any further contributions after my withdrawal from the firm.	Hogan & Hartson LLP	1/98

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SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE D	Page Number
Varney, Christine A		16 of 16

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization *(Name and Address)*	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	Hogan & Hartson LLP	Law Firm	Partner	08/1997	Present
2	Exclusive Resorts LLC	Luxury destination club/hotel industry	Board Director	07/2006	Present
3	Ryder System, Inc.	Transportation/logistics solutions worldwide	Board Director	02/1998	Present
4	Parity Communications, Inc.*	Communications	Board Director	01/1997	Present
5	*Note: Directorship commenced in 1997. Month is an estimate.				
6	Obama-Biden Transition Project	Presidential Transition	Personnel Counsel	09/2008	1/2009

Part II: Compensation in Excess of $5,000 Paid by One Source

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

None ☐

	Source *(Name and Address)*	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Hogan & Hartson LLP	Partnership
2	Ryder Systems, Inc.	Director compensation
3	Exclusive Resorts LLC	Director compensation
4	See attachment for clients	Legal service
5		
6		

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SF 278
Continuation of Schedule D Part II:
Compensation in Excess of $5,000 Paid by One Source

ABS Capital Partners
Akamai Technologies, Inc.
American Forest & Paper Association
American Hospital Association
American Society of Composers, Authors, and Publishers (ASCAP)
Art.com
Boston College
British Telecom
CapitalSource Inc.
College Loan Corporation
Darden Corporation
Datran Media
Democracy Alliance, The
Direct Selling Association
DoubleClick, Inc.
Dow Jones & Company
eBay, Inc.
Ed Loan Funding, Inc.
Edmunds.com
EMI Recorded Music North America
Ernst & Young LLP
Exclusive Resorts LLC
GemStar
Graduate Loan Associates
Havas S.A.
IBM Corporation
InfoGroup
Intelius, Inc.
Liberty Alliance
Lockheed Martin Corporation
New Media Strategies
News Corporation
NextStudent, Inc.
Online Privacy Alliance
Online Publishers Association
Penn, Schoen & Berland Associates
Phorm, Inc.
Qwest Communications
Reed Elsevier
Salesforce.com
Seiko Epson
Solidus Networks, d/b/a Pay-by-Touch
Sun Microsystems
Synopsys Corporation
Terrapass, Inc.
TrustedID
Walt Disney Company, The
XM Satellite Radio
Zango, Inc.

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FINANCIAL STATEMENT Christine Varney

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	3	000	000	Notes payable to banks-secured			
U.S. Government securities				Notes payable to banks-unsecured			
Listed securities-add schedule				Notes payable to relatives			
Unlisted securities--add schedule		565	000	Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from Hogan & Hartson Capital Account		421	130	Other unpaid income and interest			
Due from Hogan & Hartson Unfunded Pension		553	558	Real estate mortgages payable on DC and MA homes		973	684
Real estate owned-2 homes, one in Washington, DC and one Tisbury, MA	4	000	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts-itemize:			
Autos and other personal property		80	000	Barclays loan on Hogan & Hartson Capital Account		107	000
Cash value-life insurance							
Other assets itemize:							
50% Ownership in Office.com LLC	2	000	000				
100% Ownership in Saltworks.com LLC	2	000	000				
Ryder Stock Plan		132	390	Total liabilities	1	160	684
Ryder Restricted Stock Plan		251	060	Net Worth	10	854	454
Total Assets	12	015	138	Total liabilities and net worth			
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor				Are any assets pledged? (Add schedule)			
On leases or contracts				Are you defendant in any suits or legal actions?			
Legal Claims				Have you ever taken bankruptcy?			
Provision for Federal Income Tax							
Other special debt							

Senator KOHL. Thank you very much, Ms. Varney.

We now turn to Mr. Tony West. Go right ahead, sir.

STATEMENT OF TONY WEST, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. WEST. Thank you, Mr. Chairman and members of the Committee. I am honored to appear before you as the nominee to serve as Assistant Attorney General for the Civil Division of the United States Department of Justice. I am grateful to the President and to the Attorney General for giving me the opportunity to return to the Department of Justice where I spent nearly half of my legal career.

If I may, Mr. Chairman, I would like to introduce members of my family. Without them and the grace of God, I would not be here today.

First, my law school classmate, my best friend, and, yes, the love of my life, my wife, Maya Harris West. An extraordinary woman of accomplishment in the law and policy, Maya has been as much my teacher as she has been my partner, and every day she is in my life is a blessing.

I am so proud of our daughter, Meena, who is seated right behind me, who will enroll at Harvard Law School this fall.

I also want to thank my parents, Peggy and Franklin, whose examples of strength, compassion, wisdom, and integrity I try to follow every day in my own life.

My sister-in-law, Kamala, is here with us, whose unconditional support enriches my life every day. And also my Aunt Portia and Uncle Stan are here to give their love and support.

I want to acknowledge three people who could not be here today: My two younger sisters, Pamela and Patricia, whose love keeps me grounded every day, as only siblings can; and my mother-in-law, Dr. Shyamala Harris, who passed away just last month after a courageous battle with cancer. Her spirit fills my heart today.

Mr. Chairman, I revere the institution that is the Department of Justice. It was there that I learned to be a lawyer and where the most enduring and formative experiences of my professional career took place.

I began my career in public service as a special assistant in the Deputy Attorney General's Office. Later, I served as an Assistant United States Attorney for several years, where I was honored to work alongside men and women who put their lives on the line every day as law enforcement agents. While at the California Attorney General's office, I had the good fortune to work with my Federal counterparts on issues of civil rights, antitrust enforcement, and Internet crime.

The lessons that I learned at the Department of Justice I carried with me into private practice, where my advocacy has encompassed all aspects of civil litigation and included a diverse array of individual and corporate clients.

All of this has given me a deep appreciation for the Department and its singular mission to pursue justice on behalf of the American people. It has also given me a profound respect for the talented professionals like those in the Civil Division who do the hard

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work of ensuring justice every day. Their task is without fanfare oftentimes, yet their commitment to upholding the integrity of the Nation's laws is unwavering. Should I be confirmed, I will do all within my power to live up to that high standard.

I will work to, first, maintain the safety and security of the American people through the Civil Division's work involving national security; second, protect the taxpayers' dollars through the Civil Division's anti-fraud and False Claims Act enforcement efforts; and, third, ensure a Civil Division characterized by professionalism, independence, and nonpartisanship.

Mr. Chairman, if confirmed, I also look forward to working with you and your colleagues in connection with your oversight responsibilities on matters that fall within the jurisdiction of the Civil Division.

I thank you again for considering my nomination, and I am pleased to answer any questions you may have.

[The prepared statement of Mr. West appears as a submission for the record.]

[The questionnaire of Mr. West follows.]

ORIGINAL

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** Full name (include any former names used).

   Derek Anthony West ("Tony")

2. **Position:** State the position for which you have been nominated.

   Assistant Attorney General, Civil Division

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Morrison & Foerster LLP
   425 Market Street
   San Francisco, CA 94105

   [redacted]

4. **Birthplace:** State date and place of birth.

   August 12, 1965
   San Francisco, California

5. **Marital Status:** (include name of spouse, and names of spouse pre-marriage, if different). List spouse's occupation, employer's name and business address(es). Please, also indicate the number of dependent children.

   Married

Spouse:	Maya Harris West (Maya L. Harris)
Occupation:	Vice President, Ford Foundation, Peace and Social Justice Program
Employer:	The Ford Foundation 320 East 43rd Street New York, NY 10017
Dependent Children:	One

6. **Education:** List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   Stanford Law School, 1989 – 1992; J.D. 1992

   Harvard University, 1983 – 1987; A.B. 1987

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7. **Employment Record:** List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or job description where appropriate.

Dates	Entity	Job Title
2001 – Present	Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105	Partner
1999 – 2001	California Office of the Attorney General California Department of Justice 1300 I St Sacramento, CA 95814	Special Assistant Attorney General
1994 – 1999	U.S. Department of Justice United States Attorney's Office 150 Almaden Boulevard, Suite 900 San José, CA 95113	Assistant United States Attorney
1993 – 1994	U.S. Department of Justice Office of the Deputy Attorney General Washington, DC 20530	Special Assistant to the Deputy Attorney General
1992 – 1993	Bingham McCutchen (formally McCutchen, Doyle, Brown & Enersen, San José office) 1900 University Avenue East Palo Alto, CA 94303-2223	Associate
1992 – 1993	California Democratic Party 1801 Avenue of the Stars Los Angeles, CA	Chief of Staff to the Finance Chairman
Summer 1991	Tuttle & Taylor 40th Floor 355 South Grand Avenue Los Angeles, CA 90071-3102	Summer Associate
Summer 1991	Morrison & Foerster LLP 755 Page Mill Road Palo Alto, CA 94304-1018	Summer Associate
Summer 1990	Swidler & Berlin 3000 K Street, N.W.; Suite 300 Washington, DC 20007	Summer Associate
1988 – 1989	Democratic Governors' Association 1401 K Street, NW, Suite 200 Washington, D.C. 20005	Finance Director
1987 – 1988	Dukakis For President Boston, Massachusetts	Chief of Staff to the Treasurer

8. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

I have not served in the military.

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9. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Centennial Leadership Award, Ancient and Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation, 2008

Leading Lawyer in America, Lawdragon, 2008

Northern California [Top 100] "Super Lawyers" 2006, 2007 and 2008, Super Lawyers Magazine

California's Top 20 Lawyers Under 40, the *Daily Journal,* 2004

Executive Office of U.S. Attorneys Director's Award, presented by Attorney General Janet Reno, 1998

Bill Key Memorial Victim/Witness Assistance Award, presented by U.S. Attorney Michael Yamaguchi, 1998

Most Significant High-Tech Case for 1997, High-Technology Crime Investigation Association, 1998

Letter of Commendation, from FBI Director Louis J. Freeh, September 10, 1997

The Yorktown Certificate, awarded by Commissioner of United States Customs George Weise, 1997

10. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

Board of Governors, Northern California Association of Business Trial Lawyers, 2004 – Present

Northern District of California Lawyer Representative, U.S. Court of Appeals for the Ninth Circuit, 2005 – 2008

Member, Alameda County Bar Association, Litigation Section, 2007 – Present

Member, National Bar Association, 2007 – Present

Member, Charles Houston Bar Association, 2005 – Present

Member, Executive Committee of the Bar Association of San Francisco, Litigation Section, 2003 – 2009

Member, American Bar Association, 2002 – Present

Member, Earl Warren American Inn of Court, 2002 – 2006

Chair, Santa Clara County Bar Association Minority Summer Clerkship Program, 1997 – 1998

11. **Bar and Court Admission:**

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

May 1993 – Present California State Bar

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b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

May 1993 to Present	Superior Court of the State of California
May 1993 to Present	United States District Court for the Northern District of California
March 2003 to Present	United States District Court for the Central District of California
1995 to Present	United States Court of Appeals, Ninth Circuit

12. **Memberships:**

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Attorney Participant, Oakland McCullum Youth Court, Oakland, California, 2007 – Present

Board Member, Alameda County Democratic Lawyers Club, 2004 – Present

Member, Board of Directors, U.C. Hastings College of the Law, San Francisco, California, 2004 – 2007

Member, Silicon Valley Housing Leadership Council, San José, California, 1997 – 1999

Adjunct Faculty Member, Lincoln Law School of San José, California, 1997 – 1999

Participant, The Role Model Program, San José, California, 1996 – 1999

Member, National Association for the Advancement of Colored People (NAACP), 1995 – Present

Member, American Civil Liberties Union of Northern California, 1995 – Present

Member, Board of Directors, The Santa Clara County Volunteer Exchange, San José, California 1995 – 1999

Member, Board of Directors, Kids Voting San José/Silicon Valley, San José, California, 1995 – 1997

Member, 100 Black Men of Silicon Valley, Inc., San José, California, 1994 – 1998

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion - either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

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None of the organizations listed do or did discriminate.

13. **Published Writings and Public Statements:**

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have done my best to identify all requested published materials through a review of my personal files and searches of publicly available electronic databases:

Blog: Why Barack? [http://my.barackobama.com/page/community/post/tonywest/CP8p]

Blog: Notes from Des Moines
[http://my.barackobama.com/page/community/post/tonywest/CnDj]

Blog: Hope Begins With You
[http://my.barackobama.com/page/outreach/view/main/TonyWest]

"Only an Informed Public Will Know Whom to Trust," *San Jose Mercury News* (May 18, 2007)

"Defending the Despised," *San Francisco Daily Journal* (January 17, 2007)

"The Power of Honesty," *San José Mercury News* (September 9, 2005)

"Virtual Nightmare: The Orchid Club and Its Aftermath," *Prosecutor's Brief* (October/November 2004)

"President's Note," *Stanford Law Review*, Volume 44 (Summer 1992)

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify all requested reports, memoranda or policy statements through a review of my personal files and searches of publicly available electronic databases:

"Report To The Legislature: The Status Of Peace Officer Training
On Mental Illness And Developmental Disabilities," *California Commission on Peace Officer Standards and Training* (September 2004)
http://libcat.post.ca.gov/dbtw-wpd/documents/post/60382962.pdf

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"Hi-Tech Crime: Protecting Yourself in the Computer Age," *Report of the California Attorney General's Office* (November 2000)
http://safestate.org/documents/Hi-Tech_Crimes.pdf

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify all requested testimony, official statements or other communications through a review of my personal files and searches of publicly available electronic databases and have found none.

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all requested speeches or talks through a review of my personal files and searches of publicly available electronic databases.

Date	Type of Engagement	Title, Topic and/or Subject Matter	Program, Organization and/or Location
1999	Training Video	Peace Officer Standards and Training (POST): Racial Profiling Training Video	California Law Enforcement Training Video
9/10/2002	Panelist	September 11, 2002 - Where Are We Now? (Outline/Notes Unavailable)	Commonwealth Club of San Jose
2/17/2003	Speaker	Remarks to Students: Minority Admit Weekend 2003	Stanford Law School
2/18/2003	Speaker	The Case of John Walker Lindh*	Palo Alto Legal Secretaries Association (PALSA)
3/17/2003	Guest Instructor	Attacking the Indictment: United States v. John Walker Lindh	Santa Clara University Law School
4/29/2003	Guest Instructor	Legal Studies Course – National Securities and Civil Liberties (Outline/Notes Unavailable)	University of California at Santa Cruz

* Remarks based on a prepared speech, which is provided herewith.

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Program, Organization and/or Location
5/9/2003	Panelist	Litigating the Right to Access to Witnesses in Defense Department Custody (Outline/Notes Unavailable)	Legal Aid & Defender Association Conference (Federal Public Defenders)
5/10/2003	Panelist	Pleas, Cooperation, and Sentencing Issues (Outline/Notes Unavailable)	Legal Aid & Defender Association Conference (Federal Public Defenders)
5/15/2003	Panelist	Bay Area Reporters Seminar (Outline/Notes Unavailable)	Bay Area General Reporters Assoc. (BAGRA)
6/19/2003	Speaker	Civil Liberties Briefing (Outline/Notes Unavailable)	ACLU-NC Lawyers Council
7/12/2003	Panelist	Secrets of Success: What Nobody Tells You About How to Succeed in the Private Sector (Outline/Notes Unavailable)	California State Bar, California Minorities Attorneys' Conference at University of San Diego School of Law
7/23/2003	Speaker	Freedom and the Patriot Act	Rotary Club of San José
11/12/2004	Speaker	Tribute to James J. Brosnahan	San Francisco Maritime Museum
2/19/2005	Panelist	Beyond Black Letter Law: Bridging Critical Disparities Confronting Contemporary Black America (Outline/Notes Unavailable)	Stanford Law School - BLSA
2/24/2005	Moderator	Black History Month Judge Panel (Outline/Notes Unavailable)	Morrison & Foerster, San Francisco
3/10/2005	Speaker	Oakland Black Caucus – Presentation by Tony West (Attorney for Marcus Williams) (Outline/Notes Unavailable)	Oakland Black Caucus
4/5/2005	Speaker	Law Review Diversity Reception (Outline/Notes Unavailable)	Stanford Law School
4/17/2005	Speaker	Democrats Protecting Our Rights (Outline/Notes Unavailable)	California Democratic Party State Convention
9/8/2005	Panelist	A New Day for Diversity: Insights on Success in the Legal Profession (Outline/Notes Unavailable)	Fifth Annual Diversity Panel, Sponsored by Orrick, Herrington & Sutcliffe, Stanford Law School
10/21/2005	Speaker	50th Anniversary Celebration Alameda County Democratic Lawyers Club (Outline/Notes Unavailable)	Alameda County Democratic Lawyers Club
11/9/2005	Panelist	Recorder Roundtable on Representing High Profile Clients	The Recorder
1/25/2006 – 1/26/2006	Instructor	Legal Ethics for In-House Counsel	Morrison & Foerster LLP MCLE Workshop

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Program, Organization and/or Location
2/16/2006	Speaker	Black History Celebration: "Civil Rights Then and Now: Perspectives on the Movement's History and Current Challenges" (Outline/Notes Unavailable)	Morrison & Foerster
4/6/2006	Speaker	"Speed Candidating" (Surrogate speaker for Mayoral candidate Ronald Dellums) (Outline/Notes Unavailable)	East Bay Young Democrats
4/9/2006	Panelist	Alumni Panel Discussion, Stanford Law School Admit Weekend (Outline/Notes Unavailable)	Stanford Law School
4/12/2006	Panelist	Life After Stanford (Outline/Notes Unavailable)	Stanford Law School
4/28/2006	Moderator	Handle with Care: Managing Explosive Evidence in Morally Charged Cases (Outline/Notes Unavailable)	Northern District of California Judicial Conference
5/5/2006	Panelist	Ensuring Our Legacy: The Nuts and Bolts of Running for Public Office	California Association of Black Lawyers
5/6/2006	Speaker	Introduction of San Francisco District Attorney, Kamala D. Harris (Outline/Notes Unavailable)	California Association of Black Lawyers
8/2/2006	Speaker	EJS Rollback Campaign (Outline/Notes Unavailable)	Morrison & Foerster
8/2/2006	Moderator	Campaign Finance Reform: California Cities Take the Lead [http://www.commonwealthclub.org/audio/06-08calcitiesfinancepanel-complete.ram]	Commonwealth Club of California
8/16/2006	Panelist	100 Days Before Trial	Bar Association of San Francisco
9/26/2006	Panelist	The Use and Abuse of Peremptory Challenges (Outline/Notes Unavailable)	Association of Business Trial Lawyers
10/5/2006	Speaker	The American Taliban: John Walker Lindh*	USF School of Law
10/12/2006	Speaker	Elected Official Honorarium (Surrogate speaker for Mayor-Elect Ronald Dellums) (Outline/Notes Unavailable)	Charles Houston Bar Association
11/14/2006	Speaker	Mark Klein Case (Outline/Notes Unavailable)	ACLU Lawyers Council
11/18/2006	Speaker	U.S. Civil Liberties After 9/11	Canadian Bar Association, Las Vegas, Nevada

*Remarks based on a prepared speech, which is provided herewith.

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Program, Organization and/or Location
1/23/2007	Panelist	Progress and the Law: How Progressive Lawyers Can Make a Difference Even in Unlikely Places (Outline/Notes Unavailable)	American Constitution Society - University of California at Davis
2/15/2007	Panelist	Law and Justice (Outline/Notes Unavailable)	New College of California
5/7/2007	Speaker	Obama Campaign Fundraiser [http://www.youtube.com/watch?v=SS0cK1fijA4]	Emeryville, California
11/14/2007	Speaker	Obama Campaign Fundraiser [http://www.youtube.com/watch?v=qTJ0mN39P78]	San Francisco, California
1/27/2008	Speaker	Obama Campaign (Outline/Notes Unavailable)	Stanford Black Alumni Association
2/4/2008	Speaker	Welcoming remarks (Outline/Notes Unavailable)	Obama Lawyers Training
2/29/2008	Speaker	African Americans in Politics (Outline/Notes Unavailable)	Bingham McCutchen
4/2/2008	Panelist	Stanford Law Review: Minority Membership Panel (Outline/Notes Unavailable)	Stanford Law School, Stanford Law Review
4/13/2008	Panelist	Stanford Law School Alumni Showcase (Outline/Notes Unavailable)	Stanford Law School
4/19/2008	Speaker	Obama Campaign Rally [http://www.youtube.com/watch?v=xVIfwrz7heQ&feature=PlayList&p=2B0EEF2F7B539595&index=0&playnext=1]	Oakland, California
4/24/2008	Panelist	Political Panel Discussion (Outline/Notes Unavailable)	AFL-CIO Labor Council
5/17/2008	Speaker	University of California Hastings College of the Law, BLSA 2008 Commencement	University of California Hastings College of the Law
5/22/2008	Speaker	Practical Politics	CSU East Bay Hayward Campus
5/24/2008	Speaker	Obama Campaign (Outline/Notes Unavailable)	Latino Peace Officers Association, Annual Meeting
10/10/2008	Panelist	Choosing America's Next President: How Gender, Race, and the Media Affect Our Choices (Outline/Notes Unavailable)	Minority Bar Coalition's 2008 Unity Conference
10/23/2008	Panelist	Vote Smart Challenge: Obama Campaign Representative	Dominican University of California

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Program, Organization and/or Location
10/26/2008	Speaker	100th Annual Founder's Day	Los Angeles Consistory No. 26, Ancient and Accepted Scottish Rite of Freemasonry, Prince Hall Affiliation
11/2/2008	Speaker	Obama Campaign (Outline/Notes Unavailable)	Antioch Missionary Baptist Church, Miami, Florida
1/2/2009	Speaker	Civil Rights Post-Obama Election (Outline/Notes Unavailable)	NAACP Annual Leadership Retreat

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Between January 2007 and November 2008, I was interviewed numerous times by local and national media regarding the Obama presidential campaign. Because of the frequency of these interviews, I did not keep copies of every interview or news clip. I have done my best to identify all requested interviews through a review of my personal files and searches of publicly available electronic databases:

Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
10/28/1994	Interview	Ex-Guard Arrested After Artifacts Listed at Auction	San Jose Mercury News
11/11/1994	Interview	INS Clerk Accused of Forgery	San Jose Mercury News
5/27/1995	Interview	Conviction in Museum Theft	San Francisco Chronicle
6/20/1995	Interview	Ex-Clerk Admits Selling Fake IDs	San Jose Mercury News
9/9/1995	Interview	Multiple Escapes Nabbed in S.J.	San Jose Mercury News
12/20/1995	Interview	Child Porn on Internet Charged International Tip Leads U.S. Officers to a Fremont Man	San Jose Mercury News
12/20/1995	Interview	Man Accused of Selling Child Porn Over Internet	San Francisco Chronicle
5/3/1996	Interview	San Jose Food Processing Firm Charged with Selling Bad Meat	San Jose Mercury News

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
6/25/1996	Interview	Ex-Intel Engineer Gets Prison Self-Proclaimed High-Tech Spy Passed Information to AMD	San Jose Mercury News
7/17/1996	Interview	16 Indicated on Charges of Child Pornography	New York Times
7/17/1996	Interview	Live Child Porn Sent on Internet, 13 Arrested in 'Photo Shoot' of Girl, 10	San Jose Mercury News
7/18/1996	Interview	16 Indicted in Group for Child Sex on Internet	Detroit Free Press
7/18/1996	Interview	13 to Face Charges of Child Pornography	Washington Post
8/16/1996	Interview	Teacher Wins Bail in Child Porn Case	San Jose Mercury News
9/20/1996	Interview	Net Porn Suspect in Court Man Admits Role in Pedophilia Club	San Jose Mercury News
11/5/1996	Interview	Canadian Arrest Is Tied to U.S. Child-Porn Ring	New York Times
11/6/1996	Interview	Australian Man Identified in Internet Child Porn	Agence France Presse
5/13/1997	Interview	Porn Club Pleas Net Ring Defendants Opt to Avoid Trial	San Jose Mercury News
9/25/1997	Interview	1,000 Pack Hearing on Sikh Temple	San Jose Mercury News
9/26/1997	Interview	Decision on Sikh Temple Delayed Cooling Off: Opposing Sides to Seek Compromise Before October Meeting	San Jose Mercury News
10/23/1997	Interview	Federal Judge Sentences Three in Internet Child Pornography Ring	San Jose Mercury News
3/8/1998	Interview	Net Paedophile Case Hits Home	Daily Telegraph
5/11/1999	Interview	46 People Arrested at Rally Over Riverside Shooting	Los Angeles Times
12/7/2000	Interview	Moving Beyond Stereotypes in the Legislature	Sacramento Bee
10/28/2001	Interview	Security or Freedom	San Jose Mercury News Editorial Board

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
11/16/2001	Interview	MoFo Adds Another From U.S. Attorney's Office	The Recorder
11/16/2001	Interview	MoFo Adds Another Ex-DOJ Attorney	S.F. Daily Journal
1/29/2002	Interview	Bay Area Community Leader Joins Taliban Defense	San Jose Mercury News
3/15/2002	Interviews	Lindh Disillusioned by 9/11, His Lawyers Say	USA Today
4/12/2002	Interview	U.S. Troop Took Photos of Blindfolded Walker Lindh	CNN.com
4/13/2002	Interview	U.S. Soldiers Posed With Bound Lindh	Washington Post
7/16/2002	Interview	A Legal War Without Victory	Salon.com
7/18/2002	Interview	John Walker Lindh Plea: Online Discussion With Tony West, Defense Attorney and Co-Counsel	Washington Post Online
7/23/2002	Interview	Lindh Plea	MSNBC - Abrams Report
7/24/2002	Interview	Spann Dad Asks to Testify Against Lindh	Washington Times
8/31/2002	Interview	Lawyers: Lindh Seeks Forgiveness	Fox News
8/31/2002	Interview	Current Quotations	AP
9/1/2002	Interview	Lindh Is Fully Cooperating with Government, His Lawyers Say	Los Angeles Times
9/1/2002	Interview	'Sorry' Lindh Singing to Feds	New York Post
9/16/2002	Interview	The Cell Broker	The Recorder
9/28/2002	Interview	Lindh Upholding Plea Agreement, Sharing Information, Lawyers Say	Washington Post
10/7/2002	Interview	The Long Road Home	People Magazine

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
2002	Interview	BBC Documentary on John Walker Lindh	BBC
3/6/2003	Interview	Attorney Says Lindh Is Fine Except for Bruise on Forehead	AP
3/7/2003	Interview	Assault on Lindh Probed by FBI	Los Angeles Times
3/7/2003	Interview	Threats and Responses: The American Fighter	New York Times
3/7/2003	Interview	American Taliban Prisoner Attacked in Victorville	The Press-Enterprise
3/8/2003	Interview	War on Terror Osama Bin Laden; Walker Lindh Bashed in Jail	The Advertiser
3/10/2003	Interview	Lost In the Jihad	New Yorker Magazine
7/4/2003	Interview	Prisoner Pummels Lindh In Slammer	New York Post
8/2/2003	Commentary	Kobe Bryant Case	ESPN News
8/3/2003	Commentary	Kobe Bryant Case	ESPN News
8/6/2003	Commentary	Kobe Bryant Case	ESPN News
8/10/2003	Commentary	Kobe Bryant Case	ESPN News
9/3/2003	Interview	Black Like Me, John Walker Lindh's Hip-Hop Daze	East Bay Express
9/9/2003	Commentary	Kobe Bryant Case	ESPN News
10/5/2003	Commentary	Kobe Bryant Case	ESPN News
10/6/2003	Commentary	Kobe Bryant Case	ESPN News
10/8/2003	Commentary	Kobe Bryant Case	ESPN News
10/9/2003	Commentary	Kobe Bryant Case	ESPN News

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
10/12/2003	Commentary	Kobe Bryant Case	ESPN News
10/15/2003	Commentary	Kobe Bryant Case	ESPN SportsCenter Special
12/26/2003	Interview	Romanowski's Supporters Stand Fast	New York Times
2/6/2004	Interview	Maurice Clarett and Legal Changes to the NFL Draft	ESPN Hotlist
2/15/2004	Interview	Steroid Charges Bypass Athletes; Critics Question Hiding Names of Ring's Clients	San Francisco Chronicle
3/13/2004	Commentary	Violence in the National Hockey League	ESPN
3/31/2004	Commentary	Court TV: Jayson Williams	Court TV
5/4/2004	Interview	Tony West Named to Daily Journal's Top 20 Under 40 List	Daily Journal
6/10/2004	Commentary	Kobe Bryant Case	ESPN
7/25/2004	Interview	It's Party Time: Bay Area Faithful Head to Boston for Their Moment in the Spotlight	Alameda Times-Star
7/27/2004	Interview	Democrats' Affection Endures for Bill Clinton	San Jose Mercury News
8/1/2004	Interview	An Energized Party: Bay Area Delegates Revel in Hoopla	Alameda Times-Star
9/1/2004	Commentary	Kobe Bryant Case	ESPN
9/2/2004	Commentary	Kobe Bryant Case	ESPN News
9/2/2004	Commentary	Democratic Gadflies Take on RNC	The Daily Review
9/5/2004	Commentary	ESPN Sports Center: Kobe Bryant	ESPN
12/1/2004	Commentary	John Walker Lindh	ABC News
12/7/2004	Commentary	"Game Night" (Clip Unavailable)	ESPN Radio

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
2004	Commentary	Condoleezza Rice Testimony	MSNBC
2004	Commentary	Major League Baseball Drug Testing	ESPN "Outside the Lines"
3/18/2005	Interview	Romanowski Liked to Jekyll, Hyde in Closing Argument	San Francisco Chronicle
3/23/2005	Interview	Romanowski Must Pay	San Jose Mercury News
10/28/2005	Commentary	Libby Indictment	CBS-5
10/28/2005	Commentary	Libby Indictment	CNN Headline News
10/31/2005	Commentary	Libby Indictment	CNN
11/3/2005	Commentary	Libby Pleads Not Guilty (Clip Unavailable)	CBS-5
11/3/2005	Commentary	Libby Pleads Not Guilty	CNN
11/8/2005	Commentary	Terrell Owens (Clip Unavailable)	ESPN
11/9/2005	Commentary	Terrell Owens	ESPN
11/21/2005	Interview	Silent Treatment	Marin Independent Journal
12/20/2005	Commentary	Dover Intelligent Design Case	CNN Prime News Tonight
Spring 2005	Interview	Internet and Politics	Connections Magazine
3/24/2006	Commentary	Barry Bonds Case (Clip Unavailable)	CNN
3/24/2006	Commentary	Barry Bonds Case (Clip Unavailable)	CBS-5
3/25/2006	Commentary	Barry Bonds Lawsuit re "Game of Shadows"	CNN Headline News
4/6/2006	Commentary	Scooter Libby Goes to the Grand Jury	CNN-Headline News
4/14/2006	Commentary	Moussaoui Trial	CBS-5
4/14/2006	Commentary	Barry Bonds Case	CNN Headline News
4/16/2006	Commentary	The Perjury Evidence Against Bonds	SF Chronicle
4/26/2006	Commentary	Rosenthal Appeal (Clip Unavailable)	CBS-5

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
4/27/2006	Interview	Even in His Toughest Year, Bonds Still Can Inspire His Fans	San Francisco Chronicle
5/3/2006	Commentary	Moussaoui Verdict (Clip Unavailable)	CBS-5
7/22/2006	Interview	Trainer's Silence Could be Key to Bonds Case	New York Times
12/17/2006	Interview	Dellums' Team Tours Gritty West Oakland	San Francisco Chronicle
1/14/2007	Commentary	Reaction to Stimson's Comments	CBS-5
1/22/2007	Commentary	Defending the Despised	Perspectives, KQED
2/21/2007	Commentary	Libby Case Goes to Jury	CBS-5
3/16/2007	Interview	Candidacy More Complex than Black or White: Obama Straddles a Fine Line on Race	Contra Costa Times
5/22/2007	Commentary	"Police Transparency"	Perspectives, KQED
7/2/2007	Commentary	Libby commutation (Clip Unavailable)	CBS-5
7/5/2007	Commentary	Barry Bonds Case (Clip Unavailable)	CBS-5
7/11/2007	Commentary	"White House, Congress Showdown Intensifies over Executive Privilege"	CBS-5
7/16/2007	Interview	Dems Talk Early Campaign Strategies	Daily Review Online
7/23/2007	Commentary	Michael Vick Case	CNN Headline News
7/25/2007	Commentary	Legal Roundup	CNN Headline News
7/26/2007	Commentary	Michael Vick Case	CNN Headline News
8/17/2007	Commentary	Michael Vick Case	CNN Headline News
8/27/2007	Commentary	Attorney General Alberto Gonzales Resigns	CBS-5
9/5/2007	Commentary	Senator Craig Case	CNN
9/14/2007	Commentary	Sex Offender Conviction Overturned	CNN Headline News
9/19/2007	Commentary	OJ Simpson Memorabilia Case	CNN Headline News
11/8/2007	Commentary	OJ Simpson Memorabilia Case	CNN Headline News
11/9/2007	Commentary	OJ Simpson Memorabilia Case	CNN

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
11/14/2007	Interview	Obama Campaign [http://www.youtube.com/watch?v=_Pb5PhdgF5Y]	YouTube
11/16/2007	Commentary	Ed Jew Indictment	KCBS
11/16/2007	Commentary	Barry Bonds Case	CNN Headline News
12/7/2007	Commentary	Barry Bonds Case	KCBS
12/10/2007	Interview	California's Primary Could Yet Be Decisive	San Francisco Chronicle
12/19/2007	Interview	Clemens Strongly Denies Allegations By His Ex-Trainer	New York Times
Winter 2007	Interview	Attorneys Working Toward the Tipping Point of Diversity	Bar Association of San Francisco - San Francisco Attorney Magazine
Winter 2007	Interview	The Diversity Pipeline - Plugging the Leak	Bar Association of San Francisco - San Francisco Attorney Magazine
1/4/2008	Commentary	Iowa Caucus Results http://www.publicradio.org/tools/media/player/kpcc/news/shows/airtalk/2008/01/20080104_airtalk1?start=00:00:01&end=00:52:31	KPCC
1/4/2008	Interview	Mail Ballots Could Make California Vote Meaningful	San Francisco Chronicle
1/8/2008	Commentary	Obama New Hampshire Primary	ABC-7
1/12/2008	Commentary	Obama Super Tuesday	ABC-7
1/13/2008	Interview	Herhold: Political Pros Find Obama Remarkable	San Jose Mercury News
1/16/2008	Interview	The Beer or Wine Decider - It Could be the Bay Area	San Francisco Chronicle
1/23/2008	Interview	Obama Campaign (Clip Unavailable)	KRON-4
2/3/2008	Interview	Ex-Prosecutors Question Handling of Spying Case	New York Times

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
2/3/2008	Interview	Will Obama's Youth Movement Best Clinton's Mail-in-Vote Trove	San Francisco Chronicle
2/5/2008	Interview	Obama Campaign (Clip Unavailable)	KRON-4
2/12/2008	Interview	Obama Campaign (Clip Unavailable)	ABC-7
2/13/2008	Interview	L.A. to Try Tallying Ballots Left Out	San Francisco Chronicle
2/13/2008	Commentary	Roger Clemens Congressional Testimony	CNN Headline News
2/29/2008	Interview	Obama Campaign (Clip Unavailable)	CBS-5
3/1/2008	Interview	Obama Point Man Connected, Respected	San Francisco Chronicle
3/4/2008	Interview	Obama Campaign [http://www.publicradio.org/tools/media/player/kpcc/news/shows/pattmorrison/2008/03/20080304_pattmorrison1?start=00:08:53&end=00:35:59]	KPCC Pat Morrison Show
3/18/2008	Interview	Obama Campaign http://www.publicradio.org/tools/media/player/kpcc/news/shows/airtalk/2008/03/20080318_airtalk1?start=00:00:01&end=00:52:31	KPCC
3/19/2008	Interview	Obama Campaign (Clip Unavailable)	CNN Radio
3/19/2008	Interview	Obama Campaign (Clip Unavailable)	ABC-7
3/26/2008	Interview	Plans Twist and Turn for Olympic Torch's S.F. Route	San Francisco Chronicle
3/30/2008	Interview	Obama Campaign [http://www.youtube.com/watch?v=yKOKTyX9kSY]	YouTube
4/2/2008	Interview	Obama Presidential Campaign (Clip Unavailable)	CBS-5
4/3/2008	Interview	Forum - Life and Career of Barack Obama [http://www.kqed.org/epArchive/R804030900]	KQED
4/6/2008	Interview	Obama Campaign (Clip Unavailable)	KTVU
4/21/2008	Interview	Obama Campaign [http://www.youtube.com/watch?v=-zhBi6cNqCE]	CBS-5

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
4/22/2008	Interview	Obama Campaign [http://www.youtube.com/watch?v=-zhBi6cNqCE]	CBS - 5
4/22/2008	Interview	Obama Campaign (Clip Unavailable)	ABC-7
4/23/2008	Interview	Obama Campaign (Clip Unavailable)	KPCC
5/5/2008	Interview	Obama Money Train	Ebonyjet.com
5/6/2008	Interview	Democrats' Hopes on Line Today in Indiana, North Carolina	San Francisco Chronicle
5/6/2008	Commentary	Obama Indiana Primary	CBS-5
5/11/2008	Interview	Obama and Super Tuesday (Clip Unavailable)	ABC-7
5/30/2008	Interview	Graham Found Guilty of Lying in Balco Case	New York Times
7/14/2008	Interview	Obama Campaign	CBS-5
7/2008	Interview	The Best of '08	San Francisco Magazine
8/27/08	Interview	Obama Campaign [http://www.youtube.com/watch?v=ffvvKigWtGY]	CBS-5
10/7/2008	Commentary	Obama-McCain Debate	ABC-7
10/8/2008	Interview	Forum - The Second Presidential Debate [http://www.kqed.org/epArchive/R810080900?itemMD5=35c39ef2ac822377deac2cc334e3625a]	KQED
10/23/2008	Interview	McCain Surrogate to Students to Prepare for War with Iran in the Next Four Years	Marin Independent Journal
11/5/2008	Interview	Scene in Chicago: Emotion-Filled Night as New Era Dawns	San Francisco Chronicle
11/5/2008	Commentary	The California Report - Decision 2008 [http://www.californiareport.org/archive/R811051201/a]	NPR
11/10/2008	Interview	Obama Campaign [http://www.youtube.com/watch?v=nf9fiqE9N0k]	YouTube
Fall 2008	Interview	Obama Campaign	San Francisco Attorney

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Date	Type of Engagement	Title, Topic and/or Subject Matter	Publication and/or Broadcasting Company
1/13/2009	Interview	How a Long Shot Campaign Led to the White House	San Jose Mercury News
1/18/2009	Interview	Hope and Basketball	San Francisco Chronicle
1/19/2009	Interview	The 'Breakthrough' of Black Politicians	MSNBC.com
2/2009	Interview	Democracy: The Upgrade	San Francisco Magazine

14. **Public Office, Political Activities and Affiliations:**

a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

1996 – 1998 – Commissioner, City of San José Planning Commission (appointed by Mayor Susan Hammer and the City Council)

1998 – Candidate, San José City Council (unsuccessful)

2000 – Candidate, California State Assembly (unsuccessful)

2000 – 2002 – Commissioner, Juvenile Justice Commission of Santa Clara County (appointed by Board of Supervisors of Santa Clara County)

2005 – 2008 – Member, Board of Directors, U.C. Hastings College of the Law (appointed by California Governor Arnold Schwarzenegger)

2005 – 2008 – Northern District of California Lawyer Representative, U.S. Court of Appeals for the Ninth Circuit (Appointed by Chief Judge Vaughn Walker of the Northern District of California)

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

1984 – Massachusetts State Delegation, Democratic National Convention, Volunteer (assisted in floor coordination during national convention)

1987 – 1988 – Dukakis For President, Chief of Staff to the Treasurer (assisted national campaign Treasurer Robert A. Farmer in building and leading national fundraising effort for presidential candidate Michael S. Dukakis)

1988 – 1989 – Democratic Governors' Association, Finance Director (assisted and traveled with Arkansas Governor Bill Clinton to develop national fundraising program to raise money for Democratic governors and gubernatorial candidates, including the

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creation of the Democratic Governors' Club and the DGA's annual policy retreat in Aspen, Colorado)

1992 – 1993 – California Democratic Party, Chief of Staff to the Finance Chairman (assisted in fundraising for the 1992 Democratic Coordinated Campaign)

1992 – Democratic National Convention, Electoral Delegate California (Clinton)

2000 – Al Gore for President, Fundraiser (assisted in fundraising for the Al Gore presidential campaign)

2002 – 2003 – Kamala Harris for District Attorney of San Francisco, Advisor, Member of Finance Committee (advised on all aspects of the campaign; assisted in fundrasing)

2004 – Kerry/Edward Presidential Campaign, Member of Finance Committee (assisted in fundraising for Kerry/Edwards presidential campaign)

2004 – Democratic National Convention, Electoral Delegate California (Kerry)

2004 – 2005 – Campaign to Re-Elect Kamala Harris as District Attorney of San Francisco, Advisor, Member of Finance Committee (advised on all aspects of the campaign; assisted in fundrasing)

2006 – Ronald V. Dellums for Mayor Campaign (Campaign Surrogate Speaker)

2006 – Oakland Mayor-Elect Ronald V. Dellums Transition Committee, Co-Chair (assisted transition team of Mayor Dellums)

2007 – 2008 – Obama for America, Co-Chair, California Finance Committee (assisted in fundraising for the Obama presidential campaign)

2007 – 2008 – Obama California Leadership Circle, Member (assisted in Obama campaign in building a statewide, grassroots organization)

2008 – Obama/Biden Presidential Campaign, Volunteer (field coordinator, surrogate speaker)

2008 – Democratic National Convention, At-Large Delegate (Obama)

2008 – Present – Kamala Harris for California Attorney General, Advisor, Member of Finance Committee (advised on all aspects of the campaign; assisted in fundrasing)

15. **Legal Career: Please answer each part separately.**

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I never served as a clerk to a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I never practiced alone.

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iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Date	Company/Agency	Address	Affiliation
2001 – Present	Morrison & Foerster LLP	425 Market Street San Francisco, CA 94105	Partner
1999 – 2001	California Department of Justice	California Office of the Attorney General 1300 I St Sacramento, CA 95814	Special Assistant Attorney General
1994 – 1999	U.S. Attorney's Office	150 Almaden Blvd, Suite 900 San José, CA 95113	Assistant United States Attorney
1993 – 1994	United States Department of Justice	Office of the Deputy Attorney General Washington, DC 20530	Special Assistant to the Deputy Attorney General
1992 – 1993	McCutchen, Doyle, Brown & Enersen	1900 University Avenue East Palo Alto, CA 94303-2223	Associate
Summer 1991	Tuttle & Taylor	40th Floor 355 South Grand Avenue Los Angeles, CA 90071-3102	Summer Associate
Summer 1991	Morrison & Foerster LLP	755 Page Mill Road Palo Alto, CA 94304-1018	Summer Associate
Summer 1990	Swidler & Berlin	3000 K Street, N.W.; Suite 300 Washington, DC 20007	Summer Associate

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

Public Service

Following graduation from Stanford Law School, I practiced for seven years in federal and state government.

From 1993 through 1994, I served as a Special Assistant in the U.S. Department of Justice. Under the direction of U.S. Deputy Attorneys General Philip Heymann and Jamie Gorelick, as well as Attorney General Janet Reno, I worked on the development of national crime policy, including the 1994 Omnibus Crime Bill.

From 1994 to 1999, I served as an Assistant United States Attorney for the Northern District of California, prosecuting a variety of cases, including sexual exploitation offenses against children, high-tech crimes, bank robberies, financial fraud schemes, economic espionage, firearms violations, tax offenses and government malfeasance.

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From 1999 to 2001, I served as state Special Assistant Attorney General, an appointee of California Attorney General Bill Lockyer. In that capacity, I advised Attorney General Lockyer on various matters including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

Private Practice

Since 2001, I have practiced at a private law firm, representing a wide range of clients from indigent individuals in civil rights litigation to multinational corporations in complex commercial matters. My civil matters have included:

- representation of several public companies in various securities class action suits;
- trial co-counsel for former Oakland Raiders football player, in a successful tort action against fellow teammate; and
- trial co-counsel for plaintiff and her children who suffered civil rights violations following the police shooting of a family member (jury found that law enforcement officers violated plaintiff's Fourth Amendment rights and awarded punitive damages).

My criminal matters have included:

- representation of a municipal securities firm president in a multi-state, FBI criminal investigation and federal prosecution that resulted in no charges filed against client;
- successful representation of a Fortune 500 computer hardware manufacturer in a federal criminal probe that resulted in no charges filed against the company; and
- representation of individual in connection with FBI political corruption investigation that resulted in no charges filed against individual.

Community Service

I currently serve on the Board of Governors for the Northern California Association of Business Trial Lawyers and on the Bar Association of San Francisco's Litigation Section Executive Committee. I am also a participant in Oakland's McCullum Youth Court. I have served on the Board of Directors of U.C. Hastings College of the Law, as an adjunct faculty of Lincoln Law School of San José (Trial Advocacy), and as a Northern District of California Ninth Circuit Lawyers Representative.

ii. your typical clients and the areas, if any, in which you have specialized.

My typical clients include individuals and companies who retain me in a variety of complex civil and criminal matters. I specialize in complex commercial litigation, white-collar criminal defense, civil rights and civil liberties matters, securities litigation, and antitrust.

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c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

Approximately 90% of my practice has been in litigation; approximately 10% has consisted of strategic and public relations advice. From 1994 to 1999, I appeared frequently in court (as a federal prosecutor). Since 2000, I have appeared occasionally in court (as a civil litigator).

i. Indicate the percentage of your practice in:

1. federal courts; 65%

2. state courts of record; 30%

3. other courts. 5%

ii. indicate the percentage of your practice in:

1. civil proceedings; 60%

2. criminal proceedings. 40%

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried at least four cases to verdict as sole counsel, least one case to verdict as chief counsel, and at least four cases to verdict as associate counsel.

i. What percentage of these trials were:

1. jury; 100%

2. non-jury. 0%

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

N/A

16. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

b. the name of the court and the name of the judge or judges before whom the case was litigated; and

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c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

(1) ***United States v. Riva, et al.***

Citation(s)/docket number(s):

96-CR-20113 JW
United States v. Laney, 189 F.3d 954 (9th Cir. 1999)
United States v. Tank, 200 F.3d 627 (9th Cir. 2000)

Party represented:

United States of America

Summary of case:

The defendants in this criminal prosecution were the 16 members of an Internet chat room called the "Orchid Club." Members of the Orchid Club, who lived in four different countries, discussed, traded, and produced child pornography. They also engaged in the on-line molestation of a young girl. All were indicted for on various counts of sexual exploitation of children under 18 U.S.C. § 2251 and/or 18 U.S.C. § 2252.

Nature of participation:

I served as the lead attorney investigating and prosecuting these cases through trial and on appeal.

Final disposition:

All 16 defendants were convicted, either by guilty plea or at trial. The convictions of those defendants who appealed were affirmed.

Date of representation:

June 1996 – January 2000

Name of court and judge(s):

United States District Court for the Northern District of California – Judge James Ware

United States Court of Appeals for the Ninth Circuit – Judges Stephen Reinhardt, Thomas Nelson, and Phyllis Kravitch (sitting by designation)

United States Court of Appeals for the Ninth Circuit – Judges Harry Pregerson, Charles Wiggins, and David Carter (sitting by designation)

Co-counsel:

Carlos Singh
United States Attorney's Office

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150 Almaden Blvd., Suite 900
San Jose, CA 95113
(408) 535-5061

Counsel for other parties:

Carleen R. Arlidge
111 West St. John Street, Suite 555
San Jose, CA 95113
(408) 288-8533
(408) 971-8295240 Stockton Street #400
San Francisco, CA 94108-2479 E. Bayshore Road #703
Palo Alto, CA 94303
(Defense Counsel for David Vernon Tank)

Philip Howard Pennypacker
Santa Clara Courthouse
191 N. First Street
San Jose, CA 95113
(408) 556-3000
(Defense Counsel for Christopher Jon Saemisch)

Stuart D. Kirchick
Law Offices of Stuart D. Kirchick
1143 Story Road, Suite 210
San Jose, CA 95122
(408) 291-0418
(Defense Counsel for Michael Allen Grumboski)

Mark D. Flanagan
WilmerHale
1117 California Avenue
Palo Alto, CA 94304
(650) 858-6047
(Defense Counsel for Timothy James Zanor)

Alfredo Martin Morales
Morales & Leanos
75 E. Santa Clara Street #250
San Jose, CA 95113
(408) 294-5400
(Defense Counsel for Kurt Schaefer)

Jennifer Stisa Granick
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333
(Defense Counsel for Franklin Stephen Palm)

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Thomas Kelley
Kelly & Jacobson
220 S. 6th Street, Suite 215
Minneapolis, MN
(612) 339-5055
(Defense Counsel for Joseph Peter Lepore)

Thomas Joseph Nolan, Jr.
Nolan Armstrong et al LLP
600 University Ave
Palo Alto, CA 94301
(650) 326-2980
(Defense Counsel for Stephen L. Calhoun)

Jeffery Steinbock
53 West Jackson Blvd., Suite 1420
Chicago, IL 60604
(Defense Counsel for Corey J. Soderquist)

Gail R. Shifman
44 Montgomery Street Ste 3850
San Francisco, CA 94104
(415) 551-1500
(Defense Counsel for Paul Colin Freeland)

(2) *Hepting v. AT&T Corp., et al.*

Citation(s)/docket number(s):

06-CV-0672-VRW
Hepting v. AT&T Corp., 439 F. Supp. 2d 974 (N.D. Cal. 2006)
Hepting v. AT&T Corp., 539 F.3d 1157 (9th Cir. 2008)

Party represented:

Mark Klein (witness)

Summary of case:

Plaintiffs, customers of AT&T, allege that AT&T is collaborating with the National Security Agency in a massive warrantless wiretapping program that tracks and records the domestic and foreign communications of millions of Americans in violation of the U.S. Constitution and various federal and state statutes. Mark Klein, a former AT&T employee, has first-hand knowledge of the government's wiretapping program and the nature and extent of AT&T's cooperation in that program.

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Nature of participation:

I provided advice and assistance to Mr. Klein by, for example, drafting amicus papers submitted in opposition to the defendants' motion to dismiss and helping to develop a litigation and media strategy.

Final disposition:

N/A

Date of representation:

April 2006 – Present

Name of court and judge(s):

United States District Court for the Northern District of California – Judge Vaughn Walker

United States Court of Appeals for the Ninth Circuit – Judges Harry Pregerson, Michael Daly Hawkins, and Margaret McKeown

Co-counsel:

James J. Brosnahan
Brian J. Martinez
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000

Counsel for other parties:

Cindy Ann Cohn
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
(415) 436-9333
(Counsel for Plaintiffs)

Bruce A. Ericson
David L. Anderson
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
San Francisco, CA 94120-7880
(415) 983-1000
(Counsel for Defendants)

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(3) ***Mendez v. County of San Bernardino, et al.***

Citation(s)/docket number(s):

CV 04-7131 SVW (RCx) (C.D. Cal.)
Mendez v. County of San Bernardino, 540 F.3d 1109 (9th Cir. 2008)

Party represented:

Plaintiffs Evangelina and Angel Mendez

Summary of case:

The plaintiffs, a woman and her young son, were detained and interrogated by deputies of the San Bernardino Sheriff's Department following the fatal shooting of their deaf son/brother. Plaintiffs filed a federal civil rights action against the County of San Bernardino under 42 U.S.C. § 1983 for violations of the Fourth Amendment and false arrest and imprisonment under state law based on the arrest of the plaintiffs and the search of their home. A one-week jury trial was held in federal court in Los Angeles in April 2005. I argued successfully before the United States Ninth Circuit Court of Appeals reversing the District Court's denial of attorney's fees.

Nature of participation:

I supervised all pre-trial matters, including discovery and motion practice. Additionally, I was trial co-counsel and successfully argued before the Ninth Circuit on appeal.

Final disposition:

The jury found that the San Bernardino Sheriff's Department committed two constitutional violations. On appeal, the Ninth Circuit reversed the district court's order denying attorneys' fees to the plaintiffs and affirmed the district court's orders granting partial summary judgment for the defendant, denying the plaintiffs' motion for a new trial, and reducing punitive damages. The case is currently pending in the district court for a determination of the amount of attorneys' fees to be awarded to the plaintiffs.

Date of representation:

April 2003 - Present

Name of court and judge(s):

United States District Court for the Central District of California – Judges Virginia Phillips, George Schiavelli (Ret.), and Stephen Wilson

United States Court of Appeals for the Ninth Circuit – Judges Raymond Fisher, Michael Daly Hawkins, and Stephen Trott

Co-counsel:

Arturo J. González

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Geoffrey Graber
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000

Counsel for other parties:

Eugene P. Ramirez
Trevor Grimm
Patrick Hurley
Manning & Marder, Kass, Ellrod, Ramirez, LLP
801 S. Figueroa Street
15th Floor
Los Angeles, California 90017
(Counsel for Defendants)

(4) *In re JDS Uniphase Corp. Securities Litigation*

Citation(s)/docket number(s):

C-02-1486 CW
In re JDS Uniphase Corp. Securities Litigation, 2007 U.S. Dist. LEXIS 66085 (N.D. Cal., Aug. 27, 2007)

Party represented:

JDS Uniphase Corporation, Charles Abbe, Jozef Straus, and Anthony Muller

Summary of case:

The plaintiffs, class of stockholders, alleged that, during the class period, the defendants engaged in a scheme to artificially inflate the price of JDS stock by falsely representing that demand for JDS products was strong and by overstating the value of its inventory by failing to write off excess inventory. The plaintiffs alleged that the defendants benefited from this scheme by selling stock at inflated prices and by using the value of JDS stock to purchase other companies for less than their worth. The plaintiffs asserted causes of action for violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

Nature of participation:

I took and defended key depositions relating to class certification, and handled a variety of matters relating to discovery disputes. I also identified, interviewed and, deposed several of the plaintiff's confidential witnesses.

Final disposition:

Jury verdict for the defendants

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Date of representation:

May 2002 – December 2008

Name of court and judge(s):

United States District Court for the Northern District of California – Judge Claudia Wilken

Co-counsel:

James P. Bennett
Jordan Eth
Terri Garland
Philip T. Besirof
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000

Counsel for other parties:

Mark S. Arisohn
Anthony J. Harwood
Labaton Suchorow LLP
140 Broadway
New York, NY 10005
(212) 907-0840
(Counsel for Plaintiffs)

(5) ***United States v. Kim, et al.***

Citation(s)/docket number(s):

CR 06-0692 PJH

Party represented:

Individual witness, Charles Byrd, in federal antitrust investigation into the DRAM market.

Summary of case:

The United States brought charges against various individuals for violations of the federal antitrust laws in connection with alleged price fixing in the DRAM market.

Nature of participation:

I represented a former employee of the company that was under federal antitrust investigation. In that capacity, I responded to government subpoenas, represented my client in government interviews and in connection with grand jury testimony, and negotiated with government attorneys.

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Final disposition:

The government chose not to prosecute my client in exchange for his agreement to cooperate with the investigation. He did not have to testify at trial.

Date of representation:

March 2005 – November 2008

Name of court and judge(s):

United States District Court for the Northern District of California – Judge Phyllis Hamilton

Co-counsel:

N/A

Counsel for other parties:

Nat Cousins
United States Department of Justice
Antitrust Division
450 Golden Gate Avenue
Room 10-0101, Box 36046
San Francisco, CA 94102
(415) 436-6705
(Attorney for United States)

(6) ***Bradlow v. Grant Thornton LLP***

Citation(s)/docket number(s):

CGC-04-437423

Party represented:

The defendant Grant Thornton LLP

Summary of case:

A court-appointed received filed this professional negligence and fraud action on behalf of PipeVine, Inc., a non-profit organization that facilitated on-line charitable donations. PipeVine is a former customer of Grant Thornton, and its allegations stemmed from an audit that Grant Thornton conducted, as well as other accounting services that it performed, on PipeVine's behalf.

Nature of participation:

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I managed the litigation and helped direct all aspects of litigation strategy and trial preparation. In addition, I directed discovery and was involved in both a mediation and settlement negotiations with the plaintiff.

Final disposition:

Settlement

Date of representation:

February 2003 – Present

Name of court and judge(s):

San Francisco County Superior Court – Judge Patrick Mahoney

Co-counsel:

David B. Bayless
Covington & Burling LLP
One Front Street
San Francisco, CA 94111-5356
(415) 591-7005

Counsel for other parties:

Michael Eagan
Law Offices of Michael Q. Eagan
Three Embarcadero Center, 8th Floor
San Francisco, CA 94111
(415) 765-4600

(7) ***United States v. Lindh***

Citation(s)/docket number(s):

Crim. No. 02-37-A

Party represented:

Defendant John Phillip Walker Lindh

Summary of case:

In December 2001, the United States took John Walker Lindh, an American citizen, into custody in Afghanistan after Lindh surrendered to the Northern Alliance. Mr. Lindh had briefly served in the Afghan army under the Taliban to defend Afghanistan against the Northern Alliance in an internal civil war. The United States charged Mr. Lindh with 11 criminal counts. After an exhaustive investigation and litigation, the government dropped all charges accusing Mr. Lindh of fighting against Americans or engaging in terrorist activities.

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The United States dismissed all terrorism-related charges and Mr. Lindh, who pled guilty to one count of violating Title 50, United States Code, Section 1705(b), Title 18, United States Code, Section 2, and Title 31, Code of Federal Regulations, Sections 545.204 and 545.206(a) and one count of violating Title 18, United States Code, Section 844(h)(2).

Nature of participation:

As one of the members of Mr. Lindh's four-person defense team, I assisted with the development of a defense strategy. I also directed discovery, drafted and argued motions, and participated in negotiations with the federal government. Additionally, I helped direct the public relations strategy for the case.

Final disposition:

After pleading guilty to two criminal counts, Mr. Lindh was sentenced to 20 years imprisonment.

Date of representation:

December 2001 – February 2007

Name of court and judge(s):

United States District Court for the Eastern District of Virginia – Judge Thomas Ellis III

Co-counsel:

James J. Brosnahan
George C. Harris
Raj Chatterjee
Morrison & Foerster LLP
425 Market Street
San Francisco, California 94105
(415) 268-7000

William B. Cummings
William B. Cummings, P.C.
112 South Pitt Street
Alexandria, Virginia 22314
(703) 836-7997

Counsel for other parties:

The Honorable Randy I. Bellows
Fairfax Circuit Court
4110 Chain Bridge Road
Fairfax, Virginia 22030
(703) 246-2221

David N. Kelley
Cahill Gordon & Reindel

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Eighty Pine Street
New York, NY 10005
(212) 701-3050

(8) ***Williams v. Romanowski***

Citation(s)/docket number(s):

RG03122024

Party represented:

Plaintiff Marcus Williams

Summary of case:

The plaintiff, formerly a professional football player for the Oakland Raiders, brought a civil action against William Romanowski, a teammate, for battery, negligence, and intentional infliction of emotional distress. The case arose out of an incident at football practice during which Mr. Romanowski attacked Mr. Williams, forcibly removed his helmet, and punched him in the face. Mr. Williams suffered broken bones around his eye and other significant injuries, and was unable to resume his playing career. After a trial, a jury in Alameda County found Mr. Romanowski liable for battery.

Nature of participation:

I was involved in all aspects of litigation and trial and was trial co-counsel.

Final disposition:

After a jury ruled in Mr. Williams' favor, the parties settled to avoid further litigation.

Date of representation:

October 2003 – November 2005

Name of court and judge(s):

Alameda County Superior Court – Judge Cecilia Castellanos

Co-counsel:

James J. Brosnahan
Wendy M. Garbers
Brian J. Martinez
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
(415) 268-7000

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Counsel for other parties:

Jeffrey A. Springer
Springer and Steinberg, P.C.
1600 Broadway, Suite 1200
Denver, CO 80202
(303) 861-2800

(9) Parole Cases

Citation(s)/docket number(s):

N/A

Party represented:

Various female prisoners who qualify for post-conviction habeas corpus relief under California law

Summary of case:

In partnership with the California Habeas Project (an organization that provides legal aid referrals for domestic violence survivors incarcerated for crimes related to their past abuse), Morrison & Foerster provides *pro bono* representation for women who qualify for post-conviction habeas corpus relief under state law. Associates prepare parole briefs and argue their clients' cases before the California Board of Parole Hearings. Associates meet with clients, client's family members, and community organizations willing to help facilitate the client's re-entry into society.

Nature of participation:

I direct the program and supervise several associates, each of whom represents a woman who has experienced a history of domestic violence. I oversee the representation of the clients and assist with the preparation of documents filed on their behalf.

Final disposition:

N/A

Date of representation:

June 2006 - Present

Name of court and judge(s):

California Board of Parole Hearings

Co-counsel:

James Schurz
Rebecca Kruse

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Lee B. Awbrey
David M. Hymas
Stacey Sprenkel
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
(415) 268-7000

Counsel for other parties:

N/A

(10) ***United States v. Suzie Yuen***

Citation(s)/docket number(s):

CR-06-00238-001

Party represented:

Victim-Witness Theodore Rosenberg

Summary of case:

This case originated with an internal investigation into the embezzlement of millions of dollars by Suzie Moy Yuen from her employer, Theodore Rosenberg, and elderly man in his mid-nineties, whom she served as an executive assistant. The investigation revealed that Ms. Yuen embezzled 1.4 million dollars from Mr. Rosenberg over a four-year period. During that same time period, Ms. Yuen also falsified her federal income tax returns; she did not report the embezzled monies.

Nature of participation:

As an attorney for the victim-witness, Mr. Rosenberg, I conducted an internal investigation for a potential civil lawsuit that revealed a multi-million dollar fraud. Unable to resolve this matter, I referred the case to the federal authorities and cooperated with the federal investigation, sharing the information gathered during my internal investigation. I represented Mr. Rosenberg in all pre-trial matters, including witness depositions. The case's significance derives from the amount of the fraud, the elder abuse issues involved, and several unique criminal issues I litigated in the course of my representation.

Final deposition:

Ms. Yuen pled guilty to one count of mail fraud, in violation of 18 U.S.C. §§ 1341 and 1346, and one count of subscribing to a false tax return, in violation of 26 U.S.C. § 7206(1) and was sentenced to 20 months imprisonment, followed by three years of supervised release.

Date of representation:

August 2004 – March 2008

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Name of court and judge(s):

United States District Court for the Northern District of California – Judge James Ware

Co-counsel:

N/A

Counsel for other parties:

Carlos Singh, for the United States
Lincoln Law School of San Jose
One North First Street
San Jose, California 95113
(408) 977-7227

Gilbert Eisenberg, for Defendant Yuen
Law Offices of Gilbert Eisenberg
400 Montgomery St #200
San Francisco, CA 94104
(415) 433-3476

Mary McNamara, for Defendant Yuen
Swanson McNamara & Haller LLP
300 Montgomery St #1100
San Francisco, CA 94104
(415) 477-3800

17. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Representative Matters:

Civil

Representation of several public companies in various securities class action suits.

Representation of a residential real estate developer in an ongoing District Attorney investigation alleging environmental violations.

Counsel for national firm that completes disparity studies for states, cities, counties, special districts, housing authorities, transportation agencies and other governmental entities throughout the country.

Criminal

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Representation of a municipal securities firm president in a multi-state, FBI criminal investigation and federal prosecution that resulted in no charges filed against client.

Representation of a Fortune 500 computer hardware manufacturer in a federal criminal probe that resulted in no charges filed against the company.

Representation of individual in connection with FBI political corruption investigation that resulted in no charges filed against individual.

Representation of an international accounting firm in a state and federal criminal investigation that resulted in no action against company.

Representation of an international chemical company executive in a federal criminal antitrust investigation that resulted in no action against client.

Successful representation of Hollywood actor in connection with criminal charges stemming from client's political activism.

18. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

Adjunct Faculty Member, Lincoln Law School of San José, California, 1997 – 1999,

I taught a trial advocacy course. Major topics taught: fact investigation, brief writing, and oral advocacy.

19. **Deferred Income/Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

See Form 278, Executive Branch Personnel Public Financial Disclosure Report

20. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

21. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Form 278, Executive Branch Personnel Public Financial Disclosure Report

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22. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached.

23. **Potential Conflicts of Interest:**

a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will follow all relevant rules concerning conflicts of interests and, if confirmed, will be guided by the determinations of ethics professionals at the Department of Justice. With respect to matters for which I know conflicts exist, I would inform relevant personnel that I am recused from such matters. As future matters arise, if I become aware that a potential conflict exists, I would consult with DOJ ethics professionals to determine the appropriate action and will be guided by their determinations.

24. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged. "Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have devoted a significant amount of time mentoring young adults seeking advice about career paths, and volunteering my time to the following organizations:

Oakland McCullum Youth Court, CA

The Role Model Program

Board of Governors for the Northern California Association of Business Trial Lawyers

Northern District of California Ninth Circuit Lawyer Representative

Board of Directors of U.C. Hastings College of the Law

Adjunct Faculty of Lincoln Law School of San José (Trial Advocacy)

Attorneys of Color (Morrison & Foerster LLP)

Co-Chair, Diversity and Strategy Committee (Morrison & Foerster LLP)

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I have devoted a significant amount of time as an attorney and mentor for the following matters:

Guadalupe Amezcua, CDC W-43127, Parole Suitability

Terri Devereaux, CDC W-52194, Parole Suitability

Betty Jacobs, CDC W-37570, Parole Suitability

Linda Sue Rodrigues, CDC W-38150, Parole Suitability

Joan Starr, CDC W-37775, Parole Suitability

The League of Women Voters of Iowa, Intervenors

Mendez v. County of San Bernardino, et al.

Common Sense Media (video game violence watchdog group for parents)

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Tony West

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

***NOTE:** All amounts listed below are best approximations.

ASSETS		LIABILITIES	
Cash on hand and in banks	$40,000	Notes payable to banks-secured	$0
U.S. Government securities-add schedule	$0	Notes payable to banks-unsecured	$0
Listed securities Morrison & Foerster LLP Retirement Plan (Schwab 401(k))	$185,000	Notes payable to relatives	$0
Unlisted securities—add schedule	$0	Notes payable to others	$0
Accounts and notes receivable:		Accounts and bills due	$15,000
Due from relatives and friends	$0	Unpaid income tax	$0
Due from others	$0	Other unpaid income and interest	$0
Doubtful	$0	Real estate mortgages payable Mortgage balance on Primary Residence (200 Lakeside)	$370,000
Real estate owned Primary Residence: 200 Lakeside Dr. #403, Oakland, CA	$700,000	Chattel mortgages and other liens payable	$0
Real estate mortgages receivable	$0	Other debts-itemize:	
Autos and other personal property	$155,000	Outstanding Student Loans	$63,000
Cash value-life insurance	$400		
Other assets itemize:	$0		
		Total liabilities	$448,000
		Net Worth	$632,400
Total Assets	$1,080,400	Total liabilities and net worth	

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ASSETS		LIABILITIES	
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	$0	Are any assets pledged? (Add schedule)	$0
On leases or contracts 1-yr Apartment Lease; 7.5 mos Remaining (255 W 94th St, NY, NY)	$47,952	Are you defendant in any suits or legal actions?	No
Legal Claims	$0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	$40,000		
Other special debt	$0		

AFFIDAVIT

I, Derek Anthony West, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/23/09
(DATE)

(NAME)

State of California County of San Francisco
Subscribed and sworn to (or affirmed) Before me on this 23rd day of Feb. 2009 by Derek Anthony West personally Known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature

(Seal)

(NOTARY)

Commission # 1704604
Notary Public - California
San Francisco County
My Comm. Expires Nov 13, 2010

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SF278 (Rev. 07/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Form Approved
OMB No. 3209-0001

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status: (Check appropriate box)	Incumbent ☐	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate ☒	Termination Filer ☐	Termination Date (If Applicable) (Month, Day, Year)

	Last Name	First Name and Middle Initial
Reporting Individual's Name	WEST	DEREK ANTHONY
Position for Which Filing	Title of Position: Assistant Attorney General, Civil Division	Department or Agency (If Applicable): Department of Justice
Location of Present Office (or forwarding address)	Address (Number, Street, City, State, and ZIP Code): c/o Morrison & Foerster LLP, 425 Market Street, San Francisco, CA 94105	Telephone No. (Include Area Code): 415-225-0625
Position(s) Held with the Federal Government During the Preceding 12 Months (If Same as Above)	Title of Position(s) and Date(s) Held:	

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary Committee	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	[signature]	2-25-09
Other Review (If desired by agency)	Signature of Other Reviewer: [signature]	Date (Month, Day, Year): 2/25/09
Agency Ethics Official's Opinion: On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below)	Signature of Designated Agency Ethics Official/Reviewing Official: [signature]	Date (Month, Day, Year): 2-25-09
Office of Government Ethics Use Only	Signature: [signature]	Date (Month, Day, Year): 3/3/09

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if filing extension granted & indicate number of days: .....) ☐

(Check box if comments are continued on the reverse side) ☐

Fee for Late Filing

Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fee.

Reporting Periods

Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)--Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only: FEB 26 2009

Attach Additional Pages If Needed, But Do Not Exceed This Number Of Pages

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Form Designed in Microsoft Excel 2000

NSN 7540-01-070-8344

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SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: DEREK ANTHONY WEST

SCHEDULE A

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)											Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
															Type				Amount								
For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual account of any honoraria over $200 of your spouse). None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples: Central Airlines Common				X											X						X										
Examples: Doe Jones & Smith, Hometown, State		X																												Law Partnership Income $150,000	
Examples: Kempstone Equity Fund				X									X											X							
Examples: IRA: Heartland 500 Index Fund							X						X																		
1 Morrison & Foerster LLP Retirement Plan (Charles Schwab 401(k) account: Schwab Stable Value Inst'l Fund; self)				X									X						X												
2 Wells Fargo Personal Savings Account (Joint savings account with spouse; cash only)			X														X		X												
3 Morrison & Foerster, San Francisco, CA 2008 Received Income (self) 2008 Expected Income (self)		X																												Law Partnership 2008 Income $318,000.00	
4 American Civil Liberties Union, San Francisco, CA																														Spouse Salary Income	
5 Ford Foundation, New York, NY																														Spouse Salary Income	
6 Morrison & Foerster Supplemental Retirement Plan (Defined benefit plan; self)					X														X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 02/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: DEREK ANTHONY WEST

Page Number: 3

SCHEDULE A continued
(Use only if needed)

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)												Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)																
	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $ 5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	Amount: $201 - $1,000	Amount: $1,001 - $2,500	Amount: $2,501 - $5,000	Amount: $5,001 - $15,000	Amount: $15,001 - $50,000	Amount: $50,001 - $100,000	Amount: $100,001 - $1,000,000	Amount: Over $1,000,000*	Amount: $1,000,001 - $5,000,000	Amount: Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
None ☐																															
1 Citibank Money Market Savings Account (Cash only)		X																		X											
2 IRA: Vanguard 500 Index Fund (self)		X												X						X											
3 CA Savings Plus Program 401(K) Thrift Savings Plan (all underlying investments are below reporting threshold: self)			X																	X											
4 Morrison & Foerster LLP Capital Account (Filer will receive value of capital account upon resignation from firm)				X																X											
5 IRA: Fidelity Traditional IRA (100% Fidelity cash reserves: spouse)		X												X						X											
6 Ford Fndn 403(b)(7) Savings Plan (administered by Fidelity; spouse) -Fidelity Contrafund			X											X						X											
7 -Fidelity Intermediate Bond -Fidelity Inflation Protection Bond -Neuberger Berman Genesis-Trust Class		X X X												X X X						X X X											
8 Ford Fndn Retirement Plan (spouse) -CREF Stock Fund -TIAA Traditional Fund		X X												X						X X											
9 -CREF Growth Fund -TIAA Real Estate Fund -CREF Global Equities Fund		X X X												X X X						X X X											

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: DEREK ANTHONY WEST

SCHEDULE A continued

(Use only if needed)

Page Number: 4

Assets and Income (BLOCK A)	Valuation of Assets at close of reporting period (BLOCK B)											Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. (BLOCK C)														
															Type				Amount								
None ☐	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1 Morrison Foerster, San Francisco, CA 2009 Expected Income (self)				x																x												
2 ACLU Retirement Plan (administered by Lincoln Financial; spouse) -Fixed Fund (fixed annuity product)			x																	x												
3 -Delaware VIP Trend -American Funds International -American Funds Growth		x x x											x x x							x x x												
4 -Fidelity VIP Contrafund		x											x							x												
5 Policylink 401k Plan (administered by Paychex; spouse) -Blackrock Basic Value B		x											x							x												
6 -Blackrock Fundamental Growth B -Blackrock Global Allocation B -Blackrock Government Income Portfolio		x x x											x x x							x x x												
7 -Blackrock Total Return Fund B -Merrill Lynch Ready Assets Trust		x x											x x							x x												
8																																
9																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

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SF 278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name	SCHEDULE C	Page Number
DEREK ANTHONY WEST		5

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)													
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10 %	on demand					x						
1	Sallie Mae Trust - LSC/FL, PO Box 9500, Wilkes-Barre, PA 18773-9500	Parent PLUS Student Loan (disbursed 12/10/02, 12/4/03, 1/20/05, & 11/10/05; consolidated 6/28/06)	2002	6.125%	306 mos			x								
2																
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employee benefit plan (e.g. 401k, deferred compensation; (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Pursuant to partnership agreement, will receive lump sum payment of capital account two weeks after filer withdraws from firm	Morrison & Foerster, LLP, San Francisco, CA	1/04
2	Morrison & Foerster Retirement Plan (Schwab 401k plan): law firm will not make any contributions to plan after filer withdraws from firm; within 30 days of withdrawal, filer will rollover lump sum payment into a separate retirement account not affiliated	Morrison & Foerster, LLP, San Francisco, CA	1/04
3	with firm		
4	Morrison & Foerster Supplemental Retirement Plan: law firm will not make any contributions to plan after filer withdraws from	Morrison & Foerster, LLP, San Francisco, CA	1/04
5	firm; within 30 days of withdrawal, filer will rollover lump sum payment into a separate retirement account not affiliated with firm		
5	Pursuant to partnership agreement, filer will receive lump sum payment of unpaid 2008 partnership income (approx $3200) net of any applicable deductions, within two weeks of withdrawing from the firm	Morrison & Foerster, LLP, San Francisco, CA	1/04
6	Pursuant to partnership agreement, filer will receive lump sum payment of prorated 2009 partnership income (approx. $81,900) net of any applicable deductions, within two weeks of withdrawing from the firm	Morrison & Foerster, LLP, San Francisco, CA	2/09

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5 C.F.R Part 2634
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Reporting Individual's Name	SCHEDULE C	Page Number
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Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (x)											
						$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10 %	on demand					x						
1																
2																
3																
4																
5																

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employee benefit plan (e.g. 401k, deferred compensation; (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	Filer will continue in the CA Savings Plus Program 401(k) Thrift Savings Plan but no further contributions will be made.	Dated March 19, 1999	
2			
3			
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5 C.F.R Part 2634
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Reporting Individual's Name	SCHEDULE D	Page Number
DEREK ANTHONY WEST		7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	MORRISON & FOERSTER, LLP, San Francisco, CA 94105	Law Firm	Partner	11/01	Present
2	Northern California Association of Business Trial Lawyers	Professional Organization	Member, Board of Governors	2004	Present
3	Exec. Committee of the Bar Association of San Francisco, Litigation Secti	Professional Organization	Member	2003	2/09
4	U.S. Court of Appeals for the Ninth Circuit Judicial Conference	Non-profit Civic Organization	Northern District of California Lawyer Representative	2005	11/08
5	Board of Directors, UC Hastings College of Law	Law School (University of California)	Member	2005	12/08
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Applied Elastomerics, Inc., San Francisco, CA	Legal services
2	Philip Caroll, Phoenix, AZ	Legal services
3	Hynix Semiconductor, Inc., San Jose, CA	Legal Services
4	Grant Thornton LLP, Chicago, IL	Legal Services
5	Metta Fund, Corte Madera, CA	Legal Services
6	Platinum Advisors, Sacramento, CA	Legal Services

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Reporting Individual's Name	SCHEDULE D	Page Number
DEREK ANTHONY WEST		8

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None [x]

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None [ ]

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	Theodore Rosenberg, San Francisco, CA	Legal services
2	Washington Mutual, Seattle, WA	Legal services
3	W. Scott Harkonen, San Francisco, CA	Legal Services
4	Huron Consulting Group, Chicago, IL	Legal Services
5	Maher Kara, San Carlos, CA	Legal Services
6	Verizon Wireless, Washington, DC	Legal Services

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5 C.F.R Part 2634
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Reporting Individual's Name	SCHEDULE D	Page Number
DEREK ANTHONY WEST		9

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None [X]

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1					
2					
3					
4					
5					
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None [ ]

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Senator KOHL. Thank you, Mr. West.

I would also ask that statements of Senators Boxer and Feinstein in support of your candidacy be entered into the record.

Mr. WEST. Thank you, Mr. Chairman.

Senator KOHL. Now we will start with our questions. I would like to address Ms. Varney.

As I said in my opening statement, I was quite disappointed with the sharp cutback of antitrust enforcement at the Justice Department during the past 8 years. Many mergers among direct competitors in highly concentrated industries passed review without any modifications, often over the reported objections of career staff. And many anticompetitive practices by dominant firms went unchallenged.

While he was running for President, President Obama stated that the Bush administration had "the weakest record of antitrust enforcement of any administration in the last half century." The serious decline in antitrust enforcement has been very disturbing to many of us. When the Justice Department is absent from the antitrust playing field, then millions of consumers suffer.

Ms. Varney, what is your assessment of the antitrust record of the Justice Department during these past 8 years?

Ms. VARNEY. Thank you, Senator. Let me start by saying I, too, believe that the career staff at the Department of Justice is absolutely outstanding. And while each particular merger must turn on an analysis of its own facts, I was not privy to the in-depth investigations that would have been carried out in, for example, the Whirlpool-Maytag merger or the XM-Sirius merger. But clearly, from the outside, those looked like mergers in horizontal markets that one wonders why they were not challenged.

I can assure you that if I am confirmed to the Department of Justice Antitrust Division, the law will be vigorously enforced. Horizontal mergers will be thoroughly examined, and where they lead to impermissible consolidation and concentration, they will be blocked.

Senator KOHL. Ms. Varney, one of the very few industries to enjoy an exemption from antitrust law is the freight railroad industry. Because of this exemption, rail shippers have been victimized by the conduct of dominant railroads and have no antitrust remedies. Higher rail shipping costs are passed along to consumers, resulting in higher electricity bills, higher food prices, as well as higher prices for manufactured goods.

I have introduced a bill that will abolish this absolute antitrust exemption for railroads, and I am very pleased to say that our Committee just last week approved the bill by a 14–0 vote.

Do you agree that this antitrust exemption should be repealed so that the railroads are subject to the same antitrust laws as virtually every other industry in the economy?

Ms. VARNEY. Senator, as you know, antitrust generally disfavors blanket exemptions, and when you look back historically, certainly some exemptions were created for highly regulated industries. As those industries have become deregulated over the years, it clearly makes sense to examine the basis for their immunity. I think that your Committee drafted a terrific bill, and I understand that it was

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reported out 14–0, and I look forward to working with you and the Senate, if the bill is enacted, to take the next appropriate steps.

Senator KOHL. I am not sure if I heard an answer to my question.

Ms. VARNEY. Yes, Senator, I support your bill.

[Laughter.]

Senator KOHL. In 2007, we asked the Justice Department for a letter in support of this bill. We never received such a letter. Can we hope that you might be able to secure such a letter of support?

Ms. VARNEY. I will work closely with my colleagues at the Department and with the Attorney General in an attempt to provide you that support.

Senator KOHL. Thank you, so much.

Resale price maintenance. Ms. Varney, for nearly a century, it was a basic rule of antitrust law that a manufacturer could not set a minimum price for a retailer to sell a product. This rule allowed discounting to flourish and greatly enhance competition for dozens of consumer products, everything from electronics to clothes.

However, in 2007, in a 5–4 decision the Supreme Court in the *Legion* case overturned this rule and held that vertical price fixing was no longer banned in every case.

Ms. VARNEY. That is right.

Senator KOHL. I believe that this decision is very dangerous to consumers' ability to purchase products at discount prices and is harmful to retail competition. I have introduced legislation to overturn the *Legion* case and restore the ban on vertical price fixing.

Do you agree on the principle that manufacturers' setting of retail prices should be banned? Can we expect your Justice Department to support our legislation in the event that you are confirmed?

Ms. VARNEY. Senator, I, too, was quite surprised by the Supreme Court decision in *Legion*. As you mentioned, it was a 5–4 decision. And while the Court held that the resale price maintenance was no longer per se illegal, it certainly left the Division a lot of room to continue to prosecute resale price maintenance where it results in anticompetitive consequence. And I intend to continue that prosecution. I will work closely with the Department, again, in determining what we can do to help your legislation. But even before your legislation makes its way into law, I think there still is a fair amount of room that we do need to aggressively prosecute anticompetitive behavior.

Senator KOHL. Thank you.

Ms. Varney, the severe economic recession we are currently experiencing has put substantial pressures on many industries to consolidate. This is especially true in the banking sector where numerous mergers and acquisitions have occurred. Transactions oftentimes have been at least partially funded by the government money under the TARP program.

Last month, I wrote to Attorney General Holder and Treasury Secretary Geithner urging that proper heed be paid to antitrust principles and the effects on competition as the government considers consolidation in banking as well as other sectors. In a time of such economic difficulty, vigorous enforcement of antitrust is more essential than ever. Antitrust enforcement is vital to ensuring

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a vigorously competitive economy and to ensuring that consumers gain the benefits of low prices. There needs to be an advocate for antitrust policy in administration discussions regarding economic restructuring, and the best person for this role is you as the Assistant Attorney General for Antitrust.

What is your view of this issue, Ms. Varney? What will be your approach to mergers and acquisitions in the banking or other troubled industries using government-funded bailout dollars? And what will you do to assure that antitrust has a "place at the table" in this administration regarding economic restructuring?

Ms. VARNEY. Thank you, Senator. I think that the consolidation that you have talked about in the financial institutions is incredibly important, extremely timely. As you know, and as you and I have discussed, it is not clear to me that the standards that were established under the *Philadelphia Bank* case are terribly relevant when we are looking at incredibly large institutions and their potential merger. So I think it is time to take a fresh look at what standards we use to measure consolidation and concentration in the financial markets.

In order to do that, I will hope to have a seat at the table at the National Economic Council and other forums inside our government where these policies are considered so that the voice of competition can be clearly heard as we look at economic stabilization.

You know, Senator, I often wonder if antitrust has failed if we have allowed institutions to be created that are too big to fail.

Senator KOHL. Okay. That is a very good answer. I thank you so much.

Let me turn now to Senator Klobuchar—or Senator Coburn? I think you were here first. Go ahead.

Senator KLOBUCHAR. Well, thank you very much. I want to congratulate all three of you and your families. My thanks particularly goes out to your husband, Ms. Varney, Mr. Graham, for having to do those economic disclosure forms. My husband does the same thing. I would suggest one trick. What he does is he piles them up in the living room so I almost fall over them to show how long it takes to do them, and he usually keeps them out for about 2 weeks. You might want to consider that in the future.

[Laughter.]

I wanted to ask you some questions, Mr. Breuer, about the Criminal Division of the Justice Department. As you know, I was a prosecutor for 8 years and worked with a gem of an office in the U.S. Attorney's Office in Minnesota, and then sadly saw what happened when someone was put in charge who really did not have the skills to run it. Luckily, when Attorney General Mukasey came in, he put in someone else—Frank Magill—who has kind of at least gotten the office back on track. But it was really a disturbing thing that happened in our State.

And I have heard many times about the issues with morale in the Department because of the time during which Attorney General Gonzales served. Could you talk about what you are going to do to fix that?

Mr. BREUER. Absolutely, Senator. Senator, as the President has said, as the Attorney General has said, politics can play absolutely no role in the choice of our Assistant U.S. Attorneys or those in the

Criminal Division. And what we are going to ensure, if I am fortunate enough to be confirmed, is that the career people in the U.S. Attorneys' Offices and in the Department of Justice feel empowered, they will pursue cases purely based on the facts, and politics simply will not play a role.

To the degree that morale is down, I think that the Attorney General, I, and others will try to meet as closely as we can with U.S. Attorneys and Assistant U.S. Attorneys and with the staff at Main Justice, and we will ensure that we empower the career people and they understand that the only thing we are interested in is pursuing our criminal laws and letting the facts lead us where they go.

Senator KLOBUCHAR. And, Mr. Breuer, do you see with these difficult economic times we have seen some huge criminal white-collar cases coming up, from the Madoff case to a number of others across the country, do you see an increase in white-collar crime? That would be my first question. And then my second question will be: If that is happening of that magnitude, how are you going to balance the demands on some of the street crime demands, the gun cases that the U.S. Attorneys' Offices have handled?

Mr. BREUER. Well, Senator, you, of course, raise a very, very important issue. I do think it must be a priority that we pursue financial crimes, and those who have been involved in criminal conduct and have taken advantage of the system and, in part, have led to the plight we have now must understand that they are going to be held accountable. And so financial crimes is absolutely going to be a priority of the Criminal Division and the U.S. Attorneys' Offices.

But, similarly, Senator, we are going to have to go after violent crime and street crime. We are going to have to do that as a strategic partner and leader with local and State law enforcement, district attorneys, like the one you yourself led. And we may come back at times if we think we do not have enough resources, Senator, and I am hopeful we can have a very meaningful conversation with this Committee, with you and all of your staffs. But it cannot be a zero sum game, Senator. We are going to have to go after both, and we are going to have to go after both aggressively.

Senator KLOBUCHAR. And one of my biggest concerns is that I just—we had a hearing—Senator Kohl mentioned we had a hearing about the oversight of TARP funds and other things and the work that needs to be done. And I just get concerned with shrinking local resources—and we helped some with the economic recovery bill with the Byrne grants—but with the shrinking local resources that things are going to be shoved out. And I lived through that somewhat after 9/11 when the U.S. Attorneys were understandably focused on terrorism, and many of the white-collar cases came to the local attorneys' offices.

One of the things that I most remember is the difficulty on the local level of handling, say, complex computer cases. We were always promised some kind of regional computer centers where our cops would be able to learn how, when they got to a scene, what to do with these cases, and it never really came through.

So I hope you look at that, if you are going to be expecting some of the local prosecutors' offices to handle these cases, that they be

given or be allowed to use some of the tools that the Justice Department has.

Mr. BREUER. Absolutely, Senator. I think the programs you are referring to, whether it is Byrne, JAG, or the COPS program, are essential. But, for instance, the Computer Crimes Section in the Criminal Division is both a litigation section and must be a section that is used as a resource to local and State prosecutors, and Federal, and I will endeavor very much to make that happen.

Senator KLOBUCHAR. Okay. Thank you.

Mr. BREUER. Thank you, Senator.

Senator KLOBUCHAR. Mr. West, whistleblowers, and this could go to both you and Mr. Breuer, but when we had our previous hearing, we talked about that, about the mess-up in the Madoff case and how a whistleblower had come forward and the information was not taken very seriously. Could you talk about how you are going to handle that in the civil context?

Mr. WEST. Yes, Senator. You are quite right that this is one of the highest priorities of the Civil Division, and we—or I should say that the Department has been given some good tools in terms of the False Claims Act and some other tools to make sure that we have the ability to go after financial fraud. The Department, I understand, also has an increase requested in this next fiscal year budget particularly for financial fraud enforcement. And so, if confirmed, Senator, I can assure you that it would be my intention to ensure that we are spending our resources wisely and effectively to do all that we can to use these tools to the fullest extent possible to root out fraud and to recover taxpayer dollars which might be lost through misuse or fraud.

Senator KLOBUCHAR. Thank you very much.

And last, Ms. Varney, I also serve on the Commerce Committee—I am the only Senator to serve on both committees—and I am very focused on some of these antitrust commerce issues. Senator Kohl discussed the antitrust bill that we passed out. We are very proud of that on this Committee, with the railroads, and as you look at the letter that you may be writing to Senator Kohl on this, I just want to remind you that in 2004 the Department of Justice said that one practice that would violate the antitrust laws that the railroads do, and that is that they lease track to a short-line railroad under the STB rules. A major railroad that leases track to a short-line railroad can require the short line only to do business with that railroad, and the Justice Department said back then that that would violate the antitrust laws. And then there are huge problems in my State with when you have competition along the route, they make you price the route to the very end even if the last 10, 20 miles do not have competition. And it has been an outrageous problem for all kinds of industries and small businesses in rural areas in our State.

A second thing just to take note of for the future: I know that you said FTC Commissioner Leibowitz is there—somewhere back there. There he is. And I just wanted to call to your attention a case that the FTC has brought that we are very proud just came out of some facts in our State where a heart drug that saves babies' lives, the price was increased 18 times. And it came to our attention from doctors at Minneapolis Children's Hospital when one

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drug company sold the rights to the drug to another drug company that happened to have the rights to the competing drug. And we brought it to the attention of the FTC and very quickly, literally in a few months, they brought a major antitrust case that has been brought in the jurisdiction of Minnesota.

And so in talking to our doctors in Minnesota, just to highlight this for you, there is a lot of concern of some of these potential antitrust violations with pharmaceutical companies. If you want to briefly comment, I would appreciate it.

Ms. VARNEY. Thank you, Senator. On the railroad issue, I look forward to working with you and your staff on those particular issues if am confirmed.

On the pharmaceutical issues, as you know, the Federal Trade Commission does have jurisdiction over that, and I know that Chairman Leibowitz will do a terrific job, and he can count on the support of the Department of Justice as he goes forward and pursues those cases.

Senator KLOBUCHAR. Thank you very much.

Senator KOHL. Thank you, Senator Klobuchar.

Senator Coburn.

Senator COBURN. Thank you, Mr. Chairman.

First of all, let me apologize to each of you that I did not get to spend time with you in my office. As you can imagine, these are busy times, and I would extend my apology to you.

I want to identify my remarks with those of Senator Kohl. I have been very disappointed over the past 8 years in the antitrust action of the Bush administration. I have also had some problems with the Federal Trade Commission as well, and so, Ms. Varney, when you talk about dealing with the FTC, how do you plan to work out those issues so that we have a coordinated, nonduplicative effort to accomplish true, free competition in this country? How do you not step on one another? And how do we make sure that we are prosecuting what we should and influencing what we should?

Ms. VARNEY. Thank you, Senator. I think I bring two unique characteristics to the job to be able to do that. One is I was a former Federal Trade Commissioner. I am deeply committed to the Commission, that agency.

Senator COBURN. That will help.

Ms. VARNEY. And I am very close friends and a big admirer of the current Chairman, Jon Leibowitz, and he and I have had a chance to visit, and I think we are both committed to ensuring that there are no more jurisdictional squabbles or policy differences. These are things that are too important in our country to——

Senator COBURN. The American people lose when that happens.

Ms. VARNEY. I agree with you, Senator.

Senator COBURN. They all lose.

Ms. VARNEY. And I think the Chairman does also.

Senator COBURN. Let me just have one other question. What does it mean to "rebalance the legal and economic theories of antitrust law"? What do you mean by that? You said that in your testimony; you said it in your written testimony. I am not a lawyer so I have trouble with that. Would you explain to me what that literally means?

Ms. VARNEY. Are you an economist?

Senator COBURN. A former accountant, production manager, and a doctor, and a couple other things.

Ms. VARNEY. I know you are.

Senator COBURN. Some people say a politician, but not a very good one.

[Laughter.]

Ms. VARNEY. I just do not like to have conversations with economists because they are very good.

I think that what we have seen in the last 8 years is that a lot of economic theory has been used to inhibit prosecuting mergers and other activity that may be impermissible. And when I am talking about rebalancing economic theory, I am talking about bringing new rigor to the economic analysis that underpins any prosecution.

As I said, I think what we have seen, in the sort of shorthand, in the Chicago School analysis is a real reluctance for government to go forward and attempt to block mergers in the marketplace, and that is really what I mean when I talk about rebalancing economic theory.

Senator COBURN. Okay. Thank you.

On one other note, just an aside to get a commitment—and I have raised this with the FTC, with no response. The ophthalmic industry in this country today is controlled 60 percent by one company out of France. Nobody wants to do anything about it. People are paying 20 or 30 percent more than they should for products, and yet we have had no action on it whatsoever. So I would appreciate you looking into that, if you would, after you are confirmed.

This is a question really for Mr. Breuer and Mr. West both. One of the fastest ways to help President Obama with the budget is to go after fraud in Medicare and Medicaid. It is about $120 billion a year. And it would seem to me, since it is covered on both the civil and criminal, that almost a task force is needed because it is so egregious. And we are struggling with health care for Americans, but one of the reasons we is because there is such a large amount of fraud in the government-run programs.

So I would hope that I would get a commitment from each of you that you would look at that, that that would be a focus of what you do and put that on there, because if you cut it in half, that is tremendous in terms of how we will leverage our ability to give health care to other Americans, if, in fact, you just cut that in half.

Mr. BREUER. Senator, I could not agree more. It absolutely will be a priority and has to be. And should Mr. West and I both be confirmed, we have already spoken about coordinating and working very carefully in a number of areas, and this would seem to be one of the areas that we would work closely together.

Senator COBURN. Mr. West.

Mr. WEST. Absolutely, I would agree, Senator, and I agree with your remarks. And I think it is one of the areas that, if confirmed, I look forward to talking to some of the career professionals in the Department who are working on these very cases to try to do exactly what you suggest.

Senator COBURN. The reason I am interested in that is aggressive prosecution of that changes behavior. So you do not have to find it all. All you have to do is scare them, and that will change a significant amount of behavior.

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Mr. Breuer, one other question. I have read your resume and read your testimony and read the history. You were a prosecutor for 4 years at the district attorney's office in Manhattan. How many people in your range of experience have you had under you to manage in the past?

Mr. BREUER. Senator, I have had smaller groups to manage. I have been the vice chair of one of America's leading pro bono groups, and I am proud to say our firm's pro bono group has always been rated one of the top in the Nation.

I, of course, have been the co-chair of leading one of the Nation's leading white-collar investigations practices. And I have led teams such as when I was in the White House.

Senator, I have also been a teacher and a coach, and I think I would bring my life's experience to managing. I think I am a good delegator, but I would like to think I am a good leader by example. And so I am the first to acknowledge, Senator, I have not led something like the Civil Division, but I think my life's work puts me in good stead.

Senator COBURN. But it is going to be a big challenge, there is no question.

Mr. BREUER. It will, and a great honor, and I will give it all of my energies.

Senator COBURN. All right. Thank you very much.

Thank you, Mr. Chairman.

Senator KOHL. Thank you, Senator Coburn.

Senator Feingold.

Senator FEINGOLD. I thank the Chair, and I want to congratulate all the nominees and wish you well. I have some questions for Ms. Varney.

Ms. Varney, the outgoing administration has done serious damage to competition in many industries through a lack of enforcement and prosecutions for antitrust violations, lax merger review, and also generally favoring powerful interests relative to consumers and small entities. I want to raise some issues with you in the realm of agriculture, and especially dairy, but some of these concerns clearly have broader implications as well.

In September 2008, the Department issued a troubling report on single-firm monopoly conduct. The majority of the FTC immediately issued a statement calling the report "a blueprint for radically weakened enforcement of Section 2 of the Sherman Act." The FTC Commissioners described the report as being "chiefly concerned with firms that enjoy monopoly or near-monopoly power and prescribes a legal regime that places these firms' interests ahead of the interests of consumers. At almost every turn, the Department would place a thumb on the scale in favor of firms with monopoly or near-monopoly power and against equally significant stakeholders."

The report and the FTC's reaction confirm my concern that misplaced priorities have been influencing Antitrust Division decisions for some time. Will you repudiate the previous DOJ report? What other repairs are necessary to correct misrepresentations of the antitrust statutes that may not have been as formal? And, also, will you take a fresh look at cases that were either closed with no action or that have been left open indefinitely?

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Ms. VARNEY. Senator, one of the first things that I will do, if I am confirmed, is sit down with my colleagues at the Department of Justice and the Federal Trade Commission to go over that Section 2 report. I have an open mind about whether or not it is amended or withdrawn or reworked. I agree that its conclusions are not appropriate. I do not support the conclusions in the Section 2 report, and I would like a little bit of time after I get there to see what our first moves will be on that, and I would like to consult with the Federal Trade Commission on that as well.

Senator FEINGOLD. Okay. Since I was first elected to the U.S. Senate in 1992, there has been significant consolidation of practically the entire agricultural industry. According to the National Farmers Unions periodic reports on the concentration of agricultural markets in that time period, beef packers, pork packers, broilers, turkeys, milling, soybean crushing, dairy processing, dairy cooperatives, and the U.S. food retailing have all seen significant increases in market share among the largest firms. Moreover, farmers are not only threatened by monopsony as their processors consolidate, but similar concentration is also occurring in their suppliers, such as seed companies. Congress has had more hearings regarding antitrust concerns in agriculture than any other area, but the DOJ Antitrust Division has brought no enforcement actions against anticompetitive practices and no criminal enforcement actions.

Before last year's challenge of the JBS-National merger, it had been 10 years since the last challenge of a merger between agricultural processors. What will you do, if confirmed, to change that record?

Ms. VARNEY. Senator, as you and I have had a chance to visit on, agriculture will be a priority of mine. One of my first jobs ever was working for the farm workers, and I understand the relationship between the labor that goes into creating food and the chain through which it is brought to the American consumer's table.

Growing up in a large family of six children, I understand exactly what it means to make your food dollars stretch to feed growing families. And my family in Ireland—my grandparents came from Ireland—were all farmers there. So I think I cover all the chain.

I do intend to go with the Department of Justice through the activity that they have undertaken and not undertaken in the agricultural sector in the last 8 years and reinvigorate the reviews that we need to bring in all of the sectors of the agriculture industry that you have outlined.

Senator FEINGOLD. I think some of the mergers in the agriculture industry that were approved over the past 8 years have caused significant competitive harm, but that is just my opinion.

Are you open to conducting retrospective studies of the impacts of approved mergers and monitoring any of the recently approved mergers, such as the Monsanto-Delta Pine merger?

Ms. VARNEY. Absolutely.

Senator FEINGOLD. Okay. Thank you. My understanding is that when the Dean-Suiza merger was considered by the DOJ, the companies were allowed to create a private agreement and not a consent decree. Professor Carstensen described in his earlier testimony

before the Committee last year that the firms quickly found a way around this private agreement, and without a consent decree, it was difficult to prevent.

Do you plan on seeking formal consent decrees instead of relying on gentlemen's agreements, if confirmed?

Ms. VARNEY. Well, let me start with the premise, Senator, if a merger is anticompetitive, I intend to block it. If a merger has an anticompetitive aspect that can be remedied, it will, of course, follow the procedures outlined in the Tunney Act so that we do create a consent, that the consent goes before the courts, and that the public has a chance to comment on that before it becomes final.

Senator FEINGOLD. Dairy farmers have recently seen the price that they receive drop by 40 to 50 percent, as we have talked about this morning. At the same time, the price of milk and other dairy products at the retail level is not exhibiting such movement. A previous GAO report showed that these retail prices were "sticky" and did not transmit price decreases to consumers even though the wholesale price increases were transmitted.

Besides being unfair to farmers and consumers, this problem also means that the supply and demand signals are not sent. In this case, consumers are never signaled to increase dairy consumption by lower prices, and the surpluses at the wholesale level and low farm prices last longer than they should.

Is there anything the Antitrust Division can do in this case?

Ms. VARNEY. I think there is, Senator. I think that, as you point out, the economic indicators do not seem to align here, and I think a pretty thorough undertaking, trying to understand what is going on in that industry and taking action as appropriate is called for.

Senator FEINGOLD. Finally, several antitrust experts, including David Balto from the Center for American Progress and, again, Professor Carstensen from UW Law School, have called for a task force on competition issues that includes representatives of the USDA, DOJ, and FTC. During Senate consideration of the farm bill, I proposed an amendment that would have encouraged similar coordination. These experts have suggested that the task force should take evidence to hold hearings along with determining the full scope of the powers of the combined agencies under both DOJ authority and the USDA statutes to prevent price manipulation, refusals to deal on equal terms, and exclusive buying arrangements.

Do you plan to reach out to other agencies with related enforcement powers, either formally or informally? And is this a possible expanded role for the so-called Special Counsel for Agriculture?

Ms. VARNEY. Absolutely, Senator. If I am confirmed, when I get to DOJ, I really do want to understand what the Special Counsel's role is, what they have been doing, and what they can do. And as we have had a chance to talk about it, I think it is very important to reach across to other members of the government who have concurrent jurisdiction and interest and figure out a coordinated approach forward. So I do intend to do that.

Senator FEINGOLD. Thank you.

Thank you, Mr. Chairman.

Senator KOHL. Thank you very much, Senator Feingold.

We have with us the Ranking Member, Senator Arlen Specter. Senator Specter.

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Senator SPECTER. Thank you, Mr. Chairman. Thank you for waiting until I was almost seated before calling on me.

[Laughter.]

Welcome to the Judiciary Committee, nominees. You have very important responsibilities ahead of you, if confirmed, and the paucity of members is not a reflection on the importance of your jobs but on the very heavy workloads here, with many, many obligations. At the moment, the omnibus appropriations bill is on the floor, and there are constituents—I have 12 million Pennsylvanians poised on the Mason-Dixon line ready to come to Washington at any given moment, and other Senators have similar responsibilities. So do not think that there is any lack of interest in what you are about to do.

Mr. Breuer, you are the nominee for Assistant Attorney General in the Criminal Division, a very important role. The extent of white-collar crime is staggering in America today, which goes largely undetected and, when prosecuted and when convicted, too often in my opinion results in fines, which turn out to be a license to do business.

I saw a note in the paper recently where Siemens Corporation was fined $1.7 billion, which looks like a lot of money on the surface but, when contrasted with an $87 billion figure which was in the story, boils down to a license to do business.

We see some really phenomenal business practices being disclosed: Major insurance companies concluding that there be no claims and they have no funds or reserves to pay insurance claims; representations of value on corporate balance sheets which are not present, are fraudulent; a whole wave of conduct which has engulfed the United States and the world in tremendous economic problems.

Can we have your assurances that, if you are confirmed, there will be a really tough line on examination of white-collar crimes and firm recommendation for jail sentences as a deterrent?

Mr. BREUER. Absolutely, Senator. Seeking out and prosecuting financial crime will absolutely be a priority, should I be fortunate enough to be confirmed. And I could not agree with you more, Senator, that in doing that, we have to follow the facts. Those who have acted criminally and those who have taken advantage and done some of the things that have brought us to the situation we are in now must realize that when you break the law, you will be held to account. And, Senator, when appropriate, we will absolutely aggressively seek not simply financial penalties but jail time as well.

We will let the facts go where they are, Senator. We will aggressively prosecute them, and financial crime will be a very large priority.

Senator SPECTER. Mr. Breuer, how long were you in the Manhattan district attorney's office?

Mr. BREUER. Senator, I was fortunate enough to start my career there after graduating from Columbia Law School. As a New Yorker, I went there from 1985 to 1989. And since then, of course, Senator, I have——

Senator SPECTER. How many jury trials did you have there?

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Mr. BREUER. Senator, I probably had roughly 20 jury trials while I was—15 to 20, closer to 20, I think, when I was in the Manhattan D.A.'s office.

Senator SPECTER. What was the most important case you tried?

Mr. BREUER. Well, I have tried a number of cases, Senator. In private practice, when the courts have asked, I have tried murder conspiracy cases. I have litigated some large False Claims Act cases. In the D.A.'s office, Senator, as a relatively young prosecutor, I prosecuted and tried a murder conspiracy case. I did domestic violence cases.

Senator SPECTER. I do not want to interrupt you, but I do not have a whole lot of time. My briefing materials says you are probably best known for your representation of President Clinton during the impeachment trials. Why didn't your client appear during the course of the trial?

Mr. BREUER. Senator, I was——

Senator SPECTER. It is not funny, Ms. Vancey. It is a serious question.

Mr. BREUER. Senator, I was very privileged to be one of the lawyers who——

Senator SPECTER. Varney, rather. Pardon me. I had my glasses tilted.

Go ahead.

Mr. BREUER. Senator, I was very privileged to be one of the lawyers to represent the President of the United States, and, of course, in doing that, both the White House Counsel and the individual lawyers together worked——

Senator SPECTER. Are you coming to the answer?

Mr. BREUER. Well, Senator, as you can imagine, the answer to why the President did not come testify was given the way the procedures worked at that time, a decision was made in conjunction with the Senate and in conjunction with the managers——

Senator SPECTER. You thought it would be wiser not to have him there?

Mr. BREUER. Well, Senator, obviously I am not going to speak about internal discussions, but I think the fact——

Senator SPECTER. I was not asking about internal discussions.

Mr. BREUER. Senator, I would like to think that overall history reflects that the Senate impeachment hearing and trial was really a great testament to the brilliance of our Founders, and I think those, Senator, who worked on that believed that an appropriate and right outcome came and that the procedure worked.

Senator SPECTER. Do you remember my question?

Mr. BREUER. I do, Senator, and——

Senator SPECTER. What was my question?

Mr. BREUER. Senator, your question was: Why did the President not appear?

Senator SPECTER. Yes. Why?

Mr. BREUER. And, Senator, I cannot give you a more specific answer than I am right now.

Senator SPECTER. Well, can you give me a non-specific answer?

Mr. BREUER. Well, I think in considering the best representation of the President, those who were involved in that decision, Senator,

candidly, I don't recall that I was one of those people. Presumably——

Senator SPECTER. It was not up to you?

Mr. BREUER. It was not up to me, Senator.

Senator SPECTER. Well, that is a really good answer. Why didn't you start there?

Mr. BREUER. Senator, if I could start over, I will give you that one.

[Laughter.]

Senator SPECTER. I will give you another aspect of that. Was there any consideration that, if called, he would take the privilege against self-incrimination? I am just giving you another chance because you wanted another question.

Mr. BREUER. Senator, obviously, I was not involved in that decision. Obviously, I am—as I know you are, Senator—a strong believer in that tenet and in that principle.

Senator SPECTER. Ms. Varney, the Antitrust Division is really a tremendously important position, and there are a lot of questions that I have for you. We will submit some in writing. I would like to ask one this afternoon, and that is on the subject of the National Football League. They have an antitrust exemption from 1961 legislation, but it does not cover cable or satellite. They have a monopoly on the teams, on the games. They have their own channel. They have the Thursday and Saturday night specials. A lot of Eagles and Steelers fans are excluded who watch cable television.

Will you commit to take a close look at what they are doing to see if there is an antitrust violation?

Ms. VARNEY. Yes, Senator. Absolutely I will.

Senator SPECTER. Okay. Well, that is a good answer. I will not pursue it farther.

I will note that there is a Third Circuit decision which suggests that there is an antitrust violation, enormous interest in what goes on there, and enormous concern about moving to pay television on all the big sporting events. And there are a great many issues which will come where we will have a chance to talk further.

Mr. West, what do you think about the Supreme Court decision yesterday on alignments of voting districts?

Mr. WEST. Well, Senator, I would—as you know, civil rights decisions are not really within the jurisdiction of the Civil Division, but I will tell you that I thought it was interesting. It is a close vote, 5–4. And I think it does give some guidance. A clear 50-percent rule now exists that courts and other litigators can follow.

I would hesitate to comment on it any further because I do note that the Department has a case which is pending which may be implicated by some of the discussion in that case. It is——

Senator SPECTER. Let me move to another subject so I do not abuse the red light too much here. What plans, if any, do you have for improving the operation of the Civil Division?

Mr. WEST. Well, Senator, I appreciate that question. I think it begins——

Senator SPECTER. I have noticed that virtually all the answers this time begin with, "Well, Senator, I appreciate the question." Is that part of the murder boards?

Mr. WEST. No. I actually appreciate this question.

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[Laughter.]

Senator SPECTER. Could it both be part of the murder boards and really appreciating the question?

Mr. WEST. It could be both, Senator, but I am candid with you, because the Civil Division, as you know, Senator, is one of the largest divisions in the Department of Justice, and the work there is very important. And I think it begins by respecting the judgments and opinions of the Civil Division career employees who are there who work very hard at their jobs.

If I am fortunate enough to be confirmed, that will be the standard that I adhere to, and I think talking with them, making sure I am consulting with the client agents, the priorities that they have and others in the Department of Justice, my colleagues, the Attorney General, that will be the general approach I will take to managing that Division.

Senator SPECTER. Just one final question for you, Mr. Breuer. We are deeply involved in health care now, looking for a way to pay for health care costs. And there is reportedly a tremendous amount of fraud in Medicaid and Medicare. I would like your commitment that you will make that a priority and, as I questioned you on white-collar crime generally, look toward criminal sanctions. Deterrence is not realistic if you are dealing with a domestic dispute or homicide or manslaughter—involuntary manslaughter, voluntary manslaughter—but a white-collar crime, it is. May we have your commitment that you will make that a high priority?

Mr. BREUER. Senator, you do have that commitment.

Senator SPECTER. And on government contracting as well, really in the entire civil field, to look forward for criminals sanctions as a deterrent to try to stop conduct of that sort.

Mr. BREUER. Senator, I agree. I think criminal sanctions are a vital part and are essential for the requisite deterrence that is needed.

Senator SPECTER. Mr. Chairman, thank you for presiding and for allowing me a little extra time here today. I did that for you once when I was Chairman.

Senator KOHL. I think you have done an excellent job, as you always do, Mr. Specter.

Senator SPECTER. Let me conclude by saying congratulations to you. You really have very outstanding records. Nice to see young lawyers with good records academically.

The only final question I have for all three of you is: Why isn't there a Yale Law grad in the group?

[Laughter.]

Thank you, Mr. Chairman.

Senator KOHL. Thank you, Senator Specter.

Now we turn to Senator Ben Cardin.

Senator CARDIN. Thank you, Mr. Chairman. I also want to thank all of you for being willing to serve your country, and I particularly want to thank your families for the sacrifices that they have to make in order for you to be able to do what you want to do and help our country. So we thank you for that.

I do have to follow up with Senator Specter in regards to the Ravens fans and the Redskins fans. I understand the issues with the NFL and with the antitrust laws, Ms. Varney, but I do think

the fact that they operate a station and use that for their own benefit is something that needs to be looked at, and I would urge you to follow Senator Specter's request and keep us informed in regards to that matter.

Mr. Breuer, I want to talk a little bit about the disparities within our criminal justice system. When we take a look at the incarceration rates at the national level, Federal level, and State courts, we find a major disparity based upon race. And when we look at some of our criminal statute, we look at the crack/powder cocaine issue, and we see a disparity that cannot be justified with the demographics of those who are tried and convicted and sentencing based upon race.

So I just want to get your commitment to make the issue of fairness within our criminal justice system, one in which the people of the Nation feel that their laws are being enforced fairly, a high priority if you are confirmed to this position.

Mr. BREUER. Senator, you have that. If our criminal justice system means anything, we must ensure that it is fair and impartial and that it is not unfair to certain segments of the population.

Of course, your leadership and others' on the issues such as the crack cocaine disparity is clearly the kind of issue that needs a very, very hard loOkay. You have that commitment, Senator.

Senator CARDIN. There are things that we can do as far as the statutes are concerned, and we look forward to your recommendations in that regard. But there are also things that you can do directly through the management within the Department of Justice as well as working with our State prosecutors. And I would just urge you to take a very active role in that regard, and I thank you for your response.

We do have a justice integrity bill which Senator Specter and I have filed that will allow for ten pilot programs to work within each of the U.S. Attorneys to try to deal with ways in which we can have more community confidence that ethnic considerations are not part of decisions as to whether to prosecute or not or the type of sentencing that is recommended.

During the questioning of Attorney General Holder, we talked about that, and he actually had a model program when he was U.S. Attorney and favored that. I bring that to your attention because we are going to need your cooperation. I hope that legislation will move forward, but working with you to make sure that it is implemented in a way that we can get the best results in our community in support of what we are trying to do.

Mr. BREUER. Absolutely, Senator.

Senator CARDIN. Thank you.

Now, one other thing about your background that impressed me, and that is pro bono. I am going to ask Mr. West this question since it falls more within the Civil Division. We have been negligent over the last 20 years or so and falling down in providing support for legal services in America. We have not made much progress, and many Americans are denied access to our legal system because they cannot afford an attorney. And the legal service programs have been very much strapped.

I really do think leadership is needed at the national level. We are going to try to take up a legal services reauthorization bill dur-

ing this Congress. We may or may not be successful. But it seems to me, as the No. 1 civil attorney in our country, if you are confirmed, that you can play a very important role in getting this message out.

So I want to hear from you your commitment to the integrity of our system, which includes that every American has access to a civil legal system.

Mr. WEST. Well, Senator, you have my commitment on that, and it would be an honor because I am fortunate to come from a law firm and a tradition that reveres pro bono service, thinks it is important not only to the individuals that we provide services to, but to the profession. And that is something that I look forward to not only, if confirmed, working with the Department attorneys on, but working with you and others who have an interest in this area. I think it is very, very important to the profession, the legal profession.

Senator CARDIN. Thank you. I appreciate that.

I wish you all good luck. You are signing up for, I think, an extremely important role in our justice system, and once again, I thank you all for being willing to serve your country.

Thank you, Mr. Chairman.

Senator KOHL. Thank you very much, Senator Cardin.

One additional question for you, Ms. Varney. I believe that one of the best ways to contain health care costs and bring skyrocketing drug prices under control is the competition provided by generic drugs. In recent years, brand-name drug companies have paid millions of dollars to generic drug companies to settle patent cases in exchange for the generic drug company's agreement to keep competing generic drugs off the market.

I have introduced legislation to make this practice illegal. It is the Federal Trade Commission that is responsible for policing competition in the prescription drug market. But the Justice Department appeared to go out of its way and hinder the FTC in this regard. Two recent court of appeals decisions have prevented the FTC from bringing legal actions to challenge these anticompetitive, anticonsumer patent settlements.

When the FTC sought Supreme Court review of one of these lower court decisions in 2006, the Justice Department filed its own brief that opposed the FTC and argued that Supreme Court review was not warranted. I was disappointed that the Justice Department essentially lined up on the side of the parties making these deals, and in so doing opposed the FTC position.

Ms. Varney, will you commit to work to change the Justice Department's position on these reverse payment cases?

Ms. VARNEY. Yes, Senator, I do commit to work with the Department of Justice to align the Federal Trade Commission and the DOJ on the reverse payment issue. And if the courts continue to not reach the result that you and your Committee think is appropriate, then legislation may be necessary.

Senator KOHL. So you are supportive——

Ms. VARNEY. Yes, Senator.

Senator KOHL [continued]. Of being in opposition to these reverse payments.

Ms. VARNEY. Yes, Senator, I am.

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Senator KOHL. All right. One other question, and that is on something that is called "the Charleston newspaper question." In 2007, in one of the very rare challenges to a merger or acquisition undertaken by the Justice Department in the last administration, the Department filed suit against the publishers of the Charleston Gazette, in Charleston, West Virginia. This lawsuit alleged that the publishers of the Charleston Gazette violated antitrust law when it sought in 2004 to acquire full ownership of Charleston Newspapers, the company that publishes both the Gazette and the Charleston Daily Mail.

Allegations have been raised that this case was improperly motivated by political considerations. The Charleston Gazette was a major critic of the Bush administration on its editorial pages. Critics of the case are puzzled by the basis for bringing the lawsuit, noting that both newspapers were already under common ownership prior to the 2004 buyout.

You are not yet in office, I understand, at the Justice Department and, thus, are not privy to all the facts in this case. However, will you pledge to re-examine this case to ensure that it was not brought for any political motives and to ensure that it is based on sound applications of antitrust law?

Ms. VARNEY. Absolutely, Senator. If confirmed, I will review the case.

Senator KOHL. Okay. Thank you so much to one and all. We will keep the record open for just a bit to be sure that all letters and questions to this Committee have been received. And I would like to thank all of you for being here today. You have done a great job, and we wish you well. Thank you so much.

[Whereupon, at 3:48 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

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QUESTIONS AND ANSWERS
Questions for Lanny Breuer from Senator Hatch

Adam Walsh Act

I have long been an advocate of protecting children from sexual exploitation and abuse. I was a sponsor of the Adam Walsh Act in 2006 which established the SMART office at the Department of Justice and gave states until July 27, 2009 to implement a standardized sex offender registry. Unfortunately, Attorney General Holder's budget for fiscal year 2010 allocated no money for the SMART Office or implementation of the Adam Walsh Act. Please explain how, especially without federal funds, you will seek state compliance with the Adam Walsh Act?

Protecting children from exploitation and abuse is critically important. If confirmed, under my leadership the Child Exploitation and Obscenity Section in the Criminal Division will pursue a vigorous enforcement program to address the sexual exploitation of children. Since I am not at the Department, I have not been part of any budget discussions, including the development of the 2010 budget request for the SMART Office. Because of that I cannot speak directly to your question about the budget request for that Office. However, I assure you that if I am confirmed, I will ask the Child Exploitation and Obscenity Section to brief me on the Department's child exploitation and enforcement program, including on ways in which the Department can assist states in complying with the Adam Walsh Act. If additional resources are needed, I will not hesitate to advocate for such resources.

Southern Border Crime

Violent crime has exploded on the Mexican side of our southern border. It has not yet spilled over to the U.S., but that development would require a response from the Department of Justice. Five major Mexican drug cartels have been responsible for more than 6800 homicides in the past year and are the major source for methamphetamine coming into the United States. An estimated $38 billion flows back into Mexico from drug trafficking proceeds and drug lords use it to fund armies of mercenaries and to bribe public officials. The Bureau of Alcohol, Tobacco, Firearms, and Explosives estimates that 90% of the weapons used to arm these narco-terrorist organizations originate from the U.S. side of the border. What strategies will you issue to U.S. Attorneys whose districts are located in states that border Mexico?

I share your concern about the explosion of violence just south of our border. The crime problem along the border is acute and complex, involving gun trafficking, drug running, alien smuggling, and much more. If confirmed, I will work closely with the Deputy Attorney General, the Southwest Border U.S. Attorneys, the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the Drug Enforcement Administration, and the law enforcement agencies of the Homeland Security Department to help ensure that there is an effective and coordinated strategy to attack and prevent crime along the Southwest Border.

Specifically, our law enforcement agencies must focus on investigating and prosecuting illegal firearms trafficking, including straw purchases, which are reportedly a significant source of firearms transfers to Mexican drug cartels. We also need to do a better job interdicting the southbound flow of firearms and prosecuting violations. If confirmed, I will work with the

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Department of Homeland Security and its relevant components, including U.S. Immigration and Customs Enforcement, so that, in partnership with our U.S. Attorneys' Offices, we can vigorously prosecute cases of illegal firearms trafficking and exporting. In addition, I plan to work closely with our law enforcement partners in Mexico to promote the sharing of information and to ensure the successful extradition and prosecution of major drug cartel leaders and criminals who operate along our border. Finally, drug traffickers are constantly developing new techniques to smuggle illegal drugs into the United States; we must aggressively interdict and prosecute this criminal activity.

Perjury

In the political and corporate arenas, you have represented high profile clients who have been at the center of controversy. I hope you agree that one of the key roles of Congress is oversight. One way we achieve oversight is through hearings and sworn testimony. If confirmed, what will be your approach to prosecuting alleged false statements made to congressional committees and special prosecutors?

The integrity and effectiveness of Congressional oversight and the federal criminal justice system depend on witnesses being truthful. We will actively investigate allegations of false testimony to Congressional committees and special prosecutors and will follow the facts where they lead. Where the facts and law support a prosecution, we will bring appropriate charges.

Financial Crimes

A few weeks ago, the Judiciary Committee convened a hearing on the prosecution of financial crimes during this period of economic downturn. Rita Glavine, the Acting Assistant Attorney General for the Criminal Division, explained that there has been a spike in mortgage and loan fraud. It is apparent that more investigators and more prosecutors are needed to curtail this rising criminal trend. However, as I understand it, prosecutorial guidelines in most districts are informal. My concern is that these financial crimes have long taken a backseat to other cases. As a result, we are now paying the price because we didn't pay more attention to financial crimes. If confirmed, what policies will you implement so that financial crimes get the proper scrutiny and dedication they deserve from federal prosecutors?

Financial crimes – whether they involve mortgage fraud, securities or commodities fraud, health care fraud, or procurement fraud – can jeopardize our economy, threaten the integrity of our financial system, and cost taxpayers billions of dollars. If confirmed, I will make the investigation and prosecution of financial crimes a top priority. To develop the most effective strategies to address the various kinds of financial crime, I will work with the U.S. Attorney community, the FBI, Inspectors General across the government, federal financial regulators, and our state and local counterparts in a cooperative and collaborative approach. The strategies we will develop together will deploy law enforcement resources where they can be most effective. I will work to bring charges against those who have broken the law, collect restitution to make victims whole, propose changes to the law where we find gaps, seek the necessary resources to address all serious financial crimes, and ultimately send a clear message that those who do not play by the rules will be held accountable. Finally, because white collar criminals are not above the law, in appropriate cases we will pursue jail time for such offenders.

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Obscenity Enforcement

have long been critical of the low priority and misdirected strategies of the Justice Department, under oth Democratic and Republican Presidents, in enforcing laws against obscenity. Targeting only the most xtreme obscene material may guarantees convictions but has little impact on the broader obscenity ıdustry or on the consumption of this harmful material.

- I believe that consuming sexually explicit material harms individuals, families, and communities. Do you agree?

Yes, I believe that sexually explicit material can be harmful to individuals, families, and ommunities.

- Will you personally review the enforcement strategy and report to the Committee the approach you will take regarding targeting extreme or more mainstream obscenity?

f confirmed, I intend to review the Criminal Division's current enforcement program and pproach to obscenity. As with any legitimate oversight inquiry, consistent with the Department's aw enforcement interests, I would be happy to provide information to the Senate Judiciary Committee.

- Do you plan to retain and invigorate the Obscenity Prosecution Task Force to focus on adult obscenity?

As part of my review of the Criminal Division's current enforcement program and approach to bscenity, I will also look closely at the Obscenity Prosecution Task Force to ensure that we are sing all of the best tools at our disposal to vigorously enforce the laws and protect our children and he American people.

- The full U.S. Court of Appeals for the Sixth Circuit recently upheld (*Connection Distributing Co. v. Holder*, 2/20/09) the requirement in 18 U.S.C. §2257 that producers of sexually explicitly material maintain records regarding the age and identity of performers. The Adam Walsh Act extended those requirements from depictions of actual to depictions of simulated sexually explicit conduct. Will you supply the Committee with data on enforcement of this statute?

am not specifically familiar with *Connection Distributing Co. v. Holder*, but I will review the ecision and make available to the Committee data that it requests regarding the enforcement of 18 J.S.C. § 2257.

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Senator Grassley's Written Questions for Lanny A. Breuer, to be Assistant Attorney General for the Criminal Division, U.S. Department of Justice

MONEY LAUNDERING

In the 110th Congress, I introduced the Combating Money Laundering and Terrorist Financing Act, which I plan to reintroduce again this year. This legislation will restructure our anti-money laundering laws to stop new trends such as bulk cash smuggling and use of monetary instruments in blank or bearer form. It also prohibits unlicensed money transmitting businesses, and brings stored value instruments within the money laundering statutes. These are critical changes needed to protect us from terrorists and to stop criminals from garnering ill gotten gains.

1. If you are confirmed, will you work with me to help strengthen our money laundering laws to prevent terrorists, criminals and drug traffickers from possessing illegal proceeds?

Yes. Strong anti-money laundering laws are critical to prevent terrorists, drug traffickers, and other organized criminal elements from raising and transferring funds with which they can sustain their organizations. It is also critical that the proceeds of crime are recovered for the benefit of victims and that criminals – of all kinds – are prevented from profiting from their crimes. If confirmed, I will work with you and other Members of Congress to strengthen money laundering and asset forfeiture laws to ensure the most effective program to recover proceeds of crime.

2. The current Memorandum of Understanding (MOU) between law enforcement agencies investigating money laundering is almost 20 years old and does not include the Department of Homeland Security which houses the Secret Service and ICE—two agencies integral to money laundering investigations. Will you pledge to work to update this MOU so that our nation's law enforcement agencies are actively working together?

Detecting illegal money laundering and recovering the proceeds of crime are ongoing challenges, especially as our country faces increasingly sophisticated terrorist networks, drug cartels, and other organized criminal enterprises with new technologies for transferring funds at their disposal. In order to effectively address these challenges, all relevant law enforcement agencies – at the federal, state, and local levels – must work closely together, and there must be open and robust communication between them. If confirmed, I will work to ensure that all the relevant agencies collaborate effectively to detect and prosecute illegal money laundering and to recover criminal assets. In addition, if confirmed, I will review relevant memoranda of understanding with this goal of collaboration and cooperation in mind, and will pursue any necessary changes.

3. What steps will you take to more aggressively investigate alternative financing methods that terrorists and money launderers use to earn, move and store assets?

If confirmed, I will ask the experienced prosecutors in the Criminal Division's Organized Crime and Racketeering Section, Asset Forfeiture and Money Laundering Section, and Fraud Section to review current methods employed by terrorists, drug traffickers, and money launderers to move, store, and hide criminal assets and the efforts now being used to address this criminal activity. Based on this review, and working with our law enforcement partners, we will pursue a strategy to investigate, detect, and dismantle criminal financing methods. In pursuing this strategy, we will look to work closely with other federal agencies responsible for investigating these illegal practices, including the Department of the Treasury, Department of Homeland Security, and others. In order to effectively address transnational flows of illegal proceeds of crime, I hope also to cultivate productive relationships with law enforcement agencies in countries around the world where criminal financing activity is particularly problematic. Finally, if emerging technologies or evolving tradecraft related to terrorist financing and money laundering require new legislation, I will hope to work closely on any such legislation with you and other members of Congress.

4. Do you pledge to coordinate the Department's criminal enforcement efforts with the Department of the Treasury's separate regulatory mission to fill in some of the current gaps in our financial system that allow money launderers to go undetected? If so, what would be your first step to accomplish this task?

Coordination and interagency cooperation is essential in addressing money laundering. As I indicted above, if confirmed, I will look to work closely with the Treasury Department and other relevant agencies to detect and prosecute money laundering and recover criminal proceeds. In doing so, I will first undertake a review within the Criminal Division of the current efforts to recover criminal assets. This will include a review of the structures currently in place to ensure cooperation among federal law enforcement agencies, and of the legal and enforcement tools currently in place to detect money laundering. This review will identify what, if anything, should be changed to ensure the best enforcement coordination and the most effective strategy to detect such illegal activity and recover illegal proceeds.

5. Do you believe that legislation is needed to address the growing problem of the use of Stored Value Instruments to transport illegal money laundering revenues out of the country? Why or why not?

I am concerned about any methods used to transport illegal money laundering revenues. I have not yet comprehensively evaluated the need for legislation to address this method of illegal money laundering. If confirmed, I will ask the Asset Forfeiture and Money Laundering Section to review the use of Stored Value Instruments to transport illegal money laundering revenues and to report back to me on whether it believes legislation is needed to address these instruments.

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CRIMINAL PROSECUTIONS FOR COUNTERFEITING AND THE SENTENCING COMMISSION

Last year I wrote a letter to the U.S. Sentencing Commission regarding the U.S. Sentencing Guidelines and the application of the current guidelines to individuals who have been convicted of a counterfeiting scheme that involved the process of "bleaching" Federal Reserve notes. A bleached note occurs when an individual uses chemicals to remove the ink from a real Federal Reserve note and then uses a printer to print a new image on the bleached paper. As a result, a number of safety features present on the bleach note remain, with a new image superimposed on top. By bleaching the original note, these criminals are able to produce counterfeit note on real currency paper that could very easily be mistaken as real currency.

Currently, the Sentencing Guidelines instruct the courts to use §2B1.1 (Theft Property Destruction and Fraud) and § 2B5.1 (Counterfeit Bearer Obligations of the United States) when sentencing persons convicted of counterfeiting. The problem with the use of these two different guidelines is that individuals who use the more sophisticated method of counterfeiting by bleaching notes—as opposed to just photocopying currency—are given a sentence under §2B1.1 which has a lower base offense level than that of §2B5.1. This difference results in a more sophisticated criminal getting a lower sentence than the less sophisticated criminal, despite the exact same intent—and arguably a higher quality counterfeit note.

Courts across the country have struggled with this application of the Sentencing Guidelines and we've asked the Sentencing Commission to address this. The Sentencing Commission has added this issue to its Notice of Final Priorities for the amendment cycle ending in May 2009. I fear that instead of a straightforward fix that puts all counterfeiting under the same guideline, we may get a new set of guidelines that try to create different sentences for criminals who seek to do the same thing—harm the integrity of the U.S. Federal Reserve by creating counterfeit Federal Reserve Notes.

1. Do you believe that the Sentencing Guidelines should include one straightforward Guideline for the sentencing of individuals convicted of counterfeiting? Why or why not?

As you indicate, the Sentencing Commission has taken up this issue for the amendment year ending May 2009. Beyond making the issue a priority, my understanding is that the Commission has now published a proposed amendment to the federal sentencing guidelines to address the issue, will be taking testimony from the Secret Service this month, and will be voting on a proposed amendment next month.

As a general matter, all things being equal, I believe more sophisticated criminal activity should be subject to higher criminal penalties than less sophisticated criminal conduct. I also believe the sentencing guidelines should be straightforward and provide a simple, clear, and consistent set of rules for

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sentencing counterfeiting and all other offenses. If confirmed, I will review this issue and assess both what the Commission is now considering as well as whether additional reforms are needed.

2. Will you pledge to work with me to ensure that we bring some sanity to the Sentencing Guidelines for counterfeiting crimes to ensure that more sophisticated criminals are not rewarded with a lower sentence for their crimes?

If confirmed, I will work with you, other members of Congress, and the U.S. Sentencing Commission to help ensure that our sentencing scheme appropriately accounts for more sophisticated criminal conduct in these counterfeiting crimes.

MARIJUANA CRIMES

According to the 2009 National Drug Threat Assessment, the level of domestic outdoor marijuana cultivation is high and could be increasing in the U.S. Some of this marijuana is being grown on public lands by drug cartels in National Parks in California and other Southwestern states. This increase in domestic growth is troubling, given that the Threat Assessment also states that marijuana potency has increased to the highest levels ever recorded.

1. Given the new data on increases in marijuana cultivation and potency, do you plan to prioritize prosecutions of marijuana users and dealers? Why or why not?

I am concerned about reports that suggest marijuana cultivation and potency is increasing, including reports that drug cartels are now growing marijuana on public lands. We must not allow our federal lands to become safe havens for these criminal organizations. If confirmed, I will work with the Narcotics and Dangerous Drug Section, the Drug Enforcement Administration, and other relevant agencies to make disrupting and dismantling major drug trafficking organizations a top priority, and we will work with local, state, and other federal law enforcement agencies to investigate and prosecute these organizations.

To my knowledge, prosecuting simple possession of marijuana (those cases where there is no intent to distribute) is not a priority for the Department of Justice, given the large-scale, and often violent, drug-trafficking organizations and criminals on which the Department must focus its attention. In most cases, such prosecutions are appropriately left to state and local prosecutors.

2. Do you believe that additional federal resources are needed to stop the domestic production of marijuana?

I am not familiar with all the federal resources that are now deployed around the country to stop domestic production of marijuana. If confirmed, I will work with the Drug Enforcement Administration and other federal counter-narcotics agencies

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to review the resources currently addressing this problem and to determine if additional resources are needed.

3. Do you believe that individuals who hide behind state laws allowing the use of medical marijuana should be prosecuted for federal violations of the Controlled Substances Act?

I firmly believe that violators of the law should be held to account, and, if confirmed, I will vigorously enforce federal law. As I indicated above, I do not believe federal law enforcement agencies now target those who possess marijuana for personal use. However, I am quite concerned that trafficking organizations may be camouflaging their operations behind medical marijuana operations. I am similarly concerned with online pharmacies that hide illegal trafficking operations behind the appearance of sanctioned prescription drug selling. If confirmed, I will make disrupting and dismantling major illegal trafficking operations a priority.

Senator Specter's Written Questions for Lanny Breuer,
Nominee to be Assistant Attorney General, Criminal Division

1. In what ways do you expect the priorities of the Criminal Division during this administration to differ from those of the last administration?

If confirmed, I will review the allocation of resources within the Division and meet with the career attorneys before developing the full slate of the Division's priorities moving forward. Without prejudging that review, if confirmed, I expect that the Criminal Division will focus heavily on pursuing financial fraud in all its guises, domestic and international organized crime, public corruption, child exploitation, gang violence, and drug-related crime, among other priorities. I also would expect to build on the many important law enforcement partnerships—including with state, local and federal agencies—to ensure that we are effectively coordinating and ferreting out criminal activity, and vigorously enforcing the law.

2. In an August 25, 2008 op-ed in the *Washington Times*, you wrote the following:

> "Extremism in the name of security is no vice" may well be the operating philosophy for which the Bush administration is remembered. There is a growing list of U.S. government actions, both domestic and abroad, that show abuse of law and blatant indifference to human rights—all in the name of security.[1]

   a. Regarding which policies do you consider the Bush Administration to have been extremist?

My recollection is that I was referring to the reported use of waterboarding and the initial indefinite detention of terrorism suspects at Guantanamo Bay without due process, which was struck down by the Supreme Court.

   b. As you probably know, this Committee recently held a hearing on the question of whether Congress should create a "Truth Commission" to review the alleged abuse of executive power during the Bush Administration. Do you think this proposal is well advised? Is the Justice Department not capable of handling this issue on its own?

Without having seen or studied any specific proposals related to a "Truth Commission," it would be premature for me to judge the advisability of such a commission. That said, if Congress pursues such a commission and if I am confirmed, I would look forward to working with Congress and to sharing my views regarding specific proposals. Leaving aside the issue of a "Truth Commission," if confirmed, consistent with what the Attorney General has said on this issue, the Criminal Division will follow the evidence, the facts, and the law where they lead.

3. It is a matter of public record from the Independent Counsel's Report issued in 1998 and from President Clinton's answers to questions posed by the House Judiciary Committee that you invoked executive privilege during your testimony before the grand jury

[1] Lanny A. Breuer and Mark Brzezinski, "Repairing America's Image Abroad Will Take Time," WASH. TIMES, Aug. 28, 2008.

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connected with the independent counsel's investigation. What were the grounds for your invocation of executive privilege? Why do you believe executive privilege was justified?

My assertion of executive privilege with respect to certain categories of communications was based on – and, I believe, justified by – my understanding of the law of executive privilege at the time of my appearance before the grand jury, and an instruction from White House Counsel Charles Ruff – at the direction of the President – to assert the privilege.

4. The Department of Justice's policy of seeking waiver of the attorney-client privilege from organizations under investigation originated under the memorandum that then-Deputy Attorney General Holder signed on June 16, 1999.

    a. Is there any real justification for having a waiver on anything other than a purely voluntary basis?

I firmly believe that any waiver of attorney-client privilege should be voluntary. The right to counsel depends on the privilege, and no one should be coerced into waiving it.

    b. Doesn't it undermine the voluntariness of a waiver when a company's representatives have reason to believe the charges against it will be reduced in exchange for such a waiver?

Yes. However, I do not believe the right to counsel is undermined when a suspect – corporation or individual – is offered some criminal justice benefit for cooperating in an ongoing investigation or prosecution. Cooperation benefits have long been recognized by Congress and are codified in the U.S. Code. It is critical, though, that any such benefit not be contingent on a waiver of privilege, but rather on disclosure of facts that assist in some investigation or prosecution.

    c. Should a refusal to waive the attorney-client or work-product protections voluntarily ever be a factor prosecutors consider in deciding whether to indict a corporation?

No. However, as I stated above, I do believe the level of cooperation is generally a legitimate factor for prosecutors to consider.

    d. Attorney General Mukasey stated in his hearing during discussion of this question, "Absent privilege, the right to counsel is nearly meaningless. You can't get counsel – you can't be expected to disclose the facts to your lawyer so as to get good counsel if what you think you're doing is disclosing them, ultimately, to the prosecutor." Do you agree with that statement?

Yes.

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5. I recently introduced the Free Flow of Information Act, which provides a qualified privilege for reporters to withhold from federal courts, prosecutors, and other federal entities, confidential source information and documents and materials obtained or created under a promise of confidentiality. The bill recognizes that, in certain instances, the public's interest in law enforcement and fair trials outweighs a source's interest in remaining anonymous through the reporter's assertion of a privilege. Thus, it allows courts to require disclosure where certain criteria are met. Under the legislation, in most criminal investigations and prosecutions, the federal entity seeking the reporter's source information must show that there are reasonable grounds to believe that a crime has occurred, and that the reporter's information is essential to the prosecution or defense. In noncriminal actions, the federal entity seeking source information must show that the reporter's information is essential to the resolution of the matter. If you are confirmed, would you support this legislation? If not, is there an alternate form of a media shield you would support?

I support a qualified reporters' privilege for journalists. Like the Attorney General, I believe there are circumstances where reporters should be able to withhold from federal prosecutors and other federal court litigants confidential source information, documents, and other materials obtained or created under a promise of confidentiality. However, I believe it is critically important that such legislation be crafted with recognition that any privilege must give way when important national security or other critical public policy or law enforcement matters are at stake. Furthermore, the legislation must be written in a way that protects legitimate journalists, while not providing an inappropriate shield for others who, for example, simply post material somewhere on the Internet. Finally, I believe that any legislation must provide an enforcement mechanism so that when a court finds the public's interest in law enforcement outweighs a source's interest in remaining anonymous through the reporter's assertion of a privilege, that court's disclosure order will be followed.

While I have not studied the legislation you have introduced, if confirmed, I will talk to the career prosecutors in the Division and work with the other relevant components of the Department of Justice to develop a considered view on your particular proposal. My goal would be to work with you to craft media shield legislation that protects both a free and robust media, as well as the core functions of the Department.

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Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Grassley

As you know, I have been extremely concerned about increased agribusiness concentration, reduced market opportunities, fewer competitors in the marketplace, and the inability of family farmers and producers to obtain fair prices for their products. I have also been concerned about the possibility of increased collusive and anti-competitive business practices in the agriculture sector.

I believe that the Justice Department's Antitrust Division needs to dedicate more time and resources to agriculture competition issues. The Justice Department must play a key role in limiting monopsonistic and monopolistic behavior in agriculture.

1. I would like to get a commitment from you that the Antitrust Division, under your watch, will pay heightened attention to agribusiness transactions. If you are confirmed, can you assure me that agriculture antitrust issues will be a priority for the Antitrust Division?

Answer: Yes. Agriculture antitrust issues will be a priority for the Antitrust Division, if I am confirmed as Assistant Attorney General for Antitrust. The recent increases in food costs have had a significant impact on consumers, and having grown up in a large family with six children, I know all too well how this can squeeze a family's budget. As I pledged during my confirmation hearing, if confirmed, I will ensure that the antitrust laws are vigorously enforced. I believe any merger, whether in the agriculture sector or another sector, must be reviewed with rigor.

2. It is my understanding that up until the challenge of the JBS/National merger, there have been no challenges by the Justice Department to any agricultural processing mergers for at least 10 years. In your opinion, should the Justice Department take a tougher stance on agricultural mergers?

Answer: If confirmed as Assistant Attorney General for Antitrust, I will start with the premise that if a merger is anti-competitive, regardless of the industry in which it occurs, it should be enjoined. If only a portion of a merger is anti-competitive and a remedy is available to resolve the competitive concerns, I would, of course, work with the merging parties to create a consent agreement that resolves those concerns, and follow the Tunney Act procedures to ensure public comment on the proposed remedy.

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3. I believe that the Justice Department and the Department of Agriculture, which enforces the Packers and Stockyard Act, should collaborate and work together to monitor anti-competitive activity in the agriculture industry. If you are confirmed, will you commit to foster a closer and more productive relationship with the Department of Agriculture?

Answer: Yes. If confirmed as Assistant Attorney General for Antitrust, I commit to working with the Department of Agriculture generally on agriculture antitrust issues, as well as on the enforcement of the Packers and Stockyard Act. I will work to foster a close collaborative and working relationship with the Department with the goal of ensuring the applicable laws are enforced efficiently and consistently.

4. I have reintroduced S. 364, the Agriculture Competition Enhancement Act, with Senator Kohl. This legislation, among other things, would require the Justice Department to issue agriculture merger guidelines. Can I get your commitment that the Justice Department will work with me on this bill and provide me with timely comments?

Answer: As noted above, if I am confirmed as Assistant Attorney General for Antitrust, the agriculture sector will be a priority. As Assistant Attorney General, I look forward to consulting with you on this bill. I am also hopeful that with reinvigorated antitrust reviews of all industry sectors, including agriculture, and with coordination within the Administration, we can work to ensure that anticompetitive behavior, including those activities resulting from monopsonistic and monopolistic behavior, can be thwarted.

Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Patrick Leahy

1. Competition law is increasingly a global issue. Businesses compete worldwide and face competition authorities, which often have different substantive and procedural rules, everywhere they operate. What role can the Department of Justice play in promoting antitrust policy convergence with the international community?

Answer: I certainly agree that competition law is a global issue. I also believe that the Antitrust Division can play a significant role in promoting antitrust policy around the world, and I will work to ensure that it does. We must continue our cooperation with worldwide antitrust authorities, discussing our differences with international enforcers respectfully and engaging with emerging antitrust regimes such as China and India as they implement new antitrust laws. If confirmed, I also plan to participate actively in those international organizations that have traditionally worked to ensure some level of convergence on process and substantive issues, as well as continue the Division's tradition of offering Technical Assistance to countries with emerging antitrust regimes.

2. I have expressed concern in the past about competition issues related to Internet governance. The Department of Commerce has an ongoing contractual relationship with the Internet Corporation for Assigned Names and Numbers ("ICANN"), which manages top-level domains on the Internet. The Antitrust Division last year provided advice to the Department of Commerce regarding competition issues presented by certain ICANN proposals. Will you continue to work with the Department of Commerce to ensure that competition issues are given proper attention in its relationship with ICANN?

Answer: Yes. I will continue to work with the Department of Commerce on this issue. As you know, I have devoted a significant portion of my career to issues related to technology and the Internet. I believe that competition in the Internet environment must be maintained. If confirmed, I look forward to reviewing with the Division staff all of its analysis of the management of top-level domains and further assisting the Department of Commerce on this issue.

3. Rural health care providers are usually smaller and potentially less stable than their non-rural counterparts. How can collaboration in some instances promote competition for health care in rural areas?

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Answer: I believe legitimate collaboration in any industry is beneficial, particularly the healthcare industry, where quality and consistency in delivery of services is critical. If confirmed, I plan to ensure that the Antitrust Division continues to provide guidance on healthcare issues, including those involving rural health care providers, which are so important to communities across the United States.

4. Will you work with the new leadership of the Federal Trade Commission to improve the efficiency and transparency of the clearance process?

Answer: Yes. As I indicated during my confirmation hearing, the new Chairman of the FTC and I will work closely on a variety of issues, including the efficiency and transparency of the clearance process. In most cases, a transaction naturally falls under the purview of one agency that has considerable experience in evaluating similar deals. In cases where it is unclear which agency has more relevant expertise the DOJ or FTC may conduct a protracted negotiation—sometimes even exceeding the 30-day initial review period—to determine which agency will handle the investigation. As a private practitioner, I have seen firsthand how these unnecessary delays can postpone the procompetitive benefits of such transactions for consumers. The delay and uncertainty associated with the current process have a variety of costs, including an erosion of the agencies' credibility. I believe as a former FTC Commissioner, I am uniquely positioned to reduce the frequency of such delays.

Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Schumer

1. It is my understanding that over the past eight years, the Bush Justice Department challenged very few mergers on account of the anticompetitive effects of vertical integration.

- Is this statement accurate? If so, can you identify how many mergers were challenged on account of vertical issues?
- Do you believe that vertical mergers should be *per se* legal? Why or why not?
- As Assistant Attorney General, what will you do to reverse what appears to be a clear trend away from challenging mergers on the basis of the anticompetitive effects of vertical integration?

Answer: While I understand concerns have been raised regarding the Antitrust Division's past review of mergers, including vertical mergers, I pledged during my confirmation hearing to ensure that the antitrust laws are vigorously enforced. I believe that both horizontal and vertical mergers must be reviewed with rigor. If I am confirmed as Assistant Attorney General for Antitrust, you can be assured that careful thought, along with attention to facts, industry dynamics, and economic theory, will be part of any merger analysis. I can also assure you that I will not shy away from considering whether the vertical integration resulting from a merger or acquisition is likely to substantially lessen competition, which is the standard of review for all mergers under the Clayton Act.

2. On July 17, 1995, you gave remarks on "Vertical Merger Enforcement Challenges at the FTC." In those remarks, you make the statement that "the greater the market share of the companies that are vertically integrating, the greater the probability that downstream customers will be injured." Last month, the Antitrust Subcommittee of this Committee held a hearing on the merger of TicketMaster and Live Nation. That merger features TicketMaster, which is said to hold 80% of the market for ticketing concerts in major venues in the United States, and Live Nation, the world's largest live music company.

- Isn't this exactly the kind of merger that presents the kind of concerns you raised in your speech?
- If not, what would be an example (either hypothetical or actual) of a merger that would present a high probability of harm to downstream customers on account of vertical integration?

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Answer: I continue to believe what I said in my 1995 remarks: vertical integration through mergers or acquisitions can substantially lessen competition. I also believe that the facts and theories of competitive harm for such combinations must be reviewed carefully and thoroughly. I understand that the merger of TicketMaster and Live Nation is currently under review by the Antitrust Division, and if I am confirmed as Assistant Attorney General for Antitrust, I look forward to reviewing this matter, as permitted. Again, I can assure you that I will not shy away from considering the competitive impact of any merger that results in vertical integration.

3. In that speech, you also describe Silicon Graphics' plan to acquire two of the three of the world's three leading entertainment graphics software firms. In that case, the FTC challenged the merger on account of concerns about self-favoritism, and the access that the merged firm would have to competitively sensitive information of its rivals.

- Are similar concerns presented by the Ticket Master/Live Nation merger?

Answer: While I understand that the merger of TicketMaster/Live Nation is currently under review by the Antitrust Division, I only have access to information available in the public domain. Therefore, I am not currently in a position to compare the Federal Trade Commission's ("FTC") *Silicon Graphics* matter to it. The *Silicon Graphics* case reviewed during my time as a Commissioner involved the acquisition of two of the world's three leading entertainment graphics software firms by a company that had a 90 percent share of the workstations that run entertainment graphics software. My concern was that Silicon Graphics would use its market power in the workstation market to undermine competition in the software market. I believe the FTC's consent decree solved this problem by requiring Silicon Graphics, among other things, to maintain an open architecture and to publish its application programming interfaces so that new entrants would have the ability to create competitive entertainment graphics software applications. In my view, this is an example of how antitrust enforcement can help maintain a level playing field for emerging technologies.

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Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Question from Senator Cornyn

Continental Airlines and United Airlines currently have an application pending before the Secretary of Transportation to enter into a marketing alliance with each other and other Star Alliance airlines. This application has been on file since July, 2008.

While the Department of Transportation has the final authority to approve the application, I know that they are consulting with the Department of Justice Antitrust Division for assistance in determining whether this alliance is in the public interest.

I believe that the Antitrust Division and the Department of Transportation have had sufficient time to conduct necessary reviews and that it is now time to act on the Continental and United application. These airlines are major employers in Texas, Ohio, Illinois, New Jersey and other states, and are vital to the U.S. economy. Any unnecessary delay in deliberations will have significant negative impacts on the competitive landscape in the airline industry and the economy as a whole.

The competitive landscape of global aviation is changing, making membership in an international marketing alliance essential to an international carrier's survival. Continental and United's major competitors are already members of international marketing alliances. Alliances allow participating airlines to achieve additional network reach without merging. These alliance relationships provide consumers with greater flexibility in pricing and access to more international destinations.

While Executive branch review of whether the application serves the public interest should be thorough, I emphasize the real human costs of undue delay. Unnecessary delay in the consideration of the alliance application will have dramatic negative consequences for the U.S. economy, the cities served by these carriers, the employees who work at these airlines, and for competition in the airline industry.

1. Will you commit to prioritizing this matter as soon as you are confirmed?

Answer: If confirmed as Assistant Attorney General for the Antitrust Division, I look forward to working with the Department of Transportation on these issues. I am not familiar with the Division's work on this particular application, but will certainly look into this in a timely manner, if confirmed.

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Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Feingold

1. In July 2008, you published an oped in the *Wall Street Journal* concerning the proposed Arbitration Fairness Act. Have you had a chance to consider further the position you took in that oped, and can you discuss your current thinking about mandatory, binding arbitration provisions in consumer and employment contracts?

Answer: I recognize that arbitration clauses in certain types of agreements - such as employment contracts - can be detrimental to individuals seeking just compensation. While I do believe that arbitration is a long-established, successful method of resolving certain types of smaller-value consumer disputes without having to take your case to court, I believe mandatory, binding arbitration provisions in many types of contracts should be prohibited.

2. I understand that the Federal Trade Commission (FTC) has jurisdiction over mergers and market consolidation for Pharmacy Benefit Managers (PBMs). Given that there are three pharmaceutical firms which solidly dominate the market - often to the detriment of local, community pharmacies - do you anticipate collaborating with the FTC to increase government oversight of PBM mergers and acquisitions during this administration?

Answer: As you note, the Federal Trade Commission has traditionally handled pharmaceutical matters. As an FTC Commissioner, I had the opportunity to weigh in on issues related to Pharmacy Benefit Manager (PBM) integration. I would be happy to work with the FTC on these issues, should they request such.

3. Several constituents continue to express concerns about the recently approved merger between Allied and Republic in the waste management industry. They are concerned that the merger has allowed the creation of a system where there are two dominant firms and there are significant barriers to entry for any independent haulers to challenge either major firm. Do you have particular concerns about duopolies' potential for negative impacts on competition? If so, what actions can and should the Department take in cases such as these?

Answer: I pledged during my confirmation hearing to ensure that the antitrust laws are vigorously enforced. I believe any merger, regardless of the industry, must be reviewed with rigor. If I am confirmed as Assistant Attorney General for Antitrust, you can be assured that careful thought, along with attention to facts, industry dynamics, and

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economic theory, will be part of any merger analysis. In addition, should a merger have the potential to result in a duopoly, the highest level of scrutiny must be given to such analysis.

4. Also in connection with the Republic / Allied approved merger, the merger agreement included a divestment agreement. There is some concern that the divestment might be accomplished through a package sale and that due to the expense of the combined properties, independent waste companies will have difficulty competing and the only viable bidder may be the other dominant firm of the duopoly. Should this occur, would it undermine the purpose of requiring divestment in these markets?

Answer: As Assistant Attorney General, I will start with the premise that if a merger is anti-competitive, regardless of the industry in which it occurs, it should be enjoined. If only a portion of a merger is anti-competitive and a remedy is available to resolve the competitive concerns, I would, of course, work with the merging parties to create a consent agreement that resolves those concerns, and follow the Tunney Act procedures to ensure public comment on the proposed remedy. In considering any potential remedy, we must ensure that it will not itself create a competitive problem.

5. I understand the proposed merger between Ticketmaster and Live Nation is unlikely to be considered by the Antitrust Division, but I would like your opinion on the proposal given your history as a former FTC Commissioner and your views on vertical integration. Ticketmaster is clearly a dominant firm in ticket sales and especially for certain types and sizes of events. Is the proposed vertical integration a greater concern in this situation than if both firms were in unconcentrated competitive markets? I know that the FTC or DOJ would conduct a more rigorous analysis, but based on the publicly available information, do you think this merger presents serious concerns?

Answer: I believe that vertical integration through mergers or acquisitions can substantially lessen competition. I also believe that the facts and theories of competitive harm for such combination must be reviewed carefully and thoroughly. I understand that the merger of TicketMaster and Live Nation is currently under review by the Antitrust Division. Again, I can assure you that I will not shy away from considering the competitive impact of any merger that results in vertical integration.

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Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Diane Feinstein

American newspapers are currently facing severe economic problems. Last month, the *Rocky Mountain News* closed its doors, the *Seattle Post-Intelligencer* ended its print edition today, and the *Tucson Citizen* is expected to stop production soon. In California, the *San Francisco Chronicle* has cut its staff by more than 50% in the past decade and may not survive if it does not make drastic cost reductions in the coming months. I think it is a real problem for cities to lose their major newspapers. Newspapers provide timely reporting on major events, publish careful analysis of matters of public importance, and offer a critical space for informed public debate.

1. As the Assistant Attorney General for the Antitrust Division, what factors will you consider when you review mergers and other business strategies that are aimed at keeping newspapers viable?

Answer: I pledged during my confirmation hearing to ensure that the antitrust laws are vigorously enforced. I believe any merger, regardless of the industry, must be reviewed with rigor. If I am confirmed as Assistant Attorney General for Antitrust, you can be assured that careful thought, along with attention to facts, industry dynamics, and economic theory, will be part of any merger analysis. At the same time, I also understand the current plight of American newspapers, the competition they face today, and the effects of the current recession on them. In addition, I am familiar with the aims of the Newspaper Preservation Act its idea of maintaining editorial voices. With this in mind, if confirmed, I look forward to reviewing these issues with Division staff, with an eye to reaching the right balance on such issues.

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Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Hatch

1. An area on which I place particular importance is the controversy surrounding the so-called Bowl Championship Series. Utah's Attorney General has launched an investigation and I am seeking a legislative remedy. What are your thoughts on this matter?

Answer: At this point in time, I have not formed views on this issue. If confirmed as Assistant Attorney General, I look forward to learning more about these issues, as well as working with you, the Utah Attorney General, and the Division staff on them.

2. Recently, I wrote to the Department of Justice and the Department of Transportation about DoT's review of airlines' antitrust immunity applications for code sharing arrangements. I am concerned that instead of having one set of standards and levels of scrutiny, DoT's review will create unique rules for a specific industry. How do we ensure that does not happen?

Answer: I believe that competition among businesses leads to the best products at the lowest prices and the most innovation. The antitrust laws ensure that businesses do not eliminate this competition to the detriment of consumers. The antitrust laws are fundamental to our economy, and as a consequence, antitrust exemptions and immunities are not typically favored, although they do exist in certain areas. If confirmed as Assistant Attorney General for the Antitrust Division I look forward to learning more about this application process and the Division's role in it. I also look forward to working with you and the Department of Transportation to determine whether the roles, as established, are appropriate.

3. This is more of a theoretical than a practical question. You served on the Federal Trade Commission and now are nominated to be Assistant Attorney General for Antitrust. Why do we not merge the FTC's antitrust arm with the DoJ's Antitrust Division? Would that not create a more efficient regulatory regime?

Answer: Traditionally, the Federal Trade Commission and the Antitrust Division have shared jurisdiction over civil antitrust matters, and done so very effectively and efficiently. In the recent past, there have been disagreements over certain areas. As I indicated during my confirmation hearing, if I am confirmed as Assistant Attorney General for Antitrust, the new Chairman of the FTC and I will work closely on a variety of issues with the aim of restoring harmonization of views on antitrust issues. One

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specific priority I noted in my Prepared Remarks for the Judiciary Committee is the clearance process. If confirmed, I will work to ensure efficiency and transparency of the clearance process for civil matters – our area of jurisdictional overlap. I believe as a former FTC Commissioner, I am uniquely positioned to ensure that the tradition of cooperation between two antitrust agencies is maintained.

4. Do you believe that the Europeans are using their regulatory regime to unfairly discriminate against American corporations?

Answer: I believe that to date, in certain very limited areas, the Europeans have applied standards for antitrust liability that differ from the US standards. I also believe that competition law is a global issue and Antitrust Division should play a significant role in promoting antitrust policy around the world. If confirmed as Assistant Attorney General for Antitrust, I will work to ensure that it does. We must continue our cooperation with worldwide antitrust authorities, discussing our differences with international enforcers respectfully and engaging with emerging antitrust regimes such as China and India as they implement new antitrust laws. I am sure these goals can be achieved. I also plan to participate actively in those international organizations that have traditionally worked to ensure some level of convergence on process and substantive issues, as well as continue the Division's tradition of offering Technical Assistance to countries with emerging antitrust regimes.

5. When you were at the FTC, you raised concerns about vertical integration involving Pharmacy Benefit Managers (PBMs), specifically pharmacy manufacturers owning PBMs. Do you think similar concerns can arise from a pharmacy chain owning a PBM?

Answer: As you know, the Federal Trade Commission has traditionally handled pharmaceutical matters, which is why I commented on Pharmacy Benefit Manager (PBM) integration. I have not studied the effects of vertical integration between PBMs and pharmacy chains.

However, I believe that both horizontal and vertical mergers must be reviewed with rigor. If I am confirmed as Assistant Attorney General for Antitrust, you can be assured that careful thought, along with attention to facts, industry dynamics, and economic theory, will be part of any merger analysis. I can also assure you that I will not shy away from considering whether the effects of the vertical integration resulting from a merger or acquisition may be substantially to lessen competition, which is the standard of review for all mergers under the Clayton Act.

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Answers to Questions for the Record
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Questions from Senator Kohl

1(a). Ms. Varney, in the last two years, our Antitrust Subcommittee held two hearings on Google and competition in the internet search and internet advertising sector. Google has grown to become a dominant player in this sector, a sector of vital importance to the economy as a whole. Many industry observers compare Google now to the dominance possessed by Microsoft a decade ago.

Indeed, at a speech to the American Antitrust Institute last June you stated that, that the U.S. economy will "continually see a problem – potentially with Google" because it already "has acquired a monopoly in Internet online advertising."?

With this in mind, how will you scrutinize allegations of anti-competitive behavior by Google in the Internet sector in the future? Do you believe it has the capability to gain a stranglehold over this market?

Answer: If confirmed as Assistant Attorney General for Antitrust, as I stated during my confirmation hearing, you can be assured that I will vigorously enforce the antitrust laws. Where the evidence shows a violation of the antitrust laws, I will prosecute. I am not currently aware of allegations of anticompetitive behavior by Google. But like any other company, if I am made aware of such allegations, I will ensure that the Division thoroughly investigates such.

(b) From time to time, we hear calls that the old rules of antitrust don't apply to the so-called "new economy." Others argue that antitrust principles remain sound, and are flexible enough to take into account conditions in new industries. What's your view? Do new high tech industries such as this one require a different framework of antitrust enforcement? If so, what would that look like?

Answer: I believe we face a diverse set of challenges related to the application of the antitrust laws to high technology industries. I also believe that rapid seismic change has occurred in technology markets primarily because technology companies had the incentive and the freedom to innovate. In other words, innovation is a primary basis of competitive rivalry in technology markets. From my time at the FTC and in private practice, I have considerable experience regarding the application of the antitrust laws to technology industries and the Internet, and I believe the antirust laws are sound and flexible enough to be applied to any industry, including the technology sector. I also believe that when reviewing alleged anticompetitive activities in this area we need to listen to the industry participants, and take into account certain attributes of technology

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markets, such as network effects, the impact the activity has on innovation, and whether the activity results in foreclosure.

2. Last summer gas prices reached record highs of over $ 4 per gallon and crude oil exceeded $ 140 per barrel. These prices fell sharply in the last few months of 2008, and are now under $ 2 per gallon in many places. These price declines were caused by a sharp decrease in demand caused by the worldwide economic recession. But we shouldn't expect the good news on gas prices to last – since last Fall OPEC has made large oil production cuts totaling nearly 4 million barrels a day with the express purpose of raising oil prices. In the words of OPEC's President referring to these production cutbacks, "The stronger the decision, the faster prices will pick up." And already gas prices have begun to rise again – and are up about 25 cents per gallon since the beginning of the year.

In the last few years, the Justice Department spent an enormous amount of time and effort prosecuting price fixing cartels. Yet the worst and biggest cartel in the world is the OPEC oil cartel, and we've not taken any action against them. That's why I've introduced my NOPEC bill, which would permit antitrust actions by the Justice Department against the OPEC cartel, or any other cartel involving oil, petroleum or natural gas.

Do you agree with me that the actions of OPEC would be illegal if it was a group of private companies? Would you support the Justice Department having the authority to bring antitrust lawsuits against OPEC member nations?

Answer: I am also concerned about gasoline prices and the effect they have on American consumers. If I am confirmed as Assistant Attorney General for Antitrust, I can assure you that the Division will work with the Federal Trade Commission to continue their efforts to uncover and prosecute any anticompetitive conduct in the petroleum industry. While I agree that OPEC is a cartel that inflicts tremendous harm to American consumers and the industry, legislation in this area raises some difficult and complex issues. Suing foreign sovereign entities under the antitrust laws raises a number of sensitive diplomatic and security considerations with implications far beyond antitrust.

3. We have recently been examining in Antitrust Subcommittee cell phone text messaging rates. From 2006 to 2008 the four largest cell phone companies – accounting for over 90% of the market -- doubled their rates on a per-message basis, rising first from 10 to 15, then 15 to 20 cents per message in close proximity to each other. Each of the four companies raised their rates by the identical amount during this period, despite the fact that the per-message cost of text messaging is tiny, estimated at less than one cent per message by some experts.

Consumer advocates allege that this parallel rise in text messaging rates is contrary to what one would expect in a fully competitive market. We have launched an

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inquiry into this issue in the Antitrust Subcommittee, and last September I wrote a letter to the four CEOs of the cell phone companies for an explanation.

Do you have any views as to what these text messaging rate increases say about competition in the cell phone market? Will you pledge to examine this issue should you be confirmed?

Answer: I have not reviewed this issue, but look forward to working with you and Division staff, if confirmed, to examine it.

4. In September of last year, the Justice Department released a Report on single firm conduct under section 2 of the Sherman Act. This report, if followed, would substantially raise the barriers to bringing actions against companies engaging in monopolistic or anti-competitive practices. The FTC did not join or endorse the Report. Indeed, three of the four sitting FTC Commissioners expressly rejected the Report, stating that it was [QUOTE] "blueprint for radically weakened [antitrust] enforcement . . . that "would make it nearly impossible to prosecute a case under section 2." I was also very disturbed by the conclusions in this Report.

What is your view of the September 2008 DOJ Report? Do you intend to implement its recommendations, or will you agree to reexamine it?

Answer: As I stated during my confirmation hearing, I do not support the conclusions in the Section 2 Report. As I also noted during my confirmation hearing, I have an open mind about what should be done with the Report. On the whole, it represents high-quality, significant work by the Division staff. If I am confirmed, I plan to review the Report with Division staff and engage with the Federal Trade Commission, and then determine what is the best way to move forward on the issues presented.

5. We have heard many concerns from U.S. companies with global operations about being treated unfairly by other nations' antitrust enforcement agencies. These companies assert that complying with conflicting antitrust review processes is very expensive, burdensome and time consuming. They are also concerned with conflicting results among international antitrust authorities, particularly between the European Commission and the United States. There are several prominent recent examples that raise concerns, including Microsoft facing numerous antitrust investigations in Europe, and the EC blocking the GE-Honeywell merger in 2002 after the U.S. Justice Department approved the deal. Complaints have also been raised about unfair treatment given to U.S. companies by foreign antitrust authorities in order to protect competing businesses in the foreign nations. On the other hand, other commentators point out that many American companies seek the assistance of international antitrust authorities to remedy anti-competitive problems in foreign nations.

Do you believe that conflicts with international antitrust enforcement agencies is an important issue for you to address? Should even we strive for harmonization? And, if

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so, what will you do to achieve greater co-ordination and harmonization between U.S. and foreign antitrust enforcement agencies?

Answer: Yes, I also believe that competition law is a global issue and Antitrust Division should play a significant role in promoting antitrust policy around the world. If confirmed as Assistant Attorney General for Antitrust, I will work to ensure that it does. We must continue our cooperation with worldwide antitrust authorities, discussing our differences with international enforcers respectfully and engaging with emerging antitrust regimes such as China and India as they implement new antitrust laws. I am sure these goals can be achieved. I also plan to participate actively in those international organizations that have traditionally worked to ensure some level of convergence on process and substantive issues, as well as continue the Division's tradition of offering Technical Assistance to countries with emerging antitrust regimes.

6. Since the passage of the Newspaper Preservation Act of 1970, the industry has changed dramatically. Cities and towns that supported multiple papers are now lucky to have one strong newspaper. Only recently, we have seen the closing of the Rocky Mountain News, the Albuquerque Tribune, and the Birmingham Post-Herald. It is even possible that San Francisco could become the first major city without a major daily paper, if the San Francisco Chronicle is forced to close. Despite the number of voices reaching consumers through other media platforms, newspapers remain a vital source of local news and opinion.

Given the state of the newspaper industry, should the DOJ review its policies towards newspaper joint operating agreements (JOAs)? And should the Department's analysis of mergers in the newspaper industry take into account the difficulties being experienced by that industry and the desirability of maintaining at least one daily newspaper to serve large communities?

Answer: I pledged during my confirmation hearing to ensure that the antitrust laws are vigorously enforced. I believe any merger, regardless of the industry, must be reviewed with rigor. If I am confirmed as Assistant Attorney General for Antitrust, you can be assured that careful thought, along with attention to facts, industry dynamics, and economic theory, will be part of any merger analysis. At the same time, I also understand the current plight of American newspapers, the competition they face today, and the effects of the economy on them. In addition, I am familiar with the aims of the Newspaper Preservation Act its idea of maintaining editorial voices. With these aims in mind, if confirmed, I look forward to reviewing these issues with Division staff, with an eye to reaching the right balance on such issues.

7. In 2004, I sponsored an amendment to the Tunney Act, the law which governs the manner in which the courts review government antitrust settlements with the Justice Department. My amendment was enacted into law. This amendment heightened the

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scrutiny that courts must give to such settlements. We intended to halt the practice of courts merely "rubber stamping" these settlements, but instead to ensure that the courts scrutinized these consent decrees to ensure that the settlements were in the public interest.

Are you satisfied with the way the Justice Department and the courts have interpreted the 2004 amendment to the Tunney Act? How closely do you believe Justice Department settlements should be scrutinized by the courts? Do you recommend any further amendments to the Tunney Act?

Answer: I have not studied how the Division has handled the 2004 amendment to the Tunney Act, and cannot comment at this point on whether further amendments are needed. I do believe that the public and the courts must have the opportunity to review and comment on proposed Division settlements, and if confirmed, I will work to ensure such, as well as review with Division staff the current interpretations of the Act, as amended.

8. In your written testimony at the hearing, you called for "renewed collaboration between the Antitrust Division and the FTC, whose policies and processes have unfortunately diverged too frequently in recent years." You added that "policy disputes and jurisdictional squabbles between agencies with overlapping enforcement mandates lead to uncertainty for consumers [and] business."

One issue that has led to criticism is the clearance process between the Justice Department and FTC for determining which agency reviews specific mergers and acquisitions under the Hart-Scott-Rodino Act. On occasion, this determination is not made until nearly the end of the initial 30 day waiting period under the Act, causing the agency which ultimately is the one that reviews the transaction to send out an extensive Request for Additional Information and Documents (a "Second Request") because it has not had adequate time to examine the transaction prior to the resolution of the clearance dispute. For this reason, the Antitrust Modernization Commission recommended that "The Federal Trade Commission and the Antitrust Division should develop and implement a new merger clearance agreement . . ., with the goal of clearing all proposed transactions to one agency or the other within a short period of time."

Do you agree with this recommendation? Was this issue one of those "jurisdictional squabbles" you referred to in your testimony? Do have any plans to attempt to improve and/or implement new clearance procedures with your colleagues at the FTC?

Answer: As I indicated during my confirmation hearing, the new Chairman of the FTC and I will work closely on a variety of issues, including the efficiency and transparency of the clearance process. In most cases, a transaction naturally falls under the purview of one agency that has considerable experience in evaluating similar deals. In cases where it is unclear which agency has more relevant expertise, they may conduct a protracted negotiation to determine which agency will handle the investigation. As a

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private practitioner, I have seen firsthand how these unnecessary delays can postpone the procompetitive benefits of such transactions for consumers. The delay and uncertainty associated with the current process have a variety of costs, including an erosion of the agencies' credibility. I believe as a former FTC Commissioner, I am uniquely positioned to achieve this desired goal.

9. Since 2002, the Antitrust Subcommittee has does an extensive amount of work with respect to obstacles to competition created by hospital group purchasing. When we first examined this issue, we found that many smaller and innovative medical device manufacturers were being blocked from entering the market by exclusionary practices engaged in by hospital group purchasing organizations (GPOs), often at the behest of large, dominant manufacturers. Since that the time, the GPO industry has pledged to voluntary reforms and codes of conduct, and promised to eliminate many of these exclusionary practices. Nonetheless, we still hear from some medical device manufacturers who allege that they are being blocked from entering the hospital supply market because of GPO practices. Will you pledge to examine allegations of antitrust violations by either manufacturers or GPOs that are blocking entry of competitors in medical devices or equipment?

Answer: Yes. I pledged during my confirmation hearing that if I am confirmed, I will ensure that the antitrust laws are vigorously enforced. I look forward to working with you and representatives in the life sciences and healthcare fields to determine whether the antitrust laws have been violated.

10. The Supreme Court declined last month to hear the Federal Trade Commission's appeal of the D.C. Circuit's decision in *Rambus*. In that case, the FTC claimed that Rambus acquired monopoly power by manipulating its industry standard-setting process. The FTC argued that Rambus deceived the standard-setting body its patent holdings, and encouraged the body to set as the industry standard a technology for which it secretly held the patent. This prevented the standard-setting body from assessing the costs and benefits of alternate technologies with full information, and also prevented the body from requiring that Rambus offer licenses on reasonable and nondiscriminatory terms as a precondition for selection of its technology. The FTC alleged that this behavior led to the acquisition of monopoly power, which Rambus exercised when it asserted its patent interests and demanded high royalties from its competitors. The D.C. Circuit found inadequate proof of anticompetitive effects, and the Supreme Court declined the FTC's petition to hear the case. This is of concern to those of us who support stricter policing of the standard-setting world, in order to ensure fair access to the playing field for all competitors. Industry standards are important and necessary, but abuse of patent portfolios in an effort to control those standards cannot be tolerated. If you are confirmed, what steps will you take to police the standard-setting world for anticompetitive behavior?

Answer: I believe that a significant intersection between antitrust and intellectual property is the application of the antitrust laws to standard setting organizations (SSOs).

It is widely recognized that the development of standards can promote competition and economic efficiency by facilitating product interoperability, creating open networks, ensuring public safety and disseminating product information. However, standard setting may harm competition in some cases by thwarting innovation and entrenching older standards when newer or better technology is available. There is a fairly well developed body of case law that applies Section 1 of the Sherman Act, which prohibits agreements in restraint of trade, to industry standard-setting activities. However, the law is less clear when participation in the SSO is allegedly used to gain monopoly power over the standard. As an FTC Commissioner, I helped to bring attention to this issue in public speeches and by participating in Dell Computer Corp., the first case in which an antitrust enforcement agency challenged the misuse of an SSO to gain monopoly power over an industry standard. If confirmed, I hope to bring further clarity to this increasingly important aspect of the antitrust/IP interface.

11. Under current law, the Department of Transportation can approve applications for antitrust immunity for international airline alliances. The Justice Department may comment on these applications but the ultimate decision to approve or disapprove the application rests with the Department of Transportation. What is your view of this arrangement? Do you think it is desirable to have the Department of Transportation possessing this authority, or would it be better for this authority to reside with the Justice Department, the agency with expertise over antitrust law?

Answer: If confirmed as Assistant Attorney General for the Antitrust Division I look forward to learning more about this application process and the Division's role in it. I also look forward to working with you and the Department of Transportation to determine whether the roles, as established, are appropriate.

12(a). In his statement to the American Antitrust Institute last year, President Obama criticized the lack of enforcement against health insurance mergers with over 400 mergers approved with only two enforcement actions. What will be your approach to evaluating mergers among health insurance companies?

(b) Would you be willing to review consummated health insurance mergers and challenge any if there is evidence of competitive harm?

(c) I understand that there have been no antitrust enforcement against enforcement conduct by health insurers in the past 8 years. Does that concern you? What will be your approach to evaluating allegations of anticompetitive conduct by health insurance companies?

Answer: Healthcare is a significant cost driver in our economy today, and President Obama has identified healthcare reform as a top priority. And I believe strongly that maintaining vigorous competition is key to controlling healthcare costs. As has been publicly reported, concentration in health plans has been on the rise. If confirmed, I want to work with the Division staff, who have been studying these issues in real time, to learn

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more about the approach they have been taking. I look forward to the Division contributing to the healthcare reform debate in a meaningful way under my leadership, if confirmed, because maintaining and enhancing competition is an essential component of any reform proposal.

13. In 1996 Justice Department/Federal Trade Commission Heath Care Guidelines were issued you said, "[t]he health care marketplace is undergoing rapid change, and it is primarily through an open dialogue with all involved in the health care industry that the Agencies can continue to provide appropriate and relevant antitrust guidance." Now, more than a decade later, do you believe these Guidelines need to be revised, and, if so, how?

Answer: If confirmed, I will consider whether the Health Care Guidelines need to be revised to reflect changes the healthcare and life sciences industry has experienced. However, my general impression is that they were designed to be flexible enough to be used even with the rapidly changing environment.

14. On February 24, our Antitrust Subcommittee held a hearing on the proposed merger between Ticketmaster and Live Nation. We are concerned about that merger because of its potential to compete a dominant, vertically integrated company controlling large portions of the concert business, from venues, to promotion, to artist management, to ticketing. While we recognize you cannot comment on a pending matter, do you promise to ensure that this merger is investigated thoroughly to determine whether or not it may cause a substantially injury to competition? And, more generally, what will be your approach to examining vertical mergers?

Answer: I continue to believe that vertical integration through mergers or acquisitions can substantially lessen competition. I also believe that the facts and theories of competitive harm for such combination must be reviewed carefully and thoroughly. I understand that the merger of TicketMaster and Live Nation is currently under review by the Antitrust Division. Again, I can assure you that I will not shy away from considering the competitive impact of any merger that results in vertical integration.

Answers to Questions for the Record
Confirmation Hearing of Christine A. Varney
Before the Senate Judiciary Committee
March 10, 2009

Questions from Senator Specter

1. Of the 400 mergers that have occurred in the health insurance industry in the past 12 years, the Justice Department has imposed conditions in two, United's acquisition of PacifiCare and Aetna's acquisition of Prudential's health insurance subsidiary. Health insurer consolidation has coincided with steadily increasing premiums, even as patient co-pays and deductibles have expanded, effectively shrinking the scope of coverage. In contrast, the FTC has vigorously prosecuted doctors for anticompetitive conduct. If confirmed, what actions will you take to increase the level of scrutiny that DOJ gives proposed health insurance mergers and their impact on the cost of health care?

Answer: Healthcare is a significant cost driver in our economy today, and President Obama has identified healthcare reform as a top priority. I also believe that maintaining vigorous competition is key to controlling healthcare costs. As has been publicly reported, concentration in health plans has been on the rise. If confirmed, I want to work with the Division staff, who have been studying these issues in real time, to learn more about the approach they have been taking. I look forward to the Division contributing to the healthcare reform debate in a meaningful way under my leadership, if confirmed, because maintaining and enhancing competition is an essential component of any reform proposal.

2. Some health care policy makers have argued that the joint DOJ/FTC Health Care Guidelines are out of step with the current healthcare marketplace, particularly as they relate to clinical integration activities of physicians. Under this Administration, do you envision the Department of Justice being more active in the interpretation and enforcement of the Guidelines?

a. If so, what is your view of the Guidelines as they relate to today's health care marketplace, particularly with regard to the efforts of physicians to adopt health information technology and quality improvement initiatives to improve health care quality?

Answer: If confirmed, I will consider whether the Health Care Guidelines need to be revised to reflect changes the healthcare and life sciences industry has experienced. However, my general impression is that they were designed to be flexible enough to be used, particularly in the rapidly changing healthcare environment.

3. Multiple private suits have been brought alleging that MasterCard and Visa operate as a mechanism through which their member banks agree to charge the same interchange fees, a structure that many have argued amounts to illegal price fixing. Joint decision-making by the banks via MasterCard and Visa has been subject to antitrust

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liability in the past. In *United States v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003), the Justice Department successfully challenged a rule imposed by both MasterCard and Visa prohibiting their member banks from issuing American Express and Discover credit cards. In characterizing the effect of the rule, the Second Circuit stated that "[e]ach [bank] has agreed not to compete with the others in a manner which the consortium considers harmful to its combined interests. . . . [S]uch arrangements are exemplars of the type of anticompetitive behavior prohibited by the Sherman Act." The Second Circuit's characterization would also seem to apply to the manner in which interchange fees are set. If confirmed, will you remain vigilant with respect to possible anticompetitive behavior by MasterCard and Visa, especially with regard to interchange fees? Do you agree with the analysis in *United States v. Visa U.S.A.*?

Answer: If confirmed as Assistant Attorney General for Antitrust, as I stated during my confirmation hearing, you can be assured that I will vigorously enforce the antitrust laws. Where the evidence shows a violation of the antitrust laws, I will prosecute. I am not currently aware of allegations of anticompetitive behavior by MasterCard and Visa. But like any other company, if I am made aware of such allegations, I will ensure that the Division thoroughly investigates such. In addition, with Division staff, we will determine whether the analysis in Visa U.S.A. is appropriate.

4. American Needle, a company that has produced apparel with NFL team logos for the past 20 years, recently brought suit alleging that the NFL and the owners of its 32 teams violated the antitrust laws by colluding to restrict the output of NFL apparel by entering into an exclusive license with Reebok. The district court dismissed the suit, holding that the NFL was a single entity and therefore exempt from the antitrust laws. Although the majority of circuits have concluded that the NFL is not a single entity, the Seventh Circuit affirmed, concluding that the NFL is a single entity for purposes of promoting football and that selling NFL apparel amounts to promoting football. *American Needle, Inc. v. NFL*, 538 F.3d 736 (7th Cir. 2008). American Needle has sought certiorari to resolve the circuit split, but before granting a writ of certiorari, the Supreme Court has asked the Solicitor General to file a brief on the issue. The case could determine whether other joint conduct by the NFL, including the sale of television rights, is subject to the antitrust laws. I have many concerns regarding the conduct of the NFL, particularly with regard to the NFL's decision to broadcast games on pay television, rather than on free broadcast television. The NFL claims that games televised on pay television are also televised on free broadcast television in the hometown television markets of the teams; however, the NFL narrowly defines what constitutes the hometown television market of an NFL team. If confirmed, will you commit to taking a close look at this case, to urging the Solicitor General to take a close look, and to being vigilant with respect to other potentially anticompetitive behavior by the NFL?

Answer: Yes. If confirmed, I will work closely with the Solicitor General and Division staff on this case, as well as any case on which the Supreme Court seeks views on antitrust issues. Also, as indicated during my confirmation hearing and you can be assured that I will vigorously enforce the antitrust laws. Where the evidence shows a violation of the antitrust laws, I will prosecute.

5. The Railroad Antitrust Enforcement Act, which this Committee recently considered, repeals the express antitrust exemptions enjoyed by the railroads and subjects railroad mergers to review by the antitrust agencies. I support such changes. However, the bill also subjects regulated conduct to suits for injunctive relief brought by private parties and eliminates the doctrine of primary jurisdiction in which courts must defer to regulatory agencies. Without a rollback of regulatory authority exercised by the Surface Transportation Board, I am concerned that the legislation could subject the railroads to conflicting legal obligations. This would be a significant departure from current doctrine, which was articulated most recently by the Supreme Court in *Credit Suisse v. Billing*, whereby the antitrust laws are supposed to give way to congressionally-mandated regulatory regimes. Can you discuss how you think the antitrust laws should interact with congressionally mandated regulatory regimes?

a. Can you discuss how you think the antitrust laws should interact with the regulatory authority exercised by the Surface Transportation Board?

Answer: Antitrust exemptions are not typically favored, although they do exist in certain areas. As I expressed during my confirmation hearing, in certain formerly regulated industries like the railroads, a reexamination of exemptions to determine their impact on competition is wise. I am also aware of the *Credit Suisse* ruling. If I am confirmed as Assistant Attorney General for Antitrust, I will examine these issues to determine what is in the best interest of consumers and maintaining consumer welfare, when balanced against the existence of congressionally mandated regulations in an industry.

6. The Justice Department issued a report last year indicating it intended to reduce enforcement in Section 2 monopolization cases. The report was met with sharp criticism from some quarters, notably several FTC Commissioners, creating the appearance of domestic divergence on enforcement policy. This divergence in opinions is being closely watched internationally. If confirmed, how would you ensure that the U.S. government conveys a unified message internationally on key substantive issues? If you are confirmed, what will you do to improve coordination between the two agencies?

Answer: As I stated during my confirmation hearing, I do not support the conclusions in the Section 2 Report. As I also noted during my confirmation hearing, I have an open mind about what should be done with the Report. On the whole, it represents high-quality, significant work by the Division staff. If I am confirmed, I plan to review the Report with Division staff and engage with the Federal Trade Commission, and then determine what is the best way to move forward on the issues presented.

7. Members of the antitrust bar have indicated their concern that criminal enforcement within the Antitrust Division sometimes diverges from the Division's overall enforcement policy. Do you believe criminal enforcement should be consistent

with the Division's general enforcement posture? If so, will you commit to ensuring that such consistency exists?

Answer: Yes. I do believe that criminal enforcement of the antitrust laws is critical to maintaining competitive marketplaces and I agree that it should be consistent with the Division's general enforcement posture. If confirmed as Assistant Attorney General for Antitrust, I will ensure that this consistency exists.

8. The Antitrust Modernization Commission recommended that Congress provide a budgetary authorization and corresponding appropriations to address the shortcomings in international technical assistance work currently being conducted by both the Justice Department and the FTC. A predictable and regular source of funding would make it possible to build a long-term strategy of engagement with priority countries. Well-funded international engagement and technical assistance is critical to U.S. competitiveness, as it can help curb the potential for divergence and misuse of competition enforcement against leading U.S. companies. Would you consider pressing for a budget authorization as a means of increased funding for the Department of Justice so it can provide meaningful technical assistance to the world's major competition authorities?

Answer: I believe that competition law is a global issue and Antitrust Division should play a significant role in promoting antitrust policy around the world. If confirmed as Assistant Attorney General for Antitrust, I will work to ensure that it does. We must continue our cooperation with worldwide antitrust authorities, discussing our differences with international enforcers respectfully and engaging with emerging antitrust regimes such as China and India as they implement new antitrust laws. I am sure these goals can be achieved. I also plan to participate actively in those international organizations that have traditionally worked to ensure some level of convergence on process and substantive issues, as well as continue the Division's tradition of offering Technical Assistance to countries with emerging antitrust regimes, and will take any necessary steps to ensure that outcome.

9. While the McCarran-Ferguson Act exempts many insurance company practices from the antitrust laws, it does not exempt acts of boycott, coercion, and intimidation. I am concerned that a number of major life insurance carriers may be engaging in a boycott with respect to secondary market activity. Last Congress, I wrote to the Assistant Attorney General to express concerns about evidence of a possible group boycott by a number of major life insurers. As a former prosecutor, I am keenly aware that the initial gathering of evidence does not constitute a full and thorough investigation; however, the evidence suggested that further investigation was warranted. Would you commit to reviewing the letter I wrote and the evidence mentioned therein?

Answer: Yes. If confirmed, I will review the letter you sent on this issue and will certainly consider the evidence mentioned therein.

10. On December 17th of last year, I joined three other Senators on this Committee, Chairman Leahy, Senator Kohl, and Senator Hatch, in writing a letter to the Attorney General and the Secretary of Transportation regarding concern over further use of DOT's statutory authority, pursuant to 49 U.S.C. § 41308, to grant antitrust immunity to airline joint ventures. Under this statute, DOJ has the opportunity to provide comments regarding such immunity. Since a number of applications for immunity remain pending, if you are confirmed, what steps will the Antitrust Division take to review these types of applications for immunity? Do you believe that an advisory role for DOJ in reviewing these applications is sufficient to protect its interest in making certain that consumers will not be harmed by any proposed immunity?

Answer: If confirmed as Assistant Attorney General for the Antitrust Division I look forward to learning more about this application process and the Division's role in it. I also look forward to working with you and the Department of Transportation to determine whether the roles, as established, are appropriate.

11. Despite numerous decisions to the contrary in the courts, the FTC continues to vigorously prosecute generic and brand drug makers for entering into agreements settling patent infringement litigation in which the generic firm agrees to delay entry. During your testimony before the Committee, you suggested that you might be opposed to any drug patent settlement that included a so-called reverse payment.
To clarify, does that mean that you believe any settlement in which a generic firm receives something of value, or receives a reverse payment—no matter the amount—violates the antitrust laws?

a. If a patent is valid and applicable, then a settlement allowing a generic to enter the market before the expiration of the patent—no matter what the generic manufacturer receives—would actually increase competition. Why should such settlements be unlawful? Why should patent holders not enjoy the presumption that their patent is valid until there is some evidence that it is not?

b. If not all settlements in which a generic firm receives something of value violate the antitrust laws, might the court in the underlying infringement case be in the best position to assess the potential anticompetitive affect of a settlement?

c. Do you believe it is appropriate for a government agency to continue litigating an issue when every circuit court to address the issue has rejected the agency's argument?

Answer: While the Federal Trade Commission has primary jurisdiction over the pharmaceutical industry, I am very concerned that certain reverse payment settlements, which slow the entry of generics drugs into the market, can negatively impact consumer choices and costs. Regardless of which position you take on these particular patent settlement cases, I think it is important for the antitrust agencies to speak with one voice on this issue. To that end, if confirmed, I pledge to work with the FTC to more closely

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align the agencies on this matter and develop a unified approach to dealing with reverse payment settlements.

12. Since 1997, you have worked as a partner at the law firm Hogan & Hartson on privacy and antitrust matters. Your clients have included eBay, DoubleClick (the largest internet advertising firm), *The Washington Post*, *Newsweek*, Dow Jones & Co., AOL and Compaq. If confirmed, how will you handle recusal issues should these or any other clients have matters being investigated by the Justice Department?

Answer:
If confirmed, in the event of a potential conflict of interest, of this or any other kind, I would consult with the Office of Government Ethics and the Department of Justice's designated agency ethics official and comply with their guidance.

Senator Grassley's Written Questions for Tony West, to be Assistant Attorney General for the Civil Division, U.S. Department of Justice

WHISTLEBLOWERS

1. Will you provide Congress with accurate and timely information regarding any action taken, administrative or criminal, against individuals who retaliate against whistleblowers?

Answer: If confirmed, I will work with other colleagues at the Department of Justice to provide appropriate information regarding retaliation against legitimate whistleblowers in response to requests from the Judiciary Committee.

2. I have closely monitored the treatment of whistleblowers by the FBI over the years. Could you please address what safeguards you will put in place to ensure that all FBI whistleblowers are not subject to retaliation, be if from the Office of Professional Responsibility or elsewhere within the FBI or DOJ?

Answer: If confirmed, I will work to ensure that legitimate whistleblowers are taken seriously and treated fairly and lawfully.

3. What actions will you personally take to abate any fears of retaliation against individuals who are critical of procedures, practices or policies that do not guarantee or execute the primary mission and goals of both the FBI and DOJ?

Answer: If confirmed, I will clarify to Civil Division management that I will not tolerate unlawful retaliation against anyone in the Civil Division. In addition, I will make clear that the opinions and judgments of career professionals are to be respected and valued and that among our main purposes is to facilitate the ability of career Division employees to execute DOJ's mission.

FALSE CLAIMS ACT

1. If you are confirmed, will you pledge to vigorously enforce the False Claims Act (FCA), and devote adequate resources to investigating and prosecuting FCA cases?

Answer: Yes, I will.

2. Will you pledge to cooperate and support *qui tam* whistleblowers that come forward with allegations of fraud, waste, and abuse under the FCA?

Answer: Yes. If confirmed, I will work with *qui tam* whistleblowers to support viable claims of fraud, waste and abuse of taxpayer dollars.

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3. Will you oppose efforts by industry groups, including the health care industry and the defense industry, to weaken the FCA and the *qui tam* provisions of the Act?

Answer: I consider the False Claims Act *qui tam* provisions to be an important weapon that facilitates the Civil Division's ability to address fraud. For this reason, while testifying before the Senate Judiciary Committee, I highlighted the vigorous enforcement of the False Claims Act as one of my primary goals if confirmed. To the extent efforts are made to weaken the False Claims Act, I will, if confirmed, work with Congress and my colleagues at the Department of Justice to oppose such efforts.

4. Do you have any question as to the constitutionality of the FCA and its *qui tam* provisions?

Answer: No.

5. Do you anticipate any decrease in the budget for DOJ's Commercial Litigation section which is responsible for false claims prosecutions? In previous years, DOJ has specifically requested litigation support funds, including funding for accounting experts, for pending false claims cases. Are you committed to securing the funding necessary to successfully litigate FCA cases?

Answer: Based on the information currently available to me, I do not anticipate any decrease in the budget for DOJ's Commercial Litigation branch. If I am confirmed, I will ensure that the Civil Division vigorously enforces the False Claims Act.

6. Will you provide Congress with regular, timely updates on the status of FCA cases, including statistics as to how many are under seal and the average length of seal time?

Answer: If confirmed, I will work with the career professionals in the Department to respond to Judiciary Committee requests for appropriate information about False Claims Act cases.

7. Will you support efforts to utilize the FCA to recover government money lost to fraud or abuse of government bailout funds, including but not limited to funds expended under the Troubled Asset Relief Program and other direct infusions of Government money used to prop up the balance sheets of various financial institutions across the country? Why or why not?

Answer: Yes. As noted above, I consider the False Claims Act to be the Civil Division's primary weapon for fighting fraud. Given the unprecedented amount of taxpayer dollars flowing to the private sector, I believe that effectively using the False Claims Act to ensure accountability is more important than ever before.

8. Recently, a lawsuit was filed alleging that the seal provision of the FCA, codified at 31 U.S.C § 3730(b)(2), is unconstitutional. That provision requires that FCA cases by

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qui tam relators be filed in camera and remain under seal for at least 60 days, and not be served upon the defendant until the court orders. This provision was designed to give the Government ample time to investigate an allegation before making the case public, while protecting evidence and the whistleblowers from undue harm or influence. The other benefit of the seal provision is that it allows frivolous complaints to remain under seal without causing harm to a defendant. In the past, I've been a critic of prolonged extensions of the seal. I believe DOJ should use the seal judiciously and not abuse its discretion. I also believe some transparency on the part of DOJ would go a long way to dispelling questions about the seal. That said, I think the seal does a lot of good, especially in protecting whistleblowers against retaliation. Do you believe the seal provision of the FCA is unconstitutional? Why or why not?

Answer: I do not believe that the seal provision of the False Claims Act is unconstitutional. As long as there are reasonable arguments to be made, I will, if confirmed, defend the False Claims Act and the seal requirement against constitutional challenge because the provision strikes the right balance. At the same time, it is important to maximize the effectiveness of the Department's efforts to enforce the False Claims Act. Part of that effort includes protecting legitimate whistleblowers from retaliation and allowing the Government ample time to investigate whistleblowers' allegations. I believe the seal serves those important interests.

9. Will you work cooperatively with me to ensure that legislation I introduced restoring the original intent of the FCA is reviewed by DOJ in a timely manner with constructive input?

Answer: Yes.

10. Last year, the Supreme Court issued a decision interpreting portions of the FCA in A*llison Engine Co. v. United States ex rel. Sanders*. This opinion created a new intent requirement for the Government and *qui tam* relators to prove before liability can attach to certain false claims. Unfortunately, this new requirement has hindered the ability of the Government to recover Government money lost to fraud. My concerns were heightened when a judge in my home state of Iowa dismissed a FCA case on his own motion, despite objections from the Justice Department. I am worried that this case, *U.S. v. Hawley*, is just the start of a series of case dismissals and will endanger the Federal Fisc. Do you agree that the decision in *Allison Engine* is a set back for the Federal Government in prosecuting FCA cases?

Answer: I share your concern about *Allison Engine* and appreciate the Committee's recent efforts to ensure that the liability provision of the False Claims Act (31 U.S.C. § 3729) be revised to reflect the original intent of the Congress, and specifically the effort to address the *Allison Engine* decision in S. 386. I understand that the Department offered proposed revisions to address *Allison Engine* and that the Committee adopted most of those changes. In addition, I share your concern about

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the *Hawley* decision and believe it was incorrectly decided. The Department has filed a brief in the Eighth Circuit appealing *Hawley*.

MSP QUI TAM

In the 1980's, Congress enacted the Medicare Secondary Payer (MSP) statute that was designed to protect Medicare expenditures from waste and abuse when Medicare footed the bill for services, but another insurer was supposed to pay. The MSP statute provided a right of action to either DOJ or to private litigants to file suit on behalf of Medicare. This law was based largely upon the successes of other *qui tam* statutes—such as the False Claims Act—and was designed to recover monies that Medicare wrongfully paid out. However, recent court decisions have held that the MSP statute is not a *qui tam* statute for the purposes of recoveries. As a result, any monies recovered by a plaintiff are theirs to keep and they are not required to pay back any share to the U.S. Treasury. This is an inaccurate reading of the statute and creates a result contrary to the purpose of the statute.

Recently, DOJ filed a brief in the Federal District Court for the Western District of North Carolina as an Intervenor defending the constitutionality of a *qui tam* provision that allows relators to file suit on behalf of the Government for misuse of patent markings (35 U.S.C § 292).

In that brief, DOJ stated that Congress has enacted several *qui tam* provisions and expressly noted that the MSP statute (42 U.S.C. § 1395y) provided a *qui tam* cause of action for "failure to pay primary health insurance claims where Medicare is the secondary payer." Based upon this statement, DOJ currently seems to agree that the MSP statute is a *qui tam* statute similar to those such as the FCA. However, I have yet to get a straight answer from a nominee on this question.

1. Do you believe that the MSP statute is a *qui tam* statute?

Answer: The MSP is a complex statute and the issue of whether Congress provided *qui tam* authority in the MSP is a fairly new issue. If confirmed, I will review the issue with the career attorneys in the Civil Division.

2. Will you continue to support the use of the MSP statute and the *qui tam* mechanism in the statute to help Medicare recover monies expended when Medicare should have been the secondary payer?

Answer: Please see my response to Question 1 above.

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ANTI-TERRORISM ACT

In 1990, I sponsored legislation known as the Antiterrorism Act of 1990. This legislation created a civil remedy for any individual, their estate, survivors or heirs, who were injured or killed by an act of terrorism, to sue those who committed the act or sponsored the terrorist act. I drafted this law to empower victims of terrorism to take the fight back to the terrorists and hit them where it counts, in their pocket books and bank accounts. It helps victims seek justice by become an active participant in recovering funds from those who seek to harm Americans at home, or abroad.

This legislation is a vital tool in the war on terror. While money will never bring back a loved one, it can help by taking the money out of the pockets of dangerous terrorists and the state sponsors of terrorism which will help prevent other violent acts against Americans. I am concerned that as judgments against sponsors of terrorism pile up, there may be political efforts to have our government intervene and unduly influence the decisions of the courts or hamper enforcement of court judgments.

1. Do you agree with the purpose and history of the Antiterrorism Act of 1990?

Answer: Yes. I agree that Congress should support victims of international terrorism and I support the cause of action in the Antiterrorism Act of 1990, as codified at 18 U.SC. § 2333a.

2. Will you pledge to support this law?

Answer: Yes, I will support the Antiterrorism Act of 1990.

3. Will you ensure that DOJ acts in accordance with the original intent of the Antiterrorism Act?

Answer: If confirmed, I will make every effort to ensure that the Department of Justice acts in accordance with the original intent of the Antiterrorism Act as expressed in the statute.

4. Will you pledge to support victims of terrorism who bring forth good faith claims and in judgments against terrorists and state sponsors of terrorism?

Answer: If confirmed, I pledge, consistent with United States law, to support victims of terrorism who have filed legally meritorious claims and obtained judgments against terrorists and state sponsors of terrorism.

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5. Will you pledge to resist efforts from other agencies and departments that may seek to have cases dismissed?

Answer: If confirmed, I will review the appropriateness of case dispositions on a case by case basis, and will determine the United States' position consistent with the law.

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Senator Kohl's Follow-Up Question for Tony West

Question: I am troubled by the fact that, unlike other independent agencies like the SEC, the FTC cannot obtain civil penalties either administratively or in cases it brings in federal court independently of the Justice Department. In circumstances where quick action is needed to stop a fraud and prevent further harm to consumers, the FTC has to choose between going directly and quickly into court for immediate relief – and forgoing civil penalties -- or first going to Justice Department and getting the DOJ to bring the case. The FTC must gain the approval of the Justice Department, and the process can take 45 days and require time for DOJ counsel to gear up. Would you support legislation enabling the FTC to seek civil penalties in court independently?

Response: I recognize your concern about preserving the ability to take quick action when needed. Toward that end, if confirmed, I will reach out to the FTC and the career attorneys in the Civil Division for suggestions on how we can prevent the 45-day review period from becoming an impediment to timely action on civil penalties. I also recognize that the Attorney General has had long-standing authority to supervise litigation conducted on behalf of, and in the interests of, the United States Government; therefore, any legislation seeking to alter this fundamental authority is something I would evaluate with caution and in consultation with my colleagues at the Department of Justice.

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SUBMISSIONS FOR THE RECORD

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ATIONAL AERONAUTICS & SPACE ADMIN. - OIG
UCLEAR REGULATORY COMMISSION - OIG
OSTAL SERVICE-OIG & Inspection
AILROAD RETIREMENT BOARD - OIG
ECURITIES & EXCHANGE COMMISSION - OIG
MALL BUSINESS ADMINISTRATION - OIG
OCIAL SECURITY ADMINISTRATION - OIG
TATE DEPARTMENT
Bureau of Diplomatic Security & OIG
RANSPORTATION-OIG
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NATE CATURA
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MARIA COSCIA
reasurer
JAMES OTTEN JR
ice President – Legislative Affairs
DUNCAN TEMPLETON
ational Chapters Director
RASHEED TAHIR
ational Awards Director
SHANON MAST-MCPHERSON
mmediate Past President
ART GORDON
egislative Counsel

February 20, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

As the National President of the Federal Law Enforcement Officers Association (FLEOA), a 26,000 member nonprofit, nonpartisan organization representing federal law enforcement officers, I am writing to you in support of the appointment of Lanny Breuer for the position of Assistant Attorney General for the Criminal Division.

FLEOA's membership includes criminal investigators and officers from over 60 Federal law enforcement agencies including the Federal Bureau of Investigation, Bureau of Alcohol Tobacco and Firearms, Department of Justice, Office of the Inspector General, United States Marshals Service and many others. All of our members serving in these agencies have sacrificed a great deal while supporting their agency's formidable mission. They are the frontline of our nation's defense, and we need to ensure that they are led by a qualified team of professionals who have consummate experience in law enforcement issues.

As Assistant Attorney General for the United States, Lanny Breuer will manage the Criminal Division and will work closely with with the 93 United States Attorney's across our nation. His position will be of the utmost importance to all Federal criminal investigators.

Mr. Breuer started his career as a prosecutor for the Manhattan District Attorney's Office in New York. While at the Manhattan DA's Office Mr. Breuer prosecuted a wide range of criminal cases. He then went into private practice defending white collar criminal cases and later was appointed as Special Counsel during the Clinton administration.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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Mr. Breuer has been asked to be a part of the President's and Attorney General's team to implement the Obama-Biden Administration's priorities of strong law enforcement, and a restoration of robust state and local support.

I am confident that Lanny Breuer possesses the requisite knowledge, experience and and leadership ability that will serve as an asset to the Department of Justice and to the American people.

Please don't hesitate to call should you require any additional input from FLEOA regarding the qualifications of Mr. Breuer. We look forward to working with him and other senior members of the Department of Justice in the coming year.

Respectfully submitted,

J. Adler
National President

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

[redacted]

February 19, 2009

VIA FACSIMILE AND HAND DELIVERY

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Nomination of Christine A. Varney for Assistant Attorney General for Antitrust, U.S. Department of Justice

Dear Chairman Leahy and Senator Specter:

This letter is respectfully submitted to the Senate Committee on the Judiciary to communicate our enthusiastic support for the nomination of Christine A. Varney to serve as Assistant Attorney General ("AAG") for Antitrust within the U.S. Department of Justice ("DOJ"). We are a group of 20 former chairs of the American Bar Association Section of Antitrust Law. Our group includes practicing and retired partners at major law firms, former senior federal antitrust agency officials and in-house counsel, each specializing in antitrust law.[1] Ms. Varney has not requested that we submit this letter. Instead, we write because each of us believes that Ms. Varney is a highly accomplished, capable nominee who will serve consumers and this country with distinction as Assistant Attorney General for Antitrust.

Ms. Varney is an experienced, respected antitrust lawyer. It is our collective view that the Department of Justice Antitrust Division and consumers are best served by an AAG with substantial experience in antitrust law. Such a person is, in our opinion, best positioned to hit the ground running, which is essential given the importance of protecting competition in this fragile economy. As you are aware, Ms. Varney previously has obtained valuable experience as a Commissioner at the Federal Trade Commission, which shares antitrust enforcement jurisdiction with the DOJ's Antitrust Division.

She also has been recognized for the quality of her representation of clients in the private sector. For example, she has achieved the recognition of her peers in the form of coveted rankings by Chambers USA, Washington, DC Super Lawyers, and International Who's Who of Competition Lawyers and Economists. These accolades are well-deserved; many of us have interacted with Ms. Varney while representing clients before her when she was a Commissioner or have served as co-counsel with her in various matters in the private sector. Not only is she

[1] This letter of support represents our personal views, and not necessarily the views of our law firms, any client, the ABA, or the ABA Section of Antitrust Law.

smart and knowledgeable about the antitrust laws, she is an effective leader, cooperative, hardworking, pragmatic, and of high character and integrity.

Importantly, Ms. Varney is known in the international realm, too, particularly for her contributions to the development of international competition policy through the Organization for Economic Cooperation and Development ("OECD"), an important international body in which the U.S. antitrust agencies are active participants and leaders. Today, antitrust enforcement has become global and Ms. Varney's background and relationships will be critical in dealing with foreign enforcers and international organizations, including the OECD and the International Competition Network ("ICN").

In short, due to her experience and the quality of her reputation as an antitrust lawyer, we believe Ms. Varney would be an AAG with immediate credibility among the antitrust bar, the business community, international enforcers, the staff, and, of course, American consumers.

We have confidence that Ms. Varney has the expertise, leadership skills, integrity, and commitment to vigorously enforce the antitrust laws to the benefit of this country's consumers. We applaud President Obama's selection for this key position within his Administration, and highly recommend that Ms. Varney be confirmed as AAG for Antitrust. A representative of our group would be honored to testify before the Committee in support of this nomination, or to discuss Ms. Varney's impressive qualifications with your staff.

Respectfully submitted,

Joseph Angland *White & Case LLP*	John DeQ. Briggs *Axinn, Veltrop & Harkrider LLP*	Roxane C. Busey *Baker & McKenzie*
Michael L. Denger *Gibson, Dunn & Crutcher LLP*	Ky P. Ewing, Jr. *Retired*	Kathryn M. Fenton *Jones Day*
Kevin E. Grady *Retired*	Caswell O. Hobbs *Potomac River Associates*	Robert T. Joseph *Sonnenschein Nath & Rosenthal LLP*
Donald C. Klawiter *Mayer Brown LLP*	James R. Loftis III *Retired*	Janet L. McDavid *Hogan & Hartson LLP*
Phillip A. Proger *Jones Day*	Harry M. Reasoner *Vinson & Elkins L.L.P.*	James F. Rill *Howrey LLP*

Irving Scher *Weil, Gotshal & Manges LLP*	Alan H. Silberman *Sonnenschein Nath & Rosenthal LLP*	Robert P. Taylor *Mintz Levin Cohn Ferris Glovsky and Popeo P.C.*
Richard J. Wallis *Microsoft Corporation*	Robert C. Weinbaum *Retired*	

cc: Members of the Committee
Christine A. Varney, Esq.

Office of
PHIL ANGELIDES

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SACRAMENTO, CA 95816
(916) 448-1998 I
(916) 446-0966 I

March 9, 2009

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Spencer
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West as Assistant Attorney General – Civil Division

Dear Senators Leahy and Specter:

I am writing this letter to express my strong support of the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

I have known Tony well on both a professional and a personal level for over two decades. He is a person of great intellectual ability with outstanding professional skills and a proven dedication to excellence in his work. As an attorney, he is widely respected for his outstanding advocacy skills, thoughtful legal analysis, and wise judgment. In addition, Tony has consistently displayed an unwavering commitment to the rule of law and has rightly earned the respect and admiration of his peers. Most importantly, Tony is a person of unquestioned integrity and honesty who has shown a deep and lasting commitment to public service.

On a personal level, Tony is a wonderful person to have as a professional colleague and as a friend. He is gracious and generous to his friends and his community. He has served as a dedicated mentor to young lawyers, even as he has achieved success in his own right. I consider myself lucky to have the opportunity to voice my support for his nomination.

I know that Tony will bring able leadership and the highest integrity to the Department of Justice. I enthusiastically endorse his nomination and urge that he be confirmed without delay.

Thank you for your consideration.

Sincerely,

Phil Angelides
Former Treasurer, State of California 1999-2007

March 5, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to strongly support the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

I am a local prosecutor in Santa Clara County, the past President of the Santa Clara County Bar Association, the Bar Association of Silicon Valley and the past President of the California La Raza Lawyers Association, a statewide association representing more than 2,000 Latino lawyers.

I have known Tony for more than a decade, and I believe he is an excellent nominee for a high-ranking position at the Justice Department. Tony is respected and admired by colleagues and opponents alike, who know him as someone who is always even-tempered and who conducts himself with the highest level of integrity and ethics. I know Tony will bring these qualities to the Civil Division, and that they will prove invaluable as he helps to restore independence and credibility to the Department of Justice.

I enthusiastically support Tony's nomination and I urge you to confirm him without delay.

Respectfully,

Christopher Arriola
[redacted]

Stanford Law School

Barbara Allen Babcock
Judge John Crown
Professor of Law, Emerita

Crown Quadrangle
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Stanford, CA 94305-8610
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March 5, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General – Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I am writing to strongly support the confirmation of Tony West as Assistant Attorney General for the Civil Division. I have known Tony for almost 20 years, since he was my student at Stanford Law School and served as President of the Stanford Law Review. Tony was a gifted law student and his teachers knew he would be a great addition to the profession. In that he has exceeded our fondest expectations.

As a former head of the Civil Division myself, I have a good sense of what the job requires and can assure you that Tony West has the necessary qualifications. First, Civil is the division which most often represents the government in court on a wide range of matters. Tony is an accomplished litigator whose experience in the public and private spheres and in many different courts and policy positions is ideal preparation for understanding the daily work of the division.

Perhaps as important as his litigation skills, Tony is an excellent and accomplished leader and administrator. The size of the Civil Division and the breadth of its mandate make it hard to assure good practice and a unified approach in the government's litigation. But Tony has the ability to inspire and direct. In terms of the hiring he will do, the standards of excellence and ethical lawyering he will set, he will be exemplary.

I should add that I have followed Tony West's career since he left here, and also know others who are very familiar with his work. I am quite certain you will find that everyone who has ever worked with him (or indeed against him) has only the highest regard for his abilities. His is exactly the kind of appointment which will help to bring the Department back to high standards of Justice it has served in the past.

Please let me know if there is any further information I can furnish about Tony West. He has my unqualified recommendation.

Very truly yours,

Barbara Allen Babcock /dl

Barbara Allen Babcock
Judge John Crown Professor of Law
Emerita

ARNOLD & PORTER LLP

William J. Baer
[redacted]
555 Twelfth Street, NW
Washington, DC 20004-1206

March 4, 2009

[redacted]

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Christine Varney

Dear Chairman Leahy and Senator Specter:

I am writing concerning the Committee's consideration of the nomination of the Honorable Christine Varney to become Assistant Attorney General of the Antitrust Division of the Department of Justice.

I have known Christine Varney since 1995, when she was a Commissioner at the Federal Trade Commission and I was Director of the FTC's Bureau of Competition. We worked closely together for the next three years. I became an immediate fan and remain one today. Christine is smart, disciplined, quick and fair. She understood well the unique law enforcement responsibilities of the FTC and championed effective use of its authority to advance consumer welfare.

Christine's unique combination of experiences in the public sector and as a Partner at Hogan & Hartson qualify her well to assume the role of Assistant Attorney General. She will enforce the antitrust laws vigorously, but fairly. In my experience, some antitrust lawyers get caught up in the jargon and technical complexities of antitrust law. Christine understands the complexities, but her focus has been and will be on the bottom line: the unique role of antitrust enforcement in the U.S. economy – as the proverbial economy cop on the beat, making markets work efficiently and delivering high quality goods and services to the American public at competitive prices.

She is a talented and very worthy nominee for the head of the Antitrust Division. I respectfully urge that the Senate confirm her nomination.

Very truly yours,

William J. Baer

Testimony of David A. Balto,
Senior Fellow, Center for American Progress Action Fund[1]

"On the Nomination of Christine Anne Varney as Assistant Attorney General for the Antitrust Division of the Department of Justice"

Before the Senate Judiciary Committee

Tuesday, March 10, 2009

Introduction

I welcome the opportunity to submit this testimony for the confirmation hearing of Christine Anne Varney as the Assistant Attorney General of the Antitrust Division of the Department of Justice. Ms. Varney is eminently qualified to become the chief antitrust enforcer in the Department of Justice. Her experience as a FTC Commissioner and a private practitioner with a sophisticated antitrust practice gives her the breadth of experience necessary to lead the talented and committed public servants in the Antitrust Division. I am confident that Ms. Varney will receive the strong approval of this Committee.

I am providing this testimony so the Committee recognizes the significant challenges that the next Assistant Attorney General and the Antitrust Division face. Antitrust enforcement is the cornerstone to a competitive marketplace and when that enforcement is docile or misdirected consumers will suffer. Unfortunately, during the past administration the Antitrust Division embraced a minimalist course, largely trying to reduce the scope of enforcement and the use of antitrust in private litigation. This minimalist approach was based in significant part on the "Chicago School" theory that antitrust enforcement more often makes mistakes and markets almost always lead to the best result. When there are abuses by firms that use market power to exclude competition, Chicago School proponents argue, the market will self-correct because market power is temporary, and entry barriers are minimal.

[1] I am a Senior Fellow at the Center for American Progress Action Fund. This testimony is submitted on my behalf and on behalf of the Consumer Federation of America. CFA is the nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior citizen, low income, labor, farm, public power and cooperative organizations, with more than 50 million individual members.

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Even if this belief had some theoretical support, recent changes in the economy have severely undermined its proscriptive value. This belief in the near-perfect market was severely shattered by the economic downturn. The assumptions that markets are self correcting and regulation is inferior have fallen to the wayside. As Republican FTC Commissioner Tom Rosch said in a recent speech "if not dead [the Chicago School] is on life support.... [M]arkets are not perfect; imperfect markets do not always correct themselves; and business people do not always behave rationally."

The facts of the minimalist approach to enforcement need to be clear. Over the past eight years, the Division brought no enforcement actions against dominant firms; went more than five years without bringing a merger challenge in federal court; adopted an amicus program that sought almost exclusively to narrow the scope of antitrust law; and adopted an unnecessarily adversarial attitude toward other enforcement officials, especially its sister antitrust agency, the FTC.[2] The results in many markets are not surprising. A lack of merger enforcement has led to oligopolistic market structures which foster coordination, higher prices and diminished services. Moreover, the lack of merger enforcement has created many entities that are "too big to fail" and thus, candidates for government bailout. A lack of dominant firm enforcement has led to less innovation and economic growth. The general lack of enforcement may lead business to believe the cop has left the beat, perhaps leading to greater efforts at coordination and price fixing as well as predatory conduct.

That has to change. The economic downturn makes competition enforcement even more vital as consumers have suffered from higher prices, lower output, and fewer services in increasingly concentrated markets. Lax antitrust enforcement has weakened the economy as markets have become more concentrated, leading to higher prices and less service.

What are the key challenges for the new head of the Antitrust Division?

Create a Progressive Antitrust Enforcement Program Tailored to the Economic Downturn.

Some may suggest that antitrust enforcement should be minimalized because of the economic downturn. Those people believe that competition is a burden too

[2] Antitrust Division officials were openly critical of the FTC's patent settlement and standard setting enforcement efforts. As a former government official, I believe these statements were unprecedented and improperly weakened the FTC's enforcement efforts.

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great to bear when the market is suffering. They could not be more wrong. Antitrust enforcement is even more vital when markets are shrinking, prices are rising, and market opportunities are falling. History tells an invaluable lesson. In the aftermath of the depression, the Temporary National Economic Committee ("TNEC") found that the lack of antitrust enforcement in the 1930s harmed the economic recovery as business concentration and monopoly behavior constricted production and pegged prices too high; the result was diminished investment, production, employment, and income that had prolonged the Depression and triggered the 1937 and 1938 recession.

So where should the renewed focus on enforcement be placed?

First, cartel enforcement will be even more important as the economic downturn drives some firms to seek the easy life by arranging treaties with their rivals. Second, firms may attempt to use the difficult economic times as a justification to consolidate with competitors in ways that would not have been imaginable under a more robust economy. This threatens to create entities with excessive market power that far outlasts the recession. Third, the temptation for dominant firms to gain market share by unlawfully excluding competitors may be greatest when they view it as a shortcut to preserving shareholders' profit expectations in tough times.

Moreover, one key to reversing the economic downturn is increased competition. As the TNEC report found, antitrust enforcement can play a vital role in removing market barriers and permitting new firms to enter markets, thereby increasing job opportunities and leading to economic growth.

Reverse the Constriction of the Antitrust Laws.

During the past Administration, the Antitrust Division was a cheerleader for the belief that antitrust law would do more harm than good and should be exercised sparingly if at all. In its amicus program, the past Administration always argued on behalf of defendants (with one exception). It aggressively attacked the role of private antitrust enforcement. Moreover, before the Supreme Court it declined to support the efforts of its sister agency, the Federal Trade Commission, to attack problematic pharmaceutical patent settlements. In some cases the Supreme Court took an even more minimalist approach than that suggested by the Antitrust Division.

The result? Antitrust law has been severely weakened as a device to protect

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the market from anticompetitive conduct.

The Antitrust Division should work actively to reverse the past constriction of the law. There are three tools to remedy this problem.

First, the Antitrust Division can begin to reverse this constricted review of the law through its own enforcement actions. For example, early in the past Administration, the Republican leadership eliminated the Division's civil task force. Established during the Clinton Administration, the task force established a record of litigation admired throughout the Justice Department. The Division brought major civil enforcement cases against Microsoft, American Airlines, Visa, MasterCard, and numerous other prominent companies. These cases eliminated exclusionary practices that harmed competition and millions of consumers. The Division should reestablish the Civil Task Force and make civil enforcement a major priority.

Second, the Division should actively seek opportunities, through its amicus program, to clarify the law in a fashion that expands the ability of private parties to augment public enforcement and protect competition through antitrust litigation. The government has limited enforcement resources and private antitrust litigation is important to identify and attack anticompetitive conduct. The Division should actively participate in lower courts providing guidance on issues in which the courts are inconsistent or the law is unclear. Examples include issues such as antitrust injury, the standards for motions to dismiss under *Twombly*, proof of conspiracy, structuring the rule of reason analysis, market definition, class certification, and demonstrating a violation with proof of actual anticompetitive effects. And, in those cases in which the Division supports defendants, it should do so in a way that articulates a balanced statement of what the law should be, keeping open the potential for the development of the law to promote competition.

Finally, where the courts have gone too far in narrowing the antitrust law, the Division should work with Congress to reverse that trend. There is no better example than the Supreme Court's decision two years ago in *Leegin Creative Leather Products v. PSKS,* which abandoned the rule that resale price maintenance was per se illegal. The results have been increased obstacles for discounters, especially Internet-based discounters, to aggressively compete. Fortunately, Senator Herb Kohl has introduced legislation to reverse *Leegin*, and the new Administration should actively support that legislation.

Abandon the Justice Department's Dominant Firm Report.

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The culmination of the Bush Administration's antitrust non-enforcement was the issuance of a report on dominant firm conduct last year, which attempted to provide de facto rules of per se legality for dominant firms. The effort to address the concerns of dominant firm conduct began promising with the FTC and DOJ agreeing to a series of joint hearings. But rather than arriving at a consensus with its sister agency, the DOJ chose to go it alone and issue its own report at the close of the Administration.

The Report articulates alleged rules that would basically permit exclusionary conduct by monopolists unless the small firm can demonstrate that the anticompetitive effects are "disproportionately" greater than the procompetitive potential of the exclusionary conduct. The report articulates an extremely narrow view of the law, one in which dominant firm cases would be brought rarely if ever and would almost never succeed. As Jon Jacobson, a former Commissioner of the Antitrust Modernization Commission observed:

> Monopoly power can cause great harm to the national economy through higher prices, lower output, reduced choice, and stunted innovation. The premise underlying the disproportionality test is that monopoly is not really harmful. That premise is unsupported and, in any event, contrary to the fundamental purposes underlying Section 2.

Fortunately, three FTC Commissioners including a Republican and current Chairman Jon Leibowitz issued an 11-page statement resoundingly rejecting the report. The Commissioners identified two "overarching concerns" with the report. First, "the U.S. Supreme Court has declared that the welfare of *consumers* is the primary goal of the antitrust laws. However, the Department's Report is chiefly concerned with firms that enjoy monopoly or near monopoly power, and prescribes a legal regime that places these firms' interests ahead of the interests of consumers. At almost every turn, the Department would place a thumb on the scales in favor of firms with monopoly or near-monopoly power and against other equally significant stakeholders." Second, the Commissioners observe that the report "seriously overstates the level of legal, economic, and academic consensus regarding Section 2." In addition, the Commissioners noted that they were "concerned that voices representing the interests of consumers were not adequately heard," and that the report relied too heavily on economic theory in the consideration of applying antitrust law.[3] Thus, the Commissioners caution that the DOJ's approach if

[3] I note that no small businesses or representatives of consumer organizations were invited to testify at the hearings.

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"adopted by the courts, would be a blueprint for radically weakened enforcement of Section 2 of the Sherman Act."

As an antitrust practitioner who was invited to testify before the hearings, I found the report a bit stunning. Certainly there are areas of antitrust enforcement that need reform, and markets that are not behaving entirely competitively. But the area of dominant firm conduct is not one of them. There is barely any evidence that uncertainty in antitrust law has dampened the ability of dominant firms to compete aggressively. The report articulates an extremely narrow view of the law, one in which dominant firm cases would be brought rarely if ever and would almost never succeed. Not only are the standards inconsistent with the law and sound antitrust and economic policy, but these rules would give monopolists free rein to crush new or existing rivals.

The first action of the Clinton Administration's Antitrust Division was to abandon the Reagan Administration's vertical restraint guidelines. Now, the Obama Antitrust Division should abandon the Bush Administration's dominant firm report.

Restore the Ability to Litigate Mergers.

During the past Administration, the Division went to court in far fewer mergers cases, it won only once, and it failed to ascend the courthouse steps for more than five years. Since the Division and the FTC typically would litigate three or four merger cases a year, the lack of merger litigation was truly remarkable. Merger litigation is critical for consumers. To give just one example -- if the Clinton Administration had failed to block the Staples/Office Depot merger, millions of consumers would have paid higher prices for the past 12 years.

The problem with a lack of litigation, of course, is that it weakens the ability to litigate and secure meaningful relief in merger enforcement matters. Moreover, failing to litigate makes each potential case seem ever more daunting. (Fortunately at the close of the Bush Administration, the Division went to court in two merger cases.)

This timidity in merger litigation must be reversed. The Division, like every other part of the Justice Department, prides itself as being the best litigators in Washington, but without the experience, it is difficult to effectively litigate.

And there are certainly areas where litigation may be warranted. As

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Presidential candidate Obama observed, enforcement in health insurance was particularly lax, permitting almost all markets to become highly concentrated, leading to higher prices. In telecom, the Division permitted massive consolidation as the baby bells have devoured almost all of their siblings. The Division never challenged a merger based on the loss of potential competition. Similarly, the Division failed to challenge any vertical merger. Vertical arrangements such as those raised in the Ticketmaster-Live Nation merger should receive considerable attention from the Division.

Besides litigation, the Division, along with the FTC needs to both ramp up enforcement and provide guidance in areas left underenforced in the prior Administration. Although the agencies conducted hearings on horizontal mergers, they overlooked many areas of merger enforcement including potential competition, vertical mergers, and mergers raising buyer power concerns. The Guidelines addressing potential competition and vertical mergers were last revised in 1984 and are clearly out of date. These Guidelines need to be revised to recognize the potential anticompetitive concerns in all three of these areas.

Restore the Balance in Healthcare Antitrust Enforcement.

Healthcare is a major priority for the government enforcement agencies accounting for a greater portion of enforcement resources than any other industry. Healthcare antitrust enforcement can play a productive role in the efforts to control healthcare costs and enhance innovation in these markets. Central to sound health care antitrust enforcement is establishing a balance among these important principles: (1) enforcement should focus on the sectors of the healthcare system with the greatest impact on consumers; (2) both monopoly and monopsony power can harm consumers; and (3) enforcement must be balanced with clear guidelines and advice to permit procompetitive conduct.

Yet there are serious concerns about how the agencies' healthcare enforcement resources are utilized. In assessing the federal health care antitrust enforcement program, the American Antitrust Institute observed in its transition team report that "[t]he priorities of the health care enforcement agenda need to be realigned to areas with the greatest impact on consumers. Unlike in prior Administrations, there is a significant imbalance in enforcement priorities between anticompetitive activity by health insurance companies and healthcare providers. In the seven years of the Bush Administration, all non-merger enforcement actions

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have involved health care providers, with no enforcement involving health insurers."[4]

Enforcement in the past Administration focused almost entirely on doctors and ignored the problems posed by health care intermediaries, such as health insurers, Group Purchasing Organizations (GPOs), and Pharmacy Benefit Managers (PBMs). All of the 31 Bush Administration enforcement actions against anticompetitive conduct were brought against physicians. There is little evidence that these actions produced significant competitive benefits. Almost 40% of these cases were brought in rural markets, exacerbating the existing challenge of retaining and attracting qualified professionals to those underserved areas.[5] Even the Antitrust Section of the American Bar Association has counseled that the area of enforcement against physicians "is a controversial and relatively murky area."

One might suggest that the significant number of enforcement actions might be evidence of a significant competitive problem. Relying on the number of enforcement actions would be very misleading. Only one of the over 31 cases was litigated. Provider groups rarely have the resources to battle with the government agencies and may find signing a consent a far less costly solution than trying to seek vindication, even if they have not violated the law. And in none of the 31 cases have insurance companies sued for treble damages, suggesting that the insurance companies did not believe they were injured or that the injury was not substantial enough to seek damages. Moreover, there is no evidence of whether the actions enabled health insurers to secure lower rates from providers, or if these lower rates resulted in lower premiums for consumers.

At the same time the Antitrust Division brought no meaningful enforcement actions against anticompetitive or fraudulent conduct by intermediaries, including insurers, GPOs, and PBMs. Much of this lack of enforcement was picked up by state enforcement officials who brought several cases securing significant penalties. The structural problems in these markets became even more severe because of a lack of merger enforcement. As a candidate, President Obama singled out health insurance mergers as a major culprit in undercutting efforts to address increasing healthcare costs. He specifically criticized the Justice Department for taking a lax attitude toward health insurance mergers:

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[4] The complete report is available online at www.antitrustinstitute.org/Archives/transitionreport.ashx.

[5] *See* letter from Beth Landon, President, National Rural Health Association to the Honorable Patrick Leahy and the Honorable Arlen Specter (March 4, 2009)(urging the need for a balanced enforcement agenda in rural health care issues).

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> The consequences of lax [antitrust] enforcement for consumers are clear. Take health care, for example. There have been over 400 health care mergers in the last 10 years. The American Medical Association reports that 95% of insurance markets in the United States are now highly concentrated and the number of insurers has fallen by just under 20% since 2000. These changes were supposed to make the industry more efficient, but instead premiums have skyrocketed, increasing over 87 percent over the past six years.

This merger wave hurt small businesses, consumers and healthcare providers. Practically every metropolitan health insurance market is now highly concentrated. A similar trend occurred for PBMs in which three PBMs dominate the market. What has been the result? Near record profits for health insurers and PBMs. And as health insurers have used their market clout to reduce reimbursement for healthcare providers, those providers have increasingly been forced into offering assembly-line health care.

This concentration has led to higher prices, more anticonsumer insurance provisions, greater payment delays, less coverage and poorer service. Increasingly, consumers have appropriately rebelled at the actions of insurers that restrict coverage, manipulate claims processing systems, and find other ways of either refusing to pay or delaying payments. Efforts to regulate health insurers are left to the states, as there is no federal approach to assuring both choice and transparency in these markets.

We do not know about the reasons for the imbalance in enforcement priorities. One reason may be an assumption that the interests of health insurers are coincident with that of consumers. Such a view would be misguided especially when dealing with for-profit insurers that are responsible to their shareholders. Lower rates from providers may simply be pocketed as higher profits, especially where health insurers have market power. And the evidence is indisputable that almost all metropolitan health insurance markets are highly concentrated. Moreover, health insurers are not true fiduciaries for insurance subscribers. Plan sponsors may have a limited concern focusing on the cost of the insurance, and not the quality of care. Consequently, health insurers can increase profits by reducing the level of service and denying medical procedures that physicians would normally perform based on professional judgment. Providers are critical as advocates for the patient, and play a central role in advocating for patient care. Health insurers also prohibit providers from advising patients about medically

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necessary procedures that may be covered under other plans through physician "gag" clauses. That is why there have been countless consumer protection actions taken against health insurers. If competition among insurers diminishes, patients are more likely to pay for these procedures out-of-pocket or forego them entirely.

Vital to the functioning of health care markets is the ability of providers to collaborate. The key guidance in this area is joint FTC/DOJ *Statements of Antitrust Enforcement Policy in Health Care*, which were issued in 1996, twelve years ago. The Guidelines are clearly out of date. When the 1996 Guidelines were issued, then FTC Commissioner Varney wrote: "[t]he health care marketplace is undergoing rapid change, and it is primarily through an open dialogue with all involved in the health care industry that the Agencies can continue to provide appropriate and relevant antitrust guidance." Yet that dialogue and the willingness to respond to a rapidly changing marketplace was lost in the past Administration, which seemed to believe the best investment of the taxpayers' enforcement resources was in pursuing a single minded prosecution of health care providers.

Besides the failure to revise the Guidelines the agencies became even more restrictive in granting approval to physician collaborations, approving only three collaborations in the past eight years, substantially less than in the Clinton Administration. In order to meet the agencies' standards for sufficient integration, groups often have to form increasingly large entities of several hundred physicians. That narrow approach dampens procompetitive collaboration and innovation.

How can the imbalance in healthcare enforcement be corrected?

First, the DOJ with the FTC should revise the 1996 Guidelines after a meaningful dialogue with healthcare providers. There is significant room to provide more opportunities for health care providers to collaborate, and the Guidelines need to be revised to facilitate greater forms of collaboration. They can start by permitting efforts to collaborate to improve systems of health IT.

Second, there should be a renewed attention to potentially anticompetitive actions by insurers and other intermediaries such as PBMs. There are various practices by insurers such as most favored nations provisions, all products clauses, and silent networks that deter competition leading to higher prices for consumers. Similarly PBMs have been engaging in various activities such as exclusivity provisions that have led to higher drug prices. Enforcement should focus on the types of conduct which, if challenged, can have the most significant impact on improving competition.

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Third, enforcement against healthcare providers should focus on those instances of clearly egregious conduct with a significant impact on consumers. Case selection should be based on evidence of an adverse effect on competition and consumers. That is not to suggest that illegal activity should be given a free pass; rather there should be a focus on those matters with a clear impact on competition.

Finally, the lack of health insurance merger enforcement must be reversed. At the beginning of the Bush Administration, antitrust enforcers faced a similar situation with a failure to successfully challenge hospital mergers. In response the FTC conducted a retrospective study of several consummated hospital mergers to both identify mergers that had led to anticompetitive effects and "to update [the FTC's] prior assumptions about the consequences of particular transactions and the nature of competitive forces in health care." Based on the retrospective, the FTC successfully challenged one consummated merger and more importantly revised and strengthened the approach to litigating these cases. The DOJ should follow the FTC's example and conduct a thorough study of consummated health insurance mergers.

Strengthening Enforcement in Agriculture Markets.

Perhaps in no other market has the lack of enforcement impacted producers as severely as in agriculture markets. Increasingly the lack of merger enforcement means that farmers and other agricultural producers pay more for inputs, such as grain, feed and fertilizer, and receive less when they sell their goods to processors. Food prices may be increasing but economic evidence suggests that today's farmers are not benefitting from those higher prices.

Moreover, agricultural processing markets are a fertile territory for deceptive and exclusionary practices. Often agricultural processors are vertically integrated and their ability to control supply permits them to manipulate the price for food products. In addition, the conduct in processing markets is opaque, providing the opportunity for processors to engage in deceptive or unfair practices.

Not surprisingly, in no other area have there been as many Congressional hearings in the past 12 years on competition issues as in agriculture. There clearly is a significant disconnect between the expectations of Congress and farmers and enforcement. As Professor Peter Carstensen noted in testimony on the JBS/National merger that attempted to combined two of the largest beef

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processors: "there are serious problems of market failure in agriculture directly related to the high and increasing levels of concentration in the industries buying from and supplying farmers and ranchers."

The lack of merger enforcement is critical. With the exception of last year's JBS/National merger, the DOJ has not challenged any agricultural processing mergers in ten years. In the past 12 years, there has been no enforcement against anticompetitive practices and no criminal enforcement actions in the agricultural industry. Moreover, in a recent dairy merger, the Division did not require a consent decree, but rather allowed the parties to create a private agreement. There is evidence today that those parties have violated this agreement, which could have serious implications for small dairy producers in the future.

How can the lack of enforcement be reversed?

First, the DOJ should convene a task force on competition issues that should include representatives of the Department of Agriculture, and the FTC to provide a broad assessment of competitive problems in agriculture markets. This task force should take evidence and hold hearings on the current state of competition in agriculture markets. A key priority of the task force should be to determine if the agencies have the statutory powers under the antitrust laws, the Agricultural Marketing Agreement Act (the source of USDA's milk market regulatory authority), and the Packers and Stockyards Act to challenge effectively the full range of competitively harmful practices. These practices include price manipulation in commodity markets affecting transaction prices (e.g., the price of the very small quantity of cheese sold on the Chicago Mercantile Exchange directly controls the price of all milk purchases in the United States), refusals to deal on equal terms with all willing sellers, use of exclusive buying arrangements to foreclose market access, and tacit (or perhaps even express) collusion to allocate markets among buyers.

Second, the DOJ should conduct a retrospective study of consummated agricultural mergers. In particular, the DOJ should monitor recent mergers approved in the past Administration such as Monsanto/Delta Pine and JBS/Smithfield to determine if the mergers resulted in higher prices or other anticompetitive effects.

Third, the DOJ should take a stricter approach to mergers in agricultural input markets and mergers that may lead to the exercise of buyer power in

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processing markets. This includes developing and using market definitions appropriate to buyer-side market analysis.

Fourth, the DOJ should take a much more proactive, investigative role in examining the exclusionary and exploitive conduct of the major buyers of agricultural commodities especially in dairy, livestock, and poultry. In doing so it should take account of the fact that buyer power exists at lower market shares and in geographically more circumscribed markets. Hence, buyer power in agriculture may present more pervasive risks of anticompetitive conduct.

Returning Enforcement in Telecom Markets.

In the telecommunications sector, consumers and competitors have fallen into a black hole between antitrust and regulation. On the one hand, antitrust authorities have allowed a long series of mergers that resulted in the effective resurrection of the Ma Bell monopoly on a regional basis. At the same time the FCC's implementation of the Telecommunications Act of 1996 has failed to open the local market to effective competition. On the other hand, the courts have said that the existence of regulation precludes claims of anticompetitive conduct. While the DOJ cannot address the failure of regulation to prevent exclusionary conduct by the dominant telecommunications companies, it can address the anticompetitive results of the past eight years.

The DOJ has relied on theories of intermodal competition to allow incumbent local exchange carriers to acquire contiguous dominant local carriers and well as large, head-to-head competitors. Moreover, the DOJ created a theory of a "dynamic duopoly" that suggests that two competitors are sufficient for competition in any telecom market. Unfortunately, intermodal competition has proven to be far less effective than head-to-head competition in disciplining market power. The DOJ has also failed to recognize the potential harmful effects of vertical market power in an industry with strong complementarities in product markets.

The economic theory that allowed these mergers to occur must be abandoned to avoid further harm in this and other sectors. Moreover, recognizing the failure of this lax merger policy and admitting the dramatic increase in market power that has resulted from these mergers will enable the antitrust authorities to begin to take action against anticompetitive and anti-consumer practices under different sections of the antitrust laws. Thus, a return to traditional values and

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models in the merger space is a key pillar on which broader reform and reinvigoration of antitrust enforcement should be based.

At the same time, the Supreme Court has weakened the potential for antitrust enforcement through decisions like *Trinko* that eliminate antitrust litigation as a solution because of the existence of a regulatory structure. Unfortunately, these decisions fail to understand how lax regulation has become. The DOJ should work with Congress to overturn those decisions.

The problem of mergers leading to excessive concentration and antitrust exemptions afforded to industries that were formerly regulated is not limited to the communications sector and should be addressed in other sectors. One particularly egregious example is in the rail sector, where blatantly anticompetitive conditions called paper barriers have been imposed on short lines when they were spun off from major national railroads. Indeed, the railroad industry is one of the most extreme examples of the creation of market power through mergers without any protection for consumers. There are only two dominant railroads in the east and two in the west, which impose "non-compete" clauses on short lines created by spin offs and refuse to compete on price, yet they are exempt from the antitrust laws. This Committee recently came out in support of eliminating the antitrust exemption in the railroad industry with the approval of S. 146, The Railroad Antitrust Enforcement Act, and that statutory change deserves careful evaluation by Congress.

Legislative Reform to Strengthen Antitrust Enforcement.

The antitrust laws have stood the test of time as general statutes to protect competition. Yet at times it is necessary to reform the law, so that it can better fulfill the Congressional intent to protect competition. Any observer of recent Supreme Court decisions, which have narrowed the law in 15 consecutive decisions in favor of defendants, must be concerned over the future of antitrust enforcement. As the American Antitrust Institute, the leading advocacy group for antitrust enforcement, noted after last month's *linkLine* decision:

> This decision highlights the need for Congress to resuscitate the antitrust laws, which have been left for dead in the Supreme Court. Otherwise, the

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> new administration's plans to reinvigorate antitrust enforcement may well be stymied by a hostile Supreme Court.[6]

This Committee should carefully evaluate the impact of these recent decisions on the antitrust laws. It is worth recalling the guidance of the late Justice Thurgood Marshall that the:

> antitrust laws in general, and the Sherman Act in particular, are the **Magna Carta of free enterprise**. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete - to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle it can muster.

It is difficult to reconcile these recent decisions of the Court with Justice Marshall's vision. This Committee should consider the impact of the recent Supreme Court decisions on the future for antitrust enforcement, competition, and consumers. As discussed earlier, this evaluation should begin by considering the need for legislation to reverse the Court's decision in *Leegin Creative Leather Products.*

This Committee should also consider two more basic reforms that will strengthen antitrust enforcement. First, in 2004 Congress reformed the Tunney Act procedures with the hope and expectation that those reforms would give courts greater ability to evaluate whether a proposed final judgment is in the public interest. Pub. L. 108-237, § 221(b)(1) (2004). As the statute provided, "[I]t would misconstrue the meaning and Congressional intent in enacting the Tunney Act to limit the discretion of district courts to review antitrust consent judgments solely to determining whether entry of those consent judgments would make a 'mockery of the judicial function.'" Pub. L. 108-237, § 221(a)(1)(B). Yet in several Tunney Act proceedings the Antitrust Division argued that the courts' review was limited to whether the proposed remedy fulfilled the competitive issues raised in the complaint. The position of the Division was that courts cannot go beyond the scope of the complaint, and the courts have adopted the restricted view that their review is limited to the "mockery of the judicial function" standard. Congress should amend the Tunney Act to clearly provide for a court to have the complete

[6] "AAI issues Statement on Supreme Court's *linkLine* Decision." (Feb. 27, 2009), available at http://www.antitrustinstitute.org/Archives/linkline_decision.ashx

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power to review whether a proposed decree is in the public interest.

Second, Congress needs to extend a provision reducing treble damage liability for those firms participating in the Division's immunity program. The Division's immunity program is the most effective tool in its criminal enforcement program. In 2004, Congress created an additional incentive for firms to disclose illegal price fixing and participate in the Division's Corporate Leniency Policy by limiting any civil damages recovery from a corporate amnesty applicant to "actual damages sustained . . . attributable to the commerce done by the applicant in the goods or services affected by the violation." Pub. L. No. 108-237, § 213, 118 Stat. 661, 666-67 (2004). This provision increases the incentives of firms to disclose illegal conduct. Unfortunately, this provision will sunset on June 23, 2009, five years after its passage, unless Congress renews it. *See id.* § 211(a). Congress should act to renew the damage provision for those firms that participate in the immunity program.

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EXECUTIVE DIRECTOR
AND GENERAL COUNSEL

Daniel Bernstein

February 18, 2009

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Bar Association of San Francisco Letter of Support for the Nomination of Tony West to be Assistant Attorney General for the Civil Division

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Bar Association of San Francisco ("BASF"), we write to express our strong support for the nomination of Tony West to be Assistant Attorney General for the Civil Division.

Tony is an accomplished attorney whose integrity and skill have earned him an impeccable reputation in the bar. The San Francisco legal community, including this organization, has greatly benefited from Tony's leadership. For the past six years, Tony has served as a Member of BASF's Litigation Section Executive Committee. Tony is also a member of the Board of Governors for the Northern California Association of Business Trial Lawyers and a Northern District of California Lawyer Representative for the United States Court of Appeals for the Ninth Circuit. His numerous accolades and awards evidence Tony's success as a trial attorney. Tony's résumé, however, may not be able to convey that he is a "lawyer's lawyer" who commands the respect of his colleagues.

THE BAR ASSOCIATION OF SAN FRANCISCO

Tony's career as a federal prosecutor and partner at Morrison & Foerster LLP demonstrate both his commitment to public service and his broad range of experience in the practice of law. We believe the Department of Justice and the American public will be well served by Tony's confirmation. It is for these reasons that we are pleased to support the nomination of Tony West to be the next Assistant Attorney General for the Civil Division.

Sincerely,



Russell S. Roeca
President

KAREN BASS
SPEAKER of the ASSEMBLY

March 9, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General - Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to support the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

Tony West is eminently qualified to lead the Civil Division. Tony served as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct. Since that time, Mr. West has practiced civil litigation in Northern California, earning wide respect among his colleagues, and his opponents.

In addition to his experience, Tony also has the character and integrity to lead the Civil Division. Tony is a man of the highest integrity; his honesty, decency, and humanity are never in doubt. The President has made an excellent choice in selecting Tony to serve as the next Assistant Attorney General for the Civil Division. I urge you to confirm him without delay.

Sincerely,

KAREN BASS
Speaker of the Assembly

Capitol Office: State Capitol, Room 219 · Sacramento, CA 95814 · Phone (916) 319-2047 · Fax (916) 319-2147
District Office: 5750 Wilshire Boulevard, Suite 565 · Los Angeles, CA 90036 · Phone (323) 937-4747 · Fax: (323) 937-3466

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DAVID B. BAYLESS
[redacted]

February 24, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee on the Judiciary
433 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member, Senate Committee on the Judiciary
711 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my enthusiastic support for the nomination of Tony West to be Assistant Attorney General for the Civil Division of the Department of Justice.

I first met Tony in early 2001 when he joined Morrison & Foerster (where I was then a partner, after having been the head of the Securities & Exchange Commission's San Francisco Office from 1994 to 1998). Tony had served for several years as an Assistant United States Attorney and then a Special Assistant Attorney General for the California Department of Justice. We worked together closely over the next several years (until I joined Covington & Burling in 2007) on a wide range of client matters, including SEC enforcement investigations, Department of Justice inquiries, and private state law claims against a national accounting firm. Based on first hand experience, I can tell you that Tony commands the respect of his co-workers, opposing counsel, and judges. He is open-minded, practical and a fact-driven decisionmaker. I know this from working with Tony on a number of matters closely, side-by-side.

I also had the opportunity to talk with Tony over these years about the major issues of the day. He is thoughtful and measured in his views, and always open to a respectful and genuine dialogue with others with a different perspective. He understands the importance of providing consistent, clear and constructive advice to those who rely on the Department of Justice's legal judgments. Tony is also committed to operating a Department

of Justice free from inappropriate political influence. President Obama could not have made a better choice. I am pleased to give him my highest recommendation. I very much hope that you will swiftly confirm Tony for this position with broad and bipartisan support.

Sincerely,

David B. Bayless

February 19, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *Tony West*

Dear Senator Leahy and Senator Specter:

I write you in support of the nomination of Tony West to be Assistant Attorney General for the Civil Division of the United States Department of Justice. I came to know Mr. West as a worthy adversary in the prosecution and conviction of John Walker Lindh, and I hold him in the highest regard.[1]

Mr. Lindh came into the custody of the United States in Afghanistan shortly after the attacks of September 11th, and was brought to the Eastern District of Virginia for prosecution. In January 2002, in my capacity as Senior Litigation Counsel and Assistant United States Attorney for the Eastern District of Virginia, I was appointed along with David N. Kelley of the Southern District of New York to lead the prosecution of Mr. Lindh. Tony West and two colleagues from the law firm of Morrison & Foerster were retained to represent Mr. Lindh. From the very first hearing, the case was as intensely and hotly contested as any in which I have been involved during my seventeen years as a federal prosecutor.

From January 2002 until Mr. Lindh was sentenced in October 2002, I had almost daily contact with Mr. West and observed him in virtually every litigation context. What impressed me most about Mr. West was his extraordinary professionalism throughout this difficult case. I have no doubt that the skills and talent I witnessed firsthand will serve him well if he is confirmed as Assistant Attorney General.

First, in the highest traditions of the Bar, he took on the representation of a client who was the subject of massive negative publicity. He understood his categorical obligation to provide zealous representation and I never saw him flinch from that duty even for an instant. Second, Mr. West's word was his bond. Although I had never met Mr. West prior to his representation of John Walker Lindh, I came to accept his representations without qualification. Third, he demonstrated time and again that he is simply a brilliant litigator, a judgment I base not just on the exceptional quality of his

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[1] In October 2002, shortly after the prosecution of Mr. Lindh was completed, I left the Department of Justice to become a Circuit Court Judge in Fairfax County, Virginia. In accordance with Virginia Judicial Ethics Advisory Opinion 06-1, I would note that this letter is personal and does not constitute official court business.

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pleadings but on his entire approach to the litigation. Finally, Mr. West remained at all times unflappable, affable and courteous -- despite the concentrated and pressurized pace of this litigation and the need by both sides to leave no stone unturned.

In summary, for ten months in 2002, and from the vantage point of an adversary, I had the privilege of seeing in action one of the finest attorneys I have ever known. I recommend Tony West's nomination to you without reservation.

Respectfully submitted,

Randy I. Bellows

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

DIRECT DIAL [redacted]
DIRECT FAX [redacted]
EMAIL ADDRESS [redacted]

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January 28, 2009

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510-6275

RE: Lanny Breuer

Dear Senator Leahy:

I am writing to you to convey my support of the nomination of Lanny Breuer, Esquire to become the Assistant Attorney General in charge of the Criminal Division at the Department of Justice. I am a senior partner in the Washington, DC office of Skadden, Arps. In my career of over forty years, and after my service as an Assistant United States Attorney here in Washington, I specialized in the defense and trial of white collar criminal cases.

I have known Lanny for over twelve years. I first met him shortly after he entered private practice after he departed the District Attorney's office in Manhattan. Since that time he and I have collaborated on a number of cases, and we have developed a professional relationship. I believe that over the number of years that I have come to know Lanny, he is without question an accomplished and skillful lawyer. He is a fair and compassionate individual and I am confident that with his experience both as a prosecutor and in the private sector, he has the experience, wisdom, judgment and insight to guide the Department of Justice's Criminal Division and is prepared to take on the responsibilities awaiting him.

For these reasons, I urge you and your committee to act favorably on his nomination.

Sincerely,

Bob Bennett

Robert S. Bennett

PETER BENSINGER **JACK LAWN** **ASA HUTCHINSON**

February 23, 2009

Honorable Patrick J. Leahy, Chairman
Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
2245 Dirksen Senate Office Building
Washington, DC 20510

Re: Lanny Breuer – Assistant Attorney General for the Criminal Division, U.S. Dept. of Justice

Dear Chairman Leahy and Ranking Member Specter,

We are writing you to support the nomination of Mr. Lanny Breuer to be Assistant Attorney General for the Criminal Division of the U.S. Department of Justice. As former Administrators of the U.S. Drug Enforcement Administration, we understand the significance of this position and are confident that Mr. Breuer will discharge his responsibilities with integrity and effectiveness. We are familiar with Mr. Breuer's professional background and are confident that his leadership of the criminal division will service the country and the Department of Justice very well.

Mr. Breuer has served as an Assistant District Attorney in New York City under the direction of Bob Morgenthau who also endorses his appointment. He has extensive experience not only in criminal law, but with pharmaceutical litigation, national security matters, public integrity issues and international fraud. Mr. Breuer recognizes the importance of working closely with law enforcement agencies and has been recognized by his peers for his reputation for fairness and integrity. We recommend him to the Judiciary Committee for the position of Assistant Attorney General for the Criminal Division of the United States Department of Justice.

Sincerely,

Peter Bensinger
Former Administrator
U.S. Drug Enforcement Administration
(1976 -1981)

134 N. LaSalle, Ste.2200
Chicago, IL 60602

Jack Lawn
Former Administrator
U.S. Drug Enforcement Administration
(1985 -1990)

51318 East Church
Chapel Hill, NC 27517

Asa Hutchinson
Former Administrator
U.S. Drug Enforcement Administration
(2001 – 2003)

3300 Market Street, Ste. 404
Rogers, Arkansas 72758

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February 13, 2009

The Honorable Patrick Leahy, Chairman
United States Senate Committee
on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter, Ranking Member
United States Senate Committee
on the Judiciary
United States Senate
711 Hart Building
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I write to endorse the nomination of Lanny Breuer to serve as Assistant Attorney General for the Criminal Division. I commend President Obama for making such an outstanding choice to head this important Division.

I believe Lanny is everything one could hope for in a leader of the Criminal Division. He has had a distinguished career in both public service and the private sector focused largely on federal criminal cases; a proven track record of successful management of lawyers; excellent judgment and legal skill; and partisan loyalties that are supervened by an unfailing commitment both to civility and to justice. I consider him one of the outstanding lawyers of my generation in the field of federal criminal practice, and I commend his nomination to you without reservation.

Lanny's lack of undue partisanship is a trait worthy of separate comment. Even when he was beating back the scandals that beset President Clinton's White House as a member of the White House Counsel's Office – a time of very raw and high partisan feeling – Lanny remained a courteous and high-minded gentlemen who never personalized partisan or political differences. It is in part for that reason that, despite the fact that he and I come from different sides of the political aisle, I am so pleased to recommend him to you for what I hope will be a swift and uncontroversial confirmation.

I have one final request: Please do not take the brevity of this letter as any indication of a lack of enthusiasm on my part; its length is due solely to the fact that I am currently in the middle of a lengthy criminal trial. There is much more that I could say to demonstrate the conspicuous

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merits of Lanny's nomination, but I trust the record of Lanny's many accomplishments will be clear even without further elaboration by me.

Respectfully submitted,

Bradford A. Berenson

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[redacted]

January 30, 2009

The Honorable Patrick J. Leahy, Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
SD-152 Dirksen Senate Office Building
Washington, DC 20510

Re: Lanny A. Breuer

Dear Chairman Leahy and Senator Spector:

I write in support of the nomination of Lanny A. Breuer to become the Assistant Attorney General, Criminal Division, at the Department of Justice.

I came to know Mr. Breuer when he served in the White House as Special Counsel to President Clinton. From 1994 to 1999 I served as Deputy Independent Counsel in the Office of Independent Counsel Ken Starr. I headed our Office's investigation of the Monica Lewinsky matter, and I was our Office's principal contact with the White House, especially the White House Counsel's Office, in that investigation. In this capacity, I dealt with Mr. Breuer extensively. I found Mr. Breuer to be smart, honest, and forthright. I particularly admired Mr. Breuer's respect for the criminal justice process and his professionalism. Mr. Breuer always comported himself professionally, and he was always respectful of our different roles and our differences.

As a white collar criminal defense attorney myself, I am well aware of Mr. Breuer's reputation in our practice community. In short, Mr. Breuer is nationally recognized as a skilled attorney of high integrity and sound judgment.

I believe Mr. Breuer is a man of exceptional ability and integrity and that he will make a excellent Assistant Attorney General. I fully support his nomination.

Respectfully,

Robert J. Bittman

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Opening Statement of Lanny A. Breuer
Nominee to be Assistant Attorney General for the Criminal Division

Mr. Chairman, Ranking Member Specter, and Members of the Committee, I am honored to appear before you today as President Obama's nominee to be the Assistant Attorney General for the Criminal Division.

I would like first to express my appreciation to the Committee's Members and their staffs for considering my nomination. I am grateful for the courtesy that the Committee has afforded me during the nomination process, and, if confirmed, I will look forward to working with you on the many important criminal law enforcement issues facing our country.

Let me also take this moment to introduce my wife, Nancy, who is sitting behind me. She is the love of my life and, without her, I would not be sitting here today. Seated next to Nancy are my two handsome sons, Sam and Ben. I am very proud to have them here.

Also with me is my brother Richard; I am grateful for his support, and for the support of my in-laws and friends, who are here as well.

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It is particularly meaningful for me to have my mother, Lilo, here today. My father, Robert, is no longer with us, but he would have been so proud if he had made it to this day.

When I was growing up in Queens in the 1960s and 70s, Elmhurst, the neighborhood in which we lived, was a classic American melting pot. I attended the local public schools throughout my childhood, a son of two of the many first generation immigrants who came to Elmhurst to build their lives. Both of my parents had fled Nazi Europe -- my mother from Germany, my father from Austria -- during World War II.

My mother, who lost her parents in the Holocaust, came here by herself with nothing. But, like so many American success stories, she was able to start a new life in the United States. Having witnessed the devastation wrought by the Nazi regime, my parents instilled in me a distinctly American respect for fairness, the rule of law, and the pursuit of justice. My love for this country and the values it represents runs deep.

As I come before this Committee today, I am mindful of the importance and honor of public service. My first job after law school was as an Assistant District Attorney in the Manhattan District Attorney's office, where I worked under the legendary Robert Morgenthau. I prosecuted crimes across the spectrum -- from murder

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and domestic assault to armed robbery and white collar crime. I experienced first-hand that the interests of justice are best served when a prosecutor exercises his discretion "without fear or favor" – unwavering in his commitment to the even-handed but vigilant enforcement of our criminal laws. I owe a great debt to Mr. Morgenthau, whose support for this position I am grateful to have and who gave me an early and formative opportunity to serve on the front lines of combating crime. When he steps down in December after 35 years of extraordinary service, Mr. Morgenthau will leave behind an enduring legacy.

In the years following my service in the Manhattan DA's office, I have remained committed to certain core values – the importance of public service, the need for zealous but honest advocacy, and an abiding pursuit of justice for my clients. Whether in the private sector, where I have co-chaired a leading white collar defense and investigations practice and vice-chaired one of the country's premier *pro bono* practices, or in the White House, where I sought faithfully to represent the Office of the President, I have done so with these values in mind.

I believe that my experiences as a prosecutor, a private practitioner, and in the Executive Branch, have provided me with the perspective, judgment, and skill to lead the Criminal Division. As you may know, I was privileged to work in private practice, and in the White

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House, alongside Chuck Ruff. Mr. Ruff, who served the public with distinction as, among other things, U.S. Attorney for the District of Columbia, Acting Deputy Attorney General, and White House Counsel, was a true lion of the law, and an inspiration to a generation of lawyers. He was a consummate professional – a man of strength and integrity. And it is with his example in mind that I would approach my duties if I am confirmed for this important post.

If I become head of the Criminal Division, I will pursue wrongdoing vigorously. Whether it is financial crime, public corruption, child exploitation, drug offenses, gang violence, or other crimes, I will be firmly committed to enforcing our criminal laws. And because protecting our national security and fighting terrorism remain paramount, if confirmed I also will work closely with the Department's leadership, the National Security Division, and U.S. Attorneys' Offices around the country to ensure an effective strategy for combating terrorism.

As I consider this opportunity to serve our country, I do so with great reverence for the Department of Justice. If confirmed, it will be my true privilege to serve under Attorney General Eric Holder, for whom I have the utmost respect and admiration. And it would be an honor for me to serve alongside the career professionals at the Department, whose dedication and talent are vital to its mission. I also

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believe it is essential for the Criminal Division to have close and productive relationships with federal law enforcement and regulatory agencies, as well as to partner with state and local law enforcement officials. All of these dedicated men and women help to keep our communities safe, and they are critical to the work of the Department.

In closing, let me assure this Committee and the American people that, if confirmed, I will work tirelessly to execute my duties with determination and resolve, ever mindful of the government's great power, but firm in my belief that those who violate our criminal laws – whether in the boardroom or the back alley – must be held to account.

Thank you very much. I am pleased to answer any questions the Committee may have.

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SINGAPORE, BRUSSELS

February 25, 2009

Writer's Direct Contact
[redacted]

Honorable Patrick Leahy
Chairman, United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Arlen Specter
Ranking Member, United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Tony West, Nomination to be Assistant Attorney General for the Civil Division, United States Department of Justice

Dear Senators Leahy and Specter:

I write in support of the nomination of Tony West to be Assistant Attorney General for the Civil Division of the United States Department of Justice.

Tony West is an outstanding litigator and public servant. His extensive experience in a wide range of legal areas through his work in the federal government, state government, and private practice makes him particularly well suited to lead the Civil Division.

Tony and I have been law partners at the firm of Morrison & Foerster for the past 5 years and during that time Tony has served as a leader among the partners. He is highly respected for not only his informed legal analysis but also his sound judgment.

Not surprisingly, Tony has received numerous awards and honors in recognition of his stellar legal skills, including for his past service as an Assistant United States Attorney and in the office of the Deputy Attorney General.

Tony's past service at the Department of Justice will be of great benefit to him in the position of Assistant Attorney General for the Civil Division. His demonstrated dedication to the Department and to the highest standards of the legal profession makes him the ideal attorney for the position.

Sincerely,

Beth S. Brinkmann

dc-547711

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SINGAPORE, BRUSSELS

March 3, 2009

Writer's Direct Contact
[redacted]

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate office Building
Washington, DC 20510

Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Tony West for Assistant Attorney General -- Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I hope you are both well. I write in support of my partner and friend Tony West who will be in front of you next Tuesday as he appears before the Judiciary Committee for confirmation as head of the Department of Justice Civil Division.

I am sure you have his curriculum vitae, you know of his brilliant career at Stanford as a student, his various positions in law enforcement at the Department of Justice in Washington, the U.S. Attorney's office in Northern California and his position with the Attorney General's office in California.

But I am writing as a reference to something you both will appreciate. I recruited Tony to come to Morrison & Foerster and have tried a number of both civil and criminal cases with him. As you know, when you try cases with someone you not only can assess their legal skills but also their character. Tony has judgment and a good way with both colleagues and opponents.

Tony is an extraordinary legal talent. He's an organizational person who I have seen work very well in some extremely difficult situations. He is one of the best people I know at bringing disagreements to a conclusion and replacing them with a consensus, a policy, a program, a way to go ahead. He's admired by people at all levels in this firm for his leadership and his inspiration. Particularly that is true with the young lawyers who, in this difficult economic environment, seek out his guidance and his support and they always get it.

sf-2651222

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Finally, he has that quality we admire in a lawyer. He cares about his clients and always puts them first. I believe these professional skills are directly transferable to the Department of Justice Civil Division and wholeheartedly support his confirmation.

I greatly appreciate your consideration of my thoughts.

Best regards,

James J. Brosnahan

sf-2651222



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
EDMUND G. BROWN JR.

March 5, 2009

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General – Civil Division

Dear Chairman Leahy:

I write to support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division.

I had the opportunity to work with Tony in 2006 when Ron Dellums succeeded me as Mayor of Oakland. Tony was an integral part of the transition team, providing invaluable assistance on various issues, especially policing issues. I was impressed by Tony's ability to work with people across the political spectrum and to build consensus even in the face of difficult issues.

Tony's career as a lawyer is equally impressive. Tony served in the Justice Department as a Special Assistant to the Deputy Attorney General, helping to draft the Omnibus Crime Bill. He then served as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the State of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct. Tony's strong background will serve him well in leading the Civil Division.

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The President has made an excellent decision in choosing Tony West to be the next Assistant Attorney General for the Civil Division. I enthusiastically endorse his nomination and urge his confirmation.

Sincerely,

EDMUND G. BROWN JR.
Attorney General

cc: Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

WILLIE L. BROWN, JR.
ATTORNEY AT LAW
100 THE EMBARCADERO
PENTHOUSE
SAN FRANCISCO, CALIFORNIA 94105-1217

TELEPHONE: (415) 777-0310
FACSIMILE: (415) 777-0360

March 5, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General- Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I am writing you to strongly support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division. Speaking from personal experience, I can say without hesitation or qualification that Tony is a man of the highest honor and integrity. I cannot think of a better person to lead the Civil Division at this time.

Tony is eminently qualified to assume a position of leadership at the Department of Justice. Tony began his career as a Special Assistant to Deputy Attorney General Phil Heymann and then Deputy Attorney General Jamie Gorelick, where he helped to pass the 1994 Omnibus Crime Bill. Tony later served as an Assistant United States Attorney, successfully prosecuting several cases, including cases involving the exploitation of children. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

Tony is also the right man to lead the Civil Division at a time when the Department of Justice is seeking to restore its independence and credibility. The President's calls for government accountability and transparency will be well-served through Tony's appointment, because Tony does not know how to lead in any other way. If the Civil Division comes to reflect Tony West, it will be unparalleled.

The President has made an excellent decision in choosing Tony West to be the next Assistant Attorney General for the Civil Division. I strongly urge you to confirm him without delay.

Very Truly Yours,

Willie L. Brown, Jr.

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ATTORNEYS AT LAW

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*NOT ADMITTED IN VA

WRITER'S DIRECT DIAL/EMAIL
[redacted]

January 28, 2009

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

Re: Lanny A. Breuer

Dear Senator Leahy:

I am addressing you as the Chairman of the Committee on the Judiciary. I wholeheartedly support the nomination of Lanny Breuer, who is among the best lawyers in the United States, to be Assistant Attorney General in charge of the Criminal Division.

I have known Lanny for over ten years, both personally and professionally and have the highest regard for his ability, ethics, and dedication. I have no hesitation in supporting this nomination and believe Lanny will bring integrity and honor to this position.

You may recall when we sat together during the impeachment trial of former President Clinton at a time when Monica Lewinsky, my client, was a witness at the Mayflower Hotel.

Sincerely,

Plato Cacheris

Michael Chertoff

[redacted]

February 6, 2009

VIA REGULAR MAIL

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter and Members:

I am writing to give my strong support to the nomination of Lanny Breuer to serve as Assistant Attorney General for the Criminal Division.

As you know, I was Assistant Attorney General of the Criminal Division from 2001-2003. Accordingly, I am very familiar with the nature of the position for which Mr. Breuer is being nominated.

I have known Lanny for a number of years both personally and professionally. Additionally, I am familiar with his reputation in the legal community.

Lanny has exceptionally broad legal experience as a former prosecutor and defense attorney. He has handled numerous sensitive matters, including serving as Special Counsel to President Clinton. From my own experience, I know him to have outstanding judgment, a keen sense of fairness, high integrity and an even temperament. As his membership in the American College of Trial Lawyers attests, he enjoys a superb reputation among his peers.

Leading the Criminal Division requires practical experience in criminal advocacy and the commitment and courage to judge prosecutions on the merits, "without fear or favor." Lanny embodies all these qualities. I unreservedly endorse his nomination for Assistant Attorney General.

Please contact me if I can assist you with this matter.

Very truly yours,

Michael Chertoff

Congressional Black Caucus

OF THE 111TH UNITED STATES CONGRESS

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Alcee L. Hastings, FL – '93
Eddie Bernice Johnson, TX – '93
Bobby Rush, IL – '93
Robert C. Scott, VA – '93
Melvin L. Watt, NC – '93
Bennie G. Thompson, MS – '93
Chaka Fattah, PA – '95
Sheila Jackson Lee, TX – '95
Jesse Jackson, Jr., IL – '95
Elijah E. Cummings, MD – '96
Donna Christensen, VI – '97
Danny K. Davis, IL – '97
Carolyn C. Kilpatrick, MI – '97
Gregory W. Meeks, NY – '98
Barbara Lee, CA – '98
William Lacy Clay, Jr., MO – '01
Diane E. Watson, CA – '01
Artur Davis, AL – '03
Kendrick Meek, FL – '03
David Scott, GA – '03
G.K. Butterfield, NC – '04
Emanuel Cleaver II, MO – '05
Al Green, TX – '05
Gwen Moore, WI – '05
Yvette D. Clarke, NY – '07
Keith Ellison, MN – '07
Hank Johnson, GA – '07
Laura Richardson, CA – '07
André Carson, IN – '08
Donna F. Edwards, MD – '08
Marcia L. Fudge, OH – '08
Roland W. Burris, IL – 09

Change Course, Confront Crises, Continue the Legacy

February 26, 2009

The Honorable Barack Obama
President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear President Obama:

We are writing to provide our strong and unqualified endorsement of Mr. Tony West to serve as the next Assistant Attorney General for the Civil Division for the U.S. Department of Justice.

Mr. West is a litigation partner at Morrison & Foerster L.L.P. whose trial practices includes representing individuals and companies in civil and criminal matters. He is a former federal prosecutor and state special assistant attorney general and has served clients in both federal and state court legal matters.

Named one of Northern California's "Super Lawyers" every year since 2006, Mr. West was named one of the nation's "Leading Lawyers" by Lawdragon in 2008 and one of California's "Top 20 Lawyers Under 40" in 2004.

Prior to joining Morrison & Foerster in 2001, Mr. West served as State Special Assistant Attorney General, an appointee of former California Attorney General Bill Lockyer. In that capacity, he advised the attorney general on various matters including high-tech crime, identify theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

One of Mr. West's most significant prosecutions involved the "Orchid Club" -- an international online child pornography and molestation ring involving 16 defendants in four different countries. One of the first cases of its kind, Mr. West led a team of FBI and Customs agents to secure convictions of all defendants and received commendations recognizing his efforts from then

President Obama
Page 2
February 26, 2009

U.S. Attorney General Janet Reno, former FBI Director Louis Freeh and U.S. Customs Commissioner George Weise.

In light of Mr. West's exemplary record we can think of no better candidate to serve in your administration as Assistant Attorney General for the Civil Division for the U.S. Department of Justice.

Sincerely,

Rep. Barbara Lee
Chairwoman

Rep. Emanuel Cleaver
First Vice-Chair

Rep. Donna M. Christensen
Second Vice-Chair

Rep. Yvette D. Clarke
Whip

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VANDERBILT Law School

February 20, 2009

The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary, U.S. Senate
Dirksen Senate Office Building, Room 224
Washington, DC 20510

Re: Nomination of Lanny Breuer to be Assistant Attorney General
for the Criminal Division, U.S. Department of Justice

Dear Senators Leahy and Specter:

The purpose of this letter is to explain why I believe Lanny Breuer is an ideal candidate to be Assistant Attorney General of the United States for the Criminal Division.

I assume you have heard from many others about Lanny Breuer's intelligence, his skill as a lawyer and his high standards of personal and professional ethics. In this letter I wish to highlight another important quality, given the position for which he has been nominated by President Barack Obama: he is committed to making American neighborhoods safe places to live and raise children. I know this to be true because I have seen him live this commitment through action.

To defend this statement requires me to digress and explain the circumstances through which we met. In 1990, I moved to 821 Elder St in Washington, DC with my wife Dr. Margaret Blair. Our house was just east of the main gate of Walter Reed Army Medical Center, in a neighborhood of modest houses sandwiched between Shepherd Park on the west and Takoma Park, Maryland on the east. The neighborhood did not have a name, though we later gave it one: G-FEDDS, shorthand for "Georgia, Fern, Elder, Dahlia, Dogwood and connecting numbered streets."

We have since moved and I now live with my family in Nashville, Tennessee, but I look back on our years on Elder Street with great fondness. It was one of those neighborhoods that people talk about but rarely see in America: a mix of renters and homeowners, retirees and young couples, integrated by race and class, and all within a long walk or a short drive from the Metro and small businesses ranging from a Caribbean ice cream store to great Mexican food.

Shortly after we moved in I asked a neighbor about the firecrackers, which seemed to go off randomly during the night. He laughed, and patiently explained that what I thought was the sound of firecrackers was actually gunfire. He speculated that there was renewed competition for control over the lucrative drug market at Fern and Georgia, two short blocks from my house, or perhaps the dealers were having trouble collecting on their debts.

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Conversations had been going on for some time among my neighbors about what to do, and shortly after that first exchange I was invited with others to meet Mr. James Forman, a well-known organizer from Anacostia in S.E. D.C. Foreman was an advocate of direct nonviolent action against drug dealing. He explained that the best way to disrupt a drug market was to on bright orange hats and go during the peak of drug-selling hours and stand. To be frank, I was stunned. My way of dealing with such problems was to have meetings and dialogue. Forman answered, "What we need to do is to walk. Starting tomorrow night."

It was with considerable trepidation that seven of us donned bright orange hats given to us by Mr. Foreman and walked to the corner of Fern and Georgia, and stood at the front door of the Hummingbird Bar the next evening.

The small knot of drug dealers working sauntered away, and for those two hours the drug market was shut down. We were elated until Mr. Foreman explained that we needed to come back the next night, and the next.

For several months we followed his advice, and for two hours each evening things settled down. Unfortunately, the market reopened as soon as we left each night. We learned a lot by walking together and talking to police officers, long-time neighbors and others. It became apparent that, as long as the Hummingbird remained open, our efforts would be unavailing. It was the dealers' headquarters and a cover for their buyers.

Armed with this knowledge we went to the law firm of Covington & Burling and asked if a member of the firm would be willing to represent our neighborhood to seek an injunction to close the Bar. The person who volunteered to represent us on a *pro bono* basis was Lanny Breuer.

Lanny represented the G-FEDDS neighborhood for the next two years, and I noticed several things about him. Although we were a *pro bono* client of the firm, he treated us with the utmost respect and deference. Our group included retired postal workers as well as PhD's, and he listened attentively to each person. He was at ease with people of all ages and races and they quickly accepted him as "our lawyer." More important than anything else, he communicated to us that our desire for a safe neighborhood was as legitimate and important as the constitutional claims that might normally be the subject of *pro bono* work at Covington & Burling.

Not only was he sympathetic with our cause, he pursued a legal strategy that empowered us instead of leaving us in the back of the courtroom. Rather than pursue a nuisance theory in court which could have taken years for discovery and waiting for trial, he dug into the law governing bars and restaurants that sell alcohol. He discovered that the Hummingbird was licensed as a restaurant although it acted like a bar, and furthermore the prior owner had sold it to the current operator without approval by the Alcoholic Beverage Control (ABC) Board.

I will not go into the legal arguments, except to say that the law and rules governing liquor stores, bars and restaurants that sell alcoholic beverages in DC are as arcane and complex as planned unit developments or bank fraud. Lanny fashioned an argument that persuaded the ABC Board to treat the Hummingbird's application for a license as a new one rather than a renewal;

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by statute, a new license application, as distinguished from a renewal, was subject to a special process for review by the neighbors, and would be *automatically* denied if a petition in opposition were to be signed by 75% of the registered voters within 1,000 feet. This automatic rejection mechanism was extremely important, as the ABC Board was well-known for leaning over backwards to take care of bar and restaurant owners.

After Lanny won this ruling we gathered signatures from over *90%* of the registered voters living within 1000 feet of the Hummingbird. The owners' attorney challenged the signatures and the whole process, but he was no match for Lanny. The license was denied, the Hummingbird was closed, drug buyers and sellers apparently felt too exposed to make their deals without the restaurant for cover, and the drug market went away.

This certainly did not solve all problems in the neighborhood. The neighborhood later took legal action to close two crack houses and block an attempt to reopen the Hummingbird, bur Lanny's capable representation was a turning point in several ways:

- Lanny helped the neighborhood stand up against a powerful drug dealing organization for the first time, giving us a feeling that we had both power and moral authority.

- Lanny's involvement drew the attention of the police and the prosecutor (it helped that the dealers slashed the tires on my car and sprayed graffiti over walls in the neighborhood, flouting the neighborhood in a way law enforcement could not ignore). The dominant drug organization in our area, the "Fern Street Crew," would become the target of Eric Holder's first RICO action after he became U.S. Attorney for the District of Columbia.

- Finally, Lanny set an important precedent among major law firms in D.C. when he chose to represent our neighborhood and to defend our right to a safe and secure environment. Up until that time, there was a sort of "glass ceiling" that restricted *pro bono* work to individual rights, constitutional claims and the representation of indigent clients. This was one of the first cases in DC where a big firm accepted a middle class neighborhood as its client with the eradication of a drug market is the goal of the representation. Repeated many times since, Lanny was the one who broke the glass ceiling; many neighborhoods in DC benefitted in subsequent years.

I have a vivid recollection of the raucous celebration of our victory that took place at a Mexican restaurant one block away from the shuttered Hummingbird. In a small way, the feelings experienced by millions of Americans on Inauguration day were present that night. White and Black, Latino and Anglo, old and young, old-timers and newly arrived families, a K street law firm and a middle class neighborhood, together we had done a good thing. It was a moment to savor.

We made Lanny speak last, and after our applause died down he delivered a brief response and, in the process, revealed one other personal characteristic that will serve him well as an Assistant U.S. Attorney. Several earlier speakers had called him "the essential man" in our crusade, but he would have none of it. His comments went far beyond the required ritual demurral, and

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underneath the words was a deep humility, a clear recognition that no one person, not even one as gifted as he, accomplishes meaningful change working alone. Washington is full of people who take credit for other people's accomplishments in order to build up their ego and clout. Lanny Breuer is just the opposite, and I predict that this attribute will inspire people around him to do their best, for the Department and also for him.

I conclusion, words are cheap, so I prefer to judge people by their actions. Lanny Breuer invested time, energy, creativity and resourcefulness to make my neighborhood in DC a safer place for people to live and raise children. Along the way he demonstrated qualities that our country needs in the Assistant Attorney General of the United States for the Criminal Division. I hope you will promptly confirm him.

Sincerely Yours,

Roger Conner
Director, The Advocacy Project and Adjunct Professor of Law
Vanderbilt Law School
131 21st Ave, So.
Nashville, TN 37203

Email: [redacted]
Office Phone : [redacted]
Cell Phone: [redacted]

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NY 10271

ANDREW M. CUOMO
Attorney General

(212) 416-8050

February 23, 2009

Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510-4502

Honorable Arlen Specter
United States Senate
Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

I write in support of President Barack Obama's nomination of Lanny Breuer for the position of Assistant Attorney General in the United States Justice Department's Criminal Division.

Mr. Breuer has been asked by President Obama to be an integral part of the Justice Department team that will be charged with implementing the new administration's priorities, including strengthening law enforcement, fighting corporate crime, and restoring long-missing robust federal support for, and relations with, state and local law enforcement. The need for a strong leader to oversee these priorities is crucial and I believe Mr. Breuer's extensive and varied experience makes him the right person for this important job.

With a background that includes prosecutorial experience investigating and prosecuting a range of criminal cases, serving as a white collar defense attorney, and serving as a special counsel in the Clinton Administration, Mr. Breuer is no stranger to the issues that would fall under his jurisdiction should he be confirmed. Based on his experience and past performance, I am confident he will provide leadership in all of these areas.

Manhattan District Attorney Robert Morgenthau, for whom Mr. Breuer served as an Assistant District Attorney, has already written in strong support of his nomination. I am honored to join with D.A. Morgenthau in encouraging swift confirmation of Lanny Breuer as Assistant Attorney General for the Criminal Division of the United States Justice Department.

Warmest regards.

Sincerely,

ANDREW M. CUOMO



Yale Law School

DREW S. DAYS, III
Alfred M. Rankin Professor of Law

March 8, 2009

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my strongest support for the confirmation of Tony West as the Assistant Attorney General for the Civil Division. I do so because I believe that his legal ability, deep and well-rounded professional experience (in both public and private sectors), and admirable personal qualities make him, in my estimation, an ideal choice for that important post.

First, Tony is a superb lawyer with a stellar academic background who has earned the respect of both colleagues and opposing counsel throughout his impressive career. At Morrison and Foerster, Tony's firm, where I have been Of Counsel for the past twelve years, I have come to know him and his fine work. It has been obvious to me that Tony is held in highest esteem at all levels of the firm, from top management to support personnel.

Second, Tony has gained high-level professional experience in the private sector at one of the Nation's major law firms as well as through three tours of duty in government service—one in the Office of the Attorney General of California and two in the United States Department of Justice. Having served as an Assistant to two Deputy Attorneys General and as an Assistant United States Attorney, Tony clearly has a sophisticated understanding of how the DOJ works and, if confirmed, is certain to "hit the ground running" in assuming firm leadership and management with respect to the Division's diverse programs.

Third, Tony has estimable personal qualities, ones that often turn out to be critical to the success of high government officials. In addition to being bright, articulate and extremely

P.O. BOX 208215, NEW HAVEN, CONNECTICUT 06520-8215 · TELEPHONE 203 432-4948 · FACSIMILE 203 432-4871
COURIER ADDRESS 127 WALL STREET, NEW HAVEN, CONNECTICUT 06511

personable, Tony possesses sound judgment and an equanimity that should stand him in good stead as AAG. For all that, he is also tough and unlikely to bend in the stiffest of countervailing winds.

Please forgive me if I have gone on overlong. But I know that you both share my view that everything possible must be done to ensure that the prior proud reputation of the Department of Justice is restored and that those who work there feel once again that their professionalism and dedication will be respected and rewarded. I am confident that Tony West, if confirmed, will play a crucial role in achieving that transformation.

Sincerely,

Drew S. Days, III

UCLA DEPARTMENT OF PUBLIC POLICY
SCHOOL OF PUBLIC AFFAIRS 3250 Public Policy Building, Box 951656, Los Angeles, CA 90095-1656

March 6, 2009

Honorable Patrick Leahy
Honorable Arlen Specter
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West, Nomination to be Assistant Attorney General for the Civil Division

Dear Pat and Arlen:

I have known Tony West for over twenty years since his undergraduate days at Harvard. Shortly after his graduation, he became an aide in my 1988 presidential campaign, did a terrific job for me, and demonstrated the kind of intelligence and integrity that have been part and parcel of his career. Kitty and I were at his wedding in California; we have kept in close touch with him; and we think the world of him.

I have watched him develop as a lawyer, a prosecutor and as a real champion of American values. He is intelligent, articulate and strong. He has precisely the qualities the Justice Department needs as it emerges from what for many of us was a dark and troubling eight years.

As somebody who has devoted his life to public service, thirteen years of which were spent in the practice of the law, I know, as do both of you, how important it is to restore the good name of the Department of Justice with the kind of integrity and independence that it should always have.

The President has made an excellent decision in choosing Tony to be the next Assistant Attorney-General for the Civil Division. I strongly urge you to confirm him without delay.

Sincerely,

Michael S. Dukakis

Tel 310-825-7667 Fax 310-206-2381 http://www.spa.ucla.edu



Congress of the United States
House of Representatives
Washington, D.C. 20515

Anna G. Eshoo
Fourteenth District
California

March 10, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

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

Re: Nomination of Tony West as Assistant Attorney General for the Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I am writing to you to express my strong support for the nomination of Tony West as Assistant Attorney General for the Civil Division and to urge his confirmation.

I have observed Tony's career develop from the time he was an Assistant United States Attorney in San Jose, California to his service as the Special Assistant Attorney General for the State of California and now as a partner at a prominent international law firm. He has displayed a consistent dedication to serving the country and the State of California. Tony is well regarded for his ability to work across party lines to develop innovative public policy solutions. His ability to build consensus is a testament to his integrity and his respect for other viewpoints. I can think of no better person than Tony to assume a position of leadership in the Department of Justice.

President Obama has made an excellent decision in nominating Tony West to be the next Assistant Attorney General for the Civil Division. I know he will bring able leadership and integrity to the Department of Justice. I'm proud to recommend him to you and I strongly urge you to confirm him without delay. Should you have any questions I would be more than happy to speak to you personally.

Sincerely, and gratefully,

Anna Eshoo

ALICE S. FISHER
[redacted]

March 10, 2009

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510-3802

Dear Senators Leahy and Specter:

I am writing to give my strong support to the nomination of Lanny Breuer to serve as Assistant Attorney General for the Criminal Division.

I had the honor to serve as the Assistant Attorney General of the Criminal Division from 2005-2008. Accordingly, I am very familiar with the nature of the position for which Mr. Breuer is being nominated.

I have had the privilege of knowing Lanny both personally and professionally. My dealings with Lanny have been positive, as he approaches his matters with fairness and integrity. Lanny has the reputation in the legal community for fairness, intelligence and professionalism.

He has been a practitioner for many years and has handled a range of matters in the criminal arena. He has served as both a prosecutor and a defense attorney, and has served with distinction. He has handled very sensitive matters. He has been a leader for his law firm, Covington & Burling, and served as co-chair of the White Collar Defense and Investigations Practice Group. He also has a sense for public service, serving as his Firm's Vice-Chair of the pro bono committee. He has been recognized as a leading litigator. This broad experience will serve him well as Assistant Attorney General.

I believe that Lanny will serve and lead the wonderful members of the Criminal Division at the Department of Justice, and I support and recommend him to be Assistant Attorney General.

Very truly yours,

Alice S. Fisher

Alice S. Fisher

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Matthew W. Friedrich
[redacted]

March 3, 2009

VIA REGULAR MAIL

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington DC 20510

Dear Chairman Leahy, Ranking Member Specter and Members:

I write to offer my strong support to the nomination of Lanny Breuer to serve as the Assistant Attorney General for the Criminal Division.

As you may know, I served as the Acting Assistant Attorney General of the Division in the final eight months of the Bush Administration. I thus have an understanding of the requirements and challenges of this position.

Lanny comes before this Committee with a wealth of experience both as a prosecutor and as a private practitioner. Lanny served for four years as an Assistant District Attorney in Manhattan. In private practice, he has participated in a broad range of complex and high-profile matters including many of national significance. I know that Lanny is held in high-regard within the legal community, and within the Edward Bennett Williams Inn of Court of which we are both members. Also impressive are the accounts I have heard of Lanny's pro bono representation of a neighborhood association in a crime-plagued area within the District.

Based on my interactions with Lanny, I believe that, if confirmed, he will bring to the Department a high degree of professionalism, a heartfelt pride in serving alongside career prosecutors, and a firm commitment to making prosecutive decisions on the merits.

I am pleased to give my strong support to his nomination.

Sincerely yours,

Matthew W. Friedrich

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

[redacted]
TELECOPIER NO.

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

[redacted]
WRITER'S DIRECT DIAL NO.

February 17, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter and Members:

I am writing to offer my unqualified support of Lanny Breuer to serve as Assistant Attorney General for the Criminal Division for the Department of Justice. I have known Lanny for many years in a personal and professional capacity. In addition, over the past several years, I have had the privilege to spend time with his wife and family.

Lanny is a fair, decent man, who is known for his integrity and honesty. That said, he is a tenacious litigator who plays by the rules, but represents the interests of his clients. As head of the Criminal Division, Lanny will undoubtedly represent the interests of the citizens of the United States with vigor and do so always mindful of the pursuit of justice.

It is a testament to the future of our Justice Department that people of the stature of Lanny Breuer are willing to forego high salaries and time with their families to serve our Country. Lanny embodies the qualities that will make him a respected Assistant Attorney General. I look forward to the opportunity to work with him in this capacity.

If I may be of further assistance, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

Douglas F. Gansler
Attorney General

DFG:tmd/lb.ltr

200 Saint Paul Place ❖ Baltimore, Maryland 21202-2021
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Richard H. Girgenti

[redacted]

January 28, 2009

Senator Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

It is with great pleasure that I write to you on behalf of the nomination of Mr. Lanny A. Breuer for Assistant Attorney General for the Criminal Division of the United States Department of Justice.

I have known Lanny Breuer since 1985, when as the Administrative Assistant Attorney for the New York County District Attorney, Robert M. Morgenthau, I recommended to Mr. Morgenthau that he hire Lanny as an Assistant District Attorney. Since that time, Lanny has gone on to enjoy a distinguished career as one of the ablest and most successful lawyers in America. All of the personal characteristics of energy, integrity, intelligence, commitment to public service and interpersonal skills that he has exhibited throughout his career were present when I first interviewed him for a position as an Assistant District Attorney back in 1985. He subsequently honed his legal skills as a trial attorney in the District Attorney's office where he distinguished himself prosecuting serious violent crimes. The experiences that he had in those early years as an attorney prepared him well for the future challenges and successes that he has enjoyed, in his years after leaving the District Attorney's office, as an attorney in private practice and as a Special White House Counsel.

Lanny's experiences as an attorney have been diverse. Time and again, he has demonstrated the ability to handle successfully some of the most sensitive and complex matters facing his clients, and at times, the country itself. He is just as comfortable interacting and working well with private litigants and clients as he is with leaders and elected officials in the legislative and executive branch. In every forum, in varied situations, and with every manner of person, throughout the more than twenty years that I have know Lanny, he has justifiably earned a reputation as a consummate professional and one of the nations best lawyers whether working as a trusted advisor or vigorous advocate.

As the former Director of Criminal Justice Services for the State of New York under Governor Mario Cuomo, I had the opportunity to work directly and frequently with all of the federal law enforcement agencies, and in particular with the Department of Justice, the then Attorney General Janet Reno and the United States Attorneys in all of the Judicial Districts in New York State and elsewhere throughout the country. As a former prosecutor and top level state official for criminal justice, I understand well the great responsibility that is placed in the hands of the Assistant Attorney General for the Criminal Division. It is this background, and the insight that it has provided me, that gives me confidence in supporting and recommending Lanny Breuer to you for the position of Assistant Attorney General.

Sincerely,



Richard H. Girgenti

WILMERHALE

March 9, 2009

Jamie S. Gorelick
[redacted]

The Honorable Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
244 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
244 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

I am writing to endorse the nomination of Tony West to serve as Assistant Attorney General for the Civil Division. I got to know Tony West when he served in the Deputy Attorney General's office during my tenure as Deputy. Because he has also been a line prosecutor and a thoughtful and skilled private practitioner, Mr. West has all of the skills and background one would want in the head of the Civil Division.

When Mr. West was an Assistant United States Attorney, he prosecuted a wide variety of cases, including sexual exploitation offenses against children, high-tech crimes, bank robberies, financial fraud schemes, economic espionage, firearms violations, tax offenses and government malfeasance. One of his most significant prosecutions involved the Orchid Club, an international, online child pornography and molestation ring involving sixteen defendants in four different countries. Tony also wrote and successfully argued the government's appellate brief in United States v. Laney, 189 F.3d 954 (9th Cir. 1999), a case of first impression in the Ninth Circuit that established new case law ensuring that victims of child sexual exploitation are able to recover restitution for future counseling and psychological treatment stemming from their abuse (the case also established that a defendant who trades child pornography not for money but for other pornographic images engages in distribution for "pecuniary gain" under the U.S. Sentencing Guidelines).

Adding to this background is Mr. West's service in the Deputy's office and as a private practitioner. At Justice, he worked on the Omnibus Crime Bill and he addressed the wide variety of issues that present themselves at the senior levels of the Department, from civil and criminal cases, to policy development, to relationships with other agencies of government. As a distinguished lawyer at Morrison & Foerster, Mr. West handled a wide range of cases with skill and the highest standards of professionalism. He is very well-regarded in the San Francisco bar and around the country. All of these experiences will serve him well if he is confirmed as Assistant Attorney General for the Civil Division.

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In the next several years, the person in that job will have to protect the interests of the United States and its citizens in a highly challenged environment. I have every confidence that, if confirmed, Tony West will acquit that responsibility fully and admirably.

Sincerely,

Jamie S. Gorelick

SIDLEY AUSTIN LLP
SIDLEY

SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, D.C. 20005
(202) 736 8000
(202) 736 8711 FAX

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FOUNDED 1866

January 29, 2009

Honorable Patrick J. Leahy
United States Senate
Committee on the Judiciary
199 Main Street, 4th Floor
Burlington, VT 05401

Dear Senator Leahy:

I am writing to you to convey my enthusiastic support of the nomination of Mr. Lanny Breuer to become the Assistant Attorney General in charge of the Criminal Division at the Department of Justice. I am a senior partner in the Washington, DC office of Sidley Austin. In my career of over forty years, and after my service as an Assistant United States Attorney here in Washington, I specialized in the defense and trial of white collar criminal cases.

I have known Lanny for over fifteen years. I first met him shortly after he entered private practice after he departed the District Attorney's office in Manhattan. Since that time he and I have collaborated on a number of cases, and we have developed both a professional and social relationship. As a result I have come to know him very well. He is without question an accomplished and skillful lawyer who possesses a keen intellect. Furthermore his integrity is beyond reproach, and he enjoys the respect and admiration of the legal community in which we both work. Because of his experience both as a prosecutor and in the private sector, he has the experience, wisdom and insight to guide the Department's Criminal Division. He truly is ably suited and prepared to take on the responsibilities awaiting him. For these reasons I urge you and your committee to act favorably on his nomination.

I appreciate your consideration of my remarks.

Sincerely yours,

Thomas C. Green

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March 6, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Black Police Association (NBPA), we strongly recommend the confirmation of Tony West as Assistant United States Attorney General for the Civil Division. We are confident that Mr. West will lead the Civil Division with distinction and honor.

Mr. West will bring a strong background of public service to the Civil Division. Mr. West began his career at the United States Department of Justice, where he served as a Special Assistant to Deputy Attorney General Phil Heymann and then Deputy Attorney General Jamie Gorelick. Among Tony's responsibilities was working on the 1994 Omnibus Crime Bill. Tony later served as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, police officer training, civil rights and police misconduct.

Mr. West's career as a federal prosecutor and a Special Assistant Attorney General demonstrate both his commitment to public service and his broad range of experience in the practice of law. We believe the Department of

Justice and the American public will be well served by Tony's confirmation. We strongly support the nomination of Tony West to be the next Assistant Attorney General for the Civil Division, and we ask that he be swiftly confirmed.

Sincerely,

Ronald E. Hampton

Ronald E. Hampton, Executive Director

Jo Ann Harris
Attorney at Law
202 Riverside Drive, 6C
New York, NY 10025

[redacted]

[redacted]

March 10, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Lanny Breuer, nominee DOJ AAG, Criminal Division

Dear Senators Leahy and Specter:

The President has nominated Lanny Breuer for the position of Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice. I write to support his nomination.

You may remember that I have "some" knowledge about what it takes to run the Department's Criminal Division, having done it in the early-1990s. In my judgment, the country is best served by an AAG with a strong, independent sense of fairness and justice which comes from broad exposure to all aspects of our criminal justice system, as a policy-maker, a prosecutor, a defense attorney and a trial lawyer. Moreover, to effectively manage the Division, the AAG needs to command the respect of a whole pantheon of individuals ranging from the Attorney General, to the United States Attorneys, to the career lawyers and agents on the ground. Mr. Breuer brings all of this to the job. In addition, in the present economic climate, his experience in the white collar enforcement arena is particularly important and relevant.

I urge you to quickly confirm Lanny Breuer.

Respectfully submitted,
Jo Ann Harris
Former Assistant Attorney General
Criminal Division (1993-95)
United States Department of Justice

HARVARD LAW SCHOOL

Hauser Hall 522 • Cambridge, Massachusetts 02138

PHILIP B. HEYMANN
James Barr Ames Professor of Law
Director of Center for International Criminal Justice

[redacted]

March 6, 2009

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy:

I write to support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division.

Tony is an outstanding lawyer and he is eminently qualified to lead the Civil Division. I first met Tony when he worked for me as a Special Assistant at the Department of Justice. Tony provided invaluable assistance to us in helping pass the 1994 Omnibus Crime Bill. Tony went on to serve as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

The President has made an excellent decision in choosing Tony West to be the next Assistant Attorney General for the Civil Division. As a former Deputy Attorney General, I know that Tony will bring able leadership and integrity to the Department of Justice. I strongly support his nomination and urge that he be confirmed.

Please feel free to contact me at [redacted] should you need any further information.

Best regards,

Phil Heymann

Phil Heymann

abtl
ASSOCIATION OF BUSINESS TRIAL LAWYERS
NORTHERN CALIFORNIA

March 9, 2009

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Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing on behalf of the Board of Governors and members of the Northern California Chapter of the Association of Business Trial Lawyers (the "ABTL") in support of the nomination of Tony West to be the Assistant Attorney General for the Civil Division of the United States Department of Justice.[1] Mr. West's educational and professional achievements, his energetic, gracious and civil manner, as well as his many contributions to the community, qualify him extraordinarily for this position.

The ABTL, founded in 1972, is a leading California voluntary bar association. It is dedicated to fostering a dialogue between the Federal and state benches and the bar regarding business litigation issues. As such, our organization is unique among specialized bar organizations in California because it provides a forum where the plaintiffs' bar, the defense bar, and Federal and state judges all work together to improve the administration of justice for many of the most complex kinds of civil cases, including securities, antitrust, intellectual property, and consumer class actions. The Northern California Chapter of the ABTL is by far the largest of the five ABTL chapters in California and has approximately 2,000 members, many of whom are among the most highly accomplished and celebrated litigators in California, and, indeed, the nation. Our Board of Governors and many of our members are very familiar with Mr. West, who has ably served as a Governor for several years, committing his time and many talents to improving our system of justice.

Mr. West's considerable professional accomplishments mark him as a man of substance. Equally important, the professional associations to which he has contributed and his civic activities confirm his genuine and abiding commitment to the fair and equal administration of justice for all.

[1] No Governor or member of the Northern California Chapter of the ABTL who is a judicial officer participated in a discussion about, or in preparation of, this endorsement.

Chapter Contact Information
ABTL – N. California Chapter
P.O. Box 696
Pleasanton, CA 94566
Tel: (925) 447-7900

The Northern California Chapter of the Association of Business Trial Lawyers is proud to endorse Mr. West. We believe Mr. West is eminently qualified to serve as Assistant Attorney General for the Civil Division by virtue of his education and his professional experiences. He has served as a Special Assistant in the Department of Justice under the Clinton Administration, as a Special Assistant Attorney General in California, as a Federal Prosecutor, and he has gained the important perspective of those in private practice as well. From these experiences, we believe Mr. West has developed the wisdom, judgment, and skill necessary to manage the Civil Division and to uphold and enforce the laws of this nation. We urge your committee to vote favorably on Mr. West's nomination.

Very truly yours,

Stephen D. Hibbard

Stephen D. Hibbard
President

HERRICK

NEW YORK
NEWARK
PRINCETON

ELIZABETH HOLTZMAN
COUNSEL
[redacted]

February 2, 2009

Via E-mail

Senator Patrick Leahy
Chair
Senator Arlen Specter
Ranking Member
The Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Letter in Support of the Nomination of Lanny A. Breuer as
Chief of the Criminal Division, US Department of Justice

Dear Chairman Leahy and Ranking Member Specter:

It is my honor to write in support of the nomination of Lanny A. Breuer as Chief of the Criminal Division of the Department of Justice. I do so enthusiastically, both as a former prosecutor who headed the country's fourth largest district attorney's office and as a former Congresswoman who sat on the House Judiciary Committee for eight years and dealt with the Criminal Division on many occasions.

The Criminal Division exemplifies how our country views the rule of law. It requires as its chief someone who understands the need for effective and robust prosecution of those who violate the law, and at the same time the need to adhere to the highest standards of professionalism in doing so. I can think of no one better suited than Lanny Breuer to be the face of justice to the American people. He would bring to the position an extraordinary depth of experience with the criminal justice system, the obvious intelligence to understand and master the complex issues the Division faces, the thoughtfulness and care so important in making wise decisions and a commitment to ensuring the highest standards of excellence.

Lanny Breuer brings the perspective of an experienced prosecutor to the position, having worked in the Manhattan District Attorney's Office, a crucible that has produced some of the country's finest prosecutors. In addition, Lanny knows the criminal justice system from the vantage point of an expert defense counsel, having co-chaired the White Collar Defense and Investigations practice group at Covington and Burling. He brings the important benefit of understanding both sides.

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HERRICK

Having worked with Lanny when he represented President Clinton during the impeachment proceedings against him, I know that he can master the complexities of constitutional litigation and that he has the temperament and good judgment to win the confidence of his colleagues and the American people. In my dealings with him I found him to be extremely professional, an excellent legal strategist and unfailingly courteous. These qualities, I might add, were already apparent more than thirty years beforehand when Lanny worked as an intern in my Congressional office.

As a child of Holocaust survivors, Lanny would also bring a unique sensitivity to the work of one of the units in the Criminal Division, the Office of Special Investigations, which is responsible, among other things, for bringing to justice Nazi war criminals living in the US. Having helped to create that Office when I was in Congress, I have every confidence that Lanny's good judgment and commitment will ensure that the important work of the Office is carried out in accordance with the highest professional standards.

I believe that Lanny would make a superb Chief of the Criminal Division, and I most respectfully urge that he be confirmed by your Committee and the Senate.

I would be happy to answer any questions you or your staff might have.

Sincerely,

Elizabeth Holtzman

EH:am

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March 16, 2009

BY HAND

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of Lanny A. Breuer

Dear Senators Leahy and Specter:

I write in strong support of the nomination of Lanny A. Breuer to be the next Assistant Attorney General of the Criminal Division of the Department of Justice.

I had the honor of serving in the leadership of the Criminal Division during both the Clinton Administration (as Deputy Assistant Attorney General and Chief of Staff, 1999-2000) and the Bush Administration (as Chief of Staff, 2001-2002). From my first-hand experience, I fully appreciate the vital role that the Criminal Division plays in a wide range of critical issues facing our country, including the investigation and prosecution of white collar crime, the fight against cybercrime, the protection of our children from online predators, and the development of close working relationships with law enforcement agencies around the world. I also had the privilege during my service to work closely with two truly outstanding leaders of the Criminal Division, James K. Robinson and Michael Chertoff, and to see how they dealt with significant challenges every day.

In my opinion, Lanny Breuer will prove to be an outstanding leader of the Criminal Division. I have known Lanny for several years now as a result of our professional experiences as defense counsel, including our participation in the Edward Bennett Williams Inn of Court. Additionally, as a result of my prior service as a federal prosecutor in the Southern District of New York and Lanny's former service as an Assistant District Attorney in Manhattan, I have

Michael E. Horowitz Tel [redacted] Fax [redacted] [redacted]om

CADWALADER

come to appreciate the outstanding reputation that Lanny developed as both a prosecutor and trial lawyer. I also have spent considerable time recently speaking with Lanny about the Criminal Division and the many challenges that he is likely to face if confirmed. Given Lanny's wealth of criminal law experience, his impressive legal credentials, and his impeccable reputation for integrity and honesty, I have no doubt that he will aggressively pursue the mandate of the Criminal Division while at the same time recognizing the importance of prosecutorial discretion and the fair administration of justice.

In sum, Lanny has the wisdom and demonstrated judgment that should be expected of someone who has been chosen to lead the Criminal Division. I know he will be an outstanding Assistant Attorney General, and I support his nomination without reservation.

Very truly yours,

Michael Horowitz

Michael E. Horowitz

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Singapore, Brussels

March 3, 2009

Writer's Direct Contact
[redacted]

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

It is my pleasure to strongly recommend the confirmation of Tony West as Assistant United States Attorney General for the Civil Division.

Tony is an excellent lawyer. Last year, I had the opportunity to work with Tony on a civil rights case that we argued before the Ninth Circuit Court of Appeals. I was impressed by his outstanding advocacy skills, thoughtful legal analysis and wise judgment. More importantly, Tony displayed a unwavering commitment to both his clients and to the rule of law. In addition, Tony is a pleasure to work with. He is well regarded by both his colleagues and opponents, and he is respected as being a dedicated mentor to young lawyers.

As a former Ninth Circuit Judge, I can say without hesitation that Tony is an exceptional attorney, and it would have been a privilege to have him in my courtroom. I know that he will bring able leadership and the highest integrity to the Department of Justice. The President has made an excellent decision in choosing Tony West to be the next Assistant Attorney General for the Civil Division. I enthusiastically endorse his nomination and urge his confirmation.

Sincerely,

Shirley M. Hufstedler



Hon. Edward A. Infante (Ret.)
[redacted]

Two Embarcadero Center
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February 23, 2008

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Nomination of Tony West

Dear Senator Leahy and Senator Specter:

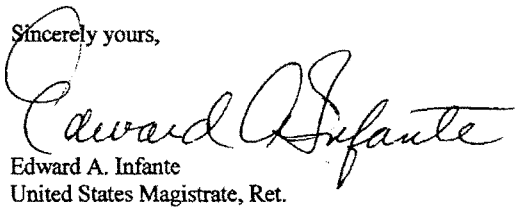
I hereby support President Obama's nomination of Tony West of California for the office of Assistant Attorney General for the Civil Division in the Department of Justice.

After receiving his Juris Doctor from Stanford Law School where he served as President of the Law Review, Tony West was appointed as an Assistant United States Attorney in the Northern District of California in 1994. During five years as a federal prosecutor he appeared before me and my fellow magistrate judges and district judges on numerous occasions. He was assigned the prosecution of several significant federal criminal cases including high-tech crime, white collar fraud, child pornography, federal firearm violations, drug trafficking, bank robberies, and tax offenses. He was consistently well-prepared and exhibited exceptional legal skills. I was particularly impressed by his even-handed and professional interaction with the court, opposing lawyers, federal agents, and others in the judicial process. His high intelligence and advocacy skills were always accompanied by common sense and good judgment. Tony West enjoys an excellent reputation among the federal judges in the Northern District of California.

After his government service, Tony West joined the law firm of Morrison & Foerster in San Francisco where he has represented clients in a wide variety of civil litigation. Since my retirement from the federal court, I have transitioned to JAMS (Judicial Arbitration & Mediation Services) where I hear civil cases as either an arbitrator or mediator. Recently, Tony West represented a party in a very sensitive case in which I served as the mediator. His skill, good judgment, and thoughtful legal advice to his client resulted in a successful mediated result which eliminated a serious risk of liability and embarrassment for his client. Once again, I witnessed the qualities that make him an extraordinary lawyer.

Tony West is exceptionally well-qualified to serve our nation as Assistant Attorney General of the Civil Division. I recommend him and urge you and the Senate Judiciary Committee to support his confirmation.

Sincerely yours,



Edward A. Infante
United States Magistrate, Ret.
Arbitrator/Mediator, JAMS

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JOHN W. KEKER

March 5, 2009

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: NOMINEE TONY WEST

Dear Senators Leahy and Specter:

I write in support of Tony West's nomination to be the Assistant Attorney General for the Civil Division of the U.S. Department of Justice.

I am a lawyer in San Francisco, and the founding partner of the Keker & Van Nest law firm. I have known Tony since he has been a partner at Morrison & Foerster, have worked with him, and admire him as a lawyer and as a man..

Tony West is a splendid nominee for a high-ranking position in the Department of Justice, and I urge you to confirm him. Whether he is on your side or serving as opposing counsel, there is never a doubt about Tony's integrity, decency, common sense, intelligence and humanity. Certainly Attorney General Eric Holder, who embodies these same qualities, is a major step in the right direction to returning the Department to excellence. Having Tony West at his side, making important decisions in the Civil Division, will be another big step.

I know and respect Tony's family, including his wife Maya and his sister-in-law Kamala Harris, our District Attorney. The support of these able and excellent family members will sustain him during his hard work at DOJ.

I am not including Tony's biographical details because you know them. If you or your staff have questions, or would like further information, please feel to call me.

Very truly yours,

JOHN W. KEKER

JWK/der

CAHILL GORDON & REINDEL LLP
EIGHTY PINE STREET
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*ADMITTED IN DC ONLY

March 1, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to highly commend to you Tony West, President Obama's nominee to serve as Assistant Attorney General for the Department of Justice's Civil Division.

As the former United States Attorney for the Southern District of New York, and adversary of Tony West, I was delighted to learn of Tony's nomination. I first met Tony when I served as one of the lead prosecutors of John Walker Lindh in the Eastern District of Virginia, and Tony was one of the lawyers who represented him.

As I am sure you are aware, shortly after the September 11 terrorist attacks, Lindh was brought into American custody after he was captured in Afghanistan. Tony immediately impressed me as a formidable adversary who, despite his client's unpopularity in the media took on the representation in a very effective and professional manner.

During the ten months of litigation culminating in Mr. Lindh's conviction, I was frequently in contact with Tony and had the opportunity to observe him in nearly every aspect of the case – including motion practice, hearings and negotiations. Tony demonstrated day in and

day out that he was the consummate professional from whom I grew to expect the smartest advocacy, but executed with the highest degree of integrity.

My contact with Tony now is infrequent, but always a tremendous pleasure. I have found him to be not only one of the very best advocates I encountered in my nearly twenty years of service to the Justice Department, but also one of the finest human beings.

I was delighted to hear of Tony's nomination, not only because I think so highly of him as a lawyer and as a person, but because I hold in such high esteem the Department of Justice, to which I dedicated a good part of my career. I can not think of a better man that Tony to carry out the mission of the Civil Division in the years to come.

Sincerely,

David N. Kelley



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Bar Association

www.southasianbar.org

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March 17, 2009

The Honorable Senator Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Senator Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the South Asian Bar Association of Northern California, I am writing to strongly recommend the nomination of Tony West as Assistant United States Attorney General for the Civil Division. We unequivocally support Mr. West's nomination given his tireless efforts to champion civil rights and represent those without a voice in our community.

Further, Mr. West is well-regarded in our legal community as a consensus builder who seeks to ensure that minority viewpoints are represented, which we believe will serve the U.S. Department of Justice and our country well as the Obama Administration tackles the tough challenges that lay ahead.

We enthusiastically support Mr. West's nomination and respectfully urge that the Senate Judiciary Committee confirm him promptly. Thank you for your service to our great nation and your thoughtful consideration of our recommendation.

Very truly yours,

Khurshid Khoja
President

THE NEW YORK CITY DEPARTMENT OF EDUCATION
JOEL I. KLEIN, *Chancellor*
OFFICE OF THE CHANCELLOR
52 CHAMBERS STREET · NEW YORK, NY 10007

March 4, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Senator Specter:

I am writing to support the nomination of Christine Varney as Assistant Attorney General for the Antitrust Division of the Department of Justice. As a former occupant of that position (from 1996 to 2000), I am confident that she has the integrity, professionalism, intellectual ability, judgment, and knowledge of antitrust law and competition policy necessary to perform the duties of this job with distinction.

I came to know Christine well, first when we worked together in the White House and then when she became a member of the Federal Trade Commission. We worked together on, and had the opportunity to discuss, numerous issues of competition law and policy as well as to work through, as colleagues, issues relating to the respective roles of the Antitrust Division and FTC. We also served together, representing our respective agencies at the OECD, and worked together there on important issues of global competition policy. In all of these experiences, Christine demonstrated the skills and talents I referenced above. She is a terrific colleague who is eager to hear others' views and to make sure she is fully informed before she makes a decision. She is inclusive in the way she works and has a terrific sense of humor, something that doesn't always characterize antitrust lawyers.

The issues facing our economy, especially as globalization and technology continue to reshape the competitive landscape, will require strong and intelligent antitrust enforcement as well as a clear vision of effective competition policy. I have no doubt that President Obama has selected the right person to assume those responsibilities.

I would be happy to provide any additional information the Committee requires.

Thank you,

Joel I. Klein
Chancellor

LA BELLA & MCNAMARA, LLP

February 17, 2009

Charles G. La Bella
[redacted]

Via Facsimile and U.S. Mail

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington D.C. 20510

Senator Arlen Specter
711 Hart Building
Washington D.C. 20510

Re: Lanny A. Breuer

Dear Senators Leahy and Specter:

I am writing to you concerning the nomination of Lanny Breuer to head the Criminal Division at the Department of Justice.

I worked with Lanny while I was in Washington heading the Campaign Finance Task Force. Lanny was Special Counsel to President Clinton and represented both the President and certain White House staff. Due to the nature of the inquiry I had almost daily contact with Lanny in an effort to obtain documents and information concerning the on-going investigation. We both faced some very difficult legal issues in our different roles. Through it all, Lanny exemplified the highest professional and ethical standards in addressing complex and at times competing investigations. We maintained an open dialogue and were able to work out each and every legal issue to our mutual satisfaction. But beyond these professional mechanics, Lanny was open minded, could see both points of view and was flexible in addressing the weekly issues concerning witness interviews, production of documents and review of sensitive materials.

I was with the Department of Justice for many years and know how important the head of the Criminal Division is to the proper administration of justice. The Criminal Division is a powerful division and must be managed ethically, professionally and responsibly. Lanny Breuer possesses all the tools to do so. I would urge his swift confirmation.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

Charles G. La Bella

CGL:pas

HOGAN & HARTSON

Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
+1.202.637.5600 Tel
+1.202.637.5910 Fax

www.hhlaw.com

March 5, 2009

Thomas B. Leary
Of Counsel
[redacted]

VIA FACSIMILE AND HAND DELIVERY

Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Re: Nomination of Christine A. Varney for Assistant Attorney General for Antitrust, U.S. Department of Justice

Dear Chairman Leahy and Senator Specter:

It is a pleasure to support the nomination of my sometime law partner and longtime friend, Christine Varney.

It is not necessary to repeat the highlights of Ms. Varney's remarkable and varied experience. It has already been done by others -- including, most notably, the 20 former Chairs of the ABA Antitrust Law Section, who wrote to you on February 19, 2009. I will simply emphasize here a special qualification that Ms. Varney will bring to the job.

As you know, Christine Varney served as a Federal Trade Commissioner from 1994 to 1997. Like other independent agencies, the Federal Trade Commission has a bi-partisan membership and a tradition that fosters consensus decisions. There is also a tradition in this country that antitrust enforcement at the Justice Department should be non-political, as well, and that is a role that Ms. Varney is uniquely qualified to fill.

Let me illustrate her sensitivity to these matters with a personal anecdote. I am a lifelong Republican, who was appointed to serve as a Federal Trade Commissioner by President Clinton. Christine Varney, a lifelong Democrat, was the first person to raise the possibility of an

appointment with me, and was thereafter extraordinarily helpful in making it happen. I assure you that Ms. Varney did not act out of personal friendship; she does not confuse personal and public matters. She acted because she wanted an upcoming slot at the agency to be filled by someone with the appropriate experience. And, this letter of support is written for the same reason.

One other aspect of Ms. Varney's experience is worthy of mention. The Federal Trade Commission has responsibility for both competition and consumer protection law, and Ms. Varney has practiced actively in both areas. It is well understood that consumer protection law needs to be tempered by respect for the competitive market system. What is less well understood is that the reciprocal is also true; competition law needs to be tempered by a respect for the sovereignty of individual consumers. The economic models that underlie competition law enforcement have tended to treat consumers as an undifferentiated mass, who respond to price signals in predictable ways. Consumer protection lawyers know that consumers are unique individuals with individual preferences, which cannot always be captured by statistics. Christine Varney's experience as a consumer protection lawyer, in both the public and the private sector, will enable her to bring a rich perspective to the Department of Justice that is unlike anything we have seen before.

I respectfully request that your Committee approve the nomination of Christine Varney to lead the Antitrust Division of the Department of Justice.

Very truly yours,

Tom Leary

Thomas B. Leary

(Former Federal Trader Commissioner
1999-2005)

LEWIS, FEINBERG, LEE, RENAKER & JACKSON, P.C.
ATTORNEYS AT LAW
1330 BROADWAY, SUITE 1800
OAKLAND, CALIFORNIA 94612-2519

[redacted]

March 9, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Tony West's Nomination for Assistant Attorney General for the Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division.

Tony is an outstanding lawyer eminently qualified to lead the Civil Division. As a former Justice Department lawyer and Special Assistant to the California Attorney General, Tony has breadth of government prosecutorial experience. As a litigator in one of the Bay Area's preeminent law firms, he also has breadth of litigation experience in the private sector. He has dealt with difficult cases in a variety of settings with skill and integrity, ranging from the volatile Tyisha Miller police misconduct matter in Riverside County to the defense of John Walker Lindh. Tony is rightly regarded as one of the most able members of the Bay Area legal community.

As Assistant Attorney General for the Civil Rights Division in the Clinton Administration, I had the pleasure of working with Tony on important policy matters, including issues of diversity and inclusion. His devotion to the practical enforcement of our nation's civil rights laws and his ability to build consensus will be a tremendous asset to the Department of Justice. The American people will be well-served by a leader like Tony who will be dedicated to the independence and non-partisanship of the Department and committed to restoring its integrity. I believe that the career lawyers and staff of the Civil Division, in particular, will benefit from his ethics, strength and sensitivity as a manager and leader.

The President has made an excellent decision in choosing Tony West to lead the Civil Division. His commitment to civil rights will serve him well in coordinating the work of the Civil and Civil Rights Divisions so that the Government speaks with a single voice in matters of equity and fairness. I enthusiastically recommend Tony's confirmation. I urge that he be confirmed without delay in light of the many challenges facing the Civil Division at this time.

If I can be of any further assistance, please feel free to contact me.

Sincerely,

Bill Lann Lee

61992.775

BILL LOCKYER
TREASURER
STATE OF CALIFORNIA

March 5, 2009

Honorable Patrick Leahy
Honorable Arlen Specter
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I am writing to strongly support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division.

Tony is an outstanding lawyer. I had the opportunity to work with Tony when I personally selected him to serve on my executive team as Special Assistant Attorney General for the State of California, when I was the California Attorney General. Although his appointment was nearly a decade ago, and much earlier in his career, Tony already had built a wonderfully diverse professional background, having worked at the United States Department of Justice, where he helped pass the Omnibus Crime Bill, and then as an Assistant United States Attorney, where he successfully prosecuted numerous cases, including sensitive and high-profile prosecutions.

Tony's work was of enormous importance to the success of my administration from its beginning, and I was able to rely on him for good advice and consistent excellence as my personal representative on a wide range of matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct. In just such a role, I asked Tony to lead the long and difficult negotiations with the city government and police department of Riverside, California in the wake of the tragic police shooting of Tyisha Miller in 1998. Tony's efforts as leader of a task force including the

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Attorney General's litigators and police review specialists resulted a pioneering, successful, and lasting resolution that ended decades of antagonism between the police department and the city's minority residents.

Tony is also the right choice to lead the Civil Division at this time. Tony has a skill at listening carefully to people of differing viewpoints and succeeding in getting them to find ways that they could work together, compromise and get something important accomplished. I think that is the skill-set needed for this job, especially at this moment in the nation's history, and I know it will help Tony foster a resurgence of independence and credibility within the U.S. Department of Justice.

The President has made an excellent decision in choosing Tony West to be the next Assistant Attorney General for the Civil Division. I know that he will bring the same able leadership and integrity to the Department of Justice that he brought to the California Attorney General's Office.

Sincerely,

BILL LOCKYER
California State Treasurer

COMMITTEE ON THE JUDICIARY
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• CHAIR — SUBCOMMITTEE ON ELECTIONS
CHAIR, CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION

Congress of the United States
House of Representatives
Washington, DC 20515–0516

ZOE LOFGREN
16TH DISTRICT, CALIFORNIA

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SAN JOSE, CA 95112
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CO-CHAIR, CONGRESSIONAL HAZARDS CAUCUS

CO-CHAIR, BIPARTISAN CONGRESSIONAL REFUGEE CAUCUS

CO-CHAIR, CONGRESSIONAL VIETNAM CAUCUS

March 9, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: **Nomination of Tony West for Assistant Attorney General — Civil Division**

Dear Chairman Leahy and Ranking Member Specter:

I write to support the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

Tony West is an excellent choice to lead the Civil Division. Mr. West is a former Assistant United States Attorney who successfully prosecuted several high profile cases, including cases involving the exploitation of children. After leaving the United States Department of Justice, Mr. West continued his public service as the Special Assistant Attorney General of the State of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct. Since that time, Mr. West has practiced civil litigation in Northern California, earning wide respect among his colleagues, and his opponents. Mr. West's strong background will serve him well at the Department of Justice.

In addition to his experience, Mr. West also has the character and integrity to lead the Civil Division. Over the years, I have come to know Mr. West as a man of courage and conviction; he displays a commitment to his clients and the law. I know he will bring that same commitment and integrity to the Department of Justice. I strongly support Mr. West's nomination and urge you to confirm him without delay.

Sincerely,

Zoe Lofgren
Member of Congress

ORRICK

ORRICK, HERRINGTON & SUTCLIFFE LLP
COLUMBIA CENTER
1152 15TH STREET, NW
WASHINGTON, D.C. 20005-1706
tel +1-202-339-8400
fax +1-202-339-8500
WWW.ORRICK.COM

February 17, 2009

The Hon. Patrick J. Leahy, Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Hon. Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Mr. Chairman and Senator Specter:

I am pleased to support the nomination of Lanny Breuer to become the next Assistant Attorney General of the Criminal Division. I dealt with Lanny extensively when I served as Chief Counsel for the Senate Government Operations Committee Investigation led by Senator Fred Thompson. Lanny served as Special Counsel to President Clinton and was our main contact on an almost daily basis for a year. The Committee held 33 days of highly publicized and often contentious hearings. I came to respect Lanny greatly and admired his legal skills and straight forward approach to all issues. He was a true professional throughout a very difficult, but important, legislative process.

Lanny and I also are, and have been for several years, Members of the Edward Bennett Williams Inn of Court. I have had the opportunity to work with him there and to observe his considerable talents.

Finally, Lanny's background as a Criminal White Collar Defense lawyer for the last 10 years coupled with his previous experience as a Prosecutor make him very well qualified for his new position.

I am confident that Lanny will make an outstanding Assistant Attorney General.

Sincerely,

Michael J. Madigan

OHS East:160534132.1



MAJOR CITIES CHIEFS ASSOCIATION

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Cleveland, Ohio
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Washington, DC
Winnipeg, Manitoba

March 3, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

On behalf of the Major Cities Chiefs, I am writing to support the nomination of Lanny A. Breuer to become Assistant Attorney General of the Criminal Division. The Major Cities Chiefs represents the 56 largest jurisdictions across the Nation.

Mr. Breuer has a distinguished career and we welcome his pledge to strengthen the partnership between state and local law enforcement and the Department of Justice.

After meeting with Mr. Breuer, we found him open and very interested in the concerns of our members and look forward to working with him throughout his term. The Criminal Division and the U.S. Attorneys he will lead are crucial in our mutual efforts to control crime and drug trafficking in our cities.

American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Lanny A. Breuer quickly through the confirmation process.

Sincerely,

Robert Davis
Chief of Police
San Jose, California
Vice President



MAJOR CITIES CHIEFS ASSOCIATION

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El Paso, Texas
Fairfax County, Virginia
Fort Worth, Texas
Honolulu, Hawaii
Houston, Texas
Indianapolis, Indiana
Jacksonville, Florida
Kansas City, Missouri
Las Vegas Metro, Nevada
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San Jose, California
Seattle, Washington
St. Louis, Missouri
Suffolk Co., New York
Toronto, Ontario
Tucson, Arizona
Tulsa, Oklahoma
Vancouver, British Columbia
Virginia Beach, Virginia
Washington, DC
Winnipeg, Manitoba

March 4, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

On behalf of the 56 largest jurisdictions in the United States, we are writing to support the nomination of Tony West to become Assistant Attorney General of the Civil Division.

Mr. West comes to Washington with a distinguished record of achievement in law enforcement. He has served as both a Federal prosecutor and a Special Assistant Attorney General in California. As Assistant U.S. Attorney, Tony West played the leading role in a multi-agency task force against child pornography and child molesters. Through these accomplishments, Mr. West has earned the widespread respect of law enforcement and the public we serve.

We applaud this high caliber of experience we heartily endorse Tony West for a position of authority at the Department of Justice. With Mr. West at the helm of the Civil Division, Chiefs of Police and Sheriffs across our Nation may look forward to a relationship built upon trust and confidence.

American law enforcement has always looked to the Judiciary Committee for leadership and we now ask that you send the nomination of Tony West to the floor for speedy confirmation by the U.S. Senate.

Sincerely,

Robert Davis, Vice President
Chief of Police
San Jose, California

BINGHAM

Raymond C. Marshall
[redacted]

February 26, 2009

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Committee on
the Judiciary
711 Hart Senate Office Building
Washington, DC 20510

Re: Tony West, Nominee for Assistant Attorney General, Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to express my enthusiastic support of Tony West's nomination to serve as Assistant Attorney General, Civil Division, in the United States Attorney General's Office.

I have known Tony since he was a law student at Stanford Law School. I had the pleasure of interviewing Tony and extending him an offer in 1991 to join our summer program. Over the years, Tony and I have become professional colleagues, good friends and mutual supporters of a variety of groups and organizations promoting civil rights and diversity within the legal profession, including the Bay Area Black Partners Group.

When Tony served as AUSA for the Northern District of California (1994-99), he prosecuted a variety of high profile child pornography cases. He was able to secure convictions in one particular online pornography and child molestation ring involving 16 defendants from four different countries on all defendants. Importantly, Tony wrote and argued the government's appellate brief in *United States v. Laney*, establishing new case law that ensures victims of child sexual exploitation recover restitution for future counseling and psychological treatment stemming from those crimes.

Tony served in the Clinton Administration as a Special Assistant in the U.S. Department of Justice, and worked on the development of national crime policy, most importantly, the 1994 Omnibus Crime Bill. Tony has also written and argued many times before the Ninth Circuit Court of Appeals.

Outside of his practice, Tony has been a major contributor to the legal community. In addition to serving on the governing board of the Northern California Association of Business Trial Lawyers, he has served as a Ninth Circuit Lawyer Representative, was a member of the Litigation Section Executive Committee for the San Francisco Bar Association, and participates in Oakland, California's McCullum Youth Court. Tony is renown in the Bay Area for his legal commentary and opinion. He has appeared frequently on television, radio and in news articles.

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Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA
94111-4067

T 415.393.2000
F 415.393.2286
bingham.com

Tony West is the real deal. He is a talented trial attorney, exceptionally smart, and both a skilled leader and team player. Tony will provide an excellent addition to Attorney General Holder's staff. I look forward to his early confirmation.

Sincerely,

Raymond C. Marshall

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61992.783

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www.hhlaw.com

Janet L. McDavid
Partner
[redacted]

March 4, 2009

Via FACSIMILE (202-228-0861)

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Christine Varney

Dear Chairman Leahy and Senator Specter:

I am writing in enthusiastic support of the nomination of Christine Varney to become Assistant Attorney General in charge of the Antitrust Division of the Department of Justice. As a former Chair of the ABA Antitrust Section, I signed a letter to you in support of Christine's nomination from 20 other former Chairs of the Antitrust Section, but I also wanted to write separately.

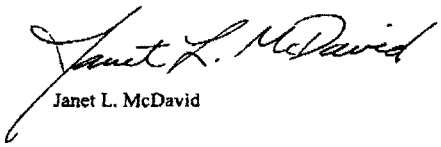
I have had the pleasure of working with Christine for more than 20 years as a colleague, and practicing before the Federal Trade Commission during her tenure as a Commissioner. Based on my experience, she is exceptionally well qualified to lead the Antitrust Division. Her former role as a Federal Trade Commissioner provides a particularly valuable credential because she has already demonstrated her commitment to the vigorous but principled enforcement of the antitrust laws. Her experience at the FTC is especially important at a time when the FTC and the Antitrust Division have sometimes diverged on antitrust enforcement because she is well positioned to help reduce differences between the two agencies' approaches.

But her many years of practicing antitrust law and advising clients on antitrust issues are also important. She has an excellent understanding of both the antitrust laws and the economic analysis that under-pins antitrust. Equally significantly, she understands how businesses work and how business decisions are made, and those insights will be valuable to her at the Antitrust Division. She has demonstrated her skills as an effective leader, consensus builder, and innovative thinker. She also is pragmatic, strategic, and a person of unquestioned integrity with strong loyalties.

As a result of her prior government experience and high profile in the antitrust bar, she will have immediately credibility with international antitrust enforcers, state attorneys general, the business community, and the antitrust bar. I recommend that the Committee confirm her.

I would be pleased to respond to any questions from the Committee.

Sincerely,



Janet L. McDavid

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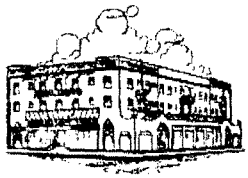

THE FARMERS UNION
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P.O. BOX 68 • SAN JOSE, CALIFORNIA 95103 • FAX (408) 295-6615 • (408) 295-6465

March 5, 2009

Honorable Patrick Leahy, Chairman
United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Honorable Arlen Specter
Ranking Minority Member
United States Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to strongly support the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

Tony began his career in public service, first as a Special Assistant to the Deputy Attorney General, where he helped to pass the Omnibus Crime Bill, and later as an Assistant United States Attorney, where he successfully prosecuted numerous cases, including cases involving the exploitation of children. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct. He is now a very successful attorney in private practice.

ROBERT F. BENSON 1875-1958 • JOHN P. MCENERY 1906-1977 • MARGARET MCENERY SR. 1908-1991
GENERAL PARTNERS: TOM MCENERY • JOHN P. MCENERY III

VerDate Nov 24 2008 08:21 Dec 08, 2010 Jkt 061992 PO 00000 Frm 00909 Fmt 6601 Sfmt 6601 S:\GPO\HEARINGS\61992.TXT SJUD1 PsN: CMORC
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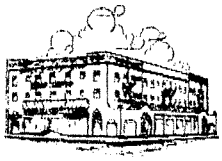

Now, I am sure that there are many who can attest to Tony's competence as an attorney – he certainly is a fine one. My purpose is to cite his accomplishments as a man and a father and a citizen. In the eight years that I was Mayor of San Jose, 1983-1990, I came to know Tony and his family well – they are everything that one can admire in a family and in Americans. His father served on the Planning Commission with great distinction and Tony, himself, was an advisor and friend to me. Perhaps, I was a mentor, but I learned much from him. He is the best we can have in public service and I enthusiastically endorse his nomination and urge his confirmation.

Thank you for allowing me to give my opinion. I wish you well in these difficult times.

Sincerely yours,

Tom McEnery

Tom McEnery

Senators Leahy & Specter –
Tony West will make us all very proud of him, and our confidence in him.
TMcE

WILMERHALE

A. Douglas Melamed

[redacted]m

March 3, 2009

VIA FACSIMILE AND HAND DELIVERY

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Nomination of Christine A. Varney for Assistant Attorney General for Antitrust, U.S. Department of Justice

Dear Chairman Leahy and Senator Specter:

I am writing in support of the nomination of Christine Varney as Assistant Attorney General for Antitrust. I have known Ms. Varney since the 1990s, when she was a Federal Trade Commissioner and I was the Principal Deputy Assistant Attorney General for Antitrust. She and I worked together in government, and we have since worked together in private practice.

Ms. Varney is bright, knowledgeable, energetic and wise. She is experienced in the ways of government and understands business. Especially at this time of economic crisis, government agencies responsible for economic policy, including the Antitrust Division, require strong, effective leadership. I have no doubt that Ms. Varney will provide that kind of leadership.

I hope that your committee and the Senate will promptly confirm Ms. Varney as Assistant Attorney General for Antitrust.

Sincerely,

A. Douglas Melamed

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California Police Chiefs Association
P.O. Box 255745, Sacramento, California 95865-5745
(Office) 916-481-8000 (Fax) 916-481-8008
e-mail [redacted]
web site www.californiapolicechiefs.org

March 5, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the California Police Chiefs Association, we strongly recommend the confirmation of Tony West as Assistant United States Attorney General for the Civil Division. We are confident that Mr. West will lead the Civil Division with distinction and honor.

Mr. West will bring a strong background of public service to the Civil Division. Mr. West began his career at the United States Department of Justice, where he served as a Special Assistant to Deputy Attorney General Phil Heymann and then Deputy Attorney General Jamie Gorelick. Among Tony's responsibilities was working on the 1994 Omnibus Crime Bill. Tony later served as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, police officer training, civil rights and police misconduct.

Mr. West's career as a federal prosecutor and a Special Assistant Attorney General demonstrate both his commitment to public service and his broad range of experience in the practice of law. We believe the Department of Justice and the American public will be well served by Tony's confirmation. We strongly support the nomination of Tony West to be the next Assistant Attorney General for the Civil Division, and we ask that he be swiftly confirmed.

Sincerely,

Bernard K. Melekian
President

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
TRENTON NJ 08625-0080

JON S. CORZINE
Governor

ANNE MILGRAM
Attorney General

February 18, 2009

The Honorable Patrick J. Leahy
Chair, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my strong support for the nomination of Lanny Breuer to be the Assistant Attorney General for the Criminal Division. Mr. Breuer is an individual of the highest competence, integrity, and professionalism who will bring a tremendous breadth of experience and expertise to the Department of Justice and the Criminal Division. Mr. Breuer has the judgment, commitment, and experience to lead the Division and to oversee the Division's fair, impartial, and full enforcement of federal criminal law.

I served in the Department of Justice's Civil Rights Division, Criminal Section, from 2001 to 2005, and I care deeply about the Department and its mission. Currently, as Attorney General for the State of New Jersey, I am the chief law enforcement officer in the state, overseeing the state's twenty-one county prosecutors, the State Police, and the Division of Criminal Justice. I welcome the opportunity to work with Mr. Breuer and a reinvigorated Criminal Division in marshalling and coordinating resources to address shared federal and state criminal justice priorities.

Mr. Breuer brings the highest qualifications to the position of Assistant Attorney General for the Criminal Division. Throughout his career, he has complemented his commitment

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to public service with a demonstrated expertise at navigating the difficult issues surrounding complex criminal investigations. In whatever sphere he has functioned, Mr. Breuer has done so with an unfailing commitment to personal and professional integrity. He began his career at the Manhattan District Attorney's office, gaining front-line insights into the nature of state prosecutions, law enforcement, and the benefits of cooperation and coordination between federal and state law enforcement. Although my tenure at the Manhattan District Attorney's Office did not overlap with that of Mr. Breuer, I am confident that his time as an assistant district attorney contributed immensely to his skills, judgment, and experience in prosecuting criminal offenses. Since that time, he has excelled in representing clients in some of the nations' most important and complex investigations and litigation, sharing with them the benefits of his guidance, temperament, and judgment.

Mr. Breuer will serve the public, the Division, and the Department of Justice well, holding himself and his colleagues to the highest standards of professionalism and commitment to the rule of law.

Sincerely yours,



Anne Milgram
Attorney General

HILL & KNOWLTON

Norman Y. Mineta
Vice Chairman

March 6, 2009

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West, Nomination to be Assistant Attorney General for the Civil Division

Dear ~~Chairman Leahy:~~ Pat:

I am writing you to express my strong support for the nomination of Tony West as Assistant Attorney General for the Civil Division, and to urge his confirmation.

I have known Tony and his family for more than 30 years. Even as a young man working as a volunteer in my congressional office when he was 11 years old, Tony struck me as gifted and capable of going on to do great things. He has proved me right.

Tony is someone who has devoted much of his life to public service. As a federal prosecutor and then as the Special Assistant Attorney General for the State of California, Tony has consistently demonstrated his commitment to making life better for his fellow citizens. As someone who has devoted his own life to public service, I know the importance of such a commitment. I believe there is no one better suited or more qualified to restore credibility to the Department of Justice than Tony, nor can I think of anyone more committed to its mission.

As the President himself put it, "the American people deserve to have faith that their Justice Department will keep them safe and uphold our most basic rights." Tony has the depth of experience and integrity necessary to accomplish these goals. The Department of Justice will be lucky to have a man like Tony West in a position of leadership. I urge you to confirm him without delay.

Sincerely,

Norman Y. Mineta

HILL & KNOWLTON, Inc
607 14th Street, NW
Suite 300
Washington D.C. 20005
[redacted]
www.hillandknowlton.com

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
4805 MT. HOPE DRIVE • BALTIMORE, MD 21215-3297 • (410) 580-5777

BENJAMIN TODD JEALOUS
President & Chief Executive Officer

JULIAN BOND
Chairman, Board of Directors

March 3, 2009

The Honorable Patrick Leahy
Chairman,
Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Senate Judiciary Committee
United States Senate
Washington, DC 20510

via fax

RE: NOMINATION OF ANTHONY WEST FOR ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Dear Chairman Leahy and Senator Specter:

On behalf of the NAACP, our Nation's oldest, largest, and most widely recognized grassroots-based civil rights organization, I am writing to strongly urge you to support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division. There is no doubt in my mind that Mr. West will lead the Civil Division with integrity and strength.

Mr. West is eminently qualified to lead the Civil Division. He served in the Justice Department as a Special Assistant to the Deputy Attorney General, and then served with distinction as an Assistant United States Attorney, successfully prosecuting several cases, including cases involving the exploitation of children. Mr. West also served as the Special Assistant Attorney General for the State of California, where he advised the Attorney General on various matters, including police officer training, civil rights and police misconduct. Since that time, Mr. West has practiced civil litigation in Northern California, earning wide respect among his colleagues as well as those with opposing views.

Our Nation and especially our racial and ethnic minority citizens are facing a crisis of confidence that the Department of Justice is not a true egalitarian defender of the rights of all Americans. Tony West is the right person at this time to help rebuild not only the Department, but our country's reputation as the defender of the right of all Americans to pursue the Constitutional promise of life, liberty and happiness. Thus, I urge you again to swiftly confirm Tony West to be the next Assistant Attorney General for the Civil Division.

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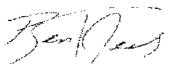
Thank you in advance for your attention to the NAACP position. Should you have any questions or comments, please do not hesitate to contact Hillary Shelton, the NAACP Vice President for Advocacy and the Director of the NAACP Washington Bureau at (202) 463-2940.

Sincerely,



Benjamin T. Jealous
President & CEO

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President
Atlanta, GA

Mavis T. Thompson
President-Elect
St. Louis, MO

Pamela Finley Boston
Vice President
Richmond, VA

Karl J. Connor
Vice President
New Orleans, LA

Daryl D. Parks
Vice President
Tallahassee, FL

Demetrius D. Shelton
Vice President
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Ellen E. Douglass
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Treasurer
Philadelphia, PA

John Lewis, Jr.
General Counsel
Atlanta, GA

Sheryl Robinson Wood
Parliamentarian
Baltimore, MD

John Crump
Executive Director
Washington, DC

Reply To:

March 5, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division.

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Bar Association (NBA), which represents a network of approximately 44,000 African American attorneys and judges nationwide, I urge you and the members of the United States Senate Judiciary Committee to confirm the nomination of Tony West to the position of Assistant Attorney General for the Civil Division of the United States of America. Mr. West is supremely qualified to be nominated as Assistant Attorney General for the Civil Division.

On August 1, 1925, during the first quarter of the 20th century, twelve African American pioneers dedicated to justice and civil rights for all people gave birth to the National Bar Association. The objectives of the National Bar Association established then, continue to form the basis of the organization today: to advance the science of jurisprudence; improve the administration of justice; preserve the independence of the judiciary and to uphold the honor and integrity of the legal profession; to promote public policy that will improve the economic condition of all American citizens, regardless of race, national origin, sex, religion; to secure for all citizens the freedoms protected and guaranteed by the Constitution; and to protect the civil and political rights of the citizens and residents of the United States of America.

As demonstrated by his distinguished career, both in the public and private sectors, Mr. West exemplifies the high standards sought by the National Bar Association for the protections and freedoms of all Americans under the Constitution of the United States. Moreover, Mr. West possesses the skills and qualifications necessary to lead the Civil Division in these difficult and unprecedented times.

Tony began his career as a Special Assistant to Deputy Attorney General Phil Heymann and then Deputy Attorney General Jamie Gorelick. Among Tony's responsibilities was working on the 1994 Omnibus Crime Bill, where he helped explain the importance of the bill's components to elected officials and local community leaders. Tony later served as an Assistant United States Attorney, successfully prosecuting several cases, including the

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Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

In addition to his public service, Mr. West has held several positions in the private sector that have given him significant preparation for execution of the duties and responsibilities of the Assistant Attorney General for the Civil Division, including his current position as a successful litigation partner for the law firm of Morrison & Foerster, LLP. At the firm, Mr. West handles complex civil and criminal cases, including white-collar criminal defense, civil rights and civil liberties matters, securities litigation, and antitrust. Mr. West brings a wealth of considerable legal and administrative knowledge and experience. He would he ready to lead the Civil Division on day one.

On a personal level, I have known Mr. West for over 15 years. I am well acquainted with both his character and reputation. He is well respected in the general community, as well as the legal community.

For these reasons, the National Bar Association urges that you confirm Tony West, as Assistant Attorney General for the Civil Division, without delay. Our support for this nomination is complete and without reservation.

Should you have any questions regarding our support, please do not hesitate to give me a call. I can be reached at (404) 347-8108.

Sincerely,

Rodney G. Moore

Rodney G. Moore, President
NATIONAL BAR ASSOCIATION
Mailing Address:
1349 West Peachtree Street N.E., Suite 1500
Atlanta, GA 30309
Tel: (404) 347-8108 Direct
Fax: (404) 592-9123
Email: rmoore@adorno.com

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DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ROBERT M. MORGENTHAU
DISTRICT ATTORNEY

January 27, 2009

Honorable Patrick J. Leahy, Chairman
Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

I am pleased to support the nomination by the President of Lanny Breuer, Esq, as the Assistant Attorney General for the Criminal Division in the Department of Justice. Based on his work in this Office, and his remarkable and varied career in and out of public service, I am confident that Mr. Breuer is an outstanding choice for this position and will be a conscientious, highly intelligent, and principled Assistant Attorney General for the the Criminal Division.

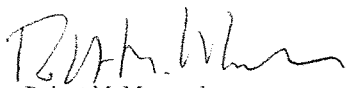
Mr. Breuer served in the District Attorney's Office from 1985 to 1989, and I am familiar with his work during that period. I have stayed in touch with him since he left the office and I am impressed by his fine reputation as a lawyer in private practice and in government service.

In the District Attorney's Office, he was responsible for the investigation and prosecution of hundreds of criminal cases, ranging from misdemeanors and petty offenses to violent felony crimes. Under our system of vertical prosecution, Mr. Breuer was responsible for each case from start to finish, from pre-arrest investigation through arraignment, grand jury, motion practice, plea-bargaining and trial. I can think of no better introduction to the demands and ethical challenges of criminal prosecution, and Mr. Breuer consistently handled his responsibilities with keen analytical ability, common sense, total integrity and an exemplary sense of justice. He was organized, calm and effective in handling a high caseload and worked well with others. He was well known in his trial bureau for his sharp intellect and ability to analyze the strengths and weaknesses of cases, but more importantly, he was never too busy in the heat of the moment to keep his eye on what the just result should be. I am convinced that he was a thorough, careful and vigorous prosecutor but that he also understood that the power and

authority possessed by a prosecutor will be best balanced by humility and discretion. He never wavered in his pursuit of fairness and justice.

For these reasons, I am happy to recommend Mr. Breuer to the Judiciary Committee. Please feel free to contact me if you have any questions.

Sincerely,



Robert M. Morgenthau

March 5, 2009

VIA E-MAIL AND HAND DELIVERY

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
Room SD-224
Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
Room SD-224
Dirksen Senate Office Building
Washington, DC 20510-6275

RE: Nomination of Christine A. Varney for Assistant Attorney General for Antitrust, U.S. Department of Justice

Dear Chairman Leahy and Senator Specter:

We respectfully submit this letter to the Senate Committee on the Judiciary to express our strong support for the nomination of Christine A. Varney to serve as Assistant Attorney General ("AAG") for Antitrust in the Department of Justice (DOJ). As former chairmen of the Federal Trade Commission ("FTC") (Mr. Pitofsky chaired the FTC from 1995 to 2001, and Mr. Muris chaired the FTC from 2001 to 2004), we believe we are well-positioned to comment on the qualifications required to enforce the federal antitrust laws of the United States effectively so as to benefit consumers and competition. We believe that Ms. Varney possesses the requisite expertise and experience to perform the duties of the AAG for Antitrust in an exemplary manner.

Most notably, Ms. Varney served from 1994 to 1997 as a Commissioner at the FTC, which shares antitrust enforcement jurisdiction with the DOJ's Antitrust Division. As a Commissioner, she made important contributions to both the antitrust and consumer protection missions of the FTC. On the antitrust side, Ms. Varney took particular interest in health care and intellectual property issues, assisting the Commission in promoting an aggressive agenda to the benefit of both competition and consumers. Promoting competition in the health care industry and promoting innovation through the sound application of the antitrust laws to intellectual property remain crucial to encouraging economic growth and revitalizing our economy. Ms. Varney's experience in these areas renders her well-positioned to promote these goals as she addresses these important issues and others at DOJ. Moreover, her broad experience working with Internet companies will serve her well in meeting the business and antitrust challenges of these growing parts of our economy.

With respect to the FTC's consumer protection mission, then-Commissioner Varney was instrumental in incorporating into the FTC's agenda the protection of consumers' sensitive personal information. During her tenure at the FTC, she led the agency's examination of privacy issues in the information age; her efforts led to congressional hearings, FTC workshops, proposed industry standards, and precedent-setting enforcement of the laws protecting consumer privacy.

Ms. Varney also has participated in the development of international antitrust law and policy through her work with the Competition Committee of the Organization for Economic Cooperation and Development (OECD). Through its work with the competition authorities of both industrialized nations and developing countries, the Competition Committee of the OECD plays an important role in coordinating international antitrust enforcement and developing sound antitrust and competition policy on a global scale. This experience will be particularly important as, increasingly, antitrust enforcement is global and requires cooperation with competition agencies around the world.

As a private practitioner, Ms. Varney's experience has garnered acclamation from her peers through recognition in The International Who's Who of Competition Lawyers and Economists, Chambers USA, and Washington, D.C. Super Lawyers. These honors are well-deserved, as Ms. Varney is an experienced, innovative, hard-working, and capable lawyer, manager, and leader.

We wholeheartedly endorse and recommend Christine A. Varney for the important position of Assistant Attorney General for Antitrust. We would be pleased to discuss our recommendation and Ms. Varney's impressive credentials with you or members of your staff.

Very truly yours,

Timothy J. Muris

Robert Pitofsky

cc: Members of the Committee
Christine A. Varney, Esq.

NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS
NADCP

4900 Seminary Road, Suite 320
Alexandria, VA 22311
Phone:703.575.9400
Fax:703.575.9402
www.nadcp.org

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CHIEF EXECUTIVE OFFICER

West Huddleston

February 24, 2009

The Honorable Patrick J. Leahy,
Chairman
The Honorable Arlen Specter,
Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

On behalf of more than 22,000 drug court professionals - representing judges, prosecutors, public defenders, probation officers, law enforcement officers, court administrations, substance abuse treatment professionals and community leaders - it gives me great pride to support the nomination of Lanny A. Breuer for the position of Assistant Attorney General of the Criminal Justice Division at the Department of Justice (DOJ).

From his experience as successful criminal prosecutor, Special Counsel in the Clinton Administration, and more recently in private practice working on a wide range of high profile and complex legal cases, Mr. Breuer has demonstrated that he has the depth and experience to uphold public trust and help restore integrity to the Criminal Division at the DOJ. In addition, as a former prosecutor Mr. Breuer is ideally suited to ensure the strong enforcement against dangerous criminals while restoring a robust relationship with state and local law enforcement officials.

Thank you in advance for consideration of our support.

Sincerely,

C. West Huddleston, III
Chief Executive Officer and
Executive Director

NADCP

NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

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MICHAEL J. MADONNA
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SEAN M. SMOOT
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Police Benevolent & Protective Association of Illinois

MICHAEL McHALE
Sergeant-at-Arms
Florida Police Benevolent Association

CHRIS COLLINS
Executive Secretary
Las Vegas Police Protective Association

NATIONAL HEADQUARTERS

WILLIAM J. JOHNSON
Executive Director

March 6, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Association of Police Organizations (NAPO), representing more than 241,000 law enforcement officers throughout the United States, I am writing to advise you of our endorsement of the nomination of Lanny A. Breuer for Assistant Attorney General for the Criminal Division.

Mr. Breuer is a nationally recognized litigator with a distinguished career both in the private and public sectors. He began his career as prosecutor for the Manhattan District Attorney's Office in New York, during which he tried cases ranging from murder and domestic assault to armed robbery and gang crimes. He then went into the private practice defending white collar criminal cases and later was appointed special counsel to the Clinton administration.

As Assistant Attorney General for the Criminal Division, Mr. Breuer would formulate and implement criminal enforcement policy and provide advice and assistance on that policy. Additionally, he would provide leadership for coordinating federal, state, and local law enforcement matters. NAPO believes Mr. Breuer's experience as a local prosecutor will be invaluable to the position as well as to the collaboration of federal, state and local law enforcement in criminal investigations and prosecutions.

We believe Mr. Breuer has the knowledge and experience necessary to aid in the development of an effective multilateral national crime-fighting strategy in which state and local law enforcement play a key role. Therefore, we urge you to confirm the nomination of Lanny A. Breuer for Assistant Attorney General for the Criminal Division. If you have any questions, please feel free to contact me, or NAPO's Director of Governmental Affairs, Andrea Mournighan, at (703) 549-0775.

Sincerely,

William J. Johnson
Executive Director

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

Charles B. Wang International
Children's Building
699 Prince Street
Alexandria, VA 22314-3175
U.S.A.

Telephone 703.274.3900

Facsimile 703.274.2222

www.missingkids.com

www.cybertipline.com

Regional Offices
California
Florida
Kansas City
New York
South Carolina
Texas

February 24, 2009

The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Leahy and Specter:

On behalf of the National Center for Missing & Exploited Children (NCMEC), I am writing to express our strong support of the nomination of Lanny Breuer as the Assistant Attorney General for the Criminal Division of the U.S. Department of Justice.

For 25 years NCMEC has worked very closely with the Justice Department. Many of our congressionally-authorized duties require frequent interaction with the Criminal Division, specifically the Child Exploitation and Obscenity Section. We have testified before congressional committees alongside previous Assistant Attorneys General for the Criminal Division on our issues, policies and common goals in the fight against child sexual exploitation.

Mr. Breuer is deeply committed to helping to prevent child victimization. He has visited NCMEC and seen first-hand the programs and services that NCMEC provides to federal law enforcement and prosecutors, as well as to state and local agencies. His experience as a former prosecutor and defense attorney, as well as his dedication to public service, greatly enhance this commitment. As a former Special Counsel to President Clinton, he is adept at handling sensitive matters, which will prove invaluable in the Criminal Division's work involving child victims of sexual exploitation.

The Justice Department and the children of America will benefit from Mr. Breuer's leadership. I am confident that he will serve with honor and integrity. The National Center for Missing & Exploited Children is pleased to offer its unqualified support of his nomination.

Sincerely,

Ernie Allen
President and Chief Executive Officer

National District Attorneys Association
44 Canal Center Plaza, Suite 110, Alexandria, Virginia 22314
703.549.9222/703.863.3195Fax
www.ndaa.org

25 February 2009

The Honorable Patrick Leahy
The Honorable Arlen Specter
Committee on the Judiciary
U. S. Senate
433 Russell Senate Office Building
Washington, D.C. 20510

RE: Recommendation of Lanny A. Breuer to be Assistant Attorney General of the Criminal Division

Dear Chairman Leahy and Ranking Member Specter:

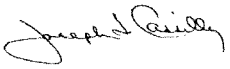
On behalf of the National District Attorneys Association, the oldest and largest national association of State and local prosecutors, I wish to convey our support for Lanny Breuer to become the Assistant Attorney General of the Criminal Division of the Department of Justice.

State and local prosecutors handle 95% of the criminal prosecutions nationally; yet too often we feel that our perspective is not heard in Washington. Mr. Breuer met with president-elect Chiles and me. His experiences as an assistant district attorney in Manhattan, from misdemeanors to felony gang trials to murder give him a perspective that prosecutors who have only seen the federal system lack. He left prosecution because of the need to deal with student loans. As implementation and funding of the John R. Justice Prosecutors and Defenders Incentive Act is a top priority for NDAA, we have Mr. Breuer's understanding and assurance he will be a supporter of that effort.

Mr. Breuer has been involved in complex litigation, has served as a trainer in litigation programs and appreciates the need for top caliber training for state and local prosecutors. His assistance in implementing training for state and local prosecutors at the National Advocacy Center will benefit the entire criminal justice system.

Mr. Breuer has assured us that he will work to improve working relationships and communication between the various law enforcement and prosecution systems. He has promised to maintain contacts with NDAA. Based on his experience and responses we urge the Judiciary Committee members to give him a favorable confirmation vote.

Sincerely,



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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

9 March 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Specter,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for Lanny A. Breuer to be the next Assistant Attorney General for the Criminal Division at the United States Department of Justice.

Mr. Breuer has an impressive record of public service, which began in 1985 as an Assistant District Attorney in Manhattan where he spent almost five years investigating and prosecuting a range of criminal cases. In 1989 Mr. Breuer left the District Attorney's office to work as a white collar defense attorney in high profile and extremely complex legal cases.

In 1999 Mr. Breuer joined Covington & Burling LLP, one of the top law firms in Washington, DC. Currently serving as a partner, Mr. Breuer co-chairs Covington's White Collar Defense and Investigations practice group and specializes in white collar criminal and civil litigation, internal corporate investigations, congressional investigations, and antitrust cartel proceedings.

It is indicative of his commitment to public service that Mr. Breuer has agreed to leave private practice to be an Assistant Attorney General. His wealth of litigation experience will be an asset to the Criminal Division, and I sincerely believe that both the Department of Justice and the Administration will be better off with his service to our nation.

On behalf of the more than 327,000 members of the Fraternal Order of Police, I urge you and your Committee to expeditiously confirm Mr. Breuer's nomination. If I can be of any further assistance in this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President

—BUILDING ON A PROUD TRADITION—

NATIONAL NARCOTIC OFFICERS' ASSOCIATIONS COALITION

P.O. Box 2456 West Covina, California 91793-2456 • (626) 960-3328 • Fax (626) 960-3328

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Colorado Drug Investigators' Assn.
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Wisconsin Narcotic Officers' Assn.

March 3, 2009

The Honorable Patrick Leahy
Chairman
The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Narcotic Officers' Associations' Coalition (NNOAC) and the more than 70,000 law enforcement officers we represent, I'm pleased to offer my full support for the nomination of Lanny A. Breuer for the office of Assistant Attorney General for the Criminal Division within the United States Department of Justice

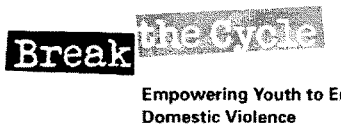
As state and local law enforcement continue to battle home-grown criminals across America, we look forward to working with an Assistant Attorney General who appreciates the challenges we face. While serving in a number of key positions in the past – including serving as an Assistant District Attorney in Manhattan, as Special Counsel to President Clinton and as partner with Covington & Burling LLP, specializing in white collar crime - Mr. Breuer has built an impressive track record of policy and managerial experience and understands the importance of working closely with state and local law enforcement on issues that matter most to America's communities.

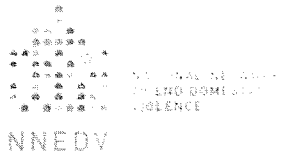
Mr. Breuer possesses an outstanding mix of legal, managerial and policy expertise desperately needed within the Department of Justice. The NNOAC membership has been pleased with recent statements by President Obama and Attorney General Holder on state and local law enforcement assistance programs – including the Byrne Justice Assistance Grant (JAG) program – and look forward to working with Mr. Breuer to ensure a strong working relationship between the Department and state and local law enforcement.

Mr. Breuer is a dedicated and well qualified professional and we can think of no one more qualified than he to serve as United States Assistant Attorney General for the Criminal Division. Please feel free to contact me at rbrooks@nca.hidta.net or (415) 748-0835 if you require further information as you work through the nomination process. Correspondence may be sent directly to me at PO Box 36102, San Francisco, CA 94102. Thank you again for taking time to review our position.

Sincerely,

Ronald E. Brooks
President





March 9, 2009

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Re: Nomination of Lanny Breuer for Assistant Attorney General

Dear Chairman Leahy and Senator Specter:

As organizations that have been working for decades to end domestic violence, dating violence sexual assault and stalking, we are writing to express our strong support for the nomination of **Lanny Breuer** to serve as Assistant Attorney General to lead the U.S. Department of Justice Criminal Division. We are confident that, through his leadership of this Division, he will work closely with groups like ours to identify and meet the most important needs of victims and survivors of domestic and sexual violence and their families.

As you know, the Criminal Division, which Mr. Breuer would lead, develops, enforces, and supervises the enforcement of federal criminal laws. Among those would be the federal violence against women statutes and the victims of trafficking statutes. Mr. Breuer evinces an understanding of the responsibilities of a prosecutor to represent the government in a manner that treats crime victims with fairness, dignity and respect.

Mr. Breuer started his successful career as a prosecutor in Manhattan where he spent almost five years investigating and prosecuting range of criminal cases. He's currently a partner at the law firm of Covington & Burling where he is vice-chair of the firm's Pro Bono Committee. While Mr. Breuer has limited direct experience working on cases involving domestic and sexual violence, he is quick to point out that "I know what I don't know." He has expressed a sincere commitment to work with domestic and sexual violence experts and advocates to learn the issues critical to protecting victims and holding perpetrators accountable for their crimes.

Mr. Breuer has been asked to be part of the President's and Attorney General's team to implement the Obama-Biden Administration's priorities of assisting victims of crime, strengthening and supporting crime prevention programs, restoring robust federal support for state and local law enforcement, and reviving a close working relationship with state and local organizations. With Attorney General Eric Holder at the helm of the Justice Department, and Lanny Breuer as one of his key deputies, we are confident that victims of violence, including women and children who have been brutalized by domestic violence, dating violence, sexual violence and stalking, will be well served by his leadership at the Department of Justice.

61992.807

We appreciate your consideration of our recommendation, and respectfully urge your confirmation of Lanny Breuer.

If you have any questions please do not hesitate to contact Juley Fulcher at Break the Cycle, 202-824-0707.

Sincerely,

Break the Cycle
National Network to End Domestic Violence

NATIONAL NETWORK
TO END DOMESTIC
VIOLENCE

NNEDV

2001 S STREET, NW
SUITE 400
WASHINGTON, DC 20009

www.nnedv.org

February 19, 2009

Senator Patrick Leahy
Chairman
Senate Committee on Judiciary
Dirksen Room 224
Washington, D.C. 20510

Senator Arlen Specter
Ranking Member
Senate Committee on Judiciary
Dirksen Room 152
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the 56 state and territory domestic violence coalition members of the National Network to End Domestic Violence (NNEDV), I am pleased to express support for the nomination of Lanny A. Breuer, as Assistant Attorney General for the Criminal Division at the U.S. Department of Justice.

With more than twenty years as a distinguished attorney, Mr. Breuer has the acumen to lead the Criminal Division and enforce federal criminal laws. As co-chair of Covington & Burling's White Collar Defense and Investigations practice group, Mr. Breuer skillfully litigated high-profile corporate and political cases involving complex legal issues. Having served as Special Counsel to President Clinton, Mr. Breuer advised the President and White House staff on all legal matters, including congressional oversight investigations and the presidential impeachment proceedings. Mr. Breuer has received numerous honors, including named a fellow in the American College of Trial Lawyers and was selected as a top white collar criminal defense lawyer in the 2009 edition of *Best Lawyers in America*.

We applaud President Obama for his selection of Mr. Breuer to be the Assistant Attorney General for the Criminal Division at the Department of Justice. President Obama's choice of Mr. Breuer reflects the commitment of the Obama-Biden Administration to assisting victims of crime --including crimes against women. Mr. Breuer's illustrious career as a leading litigator makes him an excellent candidate for Assistant Attorney General and I am certain that his leadership will greatly benefit victims. NNEDV urges his swift confirmation. If you have any questions, please do not hesitate to contact Tralonne R. Shorter, Public Policy Director at [redacted] or via email at [redacted].

Sincerely,

Sue Else
President

National Organization of Black Law Enforcement Executives

Jessie Lee, Jr.
Executive Director

Joseph A. McMillan
National President

March 5, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy:

On behalf of the National Organization of Black Law Enforcement Executives (NOBLE), we strongly recommend the confirmation of Tony West as Assistant United States Attorney General for the Civil Division. We are confident that Mr. West will lead the Civil Division with distinction and honor.

Mr. West will bring a strong background of public service to the Civil Division. Mr. West began his career at the United States Department of Justice, where he served as a Special Assistant to Deputy Attorney General Phil Heymann and then Deputy Attorney General Jamie Gorelick. Among Tony's responsibilities was working on the 1994 Omnibus Crime Bill. Tony later served as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, police officer training, civil rights and police misconduct.

Mr. West's career as a federal prosecutor and a Special Assistant Attorney General demonstrate both his commitment to public service and his broad range of experience in the practice of law.

We believe the Department of Justice and the American public will be well served by Tony's confirmation. We strongly support the nomination of Tony West to be the next Assistant Attorney General for the Civil Division, and we ask that he be swiftly confirmed.

Sincerely,

Joseph McMillan
National President

national partnership
for women & families
Because actions speak louder than words.

March 9, 2009

Dear Senator:

The National Partnership for Women & Families is proud to support the nomination of Lanny Breuer for Assistant Attorney General for the Justice Department's Criminal Division. Mr. Breuer possesses a wealth of experience in all aspects of criminal practice and is highly qualified for this position.

The National Partnership is a nonprofit, nonpartisan organization that uses public education and advocacy to promote fairness in the workplace, quality health care, and policies that help women and men meet the dual demands of work and family. For over 30 years, we have fought against discrimination and fought for equal justice in the workplace. This includes working to ensure that the crimes where women are more likely to be victims, such as gender-related hate crimes, human trafficking, and domestic violence, are treated seriously. The position of Assistant Attorney General for the Justice Department's Criminal Division oversees all of these issues and can have an important effect on women's lives and safety.

We strongly believe that Mr. Breuer will carry out his duties at the Criminal Division with care, excellence, and attention to our shared concerns for protection of victims and crime prevention. As an experienced former Assistant U.S. Attorney and a partner at Covington & Burling, Mr. Breuer has represented numerous clients in complex, high-profile matters and repeatedly has been chosen as one of the best lawyers and litigators—not only in the region, but throughout the nation. Mr. Breuer has earned bipartisan praise for his integrity, persistence, and legal acumen, and will bring these qualities to bear to restore confidence in a Department which has lately suffered from improper politicization and loss of morale.

Lanny Breuer would bring diverse experience and a sterling reputation to the job of Assistant Attorney General for the Criminal Division. In consideration of these attributes, we ask that you join with us in enthusiastic support of his nomination.

Sincerely,

Debra Ness
President

1875 connecticut avenue, nw ~ suite 650 ~ washington, dc 20009 ~ phone: 202.986.2600 ~ fax: 202.986.2539
email: info@nationalpartnership.org ~ web: www.nationalpartnership.org

Administrative Office
521 East 63rd Street
Kansas City, Missouri 64110-3329
Telephone: [816] 756.3140
FAX: [816] 756.3144

NRHA

Government Affairs Office
1108 K Street NW, Second Floor
Washington, DC 20005-4094
Telephone: [202] 639.0550
FAX: [202] 639.0559

NATIONAL RURAL HEALTH ASSOCIATION

March 4, 2009

The Honorable Patrick Leahy
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510-1501

The Honorable Arlen Specter
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510-1501

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Rural Health Association (NRHA), I am writing to ask you to consider rural health issues as you consider the nomination of Christine Varney for Assistant Attorney General of the Antitrust Division, Department of Justice.

The NRHA is a national nonprofit membership organization with more than 18,000 members, which provides leadership on rural health issues. Our membership is diverse as we represent hospitals, clinics, physicians, nurses, and other health professionals, educators, researchers and state employees. Our diverse membership is united in the goal of improving the health of rural Americans through advocacy, communications, education and research.

Rural health care providers face a unique set of challenges. The 62 million Americans who live in rural areas are, per capita, older, sicker and poorer than the rest of the country. Rural health providers are typically smaller and less financially stable than their non-rural counterparts because of the population they serve. Rural markets suffer from a chronic shortage of qualified health care professionals and hospitals, as well as long-term problems in attracting and retaining qualified health care professionals. Antitrust enforcement should be sensitive to the nature of individual markets.

With a new Administration, we have a new opportunity to ensure that rural health providers are able to provide the best possible care to their patients. The agenda of the antitrust enforcement agencies ought to focus on balancing the competitive interests of providers and insurers alike and curbing barriers to procompetitive collaboration among healthcare providers. Rural healthcare providers are particularly harmed by the imbalanced approach to enforcement. We urge you to consider these issues in considering the nomination of Christine Varney for Assistant Attorney General of the Antitrust Division, Department of Justice.

The NRHA thanks you for recognizing the needs of rural health providers and the patients they serve. We look forward to continuing to support your efforts that improve the health of 62 million rural Americans.

Sincerely,

Beth Landon

Beth Landon
President

www.RuralHealthWeb.org

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415.565.4702 fax
www.uchastings.edu

March 5, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to strongly support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division.

I am the Chancellor and Dean of University of California Hastings College of Law. Tony served on the Hastings Board of Directors. I became acquainted with him in this capacity and also had the opportunity to learn about the high esteem in which Tony is held in the California legal community. As a Director, Tony met the highest standards of integrity, by always undertaking due diligence in overseeing our $50 million budget and by his dedication to the public service mission of UC Hastings. I have great admiration for Tony as a talented attorney, a servant of the public's interest, and as a person.

After graduating from Stanford Law School, where he was President of the Law Review, Tony worked as a Special Assistant to the Deputy Attorney General at the Department of Justice. Tony then served as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

The Department of Justice will be fortunate to have a man like Tony West in a position of leadership. Tony is widely respected by both colleagues and opponents, and he is truly regarded as a pillar in the Bay Area legal community. He is an excellent choice to be the next Assistant Attorney General for the Civil Division. I enthusiastically endorse his nomination and urge his confirmation.

Sincerely,

Nell Jessup Newton
Chancellor and Dean

O'MELVENY & MYERS LLP

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OUR FILE NUMBER

WRITER'S DIRECT DIAL
[redacted]

WRITER'S E-MAIL ADDRESS
[redacted]m

March 3, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: ***Nomination of Christine A. Varney for Assistant Attorney General for Antitrust, U.S. Department of Justice***

Dear Chairman Leahy and Senator Specter:

This letter is respectfully submitted to the Senate Committee on the Judiciary to communicate my support for the nomination of Christine A. Varney to serve as Assistant Attorney General ("AAG") for Antitrust within the U.S. Department of Justice ("DOJ"). I have been an antitrust lawyer for twenty years. From 1998 - 2001 I was Director of the Bureau of Competition at the Federal Trade Commission. I write because I believe that Ms. Varney is a highly qualified nominee who will serve consumers and this country with distinction as Assistant Attorney General for Antitrust.

Ms. Varney is an experienced, respected antitrust lawyer. I have worked with her, both in and out of government, and have personal knowledge of her considerable skill and competence.

She has been recognized for the quality of her representation of clients in the private sector. For example, she has achieved the recognition of her peers in the form of rankings by Chambers USA, Washington, DC Super Lawyers, and International Who's Who of Competition Lawyers and Economists. These accolades are well-deserved. Not only is she knowledgeable

about the antitrust laws, she is an effective leader, cooperative, hardworking, pragmatic, and of high character and integrity.

In sum, due to her experience and her outstanding reputation as an antitrust lawyer, I believe Ms. Varney would be an AAG with immediate credibility among the antitrust bar, the business community, international enforcers, the staff, and, most importantly, American consumers. I applaud President Obama's selection for this key position within his Administration, and highly recommend that Ms. Varney be confirmed as AAG for Antitrust.

Respectfully submitted,

Richard G. Parker
of O'MELVENY & MYERS LLP

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March 6, 2009

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West, Nomination to be Assistant Attorney General for the Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write in support of the nomination of Tony West as Assistant Attorney General for the Civil Division.

As the President and a founder of the Equal Justice Society, a national organization dedicated to changing the law through progressive legal theory, public policy and practice, I have had a wonderful working relationship with Tony. I have known many attorneys in my 34 years in the legal profession. Tony stands out to me for a number of reasons. He is very smart yet humble. He is a brilliant thinker and strategist yet he is also accessible to people in the community. He sees the big political and legal picture yet remains grounded in community and family. He is a star yet has remained someone we can count on if we need him. The civil rights community rejoiced when we learned of this nomination. Tony has the right judgment, integrity, and management skills for the job and I look forward to seeing this new administration make significant strides.

The Justice Department and the Nation will be well served with Tony West as head of the Civil Division.

Very Truly Yours,



Eva Paterson

Richard D. Perkins

Retired Chief of Police, City of Henderson
[redacted]

February 27, 2009

Honorable Patrick J. Leahy, Chairman
Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter,

I write today to offer my wholehearted support of Lanny Breuer's nomination to be Assistant Attorney General for the Criminal Division at the Department of Justice. Based on the work he has done for me as an attorney and as his upright and just character, I have little doubt Mr. Breuer will serve his country well in this capacity.

Mr. Breuer worked with me in his capacity as an Attorney at Covington & Burling LLP, and have kept in touch with him since. At the time, I was a Deputy Chief of Police for the City of Henderson, the second-largest city in Nevada. His understanding of law enforcement and its interface with our courts and the legal superstructure impressed me.

In my fourteen years in the Nevada legislature, I've dealt with a great many attorneys. Very few were as knowledgeable in any area of law as Mr. Breuer. Fewer still had his perspective, one that can only be bred through a depth and breadth of experience. When you combine Mr. Breuer's knowledge of law enforcement and his personal character, there is little doubt that he is more than qualified to serve his country as the Assistant Attorney General of the Criminal Division.

After years of controversy in the Justice Department, Lanny Breuer is exactly the sort of attorney whose personal ethics and character will restore public confidence in this process. I have no reservation in offering you and your committee my full endorsement of his candidacy for this position.

Sincerely,

Richard D. Perkins

ReedSmith

Jonathan S. Quinn
[redacted]

Reed Smith LLP
10 South Wacker Drive
Chicago, IL 60606-7507
+1 312 207 1000
Fax +1 312 207 6400
reedsmith.com

February 11, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

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

Re: ***Lanny A. Breuer***

Dear Mr. Chairman and Senator Specter:

It is with the utmost pleasure that we write to express our strong and enthusiastic support for Lanny A. Breuer to serve as the Assistant Attorney General for the Criminal Division. Lanny is an extraordinary lawyer and an even better person. We hope that Lanny will be confirmed swiftly and will soon become an integral member of Attorney General Holder's team.

As Lanny's former colleagues at the New York County (Manhattan) District Attorney's Office, where he served as an Assistant District Attorney from 1985 to 1989, we are proud to have known Lanny at the beginning of his distinguished legal career. As an Assistant D.A., Lanny was not only an immensely talented and dedicated advocate and public servant, but he also held himself to the very highest standards of ethical conduct. While serving in perhaps the most active public prosecutor's office in the country, Lanny distinguished himself as a tenacious but scrupulously fair trial lawyer, driven by the unwavering goal of achieving justice. He quickly engendered the respect and admiration of not only his peers, supervisors, and the law enforcement community, but adversaries and court personnel, including judges. During this exciting period of his professional career, Lanny displayed unparalleled sensitivity to the victims of the crimes he prosecuted and was a fearless advocate on their behalf. His work ranged from the prosecution of violent street crimes to those involving financial crime, providing him with a solid base of experience as a prosecuting attorney. Since leaving the Manhattan District Attorney's Office, Lanny has displayed the very same qualities at Covington & Burling, where he is one of the leaders of the firm's white collar defense and investigations practice and where he has spent the entirety of his private practice career, and also as Special Counsel to President Clinton, in which capacity he represented the president in the impeachment hearings.

We are confident Lanny will be a great Assistant Attorney General. Lanny's even-mindedness and sound judgment will ensure that justice is dispensed fairly and equitably. His life and professional experiences will enable him to be fair, but tough, as well as principled and pragmatic. Lanny has distinguished himself as a bright, clear-minded thinker and problem solver; as someone who possesses stellar management skills; and perhaps most importantly for a man charged with such responsibility, as a good listener. Lanny is a consensus-builder and will

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be an effective and persuasive advocate for the Department and for law enforcement agencies across the country. He has a steady, well-grounded demeanor and puts people immediately at ease. Above all, Lanny is a man who has the courage to make the right, but not necessarily popular or easy, decision and the character to stand steadfastly for the rule of law.

We note that not only is Lanny superbly qualified to be the Assistant Attorney General for the Criminal Division, but he is a truly good and decent person. He has the integrity, the sense of fair-play, and commitment to justice under the law that will make Americans confident in the work of the Department of Justice and proud of its role in protecting the public. We urge his rapid confirmation.

Very truly yours,

Jonathan S. Quinn
On behalf of:

Matthew J. Brief
Brief Carmen & Kleiman, LLP
New York, NY

Lewis H. Chimes
Garrison, Levin-Epstein, Chimes,
Richardson & Fitzgerald, P.C.
New Haven, CT

Patrick J. Conlon
Houston, Texas

Irving B. Hirsch
Wilson Elser Moskowitz
Edelman & Dicker LLP
New York, NY

John B. McCusker
McCusker, Anselmi, Rosen, & Carvelli
Florham Park, NJ

Janet Polstein
Scarsdale, NY

Michael K. Ungar
Simmons & Ungar LLP
San Francisco, CA

Hon. Gregory Carro
New York County Supreme Court
New York, NY

Katharine T. Cobb
Queens College, CUNY
Flushing, NY

Carey R. Dunne
Davis Polk & Wardwell
New York, NY

Sally Keller
Great Neck, NY

Vincent A. Nagler
Callan, Koster, Brady & Brennan, LLP
New York, NY

Sally Strauss
Mount Sinai Medical Center
New York, NY

Gino A. Zonghetti
Kenny, Stearns & Zonghetti, LLC
New York, NY

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CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Chuck Reed
MAYOR

March 4, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

As Mayor of San José, I write to enthusiastically support the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

I fondly remember meeting Tony as a young man, back when his father and I served together on the San José Planning Commission. Tony later served with distinction on the Planning Commission, following in his father's footsteps. Since I first met Tony, I have come to admire his honesty, integrity, courage and decency. Even in the most stressful of circumstances, Tony is unflappable – always courteous and respectful to colleagues and opponents alike. I cannot think of anyone more qualified to assume a position of leadership in the Department of Justice.

The President has made an excellent choice in selecting Tony to serve as the next Assistant Attorney General for the Civil Division. I urge you to confirm him without delay.

Sincerely,

Chuck Reed

Chuck Reed
Mayor

200 East Santa Clara Street, 18th floor, San José, CA 95113 *tel* (408) 535-4800 *fax* (408) 292-6422 www.sjmayor.org

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RENNE SLOAN HOLTZMAN SAKAI LLP

March 4, 2009

LOUISE RENNE
[redacted]

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to enthusiastically support the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

By way of background, I am the former City Attorney for the City and County of San Francisco, a position which I held for almost sixteen years. Recently, I served as President of the San Francisco Police Commission. I am now in private practice where I also serve in an advisory capacity to a number of Bay Area charitable institutions.

I have known Tony for several years, and I cannot think of anyone more qualified to assume a position of leadership in the Department of Justice. I have had the pleasure of working with Tony on numerous civic projects. He is a talented attorney, an inspirational leader, and a true pillar of the Bay Area legal community. I can personally attest to the fact that he is highly regarded by the judges before whom he has appeared. Tony is a person who can bring people together, focus on the important issues, and produce positive outcomes. Furthermore, he is universally regarded as a highly principled individual with solid ethical values.

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RENNE SLOAN HOLTZMAN SAKAI LLP

Tony's service as an Assistant United States Attorney and a Special Assistant Attorney General for the State of California demonstrates his commitment to public service. He will be tremendous asset to the Department of Justice, just as he has been to Bay Area. It is for these reasons that I am pleased to support the nomination of Tony West to be our Nation's next Assistant Attorney General for the Civil Division.

Sincerely,

Louise H. Renne

Louise Renne

LHR/ko

CADWALADER

Cadwalader, Wickersham & Taft LLP
New York London Charlotte Washington Beijing

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Tel 202 862 2200 Fax 202 862 2400
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February 25, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Lanny Breuer to be the Assistant Attorney General for the Criminal Division

Dear Chairman Leahy, Ranking Member Specter and
Members of the Senate Judiciary Committee:

I write to support the nomination of Lanny Breuer to be the Assistant Attorney General for the Criminal Division.

I have dealt with the Department of Justice for over 40 years in a variety of roles, both inside and outside of the Department. It was my honor to serve in the Justice Department during the Carter Administration (as the United States Attorney for the Eastern District of Michigan 1977-1980) and in the Clinton Administration (as the Assistant Attorney General for the Criminal Division 1998-2001). I also served as President of the bipartisan National Association of Former United States Attorneys in the early 80s. It was also my honor to serve as a member of the Obama Administration Transition Team for the Justice Department.

I feel strongly that the Department is at a critical juncture in its history and that it requires the best and brightest leadership possible. I expressed these views in an article published in the most recent issue of the Harvard Law & Policy Review. See Robinson, Restoring Public Confidence in the Fairness of the Department of Justice's Criminal Justice Function, 2 Harv L & Pol Rev. 237 (2008). http://www/hlpronline.com/Robinson_HLPR.pdf

I know Lanny Breuer from a variety of professional associations, including the American College of Trial Lawyers and our work in the Edward Bennett Williams White Collar Crime Inn of Court. In addition, I have had an opportunity to meet with Lanny to discuss the challenges facing the Criminal Division going forward and to assess his commitment to the responsibilities of this important position. Lanny will bring a wealth of important criminal law experience to the Criminal Division--his service as a prosecutor in Manhattan, his work as Special Counsel to President Clinton, and his extensive white collar criminal practice. I am

James K. Robinson [redacted]
USActive 15303234.1

CADWALADER

United States Senate
February 25, 2009

convinced that Lanny will be a vigorous and effective leader of the Criminal Division and that he is fully committed to restoring the public confidence in the fairness of the Department's criminal justice function.

I am pleased to lend my support to Lanny Breuer's nomination and confident that he will do an outstanding job as Assistant Attorney General of the Department's Criminal Division.

Sincerely,

James K. Robinson

JKR

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Martha Purcell Rogers
[redacted]

Offices in
Maryland
Washington, D.C.
Virginia

January 26, 2009

The Honorable Patrick Leahy
Chairman, Judiciary Committee
433 Russell Senate Office Bldg
United States Senate
Washington, DC 20510

Dear Senator Leahy:

I am writing in support of President Obama's nomination of Lanny A. Breuer for Assistant Attorney General of the Criminal Division of the United States Department of Justice.

You are no doubt familiar with his resume and the outstanding academic credentials and legal experience he would bring to the job. What may not be evident from his resume are his personal characteristics and values that make him ideally suited for this important position. It is Lanny's intelligence, sense of fairness and integrity that most qualify him to be Assistant Attorney General. As a former prosecutor for the Department of Justice myself and a white collar defense attorney, I have seen Lanny's evenhandedness and sound decision making in action.

Lenny will ensure that the Criminal Division is a proper dispenser of justice. He's the best.

If you have any questions, please contact me at the above number or at 202-393-4333.

Sincerely,

Martha P. Rogers

Martha P. Rogers

March 3, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to support the confirmation of Tony West as Assistant United States Attorney General for the Civil Division.

I first met Tony when he was a Special Assistant to Deputy Attorney General Phil Heymann and then Deputy Attorney General Jamie Gorelick. Among Tony's responsibilities was working on the 1994 Omnibus Crime Bill, where he provided invaluable assistance as we traveled the country explaining the importance of the bill's components to elected officials and local community leaders. Tony later served as an Assistant United States Attorney, successfully prosecuting several cases, including the Orchid Club, at the time, one of the largest child pornography cases in United States history. For successfully leading that prosecution, I presented him with the Executive Office of U.S. Attorneys Director's Award for Superior Performance in 1998.

After leaving the United States Justice Department, Tony continued his public service as the Special Assistant Attorney General for the state of California, where he advised the Attorney General on various matters, including high-tech crime, identity theft, the Microsoft antitrust litigation, police officer training, civil rights and police misconduct.

I believe Tony is an excellent choice to lead the Civil Division. I am proud to have worked with him, and I know that he is committed to the Department and its mission to uphold the law. Tony will bring able leadership and the highest integrity to the Department of Justice. I enthusiastically endorse his nomination and urge that he be confirmed.

Very Truly Yours,

Janet Reno

Janet Reno

SIMONE E. ROSS
[redacted]

March 6, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Dirksen Senate Office Building, Room 224
Washington, D.C. 20510

Re: Nomination of Lanny A. Breuer

Dear Senators Leahy and Specter:

I write in support of the nomination of Lanny A. Breuer to serve as the Assistant Attorney General for the Criminal Division in the U.S. Department of Justice ("the Department").

I met Lanny nearly 14 years ago when I joined the law firm of Covington & Burling LLP as an associate, and I have worked closely with him during the nearly eight years I have practiced at Covington as an associate and now as an of counsel. Lanny is one of the finest litigators whom I know and, in all matters, is a creative and zealous advocate grounded by impeccable integrity and judgment, respect for others, and a deep commitment to the rule of law. I consider myself fortunate to have been mentored by Lanny, not only during my earlier years of legal practice in the private sector, but also during the years I spent practicing in the Department as an Assistant United States Attorney ("AUSA") in the District of Columbia and an Assistant Counsel in the Office of Professional Responsibility, which investigates allegations of misconduct involving Department attorneys and law enforcement personnel. As an African-American female who frequently finds myself in professional settings dominated by men, Lanny has always encouraged me to embrace my uniqueness and draw upon my background as an asset to advance my clients' interests and the cause of justice.

I was born and raised in Washington, D.C., and I presently serve as Vice President of the Citizens Advisory Council ("CAC") to the Metropolitan Police Department's Second District. Serving as an AUSA in Washington and participating in the CAC as a member and now Vice President, has strengthened my appreciation for the importance of our federal and local law enforcement leaders forging partnerships with citizens to make our communities safer. One of

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the many qualities that I believe will serve Lanny well should he be confirmed is his commitment to building and safe-guarding our communities. Lanny has demonstrated this commitment in many ways, including his prior public service as an Assistant District Attorney in Manhattan and his prior tenure as Vice Chair of Covington's Pro Bono Committee.

Several years ago, Lanny represented a group of Washington residents alarmed by drug dealing near the Hummingbird Bar on Georgia Avenue not far from Walter Reed Hospital. In an effort to disrupt the drug activity, the residents formed an Orange Hat patrol and stood outside the Hummingbird during peak hours. The drug dealers scattered while the Orange Hat patrol was present but quickly returned and resumed their illicit activity when the residents returned to their homes. Lanny successfully challenged the Hummingbird's license, which was revoked, and in so doing, helped the residents take back a degree of control of their neighborhood. For seven years I lived in Shepherd Park, not far from Georgia Avenue where the Hummingbird was, and during that time I witnessed a transformation, still underway, of the Georgia Avenue corridor into a more reputable business district. Efforts like Lanny's helped make this transformation possible.

Lanny's work to shut down the Hummingbird is just one example of not only his dedication to safer and sustainable communities, but also of his ability to work with people of diverse backgrounds to accomplish a common goal. As someone who has practiced law with Lanny and has come to know him well, and as a former Justice Department attorney who served during a period of considerable public scrutiny into the Department's activities, I have every confidence that Lanny will work tirelessly to ensure that the Department administers justice by protecting the interests of all of our citizens, free of political favoritism, bias or other discrimination. While I will sorely miss working with Lanny, I am comforted by the knowledge that his service as the Assistant Attorney General of the Criminal Division will benefit our Nation and continue to advance the Department's core values.

Thank you for your consideration of this letter. I would be happy to answer any questions that you may have and respectfully ask that you promptly confirm Lanny A. Breuer as the next Assistant Attorney General of the Criminal Division.

Sincerely,

Simone E. Ross

Simone E. Ross

CADWALADER

Cadwalader, Wickersham & Taft LLP
New York London Charlotte Washington Beijing

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March 9, 2009

Hand Delivery

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Nomination of Christine Varney as Assistant Attorney General
in charge of the Antitrust Division, U.S. Department of Justice

Dear Chairman Leahy and Senator Specter:

This letter is submitted to the Senate Judiciary Committee to express my strong support for President Obama's nomination of Christine Varney to be the Assistant Attorney General in charge of the Antitrust Division, U.S. Department of Justice. The undersigned is the head of the antitrust practice at Cadwalader, Wickersham & Taft LLP (the oldest law partnership in the United States) and formerly Assistant Attorney General in charge of the Antitrust Division under Presidents Reagan and Bush. Ms. Varney has not solicited this letter; it is being sent on my own initiative. Given her experience, accomplishments, and skills, I believe Christine Varney will make an excellent Assistant Attorney General.

Based on my background as both an appointee in the Antitrust Division in the 1980s holding various positions, including Assistant Attorney General, and subsequently as a private practitioner representing clients before the Division, I have a keen interest in seeing the President nominate a highly qualified individual to serve as Assistant Attorney General. As the country's chief antitrust law enforcement official, the person holding that position plays a key role in protecting marketplace competition and the welfare of consumers. Moreover, while the individual holding that job must be a tough and determined protector of consumer welfare, she must also be fair-minded and familiar with the realities facing companies and individuals attempting to compete in the marketplace. I am confident that Ms. Varney is someone who will bring the appropriate balance of toughness and fairness to the job.

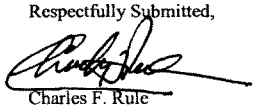
Charles F. (Rick) Rule [redacted]

Over the last fifteen years, my path has crossed Ms. Varney's on many occasions. I appeared before her on behalf of several clients when she was an FTC Commissioner and always found her to be well-prepared, knowledgeable and open-minded. In private practice, Ms. Varney and I at times have represented clients with opposing interests, and on other occasions we have represented clients with common interests. Yet, regardless of whether she was an adversary or an ally, in every case, I found her to be pleasant, capable, and professional. She is a lawyer who can be a tough and formidable adversary without making personal enemies. While we often disagree on political matters, I can find no fault but only praise for her professional abilities and her demeanor.

Christine Varney is one of the leading lights of the antitrust bar. In the 1990s, she served with distinction as a Commissioner on the Federal Trade Commission. Since that time, she has effectively represented a variety of companies, particularly those in high-tech industries. There are very few antitrust practitioners who can boast of her experience. She also is well known within the international community and respected by competition law officials around the world. Given the economic challenges that lie ahead and the questions that some are beginning to raise about the role of free and unrestrained market competition in fueling an economic revival, whoever becomes the next Assistant Attorney General will have a "tough row to hoe." Christine Varney's strong background and her stature within the antitrust bar, industry, and the international community make her an ideal candidate to face the looming challenges.

In conclusion, I strongly support Christine Varney's nomination to serve as the next Assistant Attorney General in charge of the Antitrust Division. Please let me know if you or any of the members of the Committee have any questions or if there is anything further that I can do in support of Ms. Varney's nomination.

Respectfully Submitted,



Charles F. Rule

cc: Christine Varney, Esq.

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA · 6TH FLOOR · OAKLAND, CALIFORNIA 94612

Office of the City Attorney
John A. Russo
City Attorney

(510) 238-3601
FAX (510) 238-6500
TDD (510) 839-6451

March 3, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West's Nomination for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write in support of Tony West's nomination to be Assistant Attorney General for the Civil Division. It is difficult in a mere letter to convey to you the high regard in which Tony is held by the legal community here. He commands both the respect and the goodwill of his peers and adversaries. He is a good lawyer and a good man.

I have had the pleasure of working with Tony on both political and Oakland civic projects. He is a talented attorney, an inspirational leader, and a true pillar of the Bay Area legal community. Tony has served on numerous local boards, including the Board of Directors for U.C. Hastings College of the Law and the Board of Governors for the Northern California Association of Business Trial Lawyers. These organizations and the legal community at large have benefited greatly from Tony's phenomenal talent for bringing people together, focusing on the important issues, and producing positive outcomes.

Tony's service as a federal prosecutor as well as a state special assistant attorney general demonstrates his commitment to public service. He will be a tremendous asset to the Department of Justice, just as he has been to Bay Area. It is for these reasons that I am pleased to support the nomination of Tony West to be our Nation's next Assistant Attorney General for the Civil Division.

Sincerely,

John Russo



CRIME VICTIMS UNITED
OF CALIFORNIA
11400 Atwood Road; Auburn, CA 95603 (530)885-9544 cvuc@sbcglobal.net

March 7, 2009

HONORABLE PATRICK LEAHY
Chairman, Senate Judiciary Committee
HONORABLE ARLEN SPECTER
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General – Civil Division

Dear Chairman Leahy and Ranking Member Specter:

As the founder of the first non-partisan organization dedicated solely to protecting the rights of crime victims, I write to express my strong support for the nomination of Tony West as Assistant Attorney General for the Civil Division.

Crime Victims United was founded in 1992. We are the only organization that uses education, legislative advocacy and political action to enhance public safety, promote effective crime reduction measures and strengthen the rights of crime victims. We support local, state, federal and judicial candidates who have demonstrated their commitment to enhancing victims' rights and improving public safety.

I have known Tony West for over ten years – since he was an Assistant United States Attorney in San Jose. Over the years, I have come to know and respect Tony as a dedicated public servant committed to the rights of crime victims. As a federal prosecutor, Tony successfully tried many cases involving the exploitation of children. His efforts on behalf of sexually abused children led to an appellate court decision ensuring that victims of child exploitation are able to recover restitution for future counseling stemming from their abuse. In short, Tony is a true champion for victims' rights.

Tony will make an excellent Assistant Attorney General for the Civil Division. I support his nomination and urge that he be confirmed.

Sincerely,

Harriet Salarno,
Chair

CHARLES HOUSTON BAR ASSOCIATION
PO Box 1474
Oakland, CA 94604
www.charleshoustonbar.org

2009 Executive Board

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Adante Pointer
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Kimberlei Evans Dixon
Immediate Past President
evans@lbbslaw.com

CHARLES HOUSTON BAR ASSOCIATION

Laying the Foundation for the Future

March 6, 2009

The Honorable Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Tony West's Nomination – Assistant Attorney General – Civil Division

Dear Senator Leahy and Senator Specter:

I write to you on behalf of the Charles Houston Bar Association ("CHBA") in support of Tony West's nomination as Assistant Attorney General for the Civil Division of the United States Department of Justice. As President of the CHBA, I urge you and the members of the Judiciary Committee to confirm the nomination of Tony West.

Founded in 1955, the Charles Houston Bar Association is committed to working with and within the African American community to facilitate access to the justice system and to promote equal protection under the law. CHBA is the northern California affiliate of the National Bar Association and with more than 900 members the CHBA is a powerful voice in the Northern California legal community.

Tony West is the most qualified person for this position. As you know, Mr. West has served as Assistant United State Attorney for the Northern District of California. In that capacity, he has served under former Attorney General Janet Reno and has prosecuted a variety of cases ranging from sexual exploitation offenses against children to government malfeasance. He has received numerous accolades for his skills as an accomplished attorney. As noteworthy as his career has been, I write because of his commitment to this association and his community.

Tony West's values are aligned with that of CHBA. He has tirelessly advocated for those issues that are of paramount concern to this association: improving access to justice; promoting equal protection under the law; increasing diversity within the legal field; bringing services to the community; and supporting our law students and young attorneys. His professional career demonstrates his commitment to public service, but his service to this association demonstrates his commitment to his community. Because of his efforts and commitment to CHBA and the African American community, he has been honored at many of our functions, and most recently at our Judicial Luncheon (March 2008) and our Annual Dinner Dance and Gala (December 2008).

Because of his efforts, commitment and dedication, it is my hope that you confirm the nomination of Tony West.

Sincerely,

Nedra A. Shawler
CHBA President

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61992.833

March 4, 2009

VIA FACSIMILE – (202)-228-0861 AND U.S. MAIL

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office building
Washington, DC 20510-6275

Re: Nomination of Christine A. Varney for Assistant Attorney General for Antitrust, U.S. Department of Justice

Dear Chairman Leahy and Senator Specter:

We strongly support the nomination of Christine A. Varney to be Assistant Attorney General in charge of the U.S. Department of Justice Antitrust Division. Ms. Varney is an excellent choice to lead the United States' antitrust enforcement program.

We both have appeared before Ms. Varney during her tenure as a member of the Federal Trade Commission. She demonstrated a high degree of expertise regarding the substance and economic underpinnings of the antitrust laws. Her approach was extremely balanced and exhibited a deep commitment to examining and resolving each matter on the basis of its own particular factual setting. Her breadth of interest led her to develop a special competency in dealing with innovation markets and technological developments, of particular relevance to today's economy.

In addition to her work on domestic competition matters, Ms Varney had substantial involvement with international antitrust issues, having been actively involved in the work of the Competition Committee of the Organization for Economic Cooperation and Development. As a consequence, she will bring to the increasingly important international antitrust field a depth of interest and experience that will well serve the interests of the United States.

Our experience with working on matters with Ms Varney in private practice is the same. Her advocacy is clear and effective, and her practice covers a wide range of firms throughout the economy. She has shown the same diligence, balance, and intellect in this capacity as she had at the Federal Trade Commission. We believe it is on these bases that she has been cited for excellence by the various rating publications that cover the antitrust bar.

Our support for Christine Varney's confirmation derives from the prism of our experience in the field of antitrust and our own experience as Assistant Attorneys General for Antitrust in, respectively, the Administrations of President Jimmy Carter and President George H. W. Bush. We believe Ms. Varney is extraordinarily well qualified to lead the Antitrust Division.

Respectfully submitted,

John H. Shenefield
Counsel
Morgan Lewis
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004

James F. Rill
Partner
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004

61992.835



DLA Piper LLP (US)
500 8th Street, NW
Washington, DC 20004
www.dlapiper.com

Earl J. Silbert
[redacted]

February 5, 2009

Honorable Patrick J. Leahy
United States Senate
Chair, Committee on the Judiciary
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

I am writing to you to support the nomination of Mr. Lanny Breuer to become the Assistant Attorney General in charge of the Criminal Division at the Department of Justice. I am a partner in the Washington, DC office of DLA Piper, having previously served as both an Assistant U.S. Attorney here in Washington and also as United States Attorney for nearly fifteen years. In private practice, I specialize in the defense and trial of white collar criminal cases.

I have known Mr. Breuer for many years, both when he worked in the White House Counsel's Office and in private practice. He is without question an experienced and skillful lawyer. His trial skills and integrity are considered excellent by his peers as witnessed by his being voted a Fellow of the American College of Trial Lawyers. Because of his service both as a prosecutor and in the private sector, he has the experience, wisdom and insight to lead the Department's Criminal Division. He is ably suited and prepared to take on the important responsibilities awaiting him. I urge you and your committee to act favorably on his nomination.

I thank you for your consideration of my recommendation of Mr. Breuer.

Sincerely yours,

Earl Silbert

Earl J. Silbert

EAST\42343621.1



PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102

TIMOTHY ALAN SIMON
COMMISSIONER

TEL. (415) 703-1407
FAX: (415) 703-1294

March 9, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I am writing to strongly recommend the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

I have been at the forefront of Republican Party and public policy issues for several years. Formerly an Appointments Secretary for Governor Arnold Schwarzenegger, I am currently a member of the California Public Utilities Commission. I am also an active participant in the Republican Party, and am serving my third term as a member of the Executive Committee of the California Republican Party. Until entering the Schwarzenegger Administration, I was also Vice Chair of the San Francisco Republican Party. Having known Tony for several years, I can say without hesitation that Tony is an exemplary candidate for leading the Civil Division at this time.

Tony has served in a distinguished capacity on the Board of Directors of the University of California Hastings College of the Law. While an appointee of Governor Gray Davis, Tony was viewed by the Schwarzenegger Administration as a visionary of considerable talent. Tony was held in such high esteem that I was assigned to explore potential appointments that would have provided more visibility within the administration. To Tony's credit, when approached for potential appointments, he expressed a commitment to his post on Hastings' Board of Directors, and identified specific goals he wanted the Board to address before his departure.

In addition, Tony's leadership in the State Bar of California has drawn bi-partisan accolades. His level of volunteerism, coupled with his active and high-profile law practice, are evidence of his selfless commitment to public service and equal justice.

As a more personal matter, I note that Tony has exhibited neither hesitation nor inhibition about serving a Republican Governor, despite being a Democrat himself. Tony is a man of unquestioned integrity and honesty. He is respected by people on both sides of the aisle, and he is renowned as someone who can work across the table to build consensus. Over the years, Tony has displayed an amazing ability to help people see past their differences in order to reach a common goal. By doing so, Tony not only demonstrates his own stellar abilities, but also brings out the best in others. In sum, Tony is an unbiased leader. And, that is precisely what the Justice Department and this country needs in these difficult times.

In conclusion, I am honored to give this recommendation and encourage the Republican members of this Committee to give Tony West their vote. If you have any questions or concerns, please feel free to contact me.

Sincerely,

Timothy Alan Simon

JONES DAY

51 LOUISIANA AVENUE, N.W. • WASHINGTON, D.C. 20001-2113
TELEPHONE: 202-879-3939 • FACSIMILE: 202-626-1700

[redacted]

JP372483:dn March 6, 2009

VIA HAND DELIVERY AND FACSIMILE: 202-228-0861

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Member
Senate Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Re: Nomination of Christine A. Varney for Assistant Attorney General for Antitrust, U.S. Department of Justice.

Dear Chairman Leahy and Senator Specter:

This letter is respectfully submitted to the Senate Committee on the Judiciary to express my support for the nomination of Christine A. Varney to serve as Assistant Attorney General for Antitrust within the U.S. Department of Justice. I have known and worked with Christine for almost two decades, and I view her as one of the most effective antitrust practitioners I have known. I spent more than eight years at the Antitrust Division, including four as a Deputy Assistant Attorney General for Antitrust, and view that time as perhaps the most satisfying period of my professional career. As a result, I have a very protective attitude toward the Division, and expect a lot from the people who lead it. Christine will, in my opinion, be a distinguished occupant of one of the most important economic positions in any Administration, and I strongly endorse her rapid recommendation by your Committee and confirmation by the Senate in due course.

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Thank you for the opportunity to express my strong endorsement of Christine Varney as Assistant Attorney General for Antitrust.

Very truly yours,

Joe Sims (mae)

Joe Sims

PATRICK J. LEAHY, VERMONT, CHAIRMAN
HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
RUSSELL D. FEINGOLD, WISCONSIN
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Bruce A. Cohen, Chief Counsel and Staff Director
Stephanie A. Middleton, Republican Staff Director
Nicholas A. Rossi, Republican Chief Counsel

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

March 25, 2009

Ms. Christine A. Varney
Hogan & Hartson LLP
555 Thirteenth Street, NW
Washington, DC 20004

Dear Ms. Varney:

I write to express my disappointment with some of the answers you provided to the Judiciary Committee in response to my written questions following your confirmation hearing. Given the Senate's role of providing advice and consent in the confirmation process, I believe more complete answers would be appropriate.

Specifically, your answers to questions 3, 5, 10 and 11 are not fully responsive to the questions posed and give Senators little information upon which to base their vote. By way of example, given the fact that you provided responses to detailed questions during your hearing regarding the issue of patent settlements and reverse payments, your unwillingness to clarify those responses is insufficient.

Please provide the Committee with adequate answers to these questions so that I may properly evaluate your nomination and determine whether any supplemental questions are necessary.

Sincerely,

Arlen Specter

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61992.841

GEORGE M. SUNDHEIM
[redacted]

March 7, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write to support the nomination of Tony West as Assistant United States Attorney General for the Civil Division. I am the former Chairman of the California Republican Party, one of four current members of Governor Schwarzenegger's political organization, a recipient of a California Bar Pro Bono Award, former President of a local bar association, member of the bar since 1981, worked in a District Attorney's office and have been in politics and public issues since 1971. With that background, I can say that Tony is the right person to lead the Civil Division at this time.

Tony is someone who is committed to working with people across the political spectrum and building consensus even on difficult issues. He is skilled at listening to people with diverse viewpoints and finding ways for them to be able to work together to get things done. Persons on both sides of the aisle admire Tony's integrity, honesty and decency. He is always courteous and respectful to colleagues and opponents alike. I cannot think of anyone more qualified to assume a position of leadership in the Department of Justice.

Tony will make an excellent Assistant Attorney General for the Civil Division. I support his nomination and urge his confirmation.

Sincerely,

George "Duf" Sundheim

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Assembly
California Legislature

SANDRÉ R. SWANSON
ASSEMBLYMEMBER, SIXTEENTH DISTRICT

COMMITTEES
CHAIR, ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT
CHAIR, SELECT COMMITTEE ON STATE SCHOOL FINANCIAL TAKEOVERS
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ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND INTERNET MEDIA
WORKFORCE INVESTMENT BOARD

March 5, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Tony West for Assistant Attorney General — Civil Division

Dear Chairman Leahy:

I write to strongly support the nomination of Tony West as Assistant United States Attorney General for the Civil Division.

I have known Tony for several years as a leader in the San Francisco Bay Area, in particular in our hometown of Oakland. I have personally seen him work with community groups on a wide range of issues. Tony is known as a problem solver, who has an uncanny ability to bring people together by building consensus and finding common ground. I know that Tony will bring these skills to the Department of Justice, at a time when the Department is looking to regain credibility and independence. Thus, Tony is the perfect person to lead the Civil Division.

President Obama has made an excellent choice in selecting Tony to serve as the next Assistant Attorney General for the Civil Division. Tony is a man of unrivaled honesty and integrity, who knows how to tackle the tough issues. I enthusiastically support his nomination and I urge you to confirm him without delay.

Sincerely,

Sandré R. Swanson

Assemblymember, 16th District

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THE BUHL FOUNDATION
CENTRE CITY TOWER, SUITE 2300
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PITTSBURGH, PENNSYLVANIA 15222
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February 5, 2009

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Mr. Lanny A. Breuer

Dear Chairman Leahy and Senator Specter

I write this letter in support of Mr. Lanny A. Breuer, the nominee for Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice. I believe Mr. Breuer is a spectacular choice and would serve the American people well with his depth of intelligence, professionalism, integrity and passion.

Although I currently serve as President of the Buhl Foundation, Pittsburgh's oldest philanthropy, I had the privilege of practicing law for nearly 30 years, nearly one-third of it as a federal prosecutor and, between 1993 and 1997, I had the great privilege to serve as the United States Attorney for the Western District of Pennsylvania. In that position, I also had the opportunity to interface with fellow U. S. Attorneys and great leaders such as Attorney General Eric Holder, Homeland Security Head Janet Napolitano and Rhode Island Senator Sheldon Whitehouse. Based upon that experience within the Department of Justice, I feel competent and confident in expressing my opinions in support of Mr. Breuer's qualifications to serve in this most important post.

I have known Lanny Breuer for some five years and have worked extensively with him as co-counsel on an extremely complicated and international federal criminal matter. Over the course of that close relationship, I not only had the opportunity to observe him in professional and courtroom settings but also had a sustained interaction with Lanny in the course of frequent local and international travel. It is based upon this extensive professional and personal interaction that I unhesitatingly support the nomination of this wonderful individual and lawyer.

Lanny brings to this important position a wealth of background and experience: 1) he is a seasoned line prosecutor with in-the-trench experience as a member of the District Attorney's Office in the Southern District of New York, obviously a hotbed of complex and trend-setting prosecutions; 2) as Special White House Counsel he obviously learned the importance of informed and speedy decision making, proactive identification of strategic considerations and the importance of discretion and transparency; 3) by virtue of extensive federal criminal litigation work while co-chair of Covington and Burling LLP's White-Collar Defense and Investigation Practice Group, he represented numerous individuals and organizations in sophisticated and complex matters throughout the United States and internationally. That impressive and varied resume speaks volumes about Mr. Breuer's qualifications and ability to serve in the important role of heading the Criminal Division of the Department of Justice.

Even so, I write you to discuss not Mr. Breuer's spectacular resume, which is obvious at a glance but, rather, to speak about Mr. Breuer as the lawyer that I know well. First, Lanny is probably the most well-versed attorney, cognizant of federal criminal practice and Department of Justice procedures, that I have ever known. As a former Assistant United States Attorney and a former U. S. Attorney, I have never worked with a lawyer with greater expertise in the practice of federal criminal law. Second, Lanny is a born trial attorney and a charismatic enabler. He understands the complexities of litigation, the intricacies of anticipation and preparation, the pressures of courtroom work, the need for both passion and compassion, how to balance intensity and family life, and the proper role and interplay of independence, dedication and loyalty to an oath. Third, from an organizational perspective, I have rarely met an individual with such a balance of leadership, encouragement, and a willingness to roll up his sleeves and work alongside others. He knows when to delegate, when to relegate and when to step up. Finally, and most importantly, Lanny is one of the finest, friendliest and most enjoyable individuals with whom I have ever worked. He is a dedicated family man, cares about community, is considerate, humble and engaging. Simply stated, Lanny is just great to be around.

Having spent decades not only as a federal prosecutor but also as defense counsel working on matters in opposition to the U. S. Attorney's Office, I have a keen awareness of and sensitivity to balancing zealous representation with decorum and professionalism. I have prided myself, over the years, both before and after the time I served as U. S. Attorney, with having many good friends in the U. S. Attorney's Office. Accordingly, when I worked with Lanny for some five years as a member of a legal team that waged a tough but professional legal battle with the U. S. Attorney's Office in the Western District of Pennsylvania, I was honored and proud to stand alongside Lanny. During the entire five-year litigation, he demonstrated his true character as a man of great skill and integrity. I would encourage you to contact the two AUSA's who were opposing counsel for the matter on which Mr. Breuer and I worked. They are AUSA Bruce Teitelbaum, Special Counsel for the U. S. Attorney's Office in the Western District of Pennsylvania ([redacted]) and Mr. Leon Dillon, Chief of the Criminal Division for the U. S. Attorney's Office, Western District of Pennsylvania (phone number [redacted]). Messrs. Dillon and Teitelbaum, I would wager, would agree that Mr. Breuer is as fine, professional and knowledgeable an attorney as any they have faced.

I believe the confirmation of Mr. Lanny A. Breuer as Assistant Attorney General in charge of the Criminal Division of the United States Department of Justice would be a great step for our country. Mr. Breuer is the personification of the high ideals of competence, integrity, independence and professionalism that have been the hallmark of the Department of Justice for the better part of 200 years. I wholeheartedly endorse Mr. Lanny A. Breuer to continue that tradition.

If I can be of further assistance or if you would wish to discuss the matter further, please don't hesitate to contact me.

Sincerely,

Frederick W. Thieman
President

Larry D. Thompson
[redacted]

February 17, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter and Members:

I am writing to enthusiastically support the nomination of Lanny Breuer to be Assistant Attorney General of the U.S. Justice Department's Criminal Division.

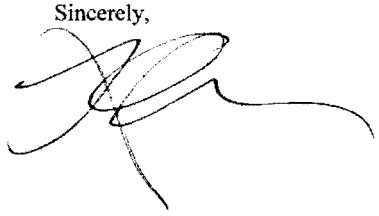
Lanny enjoys a distinguished record as a prosecutor in the District Attorney's Office of the County of New York under Robert M. Morgenthau, one of our nation's most senior and respected District Attorneys. Lanny also has a very successful white collar criminal defense practice in which he presents both individuals and corporations.

I have worked with Lanny on one case and can personally attest to his passion for his work, his deep professionalism and his total commitment to the client. Simply put, Lanny is a superb lawyer.

Having worked both sides of the street so to speak, Lanny will truly understand the tremendous power he will have as the head of the Justice Department's Criminal Division and will exercise that power, in the words of former Attorney General Robert Jackson, in ways that are "dispassionate, reasonable and just."

We truly are fortunate to have a lawyer of Lanny's ability offer for public service.

Sincerely,



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United States Senate
Committee on the Judiciary

< Return To Hearing

Testimony of

Christine Varney

March 10, 2009

Statement of Christine A. Varney
Nominee for Assistant Attorney General for Antitrust
United States Senate Committee on the Judiciary
March 10, 2009
Mr. Chairman, Senator Specter, and members of the Judiciary Committee,
I am deeply honored to appear before you today. As someone who has spent more than a decade working on antitrust matters, I sincerely appreciate the fact that this Committee, along with the Antitrust Subcommittee led by Chairman Kohl and Ranking Member Hatch, have been a consistent supporter of the Antitrust Division. If I am fortunate enough to be confirmed as Assistant Attorney General for the Antitrust Division, I look forward to working with all the members of this Committee to promote the effective enforcement of our antitrust laws and to renew our nation's status as the international leader in antitrust policy development and convergence.

I am pleased that my family is here today, and I want to recognize my husband, Tom Graham. We have two sons who are currently in college. My other family members here include my father, Jack Varney, who actually served as an attorney in the Antitrust Division 50 years ago; my sister Jackie; and my niece Molly.

Strong antitrust enforcement and respect for our competition statutes are the primary safeguard of our distinctive free enterprise system. There are three main areas that, if confirmed, I will focus on as the Assistant Attorney General for Antitrust.

First, we must rebalance legal and economic theories in antitrust analysis and enforcement. The Antitrust Division can provide strong intellectual leadership in competition policy by advancing our collective understanding of competitive behavior and adapting our thinking to reflect our ever evolving markets. Second, we need renewed collaboration between the Antitrust Division and the FTC, whose policies and processes have unfortunately diverged too frequently in recent years. Policy disputes and jurisdictional squabbles between agencies with overlapping enforcement mandates lead to uncertainty for consumers, business, and for overseas' antitrust enforcers who look to the US for consistent guidance. Third, we must continue our cooperation with worldwide antitrust authorities, discussing our differences with international enforcers respectfully and engaging with emerging antitrust regimes such as China and India as they implement new antitrust laws. Working with the committed and talented staff at the Division, I am sure these goals can be achieved.

There is no doubt that the challenges we face in our current economic crisis are great, but I believe it is important to remember that robust antitrust enforcement is essential for the free market to function properly. In these tough economic times, more than ever, it is important to remember that clear and consistent antitrust enforcement - protecting competition and thus consumers while being conscious of the need for economic stability - is essential to a growing and healthy free market economy.

While these challenges are daunting, I believe that I am well equipped to meet them and I look forward to serving our nation as its chief antitrust enforcer, if confirmed. I believe that competition is what has made this country great, and I hope to build upon the broad bipartisan consensus that competition - protected by the antitrustlaws - is essential. I will approach the challenges we face from my unique vantage point as a former FTC Commissioner, which I believe will help me to bridge the gap that exists between the antitrust enforcement agencies on several crucial substantive and procedural issues. I will work diligently and act decisively to thwart those who would reduce competition and harm American consumers. I will work collaboratively with other antitrust enforcers in the US and overseas. I firmly believe that antitrust law is a cornerstone of our economic prosperity, and I therefore am committed to recruiting the best, brightest, and most experienced antitrust minds in the country to fill the Division's key positions working alongside the talented and committed career staff.

I look forward to working with you to promote the effective enforcementof our antitrust laws and to renew our status as the international leader in antitrust policy development and convergence.

Thank you.

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Christine Varney
CVarney@hhlaw.com

March 25, 2009

Senator Arlen Specter
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Specter:

I am writing in response to the letter you sent today. I am sorry that you believe some of my answers to written questions were not fully responsive. I believe I have done my best to answer your questions, and those from other members of the Committee, as fully and candidly as possible, so that the members of the Senate can fulfill their advise and consent role and have a good understanding of how I will perform, if confirmed, as Assistant Attorney General for Antitrust. I have elaborated on my answers to questions 3, 5, 10, and 11 below, per your request. I look forward to continuing discussions on these issues if I am confirmed.

3. Multiple private suits have been brought alleging that MasterCard and Visa operate as a mechanism through which their member banks agree to charge the same interchange fees, a structure that many have argued amounts to illegal price fixing. Joint decision-making by the banks via MasterCard and Visa has been subject to antitrust liability in the past. In *United States v. Visa U.S.A., Inc.*, 344 F.3d 229 (2d Cir. 2003), the Justice Department successfully challenged a rule imposed by both MasterCard and Visa prohibiting their member banks from issuing American Express and Discover credit cards. In characterizing the effect of the rule, the Second Circuit stated that "[e]ach [bank] has agreed not to compete with the others in a manner which the consortium considers harmful to its combined interests. . . . [S]uch arrangements are exemplars of the type of anticompetitive behavior prohibited by the Sherman Act." The Second Circuit's characterization would also seem to apply to the manner in which interchange fees are set. If confirmed, will you remain vigilant with respect to possible anticompetitive behavior by MasterCard and Visa, especially with regard to interchange fees? Do you agree with the analysis in *United States v. Visa U.S.A.*?

Answer. I am not currently aware of allegations of anticompetitive behavior by MasterCard and Visa. As is true with any company, if credible allegations are brought to the Division, I will ensure that the Division thoroughly investigates the matter. In addition, with Division staff, we will determine whether the analysis in *Visa U.S.A.* is appropriate to apply to review the manner in which exchange fees are set. I look forward to examining this issue further, if confirmed, and to reviewing whether the Second Circuit's ruling and analysis are

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applicable. If confirmed as Assistant Attorney General for Antitrust, as I stated during my confirmation hearing, you can be assured that I will vigorously enforce the antitrust laws. Where the evidence shows a violation of the antitrust laws, I will prosecute.

5. The Railroad Antitrust Enforcement Act, which this Committee recently considered, repeals the express antitrust exemptions enjoyed by the railroads and subjects railroad mergers to review by the antitrust agencies. I support such changes. However, the bill also subjects regulated conduct to suits for injunctive relief brought by private parties and eliminates the doctrine of primary jurisdiction in which courts must defer to regulatory agencies. Without a rollback of regulatory authority exercised by the Surface Transportation Board, I am concerned that the legislation could subject the railroads to conflicting legal obligations. This would be a significant departure from current doctrine, which was articulated most recently by the Supreme Court in *Credit Suisse v. Billing*, whereby the antitrust laws are supposed to give way to congressionally-mandated regulatory regimes. Can you discuss how you think the antitrust laws should interact with congressionally mandated regulatory regimes?

a. Can you discuss how you think the antitrust laws should interact with the regulatory authority exercised by the Surface Transportation Board?

Answer: I believe a balance must be struck between the existence of the congressionally mandated regulations in an industry and consumer welfare. If confirmed at Assistant Attorney General for Antitrust, I will follow the *Credit Suisse* ruling when reviewing cases in which a congressionally mandated regime is at issue. The Court in the *Credit Suisse* held that the issue that must be addressed in such situations is whether allowing an antitrust suit over the alleged practices would prove "practically incompatible" with the smooth enforcement of securities law by the Securities and Exchange Commission, the congressionally mandated regulations at issue in that case. Antitrust exemptions are not typically favored, although they do exist in certain areas. In certain formerly regulated industries, such as the railroads, a reexamination of exemptions to determine their impact on competition is wise. If I am confirmed as Assistant Attorney General for Antitrust, I will examine these issues, consistent with *Credit Suisse*, to determine what is in the best interest of consumers and maintaining consumer welfare, when balanced against the existence of congressionally mandated regulations in an industry.

10. On December 17th of last year, I joined three other Senators on this Committee, Chairman Leahy, Senator Kohl, and Senator Hatch, in writing a letter to the Attorney General and the Secretary of Transportation regarding concern over further use of DOT's statutory authority, pursuant to 49 U.S.C. § 41308, to grant antitrust immunity to airline joint ventures. Under this statute, DOJ has the opportunity to provide comments regarding such immunity. Since a number of applications for immunity remain pending, if you are confirmed, what steps will the Antitrust Division take to review these types of applications for immunity? Do you believe that an advisory role for DOJ in reviewing these applications is sufficient to protect its interest in making certain that consumers will not be harmed by any proposed immunity?

Answer: If confirmed, I hope to work aggressively to advise DOT if such joint ventures are structured in a manner so that the greatest efficiencies and consumer benefits

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can be gained. As you pointed out, the Division's role is statutorily mandated in such matters. I understand the concerns you and other Senators have expressed about DOT's authority in granting antitrust immunity for airline joint ventures. As I have previously indicated, antitrust immunities are generally disfavored. I will work to ensure that any concerns the Division has are fully considered by DOT.

11. Despite numerous decisions to the contrary in the courts, the FTC continues to vigorously prosecute generic and brand drug makers for entering into agreements settling patent infringement litigation in which the generic firm agrees to delay entry. During your testimony before the Committee, you suggested that you might be opposed to any drug patent settlement that included a so-called reverse payment. To clarify, does that mean that you believe any settlement in which a generic firm receives something of value, or receives a reverse payment—no matter the amount—violates the antitrust laws?

Answer: Every case must be examined on its own merits, and certainly there are some disputes where settlements can be procompetitive.

a. If a patent is valid and applicable, then a settlement allowing a generic to enter the market before the expiration of the patent—no matter what the generic manufacturer receives—would actually increase competition. Why should such settlements be unlawful? Why should patent holders not enjoy the presumption that their patent is valid until there is some evidence that it is not?

Answer: Lawful patents should be enforced and upheld until their expiration. A patent holder who enters into a commercial arrangement to allow a competitor to enter the market prior to the patent's expiration would most likely be procompetitive.

b. If not all settlements in which a generic firm receives something of value violate the antitrust laws, might the court in the underlying infringement case be in the best position to assess the potential anticompetitive affect of a settlement?

Answer: The merits of any infringement claim can be difficult to determine. I believe available evidence must be reviewed by a court to assess the merits of the infringement claim. In cases where a court finds no infringement, there is unlikely to be an anticompetitive effect in determining a patent holder's rights. However, antitrust authorities may have an interest in participating in instances where there is a settlement in cases when the underlying infringement claim is not resolved through a full adjudication.

c. Do you believe it is appropriate for a government agency to continue litigating an issue when every circuit court to address the issue has rejected the agency's argument?

Answer: While the Federal Trade Commission has primary jurisdiction over the pharmaceutical industry, I continued to be concerned that certain reverse payment settlements, which slow the entry of generics drugs into the market, can negatively impact consumer choices and costs. Regardless of the position taken on these particular patent settlement cases, I think it is important for the antitrust agencies views are aligned on these issues, if possible. To that end,

if confirmed, I pledge to work with the FTC to align the agencies' views on this matter and develop a unified approach to dealing with reverse payment settlements. I believe that consumers are benefited by generic entry -- the result is typically more choices and lower prices. If confirmed as Assistant Attorney General for Antitrust, I will work to ensure consumers' choices are maintained. I hope these additions will further clarify my views.

If confirmed, I look forward to working with you and the Committee on these important issues. Thank you for your consideration.

Sincerely,

Christine Varney

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ANTONIO R. VILLARAIGOSA
MAYOR

March 7, 2009

The Honorable Patrick Leahy
Chairman
United States Senate United States Senate Committee on the Judiciary
Committee on the Judiciary

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

Re: Tony West, Nomination for Assistant Attorney General for the Civil Division

Dear Chairman Leahy and Ranking Member Specter:

I write in support of the nomination of Tony West as Assistant Attorney General for the Civil Division.

I have known Tony for over a decade; his dedication to public service is unparalleled. He has been a leader in his community and throughout the state. As a federal prosecutor, he successfully prosecuted individuals who exploited children. His efforts on behalf of sexually abused children led to an appellate court decision ensuring that victims of child sexual exploitation are able to recover restitution for future counseling stemming from their abuse.

Tony's demonstrated commitment to law enforcement is augmented by his dedication to civil rights, such as the work he did to improve law enforcement policy as Special Assistant Attorney General for our state. A consensus-builder, his ability to listen to diverse points of while providing the type of leadership that gets the job done. California has benefitted greatly from his service, and, if confirmed, Tony will undoubtedly become an invaluable asset to the Department of Justice and the Nation.

Tony's supporters span the political spectrum, a testament to his integrity, careful judgment, and demonstrated respect for others' points of view. For these reasons, I strongly endorse his nomination and respectfully urge his confirmation.

Very truly tours,

ANTONIO VILLARAIGOSA
Mayor

200 NORTH SPRING STREET • LOS ANGELES, CALIFORNIA 90012
PHONE: (213) 978-0600 • FAX: (213) 978-0750
EMAIL: MAYOR@LACITY.ORG

WILMERHALE

Seth P. Waxman
[redacted]

March 3, 2009

By Facsimile

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
433 Russell Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Office Building
Washington, DC 20510

Re: Nomination of Anthony West to be Assistant Attorney General

Dear Senators Leahy and Specter:

I write to endorse the nomination of Anthony West to be Assistant Attorney General overseeing the Civil Division.

Tony and I worked together at the Department of Justice in 1994, when I joined the staff of the Deputy Attorney General. Although Tony was only two years out of law school at the time, he displayed remarkable talent — qualities and skills that have been evident to so many of us who have followed with admiration his practice and career through the intervening years. Tony has everything required to become a splendid Assistant Attorney General. I commend him to the Committee heartedly, and without reservation.

Yours sincerely,

Seth P. Waxman

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United States Senate Committee on the Judiciary

< Return To Hearing

Testimony of

Tony West

March 10, 2009

STATEMENT OF TONY WEST NOMINEE FOR ASSISTANT ATTORNEY GENERAL FOR THE CIVIL DIVISION UNITED STATES DEPARTMENT OF JUSTICE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I am deeply honored to appear before you this afternoon as the nominee to serve as Assistant Attorney General for the Civil Division of the United States Department of Justice. I am grateful to the President and the Attorney General for their confidence in me and for giving me the opportunity to return to the Department of Justice where I spent nearly half of my legal career as an advocate on behalf of the United States. I am thankful to you, Mr. Chairman, and to this Committee for holding this hearing and considering my qualifications for this important post.

If I may, I would like to introduce the members of my family who are here today. Were it not for the unconditional love and support of my family and the grace of God, I would not be before you today. I want to introduce first my law school classmate, my best friend and the love of my life, my wife, Maya Harris West. An extraordinary woman of accomplishment in the law, policy and philanthropy, Maya has been as much my teacher as she has been my partner, and everyday she is in my life is a blessing.

I want to thank our brilliant daughter, Meena, who will begin a new adventure this fall as a first-year student at Harvard Law School. We are so proud of her.

I also want to thank my mother, Peggy, and my father, Franklin, who have been an inspiration to me all of my life. While I may not have always succeeded, I have always tried to live up to the examples of strength, compassion, wisdom and integrity that my parents set for my sisters and me every day of our lives.

My gratitude also goes to my sister-in-law, Kamala, who has dedicated her life to public service as the elected district attorney of San Francisco. My life is enriched because of her love, support and confidence in me.

I also want to thank and recognize three people who could not be here today: my two younger sisters, Pamela and Patricia, who keep me grounded with the loving bonds of affection that only close siblings can know; and my mother-in-law, Dr. Shyamala Harris, who four weeks ago tomorrow passed away after a courageous battle with cancer. Her spirit fills my heart today.

Mr. Chairman, I am honored to have been nominated to serve as Assistant Attorney General for the Civil Division because I revere the institution that is the Department of Justice. It was there that I learned to be a lawyer and where the most enduring and formative experiences of my professional career took place.

A year after graduating from law school, I was privileged to begin my career in public service as a special assistant in the Deputy Attorney General's Office. Later, I served as an Assistant United States Attorney for several years in the Northern District of California, where I was fortunate to work closely with men and women who put their lives on the line every day as law enforcement agents for the FBI, ATF, DEA, Customs and Secret Service. I maintained my connection to the Department of Justice even when my career took me to the California Attorney General's office, working with my federal counterparts to tackle issues of civil rights, antitrust enforcement, police officer training and internet crime.

The lessons I learned at the Department of Justice I carried with me into private practice, where my advocacy has encompassed all aspects of civil litigation and included a diverse array of individual and corporate clients.

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All of this has given me a deep appreciation for the Department and its singular mission to pursue justice on behalf of the American people. It has also given me a profound respect for the talented career attorneys who do the hard work of ensuring justice everyday.

The career professionals of the Civil Division are prime examples of public servants who work tirelessly to ensure that the interests of the American people and their government are well represented in our Nation's courts. Day in and day out, they come to work ready to meet the challenges posed by difficult times. Their task is often without fanfare, yet their commitment to upholding the integrity of the Nation's laws is unwavering. Their service sets a standard that is to be encouraged and emulated. Should I be confirmed, I will do all within my power to live up to that high standard.

I will do so with the intention of, first, maintaining the safety and security of the American people through the Civil Division's work involving national security and the War on Terror; second, protecting the taxpayers' dollars through the Division's vigilant anti-fraud and False Claims Act enforcement efforts; and third, ensuring the independence of the Department of Justice and a Civil Division characterized by professionalism and non-partisanship.

Mr. Chairman, should I be confirmed, I also look forward to working with you and your congressional colleagues in connection with your oversight responsibilities on matters that fall within the jurisdiction of the Civil Division. And I commit that I will do my best to promote a productive relationship of trust, respect and cooperation.

I thank you again for considering my nomination and I am pleased to respond to any questions you may have.

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February 18, 2009

Writer's Direct Contact
[redacted]

Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Tony West, Nomination to be Assistant Attorney General for the Civil Division

Dear Chairman Leahy and Ranking Member Specter:

As the Chair of Morrison & Foerster LLP, a global law firm with more than 1000 attorneys, I write to express my enthusiastic support for the nomination of Tony West to be Assistant Attorney General for the Civil Division.

I have known Tony since 2001, when I helped recruit him to join Morrison & Foerster LLP. The firm gained not only a brilliant attorney but also an exceptional leader. The quality of representation Tony provides his clients is unsurpassed. Moreover, Tony approaches every case with the utmost integrity, winning over the admiration of his colleagues and respect of his opponents. For these reasons, he quickly became one of our most in-demand trial lawyers.

Tony is a natural leader who leads by example as well as inspiration. He has been a leader in our firm in many ways, especially in recruiting new attorneys and as co-chair of our firm's Diversity Strategy Committee, in support of our efforts to recruit, promote and mentor diverse attorneys.

While a partner at our firm, Tony has been deeply involved in the legal community. He is a Board of Governors Member for the Northern California Association of Business Trial

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Lawyers, a Northern District of California Lawyer Representative for the United States Court of Appeals for the Ninth Circuit, and a Member of the Litigation Section Executive Committee of the Bar Association of San Francisco.

Tony's previous service as an Assistant United States Attorney as well as Special Assistant to the Attorney General of California demonstrate his dedication to public service and serving the best interests of our country. The Department of Justice will surely benefit from his able leadership. It is for these reasons that I am pleased to support the nomination of Tony West to be our Nation's next Assistant Attorney General for the Civil Division.

Sincerely,

Keith C. Wetmore
Chair

sf-2642878

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FRED S. ZEIDMAN

109 North Post Oak Lane
Suite 422
Houston, TX 77024
[redacted]

February 3, 2009

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

I am writing to you to express my sincere support of the nomination of Mr. Lanny Breuer to become the Assistant Attorney General in charge of the Criminal Division at the Department of Justice. I have known Lanny since 2002, when I became Chairman of the United States Holocaust Memorial Council, on which Lanny had been serving since 1999 (his term ended in 2004). During our years of service together, I was continually impressed with Lanny's thoughtful and professional approach to membership on the Council and believe he would bring earnestness and integrity to his service to the American people.

As you are probably aware, the United States Holocaust Memorial Council includes 55 Presidentially-appointed members and ten members from the U.S. Congress and is the governing board of the United States Holocaust Memorial Museum. Among the many members, Lanny stood out not only for his dedication to the mission of the Museum but also for his ability to work well with other members of the Council, who hail from a wide variety of professional and geographical backgrounds. An engaged listener and genuine problem-solver, Lanny won over other members with his sincerity, passion, and good humor, bringing his extensive experience in the legal world to bear on the issues faced by the Council without ever preferencing his own knowledge or experience over others' on the Council. Although the Council members are a lively and opinionated group, Lanny could connect with each and every member on equal footing because of his plain-spoken, humble, and intelligent manner, combined with his clear dedication to the Council and the community.

Lanny's practice of soliciting others' opinions and ideas enables him to balance priorities with assurance and lead with confidence, as he wins consensus and support before making decisions and tackling complex problems. It is this quality in particular that

makes him uniquely suited to guide the Criminal Division, where his personable style and keen intellect, combined with his superior legal background, will persuade lawyers and staff of all backgrounds of the wisdom and strength of his leadership. For these reasons, I unequivocally support Lanny's nomination.

Sincerely,



Fred S. Zeidman

NOMINATIONS OF DAVID F. HAMILTON, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT; RONALD H. WEICH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL OF OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE; AND R. GIL KERLIKOWSKE, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT

WEDNESDAY, APRIL 1, 2009

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m., room S–127, The Capitol, Hon. Patrick J. Leahy, Chairman of the Committee, presiding.

Present: Senators Leahy, Schumer, Whitehouse, Klobuchar, Kaufman, and Specter.

OPENING STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Chairman LEAHY. It's now 2:30. I apologize to everybody for squeezing over here, but we're in the annual budget marathon. We're about to have a series of statements and votes upstairs.

There are excellent nominees before us. David Hamilton, who is strongly supported by the two Senators from his home State, one of my best friends in the Senate and long-time friends because we go back a long time, the senior Republican of the Senate, Senator Lugar. Another distinguished Senator, Evan Bayh, from his State.

We have Ron Weich to be Assistant Attorney General for Legislative Affairs. Ron is well-known to all of us and is a good friend. I like the fact that he's also a former prosecutor.

I'm going to put in the record a letter from a former Chairman of this Committee, Senator Kennedy, on his behalf.

[The Letter from Senator Kennedy appears as a submission for the record.]

Senator Specter has agreed to add the nomination of R. Gil Kerlikowske. I'm not the first one to have trouble with that, Chief, who has 36 years of experience in law enforcement, including Chief of Police for the Seattle Police Department.

So with that, I'll put my full statement in the record.

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[The prepared statement of Chairman Leahy appears as a submission for the record.]

I see the distinguished Majority Leader, Senator Reid, is here and I will yield first to Senator Reid, and then we'll go by seniority with the Senators who are here, following our normal practice.

Senator Reid.

PRESENTATION OF RONALD H. WEICH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE, BY HON. HARRY REID, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator REID. Mr. Chairman, thank you very much for allowing me to testify. This is a very important occasion for me. As we all know, as Members of the Senate, we have the opportunity to work with the best people in the world, such dedicated people who are not out to see how much money they can make, but see what differences they can make in our society. We're all grateful for every one of these fine people who work with us.

But there are a few, at least in my career, that stand out with their intellect, their dedication, and a work ethic that makes them indispensable. Ron Weich is one such person who has worked for me as part of my senior staff for 4 years. He's been by my side on every critical legal question I've had for these past 4 years.

I recommend to this Committee Ron Weich for the position of Assistant Attorney General of our country. I do it with some measure of regret and sadness of not having him in my office, but with the absolute confidence that he'll serve our country and Attorney General Holder with the utmost skill and dedication.

Ron, like his mom, who was one of the first women to graduate from Brooklyn Law School, began his career in the courtroom as a prosecutor. He attended Columbia University, Yale Law School. He tried cases involving violent crimes as Assistant District Attorney in Manhattan. There's no question that part of what makes Ron so effective is his real-world experience—not an academic, but real-world experience.

This experience gives him the perspective to understand how to do legal policy and will actually work in practice. While many of his colleagues were entering the private sector, Ron spent almost his entire career in public service. I believe we are a better country because of people like Ron Weich.

After his tenure in the District Attorney's Office, he served at the U.S. Sentencing Commission, and then for Senators Specter and Kennedy. Following his stint at a law firm, Ron returned to government service to work as my senior, and then chief, counsel, when I became the Democratic Leader in 2004.

Ron's work for Senators Kennedy and Specter are indicative of the character and strength that will serve him well as Assistant Attorney General. He's built a foundation of trust and friendship with key Members of Congress, both Democrats and Republicans. For example, Ron was once—during debate—and worked closely with members of the Gang of 14, which consisted of 7 Democrats, 7 Republicans, as they negotiated a solution to a potential constitutional crisis. He also played the lead role in laying out ethics and lobbying reform legislation passed last year. In his new role, Ron

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will be responsive to requests from Democrats and Republicans. In the best tradition of Department of Justice, he will serve in a manner blind to partisanship, blind to politics, and—rule of law.

Ron's parents, Robert and Cecile, his wife Julie, and daughters Sophie and Sarah are here today. I'm grateful that they've shared Ron with us through the years. In his new role, Ron Weich will play an integral role, an integral part, rebuilding the Department of Justice to the once-again place where all are equal under the law, all are protected by the law, and no one is above the law.

Thank you very much, Mr. Chairman and members of the Committee.

Chairman LEAHY. Thank you. Thank you very much.

Senator REID. Thanks for allowing me to say a nice word about my friend, Ron.

Chairman LEAHY. Thank you. As I said, it's extraordinary that we're having it in here, but I recall, right after 9/11 we had one where one of President Bush's nominees—most of the hearing room was closed down, the House was closed down, and most people were leaving town. I convened a special hearing in here to accommodate President Bush and get his nominees through, and that's why we're doing it here, because of the vote.

Senator REID. Mr. Chairman, you being one of the longest-serving members of the Appropriations Committee, you've been here a few times anyway.

[Laughter.]

Chairman LEAHY. I have been here.

Senator REID. Could I be excused, Mr. Chairman?

Chairman LEAHY. Of course. Please.

[Laughter.]

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

The Republican members of this Committee will not be participating because there has been insufficient time to prepare for this hearing. I ask that the letter I've sent asking for a postponement be made a part of the record, together with a letter signed by all the Republicans sent to you yesterday.

Chairman LEAHY. Without objection, it'll be part of the record.

[The letters appear as a submission for the record.]

Chairman LEAHY. Also, the news article covering the first letter which appeared before I received the letter will also be made part of the record, and my response. I did not receive the letter, but yes it may be a part of the record. My response will be there, and the news articles detailing the letters before I received them will be made part of the record.

[The information appears as a submission for the record.]

Senator SPECTER. For all of those assembled, especially to the three nominees, I regret that there is a very strong conclusion that this position has to be taken. I personally find it very distasteful to raise these considerations in the Judiciary Committee, but I do so because of the conclusive nature of the record which shows that there has been grossly insufficient time to prepare.

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And I'll be very specific about it. The nomination of Judge Hamilton—and before I go on, let me say that the academic and professional records of these nominees is exemplary. Mr. Weich, especially close to me since he served so ably on my staff and I've watched him perform for Senator Kennedy and for the Majority Leader. Judge Hamilton, whose record I've examined, who, parenthetically, was a student with my son at Haverford. Shane Specter speaks very highly of you. I met with the nominee for Drug Czar and found him, on a personal level, Chief Kerlikowske, to be very able. But the chronology of events here really speaks for itself.

Judge Hamilton's nomination was announced on March 17th. The Committee did not receive his questionnaire until March 18th. The questionnaire was not completed until March 24th. Judge Hamilton has been a District Judge for almost 15 years and, according to his calculation, has authored roughly 1,150 written opinions, over 9,500 pages, and has submitted approximately 2,000 pages of speeches, articles, and public policy papers.

The nominations of the other individuals were also submitted within approximately 2 weeks. In the past, President Bush's nominees were submitted with Senators having, on average, 166 days to prepare for a hearing and 117 days to prepare for President Clinton's Circuit nominees. So on the procedural aspect, there has been just totally insufficient time to review these matters.

I'm not going to make a show of these boxes, but if I were to stack up the papers, they would be about four feet high on the desk. But I'm not going to do that. There is a special concern about this time sequence in light of the fact that Judge Hamilton's nomination is the first, and we're going to have many, many more.

The Constitution, as we all know, calls on the Senate to confirm. Indispensable to the confirmation process is an opportunity to examine the record of the individual, and that means a hearing, and that means questions and answers, and that means an opportunity to prepare.

So on process, I think the record is conclusive that we haven't been given a reasonable amount of time. I regret that very much on the personal level with Senator Leahy. It is well known he and I have been working together since 1970 when were District Attorneys and worked coordinately on this Committee, more than 90 percent of the time cooperatively.

Now, beyond the issue of procedure and process, there are also substantial questions to be asked. Staff has prepared summaries of some of the cases that Judge Hamilton has engaged in. These questions, I think, fairly—these cases fairly warrant an examination.

But let me make a point: I don't necessarily disagree with anything you've done, Judge Hamilton. And that is not to say that I agree with it.

[Laughter.]

But I am raising issues for inquiry just by doing just that. But I can tell you that there are members of this Committee on the Republican side who do disagree with some of what you said, but I do not state that in raising these cases. *Heinrichs* v. *Bosma*. The case involved the practice of the Indiana General Assembly opening each session with a prayer. Judge Hamilton said that was uncon-

stitutional; the Seventh Circuit reversed on the issue of—complex issue. A lot to be said on both sides.

Women's Choice v. *Newman*. The rulings which you had handed down delayed a decision in that case for some 7 years. Ultimately, the Seventh Circuit reversed. Chairman Leahy is reminding me that there's a 5-minute rule, so I'll be as brief as I can.

Grossbond v. *Indianapolis, Marion County Building Authority*, question of a Hanukkah menorah. The Seventh Circuit again reversed. Tough issues, First Amendment, require some examination.

Go v. *Prosecutor*. The issue involved registration as a sex and violent offender, also involving the consent of the search. Another complicated issue.

United States v. *Woolsey*. The statute required a life sentence. Life sentence was imposed, with the additional statement that you disagreed with it and hoped that it would be reversed by executive clemency. Okay. But it's worth some examination. *United States* v. *Reinhart*. You found a minimum mandatory sentence to be unjust, could not impose a just sentence in the case. *Bolls Commas*. Perhaps warranted, but certainly worthy of some inquiry.

Very briefly as to Chief Kerlikowske, issues have been raised as to the Chief—again, let me compliment him on the meeting that I had with him—as to his policies on marijuana. Here again, I'm not saying I disagree, just an issue, but there are others who want to talk about it. An issue about not taking action against some rioters, some disagreement by 88 percent of the police union members. I'm not saying I disagree with you, but there are issues to be examined.

Mr. Weich, some questions about his views on minimum sentences and the Unborn Victims of Violence Act. Here again, not making any comment one way or another, just that there are those who wish to be heard on that.

Chairman LEAHY. Well, we will hear first from Senator Lugar, and of course anybody can ask any question you want.

I would note, parenthetically, there's going to be almost 4 weeks before any of these nominations are even on the agenda, so there will be time for further meetings and for any follow-up questions during those 4 weeks.

Again, I thank people for coming down here, as they did when I accommodated President Bush right after 9/11 on nominees that he wanted to get through on very, very short notice.

Senator Lugar.

Senator SPECTER. Mr. Chairman, I hadn't quite finished.

Chairman LEAHY. I apologize. I'll let you go for your round of questions. I know you have more and I can't wait to hear it.

Senator SPECTER. Well, I would like to just say one more thing, because I intend to leave. That is that it is common practice to have informal sessions with nominees. I would hope to not have to put you through eight or nine of those individually. I would hope that you would be willing, perhaps even volunteer, perhaps even urge another hearing, but I don't have the gavel anymore.

Thank you.

Chairman LEAHY. Senator Lugar. I do have the gavel. Senator Lugar, please go ahead.

PRESENTATION OF DAVID HAMILTON NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT BY HON. RICHARD LUGAR, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator LUGAR. Thank you, Mr. Chairman, for this opportunity to join my friend and colleague, Evan Bayh from Indiana, in introducing Judge David Hamilton, whom the President has nominated to serve in the U.S. Court of Appeals for the Seventh Circuit.

Senator Bayh and I are proud that President Obama's first judicial nominee is from our State of Indiana and that he has chosen to elevate such an exceptionally talented jurist to the Federal appellate bench. I first had the pleasure of introducing David Hamilton to this Committee almost 15 years ago when he was nominated to the Federal District Court.

I said then that the high quality of his education, legal experience, and character well prepared him for this position and expressed my belief that his keen intellect and strong legal background will make him a great judge. This confidence in David Hamilton's character and abilities was shared by all who knew him, regardless of political affiliation, throughout Indiana's legal and civic communities.

Judge Hamilton's distinguished service on the U.S. District Court for the Southern District of Indiana, which he is now the Chief Judge, has more than vindicated that faith. I have known David Hamilton since his childhood. His father, Reverend Richard Hamilton, was our family's pastor at St. Luke's United Methodist Church in Indianapolis, where his mother was a soloist in the choir. Knowing firsthand his family's character and commitment to service, it has been no surprise to me that David's wife has borne witness to the values learned in his youth.

He graduated with honors from Pennsylvania's Haverford College. While on a Fulbright scholarship to study in Germany at the University of Cologne, and earned his law degree at Yale. After clerking for Seventh Circuit Judge Richard Cudahy, David joined the Indianapolis office of Barnes & Thornberg, where he became a partner and acquired extensive litigation experience in the Indiana and Federal judicial systems.

When our colleague, Senator Bayh, was elected Governor of Indiana he asked David to serve as his chief legal counsel. Among other achievements, in that role David supervised the overhaul of State ethics rules and guidelines and coordinated judicial and prosecutorial appointments.

In the latter capacity, David worked closely with Judge John Tinder, then a Reagan appointee to the District bench, whom President Bush recently appointed to the Seventh Circuit with the unanimous support of this Committee and the full Senate.

When David was nominated to the District Court, Judge Tinder wrote to me that "David was meticulous in asking the difficult questions of, and about, judicial nominees," and that "his approach to these duties typifies the deliberate and sensitive way in which he approaches matters in his professional life." The same is true of David's approach to his judicial duties. Leading members of the Indiana Bar testified to his brilliance and, more importantly, his character, dedication, and fairness.

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David Hamilton is the type of lawyer and the type of person one wants to see on the Federal bench. His colleagues on the Southern District of Indiana bench, a talented, exceptionally collegial group from both parties, unanimously endorsed these conclusions.

Allow me to close with a few further thoughts. Members may recall when I introduce now-Chief Justice Roberts to this Committee in 2005. My concern is that today's Federal judiciary is seen by many as a political branch, with the confirmation process often accompanied by the same over-simplification and the sources that are disturbing even in campaigns for offices that are, in fact, political.

This phenomenon is most pronounced at the Supreme Court level and traces to several causes that I'll not try to address today, but I mention it, however, to underscore my commitment to a different view of judicial nominations which I believe comports with the proper role of the judiciary in our constitutional framework. I do not view our Federal courts as the forum for resolving political disputes that the legislative and executive branches cannot, or do not, want to resolve.

Our founders warned, in words quoted in my statement at the time of Chief Justice Roberts' nomination, against allowing "the pestilential breadth of faction to poison the fountains of justice," which they knew would stifle the voice both of law and of equity.

This is why I believe our confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will vote on a particular issue of public moment or controversy, and instead try to evaluate judicial candidates on whether they have the requisite intellect, experience, character, and temperament that Americans deserve from their judges, and also on whether they indeed appreciate the vital, and yet vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws rather than working to impose their own policy views.

I support Judge Hamilton's nomination, and do so enthusiastically because he is superbly qualified under both sets of criteria.

Finally, permit me to thank my colleague from Indiana on the thoughtful, cooperative, merit-driven attitude that has marked his own approach to recommending prospective judicial nominees from our State of Indiana. The two most recent examples are a strong support for President Bush's nomination of Judge Tinder for the Seventh Circuit, and of Judge William Lawrence for the Southern District of Indiana.

I am confident that Senator Bayh and I will continue to approach nominations by President Obama in the spirit that brings us before you today, and I thank you very much.

Chairman LEAHY. Thank you very much.

Senator Bayh.

PRESENTATION OF DAVID HAMILTON NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT BY HON. EVAN BAYH, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator BAYH. Thank you, Chairman Leahy. I've had an opportunity——

Chairman LEAHY. Allow me to mention, all Senators, I know you've got a million other things. So if a Senator speaks and then

leaves—a Senator speaks first and then leaves, that doesn't mean they no longer support you.

[Laughter.]

Senator BAYH. I know my friend and colleague has a busy schedule, but Dick, before you have to go, I just want to thank and commend you for that very thoughtful and eloquent statement. I, too, want to thank you for the exemplary manner in which you handled judicial nominations under President Bush. The spirit of cooperation, comity, consultation is one that I fully intend to continue throughout our service together. So, I thank you. Thank you for all of that, and so much more.

And Mr. Chairman, I have had an opportunity before to tell you how much I appreciate being before your Committee once again. It's a Committee that my father had the privilege of serving on for 18 years.

Chairman LEAHY. And chaired.

Senator BAYH. Indeed. So there's always been a fond spot in the Bayh family heart for the Judiciary Committee.

I am pleased, Mr. Chairman, to be before you again and to have this opportunity to introduce an individual for whom I have the greatest respect and admiration, Judge David Hamilton.

Before I speak to Judge Hamilton's qualifications, I would like to comment briefly on the judicial nominations process generally. In my view, this process has too often been consumed by ideological conflict and partisan acrimony. During the last Congress, I was proud to work with Senator Lugar to recommend John Tinder as a bipartisan, outstanding consensus nominee for the Seventh Circuit Court of Appeals.

Judge Tinder was nominated by President Bush and unanimously confirmed by the U.S. Senate by a vote of 93:0. It is my hope that Judge Tinder's confirmation would serve as an example of the benefits of nominating qualified, non-ideological jurists to the Federal bench.

In selecting Judge Hamilton as his first judicial nominee, President Obama has demonstrated that he also appreciates the benefits of this approach. I was proud to once again join with Senator Lugar to recommend Judge Hamilton to President Obama. I hope that going forward other Senators will adopt what we call "the Hoosier approach," working together to select consensus nominees.

On the merits, Judge Hamilton is an accomplished jurist who is well-qualified to be elevated to the Seventh Circuit Court of Appeals. He has served with distinction as a U.S. District Judge for almost 15 years, during which time he has presided over approximately 8,000 cases.

Since January of 2008, he has served as the Chief Judge of the Southern District of Indiana, where he's been widely praised for his effective leadership style. Throughout his career, Judge Hamilton has demonstrated the highest ethical standards and a firm commitment to applying our country's laws fairly and faithfully.

In recommending Judge Hamilton I have the benefit of being able to speak from personal experience, as I had the opportunity to work closely with him while I was Governor of our State. In his role as counsel to the Governor, Judge Hamilton helped me to craft

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bipartisan solutions to some of the most pressing problems facing our State.

In particular, he helped to favorably resolve several major lawsuits that threatened our State budget and drafted a tough new ethics policy to ensure that our State government was operating openly and honestly. In addition to his insightful legal analysis, I could always count on David for his sound judgment and commonsense Hoosier values he learned growing up in Southern Indiana.

During his service in State government, Judge Hamilton also developed a deep appreciation for the separation of powers and the appropriate role of the different branches of government. If confirmed, Judge Hamilton will bring to the Seventh Circuit a unique understanding of the important role of the States in the Federal system and will be ever mindful of the appropriate role of the Federal judiciary. He understands that the appropriate role for a judge is to interpret our laws, not to write them.

On a personal note, I have known Judge Hamilton for over 20 years. I know him to be a devoted husband to his wife and a loving father to his two daughters. He is the nephew of former Congressman Lee Hamilton, and the embodiment of good judicial temperament, intellect, and even-handedness. I have high confidence that, if confirmed, Judge Hamilton will be a superb addition to the Seventh Circuit Court of Appeals and I am pleased to give him my highest recommendation.

Mr. Chairman and other members of the Committee, it is my distinct pleasure to present for your consideration Judge David Hamilton.

Chairman LEAHY. Well, thank you. Thank you very much.

We have Senator Murray. You're here to speak for the Chief, I understand.

Senator MURRAY. I am. And I can say his name.

[Laughter.]

Chairman LEAHY. I have a feeling that when I call up the nominations at the time of the mark-up, however I pronounce his name will be acceptable to the Chief.

[Laughter.]

Senator MURRAY. I am sure you are correct.

PRSENTATION OF R. GIL KERLIKOWSKI, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECTIVE OFFICE OF THE PERSEDENT, BY HON. PATTY MURRAY, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator MURRAY. Mr. Chairman, thank you very much. It really is my honor to be here, along with Senator Cantwell, to introduce to you Gil Kerlikowske, who's the Chief of the Seattle Police Department, at this very important hearing. I want to welcome Chief Kerlikowske and his wife, Anna, who is with him as well, and congratulate his entire family on this nomination for this very important office.

I also want to thank the Chief and his family for accepting this responsibility at, really, this important time in our Nation's history. So, thank you very much to both of you.

Mr. Chairman, we know that the next ONDCP Director is going to face a number of key challenges. He will play a key role in ad-

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dressing the drug-related violence in Mexico along the Southwest border. We know from history that as the economy falls, crime rises and it is growing at the same time that law enforcement agencies across our country are facing painful cutbacks and greater strains on their personnel and resources.

Law enforcement from all different levels has to work smarter, forge new relationships, and leverage the resources that they do have. Mr. Chairman, Gil Kerlikowske is the right man to address these challenges. He brings a fresh, new perspective to the job as the Nation's Drug Czar. He is a cop's cop and his perspective was shaped controlling the streets in Florida, New York, and Washington State.

Along the way he has helped thousands of people touched by violence and drugs. He and the people he has led have been on the front lines of our Nation's war against illicit narcotics and in keeping our community safe. He'll bring that hands-on perspective to ONDCP.

Chief Kerlikowske understands the importance of partnership between ONDCP and our State and local law enforcement because he has been on the local level. As the head of the Major Cities Chiefs Organization, which represents the 63 largest police departments in the United States, he sees the current problems facing cities across the country.

I've seen his work firsthand as the Seattle Police Chief. This past December, under Chief Kerlikowske's leadership, the Seattle Police Department, in cooperation with county, State, and Federal law enforcement agencies was able to bust a drug ring that stretched from Mexico, to Idaho, to Seattle.

Chief Kerlikowske worked cooperatively to create a regional response to gang violence in Seattle and in King County. He built a coalition with the King County Sheriff's Office, other King County police chiefs, the Washington Department of Corrections, ATF, and other community leaders to tackle persistent gang violence in our neighborhoods. These multi-agency Federal local partnerships require cooperation and compromise.

They require a leader with Chief Kerlikowske's experience to bring them together. Local police chiefs and sheriffs have told me they are sorry to see him go, but the Nation is gaining a true innovator in Gil Kerlikowske. I know he's going to continue to work on these relationships with State and local law enforcement across the country, and this approach will make all of America's communities safer.

Mr. Chairman, I want to add in ending here that he also understands that the drug war will not be won on the streets. For the past 9 years, he has been the national board chairman for the group, Fight Crime Invest in Kids. As this Committee knows, this is a group of police chiefs, sheriffs, prosecutors, and other law enforcement leaders who could easily be fighting only for more cops, more jails, and longer prison sentences, but instead, under the guidance of Gil Kerlikowske, they are working on prevention. They are fighting for early childhood intervention funding, after-school programs, and efforts to prevent child abuse as an effective way to fight crime. He knows that the best way to end the use of drugs and spread of crime is to prevent it.

He will bring this commonsense thinking to ONDCP. He has served the people of my State well and he's going to serve the people of the Nation well. I'm very proud to support his confirmation.

Chairman LEAHY. Thank you. Chief Kerlikowske's concepts were cheered in a hearing in Vermont recently, in St. Albans, Vermont.

Senator Cantwell, you are here also to speak for Chief Kerlikowske.

PRSENTATION OF R. GIL KERLIKOWSKI, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECUTIVE OFFICE OF THE PRESIDENT, BY HON. MARIA CANTWELL, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman.

Chairman LEAHY. I just wanted to show you——

[Laughter.]

Senator CANTWELL. Thank you, Mr. Chairman and members of the Committee. Thank you for holding this important hearing today. I, too, am very pleased to be here, along with my colleague Senator Murray, to introduce Seattle Police Chief Gil Kerlikowske.

I urge my colleagues to swiftly confirm him for the next Director of National Drug Control Policy. I have known Gil for almost a decade, and in his 36 years in law enforcement he has demonstrated that to fight drugs, we must break down the walls between prevention, treatment, and enforcement.

One of the reasons why he was hired in Seattle was because of his expertise in community policing. During his time as Deputy Director of COPS, Gil launched a critical program, like the COPS Meth Initiative and the COPS in Schools programs, and the Tribal Resource Grant Program. As a member of the High-Intensity Drug Trafficking Area executive board, he was a vocal advocate for the resources needed to deal with the meth threat.

Thanks to the hard work of Gil in Washington State, Washington State had a sharp decrease in domestic meth production. In 2001, Washington State had more than 1,400 clandestine lab seizures; in 2008, that number plummeted to only 26.

As Chief of the Seattle Police Department for over 8 years, Gil has been a leader in transforming the way that we combat crime in the 21st century. In 2004, he established a partnership between the Seattle Police Department and Interpol to help combat local crime with international ties, such as human trafficking and drug smuggling operations. He will bring this kind of comprehensive approach to his work combatting drug crimes, working with Federal, State, local, and international partners.

Today we face an increasingly globalized threat from drug trafficking organizations that are going to take a new and collaborative and comprehensive approach. This is evident clearly in Mexico, as the stories are coming out daily. According to the U.S. Director of National Intelligence, Mexico is a conduit for cocaine bound for the United States and it is the chief foreign supplier of methamphetamine to the U.S. market.

Critical networks in Asia and Europe are supplying the Mexican drug cartels with pseudoephedrine and other precursor chemicals they need to mass-produce meth. Even as Federal, State, and local law enforcement shut down meth labs across my State and through

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the country, meth and other illegal drugs continue to flow across the borders and be distributed by local street gangs. Gil Kerlikowske knows you need a comprehensive approach that must address both supply and demand.

The Obama administration is recognizing the need for decisive action, and just last week the Department of Homeland Security Secretary Napolitano announced that hundreds of Federal agents and high-tech surveillance equipment will be sent to the Southwest to stop the flow of drugs and guns. I know that Gil Kerlikowske will work closely with Secretary Napolitano, Secretary of State Clinton, and Attorney General Holder, as well as other local officials to meet these challenges head on.

The U.S. can make a huge difference, both at home and abroad, and I saw this firsthand when I traveled to Colombia in 2007 with many of my Senate colleagues to see the progress that has been made in fighting drug trafficking organizations with the assistance of the United States. Even though Colombia still faces serious challenges, the murder rate in Medellin is lower than Washington, DC today.

Our experience in Colombia has shown it is going to take a comprehensive strategy involving stakeholders at every level and participation around the world to end the flow of drugs that have caused such a devastating impact on our communities. I am confident that Gil Kerlikowske will bring the collaborative approach needed to succeed. He is the right man for this job to be the cop on this beat, and I urge my colleagues to quickly confirm him and send him to the floor.

I thank the Chair for this opportunity.

Chairman LEAHY. Thank you very much. We have a number of votes starting very soon and we'll probably be on the floor. But let me ask Judge Hamilton, Ron Weich, and Chief Kerlikowske to stand and raise their right hands.

[Whereupon, the witnesses were duly sworn.]

Chairman LEAHY. Gentlemen, this is different than we normally do. I'm going to ask all three of you to step forward and I'll let the staff change the——

As Mr. Weich can remember, we were crowding right in here to expedite some—the rest of the building was closed down. We had more bipartisanship I guess at that time because Republicans didn't object to hurrying. I guess it's only more recently. I'm sure it has nothing to do with the change in the presidency.

But Judge, you have members of your family here, do you not?

Judge HAMILTON. I do.

Chairman LEAHY. Could you introduce them so it will be, someday, in the Hamilton archives?

[Laughter.]

STATEMENT OF DAVID HAMILTON, NOMINEE TO BE U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

Judge HAMILTON. Thank you very much, Mr. Chairman. It's a pleasure to be here. I'd also like to thank Senators Bayh and Lugar for their kind words of support and many years of friendship and support. I thank the President for his confidence in me.

With me today are many friends and family who have traveled here from Indiana: My wife, Inge van der Cruysse is here; my father, Dick Hamilton; my sister, Lisa Hamilton and brother, John Hamilton, are here. I wish that my daughters Janet and Debbie could be here, but work and studying in the Nation of Turkey has kept them away. And I wish my late mother, Anna Lee Hamilton——

Also with me are my aunt, Nancy Hamilton; my cousin, Sarah Schmidt; representatives from my wife's late husband's family who have adopted me as an extra in-law, Pat and Russ van Antwerpen and Kristin Gort; and also my long-term assistant, Jenny McGinnis; and my recently retired courtroom deputy, Chuck Bruess, are here. There are also many other friends and former or current law clerks and staff members who have made the trip. I'm grateful for all of them for having come here.

Chairman LEAHY. Judge, while we're here, I hope you have a chance of going to see the cherry blossoms, which has nothing to do with your—yesterday my wife and I were there right after 6 in the morning when the sun came up, there weren't that many people around, and just walked around there for an hour before I came up here. It is a lovely and unique time of the year. It's almost a cliché when people talk about cherry blossom time, but it is a very, very nice and very good time.

Judge, I've tried a lot of cases, as have many others on this Committee. I've also argued a lot of appellate cases, as have many others on this Committee. We have different judges. It's something you don't really—you can't write on a judge's handbook about how they should react, but I remember those judges who treated everybody who came before them with courtesy, treated everybody the same. When you walked in, you did not think, this is predetermined because of who I am, because of my background and my political party, or anything else. Can you assure us that you will be that type of judge?

Judge HAMILTON. I can. And I hope that the record that I've built up over the last 14-plus years as a District Judge reinforces that confidence.

Chairman LEAHY. Do you also understand the sense of having to recuse one's self depending upon a case? Can you give us some ideas of some of the things that might cause you specifically to recuse yourself from a case?

Judge HAMILTON. Well, recusing is governed by Section 455 of the Judicial Code, a statute I'm familiar with, along with the Codes of Conduct for the Federal Courts. We go through elaborate processes for disclosure of any financial interests we might have and parties that might come before us, and any kind of financial interest requires recusal. We have automatic procedures in place in our court, and I think in most other Federal courts, to prevent a judge from being assigned to a party—to a case in which a party would require that judge's recusal. So we try to minimize that as much as possible.

There are—there have been situations earlier in my career where I had to recuse in a number of cases because of pending litigation or ongoing legal relationships that stemmed from my work in private practice and with State government. When I became a District

Judge I had proposed a method for dealing with that to the Judicial Conference Committee on Codes of Conduct. They endorsed the approach that I took, I followed it, and now recusals are pretty few and far between.

Chairman LEAHY. It's been a few years since you were in private practice.

Judge HAMILTON. Yes, sir.

Chairman LEAHY. But you could have one if you had——

Judge HAMILTON. There are family relationships.

Chairman LEAHY [continued]. Party to—financial.

Judge HAMILTON. My wife is a—my wife practices law, my brother-in-law practices law in the Federal courts within the Seventh Circuit, and obviously I would be recused from any case in which they were involved.

Chairman LEAHY. How many members are in the Seventh Circuit?

Judge HAMILTON. There are 11 active judge seats.

Chairman LEAHY. So it's not as though the court comes to a screeching halt if you recuse yourself.

Judge HAMILTON. No.

Chairman LEAHY. And would it be safe to say it's easy to err on the side of caution in those kind of things?

Judge HAMILTON. It is. I believe the Seventh Circuit also has a similar program in the Clerk's Office where specific parties or lawyers can be identified so a case involving those parties' lawyers will never be assigned to the judge in the first place.

Chairman LEAHY. Unlike the District Court where you're bound by the stare decisis not only of the Circuit, but in the U.S. Supreme Court you only have the Supreme Court for stare decisis. But also, of course, a Circuit Court can reverse their own decisions.

Would you agree with me that for a Circuit Court to change their own precedent would require a pretty significant situation or a pretty significant shift in the law throughout the country?

Judge HAMILTON. It would have to be pretty rare. I agree with that, Mr. Chairman. I can think of a couple of examples recently in which the Seventh Circuit has done so, where the Seventh Circuit had decided a particular issue under a relatively new statute and no other circuits followed it. The Seventh Circuit, upon—when asked to reconsider those questions, has gone back and decided, all right, we'll come in line with everyone else.

Chairman LEAHY. But depending upon what the circumstances were, it would reflect——

Judge HAMILTON. Exactly.

Chairman LEAHY [continued]. This happening in the rest of the country.

Judge HAMILTON. That, or an intervening Supreme Court decision.

Chairman LEAHY. And of course if there is a Supreme Court decision on—it's very easy

Judge HAMILTON. It is.

Chairman LEAHY. Thank you.

Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much.

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Welcome to all three of you. I can pronounce your name, Chief, having known you for a while. But Judge Hamilton——

Chairman LEAHY. That's going to be the new test.

[Laughter.]

Senator KLOBUCHAR. Those "K" names that are long are always difficult.

[Laughter.]

Thank you very much. I was just reading up—as I was listening to our colleague, to Senator Specter—just about, in fact, some of the background. When someone did look at your whole record as opposed to picking out a few cases that they may have disagreed with, I'm sure all of us would disagree with individual cases that a judge—decisions a judge made here and there.

But as Senator Specter pointed out, you presided over the closing of approximately 8,000 cases, which I think, at the very least, shows you're quite efficient. Of that number, you've presided over approximately 3,000 cases that went to verdict or judgment based on trial and/or decision you made, with roughly 1,150 written opinions. The American Bar Association, which did an exhaustive examination of your credentials, your record, and your temperament, concluded that you deserve the highest rating of Well Qualified.

It's my understanding, in response to some of the issues raised with a case here or there, to get that rating the ABA must find the nominee to be at the top of the legal profession, have outstanding legal ability, breadth of experience, and the highest reputation for integrity, and demonstrate the capacity for sound judicial temperament.

So when the group that has done this exhaustive examination of your record gave you the highest rating unanimously, I just question—well, everyone has a right to question a judge's decisions here and there, and I'm glad that our colleagues appear to want to talk to you about these individually. I just think that that means a lot to me to read something like that.

But I just had one or two questions. One, was I know Chief Justice Roberts, at his confirmation hearing, talked about how he would like to see the Supreme Court make decisions and strive for consensus in decisions. Do you think that the U.S. Court of Appeals should be striving for consensus as well? You've gone from a District Court now to more of group decisionmaking.

Judge HAMILTON. I think that's one of the major changes that I contemplate for moving from the District Court to the Circuit Court, if the Senate was to confirm my nomination.

I'm used to making decisions on my own, with help from staff and able law clerks, and so on, but they have to be my decisions. At the same time, I have worked in a very collegial court in the Southern District of Indiana, with friends and colleagues. We don't select our colleagues; other people do that on the court.

Senator KLOBUCHAR. I know what that's like.

[Laughter.]

Chairman LEAHY. Very good.

[Laughter.]

Senator KLOBUCHAR. Continue on.

Judge HAMILTON. We don't always agree on everything but we work together well, we exchange our views, we make our decisions,

and we move on. I know the members who are now on the Seventh Circuit and I would expect to be able to work with all of them on a similar kind of basis. I hope that I'll be able to.

Senator KLOBUCHAR. Very good. And I want to allow my colleagues here to ask a question or two.

One other question. You have been on the Federal bench for about 14 years, and as Chief Judge of the Southern District of Indiana since 2008, what are the challenges that you see for the Federal bench? I'm new on the Judiciary Committee and I'm looking forward to working with all of our judges on what are the challenges you see ahead.

Judge HAMILTON. Given my role, I should say first of all you should listen to whatever the Judicial Conference says—those are my bosses—on those sorts of issues. But from my perspective I would say to be cautious about the expansion of Federal jurisdiction, both criminal and civil.

We have plenty of work to do. I hope that Congress will maintain the distinct characteristics of Federal jurisdiction so that Federal courts can continue to play the special role that they do in our society. I hope that the Congress will continue to provide the adequate resources to the Judiciary as a whole. I know that's other committees besides this one's business, but that's going to be important.

I have to also, I think, say something about dealing with long-term criminal justice issues and working to develop effective punishment for the serious crimes that will protect the public, prevent further crime, and also manage that very difficult problem at reasonable public expense. Those would be my highlights, but as I say, I'd better defer to my bosses on any such administrative matters, the Judicial Conference.

Senator KLOBUCHAR. Thank you very much.

Judge HAMILTON. Thank you, Senator Klobuchar.

Chairman LEAHY. Senator Kaufman, before we go to you, I know the votes are just about to start. I wonder if I could ask both of the nominees, for the record, to introduce their families. It's somewhat close in here and some may have to leave.

Mr. Weich, you want to introduce your family for the Weich archives?

[Laughter.]

STATEMENT OF RONALD H. WEICH, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE

Mr. WEICH. I'm joined today by my wife, Joan Stewart. Behind her are my two brothers—since I was 6 years old. They are both real troupers today, but I'm going to say if they want to leave——

[Laughter.]

And I'm also joined by my parents, Robert and Cecilia Weich, who are from the Eastern Shore of Maryland, and originally from New York. I'm also joined by some of my colleagues, friends, and former colleagues and I appreciate all of them being here.

Chairman LEAHY. And we'll add all of their names to the record. You have two lovely daughters. If you want to take off, your dad's going to be Okay.

[Laughter.]

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STATEMENT OF R. GIL KERLIKOWSKE, NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY, EXECTIVE OFFICE OF THE PRESIDENT

Chief KERLIKOWSKE. Mr. Chairman, I'm joined by my partner, my wife, Anna Laslow, who is behind me. I am also joined by a number of friends and colleagues from my time as a Visiting Fellow at the Justice Department under Attorney General Edwin Meece, former Director of the National Institute of Justice, James K. Stewart, and a number of—just a number of friends from many years in law enforcement. So, thank you for that opportunity to introduce them.

Chairman LEAHY. Thank you.

Senator Kaufman.

Senator KAUFMAN. Yes. Judge, I am very impressed with your credentials and your experience and I think we're a really fortunate country. The country is fortunate to have you willing to take on this additional responsibility.

For 14 years you've been on the District Court. How is that experience, do you think, going to affect your role when you're going to be judging appeals from your present colleagues?

Judge HAMILTON. I think that my work on the District judge—as a District judge has given me greater hands-on insight to what goes on in District Courts, to the kinds of decisions that have to be left to the sound discretion of the District judge who's managing a docket, managing a trial, as well as to those legal issues that the Court of Appeals has to decide uniformly for the entire Circuit.

I hope it has helped me prepare to know how to read a transcript, the proverbial "cold transcript" that an appellate court must review, and to know the different kinds of tones and scenes that the same whole transcript can actually describe. I certainly have seen my cases go up on appeal. Sometimes they don't always look the same on appeal as they look to me at the District Court level, and I hope I can appreciate that difference with my colleagues whom I respect so much on the District Courts within the Seventh Circuit.

Senator KAUFMAN. You know, I'm impressed by the breadth of the support that you've received across the whole political spectrum. Can you talk a little about the relationship between your kind of personal opinions, political opinions as opposed to your opinions as a judge? I know you've had a lot of experience with that. Could you talk about that?

Judge HAMILTON. As a judge, you put your personal opinions aside. They really don't have any place in making those decisions. The decisions that I have to make are based upon the Constitution and the laws of the United States. They're based upon the interpretations of those provisions and statutes by the Supreme Court of the United States and the Seventh Circuit, taking advice also from other circuits, other Federal judges and State courts dealing with the same issues. But it's not a—the Federal judiciary is not a place for anyone to exercise their personal opinions.

Senator KAUFMAN. Thank you. I think you've made pretty clear where you stand on that.

Thank you, Mr. Chairman.

Chairman LEAHY. Thank you.

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Mr. Weich, we have—in the 1990s, Congress and the administration the State and local law enforcement as never before. We had the COPS program, the Byrne Justice Assistance Grants program. The Chief is well aware of those. Now we find kind of a double-whammy. The economic crisis of this country cuts back funding at the same time the economic crisis sees crime rising.

We had a Judiciary Committee hearing earlier this year and we had police chiefs and policy experts who made clear that if we continue to dismantle help for local law enforcement, it's going to be a catastrophic problem.

Will you work with the Congress to help us increase Federal funding for—not only for Federal law enforcement, but for local law enforcement?

Mr. WEICH. Yes, Mr. Chairman, I will. As you may know, at the outset I'm a former local prosecutor myself. I worked in the Manhattan District Attorney's Office at the beginning of my legal career. I understand, I think, the needs of State and local law enforcement. My work with the Congress and the Senate, for three different members, has really impressed upon me how strongly Senators feel about needing to assist local law enforcement in their States. So as the Assistant Attorney General for Legislative Affairs, if confirmed, I would certainly work to impress upon decisionmakers, even the administration, of the need for that kind of support.

Chairman LEAHY. And also for the community-based efforts that oftentimes are helping the Department of Justice. As the Chief has said, and others, it's not just law enforcement that can stop it, especially in the area of youngsters, drugs, and so on. But the whole community has to be involved. Now, in the past, since this Department has been helpful in those areas—less so recently—will you work with us to bring it back to where DOJ and our national programs can help with community policing and community crime prevention?

Mr. WEICH. I certainly will. There's a whole set of grant programs within the Office of Justice Programs, in our COPS office, as you say, that are, I think, really starved for support. The stimulus bill includes new resources in those areas, but there's more that needs to be done. I know Attorney General Holder and the President, President Obama, are very committed to those programs. In the role that I will play, I would make sure that those decisionmakers are aware of how strongly Congress feels about this.

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

Mr. Weich, congratulations.

Mr. WEICH. Thank you, Senator.

Senator KLOBUCHAR. The Chairman touched on this a bit, and I know you know in Minnesota we had a big problem with our U.S. Attorney's Office in terms of a political appointment that got fixed, actually, by Attorney General Mukasey when he came in. But could you talk a little bit about the morale issue within the Department? I mean, that won't be a primary responsibility. I asked this of Attorney General Holder and others, but what do you think needs to be done after this era that we lived through with the Department of Justice to improve the morale?

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Mr. WEICH. Well, Senator Klobuchar, I'm not in the Department yet and—so I can't speak firsthand about the state of morale. I do know—I was in the building, in the Department of Justice, when Attorney General Holder was sworn in the day after his confirmation. Senator Leahy was there. And it was a very exciting moment.

I have the impression that the career employees at Department of Justice were very excited to see him arrive. The career employees are really the backbone of the Department, so everything that the new Attorney General and his team can do to strengthen morale within the building, and if confirmed to join the Department of Justice team, I will do what I can to make sure that those employees and officials know how much they're appreciated and how important their work is.

Senator KLOBUCHAR. It's real interesting, because clearly part of the problem was the injection of politics into the Justice Department that made for some of the problems. Your role is going to be as legislative liaison. I know in your prepared remarks you talked about, that we need to have a healthy relationship between the Justice Department and this Committee, and how that is crucial to Federal law enforcement.

Do you want to talk a little bit about what you meant by a "healthy relationship"?

Mr. WEICH. Sure. I thought a lot about it in my—in my time working for three different Senators, Senator Specter, Senator Kennedy, and now Senator Reid, and I have the perspective of working both on the committee and for the Democratic Leader. Obviously the Constitution creates sort of an inherent tension among the branches. That's what checks and balances is all about.

But I think it's so important for leaders of the three branches to be able to speak to each other constructively, openly, with trust and respect, and I think I could facilitate that, if confirmed as the Assistant Attorney General, to at least improve and strengthen the relationship between the legislative branch and the Justice Department. If that kind of communication goes on, then I think the branches can work as partners to address the problems that the American people want to address.

Senator KLOBUCHAR. Thank you.

Chairman LEAHY. Senator Whitehouse just came in. Also, a vote has started.

Senator WHITEHOUSE. Well, it just started at 3:27.

Chairman LEAHY. I'm going to go vote. Please continue and I'll be right back.

Senator KLOBUCHAR. This is my party now.

[Laughter.]

Unfortunately, half the people didn't come, but that's Okay.

[Laughter.]

Senator WHITEHOUSE. Thank you. I just have two questions. The first is for Judge Hamilton. Welcome, Your Honor.

Judge HAMILTON. Thank you, Senator.

Senator WHITEHOUSE. As I understand it, you were appointed to the U.S. District Court in 1994?

Judge HAMILTON. Yes.

Senator WHITEHOUSE. You went through a full FBI field background check at the time?

Judge HAMILTON. I did.

Senator WHITEHOUSE. You were confirmed by the Senate?

Judge HAMILTON. Yes.

Senator WHITEHOUSE. Everybody had adequate time, if they wished, to review your past until 1994 at that point?

Judge HAMILTON. I suppose so.

Senator WHITEHOUSE. One would suppose so, wouldn't one? For 14 years you've led a relatively public life as a member of the U.S. District Court and as the Chief Judge of that court. Is that correct?

Judge HAMILTON. I say the work I've done is public, my life is private, some would say monastic. But, yes.

Senator WHITEHOUSE. Given the fact that you've been cleared once already, the fact that your work is a matter of public record, the fact that you're in a very public position as the Chief Judge of the U.S. District Court in your district, can you hazard a guess as to what of concern might not be available to our friends on the other side that has caused them to fail to appear for this hearing?

Judge HAMILTON. Senator——

Senator WHITEHOUSE. You're a pretty open boOkay. All you have to do is read it, right?

Judge HAMILTON. Senator, I'm glad to be here and my record is open. I appreciate the opportunity to appear before the Committee.

Senator WHITEHOUSE. I appreciate it. Thank you very much, Your Honor.

I will—Chief Kerlikowske, we've spoken before on this subject so I won't make you go through this again. But I would like, with the Chairman's permission and with unanimous consent, to make a request for the record that you respond on the issue of the Drug Enforcement Administration interference with e-prescribing and with the reforms that the President has promised in the area of electronic health records by virtue of insisting on a paper system being maintained by doctors for controlled pharmaceuticals, even if they have gone to an electronic prescribing system, which is obviously much more efficient for other pharmaceuticals.

I'd like to express for the record, as a former Attorney General and as a former U.S. Attorney, my very strong belief that an electronic system would actually be a very positive development for law enforcement and a very useful tool for law enforcement in looking at drug diversion offenses, and the DEA would actually be far stronger and more effective in dealing with the increasing issue of drug diversion if they would get out of the way and allow us to move to electronic prescribing and allow reasonable regulations to go forward that would support that transition. If you would take that question for the record, I'd appreciate it. If you have any comment you'd like to make now, I'd be glad to hear it, but I'll put the question for the record.

Chief KERLIKOWSKE. Senator, I just would like to tell you that I very much appreciate you and your staff explaining the details of that issue and, if I am confirmed, it will be one of the issues that I will certainly get very much more involved with and work more closely. An improved health care system is something close to everyone's heart, and an improved law enforcement system is also. So, you can rest assured that I will do that.

Senator WHITEHOUSE. I appreciate it. I thought in the last administration that we had to introduce the head of the Drug Enforcement Administration to the head of the Department of Health and Human Services and remind them that they worked for the same President and wondered why they weren't going in the same direction. It wasn't very successful, but it provided for an excellent hearing in the committee that I was then chairing.

[Laughter.]

Thank you very much. I thank the Chair. I will excuse myself to vote.

Senator KLOBUCHAR. Senator Kaufman.

Senator KAUFMAN. Yes.

Mr. Weich, I can't think of anybody coming to your position with better experience for what you're going to be doing.

Mr. WEICH. Thank you, Senator.

Senator KAUFMAN. You're one of the few I've ever seen that has bipartisan experience in the Senate, which is kind of unusual. So I think—plus your knowledge and experience you had.

Can you just talk for a few minutes about kind of how you see your role in terms of dealing with the Congress for the Justice Department? And by the way, the final thing I want to say is how fortunate the Attorney General is in having you nominated to help him with his job.

Can you talk a little bit about your role in kind of dealing between the Congress and the Justice Department?

Mr. WEICH. Well, thank you, Senator Kaufman. I do see the role of the Assistant Attorney General for Legislative Affairs as being kind of a translator, if you will, between the branches. And it's a two-way street. That is to say, I think the Assistant Attorney General has to represent the interests of the Department before Congress and explain in advance legislative initiatives and other policies, but at the same time I see the role as communicating to the Justice Department the views of the Congress. These worlds are sometimes too separate, and the more that I can do to bridge the gap and make sure that both—leaders in both branches understand what the other branch is thinking, I think the better the product will be, both legislation and the policies of the Department.

Senator KAUFMAN. Chief Kerlikowske, I mean, again, this is a great panel. I think everyone here is extremely well-qualified for what they're doing and I think we're really fortunate you're willing to come here and take on what is without a doubt one of the widest ranging jobs in the U.S. Government.

Can you kind of talk—all these different things that you're doing, kind of what your priorities are in your new position?

Chief KERLIKOWSKE. Thank you, Senator. I don't think many people outside government and out in the field—and I've spent my whole life out in State and local law enforcement—understand the wide array of responsibilities that the Director's position holds and the amount of authority that it holds over—over the budget, that setting a national drug strategy for the President of the United States is by far the most important task of the role.

But then when I look at the other priorities, clearly breaking down the silos and—I think instead of the—Senator Murray mentioned that, this isn't an either/or; it isn't about treatment or about

law enforcement, it isn't about source country eradication or about rehabilitation and recovery. Particularly in these incredibly difficult economic times, having people work together—and I always listen to them very carefully, and was listening carefully when Senator Whitehouse mentioned about everybody fully together in the same direction.

I think my background and experience in that area can help to break down some of these things so that we don't try and either arrest our way out of a problem or we don't realize that the criminal justice system is, in fact, a significant player in bringing people back into recovery and back into mainstream——

Senator KAUFMAN. Thank you. Again, I'm going to go vote—willing to take on these responsibilities. Thank you.

Judge HAMILTON. Thank you, Senator Kaufman.

Senator KLOBUCHAR. Chief, when we visited in my office we talked about drug courts and about how we both had experience with drug courts. I had the experience of a drug court, but its jurisdiction, I thought, was too broad in that it included gun cases and all kinds of things. The joke with the cops was, if you had a gun with you, you'd better hope you have drugs because then you could go to the drug court. And we changed that, actually, and as a result there was more support with law enforcement. Yet, it still took care of so many of our low-level drug offenses. Could you talk about your view of drug courts and how that would fit in nationally with what you want to do with your job?

Chief KERLIKOWSKE. I can, Senator. Clearly the drug court movement in this country—and I was fortunate to have been involved with Attorney General Reno when she persevered when moving that forward—first drug courts in the country, and I've been very fortunate to have officers assigned full-time to the drug court in Seattle.

Having gone to drug court graduations in several cities, I can't think of a more worthwhile experience, not just for a police chief or a sheriff, but also for a citizen to see people under the auspices of the right judges who are making sure that these people not only pay their debt back to society, but when they return back into society they return as productive, taxpaying citizens. I'm a big fan.

Senator KLOBUCHAR. Okay. Very good. Well, thank you.

I have to go vote, so I'll turn this back to Chairman Leahy.

Chairman LEAHY. Thank you.

Senator KLOBUCHAR. I had memorized all your key cases, Judge Hamilton, last night for my moment when Chairman Leahy was going to leave, but there was no one to tango with.

[Laughter.]

Chairman LEAHY. I haven't memorized anything.

Senator Schumer.

Senator SCHUMER. Mr. Chairman, you don't have to memorize anything, you're the Chairman.

[Laughter.]

Chairman LEAHY. Very recent rumors——

Senator SCHUMER. Anyway, first, I want to thank you for holding this hearing, Mr. Chairman.

First, about Ron Weich, I've worked with him very closely over the last several years, so has my staff, and I think we all can say

without reservation he's the right person for the position of Assistant Attorney General for the Office of Legislative Affairs. I say with pride, he's a son of the Bronx, a product of the New York City—in Brooklyn, being from the Bronx is almost as good.

[Laughter.]

He's a product of the New York City public school system.

Word of his nomination made it back home. There's a glowing letter of recommendation in his record from a legendary District Attorney of Manhattan, Bob Morgenthau, another special narcotics—from the Special Narcotics Office for New York, Bridgett Brennon, and they have seen, as I think we all have, Mr. Weich's professionalism, legal skill, and commitment to justice.

Judge Hamilton, your record on the bench speaks for itself. I look forward to seeing you continue that success on the Seventh Circuit. And to Chief Kerlikowske, who I have also known for many years, particularly in your past life as Commissioner of the Police Department of Buffalo.

Judging from your experience, it's clear to me that you're the right person to lead ONDCP now. We've worked closely together. In fact, some of the ideas that I brought down here legislatively were ideas that Chief Kerlikowske had been formulating and working out in Buffalo, did a fabulous job. He knows—Gil Kerlikowske knows, Chief Kerlikowske knows that drug problems aren't limited to New York City, Chicago, or Los Angeles. They're real, they're close to home, and they're everywhere.

So with the Chairman's permission, I'd just like to ask you a couple of questions which we had talked about, Chief, that are of great concern to me.

First, about cartels and gangs in Buffalo. A recent Justice Department report found that "Mexican drug trafficking organizations maintain drug distribution networks or supply drugs to distributors in at least 230 cities."

Now, two of those cities listed were Albany, New York and Buffalo, New York. The DOJ explicitly, specifically identified the Gulf Coast cartel, one of Mexico's most notorious cartels, as having connections in Buffalo, and there's the related problem of violent street gangs making their way into the area. Just a few weeks ago, we saw a takedown of 28 members of the Bloods street gang in Niagara County, a county right to the north of Erie County, in which Buffalo is.

All of this leads to the question of whether there are enough resources to tackle the problem. So my first question to you is, can you commit to dedicating specific attention and resources to drug trafficking—to fighting drug trafficking organizations in places like Buffalo and Albany, and then what specific actions might you take?

Chief KERLIKOWSKE. Thank you, Senator, very much. The experience in Buffalo was one that was particularly close to my heart. The first year I was there, we had the highest number of homicides ever in the history of the city, a very troubling time. Then to be able to leave 5 years later with a 38 percent reduction in crime, all that the men and women of that department did, I was impressed.

I can commit to you in a number of ways that I will work very hard to make sure that the appropriate resources, if I am con-

firmed to this position, will be put onto the front lines as there are not only a number of HIDTAS in northwest, but having experienced how important HIDTAs are at bringing State, local, and Federal law enforcement together with Federal prosecutors. Those are particularly important issues to me. Also making sure that we all understand that we can't sever out particular things, a drug trafficking organization versus a violent crime organization. They are so interconnected, that we need to keep those things in mind.

The last thing I would mention to you, Senator, is that when I talk to all of my colleagues, whether it's the chief in Minneapolis or at the farthest northern parts of our country, we know that the Southwest border doesn't stop at Texas or Arizona.

Senator SCHUMER. Right. Good.

So you will commit to helping bring the resources needed to deal with these problems in Buffalo and Albany in particular?

Mr. WEICH. If I'm confirmed, I'll do everything possible to do that, Senator.

Senator SCHUMER. Right. Okay.

The next one is a little bit related. We talked about this at our meeting, too. We're having an explosion of hydroponic marijuana coming down across New York's northern border from Canada. I don't know if this is affecting your State as well, Mr. Chairman; it may well.

Chairman LEAHY. Yes.

Senator SCHUMER. Last November and December, we saw two major drug busts in border counties. They involved 20 suspects, millions of dollars of drugs, all smuggled through the northern border.

So my question to you is, why wouldn't expanding the HIDTA designation to New York's four northern counties—as you know, we worked, when you were a police chief, on bringing HIDTA to upstate New York, which we did and it's been a great success. But it's in counties like Erie and Albany County, but it isn't in the four northern border counties. Wouldn't expanding HIDTA be a good response, not only for New York but for the whole country, since this is a gateway by which marijuana is smuggled in, and particularly the fact we've had problems at the Indian reservation there?

Chief KERLIKOWSKE. Senator, I think we've seen great success with HIDTAs. If I'm confirmed in this role, I can tell you that I will look very carefully to make sure that, as the definition of the HIDTAs are, for those High-Intensity Drug Trafficking Areas, that those finite resources in that collaboration are pot into the places in which we're seeing the most transshipment of drugs, the most dangerous drug trafficking organizations, and I will certainly commit now to that.

Senator SCHUMER. Taking a real careful look?

Chief KERLIKOWSKE. Yes, sir.

Senator SCHUMER. Okay. I think when you look at it, you're going to find that they belong in HIDTA.

One other thing about this issue, and then I have one more question. We're always worried, Senator Leahy, myself, others who are on the northern border, that the southern border gets all the attention and we don't have enough resources. Will you make sure that

no resources are diverted from the needed northern border activities to go to other parts of the country?

Chief KERLIKOWSKE. Senator, one of the most important things I'll be doing is—if I am confirmed in this role, will be to work very quickly with all of those other Federal counterparts: Border Patrol, Customs & Border folks, et cetera.

Senator SCHUMER. Right.

Chief KERLIKOWSKE. To make sure that I'm doing my job, my role as convener, as a collaborator, and making sure that the President's policy is carried out. And clearly, I know from my experience in Seattle and my experience in Buffalo, that transshipment across the Canadian border of drugs, and of course the smuggling of other things, are very important issues not only to the Federal law enforcement colleagues, but certainly to the effect that they have on our communities. So, yes.

Senator SCHUMER. Good. Thank you.

And one final one. This is about another crime problem we have in upstate New York. This is meth, crystal meth, in the southern tier. The number of meth labs in New York has been decreasing. That's good. We've had great help from law enforcement. We've all focused on this. There's still a problem of meth use. This is a different problem than manufacturing or trafficking, but use in New York's southern tier. And you know, once these people become addicted to meth it's really hard to break.

Will you focus on both existing programs and new programs as Drug Czar to help us cut down on meth use in the less densely populated areas of the country, like New York's southern tier?

Chief KERLIKOWSKE. Senator, I think there's a general feeling among many in law enforcement that the Federal Government was slow off the mark to recognize the problem of meth, and even though it still ranks on a national scale at a fairly low level, we know that in particular pockets of this country it has been an absolutely devastating drug.

If I'm confirmed, I'd like to see an ONDCP that's more flexible, that's able to move much more quickly on emerging drug threats, and that the important part of people that have become addicted, particularly, as you mentioned, the difficulty of getting someone off the addiction of methamphetamine, that the treatment issues and the rehabilitation issues are given as much of a priority as the enforcement issues.

Senator SCHUMER. Mr. Chairman, thank you. And I thank all three of our nominees here and I think they're a great group.

Chairman LEAHY. Thank you.

Judge HAMILTON. Thank you.

Mr. WEICH. Thank you.

Chief KERLIKOWSKE. Thank you.

Chairman LEAHY. Judge Hamilton, I know when Senator Specter was here he mentioned some of your cases. He did say he didn't necessarily disagree. But one was *Dole* v. *Prosecutor*, *Marion County and Henrichs* v. *Bozeman*, and *Women's Clinic* v. *Neiman*. Do you have any of the cases that have been mentioned here that you want to say anything about?

Judge HAMILTON. Thank you, Mr. Chairman. I appreciate the opportunity to address those concerns. The cases are all very familiar,

too. I could probably talk about them a long time, but I'll try to be relatively brief.

First, let me say with respect to the case of *Dole* v. *Prosecutor*, I believe that there may be some misimpressions about that decision. Indiana has a statute that requires sex and violent offenders to register periodically with law enforcement where they live, and work, and go to school.

In 2008, the Indiana legislature tightened some of those requirements. It added, for example, requirements that sex and violent offenders register with the State e-mail addresses and user names that they use in chat rooms. There has been no controversy about those provisions or the original sex offender registration provisions at all. None of those provisions were part of that case.

The one provision that was at issue in that case was a new requirement requiring sex offenders and violent offenders who had already completed all aspects of their criminal justice sentences, not only their prison sentences but also court supervision in the form of probation, parole, or supervised release, to consent to search of their computers and homes at any time without a warrant, without any individualized suspicion.

In a fairly lengthy opinion I explained why I thought, as applied to those offenders who had already completed their full sentences and who were no longer under supervision, a requirement that they be vulnerable to searches of their homes and computers at any time, without a warrant, is contrary to the Fourth Amendment. There was no appeal, I should add, from that decision. The State of Indiana has accepted that decision. There was no appeal.

If I could speak briefly about the case of *Bozeman* v. *Henrichs*, I did not hold that legislative prayer was unconstitutional. What I held was that, on the facts presented to me, systematically and pervasively, sectarian prayers from the official podium of the House of Representatives did violate the establishment clause. What I did, was apply the principles that the Supreme Court had embraced in a case called *March* v. *Chambers*, the Supreme Court's venture into the issue of legislative prayer.

My decision on the merits was consistent with other appellate courts, both in the Federal and State court systems that have dealt with similar practices of persistently sectarian prayer in an official forum. I certainly hope that the decision is not interpreted at all as limiting anyone's free exercise of religion, nor is favoring any one religion over another. The whole idea of the establishment clause is that government stays neutral in matters of religion.

As Senator Specter pointed out, the decision was reversed ultimately on appeal on the issue of standing. The case came before me with several taxpayers objecting to the use of their tax money to support this practice. I applied the laws of taxpayer standing under the establishment clause as it existed at the time under then-controlling precedents the Supreme Court had——

Chairman LEAHY. This was before *Hine* v. *Freedom*.

Judge HAMILTON. Precisely. When the case first went to the Seventh Circuit, the Seventh Circuit, in an opinion written by Judge Ripple, whose retirement created the opening here, Judge Ripple and the panel wrote an opinion, saying, in essence, that I had de-

cided the standing issue and the merits issues correctly and they left my injunction in place pending the appeal.

While that appeal was pending, the Supreme Court decided the issue of *Hine* v. *Freedom From Religion Foundation*, which reshaped in ways that I think still remain to be worked out, the doctrine of taxpayer standing under the establishment clause, and that panel divided 2:1 on how to apply Hine standing issue there.

Chairman LEAHY. And you did not have Hine as stare decisis in any form at the time you made your decision?

Judge HAMILTON. I did not. I applied the controlling precedents in place at the time. With respect to the Newman decision, what I was doing was applying the principles adopted by the plurality opinion, the controlling plurality opinion in *Casey* v. *Southeastern Pennsylvania*. And I think it was clear that the Casey opinion left open the potential for a challenge to waiting period and informed consent laws after there was some experience with those laws.

So there was an invitation, in essence, to parties who opposed such laws to develop that evidence and bring it before an appropriate court. I wound up being the court where that evidence was presented. I examined it carefully. I heard mention of the fact that the case took some time to decide. I would add that the case was brought in 1995.

I issued a preliminary injunction against enforcement of the statute in the fall of 1995. The State did not appeal that decision. Instead, the case was diverted to the State courts to resolve some issues of State law. When it came back to Federal court, I modified the preliminary injunction accordingly. There was, again, no appeal in the preliminary injunction. My recollection is that then the parties engaged in a fairly elaborate and lengthy process of discovery that involved complex statistical evidence.

Professors from several universities were brought in to examine the statistics. My recollection is that I scheduled the trial when the parties told me they were ready, after they had ample opportunity to study the experience in other States of similar laws. I held the trial, accepted additional evidence that the parties wanted to submit afterwards, as well as elaborate briefs, and decided, I think, with appropriate speed——

Chairman LEAHY. That was the parties on both sides? That was the parties on both sides?

Judge HAMILTON. It was. That's my recollection, Senator.

Chairman LEAHY. Well, do you have any other——

Senator SCHUMER. Yes. I just—no, I just wanted to make a comment, Mr. Chairman. I regret that our colleagues are not participating here. It doesn't bode well for moving and filling vacancies on the bench. You—when they were in the majority, Mr. Chairman, you led us. And we asked a lot of questions, we opposed certain nominees, but we never boycotted.

A first nominee who is supported by the Republican Senator from his home State, who is known from—you know, in jurisprudence as a moderate, supported by a member of the Federalist Society, I just find it—I just have to say it's just regrettable and I want to apologize to you, Judge Hamilton. The questions that you should be asked by some who might—maybe they don't have any difficult questions to ask you, or they think they can't get you on asking

questions so they don't come. But I just find this—let's put it like this. I think they're off to a bad start.

Chairman LEAHY. Well, you know, I won't question anybody's motives. I am—statistics. I would note that when the Democrats were in charge we moved more of President Bush's nominees, faster, than when the Republicans were in charge, to try and demonstrate that we wouldn't be partisan. I hope they're not going to be partisan on this.

We're not going to hold this hearing—it's going to be slightly over 3 weeks before we have a mark-up on this, so it'll be the first Thursday when we come back. I'll keep the record open until the end of this week. Any one of you can add to it, but you have to sit here. Certainly anybody can ask any questions. I've been here longer—in the Senate longer than any member of this Committee. We've had several long—ones but I've never known a time, whether somebody was for or again, that needed more than 3 weeks to get the answers to my questions.

We'll stand in recess. I congratulate you all, and I thank you all for being willing to answer your Nation's call in this way. Each one of you has answered the—call before and I appreciate you doing it again.

[Whereupon, at 4 p.m., the hearing was adjourned.]

[The Questionnaire and questions and answers and submissions for the record follow.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

   David Frank Hamilton

2. **Position**: State the position for which you have been nominated.

   United States Circuit Judge for the Seventh Circuit

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

   Office: United States District Court for the Southern District of Indiana
   46 East Ohio Street
   330 Birch Bayh United States Courthouse
   Indianapolis, Indiana 46204

   Residence: [redacted]

4. **Birthplace**: State year and place of birth.

   1957; Bloomington, Indiana

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

   1980 – 1983; Yale Law School, New Haven, Connecticut; J.D. 1983

   1979 – 1980; University of Tuebingen, Tuebingen, Germany
   Fulbright Scholarship – no degree

   1975 – 1979; Haverford College, Haverford, Pennsylvania; B.A. 1979

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Full-time Positions

October 28, 1994 to present
United States District Court for the Southern District of Indiana
46 East Ohio Street
330 Birch Bayh United States Courthouse
Indianapolis, Indiana 46204
United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Partner

January 1989 to July 1991
Office of the Governor of the State of Indiana
206 State House
Indianapolis, Indiana 46204
Counsel to the Governor

October 1984 to January 1989
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Associate

September 1983 to September 1984
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604
Law clerk to Judge Richard D. Cudahy

Summer 1983
Kirkland & Ellis
200 East Randolph
Chicago, Illinois 60601
Law clerk

Summer 1982
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Law clerk

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Summer 1982
Latham & Watkins
(now located at 555 Eleventh Street, NW, Suite 1000)
Washington, D.C.
Law clerk

Summer 1981 (and part-time during 1981-82 academic year)
Jacobs, Grudberg & Belt
350 Orange Street
New Haven, Connecticut 06511
Law clerk

May -June 1979
Association of Community Organizations for Reform Now
Philadelphia, Pennsylvania
Fundraiser

Part-time Positions and Activities

2008 and 2009: Judge on selection panel for Hon. Richard D. Cudahy Prize, an annual writing competition on administrative law underwritten by donations from Judge Cudahy's former law clerks and staff, and sponsored by the American Constitution Society, 1333 H Street NW, 11th Floor, Washington, DC 20005

2006 to present: Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

Spring 2004: Adjunct Professor of Law, Indiana University School of Law (course on federal jurisdiction), 211 South Indiana Avenue, Bloomington, Indiana 47405

1999 to 2007: Member, Board of Visitors, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

1993 to 2008: Director of William E. Schmidt Foundation (charitable foundation established by and named for my mother's brother)

1991 to 1994: Partner, BT Building Company, a partnership that owned and operated the building where Barnes & Thornburg has its Indianapolis office

Spring 1988: Adjunct Professor of Law, Indiana University School of Law (course on antitrust law), 211 South Indiana Avenue, Bloomington, Indiana 47405

1987 to 1988: Vice president for litigation and board member, Indiana Civil Liberties Union, Indianapolis, Indiana

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1985 to 1986: Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

Fall 1982: Teaching assistant, Professor Peter Schuck, Yale Law School, 127 Wall Street, New Haven, Connecticut

Spring 1981: Research assistant, Assistant Dean Edward Dauer, Yale Law School, 127 Wall Street, New Haven, Connecticut

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I did not register for selective service; there was no registration requirement in effect for men my age.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

2007 – Distinguished Barrister Award, Indiana Lawyer newspaper
2007 – Lawdragon 500 Leading Judges in America
Approximately 1998 – North Central High School, Alumni Hall of Fame
Approximately 1996 – 40 Under 40, Indianapolis Business Journal
1991 – Sagamore of the Wabash (award by Governor of Indiana)
1979-80 – Fulbright Scholar, for study of theology at University of Tuebingen, Germany
1979 – Phi Beta Kappa, B.A. magna cum laude, with departmental honors (philosophy) and high honors (religion) at Haverford College
1975 – Magill-Rhoads Scholar, Haverford College
1973 – Eagle Scout

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

2007 to present: Member, Judicial Conference Committee on Space and Facilities

2000 to 2006: Member, Judicial Conference Committee on Criminal Law. Chair of Sentencing Subcommittee, approx. 2005-06

1998 to present: Founding member, Sagamore American Inn of Court. President, 2001-03; Program Chair, 1998-2001.

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1985 to present: Member, Seventh Circuit Bar Association

1985 to 1994: Member, Indiana State Bar Association

1985 to 1986: Member, Indianapolis Bar Association

1985 to 1994: Member, American Bar Association

10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Indiana October 23, 1984
There has been no lapse in membership.

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Indiana Supreme Court; October 23, 1984

United States District Court for the Southern District of Indiana; October 23, 1984

United States Court of Appeals for the Seventh Circuit; February 26, 1985

Supreme Court of the United States; November 2, 1992

There have been no lapses in admission to any court.

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

2006 to present – Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, Bloomington, Indiana

2004 to present – Lifetime Fitness (health club)

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1999 to 2007 – Member, Board of Visitors, Indiana University School of Law, Bloomington, Indiana

1998 to present – Member, Lawyers Club of Indianapolis

1993 to 2008 – Director, William E. Schmidt Foundation

1995 to present – Member, Federal Judges Association

1987 to 1988 – Vice president for litigation and board member, Indiana Civil Liberties Union

1985 to 1986 – Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

1984 to 2004 – Indianapolis Athletic Club, Indianapolis, Indiana (club closed and dissolved in 2004)

1973 to present – North United Methodist Church, Indianapolis, Indiana

b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Indianapolis Lawyers Club is a social club of lawyers and judge that holds quarterly dinner meetings. I have been a member since 1998. The club membership was all male until sometime in the late 1980s, but women have been members, officers, and presidents before and throughout the time I have been a member. The other organizations also do not discriminate on any of the stated criteria.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

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I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

The Importance and Overuse of Policy and Custom Claims: A View from One Trench, 48 DePaul L. Rev. 723 (1999).

Dedication of Birch Bayh United States Courthouse, 37 Indiana L. Rev. 613 (2003). (remarks on Senator Birch Bayh's Senate career).

Naturalization Remarks – Excerpts from my remarks at a naturalization ceremony shortly after the terrorist attacks of September 11, 2001, published in the Indianapolis Star on November 4, 2001.

Letter to United States Sentencing Commission, September 4, 2007, urging the Commission to make retroactive its 2007 amendments to the Sentencing Guidelines adjusting the base offense level for crack cocaine offenses.

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Letter from Judicial Conference concerning HR 1528, June 2005, to House Judiciary Committee

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

February 2, 2009 – Testimony before the Civil Rules Advisory Committee meeting in San Francisco regarding proposed amendments to Rule 56 of the Federal Rules of Civil Procedure.

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In February 2006, Judge Paul Cassell, then Chair of the Judicial Conference Committee on Criminal Law, presented testimony to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security regarding legislative responses to the Supreme Court's decision in United States v. Booker holding the Sentencing Guidelines as advisory rather than mandatory. I was then a member of the committee and approved of the testimony before it was given.

August 19, 2003 – As a member of the Criminal Law Committee, I testified before the United States Sentencing Commission regarding the implementation of the PROTECT Act of 2003, particularly with respect to departures under the then-mandatory Sentencing Guidelines.

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Jan. 16, 2009 - Remarks at investiture ceremony for U.S. Magistrate Judge Debra M. Lynch.

Jan. 13, 2009 - The Federalist Society – Indianapolis chapter: "Textualism – Not Always the Last Word"; remarks on statutory interpretation as part of panel discussion.

Jan. 10, 2009 - Remarks at ceremonial oath of office for U.S. Representative Baron Hill, U.S. Courthouse in New Albany, Indiana. (No notes – welcomed visitors to courthouse and commented on peaceful transitions of power after elections in the United States.)

Dec. 12, 2008 - Federal Bar Association continuing legal education conference, Indianapolis, Indiana.

Nov. 21, 2008 - Groundbreaking for new U.S. Courthouse in Terre Haute, Indiana.

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Nov. 13, 2008 - Indiana University Law School – Bloomington, course on Constitutional Design, remarks on judicial independence.

Oct. 15, 2008 - Panelist in Zionsville Public Library forum discussing Jeffrey Toobin's book The Nine, as part of annual "One Town, One Book" program for Zionsville, Indiana.

Sept. 12, 2008 - Remarks at investiture ceremony for U.S. District Judge William T. Lawrence.

May 19, 2008 - Seventh Circuit Conference, Chicago, Illinois – panel discussion on jury comprehension, education, and persuasion. No notes available; as a panel member, I responded to remarks of jury experts on their research findings.

May 1, 2008 - Law Day event for Indianapolis high school students.

March 19, 2008 - Zionsville High School Economics Club. Spoke regarding the constitutional drafting process for the Burmese opposition.

March 18, 2008 - Indianapolis Bar Association bar leader program.

March 6, 2008 - Remarks to legal writing classes at Suffolk University Law School, Boston, on legal writing.

Dec. 13, 2007 - CLE Presentation on federal practice – Marion County Bar Association, Indianapolis.

Nov. 20, 2007 - Indianapolis chapter of the American Constitution Society speech regarding the constitutional drafting process for the Burmese opposition.

Oct. 22, 2007 - Speaker at Red Mass Dinner of the St. Thomas More Society, Indianapolis, Indiana.

July 16-20, 2007 - Presentations on the Rule of Law, judicial independence, and courts in federal nations in constitutional design for State Constitutional Drafting Committees working under auspices of the Ethnic Nationalities Council (Burmese democratic opposition in exile) in Chiang Mai, Thailand, as part of work with Center for Constitutional Democracy in Plural Societies.

April 10, 2007 - Introduction for Hon. Lee H. Hamilton at Rotary Club meeting, Indianapolis, Indiana.

March 20, 2007 - Indianapolis Bar Association bar leader series.

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Jan. 6, 2007 - Remarks at ceremonial oath for U.S. Representative Baron Hill, New Albany, Indiana.

Dec. 7, 2006 - Federal Bar Association seminar on federal practice, Indianapolis. No notes available; spoke to federal practitioners on court rules, updates, practices.

Nov. 10, 2006 - Presentation on judicial independence and parallel court structures in federal systems to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Nov. 1, 2006 - Presentation on Rule of Law and judicial independence in constitutional design, to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Oct. 25, 2006 - Federal Judicial Center workshop, panel on sentencing, Lake Geneva, Wisconsin.

Oct. 22 & 29, 2006 - North United Methodist Church, Indianapolis; Sunday School classes on "Thomas and 'Q': Early Collections of Sayings."

July 24, 2006 - National Sentencing Institute, Washington, D.C. – chair, introducing speakers and programs.

June 23, 2006 - Memorial Ceremony for Judge S. Hugh Dillin of the Southern District of Indiana.

June 2, 2006 - Federal Sentencing Guideline Seminar, Miami Beach, program on sentencing in firearm cases. No notes available.

May 16, 2006 - Indianapolis Bar Association bar leader program. No notes, but remarks very similar to remarks on March 18, 2008 and March 20, 2007.

March 5 & 12, 2006 - North United Methodist Church, Indianapolis. Sunday School presentation on "Church-State Relationships: Applying Eighteenth Century Principles in the Twenty-first Century."

Sept. 29, 2005 - Federal Judicial Center, Chicago. First and Seventh Circuit workshop: panel on sentencing issues. No notes available; this was an educational meeting for Circuit and District Judges from the two circuits.

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July 30, 2005 - American Constitution Society national convention, Washington, D.C. – panel discussion on sentencing issues after United States v. Booker.

July 11, 2005 - National Sentencing Institute to respond to United States v. Booker, Washington, D.C.

May 27, 2005 - National Sentencing Guidelines Seminar – presentation on sentencing after United States v. Booker, San Francisco.

May 23, 2005 - Seventh Circuit Conference – introduction of Hon. Lee H. Hamilton as the principal speaker of the annual conference in Indianapolis, Indiana.

May 23, 2005 - Seventh Circuit Conference – presentation regarding early effects of United States v. Booker on sentencing practices, Indianapolis, Indiana.

May 20, 2005 - Indiana Bar Admission Ceremony, Indianapolis, Indiana.

Dec. 3, 2004 - Indianapolis Kiwanis Club re: federal courts.

Oct. 8, 2004 - Top Ten Tips for Federal Practice – continuing legal education talk in Indianapolis.

October 2004 - Speaker at Indiana University Law School – Indianapolis, course on judicial processes. (no notes; text of questions available)

July 21, 2004 - Remarks on investiture of new regional director of NLRB, Indianapolis, Indiana.

May 7, 2004 - Six Hot Topics in Federal Jurisdiction – continuing legal education presentation in Indianapolis, Indiana.

April 14, 2004 - Presentation of American Inn of Court professionalism award to Hon. Jon D. Krahulik, former Justice of the Indiana Supreme Court.

Dec. 19, 2003 - Federal Bar Association continuing legal education talk in Indianapolis – Practical Tips from the Bench. No notes available – this is an annual event in which judges rotate presentations on updates for court rules and practices.

Dec. 12, 2003 - Federal Community Defenders, Indianapolis – Federal Criminal Practice Seminar for federal criminal defense attorneys – remarks on sentencing policies and procedures.

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Oct. 28, 2003 - Multi-District Litigation Transferee Judges Conference – Multiple State-wide Class Actions, remarks, Palm Beach, Florida.

Oct. 24, 2003 - Dedication of the Indianapolis Courthouse as the Birch Bayh United States Courthouse – reviewing Sen. Birch Bayh's Senate career.
Nov. 2002 - Indiana University School of Law, Bloomington, American Constitution Society chapter, remarks on federal sentencing law and practices – "Two Cheers for the Sentencing Guidelines" No notes available. I spoke to students and explained how guidelines work in a bank robbery, for example, then discussed advantages and disadvantages of mandatory guideline system.

Dec. 20, 2001 - CLE presentation: Trial and Civil Procedure Update, Indianapolis, Indiana

May 21, 2001 - Seventh Circuit Conference – panel discussion on the use of summary judgment after Reeves v. Sanderson Plumbing at annual conference in Indianapolis.

July 27, 2000 - Indianapolis Bar Association speech. Topic unknown. No notes available.

July 8, 1999 - Sidebar for Young Lawyers section of a bar association Topic unknown. No notes available.

Dec. 3, 1998 - Indiana Lawyer program on EEO litigation, Indianapolis.

Oct. 28, 1998 - Panelist at Indiana University Law School, Bloomington, to discuss Prof. William Popkin's book on statutory interpretation.

Sept. 24, 1998 - CLE Presentation on federal practice, Indianapolis.

March 13, 1998 - DePaul University Law School, Chicago, Illinois: Symposium on Section 1983 Municipal Liability in Civil Rights Litigation. Formal paper published at 48 DePaul L. Rev. 723 (1999).

Jan. 21, 1998 - Floyd County Bar Association, remarks in New Albany, Indiana

Dec. 19, 1997 - Indiana State Bar Assoc. Young Lawyers Division – Roundtable – remarks on civility, Indianapolis.

Oct. 17, 1997 - Federal Criminal Defense Seminar, Indianapolis. No notes available; spoke to annual seminar for federal criminal defense attorneys sponsored by Federal Community Defender of Indiana.

June 13, 1997 - ICLEF program on employment discrimination, Indianapolis.

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June 6, 1997 - Indiana Bar Admission remarks, Indianapolis.

May 9, 1997 - Indiana Civil Liberties Union – CLE lunch presentation regarding 42 U.S.C. § 1983, in Indianapolis. No notes available.

Dec. 16, 1996 - Zionsville High School – speak to government classes about role of federal courts. No notes available.

Oct. 18, 1996 - ICLEF seminar on employment litigation, Anderson, Indiana.

Oct. 4, 1996 - Speech to patent lawyers in Indianapolis on Markman decision in patent law.

Sept. 12, 1996 - Federal Bar Association federal practice seminar, Indianapolis.

April 8, 1996 - CLE presentation – Recent Seventh Circuit Developments in Civil Procedure and Evidence, Indianapolis.

Dec. 22, 1995 - Remarks upon swearing in of class of new Indiana State Police Troopers, Indianapolis.

Nov. 16, 1995 - CLE Presentation on Professionalism and Civility, Indianapolis.

Aug. 22, 1995 - Zionsville Lions Club, on federal courts.

June 9, 1995 - Indiana Bar Admission remarks, Indianapolis.

April 13, 1995 - CLE Presentation – Class Actions: A Judicial Perspective, in Indianapolis.

Naturalization Ceremonies: Over the past fourteen years, I have presided over approximately 20 to 25 naturalization ceremonies. At each ceremony, I have given a speech that has evolved slowly over those years. Available texts are collected together.

Seventh Circuit Conference: Each year at the Seventh Circuit Bar Association and Judicial Conference, my colleagues in the Southern and Northern Districts of Indiana and I participate in a panel discussion with attorneys who practice in our courts to discuss a variety of procedural and court administration issues. I do not have notes of these discussions.

There have been a number of other occasions at which I have spoken briefly, such as investitures of new judicial officers in the district and court visits by new lawyers and school groups, but I have not been able to locate notes from those events.

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e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Fox 59 News – March 3, 2008 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. No copies available.

Indiana Lawyer – December 2007 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. Article appeared in December 26, 2007 edition.

Indiana Lawyer – January 2008 regarding new role as chief judge. I do not recall any specific article appearing from that interview.

NUVO – March 8, 2006 issue.

UPN Focus – television interview with Judge John Daniel Tinder hosted by Milt Thompson. No copy available.

13. **Judicial Office**: State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On October 11, 1994, I was appointed United States District Judge for the Southern District of Indiana by President Clinton, following confirmation by the United States Senate on October 7, 1994. I entered duty in that office on October 28, 1994.

I have served as Chief Judge, United States District Court for the Southern District of Indiana, since January 1, 2008.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? Approximately 3000.

As a judge, I have presided over the closing of approximately 8,000 cases. Of that number, approximately 3,000 went to judgment based on a trial and/or decision I made, with roughly 1,150 written opinions available in electronic data bases. Approximately 150 to 200 have gone to verdict or decision after a trial.

i. Of these, approximately what percent were:

jury trials? 60%; bench trials 40%

civil proceedings? 60%; criminal proceedings? 40%

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b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached lists of citations from Westlaw. (Two lists cover two date ranges because of the large number.) In addition to the cases on the lists, see Sefick v. United States, 1999 WL 778588 (N.D. Ill. 1999), in which I sat by designation in the Northern District of Illinois.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. Watkins v. Anderson, 92 F. Supp. 2d 824 (S.D. Ind. 2000). Granted writ of habeas corpus. Watkins was wrongly convicted of the rape and murder of a young girl. After the trial, early DNA tests showed it was nearly impossible for Watkins to have committed the crimes, but state courts rejected the conclusions from those tests. In the federal habeas proceedings, Watkins showed (a) that the DNA test results undermined the conviction and (b) that the prosecution had violated his constitutional rights under Brady v. Maryland by failing to disclose the statement of an eyewitness who described the girl's abduction by a man who did not fit Watkins' description and at a time when time-clock records showed that Watkins was at work. Watkins therefore met the stringent standards for habeas relief under the Anti-terrorism and Effective Death Penalty Act of 1996. The state filed an appeal but dismissed the appeal after a newer, more sophisticated DNA test confirmed the results I had relied upon. The State of Indiana did not attempt to re-try Watkins.

Counsel for petitioner Watkins were Joseph Cleary, Hammerle & Cleary, Indianapolis, Indiana, tel. 317-630-0137, and William E. Marsh, Federal Community Defender, Indianapolis, tel. 317-383-3520. Counsel for respondent were Michael A. Hurst and Thomas D. Perkins, Deputy Attorneys General. Mr. Hurst of Indianapolis is now at 317-598-8685. Mr. Perkins is still with the Office of the Indiana Attorney General and can be reached at 317-232-6201.

2. Nelson v. IPALCO Enterprises, Inc., 480 F. Supp. 2d 1061 (S.D. Ind. 2007). This was a class action under the Employee Retirement Income Security Act (ERISA) involving employee investments in the employer's stock as an investment option in a retirement savings plan. IPALCO owned the electric power company in Indianapolis. IPALCO was acquired by AES Corporation in 2001 in a stock-for-stock exchange. Several months after the closing of the acquisition, AES stock lost 90 percent of its value, with devastating effects on the retirement accounts of many IPALCO employees who had invested in company stock. The plaintiff class argued that the plan fiduciaries (1) should have removed company stock as an

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investment option, (2) wrongfully promoted investment in company stock while they were selling their own company stock, and (3) wrongfully allowed the employer-match part of the plan assets to be converted into AES stock. Plaintiffs sought damages in excess of $100 million. I denied a motion to dismiss, 2003 WL 402253 (S.D. Ind. Feb. 13, 2003), certified a plaintiff class, 2003 WL 23101792 (S.D. Ind. Sept. 30, 2003), and denied cross-motions for summary judgment on the major issues, 2005 WL 1924332 (S.D. Ind. Aug. 11, 2005). After a bench trial, I found for defendants in the cited opinion. The Seventh Circuit affirmed. Nelson v. Hodowal, 512 F.3d 347 (7th Cir. 2008). The case was important not only because of the number of plaintiffs and the financial stakes but also because of the possible tension between company executives' fiduciary duties to employees under ERISA and their duties to all shareholders under federal securities laws.

Plaintiffs' counsel were Nicholas Styant-Browne, Steve Berman, and Andrew Volk of Hagens Berman Sobol Shapiro, Seattle, Washington, tel. 206-623-7292; and John R. Price, Indianapolis, Indiana, tel. 317-844-8822. Defense counsel were Dane Butswinkas and R. Hackney Wiegmann of Williams & Connolly, Washington, DC, tel. 202-434-5000; and James H. Ham III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300.

3. In re AT&T Fiber Optic Cable Litigation, MDL No. 1313. The Judicial Panel on Multi-District Litigation assigned this multi-district litigation to me to manage the pretrial aspects of similar cases around the country. In this litigation, twenty-first century technology met nineteenth century law. Plaintiffs were thousands of owners of property adjoining railroad rights of way where AT&T had laid fiber optic telecommunications cables in the 1980s and 1990s. Plaintiffs alleged that laying the cables violated their property rights, asserting claims of trespass, slander of title, and unjust enrichment. Plaintiffs sought to pursue the claims with class actions, initially with a nationwide class, and later with a series of statewide classes. After some early procedural sparring, see In re AT&T Fiber Optic Cable Installation Litigation, 2001 WL 1397295 (S.D. Ind. Nov. 5, 2001) (denying motion to remand), a Seventh Circuit decision in a similar case showed that plaintiff classes could not be certified for litigation. The parties agreed to general principles for a series of statewide class action settlements, and the cases proceeded on that path over several years. During that time, I decided a series of contested issues. See, e.g., 2001 WL 1224726 (S.D. Ind. July 6, 2001) (denying leave to submit briefs under seal); 2002 WL 1364157 (S.D. Ind. June 5, 2002) (denying motion to compel production of settlement agreement between AT&T and its insurers); 2003 WL 22080739 (S.D. Ind. Aug. 21, 2003) (denying request for additional attorney fees).

On the merits of some claims, I decided Home on the Range v. AT&T Corp., 386 F. Supp. 2d 999 (S.D. Ind. 2005), which addressed how several federal land grant statutes from the nineteenth century – the Pacific Railroad Act of 1862, the

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Northern Pacific Act of 1864, and the General Railroad Right of Way Act of 1875 – allocated property rights among the railroads, the adjoining landowners, and the United States government. That decision was not appealed and provided the foundation for a settlement for the plaintiff classes who own property adjoining federal land-grant railroads. In essence, the property owners adjoining railroads established under the earlier statutes did not have any interest in the railroad right of way. Property owners adjoining railroads built under the later General Railroad Right of Way Act had a limited property interest in the adjoining railroad rights of way. Most of the statewide class settlements have been fully implemented. The last few settlements are still in the final stages of distribution of claims. Baltimore County, Maryland opted out of the class settlement and that case remains pending against AT&T.

Plaintiffs' lead counsel were Henry J. Price, Price Waicukauski & Riley, Indianapolis, Indiana, tel. 317-633-8787 ; Nels Ackerson, Ackerson Kauffman Fex, Washington, DC, tel. 202-833-8833; and Daniel J. Millea, Zelle Hofmann, Minneapolis, Minnesota, tel. 612-336-9170. Lead defense counsel were B. Haven Walling, Jr., tel. 202-420-2658; Peter Morgan, tel. 202-420-2287; and Howard N. Feldman, tel. 202-420-4707 of Dickstein Shapiro, Washington, DC.

4. Eli Lilly & Co. v. Emisphere Corp., 408 F. Supp. 2d 668 (S.D. Ind. 2006). Eli Lilly entered into contracts for a joint biotechnology research program with Emisphere, a much smaller start-up company. After a bench trial, I found that Eli Lilly had breached the contracts by trying to appropriate for itself the intellectual property of Emisphere. Eli Lilly had conducted secret research projects that should have been joint projects and distributed Emisphere's confidential information to other scientists within Eli Lilly who were not entitled to access to it. Before a final determination of the remedy, the parties settled the case without an appeal.

Plaintiff's counsel were Donald E. Knebel and Dwight D. Lueck, Barnes & Thornburg, Indianapolis, Indiana, tel. 317-236-1313. Defendant's counsel were Colin A. Underwood, tel. 212-969-3350, and Aliza Ross, tel. 212-969-3142, both of Proskauer Rose, New York City, New York.

5. In re Lawrence Inlow Accident Litigation, No. IP 99-830. In terms of damages sought, this may have been one of the largest single-victim wrongful death cases in the U.S. Lawrence Inlow was the general counsel of Conseco Insurance. He was killed when he was hit in the head by a helicopter rotor blade as he was exiting a company helicopter on a windy day. At the time of his death, he was earning tens of millions of dollars each year. Several cases were consolidated into one case. I eventually granted summary judgment for the foreign helicopter manufacturer on the Inlow family's wrongful death claims. 2002 WL 970403 (S.D. Ind. April 16, 2002). I held that the danger posed by the decelerating blades under windy conditions was open and obvious and that the helicopter pilots were

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"sophisticated intermediaries" under Indiana law, so that the manufacturer did not have a duty to warn passengers of the specific risk. The Seventh Circuit affirmed that decision. First National Bank and Trust Corp. v. American Eurocopter Corp., 378 F.3d 682 (7th Cir. 2004). In earlier decisions, I dismissed Inlow's life insurer's claim against the manufacturer, holding that the life insurer did not have standing to pursue its own wrongful death claim against an alleged tortfeasor, 2001 WL 1781927 (S.D. Ind. Dec. 13, 2001), and resolved a host of other issues to streamline the litigation, 2001 WL 331625 (S.D. Ind. Feb. 7, 2001). Those decisions were not appealed.

Counsel for the Inlow plaintiffs were James T. Crouse, Mineo & Crouse, Raleigh, North Carolina, tel. 919-861-0500; John R. Howie, Howie & Sweeney, Dallas, Texas, who has died. Counsel for Conseco was Joseph H. Yeager, Jr., Baker & Daniels, Indianapolis, Indiana, tel. 317-237-1278. Counsel for defendants were Stephen C. Johnson, Lillick & Charles (now Nixon Peabody), San Francisco, California, tel. 415-984-8222; and Martin E. Rose, Rose Walker, Dallas, Texas, tel. 214-752-8600.

6. Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. I then denied a motion to amend the judgment, 2005 WL 3544300 (S.D. Ind. 2005), and denied a stay pending appeal, 410 F. Supp. 2d 745 (S.D. Ind. 2006). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs' taxpayer standing and the merits of the Establishment Clause issue. Hinrichs v. Bosma, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in Establishment Clause cases in Hein v. Freedom from Religion Foundation, 127 S. Ct. 2553 (2007). Based on Hein, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. Hinrichs v. Speaker of House of Representatives, 506 F.3d 584 (7th Cir. 2007). The Seventh Circuit did not revisit the merits of the Establishment Clause issues.

Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendant were Thomas Fisher, Solicitor General of Indiana, 317-232-6201, and William Bock III, Indianapolis, Indiana, tel. 317-692-9000.

7. A Woman's Choice–East Side Women's Clinic v. Newman, 132 F. Supp. 2d 1150 (S.D. Ind. 2001). This was a challenge to Indiana legislation imposing a new informed-consent requirement for abortions that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had initially granted a temporary restraining order

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and then a preliminary injunction against enforcement of the statute. 904 F. Supp. 1434 (S.D. Ind. 1995). At the same time, I certified a question of state law, at the state's request, to the Indiana Supreme Court concerning the scope of the health exception to the new law's requirements. The state court answered the question, 671 N.E.2d 104 (Ind. 1996), and I responded by narrowing the scope of the preliminary injunction so as to enjoin only the requirement that required information be given "in the presence" of the woman at least 18 hours before the procedure. 980 F. Supp. 962 (S.D. Ind. 1997). The other portions of the law then took effect. The parties then undertook an extended discovery process to evaluate the effects of similar statutes in other states and to explore other issues. I held a court trial and received additional evidence in writing after the trial, and issued a permanent injunction tracking the narrowed scope of the preliminary injunction. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction. 305 F.3d 684 (7th Cir. 2002).

Counsel for plaintiffs were Simon Heller, then with the Center for Reproductive Law & Policy, New York City, tel. 646-549-3881, Kenneth J. Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059, and Mary J. Hoeller, Indianapolis, Indiana, tel. 317-633-4002. Counsel for defendants were Jon Laramore, then a Deputy Attorney General and now with Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300, Arend J. Abel, also then a Deputy Attorney General and now with Cohen & Malad, Indianapolis, Indiana, tel. 317-636-6481.

8. Hoosier Environmental Council v. U.S. Department of Transportation, 2007 WL 4302642 (S.D. Ind. Dec. 10, 2007). The case was an environmental challenge to construction of a new interstate highway between Indianapolis and Evansville as part of Interstate 69. I held that the federal and state agencies had not acted arbitrarily or capriciously in selecting the preferred route for the highway. The case is interesting because of the approval of "tiering" for environmental analysis of the government decisions. "Tiering" allows the government to look at some issues on a broad scale initially, and to defer some of the more detailed environmental analysis (of a specific highway route, for example) to a second stage of analysis. My decision approving of the chosen route was not appealed. Early construction has begun near Evansville.

Counsel for plaintiffs were John N. Moore, Chicago, Illinois, tel. 312-782-9503/312-795-3706, and Michael K. Sutherlin, Indianapolis, Indiana, tel. 317-634-6313. Counsel for the federal defendants were Jill E. Zengler and Shelese M. Woods of the U.S. Attorney's Office, tel.317-226-6333. Counsel for the state defendants was Albert M. Ferlo, Akin Gump Strauss Hauer & Feld, LLP, Washington, DC, tel. 202-887-4000.

9. United States Securities and Exchange Commission v. Church Extension of the Church of God, 429 F. Supp. 2d 1045 (S.D. Ind. 2005). The financial arm of the

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Church of God issued more than $85 million in bonds to church members. The stated purpose for the bonds was to help finance the construction and remodeling of churches all over the world. The leaders of the financial arm, however, began investing the church assets in much riskier real estate and other investments. The church's financial arm eventually became insolvent. The SEC brought a civil enforcement action in 2002. I have supervised a receivership to marshal as many assets as possible, which has included a number of related actions and written opinions. A jury trial in 2005 found that the two leaders of the financial arm had committed securities fraud over several years by misleading bond buyers as the financial position worsened. The cited opinion decided the civil sanctions against those two leaders, who were unusual among securities fraud defendants because they did not line their own pockets. But they were reckless with the money entrusted to them, and investors lost tens of millions of dollars. The challenge was to tailor the penalties to those unusual facts. The receivership should conclude in the near future after recovering more than $50 million for the church members who had invested in the fraudulent bonds.

Counsel for plaintiff SEC were Steven J. Levine and Tina K. Diamantopoulous, Chicago, Illinois, tel. 312-353-7390; counsel for defendants were Thomas M. Knepper and Jill Gladney, Chicago, Illinois, tel. 312-957-1300. Receiver was Jeff Marwil, Chicago, Illinois, tel. 312-962-3540. Counsel for bondholders was Elliott D. Levin, Indianapolis, Indiana, tel. 317-634-0300.

10. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc. This is a patent case involving implantable cardiac defibrillators. I have issued approximately twenty substantive decisions in the case, and the case has been before the Federal Circuit on five occasions. After claim construction and extensive motion practice, the case was tried to a jury on four claims of two patents. The jury found that one patent was not infringed but the other was infringed, and the jury awarded $140 million. I set aside that verdict on multiple grounds and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. July 5, 2002). The plaintiffs did not appeal the loss of their $140 million verdict, but they sought to pursue just one method claim of the patent the jury had found not infringed. The Federal Circuit affirmed in part and reversed in part, ordering further proceedings on that one method claim. I later granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that decision in part and reversed in part. 2008 WL 5257333 (Fed. Cir. 2008), but that decision has been vacated and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.

Lead counsel for plaintiffs are J. Michael Jakes, tel. 202-408-4045 and Kara Stoll, tel. 202-408-4119 of Finnegan Henderson, Washington, DC; and Robert Stanley and John Schaibley of Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300. Lead counsel for defendants are Denis R. Salmon of Gibson Dunn & Crutcher, Palo Alto, California, tel. 650-849-5301; Mark A. Perry, Gibson Dunn,

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Washington, DC, tel. 202-887-3667; Jeffrey Olson, Sidley Austin Brown & Wood, Los Angeles, California, tel. 313-896-6041; Phillip Whistler, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. Eckles v. Consolidated Rail Corp., 890 F. Supp. 1391 (S.D. Ind. 1995), aff'd, 94 F.3d 1041 (7th Cir. 1996). The issue of first or second impression was whether the Americans with Disabilities Act required an employer to provide a "reasonable accommodation" to one employee by violating the seniority rights of other employees under a collective bargaining agreement. The statutory language of the ADA did not address the issue. The legislative history showed that Congress had recognized the issue but had not reached any definite conclusion. I granted summary judgment for the defendants, finding that the ADA did not require the employer to violate the collective bargaining rights of the other employees. I reasoned that rights under collective bargaining agreements were so well established under federal law that they could not be limited by implication, without explicit limitation by Congress. The Seventh Circuit agreed and affirmed, and other circuits have followed the lead of Eckles.

Counsel for plaintiff was Susan L. Kuss, now at Law Office of Susan L. Brach, LLC, Bluffton, SC, tel. 843-706-5977. Counsel for the defendant employer was Cynthia L. Wodock, Stewart & Irwin, Indianapolis, Indiana, telephone unknown; counsel for the union defendant were Kevin C. Brodar, United Transportation Union, Cleveland, Ohio, tel. 216- 228-9400; and Frederick W. Dennerline, III, Fillenwarth Dennerline Groth & Baird, Indianapolis, Indiana, tel. 317-353-9363.

2. Henderson v. Irving Materials, Inc., 329 F. Supp. 2d 1002 (S.D. Ind. 2004). Plaintiff Henderson was the first African-American cement truck driver at the defendant's facility. He sued for race discrimination under Title VII of the Civil Rights Act of 1964, alleging that co-workers and one supervisor had created a racially hostile work environment. I denied the employer's motion for summary judgment on the key claim, finding that the cumulative effect of the harassment was sufficient to allow a finding of a racially hostile work environment under Seventh Circuit law. I also found that some forms of facially non-racial harassment could be viewed as racial when taken in context of other harassment and historic forms of violence directed against African-Americans.

Plaintiff's counsel was Denise H. LaRue, Haskin Lauter & LaRue, Indianapolis, Indiana, tel. 317-955-9500. Defendant's counsel was Paul H. Sinclair, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

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3. Eaton v. Onan Corp., 117 F. Supp. 2d 812 (S.D. Ind. 2000). This was one of the early cases challenging "cash balance" pension plans as a form of age discrimination. The question arose at the intersection of the Internal Revenue Code, the Age Discrimination in Employment Act, and the Employee Retirement Income Security Act. I granted summary judgment in favor of the pension plan and employer, concluding that cash balance pension plans are permissible under the law and are not inherently a form of unlawful age discrimination. This decision was not appealed, but the Seventh Circuit later agreed with this conclusion. See Cooper v. IBM Personal Pension Plan, 457 F.3d 636 (7th Cir. 2006).

   Counsel for plaintiffs were William K. Carr, Denver, Colorado, tel. 303-296-6383; and William C. Barnard and Mary Doherty of Sommer & Barnard of Indianapolis. Mr. Barnard has died. Ms. Doherty is now with Taft Stettinius & Hollister, LLP in Indianapolis, tel. 317-713-3500. Counsel for defendant were Arthur P. Kalleres and Marc Sciscoe of Ice Miller, Indianapolis, Indiana. Mr. Kalleres has also died. Mr. Sciscoe's telephone number is 317-236-2100.

4. Watkins v. Anderson, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See description above in Answer 13(b).

5. Doe v. Prosecutor, 566 F. Supp. 2d 862 (S.D. Ind. 2008). An Indiana law enacted in 2008 allowed law enforcement authorities to search the homes and computers of convicted sex offenders at any time, and without a search warrant, probable cause, or reasonable suspicion. The new law applied not only to offenders on parole or probation, but also to offenders who had completed their sentences. Two offenders who had completed their sentences brought a class action challenging the new law under the Fourth Amendment. I found that the pre-enforcement challenge to the law was ripe, and I held that the new law violated the Fourth Amendment as applied to offenders who had already completed their sentences, including any terms of probation or parole. There was no appeal.

   Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was David A. Arthur, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

6. Zehner v. Trigg, 952 F. Supp. 1318 (S.D. Ind. 1997), aff'd, 133 F.3d 459 (7th Cir. 1997). Prisoners who alleged they had been exposed to asbestos while working in a prison kitchen sued for violation of their Eighth Amendment rights. No plaintiff had suffered any physical injury, but they sought damages for emotional distress. The Prison Litigation Reform Act of 1995 provided in 42 U.S.C. § 1997e(e): "No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." Plaintiffs argued that the new legislation violated their constitutional rights under the Eighth and Fourteenth

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Amendments. I granted judgment on the pleadings for the defense and upheld the constitutionality of the new statutory limit on damages. I concluded that although the new law limited remedies for constitutional violations, the limit was not so severe as to reach beyond the constitutional power of Congress or to violate other constitutional provisions. The Seventh Circuit affirmed.

Counsel for plaintiffs was John Emry, Franklin, Indiana, tel. 317-736-5800. Counsel for defendants was Wayne E. Uhl, Deputy Attorney General, now with Stephenson, Morow & Semler, Indianapolis, Indiana, tel. 317-844-3830.

7. Williams v. Humphreys, 125 F. Supp. 2d 881 (S.D. Ind. 2000). After federal welfare reform legislation established the Temporary Assistance for Needy Families (TANF) program, Indiana required that all children in families receiving TANF benefits assign to the state their rights to child support from non-custodial parents. But TANF also excluded from the benefit calculations many "after-born" children. The result was that TANF provided no benefits directly to those after-born children but required that those same children give up their child support rights to the state. I held that the policy requiring assignment of child support rights from those children amounted to an unconstitutional taking of private property for a public purpose without compensation. I issued a permanent injunction against the policy. There was no appeal.

Counsel for plaintiffs were Jacquelyn E. Bowie and Kenneth Falk, Indiana Civil Liberties Union, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was Frances Barrow, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

8. MCI, LLC v. Patriot Engineering & Environmental, Inc., 487 F. Supp. 2d 1029 (S.D. Ind. 2007). This is one of many recent cases involving accidental cuts of high-capacity fiber optic communications cables. Damages in such cases ordinarily should include the costs of repair and a reasonable sum for lost use of the cable. MCI and other telecommunication companies have pursued some much more aggressive damages theories. In this case, for example, the repairs took about eight hours and cost MCI $22,000. MCI sought damages of more than $630,000 based on the supposed rental costs for such high capacity cables. MCI used as evidence longer-term leases that included very high one-time or annual fees or deposits that amounted to 98 percent of the claimed loss-of-use damages. I rejected the attempt to base the damage calculation on cable leases with those high fees as unreasonable as a matter of law and granted summary judgment for the defendant on the issue. The parties later settled; there was no appeal.

Counsel for plaintiff MCI were Anthony J. Jorgenson and James John Proszek of Hall Estill Hardwick Gable Golden & Nelson, Tulsa, Oklahoma, tel. 918-594-0631, and Cathy Elliott, Bose McKinney & Evans, Indianapolis, Indiana, tel. 317-684-5248. Counsel for defendant Patriot were Jeffrey Musser, Scott Timberman,

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and James D. Witchger of Rocap Witchger LLP, Indianapolis, Indiana, tel. 317-577-5380.

9 Sakhrani v. Brightpoint, Inc., 78 F. Supp. 2d 845 (S.D. Ind. 1999). This was a relatively early case under the Private Securities Litigation Reform Act. The principal issue at this stage was whether the selection of a lead plaintiff in a securities case could be manipulated by having attorneys assemble an artificial "group" of investors who could pool their alleged losses to show that they had the largest stake in the case. I held that the statutory language allowing a "group of persons" to serve as lead plaintiff did not apply to a group of investors who had nothing in common with one another beyond their investment. I later granted the defendants' motion to dismiss the case, and there was no appeal.

Counsel for plaintiffs were Kevin J. Yourman, formerly with Yourman, Alexander & Parekh, LLP, Los Angeles, California, firm now closed; for information on cases, send fax to 310-601-4109; Michael D. Braun, now with Braun Law Group, Los Angeles, California, tel. 310-442-7755; James A. Knauer, Kroger Gardis & Regas, Indianapolis, Indiana, tel. 317-692-9000; and William C. Potter, II, Indianapolis, Indiana, tel. 317-625-4834. Counsel for defendants were James H. Ham, III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300; and Ira A. Finkelstein, now with Harnik Wilker & Finkelstein, New York, New York, tel. 212-599-7575.

10. Eco Mfg. LLC v. Honeywell Int'l, 295 F. Supp. 2d 854 (S.D. Ind. 2003), aff'd, 357 F.3d 649 (S.D. Ind. 2003). The familiar round Honeywell thermostat presented questions at the intersection of patent law and trademark law. Plaintiff Eco Manufacturing wanted to manufacture a round thermostat. Honeywell threatened to sue for trademark infringement. Honeywell had obtained a utility patent on the round thermostat design in the 1930s. As the utility patent was about to expire, Honeywell then obtained a design patent on the round design. After the design patent expired, Honeywell eventually managed to obtain a registered trademark on the round design. I denied Honeywell's request for a preliminary injunction that would have stopped Eco from using a similar round design. I found that the trademark was invalid and conflicted with patent law. After a utility patent expires, the public has a right to practice the patented invention. I also found that Honeywell had misled the Patent & Trademark Office when it obtained the trademark on the round design. The Seventh Circuit affirmed the denial of the preliminary injunction. The case later settled.

Counsel for plaintiff Eco were Michael Beck, David Lockman, and Paul Maginot of Maginot Moore & Bowman, Indianapolis, Indiana, tel. 317-638-2922. Counsel for defendant Honeywell was Paul R. Garcia, Kirkland & Ellis, Chicago, Illinois, tel. 312-861-2327.

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e. Provide a list of all cases in which certiorari was requested or granted.

Kauble v. Pension Ben. Guar. Corp., 1994 WL 722966 (S.D. Ind. 1994), aff'd mem., 94 F.3d 647 (7th Cir. 1996), cert. denied, 519 U.S. 1057 (1997).

Grossbaum v. Indianapolis-Marion County Bldg. Auth., 909 F. Supp. 1187 (S.D. Ind. 1995), aff'd, 100 F.3d 1287 (7th Cir. 1996), cert. denied, 520 U.S. 1230 (1997).

Eckles v. Consolidated Rail Corp., 890 F. Supp. 1391 (S.D. Ind. 1995), aff'd, 94 F.3d 1041 (7th Cir. 1996), cert. denied, 520 U.S. 1146 (1997).

K.R. by M.R. v. Anderson Comm. School Corp., 887 F. Supp. 1217 (S.D. Ind. 1995), rev'd, 81 F.3d 673 (7th Cir. 1996), cert. granted and judgment vacated, 521 U.S. 1114 (1997), on remand, 125 F.3d 1017 (7th Cir. 1997), cert denied, 523 U.S. 1046 (1998).

Harmon v. OKI Systems, 902 F. Supp. 176 (S.D. Ind. 1995), aff'd, 115 F.3d 477 (7th Cir.1997), cert. denied, 522 U.S. 966 (1997).

Estate of Cole by Pardue v. Fromm, 941 F. Supp. 776 (S.D. Ind. 1995), aff'd, 94 F.3d 254 (7th Cir. 1996), cert. denied, 519 U.S. 1109 (1997).

Fleenor v. Farley, 47 F. Supp.2d 1021 (S.D. Ind. 1998), aff'd, 171 F.3d 1096 (7th Cir. 1999), cert. denied, 528 U.S. 891 (1999).

Snyder v. United States, 1998 WL 1181015 (S.D. Ind. 1998), aff'd mem., 172 F.3d 53 (7th Cir. 1998), cert. denied, 528 U.S. 968 (1999).

Mead Johnson & Co. v. Abbott Laboratories, 41 F. Supp. 2d 879 (S.D. Ind. 1999), rev'd, 201 F.3d 883 (7th Cir. 2000), amended on denial of rehearing, 209 F.3d 1032 (7th Cir. 2000), cert. denied, 531 U.S. 917 (2000).

Sefick v. United States, 1999 WL 778588 (N.D. Ill. 1999) (sitting by designation), aff'd, 164 F.3d 370 (7th Cir. 1998), cert. denied, 527 U.S. 1035 (1999).

Watts v. Network Solutions, Inc., 1999 WL 778589 (S.D. Ind. 1999), aff'd mem., 202 F.3d 276 (7th Cir. 1999), cert. denied, 530 U.S. 1088 (2000).

Lowery v. Anderson, 69 F. Supp. 2d 1078 (S.D. Ind. 1999), reconsideration denied, 1999 WL 778587 (S.D. Ind. 1999), aff'd, 225 F.3d 833 (7th Cir. 2000), cert. denied, 532 U.S. 959 (2001).

American Amusement Mach. Ass'n v. Kendrick, 115 F. Supp. 2d 943 (S.D. Ind. 2000), rev'd, 244 F.3d 572 (7th Cir. 2001), cert. denied, 534 U.S. 994 (2001).

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Midwestern Gas Transmission Co. v. McCarty, 120 F. Supp. 2d 1155 (S.D. Ind. 2000), rev'd, 270 F.3d 536 (7th Cir. 2001), cert. denied, 535 U.S. 1053 (2002).

Gregory-Bey v. Hanks, 2000 WL 1909642 (S.D. Ind. 2000), aff'd, 332 F.3d 1036 (7th Cir. 2003), cert. denied, 540 U.S. 1052 (2003).

United States v. Evans, 2001 WL 243287 (S.D. Ind. 2001), aff'd, 282 F.3d 451 (7th Cir. 2002), cert. denied, 537 U.S. 918 (2002).

A Woman's Choice-East Side Women's Clinic v. Newman, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), rev'd , 305 F.3d 684 (7th Cir. 2002), cert. denied, 537 U.S. 1192 (2003).

Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 2002 WL 1801525 (S.D. Ind. 2002), aff'd in part and rev'd in part, 381 F.3d 1371 (Fed. Cir. 2004), cert. denied, 544 U.S. 1032 (2005).

Latner v. Delta-HA, Inc., 2002 WL 31255473 (S.D. Ind. 2002), aff'd mem., 72 Fed. Appx. 448 (7th Cir. 2003), cert. denied, 540 U.S. 1182 (2004).

United States v. Emerson, 501 F.3d 804 (7th Cir. 2007), cert. denied, 128 S. Ct. 1098 (2008).

Caskey v. Colgate-Palmolive Co., 438 F. Supp. 2d 954 (S.D. Ind. 2006), aff'd, 535 F.3d 585 (7th Cir. 2008), cert. denied, 129 S. Ct. 738 (2008).

United States v. McCotry, 2006 WL 2460757 (S.D. Ind. 2006), rev'd, 495 F.3d 795 (7th Cir. 2007), cert. denied, 128 S. Ct. 938 (2008).

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. United States v. Avila, No. 07-2404, — F.3d — , 2009 WL — (March 6, 2009). The Seventh Circuit affirmed the defendant's conviction in a methamphetamine conspiracy but vacated the sentence of 396 months because of an error in calculating the advisory sentencing guidelines.

2. United States v. Osborne, 551 F.3d 718 (7th Cir. 2009). The Seventh Circuit vacated and remanded a sentence in a child pornography case for further consideration of whether the defendant's prior conviction qualified as a conviction for "abusive sexual conduct involving a minor," which requires a mandatory minimum sentence of 15 years. I held that the defendant's prior conviction

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qualified for the higher minimum sentence. In a case of first impression at the appellate level, the Seventh Circuit held that the state statute (making it criminal for a person 18 years old or older to have sexual contact with a person 14 or 15 years old) might have some "non-abusive" applications, so the court remanded for further consideration of the circumstances of the defendant's prior conviction.

3. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 2008 WL 5257333 (Fed. Cir. Dec. 18, 2008). After an earlier remand for a partial new trial on one method claim of one patent, I granted summary judgment (a) to the plaintiffs on the issue of infringement, (b) to the defendants based on a finding of invalidity for anticipation, and (c) to each side on several damages issues. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed the finding of infringement, reversed the finding of invalidity, affirmed the findings on damages issues, and remanded for a trial on damages only. The Federal Circuit panel decision has been vacated, and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.

4. Gaylor v. Astrue, 2008 WL 4206360 (7th Cir. Sept. 8, 2008), reversed my decision affirming the Social Security Administration's denial of disability benefits. 2007 WL 968733 (S.D. Ind. 2007). The Seventh Circuit found that the Administrative Law Judge had not sufficiently explained his decision. The case was remanded to the SSA for further proceedings.

5. Chapman v. Airleaf Publishing Book Selling, 2008 WL 3977527 (7th Cir. Aug. 28, 2008). I dismissed this pro se copyright case for failure to state a claim upon which relief could be granted. 2007 WL 2751780 (S.D. Ind. 2007). The Seventh Circuit held that the case was so lacking in merit that the dismissal should have been for lack of subject matter jurisdiction instead.

6. United States v. Woolsey, 535 F.3d 540 (7th Cir. 2008). The Seventh Circuit affirmed convictions after trial in a drug and firearm case, but on the government's cross-appeal, remanded for imposition of mandatory life sentence for a 55 year old defendant, as opposed to the 25 year sentence I had imposed. The issue was whether a 1974 conviction under the old Youth Corrections Act should be treated as expunged or whether it should count toward the "three strikes" sentencing law in 21 U.S.C. § 851. I had treated it as expunged because it should have been expunged but was not. The Seventh Circuit disagreed.

7. Bright v. Hill's Pet Nutrition, Inc., 510 F.3d 766 (7th Cir. 2007). The Seventh Circuit affirmed in part and reversed in part the jury verdict for the defense in a trial for alleged sexual harassment and Family and Medical Leave Act violations. The Seventh Circuit remanded for a new trial on the sexual harassment claim because I excluded some evidence from plaintiff that the court deemed relevant.

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8. CSX Transportation, Inc. v. Appalachian Railcar Services, Inc., 509 F.3d 384 (7th Cir. 2007). The Seventh Circuit reversed my grant of summary judgment for defendant in a commercial dispute over whether CSX could recover payments it had mistakenly made for damage to railcars based on its misunderstanding of whether the rail accident had occurred on CSX track. 2006 WL 2264004 (S.D. Ind. 2006). The parties later settled.

9. United States v. Cannon, 253 Fed. Appx. 590 (7th Cir. 2007). The defendant pled guilty to conspiring to rob another drug dealer of cocaine. I sentenced him to 270 months in prison, plus 60 months in prison for a supervised release violation from an earlier case, without objection to the supervised release portion of the sentence. The Seventh Circuit had initially dismissed his appeal, 182 Fed. Appx. 558 (7th Cir. 2006), but both the defendant and the government later realized that because of the felony classification from the earlier case, the statutory maximum for the supervised release violation was 24 months. The Seventh Circuit vacated the 60-month sentence and remanded for a new sentence. I sentenced the defendant to 24 months on the supervised release violation, and the Seventh Circuit affirmed.

10. Hinrichs v. Speaker of House of Representatives, 506 F.3d 584 (7th Cir. 2007). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs' taxpayer standing and the merits of the Establishment Clause issue. Hinrichs v. Bosma, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in Establishment Clause cases in Hein v. Freedom from Religion Foundation, 127 S. Ct. 2553 (2007). Based on Hein, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. The Seventh Circuit did not revisit the merits of the Establishment Clause issues.

11. Evory v. RJM Acquisitions Funding LLC, 505 F.3d 769 (7th Cir. 2007). Plaintiffs alleged that debt collectors' letters offering to settle for a specific discount by a specific date were misleading because the debt collectors actually would have been willing to settle for less money and at any time. I held that these allegations did not state a viable claim under the Fair Debt Collection Practices Act. Headen v. Asset Acceptance, LLC, 458 F. Supp. 2d 768 (S.D. Ind. 2006), and 383 F. Supp. 2d 1097 (S.D. Ind. 2005). The Seventh Circuit held that the theory was viable and reversed the dismissal. After remand, two of the cases are going forward with certified plaintiff classes.

12. United States v. Hollingsworth, 495 F.3d 795 (7th Cir. 2007). The Seventh Circuit affirmed one defendant's criminal conviction and sentence, but reversed my order

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suppressing evidence against the other defendant. In the affirmance, the court found that I erred by admitting evidence from the suppression hearing and had made an Apprendi error in imposing the sentence, but that both errors were harmless. I granted a motion to suppress by the other defendant, where the police had obtained a search warrant for her apartment by twice interrogating her elementary school-age daughter in private at the public school. I held that such tactics under the circumstances violated the family's constitutional right of privacy. United States v. McCotry, 2006 WL 2460757 (S.D. Ind. 2006). The Seventh Circuit reversed the suppression of evidence, finding no constitutional violation. That defendant then pled guilty.

13. Wieland v. Buss, 185 Fed. Appx. 527 (7th Cir. 2006). The habeas corpus petitioner pled guilty to aggravated battery. He argued that he would not have pled guilty if his lawyer had explained the potential sentences more accurately. I denied his petition for a writ of habeas corpus, concluding that the state courts had not acted unreasonably in applying Supreme Court precedent. Wieland v. Davis, 1:04-cv-991 (S.D. Ind. July 27, 2005). The Seventh Circuit reversed and granted the writ, holding that the attorney's performance was ineffective and had prejudiced the defendant, and that the state courts had acted unreasonably in denying relief.

14. Brown v. Bartholomew Consolidated School Corp., 442 F.3d 588 (7th Cir. 2006). I affirmed a state administrative ruling in a special education case under the Individuals with Disabilities Education Act. 2005 WL 552194 (S.D. Ind. 2005). By the time the parents' appeal was ripe, the case had become moot. The Seventh Circuit ordered dismissal for lack of jurisdiction as moot.

15. Norfleet v. Webster, 439 F.3d 392 (7th Cir. 2006). I granted summary judgment for three defendants in this pro se case challenging medical care in a federal prison, but denied summary judgment for two defendants – a doctor and physician's assistant. Cause No. 1:03-cv-458 (S.D. Ind. Dec. 29, 2004). The Seventh Circuit reversed the denial of summary judgment for the doctor and physician's assistant, finding no issue of fact as to whether they could have acted with deliberate indifference to the prisoner's serious medical need.

16. United States v. Graves, 418 F.3d 739 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this crack cocaine distribution case but remanded for re-sentencing because the sentence was imposed when the Sentencing Guidelines were still mandatory, before United States v. Booker, 543 U.S. 220 (2005). On remand, I imposed the same 30-year sentence, which was affirmed in a later appeal. 184 Fed. Appx. 579 (7th Cir. 2006).

17. United States v. Miller, 405 F.3d 551 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this "ecstasy" distribution case but vacated for re-sentencing to reconsider whether the defendant might qualify under new case law

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for a "minor role" adjustment under Sentencing Guidelines. I imposed the same sentence on remand, finding that the defendant did not play a minor role in the drug distribution.

18. Canaan v. McBride, 395 F.3d 376 (7th Cir. 2005). In this death penalty habeas corpus case, I affirmed the murder conviction and one finding of a death penalty aggravator, but found that a new trial was required as to another death penalty aggravator and that a new death penalty hearing was required. Canaan v. Davis, 2003 WL 118003 (S.D. Ind. 2003). The Seventh Circuit reinstated the aggravating factor finding but affirmed the ruling that a new death penalty hearing was required. The defendant was later sentenced to life without parole.

19. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 381 F.3d 1371 (Fed. Cir. 2004). This patent case was tried to a jury, which ruled for the plaintiff on one patent for implantable defibrillators and awarded $140 million. I set the verdict aside and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. 2002). On appeal, the Federal Circuit held that I had erred in construing one ambiguous claim of one patent and on several defenses. The court remanded for further proceedings on one method claim. I later ruled that the case should be assigned to another judge based on an unusual blend of Seventh Circuit and Federal Circuit rules. 2005 WL 1070681 (S.D. Ind. 2005). In another appeal, the Federal Circuit reversed that decision and said I should continue to handle the remanded case. 144 Fed. Appx. 106 (Fed. Cir. 2005). I did so and eventually granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that in part and reversed in part on December 18, 2008, but that decision has been vacated for rehearing *en banc*. (See above).

20. United States v. Allen, 383 F.3d 644 (7th Cir. 2004). The Seventh Circuit reversed a conviction for felon-in-possession of firearm after a bench trial. The Seventh Circuit held that the government had not proved beyond a reasonable doubt that defendant David Allen was the same David Allen whose felony conviction record was put into evidence.

21. Old Town Neighborhood Ass'n v. Kauffman, 333 F.3d 732 (7th Cir. 2003). I granted injunctive relief against a highway project through an historic neighborhood. 2002 WL 31741477 (S.D. Ind. 2002). The Seventh Circuit held that I should have issued a narrower injunction only against use of federal funds to carry out the project.

22. Precision Industries, Inc. v. Qualitech Steel SBQ, LLC, 327 F.3d 537 (7th Cir. 2003). In a question of first impression at appellate level, the Seventh Circuit reversed a decision regarding how best to reconcile two apparently conflicting statutory provisions affecting a tenant's rights when the landlord goes into

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bankruptcy and the rented property is sold. My decision is available at 2001 WL 699881 (S.D. Ind. 2001).

23. Veach v. Sheeks, 316 F.3d 690 (7th Cir. 2003). The Seventh Circuit affirmed a defense jury verdict in a Fair Debt Collection Practices Act case but reversed and remanded my grant of judgment as a matter of law on one claim.

24. A Woman's Choice–East Side Women's Clinic v. Newman, 305 F.3d 684 (7th Cir. 2002). The Seventh Circuit reversed my decision in an as-applied challenge to an informed-consent abortion statute that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had held unconstitutional the requirement that information be provided to the woman in person at least 18 hours before the procedure. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction.

25. United States v. Cannon, 39 Fed. Appx. 342 (7th Cir. 2002). The Seventh Circuit vacated and remanded a sentence in a tax fraud case because of an error in calculating the defendant's criminal history points.

26. New Hope Services, Inc. v. United States, 285 F.3d 568 (7th Cir. 2002). A taxpayer prevailed at the administrative level in a tax dispute and then sued for attorney fees from the government under the Equal Access to Justice Act, 28 U.S.C. § 2412. I denied relief for failure to exhaust administrative remedies. Cause No. NA 96-C-116 (S.D. Ind. Aug. 18, 2000). The Seventh Circuit reversed, finding that the taxpayer had adequately exhausted administrative remedies.

27. Higgs v. Carver, 286 F.3d 437 (7th Cir. 2002). I dismissed this many-faceted prisoner civil rights case. 2000 WL 1902190 (S.D. Ind. 2000). The Seventh Circuit reversed on two counts, finding the dismissal premature.

28. Midwestern Gas Transmission Co. v. McCarty, 270 F.3d 536 (7th Cir. 2001). The state utility regulatory commission was considering a proposed "bypass" arrangement in which a large industrial user of natural gas sought to bypass the local gas utility and connect directly to an interstate pipeline. I abstained under Younger v. Harris and denied the gas pipeline's request to enjoin the state regulatory proceedings. 120 F. Supp. 2d 1155 (7th Cir. 2001). The Seventh Circuit reversed and held that the Federal Energy Regulatory Commission had exclusive jurisdiction over the question so that the state proceedings should have been enjoined.

29. Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc., 261 F.3d 1329 (Fed. Cir. 2001). I granted summary judgment for defendants in this patent infringement action involving cardiac stents used to open blocked coronary arteries. Cause No. IP 98-1108-C (S.D. Ind. June 28, 2000). The Federal Circuit

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affirmed in part and reversed in part, holding that I erred in construing some claims in the patents.

30. American Amusement Machine Ass'n v. Kendrick, 244 F.3d 572 (7th Cir. 2001). Indianapolis enacted an ordinance to require parental consent for children to have access to arcade video games with extreme violence or explicit sexual content. The video game industry challenged the ordinance as applied to violent games. I upheld the ordinance and denied an injunction, reasoning that the city could restrict children's access to extremely violent content much as it could restrict their access to explicit sexual content that would be legal for adults to possess. 115 F. Supp. 2d 943 (S.D. Ind. 2000). The Seventh Circuit reversed and held that the limits on children's access to violent video games violated the First Amendment.

31. United States v. Arambula, 238 F.3d 865 (7th Cir. 2001). The defendant in this cocaine case had testified against a co-defendant (also before me). At sentencing, I found that Arambula had lied in his testimony against the co-defendant to protect others involved in the cocaine distribution, and I enhanced his sentence under the Guidelines. The Seventh Circuit reversed and remanded for resentencing, holding that the lies were not material. I re-sentenced the defendant without that enhancement.

32. Del Vecchio v. Conseco, Inc., 230 F.3d 974 (7th Cir. 2000). I granted summary judgment for a life insurance company on statute of limitations grounds in a case claiming fraud in marketing whole life insurance policies. Cause No. IP 98-91-C (S.D. Ind. Sept. 13, 1999). The Seventh Circuit held that the jurisdictional amount-in-controversy requirement was not satisfied, so that I should have dismissed the case instead for lack of jurisdiction.

33. Weiss v. Cooley, 230 F.3d 1027 (7th Cir. 2000). Prisoner sued jail officials for civil rights violations after he was attacked by other inmates. I granted summary judgment for defendants. Cause No. IP 97-471-C (S.D. Ind. May 29, 1998). The Seventh Circuit affirmed in part but reversed as to one defendant, finding a genuine issue of fact as to whether that defendant recognized the risk to the plaintiff

34. Zimmerman v. Tribble, 226 F.3d 568 (7th Cir. 2000). I dismissed a prisoner's complaint stating several civil rights claims. Cause No. IP 97-1778-C (S.D. Ind. April 29, 1998) (copy not available). The Seventh Circuit affirmed in part but reversed as to the prisoner's claim that a library supervisor had retaliated against him by denying library access after the prisoner complained about his limited access.

35. Walker v. O'Brien, 216 F.3d 626 (7th Cir. 2000). In several consolidated cases challenging prison disciplinary decisions, a colleague and I denied habeas corpus

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relief and then denied certificates of appealability. I also held that the petitioner was not entitled to proceed on appeal without payment of fees because he had accumulated three "strikes" in the form of frivolous cases. See Finfrock v. Hanks, Cause No. IP 97-861-C (S.D. Ind. Oct. 30, 1997) (denying certificate of appealability). The Seventh Circuit decided to overrule prior circuit law and remanded those determinations, finding that no certificate of appealability was needed in such appeals.

36. Board of Trustees, Sheet Metal Workers' Nat'l Pension Fund v. Elite Erectors, Inc., 212 F.3d 1031 (7th Cir. 2000). I held that this pension fund could not exercise "long-arm" jurisdiction over the shareholder of the bankrupt employer that defaulted on its pension contributions. 46 F. Supp. 2d 852 (S.D. Ind. 1999); 64 F. Supp. 2d 839 (S.D. Ind. 1999). The Seventh Circuit reversed and held that such long-arm jurisdiction over an employer's shareholder was permissible under ERISA.

37. Mead Johnson & Co. v. Abbott Laboratories, 201 F.3d 883 (7th Cir. 2000), on rehearing, 209 F.3d 1032 (7th Cir. 2000). I granted a preliminary injunction under the Lanham Act against advertising for infant formulas that I found was misleading. 41 F. Supp. 2d 879 (S.D. Ind. 1999). The Seventh Circuit reversed, holding that the advertising was not misleading and that I erred by setting too low an injunction bond.

38. Smith v. U.S. District Court Officers, 203 F.3d 440 (7th Cir. 2000). Plaintiff sought a writ of mandamus to obtain copies of audio tapes of all proceedings in his earlier federal criminal case. I dismissed the petition. Cause No. IP-97-1924-C (S.D. Ind. Feb. 4, 1998). The Seventh Circuit decided a question of first impression and vacated, holding that the petitioner had a right of access to at least some of the tapes.

39. Velasquez v. Frapwell, 165 F.3d 593 (7th Cir. 1999). Indiana University fired an attorney who alleged discrimination on several grounds, including his National Guard service. I dismissed his claim under the Uniformed Services Employment and Reemployment Rights Act based on the Eleventh Amendment. 994 F. Supp. 993 (S.D. Ind. 1998). The Seventh Circuit affirmed. 160 F.3d 389 (7th Cir. 1998). The court then learned that one day before its affirmance, Congress had enacted new legislation to apply to pending cases, directing them to state courts. The Seventh Circuit therefore vacated the portions of its and my decisions regarding the USERRA claim.

40. Schleibaum v. Kmart Corp., 153 F.3d 496 (7th Cir. 1998). In this ERISA case, I found a violation of the employee's procedural rights but found that the plaintiffs were not entitled to any substantial recovery. Cause No. IP 95-284-C (S.D. Ind. Feb. 12, 1997). The Seventh Circuit affirmed as to the violation but remanded for creation of an equitable remedy.

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41. K.R. v. Anderson Community School Corp., 125 F.3d 1017 (7th Cir. 1997). K.R. was a young child with special needs. Her parents chose to enroll her in a Catholic school. Federal regulations required public school districts to provide assistance to children enrolled in private schools that was "comparable" to the help they would receive in public school. I held that the regulations required an assistant for the child, which public schools would have provided if she had attended public school. 887 F. Supp. 1217 (S.D. Ind. 1995). The Seventh Circuit reversed, 81 F.3d 673 (7th Cir. 1996), while other circuits followed the approach I had taken. The Supreme Court granted certiorari and remanded this case and others for reconsideration in light of 1997 statutory amendments. 521 U.S. 1114 (1997). On remand, the Seventh Circuit again held that the student was not entitled to assistance, and the Supreme Court denied a second petition for certiorari.

42. United States v. Talbott, 78 F.3d 1183 (7th Cir. 1996). Defendant was convicted of being a felon in possession of a firearm on one occasion and ammunition on another occasion, and I sentenced him as an armed career criminal under the Guidelines. The Seventh Circuit held that I had erred by imposing the burden on the defendant to prove his defense of necessity. (The Supreme Court later overruled the Seventh Circuit's opinion in Talbott on this point. Dixon v. United States, 548 U.S. 1 (2006).) The Seventh Circuit also held that Talbott should be sentenced at one offense level lower under the Guidelines because his crime was not in connection with a crime of violence. I imposed a lower sentence on remand, and the Seventh Circuit affirmed, 107 F.3d 874 (7th Cir. 1997).

43. Gregory-Bey v. Hanks, 91 F.3d 146, 1996 WL 394011 (7th Cir. 1996). I dismissed a habeas corpus petition in this robbery-murder for failure to exhaust state remedies, which had been long delayed. Cause No. IP 94-903 (S.D. Ind. April 7, 1995). The Court of Appeals reversed, holding that the state courts' delay meant that no further exhaustion was required. On remand, after further discovery and evidentiary hearings, I denied relief on the merits, 2000 WL 1909642 (S.D. Ind. 2000), and the Seventh Circuit affirmed, 332 F.3d 1036 (7th Cir. 2003).

44. Grossbaum v. Indianapolis-Marion County Building Authority, 63 F.3d 581 (7th Cir. 1995). Plaintiffs sought to erect a large menorah in the lobby of the City-County Building. Their request was denied, and they sought an injunction. I denied relief, reasoning that the local government had not opened up the lobby as a public forum and that the government had imposed neutral and permissible restrictions on the subject matter of private displays in the lobby. The Seventh Circuit reversed, holding that the government's restrictions amounted to "viewpoint" discrimination barred by the First Amendment. The government responded by prohibiting all private displays in the public lobby. When the plaintiffs sued again, I held that the new restrictions did not violate the First Amendment, 909 F. Supp. 1187 (S.D. Ind. 1995), and the Seventh Circuit later affirmed that ruling. 100 F.3d 1287 (7th Cir. 1996).

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g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Before April 2000, a substantial majority of the written decisions I issued were not published even in electronic form. They were distributed to the parties and placed in the case file. I designated approximately ten to fifteen percent of those decisions for publication on Westlaw and Lexis, and designated a smaller percentage for publication in the bound Federal Supplement volumes. (Some decisions have also been published by those businesses upon request by parties or counsel rather than by me.) The unpublished decisions are available from the case files. I have paper copies of most that were drafted by my law clerks and me. (I do not have copies of most decisions first drafted by the court's pro se law clerks for my review and revision. Those would need to be retrieved from case files in storage.) The paper copies from those years fill approximately four standard file drawers.

In April 2000, the Southern District of Indiana introduced a system that allowed judges to designate unpublished decisions so that they would be made accessible electronically on the court's Internet website. The database is still maintained. The opinions are maintained in a searchable database, accessible at: http://www.insd.uscourts.gov/Search/opinions_search.htm. These opinions are stored on the court's Internet server, housed at the Indianapolis Courthouse. I designated a total of 446 decisions on this database, including decisions from as early as December 1994 and as late as April 24, 2005. Many of these opinions are also available through Westlaw or Lexis.

On April 24, 2005, in response to the E-Government Act, the court's Case Management/Electronic Case Filing (CM/ECF) was upgraded to permit judges to designate opinions as "written opinions," defined as "any document issued by a judge . . .that sets forth a reasoned explanation for a court's decision." Since April 24, 2005, I have designated nearly 850 documents as "written opinions" that were not specifically designated "for publication." These opinions are stored on the court's CM/ECF server in Indianapolis, and the information should also be available on a server maintained by the Administrative Office of the U.S. Courts. Many of these opinions are also available through Westlaw or Lexis.

h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. Grossbaum v. Indianapolis-Marion County Building Authority, 870 F. Supp. 1450 (S.D. Ind. 1994). See discussion in Response 13(f).

2. K.R. v. Anderson Community School Corp., 887 F. Supp. 1217 (S.D. Ind. 1995). See discussion in Response 13(f).

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3. A Woman's Choice-East Side Women's Clinic v. Newman, 904 F. Supp. 1434 (S.D. Ind. 1995). I issued a preliminary injunction blocking enforcement of a 1995 Indiana law requiring a woman seeking an abortion to make two trips to a clinic (one for a face-to-face meeting with a doctor and a second trip at least 18 hours later for the procedure itself). I found that plaintiffs had made a sufficient showing that the new law was likely to impose an "undue burden" on a significant number of women's right to choose to have an abortion. The preliminary injunction was not appealed. I later narrowed the scope of the injunction after the Indiana Supreme Court construed the health exception in the statute so as to reduce the constitutional problems. 980 F. Supp. 962 (S.D. Ind. 1997). That modification also was not appealed. I later issued a permanent injunction against the requirement that information be provided in person, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), and the Seventh Circuit reversed that decision, 305 F.3d 684 (7th Cir. 2002), as noted above.

4. Estate of Cole v. Fromm, 941 F. Supp. 776 (S.D. Ind. 1995). Cole committed suicide while in jail. His estate sued several jail officials alleging deliberate indifference to his safety. I granted summary judgment for the defendants, and the Seventh Circuit affirmed. 94 F.3d 254 (7th Cir. 1996).

5. United States v. Simpson, 944 F. Supp. 1396 (S.D. Ind. 1996). I granted a motion to suppress cocaine seized pursuant to a search warrant. I found that the police had violated the defendant's Fourth Amendment rights by making a recklessly false statement to obtain the warrant. The government did not appeal.

6. Brownsburg Area Patrons Affecting Change v. Baldwin, 943 F. Supp. 975 (S.D. Ind. 1996). A local political action committee challenged state campaign finance laws that applied to political action committees. I found that the statutes did not apply to the plaintiffs and therefore denied a preliminary injunction. The Seventh Circuit certified the question of state law to the Indiana Supreme Court, which agreed with my interpretation, 714 N.E.2d 135 (Ind. 1999), and the Seventh Circuit then affirmed. 1999 WL 33611333 (7th Cir. 1999).

7. Zehner v. Trigg, 952 F. Supp. 1318 (S.D. Ind. 1997), aff'd, 133 F.3d 459 (7th Cir. 1997). See discussion in Response 13(d), case # 6.

8. Stovall v. McAtee, 35 F. Supp. 2d 1125 (S.D. Ind. 1997). The plaintiff was badly injured by other inmates while he was detained in the Marion County Jail. He sued the sheriff in his individual and official capacities. I granted summary judgment for the sheriff in his individual capacity but denied summary judgment on the official capacity claims. There was no appeal; the case later settled.

9. Fleenor v. Farley, 47 F. Supp. 2d 1021 (S.D. Ind. 1998). Fleenor murdered his mother- and father-in-law in front of his wife and children. He was sentenced to death. I denied his petition for a writ of habeas corpus, addressing numerous

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constitutional challenges to his convictions and death sentence. The Seventh Circuit affirmed.

10. Velasquez v. Frapwell, 994 F. Supp. 993 (S.D. Ind. 1998). See discussion in Response 13(f), case # 39.

11. Bibbs v. Newman, 997 F. Supp. 1174 (S.D. Ind. 1998). A deputy prosecutor in Marion County sued for sex discrimination on the job. Whether a deputy prosecutor is an "employee" entitled to protection under Title VII of the Civil Rights Act of 1964 depended on whether, under the First Amendment, the attorney position was one for which political affiliation could be considered in hiring and firing decisions. I found that the First Amendment and therefore Title VII did not protect the deputy prosecutor. There was no appeal.

12. Mason v. Hamilton County, 13 F. Supp. 2d 829 (S.D. Ind. 1998). Plaintiff Mason was high on drugs outside a Grateful Dead concert when he climbed a fence to "crash the gate." He refused a police officer's order to stop, and a deputy sheriff sent a police canine to stop Mason, resulting in serious injuries. A jury found that the deputy sheriff had not used excessive force by using the police dog to stop Mason from fleeing. I denied plaintiff's motion for judgment as a matter of law and a new trial, finding that whether the use of force was reasonable was a factual question for the jury to decide. There was no appeal.

13. United States v. Gosha, 78 F. Supp. 2d 833 (S.D. Ind. 1999). I denied motions to suppress drug evidence, finding that the police could conduct a warrantless walk-through inspection of house in which one defendant was arrested because they believed a child was left alone inside.

14. Lowery v. Anderson, 69 F. Supp. 2d 1078 (S.D. Ind. 1999). Lowery and another man murdered an elderly couple in their home, and Lowery was sentenced to death. I denied his petition for a writ of habeas corpus, deciding numerous constitutional challenges to the convictions and sentence. I later denied a motion to reconsider. 1999 WL 778587 (S.D. Ind. July 29, 1999). The Seventh Circuit affirmed. 225 F.3d 833 (7th Cir. 2000).

15. Schornhorst v. Anderson, 77 F. Supp. 2d 944 (S.D. Ind. 1999). Attorneys for D.H. Fleenor sought to stop his execution by asserting that he was incompetent to be executed. I held on an emergency basis that the state court finding that he was competent to be executed was reasonable, and denied the last-minute request to stop the execution.

16. United States v. Gold, 77 F. Supp. 2d 936 (S.D. Ind. 1999). I granted a defendant's motion to suppress a firearm seized after a traffic stop for which police had no probable cause. The government did not appeal.

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17. Sefick v. United States, 1999 WL 778588 (N.D. Ill. 1999). While sitting by designation in the Northern District of Illinois, I held that the First Amendment did not entitle an artist to place a sexually suggestive artistic work in the lobby of a principal federal office building in Chicago. The decision was not appealed..

18. Gray v. City of Columbus, 2000 WL 683394 (S.D. Ind. Jan. 31, 2000). I denied summary judgment for the police department and police officers where a person who was not under arrest testified that she had been required to submit to a warrantless strip search and body cavity search. The case was later settled without an appeal.

19. Porter v. City of Muncie, 2000 WL 682660 (S.D. Ind. Feb. 16, 2000). Porter was mentally ill and, after a dispute with her husband, left her home on foot with two kitchen knives. Her husband called the police, and an officer located her. The encounter ended with the officer firing two shots that killed Porter. Her husband filed suit, claiming that the use of deadly force was unreasonable and excessive under the Fourth Amendment. After a bench trial, I found that the officer had been justified in shooting Porter to defend himself as she approached him with the knives and refused his orders to stop. There was no appeal.

20. Watkins v. Miller, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See discussion in Response 13(c).

21. Marion County Committee of Indiana Democratic Party v. Marion County Election Board, 2000 WL 1206740 (S.D. Ind. Aug. 3, 2000). Indiana election law gives small political parties more time than it gives the two major parties to fill vacancies on the ballot. The plaintiff Democratic Party challenged the different treatment under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. I denied the Democratic Party's motion for a preliminary injunction, finding that the legislature had not discriminated unconstitutionally against the Democratic and Republican parties.

22. American Amusement Machine Ass'n v. Kendrick, 115 F. Supp. 2d 943 (S.D. Ind. 2000). See discussion in Response 13(f).

23. Canaan v. Davis, 2003 WL 118003 (S.D. Ind. Jan. 10, 2003). See description of Canaan v. McBride in Response 13(f).

24. Porco v. Trustees of Indiana University, 2005 WL 552462 (S.D. Ind. Feb. 24, 2005). Plaintiff had moved from Michigan to Indianapolis to attend law school. After paying the higher non-resident tuition for his first year, he sought the lower resident tuition rate for his second and third years. The university rejected his request, and he sued, alleging violation of his federal constitutional rights. I ruled in favor of the university, holding that lower tuitions at state schools for state residents do not violate the Constitution. The plaintiff's appeal was later

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dismissed as moot because he had failed to seek a stay pending appeal to block distribution of the money deposited with the court. 453 F.3d 390 (7th Cir. 2006).

25. Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). See discussion in Response 13(c), case # 6

26. United States v. McCotry, 2006 WL 2460757 (S.D. Ind. July 13, 2006). See discussion of United States v. Hollingsworth, 495 F.3d 795 (7th Cir. 2007), in Response 13(f), case # 12.

27. Martin Marietta Materials, Inc. v. Brainard, 2007 WL 4232184 (S.D. Ind. Nov. 28, 2007). Martin Marietta owned a long-established gravel and stone quarry. A suburb grew up around it. Residents of the area pushed the local government to restrict the mining activities. After numerous disputes and court cases, Martin Marietta sued the local government for breaching a contract and violating its constitutional property rights. I denied the local government's motion for summary judgment.

28. Martin v. Indiana State Police, 537 F. Supp. 2d 974 (S.D. Ind. 2008). Police obtained a warrant to search Martin's house for evidence of marijuana production and sales. In a garden bed just outside the house, the police found $300,000 in cash sealed in buried pipes. The police seized the money and later turned it over to federal authorities for forfeiture. Martin later sued to recover the money. Among other issues, I found that the warrant was valid and was broad enough to authorize the search of the garden bed as part of the home's "curtilage." (I also found that the police may have violated state law by delivering the money to federal authorities without permission from the state court that had issued the warrant, but that any remedy would need to be pursued under state law in state courts.) No appeal was filed.

29. Bowden v. Town of Speedway, 539 F. Supp. 2d 1092 (S.D. Ind. 2008). Bowden was detained by police officers investigating unusual activity outside a business late at night. The detention lasted well beyond the point where it was clear that there was no criminal activity. Bowden sued for violation of his Fourth Amendment rights. On cross-motions for summary judgment, I held as a matter of law that a police officer had violated Bowden's rights by keeping him in a police car in handcuffs after it was clear that there was no criminal activity. I also granted defendants' motion for summary judgment in part and denied it in part. The case later settled; there was no appeal.

30. Doe v. Prosecutor, 566 F. Supp. 2d 862 (S.D. Ind. 2008). See discussion in Response 13(d), case # 5.

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i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;

b. a brief description of the asserted conflict of interest or other ground for recusal;

c. the procedure you followed in determining whether or not to recuse yourself;

d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have always provided the Clerk's Office with an automatic recusal list. Judges provide the clerk with a list of parties from whose cases they would need to recuse, and no case with those parties should be assigned to that judge. My list for automatic recusal has included at various times one corporation in which my minor daughter held stock, two state agencies that my brother directed, a not-for-profit organization and then a city where my wife has worked as an attorney, and corporations in which the estate of my then father-in-law held stock. In addition, I recuse in any case in which my brother-in-law David J. Hensel is counsel.

For the first two years I served as a judge, I recused automatically from all cases in which my former law firm (Barnes & Thornburg) appeared as counsel. After those first two years, I recused from any cases in which Barnes & Thornburg had been involved while I was still with the firm. I do not have specific records or recollections of the particular cases.

During the first several years on the court, I also recused from almost all cases in which the law firm of Baker & Daniels appeared. Lawyers from that firm were then representing me and Indiana Attorney General Pam Carter and other defendants in lawsuits by former Attorney General's Office employees who had

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been terminated or had resigned in connection with Attorney General Carter's transition, which I had served as volunteer transition director from November 1992 to January 1993. Several former employees filed federal lawsuits in the Southern District of Indiana claiming that they had lost their jobs because of improper considerations, including political affiliation, race, national origin, sex, and/or age. All cases were dismissed on the merits, holding that the applicable laws did not protect deputy attorneys general, without reaching the issues of the defendants' motives. The cases included Americanos v. Carter, 74 F.3d 138 (7th Cir. 1996) (affirming dismissal under Rule 12(b)(6)), which became the basis for dismissing other cases brought by deputy attorneys general. The other cases were Wright v. Carter, IP 94-C-1312; Webster v. Carter, IP 94-C-2104; and Miller v. Carter, IP 94-C-477. One example of such disqualification involving Baker & Daniels was Robyns v. Community Centers of Indianapolis, Inc., IP 94-440-C-T/G, aff'd, 130 F.3d 1231 (7th Cir. 1997) (affirming Judge Tinder's grant of summary judgment), though I later handled a second related case several years later, and several years after the grounds for disqualification had been removed. See Robyns v. Community Centers of Indianapolis, Inc., IP 98-1241, 2000 WL 1902193 (S.D. Ind. Dec. 28, 2000). The reason I recused from "almost" all of the Baker & Daniels cases is that this particular ground for recusal could be waived by all the parties through a "blind" process that prevented me from learning which parties declined to waive the ground for recusal. I recall that all parties did waive the ground for recusal in a few cases, but I have no specific records or memories of those cases. I also recused from cases involving the lawyers or the law firms adverse to me in those Attorney General transition lawsuits, but I do not have specific records or recollections of the particular cases. When I joined the bench, I had proposed this approach to the Judicial Conference on Codes of Conduct, and the committee endorsed the approach.

During approximately my first year or two on the bench, I also recused in any cases involving law firms that were involved in the case of Nobles v. Cartwright, 659 N.E.2d 1064 (Ind. App. 1995), in which I was a defendant stemming from my work as Counsel to the Governor. I do not have records or recollection of the specific cases affected. Shortly after the Indiana Court of Appeals decision, the matter was concluded successfully, and after that, I no longer recused in cases involving law firms that had been involved in the lawsuit.

I recused in an employment discrimination case against the South Indiana Conference of the United Methodist Church, Cronin v. South Indiana Annual Conference, 1:05-cv-1804 (S.D. Ind. Oct. 23, 2006). The plaintiff moved for my disqualification on the ground that my father is a retired United Methodist minister and had previously had administrative responsibilities in the conference, including service as a district superintendent of the church. I granted the motion to disqualify pursuant to 28 U.S.C. § 455(a) (disqualify where impartiality might reasonably be questioned).

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I raised the issue of recusal in Mead Johnson Co. v. Abbott Laboratories, 1999 WL 778592 (S.D. Ind. Feb. 22, 1999). A few weeks after I heard evidence on a motion for preliminary injunction in a false advertising trademark case, my then father-in-law died. Shortly after his death, I learned that his estate included some stock in the plaintiff's parent company. Because my then-wife was a beneficiary of the estate, that meant I had unexpectedly acquired a disqualifying financial interest in the plaintiff. Under such circumstances, I could and did use the "safety valve" mechanism set forth in 28 U.S.C. § 455(f) to dispose of the disqualifying interest quickly and then proceeded to decide the case. I filed the cited opinion explaining the situation and my resolution of it.

I recused from KnowledgeAZ, Inc. v. DeFosset, No. 1:05-cv-1019, on April 11, 2007. After I had presided in the case for nearly two years, new attorneys for plaintiff filed a motion to disqualify Barnes & Thornburg from representing a defendant. The motion was based on a theory that an attorney for Barnes & Thornburg had done related work for a predecessor company of the plaintiff. My initial review of the motion indicated that its resolution might depend on whether the prior work was actually related to the issues and contracts in the current lawsuit. The problem for me was that the prior work had been done back in 1994 in my last few months as a partner of Barnes & Thornburg. I concluded that recusal was appropriate. The new judge assigned to the case later denied the motion for disqualification of the law firm.

Plaintiffs moved for my disqualification in 2008 in two parallel cases challenging conditions at a privately-managed jail facility in Indianapolis, Kress v. CCA of Tennessee, LLC (No. 1:08-cv-431) and Olmstead v. CCA of Tennessee, LLC (No.1:08-cv-029). The motions asserted that I should recuse because one of the defendants' lawyers had worked for me as a law clerk (in 1999-2000) and because I had been a partner in the defendants' law firm (Barnes & Thornburg) before I was appointed to the court in 1994. I denied the motions to disqualify in an opinion available at 2008 WL 5216018 (S.D. Ind. Dec. 11, 2008). I explained that I have applied a one year "cooling off period" for law clerks after they leave employment with me, and that I had applied a two year cooling off period for cases with Barnes & Thornburg lawyers. In my judgment, recusal was not called for based on these prior relationships.

During my fourteen years service as a district judge, several pro se litigants who have been unhappy with my rulings in their current or previous cases have sought recusal. This is routine in a district court, and I did not keep records of all such requests. I have located several examples of cases in which pro se parties filed such requests. The following are examples of such cases:

Raphlah v. Roob, 2007 WL 3302440 (S.D. Ind. Nov. 5, 2007). This was a pro se habeas corpus case challenging the petitioner's state court commitment to a mental hospital in 2005. Several months after I dismissed the case as moot, the

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petitioner filed a motion for my recusal. He argued that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration, which oversaw the hospital where petitioner had been confined, and would or should have been a witness. My brother had been the Secretary of the agency from 2001 until August 2003, long before the petitioner had been committed to the hospital. I denied the motion for recusal because it came too late and lacked merit. My brother had not been involved at any relevant time, and the habeas corpus case challenged the state court's decision to commit the petitioner to the hospital, not the management or conditions of the hospital.

Raphlah v. Indiana Medical Bd., 2007 WL 3285805 (S.D. Ind. Nov. 5, 2007). The same pro se litigant filed motion seeking recusal more than three years after the case was closed. The plaintiff again asserted that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration from 2001 until August 2003. I denied the motion. Neither that agency nor my brother nor any other agency personnel had been named as defendants, nor had the plaintiff challenged any agency policy.

Palmer v. United States, 2007 WL 3286414, *3 (S.D. Ind. Nov. 5, 2007). Palmer pled guilty to federal bank fraud and I sentenced her. She later sought relief under 28 U.S.C. § 2255 and asserted, among other arguments, that she should have been informed that one of the physicians she defrauded was the daughter of a former law partner from the firm where I was a partner from 1991 to 1994. I had never met the victim and had no relationship with her. I concluded that the partnership with the victim's late father more than a decade earlier was too tenuous to have required disqualification under 28 U.S.C. § 455.

Nottingham v. Acting Judges of District Court, 2006 WL 1042761 (S.D. Ind. March 24, 2006). Plaintiff had filed a nearly incoherent pro se complaint against all judges of the Southern District of Indiana, including myself, complaining about the results of previous lawsuits. He sought my recusal. If there had been a colorable claim against me or any of my colleagues, I would have recused. Because there was not even a colorable claim, I concluded that there was no need to recuse to allow a litigant to choose his or her judge, or to force the court to bring in a judge from another district, by filing frivolous claims against all the judges.

Robinson v. Gregory, 929 F. Supp. 334 (S.D. Ind. 1996). In a pro se case challenging alleged screening of prison mail, the plaintiff moved to disqualify me under 28 U.S.C. § 144, which requires a certificate of "good faith" signed by "counsel of record" stating that the judge has a personal bias or prejudice, apparently based on his disagreement with some of my earlier rulings in the case. I concluded that § 144 did not apply to such a request by a pro se litigant, and I

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also found no reason to recuse under 28 U.S.C. § 455, the more general recusal statute.

15. **Public Office, Political Activities and Affiliations**:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Indiana State Ethics Commission. Chair, 1991 to 1994, appointed by Governor Evan Bayh to a four-year term. The Commission is responsible for developing, implementing, and enforcing ethical standards for the executive branch of state government, and for providing advisory opinions and education for state officers and employees. No reports were issued during my tenure. I resigned to accept appointment to U.S. District Court

Counsel to the Governor. January 1989 to June 1991, appointed by Governor Evan Bayh to serve as a member of his staff and as the chief lawyer for the administration.

Indiana State Recount Commission. November 1986 to January 1988, appointed pursuant to statute by the chairman of the Indiana Democratic Party (John Livengood) to serve as the Democratic member of the three-member commission for recounts in the 1986 election cycle, the first of the commission's existence.

Mayor's Task Force on Police Performance Assessment. October 1992 to 1994. I also served as a member of the task force. I was selected to serve by Marion County Prosecutor Jeff Modisett, though it is possible that Mayor Stephen Goldsmith made the formal selection. The task force developed a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers. As I recall, the proposal was made public some time in 1994 but quickly died for lack of support. Neither the chairman of the task force nor I have been able to locate a copy of the report.

Marion County Traffic Safety Partnership. Approx. 1993 to 1994. I served as chair of this multi-agency partnership to promote traffic safety. I served as a volunteer appointed by Marion County Prosecutor Jeff Modisett.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

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November 1992 to January 1993 – Transition Director, Indiana Attorney General-elect Pamela Carter (unpaid volunteer position). Volunteer on issues research during the campaign in 1992.

1987 to November 1988 – Evan Bayh for Governor. Volunteer to coordinate issues research and position papers for the gubernatorial campaign.

1985 to November 1986 – Evan Bayh for Secretary of State. Volunteer as counsel to the campaign and for issues research, particularly in the field of election and recount law.

1988 and 1992 – Organized fundraisers among my colleagues at Barnes & Thornburg for Evan Bayh in 1988 and 1992, and in 1992 for the Indiana House Democratic Caucus, Pamela Carter for Attorney General, and Stan Jones for Superintendent of Public Instruction.

1974 – Volunteer for Sen. Birch Bayh's campaign for re-election. I worked as a "gopher" at campaign headquarters for several hours each day during the summer.

1973 – Youth coordinator for Philip Hayes, candidate for the U.S. House of Representatives from Indiana's Eighth Congressional District.

16. **Legal Career:** Answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk for Judge Richard Cudahy, United States Court of Appeals for the Seventh Circuit from September 1983 to September 1984.

ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

October 28, 1994 to present
United States District Court for the Southern District of Indiana
46 East Ohio Street
330 Birch Bayh United States Courthouse

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Indianapolis, Indiana 46204
United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Partner

January 1989 to July 1991
Office of the Governor of the State of Indiana
206 State House
Indianapolis, Indiana 46204
Counsel to the Governor

October 1984 to January 1989
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Associate

September 1983 to September 1984
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604
Law clerk to Judge Richard D. Cudahy

Summer 1983
Kirkland & Ellis
200 East Randolph
Chicago, Illinois 60601
Law clerk

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

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ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

1. 1984-89 – Associate at Barnes & Thornburg in the firm's Intellectual Property and Trade Regulation department and the Litigation department. The trade regulation work included antitrust law in both litigation and counseling of clients. Much of the counseling work involved application of antitrust law to joint ventures in health care and other industries. The trade regulation litigation included both prosecuting and defending efforts to enforce covenants not to compete and trade secret cases, often on an expedited basis involving temporary restraining orders and preliminary injunctions. I represented manufacturers in disputes with their distributors and/or franchisees. I counseled businesses on trade secret protection, covenants not to compete, and vertical distribution relationships. In general litigation, I was involved in prosecuting and defending civil claims for securities fraud, common law fraud, RICO violations, breaches of contract, and other causes of action between businesses. I had a blend of first chair and second chair responsibilities. In a junior capacity, I helped draft the briefs for CTS Corporation before the Supreme Court of the United States in CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69 (1987), in which the Supreme Court upheld Indiana's control share laws regulating hostile corporate takeovers. I also did extensive legal and factual work in Wabash Valley Power Ass'n v. Public Service Co. of Indiana, a RICO and securities fraud case brought against our client, PSI, by the co-owner of the cancelled Marble Hill nuclear generating plant.

2. 1989-91 – Counsel to the Governor: When Governor Bayh took office in 1989, I joined his staff as his counsel. My principal task was to provide legal advice for the Governor, other members of the staff, and agency directors. As the new administration took over the reins of state government, a wide range of legal issues arose, from personnel matters to litigation to the extent of executive powers.

When the new administration took office, several major lawsuits were pending that threatened the state with potential liabilities of hundreds of millions of dollars – enough to disrupt the state budget and Governor Bayh's programs. Those lawsuits included several class actions seeking tax refunds, a class action by former patients of mental hospitals seeking payment for work performed at mental hospitals, and a state constitutional challenge to the school funding system. I managed those cases closely. By combining aggressive defenses and selective settlements, I reduced the threats to the administration's programs and the state budget.

As Counsel to the Governor, I coordinated appointments of judges and prosecutors. While I worked for him, the Governor appointed one justice

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to the Indiana Supreme Court, four judges to the Indiana Court of Appeals, and approximately 15 trial court judges.

As Counsel to the Governor I was the chief ethics officer for the Governor and the administration. I helped develop and implement a new, tougher ethics policy, first for the Governor's staff and then for the entire executive branch through legislation and rulemaking. I was the Governor's liaison to the State Ethics Commission, the State Election Board, the Attorney General, and the State's judiciary. I assisted the Governor and the chief of staff on selected personnel and legislative matters.

3. 1991-94 – Partner of Barnes & Thornburg: As a partner in the litigation department, I litigated, tried, and argued a variety of commercial, constitutional, and regulatory disputes at all levels of the federal courts and state courts and administrative agencies. I represented state and local governments in several constitutional challenges to government actions. I represented businesses and not-for-profit entities in contract and related disputes, including covenants not to compete and trade secret cases. I represented public utilities before the courts and the Indiana Utility Regulatory Commission. I represented the plaintiff in an antitrust case in the Southern District of Texas against Greyhound Lines, Inc., and I served as court-appointed counsel to a habeas corpus petitioner in the Southern District of Indiana.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an attorney in private practice, both as a partner and associate, approximately 75% of my practice was litigation. During that time, I appeared in court occasionally. Most of my private practice involved small numbers of complex matters in which most of the activity was outside the courtroom. As Counsel to the Governor, approximately 25% of my time was spent on litigation, but almost always in the role of a manager or client representative. As Counsel to the Governor, I appeared only once before a court.

i. Indicate the percentage of your practice in:
   1. federal courts: 50%
   2. state courts of record: 45%
   3. other courts:
   4. administrative agencies: 5%

ii. Indicate the percentage of your practice in:
   1. civil proceedings: 100%
   2. criminal proceedings.

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d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Eight. Two as sole counsel; three as chief counsel; and three as associate counsel.

i. What percentage of these trials were:
1. jury;
2. non-jury: 100%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

As counsel of record, I filed a petition for certiorari in Bayh v. Government Suppliers Consolidating Services, Inc., which was denied. 506 U.S. 1053 (1993). For details, see Answer 17, below (case #1).

Before I was admitted to the Supreme Court bar, I also assisted with the following matters:

Jurisdictional and merits briefing on behalf of CTS Corporation in CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69 (1987), which upheld the Indiana Control Share statute against federal preemption and commerce clause challenges.

Petition for certiorari in Johnson v. Duckworth, which was denied. 479 U.S. 937 (1986). For details, see Answer 17, below (case #6).

Petition for certiorari in Cambridge v. Duckworth, which was denied. 489 U.S. 1056 (1989). I was court-appointed counsel for this habeas petitioner before the Seventh Circuit. The principal issue was whether a mistrial was required after a witness blurted out during the criminal trial that the petitioner had previously signed a guilty plea in the case.

17. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

a. the date of representation;

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b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Government Suppliers Consolidating Services, Inc. v. Bayh, 975 F.2d 1267 (7th Cir. 1992). I was lead counsel for Governor Bayh in this lawsuit challenging the constitutionality of several Indiana laws regulating waste disposal and transportation. Two waste brokers brought suit in 1991 claiming that nine laws violated the Commerce Clause because they imposed an excessive burden on interstate waste shipments into Indiana. They also sought a preliminary injunction against enforcement of the statutes. After a hearing on the preliminary injunction, Judge Larry McKinney of the Southern District of Indiana denied the injunction and dismissed several of the challenges for lack of a ripe case or controversy or failure to state a claim. He held a bench trial to consider challenges to a statute that restricted "backhauling" of goods other than municipal waste on vehicles that had been used to carry municipal waste, and statutes requiring vehicles used to transport municipal waste for disposal in Indiana to be registered and labeled as municipal waste vehicles.

Judge McKinney found that these laws applied to both intrastate and interstate commerce. He found that both laws served legitimate state interests and did not unconstitutionally burden interstate commerce. On appeal, the Seventh Circuit reversed, concluding that the backhauling and vehicle registration laws would have a substantially greater effect on interstate commerce than on intrastate commerce. The Supreme Court denied certiorari.

Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Co-counsel for defendants were John Maley, Barnes & Thornburg, 11 South Meridian Street, Indianapolis, 46204, 317-236-1313; Rosemary G. Spalding, Spalding & Hilmes, PC, 330 South Downey Avenue, Indianapolis, Indiana 46219, 317-375-1140; Arend J. Abel, Cohen & Malad, Suite 1400, One Indiana Square, Indianapolis, Indiana 46204, 317-636-6481; and Robert S. Spear, formerly of the Office of the Attorney General, 7530 U.S. Highway 31 South, Indianapolis, Indiana 46227, 317-884-4166.

2. Department of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000 (Ind. 1989). Beginning in 1985, I was lead counsel, on a pro bono basis, for the Wabash Valley Archaeological Society and the Council for the Conservation of Indiana Archaeology to test whether the "lands unsuitable" provisions of federal and state surface mining laws could effectively protect significant archaeological sites. The subject of the case was the "Beehunter Site," a significant archaeological site that lay over substantial coal deposits

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for which a coal company had sought a mining permit. Surface mining would have destroyed the site. I presented the case for preservation in two contested evidentiary administrative hearings before the Department of Natural Resources. Both ALJs found that the site was significant and was unsuitable for surface mining. The owner and the coal industry sought judicial review. The Dubois Circuit Court held in 1987 that the restriction on surface mining on this privately owned site amounted to an unconstitutional regulatory taking of private property without compensation.

The archaeology groups and the DNR appealed to the Indiana Supreme Court, which reversed the Dubois Circuit Court and upheld the DNR decision. The Supreme Court agreed with our arguments that the lands unsuitable designation did not interfere with the existing use of the land or deny all economically viable use of the property, and that the designation served legitimate state interests in protecting the state's heritage from unnecessary destruction. The U.S. Supreme Court denied certiorari.

The evidentiary hearings before the DNR were held in November 1985 and on December 19, 1985. The first was before Steve Lucas, Indiana Natural Resources Commission, Suite N-501, 100 North Senate Avenue, Indianapolis, Indiana 46204, 317-233-3322. The second was before Sue Shadley, Plews Shadley Racher & Braun LLP, 1346 North Delaware Street, Indianapolis, Indiana 46202, 317-637-0700. Judge Hugo Songer of the Dubois Circuit Court heard argument on two occasions, November 14, 1986, and July 9, 1987. He is now Senior Judge, and his address is Dubois Superior Court, One Courthouse Square, Jasper, Indiana 47546, contact phone number through the Clerk's Office at 812-481-7035. Counsel for the DNR on judicial review was Deputy Attorney General Myra Spicker, retired from the Office of the Solicitor, U.S. Department of the Interior, Sacramento, California, current location in Foothill Ranch, CA. Opposing counsel throughout the case were David R. Joest, current address unknown; and James Buthod, current address unknown. Opposing counsel before the Indiana Supreme Court was G. Daniel Kelley, Jr., G. Daniel Kelley, Jr., Ice Miller LLP, One American Square, Suite 3100, Indianapolis, Indiana 46282, 317-236-2100.

3. Stewart v. Stewart, 521 N.E.2d 956 (Ind. App. 1988). A divorce court terminated a father's parental rights because he was infected with HIV. On appeal I was the principal author of the amicus brief of the Indiana Civil Liberties Union arguing that this discrimination against the father – amounting to the total destruction of his relationship with his daughter – was an irrational and unconstitutional interference with the father's parental relationship with his daughter. The Court of Appeals decision in favor of the father was the first in Indiana, and one of the early reported decisions in the nation, preventing such discrimination against persons with HIV.

I was the principal author of the constitutional arguments in the amicus brief. Richard Waples of the ICLU was principally responsible for the brief's discussion of the available medical evidence. His address is 410 North Aububon Road, Indianapolis, Indiana 46219, Indianapolis, Indiana 46219; 317-357-0903. Lead counsel for the father was Timothy

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Rowe, 22 East Washington Street, Suite 600, Indianapolis, Indiana 46204; 317-632-2524. Lead counsel for the mother was Mary T. Wolf, current address unknown.

4. Office of Utility Consumer Counselor v. Public Service Co. of Indiana, 608 N.E.2d 1362 (Ind. 1993). Almost four years after PSI had formed a holding company, the Indiana Court of Appeals ruled that PSI should have obtained prior regulatory approval for the transaction. That ruling created significant obstacles in issuing new securities and raising new capital for PSI and other Indiana utilities with holding companies. The Indiana Supreme Court ruled that PSI was not required to obtain regulatory approval before it created the holding company. The case was important for PSI and for other Indiana public utilities and their investors because it removed the legal uncertainty and obstacles to raising capital.

   I took the primary role in writing the brief, and I worked closely on the brief with my partner, Stanley C. Fickle, who did the oral argument before the Indiana Supreme Court. Counsel for the Office of Utility Consumer Counselor were James Turner, now with Duke Energy, reachable through corporate offices at 526 South Church Street, Charlotte, North Carolina 28202, 704-594-6200; and Robert K. Johnson, 350 Canal Walk, Suite A, Indianapolis, Indiana 46202; 317-506-7348.

5. Reel Pipe & Valve Co. v. City of Indianapolis. I was lead counsel for the City of Indianapolis in a constitutional and procedural challenge to the city's power to acquire private property for an economic development project along the nineteenth century Central Canal in downtown Indianapolis. In an area declared blighted in 1981, the city took initial steps in 1992 to begin acquisition of some private property to clear and redevelop the area. Several property owners opposed the effort and sought judicial review of the decision to add their property to an acquisition list. In an unusual hearing before thirteen judges of the Marion Superior Court, sitting en banc, the court ruled in the city's favor in July 1992. That decision was affirmed on appeal. 633 N.E.2d 274 (Ind. App. 1994). The case was significant because of the economic development project for which the land was essential, the constitutional issues concerning the city's power to acquire private property in a blighted area for economic development purposes, and the procedural protections for property owners who sought to challenge the city's decision.

   The case was argued to the Marion Superior Court, en banc, on July 24, 1992. The presiding judge was Judge James Kirsch, currently Judge, Indiana Court of Appeals, Room 415, 200 West Washington Street, Indianapolis, Indiana 46204, 317-232-6909. Opposing counsel for the property owners were Douglass R. Shortridge, 748 Woodview North Drive, Carmel, Indiana 46032, 317-846-4801; and Jerry W. Newman, current address unknown. Co-counsel for the city was Sue A. Beesley, Bingham McHale, Suite 2700, 10 West Market Street, Indianapolis, Indiana 46204, 317-635-8900.

6. Johnson v. Duckworth, 793 F.2d 898 (7th Cir. 1986). I was the court-appointed attorney in this habeas corpus appeal. The petitioner, Thomas Johnson, had shot and killed his brother in an altercation after both had been drinking. He was charged with murder but

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claimed self-defense. The prosecutor offered to accept a guilty plea to voluntary manslaughter. Johnson was 17 years old at the time. His father and attorney decided for him to reject the plea offer. At trial Johnson was convicted of murder and sentenced to 30 years. In his habeas case, Johnson raised pro se the question whether his father and attorney could decide for him to reject the plea offer. The Seventh Circuit appointed me to serve as counsel for supplemental briefing and oral argument on this issue. I argued that the decision to reject a plea offer, like the decision to accept an offer and plead guilty, is a fundamental decision that only the client can make. Under applicable professional standards, the attorney's role in such matters is only to advise. I also argued that neither Johnson's age nor his emotional condition could justify denying him the right to make this basic decision about his own fate. The Seventh Circuit agreed with my legal arguments and held that a defendant generally has the right to decide for himself or herself whether to accept or reject a plea offer. At the end of its opinion, however, the court held that the "unique circumstances" of the case (Johnson's age and emotional state) required denial of his petition. 793 F.2d at 902. The Supreme Court denied certiorari.

Opposing counsel was Charles N. Braun II, 11935 Glen Cove Court, Indianapolis, Indiana 46236; (317) 823-0789.

7. Government Suppliers Consolidating Services, Inc. v. Bayh, 133 F.R.D. 531 (S.D. Ind. 1990). While still serving as Counsel to the Governor, I was involved in an earlier round of litigation with the same two trash brokers who sued again in 1991. The 1990 case challenged Indiana laws that facially discriminated against interstate waste shipments. The plaintiffs sought the deposition of the Governor and sought documents and testimony concerning internal deliberations on policy. I appeared and filed a motion to quash and brief on behalf of the Governor that successfully asserted (for the first time in Indiana) a Governor's general immunity from deposition, at least absent a specific showing of extraordinary need. (Judge John Tinder's unreported decision on this motion is referenced in his later opinion, 133 F.R.D. at 532.) Defense witnesses asserted the governmental deliberative privilege in response to plaintiffs' discovery requests for documents and testimony reflecting internal policy deliberations. When they moved to compel, I prepared the brief filed by the Office of the Attorney General to oppose the motion. That brief argued that the governmental deliberative privilege should be recognized in Indiana. The opinions of both Magistrate John Godich and Judge John Tinder recognizing the privilege and upholding it in the case are published at 133 F.R.D.532.

Judge Tinder is now a judge on the Seventh Circuit, tel. 317-229-3680. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Representing defendants from the Office of the Attorney General was Harry John Watson, III, Deputy Attorney General, 5th Floor, 302 West Washington Street, Indianapolis, Indiana 46204, 317-232-6201.

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8. Valley Transit Co. v. Greyhound Lines, Inc. In August 1992 a national bus company terminated a small regional carrier's leases for use of bus terminals in Houston, San Antonio, and Corpus Christi, Texas. I worked with my colleagues Richard H. Streeter and Michael Klein of Barnes & Thornburg, and Rene Oliveira of Brownsville, Texas, to prepare and file a federal antitrust action for attempted monopolization in the Southern District of Texas. We sought a temporary restraining order, arguing that the three terminals were "essential facilities" under antitrust law. Immediately before the hearing on Valley Transit's motion for a temporary restraining order, the national carrier consented to an order that allowed Valley Transit to stay in the terminals, thus saving Valley Transit's business and an important public service in the Rio Grande Valley. I do not know how the case was ultimately resolved after I joined the court.

   The case was before Judge Filemon Vela, former Senior District Judge for the Southern District of Texas, who died in 2004. Opposing counsel for Greyhound Lines were Gary Gurwitz, Atlas & Hall, LLP, 818 Pecan Boulevard, McAllen, Texas 78501, 956-632-8226; Mark Horning, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-8126. Co-counsel for Valley Transit were Rene O. Oliveira, now State Representative, Room CAP 4N.10, P.O. Box 2910, Austin, Texas, 78768, 512-463-0640, also at 855 West Price Road, Suite 22, Brownsville, TX 78520, 956-542-1828; Richard H. Streeter, Barnes & Thornburg, 750 17th Street, N.W., Suite 900, Washington, D.C. 20006, 202-408-6933; and Michael A. Klein, last known address 4354 Idlewild Lane, Carmel, Indiana 46032, 317-843-2369.

9. NUCOR Corp. v. Aceros y Maquilas de Occidente, S.A. de C.V. I represented NUCOR in this declaratory judgment action before Judge Larry McKinney of the Southern District of Indiana. In early 1991, NUCOR entered into negotiations for a possible sale of steel to a steel broker, United Steel Corp. of Houston, Texas, for resale to a Mexican steel company, Aceros y Maquilas. After extended communications and negotiations, no steel was ever shipped. Aceros threatened to sue NUCOR for breach of contract and violation of the Texas Deceptive Trade Practices Act, but did not file suit. I filed a declaratory judgment action in federal court in Indiana against Aceros and United Steel. I was assisted by my colleagues Robert D. MacGill and Andrew J. Detherage. We sought a declaration that NUCOR had never entered into any binding contract with United Steel or Aceros, and had not violated the Texas Act. Judge McKinney granted NUCOR's motion for summary judgment. The legal issues were whether the statute of frauds under the Uniform Commercial Code was a defense to any contract claim, whether NUCOR had made United Steel its agent for dealing with Aceros, whether Aceros could assert a claim for promissory estoppel in the absence of an enforceable contract, and whether the Texas Deceptive Trade Practices Act could be applied to NUCOR's conduct, which was centered in Indiana. Judge McKinney ruled for NUCOR on all issues. The Seventh Circuit affirmed. 28 F.3d 572 (7th Cir. 1994). The case is representative of my commercial litigation work.

   I was the principal author of the briefs in the district court and the Seventh Circuit, and argued the appeal. Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio

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Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel for Aceros were Richard C. Arroyo, 855 West Price Road, Brownsville, TX 78520, 956-541-4825; and Alan J. McLaughlin, Suite 702, 111 Monument Circle, Indianapolis, Indiana 46204, 317-287-3520. United Steel did not participate in the case.

10. Diversified Computer Services, Inc. v. Kathy Ann Cox. I represented the defendant Kathy Cox in this 1986 action to enforce a covenant not to compete. Ms. Cox was a computer programmer employed by Diversified to write and maintain software for its clients. She then accepted a job with one of the accounts she served and was planning to start work. Diversified sued her in the Marion Superior Court and obtained an ex parte temporary restraining order that enforced a covenant not to compete and barred Ms. Cox from taking her new job. I filed a brief for Ms. Cox and tried the preliminary injunction hearing, which was also consolidated with the trial on the merits, before Judge Gerald Zore of the Marion Superior Court. Judge Zore held that the covenant not to compete was not enforceable and entered judgment for Ms. Cox. Judge Zore also found that Ms. Cox was entitled to damages for the wrongful temporary restraining order, including the attorney fees for dissolving the TRO. No appeal was taken. The case is representative of my work on covenant not to compete cases.

    Judge Gerald Zore has retired, and his current address is unknown. Counsel for Diversified was Michael J. Hebenstreit, Whitham, Hebenstreit & Zubek, LLP, Suite 2000, 151 North Delaware Street, Indianapolis, Indiana 46204, 317-638-5555.

18. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

    In addition to matters described above, launching the Bayh administration in 1989-90 was the most significant. The Bayh administration took office after 20 years of control by the opposite party. The administration had many talented and energetic people but few with significant experience in state government or public life. We faced challenges ranging from personnel decisions and ethics policies to long-term strategic goals. There was a legal dimension to most of our issues. I participated in a wide variety of issues and decisions to try to avoid legal problems and recognize the opportunities we had.

19. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

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Indiana University School of Law, Bloomington, Indiana. Spring 2004 – Federal Jurisdiction.

Indiana University School of Law, Bloomington, Indiana. Spring 1988. Selected topics in Antitrust Law. I have not been able to locate a syllabus or notes. The course reviewed major doctrines in antitrust law, including conspiracies, concerted action and combinations that are illegal per se; combinations subject to the rule of reason; joint ventures; state action exception; monopoly power and attempted monopolization.

20. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I hope to continue to work as a volunteer with the Center for Constitutional Democracy in Plural Societies (based at the Indiana University School of Law in Bloomington), especially in helping the Burmese democracy movement in exile develop effective federal and state constitutions for a future democratic Burma. This work involves occasional meetings in Indiana and possible foreign travel on vacation time to meet with members of the movement. I have no other plans, commitments, or agreements to pursue outside employment during service on the court.

22. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

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24. **Potential Conflicts of Interest**:

a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Since becoming a District Judge, I have tried to minimize the potential for conflicts of interest by avoiding investments and other relationships likely to require recusal. For example, I do not invest directly in any corporate stocks. If appointed to the Court of Appeals, I would provide the Clerk of the court with a list of automatic disqualifying relationships, which would include the City of Bloomington, Indiana, where my wife is an attorney. I would also need to avoid cases in which my brother-in-law David J. Hensel is an attorney. (He practices in Indianapolis with Taft Stettinius & Hollister.) I would also plan to avoid any issues in which the Center for Constitutional Democracy in Plural Societies might be involved. (The Center has not been involved in litigation anywhere, let alone in the United States.) If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In all cases I will follow the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

25. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a judge, I may not practice law and thus have not done pro bono representation of the disadvantaged. I have assisted the Center for Constitutional Democracy in Plural Societies, as described above, in advising the Burmese democratic opposition in exile, and hope to continue to do so. (Such assistance is not the practice of law.)

In private practice, I spent more than 200 hours per year on pro bono work. I served as court-appointed counsel in Johnson v. Duckworth, described above in response to Question 17. (167 hours), and I served as court-appointed counsel in two additional federal habeas corpus cases. One was Brian Cambridge v. Duckworth, 859 F.2d 526 (7th

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Cir. 1988), on which I spent approximately 180 hours. The second was a case in the Southern District of Indiana, Leland Powell v. State of Indiana, on which I spent more than 50 hours. Associates I supervised spent more time. The writ was eventually granted in that case, and there was no appeal.

The work on the coal v. archaeology "Beehunter Site" case described above was all pro bono, and over the three years that I worked on the case, I spent 341 hours on the matter.

I also served as a volunteer attorney, board member, and vice president of litigation for the Indiana Civil Liberties Union. The ICLU does not represent clients who can afford private counsel. In 1984-85, I was lead counsel for the ICLU in Bruce Grau v. Indiana State Bd. of Nursing Registration, which challenged the constitutionality of an Indiana law that discriminated against graduates of out-of-state nursing schools, and I spent 155 hours on that matter. I was the principal author of the ICLU's amicus brief in Stewart v. Stewart, described above, and I spent 52 hours on that matter. As vice president of litigation, I also participated in evaluating and selecting cases for the ICLU to handle, and I often provided advice and assistance to the lead attorneys.

From 1985 to 1987, I served as a board member and treasurer of the Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in the Mapleton-Fall Creek neighborhood of Indianapolis to promote housing development, rehabilitation, and home ownership.

From October 1992 to 1994, I served as a member of the Mayor's Task Force on Police Performance Assessment, which studied and tried to develop a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers.

26. **Selection Process**:

a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission that operates in Indiana at this time.

In approximately June 2008, after I learned that Judge Kenneth Ripple had advised the President that he intended to take senior status, I spoke with Senator

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Evan Bayh to express my interest in the event that Senator Obama would win the presidential election. A few days after the election, I spoke with Senator Bayh again about the matter. I was contacted by the White House Counsel's office on January 30, 2009, to ask if I would agree to a background check, and I said yes. On February 3, 2009, the White House Counsel's office contacted me by telephone and emailed a copy of a questionnaire and asked me to complete it. On February 4, 2009, I spoke by telephone with the White House Counsel's office with a few questions about how best to provide the requested information. Beginning on approximately February 7, 2009, I was contacted by the Office of Legal Policy (OLP) of the Department of Justice and received additional forms to complete, and I have been in touch with that office by telephone and email concerning the timing and logistics of those responses. In addition, I have been interviewed by the ABA Standing Committee representative for the Seventh Circuit. On March 16, 2009, I met with Attorney General Holder, Associate Attorney General Perrelli, and OLP staff in separate meetings at the Department of Justice. I also met with Counsel to the President Gregory Craig and members of his staff and then with members of the White House communications staff on that same day, and I met briefly with President Obama that same day. My nomination was submitted to the Senate on March 17, 2009.

b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

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AFFIDAVIT

I, David Frank Hamilton, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 18, 2009

David F Hamilton
(SIGNED)

Linda Carmichael
(NOTARY)

Linda S. Carmichael
State of Indiana Notary Public
Resident of Marion County
My Commission Expires 9/11/2014

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

AMENDED QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name: State full name (include any former names used).**
   Richard Guilford Kerlikowske, Jr. (R. Gil Kerlikowske)

2. **Position: State the position for which you have been nominated.**
   Director of National Drug Control Policy

3. **Address: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.**
   Seattle Police Department Headquarters
   PO. 34986, 610 Fifth Ave.
   Seattle, WA 98124-4986

4. **Birthplace: State date and place of birth.**
   November 23, 1949
   St. Joseph, MI

5. **Education: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.**
   MA. Criminal Justice University of South Florida (Tampa) 1985
   BA. Criminal Justice University of South Florida (Tampa) 1978
   AA Police Administration St. Petersburg (FL) Junior College 1978
   With the exception of my first year of college in St. Petersburg, I went to school part-time under the G.I. Bill while working as a police officer. Note: My education began in 1969 and was completed in 1985 due to service in the military and part time status while working as a police officer.

6. **Employment Record: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.**
   Chief of Police 2000-current Seattle Police Department, , P.O. Box 34986, 610 Fifth Ave Seattle, WA 98109

   Deputy Director, 1998-2000 Office of Community Oriented Police Services, U.S. Department of Justice,1100 Vermont Ave., N.W., Washington, D.C. 20005

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Police Commissioner, 1994-1998 Buffalo Police Department, 74 Franklin St., Buffalo. New York 14202

Chief of Police 1990-1994 Fort Pierce Police Department, 920 South U.S. Highway 1. Fort Pierce, FL 34954

Chief of Police 1987-1990 Fort St. Lucie Police Department 121 SW Port St. Lucie Blvd. Bldg "C" Port St. Lucie, FL. 34984

Officer, detective, sergeant, lieutenant 1972-1987 St. Petersburg Police Department. St. Petersburg Police Department 1300 1 Avenue North St. Petersburg, FL 33705

Boards and Commissions
Washington State Criminal Justice Standards and Training Commission 2007-current
Fight Crime: Invest in Kids, Board Chair. Washington, DC a non-profit organization advocating for early childhood programs and quality after school programs 1996-current
Salvation Army: local Advisory Board in FL, NY, past; WA January 2002-current
United Way FL and WA: past president, past advisory board member
Boy Scouts, District Commissioner in FL and NY, past
National Conference (Christians and Jews) Buffalo, board member, past
St. Mary's School for the Deaf, Buffalo, NY, board member, past
Fort Pierce-St. Lucie Chamber of Commerce, FL, board member, past
Hospital Corporation of America, Port St. Lucie and Fort Pierce, FL member of Hospital Board of Trustees, past
School Superintendent's Advisory Committee, Fort Pierce, FL, Chair, past
Rape Crisis Center, St. Petersburg, FL, Chair of Advisory Council, past

7. **Military Service and Draft Status: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.**
U.S. Army, February 1970-February 1972, Military Police Corps, Specialist 4th Class, Honorable Discharge

8. **Honors and Awards: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**
Community Service Award, Association of Hispanic Chambers of Commerce, 2008
Seattle University Community Leader Award, 2008
Friend of Freedom Award, Council on American-Islamic Relations, 2008
Leadership Award, Police Executive Research Forum, 2006
James V. Cotter Award for Excellence (Commission on Accreditation of Law Enforcement Agencies) 2006

Person of the Year Award, Ceasefire, 2006
Brotherhood/Sisterhood Award, The National Conference, 1998
Progressive Leadership Award, Citizen Action of New York, 1996
Gary P. Hayes Award for Innovation in Policing, 1991
Attorney General's Award (FL) for Outstanding Crime Prevention Unit, 1988 and 1990
Visiting Fellow, U.S. Department of Justice, National Institute of Justice, 1984
Honor Graduate, Outstanding Military Police Officer, 1970
U.S. Army Presidential Service Medal, 1972

9. **Bar Associations: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.**
Not Applicable

10. **Bar and Court Admission:**

a. **List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.**

b. **List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.**

Not Applicable

11. **Memberships:**

a. **List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.**

b.

Fight Crime: Invest in Kids, February 1998 - current
Member, International Association of Chiefs of Police
Member, Police Executive Research Forum Member
Member, Center Against Spouse Abuse (CASA), St. Petersburg, FL, past
note: Major Cities Chiefs Association, the member is the agency, ex. Seattle Police and not the agency head.

c. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To my knowledge, none of the organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies.

12. Published Writings and Public Statements:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

12a - I have tried to recall and identify all published writings and statements. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis.

Attached at Tab A are copies of the following:

A Note on the 2008 Crime Statistics, Seattle Police Department, 2009

Restore Voting Rights to Ex-Felons, Gil Kerlikowske and John Lovick, Seattle Post-Intelligencer, February 13, 2009

A Report to the Community: Thank You for Helping Us Do Our Jobs Better, Seattle Police Department, September 14, 2008

Imprisoned in the ____; Freeing the silent sufferers of human trafficking and bringing their captors to justice, Law Enforcement Technology, September 2008

Safe at home? Policing the U.S. hometown in a post 9/11 environment,
Crime, Law and Social Change. Vol. 50, Issues 1-2, p. 47-58, :September 2008 (not available)

To fight crime, start early, Seattle Times, October 11, 2007

A Report to the Community: Message from Chief Gil Kerlikowske, Seattle Police Department, September 16, 2007

NetSmartz: A Comprehensive Approach to Internet Safety and Awareness, R. Gil Kerlikowske; Malinda Wilson, The Police Chief, April 2007

Starting kids early on a path to success, Seattle Times, February 22, 2006

Bullying Prevention Is Crime Prevention, A Report by Fight Crime: Invest in Kids, 2003

Formation of Commission on Forensic Science and Public Policy Completed, Judicature, Jan/Feb 2006

Reducing Criminality, Letter To the Editor, New York Times, June 29, 2005

Leading Beyond Tradition: A Breakthrough Strategy for Law Enforcement Foreword by G. Kil Kerlikowske, William E. Cooper, 2005

Seattle Police Department Strategic Plan, Seattle Police Department, 2004

Renew Assault-Weapons Ban, The Seattle Times, 8/25/2004

Save the Assault Weapons Ban, Christian Science Monitor, 8/24/2004

Expulsion Not Only Solution, Daily Oklahoman, 9/29/2003

Limiting cases of criminal injustice, Bob Boruchowitz and Gil Kerlikowske, Guest Columnists, Seattle Post-Intelligencer, February 27, 2003

SPD Special Report: Addressing the Issue of Racial Profiling—One Year Later, Seattle Police Department/R. Gil Kerlikowske, August 2001 (only available at Seattle public library)

A sound investment, Letter To the Editor, U.S. News, May 29, 2001

Support for early childhood programs, Letter to the Editor, Newsweek, Nov 6, 2000

A Less Lethal Options Program for Seattle Police Department: A Report with Recommendations, Seattle Police Department/R. Gil Kerlikowske, Clark Kimerer, September 2000 *(copy not provided-only available at Seattle public library)*

Commentary: A powerful weapon against crime, Albany Times Union, February 26, 1998 (unavailable)

Want to Really Cut Crime? Provide the Care Kids Need So They Won't Become Criminals, Buffalo News, 2/18/1998

Modern Policing, Letter to the Editor, U.S. News, August 30, 1993

Community Survey: An Assessment of Police Services and Performance, Chief R. Gil Kerlikowske and Captain Brian E. Reuther, Florida Police Chief, December, 1989

Community Close-Up: Buffalo's Neighborhood Initiatives, Book: Community Policing: A Contemporary Perspective. date not available (unavailable)

Federal cuts hurt crime fight. Special to The Times, Seattle Times, date not available

Studies prove it: The best way to fight crime, Elliot L. Richardson and R. Gil Kerlikowske, Boston Globe. date not available

b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Not Applicable

c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

12 c. I have tried to recall and identify all testimony I have delivered. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis. For testimony which I delivered at the state level for which I have written testimony, I have included four copies of the text. For state-level testimony for which I do not have the written testimony, I have requested copies from the relevant legislative body and have been informed that copies can not be provided to me at this time.

Attached at Tab C are copies of the following:

Letter to Washington State Liquor Control Board, 6/20/2008

Committee on Ways and Means, Subcommittee on Income Security and Family Support, U.S. House of Representatives, Hearing on Improving the Child Welfare System, Congressional Testimony, February 27, 2008

Open Letter re: Mayor's Budget, 9/17/2007

The new need to know, Homeland Security, 9/1/2007

Seattle's Red Light Cameras Making Streets Safer, Seattle Office of the Mayor, 7/19/2007

Boeing to staff FBI Fusion Center, Washington Technology, 6/1/2007

Law Enforcement and Private Sector Information Sharing, Congressional Testimony, 5/25/2007

Senate Labor, Commerce, Research and Development Committee on Senate Bill 5197 to Close the Gun Show Loophole, Congressional Testimony, 2/8/2007

Open letter re: SPD Staffing Levels, 10/25/2006

Criminal Activity and Violence Along the Southern Border – Hearing Before the Subcommittee on Investigations of the Committee on Homeland Security, House of Representatives, One Hundred Ninth Congress, Second Session, Congressional Testimony, 8/16/2006

Washington: gun Show Background Checks gets Support, Crime Control Digest, 12/16/2005

Seattle Police Chief Urges Background Checks at Gun Shows, Brady Campaign to Prevent Gun Violence, 12/12/2005

Port Security - Prepared Statement for a Special Hearing Before a Subcommittee on Appropriations, United States Senate, One Hundred Seventh Congress, Second Session, Seattle, WA, page 61, Congressional Testimony, April 4, 2002

Multi-Agency Mardi Gras Summit, Seattle Police Department, March 11, 2001

Mardi Gras 2001 After Action Report, Seattle Police Department, 2001

Testimony R. Gil Kerlikowske President Police Executive Research Forum House Judiciary Constitution Applying Federal Law to Bailbondsmen & Bounty Hunters, Congressional Testimony, 3/12/1998

Judiciary Committee, Subcommittee on the Constitution, U.S. House of Representatives, Hearing on H.R. 3168 Citizen Protection Act of 1998, , Congressional Testimony March 12, 1998

John S. Farrell Legislative Committee Chair Police Executive Research Forum House Judiciary Crime Gun Bills, Congressional Testimony, 7/22/1997

House Education Early Childhood, Youth and Families Revision of Special Education Program, Congressional Testimony, 2/6/1997

d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of

the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

12 d. I have tried to recall and identify all speeches and talks I have delivered. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis. For those speeches and talks for which I have prepared remarks, I have included four copies of the text. The majority of these speeches or talks, however, did not have written prepared remarks.

Attached at Tab D are copies of the following:

New Directions for Policing Serious and Complex Crime (No transcript avail), summary provided, 2009 Speaker 2009 International Conference for Police and Law Enrforcement Executives Halifax, Nova Scotia, 4/19/2009, (no transcript available)

Center of Excellence in Policing and Security Symposium - New South Wales, Australia, 3/10/2009, no transcript or video available

How Cold Case Investigations are Relevant to DNA Post-Conviction Cases (video), National Institute of Justice DNA Symposium, 1/22/2009, no transcript or video available

Press Conference Remarks re: Fatal Shooting of police officer, Seattle Police Department, 1/2/2009, no transcript available, video available online.

Press Conference (Video): Youth Violence, City of Seattle's "Seattle Channel" at seattlechannel.org, 12/16/2008, no transcript available, video available online.

Remarks at Symposium on Law Enforcement and Violence Prevention, December 1, 2008

Remarks at Ryther Child Care Center, November 13, 2008

Press Conferenc: Wallingford Sexual Assault Suspect Arrested, City of Seattle's "Seattle Channel" at seattlechannel.org , 10/31/2008, no transcript available, video available online.

Guns Reduce Crime (Debate Transcript), The Rosenkranz Foundation/ Intelligence Squared US, 10/28/2008

Press Conference Remarks re: Mayor's Press Conference: Traffic Safety Speed Van, City of Seattle's "Seattle Channel" at seattlechannel.org, 10/20/2008, no transcript available, video available online.

A Message from Chief Kerlikowske about Civilian Oversight and Transparency in the Seattle Police Department, August 26, 2008

National Night Out: Some Thoughts and Observations by Chief R. Gil Kerlikowske, August 14, 2008

Press Conference Remarks re: Concealed Weapons, City of Seattle's "Seattle Channel" at seattlechannel.org, 6/9/2008, no transcript available, video available online.

Remarks at May 20th Promotional Ceremony, May 20, 2008

Press Conference Remarks re: New Technology for Reporting Crime Tips, Seattle Police Department, 4/4/2008, no transcript available, video available online.

Press Conference: 2007 Seattle Crime Stats, City of Seattle's "Seattle Channel" at seattlechannel.org, 1/17/2008, no transcript available, video available online.

Press Conference: Recent Undercover Operation involving Seattle Nightclubs, City of Seattle's "Seattle Channel" at seattlechannel.org , 9/9/2007, no transcript available, video available online.

Press Conference: Downtown Public Safety, City of Seattle's "Seattle Channel" at seattlechannel.org, 8/16/2007, no transcript available, video available online.

Press Conference: Police Accountability, City of Seattle's "Seattle Channel" at seattlechannel.org, 6/29/2007, no transcript available, video available online.

Youth Violence Forum: The West Side Story Project, City of Seattle's "Seattle Channel" at seattlechannel.org, 5/30/2007, no transcript available, video available online.

Press Conference (Video): 26 Year Old Cold Case, City of Seattle's "Seattle Channel" at seattlechannel.org, 4/6/2007, no transcript available, video available online.

ACAP Child & Family Services 37th Anniversary Breakfast and Fundraiser, March 19, 2007

City Inside/Out: Neighborhood Policing, City of Seattle's "Seattle Channel" at seattlechannel.org, 3/16/2007, no transcript available, video available online.

Safe at Home? Policing the Hometown in the Era of Homeland Security, (speech), Patrick V. Murphy lecture on Perspectives in Police Leadership in New York City, November 28, 2006

Chief's Statement to City Council Committee on Increasing Sworn Staffing, October 25, 2006

Chief's Statement to City Council Committee on Charter Amendment, July 14, 2006

An Explanation of the Investigation and Disciplinary Process in the Seattle Police Department, January 2006

International Roundtable: Police Challenges in the 21st Century, Eastern Kentucky University, Justice and Safety Center, October 10-11, 2005, no transcript available

Silver Successes, Golden Opportunities, 7th National Conference on Preventing Crime, National Crime Prevention Council, 2005

Convicting the Guilty, Exonerating the Innocent: How DNA and Other Methods are Dramatically Changing Policing, Police Executive Research Forum Annual Meeting, April 22, 2005, no transcript available

Brookings Welfare Reform and Beyond Initiative Public Forum. Measuring Child Well-Being: Reducing Risky Behavior (Transcript), Brookings Institution, 3/30/2005

Law Enforcement and Homeland Security Panel; Making Intelligence Relevant, U.S. Department of Homeland Security Conference, August 10, 2004, no transcript available

Forum on disparate law enforcement, City of Seattle Employees Black History Month Committee, February 26, 2004, no transcript available

Reporting on Terrorism the News media and Public health, Columbia University Mailman School of Public Health, 2004, (video, only available at DIA- will not release)

Law Enforcement Perspective, 2003 Hate Crimes Conference, Organization of Chinese Americans, October 15, 2003

The End of Community Policing, 2nd Annual National Community Policing Conference, Office of Community Oriented Policing, U.S. Department of Justice., June 18, 2003

Remarks given at Washington Association of Sheriff and Police Chiefs Conference, May 21, 2003

Remarks given to Rotary Club, March 6, 2003

Covering Police in Times of Crisis Forum , Western Knight Center for Specialized Journalism, 12/8/2001, transcript not available

Lessons Learned from the streets of Seattle, Cincinnati and Los Angeles, University of Southern California's Institute for Justice and Journalism - Covering Police in Times of Crisis Conference, 12/5/2001, transcript not available

Remarks given to The Junior State of America, November 10, 2001

Visions for the Seattle Police Department, University of Washington Evans School of Public Affairs, May 15, 2001 , (video, only available at University of Washington library)

Community Policing in the 21st Century, 1999 Bureau of Justice Assistance National Partnership Meeting: Working Together for Peace and Justice in the 21st Century, 4/6/1999, transcript not available

DWI Issues and Initiatives, (recording, only available at SUNY Buffalo Law Library). State University of New York at Buffalo, 1997

e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

12e. I have tried to recall and search for interviews that I have given and other articles in which I have been quoted. The following list is based on my recollection, a review of my files, and searches of electronic databases publically available and library resources including Lexis-Nexis. This list includes articles from primary sources in which I was quoted as a result of statements that had been disseminated to the press.

Attached at Tab E are copies of the following:

Securing the Border; Bernard Madoff Pleads Guilty, CNN, 3/12/2009

President Obama Signs Omnibus Spending Bill, Newshour with Jim Lehrer, 3/11/2009

An Unsolved Killing; What does the firing of a U.S. Attorney have to do, The New Yorker, 8/6/2007

Top Cop Says Invest Now, Seattle's Child, 11/2007

U.S. Cities Boost Security for July 4 Events, NPR, 7/2/2007

CEDs stop suspects in their tracks, Law Enforcement Technology, 5/1/2007

Bush Appointee Resigns, CNN, 4/28/2007

New Defense Secretary Takes Over; United States to Share Nuclear Technology, CNN, 12/18/2006

Violent Crime on the Rise in America, CNN Lou Dobbs Tonight, 12/18/2006

Interview with George Clooney; Total of U.S. Soldiers Wounded in Iraq, CNN, 9/14/2006

Lebanon Mourns After Qana Attack; Heat Wave Scorches Country, CNN, 8/31/2006

6 Women Shot, 1 Dead at Seattle's Federation, The Indiana Jewish Post & Opinion, 8/2/2006

Crisis in the Middle East; Jewish center Shootings Rattle Seattle, CNN, 7/29/2006

Violence Intensifies in Middle East, Secretary Rice Pushes for Possible, CNN, 7/29/2006

Gunman Opens Fire in Jewish Federation of Greater Seattle, Killing One, CBS Evening News, 7/29/2006

Seattle Shooting at Jewish Center May be Hate Crime, NBC News, 7/29/2006

Shooting in Seattle Might Indicate Mideast Tensions Affecting America, CBS Evening News, 7/26/2006

A Weekend Party that Turned Into a Killing Spree, CTV Television, 3/27/2006

Seattle Massacre, ABC News, 3/26/2006

Investigation Continues on Friday's Worst Mass Murder in Seattle, NBC News, 3/26/2006

More Fallout in Controversy Over Bush Administration's Domestic-Spying Program, CNN, 12/28/2005

U.S. Terror Alert, Federal News Service, 10/19/2005

Highlights of U.S. Broadcast News Coverage of the Middle East, Federal News Service, 10/19/2005

Baltimore, MD's Reaction to Terrorist Threat, NBC News, 10/18/2005

Rethinking Evacuation Plans, PBS NewsHour with Jim Lehrer, 9/26/2005

After the Storm: Are We Prepared: Speaking Out, Newshour with Jim Lehrer, 9/26/2005

Seattle Channel Spends a Day with Chief Kerlikowske, City of Seattle Web site, 6/27/2005

A Closer Look at Stun Guns, ABC News, 12/10/2004

Bloody Weekend, Newshour with Jim Lehrer, 9/13/2004

End of the Ban, PBS NewsHour with Jim Lehrer, 9/13/2004

Federal Assault Weapons Ban Expires, Online NewsHour, PBS.org, 9/13/2004

Listeners' Comments, NPR, 8/14/2004

Chief Gil Kerlikowske Discusses How Seattle is Handling Terror Alerts, NPR, 8/7/2004

Nightline Your Questions Answered, ABC News, 8/5/2004

The Abrams Report for July 23, 2004, MSNBC, 7/23/2004

Nightline the Final Report, ABC News, 7/22/2004

Faulty Analysis, CNN Paula Zahn Now, 7/9/2004

On Guard, But How Well?, The National Journal, 3/6/2004

Bullied children more prone to depression: raises suicide risk, Family Practice News, 1/1/2004

Security Preparations for New Year's Eve Celebrations Across the U.S., NPR, 12/31/2003

Fight Crime: Invest in Kids, Marketplace Morning Report, 11/28/2003

Many US Cities Need More Federal Money to Fully Prepare for Potential, CBS Morning News, 9/10/2003

New Report Critical of Terror Alert System, CNN, 8/11/2003

Homeland Security's 'Intractable Problem', The National Journal, 8/9/2003

The Search for Patrick Dennehy Continues, MSNBC, 7/3/2003

Lester Holt Live for July 3, 2003, MSNBC, 7/3/2003

How Are Cities Responding to Terror Alerts?, CNN, 5/21/2003

Continuing Events in the War with Iraq, NPR, 3/21/2003

How Baltimore and Seattle Are Coping with Heightened Security Alert, NPR, 2/15/2003

Intelligence Officials Have Sobering New Assessments of Al-Qaeda's, NBC News, 2/12/2003

Health and Human Services Assistant Sec. Jerome Hauer and Seattle Police, CNBC, 2/10/2003

Local Governments Struggling to Pay for Security Mandates, Marketplace, 2/7/2003

Dangerous Mission Communicating with Sniper, ABC News, 10/22/2002

Vouching for Veracity; Policing Immigration, Newshour with Jim Lehrer, 8/14/2002

Americans One Year After September 11, MSNBC, 8/12/2002

Cost of Increased Security, Marketplace, 7/4/2002

Murder of Gun Control Advocate and Federal Prosecutor Tom Wales, CBS Evening News, 4/17/2002

State of the Union Address and Responses, MSNBC, 1/29/2002

Police Departments Leading Homeland Security Want Freedom from Rules, CBS Evening News, 1/11/2002

America Continues Strike, MSNBC, 10/8/2001

What Goes Around Comes Around, The American Enterprise, 10/1/2001

The legal, political, and public war on racial profiling and its unlike, Texas Review of Law & Politics, 9/1/2001

Fine Line Between Overpolicing and Underpolicing, NPR, 7/23/2001

Missing- person cases: A Balancing Act for Police, New York Times, 7/21/2001

Police from Cities Plagued by Mardi Gras Violence Meet to Try to Come Up, CBS Evening News, 3/12/2001

Chief Gil Kerlikowske Discusses Finding Answers to Growing Problem of Violence, NBC News, 3/11/2001

Seattle Police Officer Apologizes for his Lack of Action in the Mardi Gras, CBS Evening News, 3/9/2001

Police Officials from Several Cities Meet to Grapple with the Problems, CBS Evening News, 1/11/2001

Police Departments Across the Country Reluctant to Devote More Resources, NPR, 12/27/2000

Seattle Demonstrations Against WTO Turned Ugly with Many Arrested, ABC News, 12/1/2000

Landslides and Flooding Kill 100 in Sumatra, ABC News, 11/28/2000

Recent Wave of Violent Crime by Young Attackers in the Seattle Area, CBS Evening News, 9/29/2000

Political leaders should listen to Kerlikowske, The Tribune, 7/29/1996

Laptop 54, Where are you?, Business Week, 8/7/1995

Many Citizens and Police Forces Hope Crime Law Will Increase Number, CBS Evening News, 9/13/1994

13. Public Office, Political Activities and Affiliations:

a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Chief of Police, Seattle, Washington, 2000-current, Mayor Paul Schell
Deputy Director, Office of Community Oriented Policing Services, 1998-2000, Attorney General Janet Reno
Police Commissioner, Buffalo Police Department, 1994-98, Mayor Anthony Massielo
Chief of Police, Fort Pierce (FL), 1990-1994, City Manager James A. "Bo" Powell
Chief of Police, Port St. Lucie (FL), 1987-1990, City Manager Wayne Allgire
I have not run for elected office and have not held any position with a political party.

b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

14. Legal Career: **Answer each part separately.**

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

ii. whether you practiced alone, and if so, the addresses and dates;

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

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b. **Describe:**

i. **the general character of your law practice and indicate by date when its character has changed over the years.**

ii. **your typical clients and the areas at each period of your legal career, if any, in which you have specialized.**

c. **Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.**

i. **Indicate the percentage of your practice in:**
1. **federal courts;**
2. **state courts of record;**
3. **other courts;**
4. **administrative agencies**

ii. **Indicate the percentage of your practice in:**
1. **civil proceedings;**
2. **criminal proceedings.**

d. **State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.**

i. **What percentage of these trials were:**
1. **jury;**
2. **non-jury.**

e. **Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.**

Not Applicable

15. Litigation: **Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:**

a. **the date of representation;**

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b. the name of the court and the name of the judge or judges before whom the case was litigated; and

c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Not Applicable

16. **Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)**

Not Applicable

17. **Teaching: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.**

Seattle University, Seattle, WA, January, 2002 – current: Course CRJS 522: Issues in Law Enforcement. Syllabus attached at Tab F.

Buffalo State College courses on crime and the police response to crime that I taught had similar themes and would be during the 1995-97 years while Police Commissioner in Buffalo

Florida Atlantic University and Indian River Community College, Fort Pierce, Fl. The FAU courses were taught at Indian River Community College (this was the off-site campus for FAU) and the courses, as noted, were under the auspices of FAU or IRCC during the 1988-93 years. I would teach once or twice a year on "contemporary issues in policing." The theme was around causes of crime, the police response to crime, etc.

18. **Deferred Income/ Future Benefits: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former**

employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.
Current
City of St. Petersburg retirement, currently receiving $900 a month

Future
Retirement from State of Washington Law Enforcement Officer Pension System. +/- $2500 per month upon retirement

City of Seattle Deferred Compensation Plan, future value not readily ascertainable

Deferred compensation from contributions by self and former employers (City of Fort Pierce, FL, and City of Port St. Lucie, FL) now in IRA managed by D.A. Davidson & Co., future value not readily ascertainable

19. **Outside Commitments During Service: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**
There are none

20. **Sources of Income: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding $500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).**

City of Seattle salary as Police Chief, $216,515.00
Retirement from City of St. Petersburg, FL, $10,095
Seattle University, adjunct professor, $3,700
Maryland Police Chiefs, lecture on leadership fee, $1,500
Honoraria, Rosenkrantz Foundation, panel discussion, $1,000

21. **Statement of Net Worth: Please complete the attached financial net worth statement in detail (add schedules as called for).**
Attached at TAB E

22. **Potential Conflicts of Interest:**

    a. **Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the**

position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

23. Pro Bono Work: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name**: Full name (include any former names used).

Ronald Harris Weich

2. **Position**: State the position for which you have been nominated.

Assistant Attorney General for Legislative Affairs, Department of Justice

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office of the Senate Majority Leader
S-221 The Capitol
Washington, DC 20510

4. **Birthplace**: State date and place of birth.

November 19, 1959
New York City, NY

5. **Education**: List in reverse chronological order, listing most recent first, each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

Yale Law School; attended 1980 – 1983; J.D. Degree awarded in May, 1983.

Columbia University; attended 1976 – 1980; B.A. Degree awarded in May, 1980.

London School of Economics and Political Science; attended 1978 – 1979; no degree awarded (General Course student).

6. **Employment Record**: List in reverse chronological order, listing most recent first, all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services.

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Include the name and address of the employer and job title or job description where appropriate.

United States Senate

Chief Counsel to Majority Leader Harry Reid	**Jan 2007 – present**
Senior Counsel to Minority Leader Harry Reid	**Jan 2005 – Dec 2006**
Chief Counsel to Senator Edward M. Kennedy	**July 1995 – Feb 1997**
General Counsel, Committee on Labor and Human Resources	**Jun 1992 – Jun 1995**
Counsel to Senator Edward M. Kennedy	**Jan 1990 – May 1992**
Counsel to Senator Arlen Specter	**Feb – Dec 1989**

Zuckerman Spaeder LLP, 1800 M Street, NW, Washington, DC 20036

Partner **Mar 1997 – Dec 2004**

Bazelon Center for Mental Health Law, 1101 15th Street, NW, Washington, DC 20005
Trustee (uncompensated) **1997-2004**

Vera Institute of Justice, 233 Broadway, New York, NY 10279
Trustee (uncompensated) **1997-2004**

Dean for America, 60 Farrell Street, South Burlington, VT 05403

Part-time Policy Advisor **May 2003 – Feb 2004**

District of Columbia Community Corrections Facility Siting Advisory Commission
Appointed Member (uncompensated) **2003**

Washington Council of Lawyers, 555 12th Street, NW, Washington, DC 20004
Board member (uncompensated) **1998-2002**

DC Prisoners Legal Services Project, 11 Dupont Circle, Washington, DC 20036
Board member (uncompensated) **2000-2001**

Emory University School of Law, 1301 Clifton Road, Atlanta, GA 30322

Adjunct Professor of Law **Jan – Jun 1995**

Federal Sentencing Reporter, 2000 Center Street, Berkeley, CA 94704
Advisory Board member (uncompensated) **1988 – present**

United States Sentencing Commission, One Columbus Circle, NE, Washington, DC 20002

Special Counsel **Nov 1987 – Feb 1989**

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Office of the Manhattan District Attorney, **One Hogan Place, New York, N.Y. 10013**

Assistant District Attorney **Aug 1983 – Nov 1987**

7. **Military Service and Draft Status**: Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received.

None.

8. **Honors and Awards**: List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Named by *Roll Call* newspaper as one of the 50 most influential congressional staff members (2007-09).

Named by *National Law Journal* as one of 105 most influential lawyers in the United States (1994).

Award from National Mental Health Association for Outstanding Advocacy (1992)

Runner-up, Yale Law School Moot Court Prize Argument (1983).

Graduated *magna cum laude* from Columbia University (1980).

Elected to Phi Beta Kappa (1980).

9. **Bar Associations**: List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups

American Bar Association (ABA), member 1988 – 2006

-- ABA Criminal Justice Section, member 1988 – 2006; Council member 2000-2002; Vice Chair for Government Relations 2000-2002

-- ABA Individual Rights and Responsibilities Section, member 1998-2002

District of Columbia Bar Association (1997 – present)

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10. **Bar and Court Admission**:

a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

District of Columbia; admitted 1997

New York State (First Department); admitted 1983

b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

U.S. Supreme Court; admitted 2002

U.S. Court of Appeals for the District of Columbia Circuit; admitted 1988

District of Columbia; admitted 1997

New York State (First Dept.); admitted 1983

11. **Memberships**:

a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 10 or 11 to which you belong, or to which you have belonged, or in which you have significantly participated, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Member, Interfaith Family Project (2005-present) (3rd grade Sunday School teacher)

Member, Palisades Swimming Pool Association (2007-present)

Advisory Board Member, Federal Sentencing Reporter (1988 – present)

Trustee, Bazelon Center for Mental Health Law (1997-2004)

Trustee, Vera Institute of Justice (1997-2004)

Member, National Association of Criminal Defense Lawyers (1997-2004)

Board member, Washington Council of Lawyers (1998-2002)

Board member, DC Prisoners' Legal Services Project (2000-2001)

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Member, Citizens for the Constitution (1999)

b. Please indicate whether any of these organizations listed in response to 12(a) above currently discriminate or formerly discriminated on the basis of race, sex, or religion – either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

No.

12. **Published Writings and Public Statements**:

a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Please supply four (4) copies of all published material to the Committee.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

ARTICLES:

Dan Freed: My Teacher, My Colleague, My Friend, forthcoming publication in the Federal Sentencing Reporter (2009)

The Innocence Protection Act of 2004: A Small Step Forward and a Framework for Larger Reforms, 29 *The Champion* No. 2 at 28 (March 2005).

The Innocence Protection Act: Death Penalty Reform on the Horizon, 25 *The Champion* No. 3 at 18 (April 2001).

Managed Care and Managed Sentencing — A Tale of Two Systems, 11 *Federal Sentencing Reporter* 139 (1998)

Victims' Rights Amendment: Unique Problems in Corporate Criminal Cases, 4 *Business Crimes Bulletin* No. 7 at 4 (1997).

The Battle Against Mandatory Minimums: A Report from the Front Lines, 9 *Federal Sentencing Reporter* 94 (1996).

Introduction to FJC Survey, 7 *Federal Sentencing Reporter* 151 (1994).

Proposed 1992 Guideline Amendments, 4 *Federal Sentencing Reporter* 239 (1992).

The Strange Case of the Disappearing Statute, 3 *Federal Sentencing Reporter* 239 (March - April 1991) (and Guest Editor of FSR issue).

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Contribution to Post-Mistretta Forum, 1 *Federal Sentencing Reporter* 372 (February-March 1989).

The Relevant Conduct Controversy, 2 *Federal Sentencing Reporter* 150 (1989) (co-author).

Emergency Amendments, 2 *Federal Sentencing Reporter* 71 (1989).

Plea Agreements, Mandatory Minimum Penalties and the Guidelines, 1 *Federal Sentencing Reporter* 266 (1988).

The Constitutionality of the New Claims Court, 29 *Federal Bar News & Journal* 477 (1982) (co-author).

CLIENT REPORTS:

Note: The following policy reports were written under the direction of paying clients of my law firm and their contents do not necessarily reflect my personal views.

The Bush Administration Takes Aim: Civil Rights Under Attack, report prepared for the Leadership Conference on Civil Rights and the Leadership Conference Education Fund (2003).

Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001, report prepared for the Leadership Conference on Civil Rights and the Leadership Conference Education Fund (2003) (co-author).

Insatiable Appetite: The Government's Demand for New and Unnecessary Powers After September 11, report prepared for the American Civil Liberties Union (2002).

Upsetting Checks and Balances: Congressional Hostility Towards the Courts in Times of Crisis, report prepared for the American Civil Liberties Union (2001).

Justice on Trial: Racial Disparities in the American Criminal Justice System, report prepared for the Leadership Conference on Civil Rights and the Leadership Conference Education Fund (2000) (co-author).

b. Please supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, please give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

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Report and Recommendations of the District of Columbia Community Corrections Facility Siting Advisory Commission (April 2003) (I was an appointed member of this Commission)

Building Consensus on Election Reform: A Report of the Constitution Project's Forum on Election Reform (2001) (I served as legislative counsel to the organization that issued this report)

"Great and Extraordinary Occasions": Developing Guidelines for Constitutional Change (1999) (I was a member of the working group that developed these guidelines and endorsed the guidelines themselves)

Report of the Drugs and Violence Task Force convened by the U.S. Sentencing Commission (1996) (According to an electronic database I participated in this task force as a representative of Senator Kennedy, for whom I worked at that time, but as best as I can determine a final report was never issued)

c. Please supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Testified before the U.S. Senate Judiciary Committee on "Blakely v. Washington and the Future of the Federal Sentencing Guidelines" (July 13, 2004)

Testified on behalf of the American Bar Association before the U.S. Sentencing Commission on "Proposed Amendments to the Sentencing Guidelines" (February 26, 2002)

Testified on behalf of the Justice Project before the Maryland Senate Committee on Judicial Procedures on "Post-Conviction DNA Testing" (October 23, 2001).

Testified on behalf of the American Civil Liberties Union before the National Committee on Vital and Health Statistics, Subcommittee on Privacy and Confidentiality, on "Implementation of Medical Privacy Regulations: Significance of the 'Minimum Necessary' Standard." (August 22, 2001)

Testified on behalf of the American Civil Liberties Union before the U.S. House Committee on Banking and Financial Services on "H.R. 4585 – the Medical Financial Privacy Protection Act" (June 14, 2000)

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Testified on behalf of Citizens for the Constitution before the Constitution Subcommittee of the U.S. House Judiciary Committee on "H.J. Res. 9 The Line Item Veto Constitutional Amendment" (March 23, 2000)

Testified before the U.S. Senate Judiciary Committee on "S. 1673, the Unborn Victims of Violence Act" (February 23, 2000).

Testified before the Constitution Subcommittee of the U.S. House Judiciary Committee on H.R. 2436, the Unborn Victims of Violence Act" (July 21, 1999).

Memo to "Interested Persons" on behalf of the American Civil Liberties Union regarding an amendment to juvenile justice legislation (June 16, 1999).

Testified on behalf of the American Civil Liberties Union before the U.S. Senate Committee on Health, Education, Labor and Pensions on "Medical Records Confidentiality in a Changing Health Care Environment" (April 27, 1999).

d. Please supply four (4) copies, transcripts or tape recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Please include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or tape recording of your remarks, please give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, please furnish a copy of any outline or notes from which you spoke.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Panelist, "Liberty and Security in the Next Administration: War, Rights, and Antiterrorism" (October 3, 2008 panel at Yale Law School, New Haven, CT) (videotape available at http://ylsqtss.law.yale.edu:8080/qtmedia/alumni2008/aw08panel2Fri100308_s.mov)

Panelist, "Strickland v. Washington: How Effective is the Right to the Effective Assistance of Counsel Standard?" (November 7, 2007 conference at the Library of Congress sponsored by the Constitution Project) (videotape available at http://www.loc.gov/today/cyberlc/feature_wdesc.php?rec=4234)

Panelist, "Congress and the Balance of Power" (2007 American Constitution Society annual meeting) (videotape available at http://www.acsblog.org/news-and-announcements-congress-and-the-balance-of-power.html)

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Guest, class on legislative process at Harvard Law School, Cambridge, MA (Professor Flug) (February, 2007) (extemporaneous remarks, no transcript available)

Panelist, "Round Table Discussion: Survey of New Developments in National Security Law: Views from the Hill" (November 2006 meeting of the American Bar Association Standing Committee on Law and National Security in Washington, DC) (extemporaneous remarks, no transcript available)

Speaker, "Public Interest Lobbying Skills" (September 19, 2006 workshop sponsored by the Washington Council of Lawyers in Washington, DC) (extemporaneous remarks, no transcript available)

Panelist, "Separation of Powers: Restoring the Balance Among the Branches" (2006 American Constitution Society annual meeting) (transcript attached and available at http://www.acslaw.org/files/Separation%20of%20Powers--Restoring%20Balance%20Among%20the%20Branches--transcript.pdf)

Panelist, "The Meaning of the 2004 Election for People with Mental Disabilities" (December 2, 2004 panel discussion sponsored by the Bazelon Center for Mental Health Law in Washington, DC) (extemporaneous remarks, transcript unavailable but article describing the panel is attached and available at: http://www.bazelon.org/about/inbrief/spring2005.pdf)

Facilitator, "Forum on Blakely, the Kennedy Commission, and Beyond: The Future of State and Federal Sentencing Policies" (September 14, 2004 panel discussion at the National Press Club sponsored by the Open Society Institute and the Constitution Project). (Audiotape available at: http://www.soros.org/initiatives/washington/events/blakely_20040914?skin=printable)

Panelist, "Federal Sentencing in Flux: The Impact of Blakely on White Collar Criminal Enforcement" (August 4, 2004 panel discussion sponsored by the Washington Legal Foundation in Washington, DC) (extemporaneous remarks, no transcript available but flyer attached).

Guest, The Diane Rehm Show on National Public Radio, discussion of sentencing law (August 12, 2003) (extemporaneous remarks, no transcript available)

Guest, C-Span Discussion on developments in sentencing law (August 11, 2003) (videotape provided to Committee).

Panelist, "Commuting the Death Sentences in Maryland: Executing Juveniles and Mentally Retarded." (March 27, 2003 panel discussion at the American University College of Law, Washington, DC) (extemporaneous remarks, no transcript available).

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Panelist, "Whither Federalism? The Impact of Globalization and the War on Terror" (2002 Federalist Society Convention, Washington, DC) (extemporaneous remarks, no transcript available but convention program attached).

Panelist, "The New Medical Privacy Regulations: Will They Protect Our Most Personal Information" (February 15, 2001 Cato Institute Policy Forum) (videotape available at https://www.cato.org/events/010215pf.html)

Participant, Press Conference on release of client report entitled "Upsetting Checks and Balances: Congressional Hostility Towards the Courts in Times of Crisis" (November 1, 2001) (extemporaneous remarks, no transcript available, but client report produced in response to question 12(a) above).

Participant, Press Conference on release of client report entitled "Justice on Trial: Racial Disparities in the American Criminal Justice System" (May 4, 2000) (extemporaneous remarks, no transcript available, but client report produced in response to question 12(a) above).

Panelist, "Invading Our Privacy: How the Government Plans to Violate Patient Confidentiality" (May 27, 1999 panel discussion at the Heritage Foundation, Washington, DC) (extemporaneous remarks, no transcript available).

Panelist, Federal Public Defenders' Training Conference in Las Vegas, NV (Sept. 14, 1998) (extemporaneous remarks, no transcript available).

e. Please list all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following (where noted, I spoke on behalf of a client):

"Behind the Scenes, an Army of Senate Aides Takes On the Filibuster Fight," *New York Times*, May 20, 2005.

"Add-Ons End Years of Wrangling, Clear Path for DNA Testing Bill," *Congressional Quarterly Weekly*, October 16, 2004 (on behalf of client).

"Supreme Court Starts Term with Prison Sentencing Rules," *USA Today*, October 4, 2004.

"Long Term in Drug Case Fuels Debate on Sentencing," *New York Times*, September 12, 2004.

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"Trial by jury," *San Francisco Chronicle*, August 10, 2004.

"Rulings rein in Bush," *New York Newsday*, June 29, 2004.

"What Price Can We Put on Freedom? State May Limit Compensation for False Convictions," *Daily Press* (Newport News, VA), February 29, 2004 (on behalf of client).

"Long-Distance Operator," *National Journal*, January 17, 2004

"Dean walks the line on gun control," *Burlington Free Press*, September 28, 2003.

"Words as Tactics In War on Terror," *New York Times*, September 14, 2003.

"Feeney Makes an Impression as Freshman on Capitol Hill," *Orlando Sentinel*, April 28, 2003.

"The Politics of Judicial Confirmation," *Washington Lawyer*, September 2002.

"Downside of taking the Fifth: Public relations suffers," *USA Today*, February 12, 2002.

"Justice During Wartime," *Legal Times*, November 19, 2001 (on behalf of client).

"Bush Plan Draws Criticism from Civil Libertarians," *St. Louis Post-Dispatch*, November 18, 2001 (on behalf of client).

"Anti-terror laws face little challenge," *Chicago Tribune*, November 11, 2001 (on behalf of client).

"Senator presses for new law banning genetic bias," *Disability Compliance Bulletin*, June 29, 2001 (on behalf of client).

"Press Rips HIPAA," Hospitals & Health Networks, June, 2001 (on behalf of client).

"For Sale: Privacy Concerns, Drug Marketing Collide at the AMA," *Modern Physician*, May 1, 2001 (on behalf of client).

"Bush To Employ Medical Privacy Rules," *Associated Press Online*, April 12, 2001 (on behalf of client).

"White House Plans to Revise New Medical Privacy Rules," *New York Times*, April 8, 2001 (on behalf of client).

"Bush Administration Disputes Medical Privacy Rules," *Seattle Post-Intelligencer*, April 07, 2001 (on behalf of client).

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"Leahy Challenges Congress to Fill Gaps in Medical Information Privacy Rule," *Cyberspace Lawyer*, March 2001 (on behalf of client).

"Close Eye on Ashcroft Promise; Friends, Foes Wait to See on Racial Profiling Policy," *Newsday*, February 4, 2001 (on behalf of client).

"Conservatives Get Champion at Justice," *Washington Post*, December 23, 2000.

"U.S. Moves To Cloak Medical Records; New Privacy Rules Are Strengthened," *Washington Post*, December 20, 2000 (on behalf of client).

"Clinton Will Issue New Privacy Rules to Shield Patients," *New York Times*, December 20, 2000 (on behalf of client).

"Health Privacy Rules To Be Issued," *Associated Press Online*, December 20, 2000 (on behalf of client).

"Don't Pardon Ex-President Clinton – Commute His Sentence," *National Journal*, September 13, 2000.

Tony Snow Interview of Ron Weich regarding the Innocence Protection Act, Fox News Network, June 16, 2000 (on behalf of client).

"GOP Targets Lawyer for Elian's Dad," *Chicago Tribune*, April 27, 2000.

"Privacy Initiative Elicits Praise, Concern," *Los Angeles Times*, October 30, 1999 (on behalf of client).

"Health data privacy pushed; New U.S. rules would limit access to medical records," *Chicago Sun-Times*, October 30, 1999 (on behalf of client).

"Plan Would Guard Data on Patients; Clinton Proposal Too Full of Loopholes, Advocates Say," *Chicago Tribune*, October 30, 1999 (on behalf of client).

"SIIA, ACLU Clash Over Privacy Of WC Medical Records," *National Underwriter*, October 11, 1999 (on behalf of client).

"Ashcroft and Carnahan Joust Over Victims' Rights," *St. Louis Post-Dispatch*, October 10, 1999.

"Reno Toughs Out Term," *Chicago Tribune*, August 4, 1999.

"Rep. Franks Changes Language in Internet Filtering Bill," *Newsbytes*, March 2, 1999 (on behalf of client).

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"Senate's Internet Legislation Under Fire," *New York Times*, July 27, 1998 (on behalf of client).

"Senate Approves Internet Filters, Son of CDA," *Newsbytes*, July 22, 1998 (on behalf of client).

"Debate heats up over privacy of computerized medical records," *Orange County Register*, July 7, 1999 (on behalf of client).

"Nation Debates Need for Medical Privacy," *Baltimore Sun*, June 27, 1999 (on behalf of client).

"The Web's Pornucopia," *National Journal*, January 9, 1999 (on behalf of client).

"Wired in Washington," *National Journal*, August 8, 1998 (on behalf of client).

"Compressed Data; Backing for Bill To Shield Children," *New York Times*, June 29, 1998 (on behalf of client).

"Starr: If Lies Were Told, Civil Case 'Doesn't Matter,'" *Chicago Tribune*, April 3, 1998.

"Politics Perils U.S. Sentencing Panel," *Chicago Tribune*, August 12, 1997.

"Lobbyists, Tired of Giving, Lobby for Campaign Finance reform," *The Hill*, January 22, 1997.

"Congress is expected to vote ban on smoking in schools," *Boston Globe*, March 22, 1994.

13. **Public Office, Political Activities and Affiliations**:

    a. List chronologically any public offices you have held, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

Member, District of Columbia Community Corrections Facility Siting Commission (2002-03). Appointed by D.C. Councilmember Kathy Patterson.

I have never run for elective office.

In addition, the government jobs I have listed in response to Question #7 may be considered "public offices."

    b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever

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held a position or played a role in a political campaign, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have volunteered for various political campaigns, including:

Joel Harnett for Mayor of New York City (1977) – driver
Nick Scoppetta for Attorney General of New York State (1978) – driver; general assistance
Edward M. Kennedy for Senator from Massachusetts (1994) – GOTV volunteer
John Kerry for President (general election 2004) – volunteer policy advisor
Barack Obama for President (general election 2008) – GOTV volunteer

In addition, I was a paid employee of VT Governor Howard Dean's unsuccessful campaign for the Democratic presidential nomination in 2004. I took a 50% leave of absence from my law firm from approximately May 2003 to February 2004 to serve as a part-time policy advisor to the campaign.

14. **Legal Career:** Please answer each part separately.

a. Describe chronologically your law practice and legal experience after graduation from law school including:

i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I have never clerked for a judge.

ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced law alone.

iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

United States Senate

Chief Counsel to Majority Leader Harry Reid	**Jan 2007 – present**
Senior Counsel to Minority Leader Harry Reid	**Jan 2005 – Dec 2006**
Chief Counsel to Senator Edward M. Kennedy	**July 1995 – Feb 1997**
General Counsel, Committee on Labor and Human Resources	**Jun 1992 – Jun 1995**
Counsel to Senator Edward M. Kennedy	**Jan 1990 – May 1992**
Counsel to Senator Arlen Specter	**Feb – Dec 1989**

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Zuckerman Spaeder LLP, 1800 M Street, NW, Washington, DC 20036
Partner **Mar 1997 – Dec 2004**

Dean for America, 60 Farrell Street, South Burlington, VT 05403
Part-time Policy Advisor **May 2003 – Feb 2004**

Emory University School of Law, 1301 Clifton Road, Atlanta, GA 30322
Adjunct Professor of Law **Jan – Jun 1995**

United States Sentencing Commission, One Columbus Circle, NE, Washington, DC 20002
Special Counsel **Nov 1987 – Feb 1989**

Office of the Manhattan District Attorney, One Hogan Place, New York, N.Y. 10013
Assistant District Attorney **Aug 1983 – Nov 1987**

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

No.

b. Describe:

i. the general character of your law practice and indicate by date when its character has changed over the years.

ii. your typical clients and the areas, if any, in which you have specialized.

In the 26 years since I graduated from law school, I have principally been a government lawyer. I began my career as a New York City prosecutor (1983-87), then came to Washington to work for a federal agency (1987-89) and moved from there to the staffs of two senators (1989-97). After fourteen years in government service I joined a law firm where I was worked for eight years (1997-2004) as a litigator and public policy specialist. In 2005 I returned to the Senate to join the staff of Senate Minority Leader Harry Reid.

I currently serve as Chief Counsel to Senator Reid, who is now the Senate Majority Leader. I play a leading staff role with respect to anti-terror legislation, all civil and criminal justice bills, judicial nominations and institutional legal issues. This is my

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second period of service in the Senate -- earlier in my career I worked on similar issues for Judiciary Committee members Edward Kennedy and Arlen Specter. I also handled several public health policy issues for Senator Kennedy and helped to manage a large professional staff as General Counsel of what was then called the Labor and Human Resources Committee.

Between these two periods of employment in the Senate, I was a partner in the law firm of Zuckerman Spaeder LLP. As a member of the firm's litigation department, I represented clients before courts, legislatures and administrative agencies in civil and quasi-criminal matters. I also counseled clients regarding public policy and legislative strategy, and drafted a number of policy reports for clients. I have included these policy reports among the publications listed in response to question 12(a), but I wish to emphasize that they were written under the direction of paying clients, and their contents do not necessarily reflect my personal views.

Among my litigation clients at the law firm were the Oneida Indian Nation of New York, the International Brotherhood of Teamsters, several generic drug companies and various individuals. Among my public policy clients at the law firm were U.S. Pharmacopeia, the American Psychological Society, the Justice Project and the Campaign for Tobacco-Free Kids. The aforementioned policy reports were written for the American Civil Liberties Union and the Leadership Conference on Civil Rights. Both of these organizations were paying clients of my law firm.

Still earlier in my career, prior to my first stint as a Senate staff member, I served as Special Counsel to the United States Sentencing Commission, an independent judicial branch agency. I served as the Commission's legislative liaison, drafted guideline amendments, and represented the Commission in federal district courts throughout the United States in cases challenging the constitutionality of the Sentencing Reform Act of 1984.

My first legal job was in the Office of the Manhattan District Attorney. As an Assistant District Attorney in a trial bureau (Trial Bureau 30), I was responsible for hundreds of criminal prosecutions, most of which resulted in guilty pleas. According to records recently provided to me by that Office, I tried approximately twelve felony cases to jury verdict. In addition, I handled hundreds of misdemeanor prosecutions at the beginning of my time in the Office, and conducted approximately seven misdemeanor trials, some of which were jury trials and others of which were bench trials. I also conducted numerous pre-trial hearings, in both misdemeanor and felony cases.

Finally, in response to question 6, I listed two other miscellaneous legal jobs: In 1995 I was an adjunct professor at Emory Law School where I taught a class on "Legislative Process." And in 2003-04 I was a part-time paid policy advisor to Vermont Governor Howard Dean during his unsuccessful campaign for the Democratic presidential nomination.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

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Over the course of my career, approximately 20% of my legal work has involved litigation and 80% has involved public policy matters. In the aggregate, I have appeared in court "occasionally." (see description below).

i. Indicate the percentage of your practice in:
   1. federal courts;
   2. state courts of record;
   3. other courts.

Over the course of my career, approximately 20% of my litigation experience has been in federal court and 80% in state court (see description below).

ii. Indicate the percentage of your practice in:
   1. civil proceedings;
   2. criminal proceedings.

Over the course of my career, approximately 10% of my litigation experience has been in civil proceedings and 90% has been in criminal proceedings (see description below).

. . . . . .

I began my legal career as an Assistant District Attorney in New York, where 100% of my practice involved litigation in New York City Criminal Court (misdemeanor cases) and New York State Supreme Court (felony cases). I appeared in court almost every day.

Thereafter I worked for the U.S. Sentencing Commission, where I spent approximately 20% of my time working on litigation generated by challenges to the constitutionality of the Sentencing Reform Act of 1984. I appeared in federal district courts across the country on behalf of the Commission as *amicus curiae* in those cases. See, e.g., U.S. v. Dibiase, 687 F. Supp. 38 (D. Conn en banc 1988). These appearances all took place in criminal cases, but my role in them was to present oral argument on matters of constitutional and administrative law in response to motions by defendants. The other 80% of my work for the Commission involved drafting guideline amendments and serving as the agency's liaison to Congress.

In 1989 I joined the staff of Senator Arlen Specter and later joined the staff of Senator Edward M. Kennedy. My work for these members was strictly legislative in nature and involved no litigation.

During the eight years I was a partner in the law firm of Zuckerman Spaeder LLP, I spent approximately 50% of my time as a litigator and 50% of my time as a public policy specialist. The litigation component of my practice mostly involved drafting briefs and other pleadings and rarely involved formal court appearances. I did, however, appear in federal court on behalf of the International Brotherhood of Teamsters in a quasi-criminal

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matter, first in the Southern District of New York and then in the Second Circuit (U.S. v. IBT, 172 F.3d 217 (2d Cir. 1999).

In my current role as Chief Counsel to Senate Majority Leader Reid I do not appear in court, although I occasionally work with the Office of the Senate Legal Counsel and make recommendations with respect to litigation in which the Senate or individual Senators are a party.

d. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

i. What percentage of these trials were:
1. jury;
2. non-jury.

As described in the preceding answer, I tried approximately 20 cases to verdict in the years I served as an Assistant District Attorney in New York City. At least 75% of these cases were jury trials and the rest were bench trials. During these trials I was typically the sole lawyer on behalf of the government, although I recall that I "second-chaired" a trial early in my career. Later in my career as a prosecutor I sometimes had a junior lawyer assist me during significant trials.

Other court appearances during my career – on behalf of the Sentencing Commission and on behalf of my law firm clients – did not involve cases tried to verdict or judgment.

e. Describe your practice, if any, before the Supreme Court of the United States. Please supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have never presented oral argument before the U.S. Supreme Court. However I have filed briefs with the Supreme Court in the following matters:

1. Mistretta v. United States, 488 U.S. 361 (1989). I was one of several named attorneys on the staff of the U.S. Sentencing Commission who, along with outside counsel, filed a brief on behalf of the Commission as *amicus curiae* in this landmark case upholding the constitutionality of the Sentencing Reform Act in the face of a separation of powers claim.

2. Bousley v. Brooks, 523 U.S. 614 (1998). As pro bono counsel to the National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums, I filed an *amicus curiae* brief urging that a newly announced rule of criminal procedure be applied retroactively.

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3. Abdur'Rahman v. Bell, 537 U.S. 88 (2002). On behalf of six former Tennessee prosecutors, I filed an *amicus curiae* brief urging that a death row inmate be granted habeas corpus relief based on prosecutorial misconduct. The writ of certiorari was dismissed as improvidently granted, but Justice Stevens filed a dissent which cited our brief.

4. Miller v. U.S (No. 04-38), cert denied, 544 U.S. 919 (2004). As pro bono counsel to indigent criminal defendant Shannon Miller, I filed a petition for certiorari challenging the composition of the 11th circuit panel that denied Miller's appeal of a criminal conviction. Certiorari was denied.

15. **Litigation**: Describe the ten (10) most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

    a. the date of representation;

    b. the name of the court and the name of the judge or judges before whom the case was litigated; and

    c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

In replying to this question, I have attempted to identify current contact information for other attorneys involved in these cases but have been unable to do so completely.

1. Miller v. U.S (No. 04-38), cert denied, 544 U.S. 919 (2004). As pro bono counsel to indigent criminal defendant Shannon Miller, I filed a petition for certiorari challenging the composition of the 11th circuit panel that denied Miller's appeal of a criminal conviction. Certiorari was denied. The United States was represented by the Solicitor General's Office, which did not file a brief in opposition to the petition.

Co-Counsel for Petitioner Miller
Federal Public Defender Paul Rashkind
150 W Flagler Street
Miami, FL 33130
(305) 536-6900 x205

2. Abdur'Rahman v. Bell, 537 U.S. 88 (2002). On behalf of six former Tennessee prosecutors, I filed an *amicus curiae* brief urging that a death row inmate be granted habeas corpus relief based on prosecutorial misconduct. The writ of certiorari was dismissed as improvidently granted, but Justice Stevens filed a dissent which cited our brief.

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Attorney for Petitioner
Professor James Liebman
Columbia Law School
435 West 116th Street
New York, NY 10027
212-854-3423

Attorney for Respondent
Tennessee Attorney General Paul G. Summers
currently at:
Waller Lansden Dortch & Davis LLP
511 Union Street
Nashville, TN 37219
(615) 850-8790

3. U.S. v. International Brotherhood of Teamsters (IBT), 172 F.3d 217 (2d Cir. 1999). As counsel to the IBT, I presented oral argument in this case regarding federal reimbursement for expenses incurred by the IBT for a union election under the terms of a federal court consent decree. The Second Circuit, in an opinion by Judge Leval joined by Judges Van Graafeiland and Burns, denied my client's appeal. I also participated (but did not present oral argument) in an earlier stage of the litigation, where the Second Circuit ruled that the IBT was entitled to federal funding for its election under certain circumstances. U.S. v. International Brotherhood of Teamsters, 141 F.3d 405 (2d Cir. 1998).

Attorney for the United States
Karen Konigsberg
Office of the United States Attorney, Southern District of New York
1 St. Andrews Plaza
New York, NY 10007
(212) 637-2200

In-house counsel for the IBT
David Neigus
currently at:
International Association of Machinists and Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772
(301) 967-4500

4. Bousley v. Brooks, 523 U.S. 614 (1998). As pro bono counsel to the National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums, I filed an *amicus curiae* brief urging that a newly announced rule of criminal procedure be applied retroactively. Our position was adopted by the Court.

Attorney for Petitioner

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I. Marshall Smith
Current address unknown

Attorney for the United States
Michael Dreeben
Office of the Solicitor General
(202) 514-2203

5. Mistretta v. United States, 488 U.S. 361 (1989). I was one of several named attorneys on the staff of the U.S. Sentencing Commission who, along with retained counsel, filed a brief on behalf of the Commission as *amicus curiae* in this landmark case upholding the constitutionality of the Sentencing Reform Act in the face of a separation of powers claim.

Attorney for Petitioner
Professor Alan Morrison
currently at:
American University Law School
4801 Massachusetts Avenue, NW
Washington, DC 20016
(202) 274-4236

Attorney for the United States
Solicitor General Charles Fried
currently at:
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138
(617) 495-4636

6. U.S. v. Dibiase, 687 F. Supp. 38 (D. Conn. en banc 1988). In the lower court litigation leading up to Mistretta, discussed above, I represented the Sentencing Commission as *amicus curiae* in federal district courts across the country. One example of this litigation was the Dibiase case, in which I argued the matter before an en banc panel of judges in the District of Connecticut.

Attorney for Defendant
Darcy McGraw
currently at:
240 Lawrence Street
New Haven, CT 06515
(203) 368-4234

Attorney for the United States
Paul Cassell
currently at:
University of Utah Law School

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332 South 1400 East
Salt Lake City, UT 84112
(801) 581-6833

7. People of the State of New York v. William Mingues. (Indictment No. unknown), 165 A.D. 2d 774 (1st Dept. 1990), leave to appeal denied, 76 NY2d 988 (1990). As an Assistant District Attorney I prosecuted the defendant, a career criminal, for a series of elevator robberies. He was convicted of Robbery in the First Degree and sentenced to a maximum of 20 years. The case was tried in New York State Supreme Court before the Honorable Allen Murray Myers. The defendant's appeals were denied. I have not been able to ascertain the name of the defense attorney.

8. People of the State of New York v. William Velez (Indictment No. 4115/85). As an Assistant District Attorney I prosecuted the defendant for stabbing a taxicab driver in the chest, inflicting a wound which required two dozen stitches. He was convicted of Assault in the Second Degree and sentenced to a maximum of six years in state prison. The case was tried in New York State Supreme Court before the Honorable Jeffrey Atlas.

Attorney for the Defendant
Mark Weinstein
401 Broadway
New York, NY 10013

9. People of the State of New York v. Eric Washington (Indictment No. 7042/86). As an Assistant District Attorney I prosecuted the defendant for stealing $600 from a man at knifepoint. He was convicted of Robbery in the First Degree, Robbery in the Second Degree and Criminal Possession of Stolen Property in the Second Degree and sentenced to a maximum of 15 years in state prison. The case was tried in New York State Supreme Court before the Honorable Leslie Crocker Snyder.

Attorney for the Defendant
Brian Buchbinder
Legal Aid Society of New York
199 Water Street
New York, NY 10038
(212) 577-3300

10. People of the State of New York v. Keith Morris (Indictment No. 1590/86). As an Assistant District Attorney I prosecuted the defendant for stealing money and credit cards from a woman in an elevator at knifepoint. The defendant was convicted of Robbery in the First Degree and sentenced to a maximum of nine years in state prison. The case was tried in New York State Supreme Court before the Honorable Jay Gold.

Attorney for the Defendant
David Leibman
401 Broadway

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New York, NY 10013

16. **Legal Activities**: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. Please list any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Most of my significant legal activities in recent years have occurred in the congressional arena, where I have functioned in both the government and private sectors. For example:

1. FISA Amendments Act of 2008 (Pub. L. 110-261). As Chief Counsel to Senator Reid, I helped to facilitate passage of this major national security law. I worked to coordinate joint activities of the two Senate committees with jurisdiction over the Foreign Intelligence Surveillance Act (the Select Committee on Intelligence and the Judiciary Committee) and participated in negotiations among these Senate committees, their House counterparts and Bush Administration officials within the intelligence community.

2. PROTECT Our Children Act of 2008 (Pub. L. 110-401). As Chief Counsel to Senator Reid, I helped to resolve procedural difficulties that had impeded passage of this legislation to develop a National Child Exploitation Prevention and Interdiction Strategy and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute child predators.

3. Honest Leadership and Open Government Act of 2007 (Pub. L. 110-81). Senator Reid was a leading sponsors of this landmark law, which has been called the most sweeping ethics and lobbying reform in a generation. As Reid's Chief Counsel, I was one of the principal draftsmen and strategists behind this effort.

4. Patient Safety and Quality Improvement Act of 2005 (Pub. L. 109-41). When I was in private practice I was retained by U.S. Pharmacopeia, a non-profit organization that administers a widely used medication error reporting system, to draft and seek enactment of a federal evidentiary privilege for information developed by such systems. Such a law was eventually enacted in 2005.

5. Innocence Protection Act (title IV of the Justice For All Act, Pub. L. 108-405). In private practice I represented the Justice Project, a non-profit organization that advocates improvements to the administration of capital punishment in the United States. On behalf of the group I helped to draft and championed passage of the Innocence Protection Act, a bipartisan initiative to (a) expand access to DNA testing for death row inmates with legitimate claims of innocence, and (b) encourage improvements in state systems for the appointment of indigent defense counsel in capital cases.

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6. ADAMHA Reorganization Act of 1992 (Pub. L. 102-321). Early in my congressional career, as counsel to Senator Kennedy, I was the principal staff author and strategist behind this significant public health initiative which for the first time brought the National Institutes of Mental Health (NIMH), Drug Abuse (NIDA) and Alcoholism and Alcohol Abuse (NIAAA) within the research portfolio of the National Institutes of Health. This law also established the Substance Abuse and Mental Health Services Administration (SAMHSA) to carry out federal support for drug treatment and mental health services throughout the United States.

- - - - - - -

As an attorney in private practice from 1997 to 2004, prior to joining Senator Reid's staff in January 2005, I performed lobbying activities on behalf of the following clients on the following issues:

The Constitution Project: Election reform

The Justice Project: Improved access to DNA testing; improved indigent counsel systems

Leadership Conference on Civil Rights: Initiatives to reduce racial disparities in the criminal justice system

Oneida Indian Nation of New York: Issues relating to the Nation's land claims and gaming interests in upstate New York

Campaign for Tobacco-Free Kids: Legislation to reduce underage smoking

American Civil Liberties Union: Medical privacy, Internet privacy, financial privacy

American Psychological Society: Support for behavioral research within NIH and other federal agencies

National Alliance for the Mentally Ill: Mental Health Parity Legislation

National Pawnbrokers Association: Bankruptcy and Firearms issues

National Prison Project: Issues arising from the Prison Litigation Reform Act of 1995

International Brotherhood of Teamsters (IBT): Issues arising from union governance provisions of the IBT's longstanding federal court consent decree

U.S. Pharmacopeia (USP): Legislation to strengthen USP's medication error reporting system

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17. **Teaching**: What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, please provide four (4) copies to the committee.

In 1995 I was an Adjunct Professor of Law at Emory University School of Law and taught a course entitled "Legislative Process" to approximately 100 students.

18. **Deferred Income/ Future Benefits**: List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

19. **Outside Commitments During Service**: Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

None.

20. **Sources of Income**: List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Financial disclosure form submitted.

21. **Statement of Net Worth**: Please complete the attached financial net worth statement in detail (add schedules as called for).

Statement of Net Worth attached.

22. **Potential Conflicts of Interest**:

    a. Identify any affiliations, pending litigation, financial arrangements, or other factors that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

My wife Julie Stewart is president of Families Against Mandatory Minimums (FAMM), a non-profit organization that conducts public education in support of judicial discretion at sentencing. She is not a registered lobbyist, and FAMM does not lobby the Department of

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Justice, but there may be instances in which advocacy by my wife's organization would appear to conflict with my responsibilities at the Department. I have already consulted with ethics officials at DOJ to establish a protocol for recusing myself from such matters.

b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **Pro Bono Work**: An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I have been a government lawyer for 18 of the 26 years since I graduated from law school. During my years in government service I have frequently worked on matters that, in my view, served the disadvantaged. For example, as a prosecutor I worked closely with crime victims; as a member of the U.S. Sentencing Commission staff I worked to establish fair and effective sentencing guidelines; and as a member of Senator Kennedy's staff I assisted in efforts to reauthorize the Legal Services Corporation. Moreover, in 2004 I left a lucrative law firm partnership to serve the public interest as a member of Senator Reid's staff.

During my years in the private sector I handled several pro bono matters. For example:

-- In 1998 I served as pro bono counsel to the National Association of Criminal Defense Lawyers and Families Against Mandatory Minimums as *amicus curiae* in Bousley v. Brooks (523 U.S. 614 (1998)).

-- In 1999 I served as pro bono counsel to Our Place DC, a Washington-based social service agency, in negotiations that led the organization to separate from a parent entity and become an independent non-profit organization.

-- In 2004 I served as pro bono counsel to the Sierra Club in Sierra Club v. Leavitt (No. 03-10262-F) (11th Cir. 2004) in a challenge to the recess appointment of Judge Pryor to the Eleventh Circuit. Subsequently I litigated the same issue as pro bono counsel to an indigent defendant named Shannon Miller in Miller v. U.S (No. 04-38), cert denied, 544 U.S. 919 (2004).

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RONALD H. WEICH
STATEMENT OF NET WORTH (as of 12/31/08)

ASSETS:	
Cash on hand and in banks	$15,000.00
U.S. Government securities (Thrift Savings Plan)	$81,772.86
Listed securities (see Schedule A)	$533,551.73
Unlisted securities--add schedule	0
Accounts and notes receivable	0
Real estate owned (see Schedule B)	$1,255,970.00
Real estate mortgages receivable	0
Autos and other personal property (see Schedule C)	$69,750.00
Life insurance (see Schedule D)	
Cash Surrender Value of Mass Mutual Policy	$9,988.87
Other assets:	
20 acres of farmland in Pullman, WA	$28,000.00
TOTAL ASSETS:	**$1,994,033.46**

LIABILITIES:	
Notes payable to banks-secured (Home Equity Loan)	$60,217.00
Notes payable to banks-unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	0
Unpaid income tax	0
Other unpaid income and interest	0
Real estate mortgages payable (see Schedule B)	$676,891.00
Chattel mortgages and other liens payable	0
Other debts	0
TOTAL LIABILITIES	**$737,108.00**
NET WORTH:	**$1,256,925.46**

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GENERAL INFORMATION

Are any assets pledged?	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

SCHEDULE A - Listed Securities

My Retirement Account at Smith Barney:

Washington Mutual Investors Fund Class A	$1,348.68
Capital Income Builder Fund Class A	$22,387.45
Capital World Growth and Income Fund Class A	$19,689.86
EuroPacific Growth Fund Class A	$68,009.34
Growth Fund of America	$72,598.39
Income Fund of America Class A	$21,440.44
Smallcap World Fund Class A	$32,435.88
Washington Mutual Investors Fund Class A	$73,115.77
TOTAL:	$311.025.81

Spouse's Retirement Account at T. Rowe Price:

Growth Stock	$58,345.55
Small Cap Value	$95,143.13
TOTAL	$153,488.68

Spouse's Roth Conversion IRA at Smith Barney:	$2,626.32

Children's College Funds (529A) at American Funds:
(Two identical accounts aggregated)

Growth Fund of America	$21,659.74
Smallcap World Fund	$5,887.10
Capital World Growth and Income	$19,037.04
Washington Mutual Investors Fund	$19,827.04
TOTAL	$66,410.92

TOTAL LISTED SECURITIES:	**$533,551.73**

SCHEDULE B - Real Estate

Primary Residence (Washington, DC)

Current value:	$820,970
Amount of mortgage:	$437,705

Residential Rental Property (Washington, DC)

Current value:	$300,000
Amount of mortgage:	$239,186

Vacation / Rental Condominium (Antigua, Guatemala)

Current value:	$135,000
(No mortgage)	

TOTAL VALUE OF REAL ESTATE:	**$1,255,970.00**
TOTAL AMOUNT OF MORTGAGES:	**$676,891.00**

SCHEDULE C - Automobiles and Personal Property

2006 Toyota Prius	$12,300
2006 Mazda 5	$7,450
General Household Property (est.)	$50,000
TOTAL ESTIMATED VALUE OF AUTOS AND HOUSEHOLD PROPERTY:	**$69,750**

SCHEDULE D - Life Insurance

Empire General Term Life Insurance
Beneficiary = self
Death benefit = $750,000

Mass Mutual Variable Universal Life Insurance
Beneficiary = self
Death benefit = $250,000
Cash Surrender Value = $9,988.87

Genworth Life and Annuity Term Life Insurance
Beneficiary = spouse
Death benefit = $400,000

AFFIDAVIT

I, Ronald H. Weich, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 18, 2009
(DATE)

(NAME)

Heather D. Vachon
(NOTARY)
District of Columbia
Subscribed and sworn to before me this 18th day of March, 2009

Notary Public

NOTARY PUBLIC
DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES OCTOBER 14, 2013

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QUESTIONS AND ANSWERS

Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Jeff Sessions

1. **During his campaign, President Obama announced: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old-and that's the criteria by which I'll be selecting my judges." Which, if any, of these categories do you believe best describes your judicial philosophy as laid out by the President?**

RESPONSE:

Federal judges take an oath to administer justice without respect to persons and to do equal right to the poor and to the rich. Empathy for all parties – to be distinguished from sympathy – is important in fulfilling that oath. If confirmed, I will apply the law fairly and accurately to all parties before me.

2. **In his questionnaire, Judge Gerard Lynch noted that he got several cases wrong and that the appeals court reversed him appropriately. In which of the following cases where your decisions were either reversed or vacated do you believe the appellate court decided the case correctly? Please explain why.**

   a. **Grossbaum v. Indianapolis-Marion County Building Authority, 870 F. Supp. 1450 (S.D. Ind. 1994).**

RESPONSE:

I agree with the Seventh Circuit's reversal, 63 F.3d 581 (7th Cir. 1995). The Seventh Circuit relied heavily on an intervening Supreme Court decision, *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), which provided helpful guidance in applying First Amendment free speech protections (as distinct from free exercise of religion protections) to these issues.

   b. **American Amusement Machine Ass'n v. Cottey, 115 F. Supp.2d 943 (S.D. Ind. 2000).**

RESPONSE:

I recognize the Seventh Circuit's decision, 244 F.3d 572 (7th Cir. 2001), as controlling law within the circuit. I respectfully disagree with it for the reasons stated in my opinion. In summary, I do not believe the Seventh Circuit's opinion gave sufficient weight to parents' interests in limiting their minor children's unsupervised access to extremely violent games in public arcades.

c. Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005).

RESPONSE:

I have no disagreement with the ultimate reversal on the issue of taxpayer standing, see 506 F.3d 584 (7th Cir. 2007), which was based on an intervening decision by the Supreme Court, *Hein v. Freedom from Religion Foundation*, 551 U.S. 587 (2007), which sharply curtailed reliance on taxpayer standing in Establishment Clause cases.

d. United States v. McCotry, 2006 U.S. Dist. LEXIS 62777 (S.D. Ind. 2006).

RESPONSE:

On the issue on which my decision was reversed, see 495 F.3d 795 (7th Cir. 2007), whether the police violated a mother's constitutional rights by interrogating her young daughter at public school to pursue a criminal investigation of her mother, I recognize the Seventh Circuit's decision as controlling law within the circuit. I respectfully disagree with it for reasons stated in my opinion.

3. The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

a. Do you believe that the Second Amendment is an individual right or a collective right? Please explain.

RESPONSE:

I believe it is an individual right, as held in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

b. Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.

RESPONSE:

I have not considered the question before with the kind of care needed to make a court decision. However, I believe the Supreme Court's decision in *District of Columbia v. Heller* did not limit the individual right to the context of military service or hunting, but extended it to traditionally lawful uses of firearms, including defense of property and persons.

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c. What restrictions, if any, do you believe would be constitutional against an individual's Second Amendment rights?

RESPONSE:

The Court's opinion in *District of Columbia v. Heller* made clear that the right is important and that any restrictions on it would need to be justified by powerful reasons. At the same time, the Court said that its decision "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 128 S. Ct. at 2816-17. Lower courts will need to examine those examples of still-valid laws and apply their teachings to other restrictions that are challenged.

d. What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?

RESPONSE:

I have not had occasion to study the matter, and have not had the benefit of full adversarial presentations of competing views. Since *District of Columbia v. Heller* declined to adopt a particular standard of review for laws regulating gun ownership, possession, and use, lower courts will need to examine the cited examples of still-valid laws and apply their teachings to other restrictions that are challenged.

e. Do you believe that the Second Amendment should be incorporated against the State?

RESPONSE:

I have not had occasion to study the particular question or the broader case law on incorporation of specific provisions in the Bill of Rights into the liberty protected by the Fourteenth Amendment, and I have not had the benefit of full adversarial presentations of competing views. If the question were presented to me, I would do my best to apply faithfully the doctrines and case law developed in earlier incorporation cases.

4. Do you believe that the spontaneous questioning of a private citizen by another citizen could ever implicate the Fifth Amendment? If so, please explain.

RESPONSE:

I do not believe so. I understand the Fifth Amendment privilege against self-incrimination to apply to questioning by government actors, not by private individuals acting in an entirely private capacity.

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5. In Video-Home-One, Inc. v. Brizzi, Civ. No. 105CV1712DFHVSS (Nov. 22, 2005), you granted a temporary restraining order blocking enforcement of an Indiana criminal law that barred the sale or display of sexually explicit material within 500 feet of a church of school. By contrast, you upheld an Indianapolis ordinance that restricted unaccompanied minors' access to violent video games in American Amusement Machine Ass'n v. Cottey, 115 F. Supp.2d 943 (S.D. Ind. 2000). In Cottey, you wrote that you saw no "principled constitutional difference between sexually explicit material and graphic violence. You were reversed in Cottey by the Seventh Circuit.

a. Your statement in Cottey is remarkable next to your decision in Brizzi. You stated that there was no "constitutional difference between sexually explicit material and graphic violence," yet you upheld a restriction on graphic violence but enjoined enforcement of an obscenity restriction. Please explain this discrepancy.

RESPONSE:

The principal difference between the two cases is that the violent video game case dealt with limits on children's unsupervised access to violent video games in arcades, while the *Video-Home-One* case dealt with the location of stores selling sexually explicit material that is legal for adults to buy or rent. The city's violent video game ordinance contained similar restrictions on children's access to sexually explicit video games. Those restrictions were so clearly constitutional that the industry did not even try to challenge them.

Under controlling Supreme Court precedents discussed in the *Video-Home-One* opinion, restrictions on locations of stores selling legal but sexually explicit materials can be justified based on the so-called "secondary effects" they cause, such as increases in local crime. For the court to have upheld the statute, the state needed to offer evidence showing that businesses like the plaintiff (a general-audience video rental store that had a small collection of sexually explicit videos in a separate, adults-only section) would have such secondary effects on the neighborhood. The state had no such evidence. Instead, the state conceded that the statute was unconstitutional and agreed to a permanent injunction.

6. In an interview with *NUVO: Indianapolis's Alternative Voice*, you discussed procedural rules and appeared to distance yourself from the judicial role described by Chief Justice Roberts during his confirmation hearing. You stated:

> **"[T]he rules are so complicated that there can be traps for even very capable lawyers. So judges are given some discretion - not in deciding what the rules are, but in how tightly they will be enforced. Reasonable and conscientious judges reach different decisions from time to time. In that sense, the call is not was that a ball or strike. But taking into account what happened and its effect on both parties, what are the practical consequences. . . ."**

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I'm alarmed and very troubled by your statement that a judge's job is not to call the game fairly, but instead to be results-oriented. From a procedural perspective it makes little sense to rule on anything other than the law that is clearly set by Congress and to do so consistently between all litigants.

a. Please explain your statement and how it comports with the Civil Rules of Procedure and Criminal Rules of Procedure.

RESPONSE:

I did not say that the judge's job is not to call the game fairly, nor did I say that the judge should be "results-oriented" I was addressing situations that arise frequently in managing cases, especially in civil litigation, in which one side, and often both sides, might miss a deadline or fail to fulfill every detail of their obligations in discovery, or where a defendant might fail to answer the complaint on time and be subject to a default judgment. Many provisions in both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and the cases interpreting them expressly give the judge both the power and the obligation to use discretion in deciding whether to excuse some failures to comply and in choosing an appropriate sanction.

In the quoted interview, I was making the point that in exercising the discretion given by the Rules in such instances, I try to evaluate the results of the party's failure to comply with a deadline or other rule. Was the mistake inadvertent and excusable? Was it a deliberate tactic to gain an unfair advantage? Did the failure cause prejudice to the opposing party or to the court? Those judgments are routine in district courts, but they are not as simple as calling a ball or strike. They call for the exercise of discretion and judgment to ensure that the court will be fair to all parties.

7. **During your hearing, you responded to a question from Senator Cardin that asked you to share "a moment during your career where you stood up for something that was not popular, stood up for people who were disadvantaged, whether it was against government or big companies, that indicated your willingness to step forward in order to protect the rights of individuals." As part of your response, you pointed to your time spent as a District Court judge, stating: "I try not to go out of my way to be unpopular. That's just not the way we decide cases. Sometimes the right result turns out to be the popular result; sometimes the right result is unpopular. You just go with the right result."**

a. I agree that a judge's decision should not be based on what is popular versus what is unpopular. However, the way that a judge should decide cases is through a correct application of the law to facts - not on what he or she personally believes is the "right result." Please explain how you define the "right result."

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RESPONSE:

I define the "right result" as the result that follows from correct application of law to the facts of the case.

8. **In a 2003 speech you made a statement that "part of a judge's job is to write a series of footnotes to the Constitution." During your hearing, Senator Coburn asked you about this statement and you stated that: "[A] least to me, the concept of the footnote implies what we're trying to do is not something new, but work out the details of how those principles apply to new situations."**

   a. **Your reference to judge-made "footnotes to the Constitution" is very confusing to me. Please list and describe all the "footnotes" which you believe you have added to the Constitution during your 14-year tenure on the bench.**

RESPONSE:

The phrase "footnotes to the Constitution," described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. In my view, judges do not "add" footnotes to the Constitution itself. They apply the Constitution to the facts of the particular case and add to the body of case law interpreting the Constitution.

   b. **Are any of the "footnotes" that you added contrary to the express language or original intent of the Founding Fathers?**

RESPONSE:

I have not added footnotes to the Constitution. I believe the constitutional decisions I have made have been consistent with the express language and original intent of the Founding Fathers.

   c. **In which areas do you believe "footnotes" remain to be written in the Constitution?**

RESPONSE:

I do not believe judges write footnotes into the Constitution. Judges will continue to decide the constitutional cases that come before them.

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9. **During your hearing, Senator Coburn asked you whether you believed courts should look to international law in interpreting the Constitution. In response, you stated:**

> **"There are situations that we've seen in which the Supreme Court or other courts, in struggling with a difficult question, will look to guidance from wise commentators from many places, professors from law schools, experts in a particular fields who have written about it. And in recent years the Supreme Court has started to look to some courts from other countries where some members of the court may believe that there is some wisdom to be gained. As long as it's confined to something similar to citing law professors' articles, I don't have a problem with that, but I think that all of us remember that the Constitution, after all, is the product of a rebellion against a foreign power, and it is an American document that we are interpreting and applying."**

a. In which Supreme Court decisions do you believe it was valid for the Court to look for other countries for "some wisdom to be gained"? Please explain.

RESPONSE:

The example I had in mind was from Justice Stevens' dissenting opinion in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 133 (2001), regarding statutory interpretation. Justice Stevens quoted Justice Aharon Barak of the Supreme Court of Israel, who had written "that the 'minimalist' judge 'who holds that the purpose of the statute may be learned only from its language' has more discretion than the judge 'who will seek guidance from every reliable source.'" That point is valid in any legal system that requires statutory interpretation. After quoting Justice Barak, Justice Stevens went on to point out that a "method of statutory interpretation that is deliberately uninformed, and hence unconstrained, may produce a result that is consistent with a court's own views of how things should be, but it may also defeat the very purpose for which a provision was enacted."

b. Based on your answer to Senator Coburn, do you believe it was appropriate for members of the Supreme Court to look to international law in striking down the death penalty for person under the age of 18 in Roper v. Simmons, 543 U.S. 551 (2005)?

RESPONSE:

No.

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10. In Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005), you permanently enjoined sectarian prayers invoking the name Jesus Christ, yet explicitly noted that Muslim clerics could still pray to Allah. Please explain how this comports with Supreme Court precedent by not favoring one religion over another.

RESPONSE:

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. Under the reasoning of that case, some official prayers are permissible and some are not. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered "sectarian." See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be "sectarian" if it "specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"). Under this reasoning, similarly, a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, "Allah," I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric's prayers' content and setting could lead one to conclude that they were sectarian.

11. If standing had been appropriate in Hinrichs, do you believe your opinion should stand?

RESPONSE:

Yes, based on the evidence before me showing repeated and consistent sectarian official prayers. On the merits, the decision followed the controlling Supreme Court precedent in *Marsh v. Chambers* and was consistent with all other lower court decisions I knew of addressing comparable practices of official, sectarian prayer. When the Seventh Circuit addressed the merits in the decision on a stay pending appeal, the court agreed with my view of the merits. 440 F.3d 393 (7th Cir. 2006).

12. In United States v. Rinehart, 2007 U.S. Dist. LEXIS 19498 (S.D. Ind. Feb. 2, 2007), you sentenced a 32-year-old defendant to fifteen years in prison for engaging in and video-taping sexual relations with two young girls, one age 16 and one age 17. In your written opinion, you found that the sexual relationship was "consensual." You disapproved of the fifteen year mandatory minimum sentence and noted that "this court could not impose a just sentence in this case." Further, you wrote: "The only way that [the defendant's] punishment could be modified to become just is through an exercise of executive clemency by the President. The court hopes that will happen."

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a. Do you stand by your statement?

RESPONSE:

Yes, because of the unusual circumstances detailed in the opinion, including the facts that under applicable Indiana law, the defendant's sexual relationships with the two girls were legal because they were of lawful age to consent, and there was no indication of any intent to distribute the photographs any further.

b. Do you believe it was appropriate for you to urge for clemency in your written opinion? Please explain.

RESPONSE:

Yes. Congress must enact legislation with broad application, and as I explained in the opinion, Rinehart's conduct fell within the letter of the law but did not, in my view, reflect the much more heinous conduct that Congress targeted with the mandatory minimum 15-year sentence. I applied the law in the case, but recognized that the President has the power to grant clemency. My understanding is that it would be unusual for a President to grant clemency in a case without giving the prosecutor and sentencing judge the opportunity to comment on the case. I thought it was appropriate to set out my views while the case was still very fresh in my mind rather than try to remember it years later.

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Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Orrin G. Hatch

1. **Judge Hamilton, I believe that the qualifications to be a federal judge include not only what your resume tells us but also your judicial philosophy. By that I mean your understanding of a federal judge's power and role in our system of government. In a 2003 speech for the dedication of the Birch Bayh Courthouse, you agreed with the notion that "part of our job as judges is to write a series of footnotes to the Constitution." You addressed this briefly in your hearing, but I would like a fuller explanation as well as a few examples of footnotes you have added to the Constitution?**

RESPONSE:

The phrase "footnotes to the Constitution," described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. In my view, judges do not "add" footnotes to the Constitution itself. They apply the Constitution to the facts of the particular case and add to the body of case law interpreting the Constitution.

2. **In those remarks, you said that supporters of the Equal Rights Amendment had lost the battle but won the war because the Supreme Court has since taken positions very similar to the ERA. To be honest, I find that observation disturbing because it suggests that it does not matter how the Constitution is changed, whether by the people or by judges. The Supreme Court can amend the Constitution just as much, perhaps even more, by changing its meaning as the people can by changing its words. Do you believe it was legitimate for the Court to accomplish what it would have required the ERA to accomplish? Do you believe that judicial amendments are as legitimate as popular amendments?**

RESPONSE:

I believe the development of equal protection law applied to sex discrimination over a series of cases is legitimate, similar to the development of the case law on racial classifications, from the separate-but-equal standard in *Plessy v. Ferguson* to the gradual erosion of that standard and its eventual overruling in *Brown v. Board of Education*. At the same time, of course, the courts are not justified in disregarding amendments adopted under Article V of the Constitution. Both the process of case-by-case adjudication and the Article V amendment processes are constitutionally legitimate, and were both, in my view, expected by the Framers, provided that case-by-case interpretation follows the usual methods of legal reasoning and interpretation. If there were a conflict between the two, an amendment adopted under Article V clearly would take precedence over conflicting case law.

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3. **In that same vein, let me ask you about your remarks at a 2001 naturalization ceremony when you spoke about how the temptation to limit freedom can be very strong. You gave examples of limiting an *individual*'s freedom of speech, religion, or property. But there is also the *collective* freedom of the people to govern themselves. When judges change the meaning of statutes or the Constitution, they change the law and undermine the ability of the people to govern themselves. I would like your comment on that.**

RESPONSE: I agree with your observation about the risk that judges can, if they err, undermine the ability of the people to govern themselves. The role of the courts is to ensure that statutes and constitutional provisions are given their intended scope and effect and are not erroneously narrowed or broadened.

4. **Judge, I have a few questions about some of your decisions. These are also directed at your judicial philosophy, your approach to judging. First, let me ask you about your decision last year in *United States v. Woolsey*. The defendant in that case received a mandatory sentence because of two previous drug felony convictions. You ignored one of those previous convictions because you thought it should have been set aside. As you put it, you treated as having been done what you believed should have been done. I find this stunning. Applying the law to the facts that were actually before you apparently would have led to a result you did not like, so you changed the facts. You, in effect, decided a different case than the one that was before you, I assume in order to reach a result you preferred. The Seventh Circuit unanimously reversed you and stated that judges do not have the authority to decide cases based on their personal views of what is wise or appropriate. I thought that was just a given. What made you think that you could, in effect, make up facts in order to achieve a particular result? Please explain why you thought you had authority to take the approach you did, treating as having been done what had not been, but which you thought should have been, done.**

RESPONSE:

When I received the Seventh Circuit's opinion in *United States v. Woolsey*, 535 F.3d 540 (7th Cir. 2008), I agreed that I had made a mistake in imposing on a 55 year old man a 25 year mandatory sentence rather than a mandatory life sentence. In making that mistake, I was not acting on the basis of personal preferences or beliefs. I was trying to apply to a conviction under the repealed Youth Corrections Act the standards Congress has set forth in 18 U.S.C. § 3553(a) for sentencing and 21 U.S.C. §§ 841 and 18 U.S.C. § 924(c) for mandatory minimum sentences in drug and firearm cases. I agree that judges should not make decisions based on their personal views of what is wise or appropriate.

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5. **In your 2005 decision in *Hinrichs v. Bosma*, you held that prayers using "Christ's name or title" or making specific theological claims about Jesus violated the First Amendment while there was "little risk" in using the name "Allah." Against the backdrop of the Supreme Court decision upholding the constitutionality of legislative invocations, and since no one need even listen to, let alone participate, in such a prayer, isn't such regulation of the content of prayers what America's founders sought to guard against and the sort of "entanglement" with religion that the Supreme Court has warned against?**

RESPONSE:

In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court held that official legislative prayers did not violate the Establishment Clause where those prayers had not been used "to proselytize or advance any one, or to disparage any other, faith or belief." Under the reasoning of that case, some official prayers are permissible and others are not, depending on the content and circumstances. As a district judge, I applied the standard and reasoning of *Marsh v. Chambers*, which required attention to the content and circumstances of the prayers.

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Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Charles E. Grassley

1. **In your opinion, what is the role of a judge in society? How would you define "judicial activism?"**

RESPONSE:

The role of a judge in our society is to decide cases within the court's jurisdiction according to the law and the evidence.

I would define "judicial activism" as the use of judicial power beyond the clear constraints on the court's jurisdiction, the use of biased fact-finding to reach a preferred result, and decisions that are not based on reasonable interpretations of applicable constitutional, statutory, or regulatory provisions or common law precedents. I would also apply the term to decisions that give too little deference to legislative policy judgments and/or fact-finding.

2. **In notes from a March 2008 speech to the Indianapolis Bar Association, you wrote, in reference to Federalist Paper 78, "judges could and should refuse to enforce federal laws that were 'contrary to the manifest tenor of the constitution." The quote "contrary to the manifest tenor of the constitution" is from Federalist Paper 78. What do you think that Hamilton meant when he used the words "manifest tenor of the constitution?"**

RESPONSE:

In context, I believe that Hamilton simply meant by the phrase "the manifest tenor of the constitution" the provisions of the Constitution. He used the phrase immediately after referring to specific constitutional prohibitions on bills of attainder and ex post facto laws.

   i. **Does the Defense of Marriage Act, which defines marriage to be between a man and a woman, go against the "manifest tenor of the constitution?"**

RESPONSE:

I have not studied the question or had the benefit of adversarial presentation of views, but I am not aware of any court decision concluding that such a provision would violate the United States Constitution.

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ii. What about a law requiring women seeking abortions to receive certain medical information before undergoing the procedure?

RESPONSE:

The answer would depend on the application of the Supreme Court's "undue burden" standard to the purpose and effects of the specific law. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

iii. What about laws that impose tough mandatory minimums on individuals who possess child pornography?

RESPONSE:

No.

iv. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

No, the Constitution is a written text that does not evolve other than through the amendment process. However, the world to which it applies does change.

3. In United States v. Rinehart, you issued a separate written order of judgment and conviction "so that it may be of assistance in the event of an application for executive clemency." In this case, you found the applicable mandatory minimum sentence to be unjust. The defendant, a 32 year-old local police officer had "consensual" sexual relations with two young girls, ages 16 and 17. According to your opinion, the sexual relationships were legal under state and federal law. The defendant, however, took pictures of one of the girls engaged in "sexually explicit conduct" and took videos of him and the other girl engaging in sexual relations. These images were on the defendant's home computer, and he was charged under the Child Protection Act of 1984, which requires a mandatory minimum of 15 years. You sentenced him to that 15 year minimum since you "could not impose a just sentence in this case." You further stated, "The only way that Rinehart's punishment could be modified to become just is through an exercise of executive clemency by the President. The court hopes that will happen."

a. The Child Protection Act of 1984 passed the House by a vote of 400-1 and passed the Senate by voice vote. Do you believe that the punishments that this law sets forth are unconstitutional?

RESPONSE:

No, I do not believe the punishments are unconstitutional.

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b. If they are not unconstitutional, shouldn't the judgment of whether or not the punishments are "just," which is clearly a policy matter, be addressed by the elected, legislative branch?

RESPONSE:

Decisions about just punishments begin with the decisions of the legislative branch in enacting the laws. Congress has also enacted legislation requiring judges to consider a number of factors and goals in imposing just sentences, in 18 U.S.C. § 3553(a). Judges have the duty of applying those laws in individual cases.

c. Do you stand by your actions in Rinehart?

RESPONSE:

Yes, I imposed the sentence that the law required. Several circumstances made the case unusual, including the facts that under applicable Indiana law, the defendant's sexual relationships with the two girls were legal because they were of lawful age to consent, and there was no indication of any intent to distribute the photographs any further. I believe the opinion was correct for the reasons stated in the opinion, pointing out how far Rinehart's conduct was from the more heinous conduct that Congress targeted with the 15-year mandatory minimum sentence.

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Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Lindsey Graham

1. **In 2005, you ruled that the prayers offered to open Indiana House sessions were sectarian Christian prayers, in violation of the Establishment Clause. You ruled that the prayers at issue were "expressly and consistently sectarian" and that such prayers may not use "Christ's name or title or any other denominational appeal." In contrast, on a post-judgment motion you ruled that the use of "Allah" in such a prayer would likely not advance a particular religion. After an intervening Supreme Court case, the Seventh Circuit dismissed the case for lack of standing.**

   Please explain why you ruled that using "Allah" in such a prayer would not violate the Establishment Clause, but using "Christ" would. Under your reasoning at the time, would using "Mohammad" in such a prayer have violated the Establishment Clause?

   RESPONSE:

   In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered "sectarian." See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be "sectarian" if it "specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"). Under this reasoning, similarly, a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, "Allah," I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric's prayers' content and setting could lead one to conclude that they were sectarian.

2. **In 2006, you suppressed evidence obtained through a warrant based on information revealed by a 9-year-old about her mother during questioning by a school social worker. You ruled that there was a violation of the mother's constitutional right of family privacy and integrity under Fourteenth Amendment substantive due process. The Seventh Circuit unanimously reversed your ruling.**

   Given that law enforcement officials had some reason to believe that the child's mother was engaged in illegal activity, please explain why you did not view the government's interest in speaking to the child in this case as compelling, unlike the Seventh Circuit. Given that the child voluntarily confided in the school officials,

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please explain your ruling that the method with which the evidence was obtained "shocked the conscience."

RESPONSE:

As detailed in my opinion, 2006 WL 2460757 (S.D. Ind. 2006), the child voluntarily told the principal that her mother and her boyfriend would need to get "the stuff" out if school officials visited the home. All further information was obtained when the police used the social worker to question the child for purposes of the police investigation. The police investigation was carried out for the sole purpose of a possible prosecution of the child's mother, without taking steps associated with child protection. The case was a difficult one in an area of constitutional law that does not arise often.

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Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator John Cornyn

1. **In a speech that you gave in 2003 at the dedication of the Birch Bayh United States Courthouse, you said "Judge S. Hugh Dillin of this court has said that part of our job here as judges is to write a series of footnotes to the Constitution. We all do that every year in cases large and small."[1] Do you think that it is the role of a judge to write "footnotes to the Constitution?" What does that mean to you?**

RESPONSE:

The phrase "footnotes to the Constitution," described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. I think it is the role of judges to write such "footnotes to the Constitution," in this sense of applying the Constitution to the facts of the particular case and adding to the body of case law interpreting the Constitution.

2. **In notes from a March 2008 speech to the Indianapolis Bar Association, you wrote, in reference to Federalist Paper 78, "judges could and should refuse to enforce federal laws that were 'contrary to the manifest tenor of the constitution.'"[2] The quote "contrary to the manifest tenor of the constitution" is from Federalist Paper 78. What do you think that Hamilton meant when he used the words "manifest tenor of the constitution?"**

RESPONSE:

In context, I believe that Hamilton simply meant by the phrase "the manifest tenor of the constitution" the provisions of the Constitution. He used the phrase immediately after referring to specific constitutional prohibitions on bills of attainder and ex post facto laws.

   a. **Does the Defense of Marriage Act, which defines marriage to be between a man and a woman, go against the "manifest tenor of the constitution?"**

RESPONSE:

I have not studied the question or had the benefit of adversarial presentation of views, but I am not aware of any court decision concluding that such a provision would violate the United States Constitution.

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[1] David F. Hamilton, *Dedication of Birch Bayh United States Courthouse*, 37 IND. L. REV. 613 (2004).
[2] David Hamilton, Remarks Before the Indianapolis Bar Association, March 18, 2008.

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b. What about a law requiring women seeking abortions to receive certain medical information before undergoing the procedure?

RESPONSE:

The answer would depend on the application of the Supreme Court's "undue burden" standard to the purpose and effects of the specific law. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

c. What about laws that impose tough mandatory minimums on individuals who possess child pornography?

RESPONSE: No.

d. Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?

RESPONSE:

No, the Constitution is a written text that does not evolve other than through the amendment process. However, the world to which it applies does change.

3. President Obama has described the types of judges that he will select as follows: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges." What role do you believe that empathy should play in a judge's consideration of a case?

RESPONSE:

Federal judges take an oath to administer justice without respect to persons, and to do equal right to the poor and to the rich. Empathy - to be distinguished from sympathy - is important in fulfilling that oath. Empathy is the ability to understand the world from another person's point of view. A judge needs to empathize with all parties in the case - plaintiff and defendant, crime victim and accused defendant - so that the judge can better understand how the parties came to be before the court and how legal rules affect those parties and others in similar situations.

a. Do you believe that following "the manifest tenor of the constitution" allows judges to consider empathy in their decision-making?

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RESPONSE:

Yes, because empathy is the ability to understand the world from another person's point of view, and I believe that is essential to decision-making that is fair to all parties. Empathy should not be confused with sympathy for one side or another, which has no role in the process.

b. You are President Obama's first judicial nominee and numerous press reports have asserted that your nomination sets the tone for future judicial nominees. Do you believe that you fall into his mold for federal judges, as described in his quote?

RESPONSE:

Yes, I believe I am the type of judge who will apply the law to the facts in every case fairly and impartially.

c. According to local practitioners cited in the *Almanac of the Federal Judiciary*, you are "the most lenient of any of the judges in the district." Others quotes include: "He is one of the more liberal judges in the district. He leans toward the defense. He makes the government prove its case"; "He goes out of his way to make the defendant comfortable"; "In sentencing, he tends to be very empathetic to the downtrodden, or to those who commit crimes due to poverty." (emphasis added) What is your reaction to these statements?

RESPONSE:

As a judge, I make decisions based on the facts and applicable law of each case. I do not make decisions based on what is popular with the public or members of the bar. I agree that I make the government prove its case. I disagree with the other statements, and I believe that prosecutors and a larger sample of defense attorneys in the district would disagree with them. In terms of "making the defendant comfortable," when I take a guilty plea, I treat the defendant with respect because that is appropriate and because it is important that the decision to plead guilty is a knowing and voluntary decision. In terms of empathizing with "the downtrodden," the victims of the crimes in such cases are often equally or more "downtrodden" than the defendant. The sentencing judge has an obligation to keep in mind those victims and their injuries and losses.

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Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Tom Coburn, M.D.

1. **President Obama has described the types of judges that he will select as follows: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."**

   - **What role do you believe empathy should play in a judge's consideration of a case?**

RESPONSE:

Federal judges take an oath to administer justice without respect to persons, and to do equal right to the poor and to the rich. Empathy - to be distinguished from sympathy - is important in fulfilling that oath. Empathy is the ability to understand the world from another person's point of view. A judge needs to empathize with all parties in the case - plaintiff and defendant, crime victim and accused defendant - so that the judge can better understand how the parties came to be before the court and how legal rules affect those parties and others in similar situations.

   - **As President Obama's first judicial nominee, do you believe that you fit his criteria? Why, or why not?**

RESPONSE:

Yes, because I will continue to do my best to follow the law, to treat all parties who come before me with respect and dignity, and to understand how legal rules or decisions will affect behavior and incentives for different people and institutions.

   - **Local practitioners quoted in the Almanac of the Federal Judiciary were quoted as saying: "[Hamilton] is the most lenient of any of the judges in the district." "He is one of the more liberal judges in the district. He leans toward the defense. He makes the government prove its case." "He goes out of his way to make the defendant comfortable." "In sentencing, he tends to be very empathetic to the downtrodden, or to those who commit crimes due to poverty."**

   - **What is your reaction to these statements?**

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RESPONSE:

As a judge, I make decisions based on the facts and applicable law of each case. I do not make decisions based on what is popular with the public or members of the bar. I agree that I make the government prove its case. I disagree with the other statements, and I believe that prosecutors and a larger sample of defense attorneys in the district would disagree with them. In terms of "making the defendant comfortable," when I take a guilty plea, I treat the defendant with respect because that is appropriate and because it is important that the decision to plead guilty is a knowing and voluntary decision. In terms of empathizing with "the downtrodden," the victims of the crimes in such cases are often equally or more "downtrodden" than the defendant. The sentencing judge has an obligation to keep in mind those victims and their injuries and losses.

2. **In your 1994 response to a confirmation questionnaire, you said that "members of the judiciary have a responsibility to exercise their power with restraint and deference to the elected branches of government, and with appropriate respect and restraint when dealing with state and local governments."**

   - **How did your decision to obstruct, for seven years, Indiana's implementation of a statute requiring informed consent for women seeking abortion honor your responsibility to exercise restraint, respect, and deference to the state legislature?**

RESPONSE:

I believe my decisions in *A Woman's Choice v. Newman* were based on faithful application of the controlling "undue burden" standard to the evidence before me. That standard gives substantial respect and deference to legislatures, but still requires the court to consider actual evidence of the purpose and effects of a law restricting access to abortions.

3. **Would you agree that, in most basic terms, a judge's role is to interpret the law? If so, why, in a 2006 article, did you take issue with the popular analogy of a judge being like an umpire, calling balls and strikes? Instead, you seemed to advocate a more results-oriented approach by saying: "[T]aking into account what happened and its effects on both parties [and] what are the practical consequences…Judges do have an obligation to see that justice is done."**

RESPONSE:

I agree the judge's role is to interpret the law and to be fair to all parties. In the quoted comment in the interview, I was not advocating a "results-oriented approach" to deciding

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cases. I was addressing situations that arise frequently in managing cases, especially in civil litigation, in which one side, and often both sides, might miss a deadline or fail to fulfill every detail of their obligations in discovery, or where a defendant might fail to answer the complaint on time and be subject to a default judgment. Many provisions in both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and the cases interpreting them give the judge both the power and the obligation to use discretion in excusing some failures to comply or in choosing an appropriate sanction.

In the quoted interview, I was making the point that in exercising discretion given by the Rules in such instances, I try to evaluate the results of the party's failure to comply with a deadline or other rule. Was the mistake inadvertent and excusable? Was it a deliberate tactic to gain an unfair advantage? Did the failure cause prejudice to the opposing party or to the court? Those judgments are routine in district courts, but they are not as simple as calling a ball or strike. They call for the exercise of discretion and judgment to ensure that the court will be fair to all parties.

4. **The Seventh Circuit chastised your obstruction of Indiana's informed consent statute at issue in A Women's Choice v. Newman. In the reversing opinion, Judge Easterbrook wrote, "[F]or seven years Indiana has been prevented from enforcing a statute materially identical to a law held valid by the Supreme Court in Casey, by this court in Karlin, and by the fifth circuit in Barnes. No court anywhere in the country (other than one district judge in Indiana) has held any similar law invalid in the years since Casey…Indiana (like Pennsylvania and Wisconsin) is entitled to put its law into effect and have that law judged by its own consequences."**

- **What is your response to this criticism? Did you ignore existing precedent to advance your own policy position on abortion?**

- **Do you stand by your decision in the Newman case? Do you still believe that Indiana's informed consent requirements create an undue burden for women seeking an abortion?**

RESPONSE:

I believe my decisions in *A Woman's Choice v. Newman* were based on faithful application of the controlling "undue burden" standard to the evidence before me concerning the effects of similar laws. The Seventh Circuit found that my factual findings were not clearly erroneous. I did not ignore existing precedent to advance any personal views. To the extent the criticism is based on the time it took to resolve the case, I note that the State chose not to appeal my decisions granting and then modifying a preliminary injunction in 1995 and 1997. After resolving the preliminary injunction issues, I set a prompt trial date. All parties jointly asked me to postpone the trial date on more than one occasion so they could pursue discovery, especially into some complex statistical issues.

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I believe my final decision on the merits was correct based on the evidence before me, and based on the applicable case law at that time. I have not seen later evidence on the actual experience under the Indiana law, after the Seventh Circuit's decision, so I could not express an opinion now about whether the law is now imposing an "undue burden."

5. **Some of your statements in your rulings in the Newman case suggest a personal hostility to the law. For example, you complain in your 1997 ruling (980 F. Supp. 962) finally permitting the waiting-period and mandatory-disclosure provisions of the law to go into effect that these provisions "appear likely to be useless, patronizing, and annoying, and there is no evidence that these provisions will actually serve any constitutionally legitimate purpose."**

- **How would you characterize that statement today, upon reflection?**
- **Was your description - of provisions you were finally permitting to take effect - appropriate in your role as a judge?**
- **Do you stand by your characterization of the waiting-period and mandatory-disclosure provisions as "useless, patronizing, and annoying"?**
  - **Why, specifically, do/did you believe that it is "useless, patronizing, and annoying" for a pregnant woman considering abortion to be informed of:**

i. **the name of the physician performing the abortion?**
ii. **the nature of the proposed abortion procedure?**
iii. **the risks of and alternatives to the abortion?**
iv. **the probable gestational age of her baby?**
v. **the medical risks associated with carrying the baby to term?**
vi. **medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care?**
vii. **that adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care?**

RESPONSE:

The quoted phrase reflects my view of the evidence before me as the issues were framed by the parties, not a personal policy preference. The parties and I all took the view that evidence of benefits of the challenged law, or lack of benefits, could be relevant in applying the "undue burden" standard or other standards that other Justices concluded were more appropriate. The parties presented evidence on that question of benefits, and I

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made factual findings based on that evidence. The evidence indicated that most women seeking abortions gave the decision careful thought and that the doctors and clinics in Indiana were taking effective steps to ensure that all women were aware of their alternatives and had made a considered decision before having an abortion. The State had ample opportunity to present contrary evidence, subject to adversarial testing in the courtroom, showing that the informational requirements and waiting period would address real problems. The State was not able to do so, as I explained in detail. See 904 F. Supp. at 1450-52; see also 132 F. Supp. 2d at 1175 (State's attorney was unable to identify any evidence tending to show that the information requirements and waiting period actually persuaded women to decide not to have abortions they were considering).

The description of the evidence before me remains accurate with respect to the effects or lack of effects of such requirements on that record. If different evidence were presented to me in another case today, I would give that evidence a fresh look, recognizing that the evidence presented to one district court in one case ten years ago is not the complete word or the last word on the subject.

6. **In Hinrichs v. Bosma, you enjoined the Speaker of the Indiana House of Representatives from permitting sectarian prayer, which you ruled included any prayer mentioning the name of Jesus Christ. You wrote: "If the Speaker chooses to continue any form of legislative prayer, he shall advise persons offering such a prayer (a) that it must be non-sectarian and must not be used to proselytize or advance any one faith or belief or to disparage any other faith or belief, and (b) that they should refrain from using Christ's name or title or any other denominational appeal." You added: "The Speaker has also asked whether, for example, a Muslim imam may offer a prayer addressed to "Allah." The Arabic word "Allah" is used for "God" in Arabic translations of Jewish and Christian scriptures. If those offering prayers in the Indiana House of Representatives choose to use the Arabic Allah ... or any other language's terms in addressing the God who is the focus of the non-sectarian prayers contemplated in Marsh v. Chambers, the court sees little risk that the choice of language would advance a particular religion or disparage others."**

   - **Following your reasoning in Hinrichs, if state legislators in my home state of Oklahoma decided to begin their day with a prayer that made reference to Jesus Christ, you would find that was a violation of the Establishment Clause. Is that correct? Please explain.**

   - **Also following your reasoning in Hinrichs, if state legislators in my home state of Oklahoma decided to begin their day with a prayer referencing Allah, you would not find that was a violation of the Establishment Clause. Is that correct? Please explain.**

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RESPONSE:

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered "sectarian." See *Lee v. Weisman* 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be "sectarian" if it "specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"). Under this reasoning, similarly, a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, "Allah," I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric's prayers' content and setting could lead one to conclude that they were sectarian.

In the *Hinrichs* case, the finding of an Establishment Clause violation was based not on any one prayer, but on evidence showing a pattern of repeated and consistent sectarian prayers. If the evidence did not show such a pattern in the hypothetical cases you described, the conclusion would not necessarily be the same.

7. **In addition to having Dawn Johnsen as your sister-in-law, from 1999 to 2007 you were on the Board of Visitors of the Indiana University law school, where Ms. Johnsen was on the faculty.**

   a. **Have you ever read any of Ms. Johnsen's writings on abortion? Did you agree with them? Have you discussed them with her?**

RESPONSE:

I recall reading one "issue brief" that Professor Johnsen wrote on the subject a couple of years ago. If I recall correctly, I thought it was a concise and accurate description of the history of the Supreme Court's treatment of the issue, and I recall telling her so after I read it.

   b. **Have you and Ms. Johnsen ever discussed the topic of abortion?**

RESPONSE:

I am sure that we have discussed the topic from time to time, most likely in the context of family gatherings.

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c. Did you and Ms. Johnsen ever discuss your case involving the Indiana informed-consent statute?

RESPONSE:

After a decision was issued in the case, we probably discussed it, but I don't recall any such discussion. She has sometimes read decisions of mine that have attracted some media attention, as this case did. I never sought or received any advice from her about the case.

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WRITTEN QUESTIONS FOR R. GIL KERLIKOWSKE
NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY
FROM SENATOR ARLEN SPECTER

SOUTHWEST BORDER/ MEXICO

QUESTION:

1. ONE OF THE MOST PRESSING ISSUES WE FACE TODAY IS THE ESCALATING VIOLENCE IN MEXICO BETWEEN DRUG CARTELS AND THE GOVERNMENT. THAT CONFLICT HAS RECENTLY SPILLED OVER INTO THE UNITED STATES. WHAT MEASURES DO YOU BELIEVE WE NEED TO TAKE TO RESPOND TO THIS CRISIS?

ANSWER:

Spillover violence from Mexico into our border states is a serious concern. There are several actions which must be taken, many which I believe are already under way by Federal, state, and local authorities. First, these incidents of spillover violence are crimes which must be thoroughly investigated within the jurisdictions where they are committed and violators must be brought to justice. Secondly, any intelligence which can be gained from suspects captured in the U.S. must be used to further our understanding of the drug cartels and their illegal operations within our borders. Thirdly, close coordination is required with appropriate Mexican officials to ensure they are doing everything they can to catch Mexican criminals before they cross over to the United States. Upon confirmation, I will follow up on these and other issues related to spillover violence.

GENERAL DRUG POLICY

QUESTION:

2. PRESIDENT OBAMA PLEDGED DURING HIS CAMPAIGN LAST YEAR THAT HE WOULD ATTEMPT TO "SHIFT" THE PARADIGM" OF DRUG POLICY TO "FOCUS MORE ON A PUBLIC HEALTH APPROACH." DO YOU SHARE THE SAME GOAL OF SHIFTING THE PARADIGM OF DRUG POLICY TOWARD TREATMENT?

    A. WHAT MEASURES WOULD YOU RECOMMEND TO DO SO?

ANSWER:

I certainly share the same view as President Obama on this matter and I believe we need an expanded conversation about drug policy. I have stated on the record before, the drug problems we face in this country are not problems we can arrest our way out of. In my view there are too many "silos" in our approach to the issues and too many "either, ors;" examples would be "enforcement or treatment," "source country eradication or border interdiction." Criminal justice plays a large role in getting people into treatment,

yet the two systems do not communicate well. Nor do we recognize and take advantage of leveraging resources to support an outcome wherein someone is brought back to society as a productive individual.
In order to be successful, we must employ evidence-based public health policies for the prevention and treatment of drug abuse. The field of public health relies upon sound science to drive its interventions. The same will be true in the work that I will oversee.

The position I seek your confirmation to perform will provide me with some unique authorities, which have been established by the Congress. Included are authorities such that the Director of ONDCP shall:

- **consult with and assist State and local governments with respect to the formulation and implementation of National Drug Control Strategy**

- **seek the support and commitment of State, local, and tribal officials in the formulation and implementation of the National Drug Control Strategy**

For the National Drug Control Strategy to be an effective tool, it must be informed by the best and brightest. I can assure you that I will seek the advice and counsel of all invested parties and develop policies based on evidence, research, and sound scientific principles.

3. FEDERAL APPROPRIATIONS FOR DRUG ABUSE TREATMENT THROUGH THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION TOTALED $2,192,933,000 FOR FY 2009. THIS MARKED AN INCREASE OF $34,361,000 ABOVE THE FY 2008 LEVEL. DO YOU BELIEVE THE RESOURCES DEDICATED TO THIS GOAL ARE ADEQUATE?

   A. DO YOU BELIEVE THE AVAILABLE RESOURCES HAVE BEEN PROPERLY ALLOCATED?

ANSWER:

Let me start by saying I am a proponent of drug treatment. It works and it deserves our support. If confirmed, I will oversee the development of the National Drug Control Strategy and Budget. These processes and the products will be tightly linked. I can assure you the Strategy will take into consideration data on treatment need and capacity and budget to reach Strategy goals.

BACKGROUND

QUESTION:

4. YOU WERE WIDELY CRITICIZED FOR THE SEATTLE POLICE DEPARTMENT'S RESPONSE TO THE MARDI GRAS RIOTS IN SEATTLE'S PIONEER SQUARE DISTRICT ON FEBRUARY 28, 2001. THE RIOTS LEFT ONE PERSON DEAD—A 20-YEAR-OLD NAMED KRISTOPHER KIME—AND

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OVER 70 INJURED. THE CRITICISM REPORTEDLY AROSE FROM YOUR ORDER TO YOUR OFFICERS NOT TO INTERVENE DURING THE RIOTS, AND INSTEAD TO SET UP A PERIMETER AROUND THE RIOTERS. THE CITY OF SEATTLE LATER ACKNOWLEDGED THE DEFICIENCY OF THE POLICE STRATEGY AND SETTLED WITH MR. KIME'S FAMILY FOR NEARLY $2 MILLION. THIS ISSUE ALSO LED TO A VOTE OF "NO CONFIDENCE" IN YOU BY APPROXIMATELY 88% OF THE SEATTLE POLICE OFFICERS GUILD IN 2002.

A. DO YOU BELIEVE THE CRITICISM YOU RECEIVED IN THIS INSTANCE WAS JUSTIFIED?

ANSWER:

The Chief of Police is ultimately responsible for the actions of the entire department and for the safety of the people within his/her jurisdiction. Therefore, the criticism of me for the outcome of the disturbance is properly directed.

B. WHAT HAVE YOU LEARNED FROM THAT INCIDENT? DID YOU CHANGE YOUR TACTICS WITH RESPECT TO SIMILAR INCIDENTS THAT HAVE OCCURRED SINCE THE MARDI GRAS RIOTS?

ANSWER:

The Seattle Police Department, and all big-city police departments, thoroughly examine the incidents they are involved in and seek to improve their actions. Just as steps were taken after the World Trade Organization demonstration, the Department, along with other cities that experienced Mardi Gras violence (Austin, Texas, Philadelphia, Pennsylvania, and Fresno, California) came together to learn what happened in each jurisdiction. Changes in procedures and tactics were made. Seattle has about 100 demonstrations a year and has not experienced similar problems since.

C. SOME ATTRIBUTED THE 2002 "NO CONFIDENCE" VOTE TO A PERCEIVED DOUBLE STANDARD IN DISCIPLINE IN THE DEPARTMENT AFTER YOU PUBLICLY DISCIPLINED A LINE OFFICER FOR HIS MISCONDUCT TOWARD A GROUP OF STUDENTS WHO WERE STOPPED FOR JAYWALKING, BUT NEVER DISCIPLINED ANY COMMANDERS OVER THE MARDI GRAS INCIDENT. DO YOU BELIEVE THAT CRITICISM WAS JUSTIFIED?

ANSWER:

Attached is a statement issued by me shortly after the Mardi Gras disturbance. Specifically regarding Mardi Gras 2001, neither the Incident Commander (a Precinct Captain and former SWAT commander) nor the Field Commander (an assistant chief, former Marine helicopter pilot in Vietnam) was disciplined because they did not violate

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department rules. They prepared for the incident, they planned for the incident, they were on-scene the entire time and they made decisions and issued orders based upon the best information available to them. Neither option: dealing with sporadic fights or firing tear gas and risking panic in an alcohol-fueled crowd on streets lined with plate glass storefronts, provided a right answer.

QUESTION:

5. IN 2007, THE MINORITY EXECUTIVE DIRECTORS COALITION, AN ALLIANCE OF 80 PUBLIC INTEREST ORGANIZATIONS, CALLED FOR YOUR RESIGNATION DUE TO YOUR HANDLING OF SEVERAL POLICE MISCONDUCT CLAIMS. THE PRINCIPAL GRIEVANCE STEMMED FROM YOUR REPEATED REVERSALS AND REDUCTIONS OF DISCIPLINARY RECOMMENDATIONS MADE BY THE SEATTLE POLICE DEPARTMENT'S OFFICE OF PROFESSIONAL ACCOUNTABILITY WITHOUT EXPLAINING IN WRITING YOUR REASONS FOR DOING SO.

   A. DO YOU BELIEVE THIS CRITICISM WAS FAIR? IN RETROSPECT, COULD YOU HAVE DONE BETTER TO RETAIN THE CONFIDENCE OF THE COMMUNITY YOU SERVED?

ANSWER:

The criticism was not fair. The president of the Urban League and the past president of the NAACP also held a joint press conference, along with other community members, in support of my leadership of the department. The high level of confidence for the Department I am responsible for is shown in the bi-annual citizen surveys, posted on the Department's Website. The surveys reflect the strategy used to improve public confidence and trust in the police and enhance community-police relations.

   B. HOW DID YOU RESPOND TO THIS STRONG CRITICISM? DID YOU TAKE STEPS TO CHANGE HOW YOU HANDLE MISCONDUCT CLAIMS?

The Police Chief, by law, is the person responsible for making discipline decisions. I implemented civilian oversight in the Department when I became Chief. Every oversight system needs to be examined and refined based on experience, changes in the law, and court decisions. The Mayor appointed a panel to review the system and a number of recommendations to improve it were made. The final result, however, did not alter the decision-making authority of the Chief which supports the manner in which I carried out those responsibilities over the last eight years.

MARIJUANA

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QUESTION:

6. ACCORDING TO THE NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS (NORML), THE SEATTLE POLICE DEPARTMENT DOES NOT INTERFERE WITH THE ANNUAL HEMPFEST IN THE CITY—WHERE THOUSANDS OF PEOPLE OPENLY CONSUME CANNABIS IN THE PRESENCE OF POLICE OFFICERS AND OFFICERS DO NOT "HARASS" (IN THE WORDS OF THE ORGANIZATION) CITIZENS WHO POSSESS, CRAFT, AND SELL MARIJUANA PARAPHERNALIA.

   A. DID YOU EVER DIRECT OFFICERS TO TOLERATE MARIJUANA USE IN THIS MANNER?

ANSWER:

I have not directed officers to tolerate open marijuana use at Hempfest. Hempfest has been in existence in Seattle since 1991, long before I became Chief of Police. A precinct Lieutenant oversees the event and directs the small number of officers (about twenty) on how to police the event. The event is policed similarly to the way law enforcement agencies across the country police rock concerts. Public safety and protection of people is the primary concern at Hempfest and other large-scale public events in the city. There have been virtually no problems involving violence, fights, disturbances, or injuries over the course of the Hempfest weekends.

   B. HAVE YOU DONE ANYTHING TO ENCOURAGE SUCH A POLICY OF NON-ENFORCEMENT?

ANSWER:

As stated above, I would not characterize the policing of Hempfest as a policy of non-enforcement. Police actions have been taken and arrests have been made at Hempfest. Seattle police officers continue to arrest people for marijuana possession.

   C. WAS YOUR POLICY REGARDING THE HEMPFEST DIFFERENT PRIOR TO THE PASSAGE OF A 2003 REFERENDUM THAT MADE MARIJUANA PROSECUTION A LOW LAW ENFORCEMENT PRIORITY? IF YES, HOW SO?

ANSWER:

No.

   D. DO YOU BELIEVE THERE IS A DISTINCTION BETWEEN MAKING MARIJUANA PROSECUTIONS A LOW LAW ENFORCEMENT

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PRIORITY AND PERMITTING OFFICERS TO IGNORE CRIMES COMMITTED IN PLAIN SIGHT?

ANSWER:

The referendum had almost no effect on changing law enforcement practices in Seattle in terms of marijuana offense in Seattle. It should be made clear that the referendum, which I opposed, is focused on individual incidents and not on events such as Hempfest. Police actions have been taken and arrests have been made at Hempfest. Seattle police officers continue to arrest people for marijuana possession.

E. DO YOU AGREE THAT NOT ENFORCING A CRIME COMMITTED IN PLAIN SIGHT WHERE VIRTUALLY NO EFFORT IS REQUIRED TO FIND THE ACTIVITY SENDS THE MESSAGE THAT THERE IS AN ALMOST COMPLETE DISREGARD FOR SUCH LAWS AMONG THOSE CHARGED WITH LAW ENFORCEMENT?

ANSWER:

Not enforcing a crime committed in plain sight would send an inconsistent message. However, the premise of this question, as related to Hempfest, misinterprets the event and the policing activities that occur during and surrounding the event.

QUESTION:

7. THE LEADERSHIP OF GROUPS LIKE NORML AND THE SEATTLE HEMPFEST HAVE EXPRESSED SUPPORT FOR YOUR NOMINATION AS A STEP IN THE RIGHT DIRECTION. THAT IS AN UNUSUAL DEVELOPMENT FOR SOMEONE NOMINATED TO BE THE NATION'S DRUG CZAR. IN HIS STATEMENT ON YOUR NOMINATION, THE DEPUTY DIRECTOR OF NORML NOTED THAT "THERE ARE NOW FEWER MARIJUANA-RELATED ARRESTS IN SEATTLE THAN IN VIRTUALLY ANY OTHER MAJOR CITY IN THE UNITED STATES."[1]

A. DO YOU BELIEVE THE U.S. SHOULD PLACE A LOW PRIORITY ON ENFORCEMENT OF MARIJUANA CRIMES?

ANSWER:

No. For example, trafficking of marijuana is a serious offense and, I believe, that violators of the law should be held to account; I believe the government should continue to vigorously enforce all applicable laws. In addition, marijuana cultivation on Federal public lands poses a significant public safety threat and must remain an enforcement priority.

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[1] Statement of NORML Deputy Director Paul Armentano on the Kerlikowske nomination, Feb. 12, 2009.

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B. ARE THERE ANY OTHER CATEGORIES OF DRUG CRIMES THAT SHOULD BE OF LOWER PRIORITY THAN MARIJUANA CRIMES?

ANSWER:

One of the reasons I opposed the referendum in Seattle is that I do not believe it is productive criminal justice or effective public policy to rank order criminal offenses. Nevertheless, I support directing limited resources to target drug trafficking.

QUESTION:

8. ON MARCH 19, ATTORNEY GENERAL HOLDER STATED: "GIVEN THE LIMITED RESOURCES THAT WE HAVE, OUR FOCUS WILL BE ON THE PEOPLE, ORGANIZATIONS THAT ARE GROWING, CULTIVATING SUBSTANTIAL AMOUNTS OF MARIJUANA AND DOING SO IN A WAY THAT'S INCONSISTENT WITH FEDERAL AND STATE LAW."[2] IF CONFIRMED, WILL YOU DISCOURAGE THE PROSECUTION OF MARIJUANA DISTRIBUTORS IN JURISDICTIONS WHERE THEY VIOLATE FEDERAL BUT NOT STATE LAW?

ANSWER:

Not being a member of the Administration I have not had an opportunity to confer with the Attorney General about this. All law enforcement agencies, including federal entities, direct their finite resources to target the greatest threats. However, I believe that violators of the law should be held accountable and federal laws should be enforced.

NEEDLE EXCHANGE

QUESTION:

9. SEATTLE HAS ONE OF THE NATION'S LARGEST NEEDLE EXCHANGE PROGRAMS. KRIS NYROP, FORMER DIRECTOR OF SEATTLE'S NEEDLE EXCHANGE GROUP STREET OUTREACH SERVICES, SAYS THAT "IT HAS BEEN A LAISSEZ-FAIRE THING AND THE POLICE BASICALLY LEAVE NEEDLE EXCHANGES ALONE."[3]

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[2] Attorney General Signals Shift in Marijuana Policy, States News Service, Mar. 19, 2009.

[3] The Stranger blog, Feb. 18, 2009, at http://www.thestranger.com/seattle/good-luck-and-good-riddance/Content?oid=1118926.

A. DOES THAT STATEMENT FAIRLY REFLECT YOUR POSITION TOWARD NEEDLE EXCHANGE PROGRAMS AS CHIEF OF POLICE IN SEATTLE?

ANSWER:

Needle exchange programs have been in existence in Seattle for many years. When I was police commissioner in Buffalo there was also a needle exchange program. From a law enforcement perspective, they are not a cause of significant public safety problems.

B. WHAT DIFFERENT POLICY (IF ANY) WOULD YOU PROPOSE FOR THE NATION WITH RESPECT TO NEEDLE EXCHANGES?

ANSWER:

The Administration embraces a comprehensive approach for drug abuse prevention, treatment, and care, including efforts to reduce the transmission of HIV/AIDS and other blood-borne diseases. I do as well.

Needle exchange programs have been proven to reduce the transmission of blood borne diseases. A number of studies conducted in the U.S. have shown needle exchange programs do not increase drug use. I understand that research has shown these programs, when implemented in the context of a comprehensive program that offers other services such as: referral to counseling, healthcare, drug treatment, HIV/AIDS prevention, counseling and testing, are effective at connecting addicted users to drug treatment.

If confirmed, I will certainly strongly consider the current research on the subject.

My answer should not be interpreted to mean I support drug legalization, instruction in the "safe" use of drugs, or the provision of paraphernalia that facilitates drug use but does not reduce disease transmission.

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QUESTIONS FOR R.GIL KERLIKOWSKE
FROM SENATOR HATCH

MARIJUANA/LEGALIZATION
QUESTION:
1. TRADITIONALLY, MOST OF THE MARIJUANA AVAILABLE ON U.S. STREETS HAS BEEN TRAFFICKED OVER THE BORDER FROM MEXICO AND SMALLER QUANTITIES FROM CANADA. RECENTLY, HOWEVER, DRUG TRAFFICKING ORGANIZATIONS ARE EXPANDING CULTIVATION OPERATIONS INTO THE UNITED STATES, REDUCING RISKY BORDER CROSSINGS AND INCREASING PROFIT MARGINS.

THIS DANGEROUS TREND MEANS THAT VIOLENT MEXICAN DRUG TRAFFICKING ORGANIZATIONS SET UP ENVIRONMENTALLY DESTRUCTIVE GROW OPERATIONS ON PUBLIC LANDS, AND AS CANADA-BASED ASIAN CRIMINAL ORGANIZATIONS SET UP HAZARDOUS INDOOR GROW OPERATIONS IN AMERICAN COMMUNITIES IN OUR NORTHWEST.

THE DRUG ITSELF HAS BECOME FAR MORE DANGEROUS AS WELL, WITH THE AVERAGE POTENCY OF THC UP MORE THAN 150 PERCENT SINCE 1983.

TWO WEEKS AGO, THE PRESIDENT WAS ASKED IN A VIRTUAL TOWN HALL MEETING ABOUT THE LEGALIZATION OF MARIJUANA. HE PROVIDED, IN MY OPINION, A WEAK RESPONSE SAYING THAT LEGALIZATION OF MARIJUANA "WOULDN'T GROW THE ECONOMY." BACK IN JANUARY 2004, HOWEVER, HE FLATLY OPPOSED MARIJUANA LEGALIZATION. I DO NOT KNOW HOW ANYONE COULD EVALUATE LEGALIZING DRUGS BASED ON ECONOMICS.

WHAT ARE YOUR THOUGHTS ON THE LEGALIZATION OF MARIJUANA?

ANSWER:
Marijuana is a dangerous drug and is listed as Schedule 1 in the Controlled Substances Act. The President opposes legalization, as do I.

SOUTHWEST BORDER/ MEXICO
QUESTION:
2. LAW ENFORCEMENT AT ALL LEVELS IS RESPONDING TO THE THREAT OF MEXICAN CARTEL VIOLENCE AND INCREASING THEIR COOPERATION ON THE BORDER WITH MEXICO. THAT IS THE POINT OF ENTRY FOR MUCH OF THE MARIJUANA, COCAINE, METHAMPHETAMINE, AND HEROIN AVAILABLE ON U.S. STREETS.
THE MEXICAN GOVERNMENT HAS MOUNTED AN UNPRECEDENTED EFFORT TO COMBAT THE DRUG TRAFFICKING ORGANIZATIONS THAT EXPLOIT OUR SHARED BORDER.

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TO TARGET ILLEGAL WEAPONS THAT FUEL VIOLENCE ON THE SOUTHWEST BORDER, THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES INITIATED PROJECT GUNRUNNER.

THIS EFFORT DEDICATES SPECIAL AGENTS, INDUSTRY OPERATIONS INVESTIGATORS, AND INTELLIGENCE RESEARCH SPECIALISTS, AS WELL AS FACILITATES THE SHARING OF ETRACE TECHNOLOGY FOR TRACING OF CRIME GUNS IN ORDER TO REVEAL SMUGGLING TRENDS AND GENERATE CRUCIAL INVESTIGATIVE LEADS. ICE IS WORKING WITH THE MEXICAN GOVERNMENT TO STEM ARMS TRAFFICKING THROUGH OPERATION ARMAS CRUZADAS.

AS PART OF THIS INITIATIVE, DHS AND MEXICAN AGENCIES PARTNER IN UNPRECEDENTED BI-LATERAL INTERDICTION, INVESTIGATION, AND INTELLIGENCE-SHARING ACTIVITIES TO IDENTIFY, DISRUPT, AND DISMANTLE CROSS-BORDER ARMS SMUGGLING NETWORKS.

IF CONFIRMED AS THE DIRECTOR OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY, WHAT STRATEGIES WILL YOU EMPLOY TO ADDRESS THE THREATS OF DRUG TRAFFICKING ORGANIZATIONS FROM MEXICO INTO YOUR NATIONAL DRUG CONTROL STRATEGY?

ANSWER:

Upon confirmation, I would work very aggressively to support the details of the President's initiatives to protect and secure the border and assist Mexico in combating drug-related violence. Secretary Napolitano has indicated that ONDCP should play a greater role in working with DHS on this problem and I look forward to a partnership with DHS. Reviewing policies and programs to ensure our border activities are well implemented would be a high priority for me if I am confirmed. I believe one strength I can bring to the Office of National Drug Control Policy is my close relationship with local law enforcement over many years. The chiefs in Houston, Dallas, San Antonio, Austin, Tucson, Phoenix and San Diego are all members of the Major Cities Chiefs Association, where I currently serve as president. I believe state and local law enforcement can play a larger role and their practical expertise can be used to a greater degree against the challenges on our Southwest border. And, as Secretary Clinton pointed out, U.S. consumption of illegal drugs is an important contributing factor to the violence in Mexico. If confirmed, I will also work with my colleagues in the prevention and treatment communities to reduce the demand for drugs in the U.S. and abroad.

HIDTA

QUESTION:

3. FEDERAL LAW AUTHORIZES THE ONDCP DIRECTOR TO DESIGNATE AREAS WITHIN THE UNITED STATES WHICH EXHIBIT SERIOUS DRUG TRAFFICKING PROBLEMS AND HARMFULLY IMPACT OTHER AREAS OF THE COUNTRY AS HIGH INTENSITY DRUG TRAFFICKING AREAS. THAT DESIGNATION BRINGS ADDITIONAL FEDERAL RESOURCES.

THIS APPROACH INVOLVES LAW ENFORCEMENT ORGANIZATIONS WITHIN THE HIGH INTENSITY AREAS, CONSULTATION WITH CABINET DEPARTMENTS, AND HEADS OF NATIONAL DRUG CONTROL PROGRAM AGENCIES, AS WELL AS GOVERNORS. HIGH INTENSITY AREAS CURRENTLY EXIST IN ALL FIFTY STATES, INCLUDING FIVE ALONG THE SOUTHWEST BORDER. THESE EFFORTS HAVE IDENTIFIED 5700 DRUG TRAFFICKING ORGANIZATIONS AND 89 PERCENT OF ITS ACTIVITIES ARE DIRECTED AT MARIJUANA AND COCAINE INVESTIGATIONS.

JUST FOUR YEARS AGO, SOME PROPOSED TAKING CONTROL OF THIS IMPORTANT PROGRAM AWAY FROM THE DRUG CZAR'S OFFICE.

WITH YOUR EXPERIENCE AND CAREER IN LAW ENFORCEMENT, WHAT ARE YOUR THOUGHTS ON KEEPING THIS LAW ENFORCEMENT PROGRAM UNDER THE CONTROL OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY?

ANSWER:

The High Intensity Drug Trafficking Areas are an effective mechanism to bring state, local, and Federal resources together to reduce drug trafficking. They also provide a forum for the prevention and treatment sector to interact with criminal justice decision-makers.

I currently serve on the Executive Board of the Northwest HIDTA and believe the HIDTA Program must continue to be a part of ONDCP. I think it is important for the HIDTA Program to remain under the control of ONDCP for the very reasons it was originally placed there. Management of the HIDTA Program at ONDCP facilitates the coordination and collaboration among the various Federal, state and local agencies which must work together to address drug trafficking threats.

PRESCRIPTION DRUGS

QUESTION:

4. MY HOME STATE OF UTAH IS #1 IN THE COUNTRY FOR PRESCRIPTION DRUG ABUSE UNDER AGE 25. PARENTS UNWITTINGLY BECOME PASSIVE PUSHERS BY LEAVING ADDICTIVE PRESCRIPTION DRUGS, SUCH AS THE PAINKILLERS OXYCONTIN AND VICODIN, AROUND THE HOUSE. A RECENT OFFICE OF NATIONAL DRUG CONTROL POLICY SURVEY INDICATED THAT TWO-THIRDS OF TEENS WHO KNOW A PRESCRIPTION DRUG ABUSER SAY THE DRUGS COME FROM HOME, FRIENDS, OR CLASSMATES.

TEENS WHO ABUSE PRESCRIPTION OR OTC DRUGS MAY BE ABUSING OTHER SUBSTANCES AS WELL. FOR THE FIRST TIME, MORE TEENS CAN GET PRESCRIPTION DRUGS MORE EASILY THAN ALCOHOL.

I HAVE MET WITH TEENS FROM UTAH WHO ARE IN RECOVERY, KIDS WHO ENDED UP IN THE EMERGENCY ROOM AFTER BINGING ON DRUGS AND ALCOHOL. THE STATE OF UTAH HAS DEVELOPED A VIGOROUS PRESCRIPTION DRUG EDUCATION CAMPAIGN TO ADDRESS THIS FORM OF ABUSE.

THE OFFICE OF NATIONAL DRUG CONTROL POLICY RUNS AN EXCELLENT MEDIA CAMPAIGN CALLED *ABOVE THE INFLUENCE* TO EDUCATE TEENS ABOUT DRUG AND ALCOHOL USE.

AS DIRECTOR, HOW WOULD YOU DIRECT THE STRATEGY TO BRING THIS LARGELY UNRECOGNIZED DRUG ISSUE TO THE FOREFRONT?

ANSWER:

I agree with you that the illicit use of prescription drugs is a growing problem in our country. Educating youth and parents about the dangers of abusing these drugs is critically important to reducing this threat.

Beyond the education of the public, there are numerous, complex issues related to production, distribution, and disposal which require the expertise of DEA, EPA, HHS, private industry, and others to develop an intelligent approach to limiting diversion and abuse of prescription drugs. If confirmed as the Director of National Drug Control Policy, I will use my position to ensure all of these agencies and parties come together so the Administration can develop effective and realistic strategies to deal with this issue.

ONDCP's Media Campaign should use empirical data to determine the drugs which are most problematic among teens. Therefore, while prescription drug abuse should not be the Campaign's exclusive focus, it should be an integral part of the Campaign, at present, to be relevant and responsive to current teen use patterns.

When we see a rise in teen use of any particular drug, we need to address that problem using all of the tools that we have available, reflecting a balanced strategy that includes prevention, treatment, and law enforcement.

SENATOR GRASSLEY'S WRITTEN QUESTIONS FOR R. GIL KERLIKOWSKE TO BE DIRECTOR OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY APRIL 1, 2009

GENERAL

QUESTION:

(1) WHAT DO YOU BELIEVE IS THE ROLE OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY (ONDCP)?

ANSWER:

The position I seek your confirmation to perform will provide me with some unique authorities, which have been established by the Congress. Among others, I would be required to:

- **Assist the President in the establishment of policies, goals, objectives, and priorities for the National Drug Control Program;**
- **Make recommendations to the President regarding the changes in the organization, management, and budgets of National Drug Control Program agencies;**
- **Consult with and seek the support of State, local, and tribal officials and governments with respect to the formulation and implementation of National Drug Control Policy and their relationships with the National Drug Control Program agencies and**
- **Provide budget recommendations that are consistent with the priorities of the President under the National Drug Control Strategy, to the heads of departments and agencies with responsibilities under the National Drug Control Program.**

These, in my mind, are the most critical and cross-cutting of the authorities of the office. I have stated on the record before that the drug problems that we face in this country are not problems that we can arrest our way out of. In order to be successful, we must employ evidence-based public health policies for the prevention and treatment of drug abuse in addition to a bold but carefully-designed enforcement strategy. The field of public health relies upon sound science to drive its interventions.

It is the role of ONDCP to create a process to gather all available data, hear from all stakeholders, and to assess the current landscape to ensure that the entire Federal approach to the drug issue is wholesome, sound, flexible, and evidence-based.

For the National Drug Control Strategy to be an effective tool, it must be informed by the best and brightest. I can assure you that I will seek the advice and counsel of all invested parties and develop policies based on evidence, research, and sound scientific principles.

In addition to the development of the Strategy, it would also be my responsibility to coordinate and oversee its implementation. The unique position inside the Executive Office of the President gives ONDCP the ability to constantly monitor the Strategy's implementation and make adjustments as necessary.

QUESTION:

(2) WHAT KIND OF LEADERSHIP WILL YOU PROVIDE AT ONDCP?
ANSWER:

Upon confirmation I will be a visible and accessible leader who will value input, debate, and discussion from career personnel.

I will provide direction and support for the Agency and work diligently to restore ONDCP to a prominent role.

QUESTION:
(2) WHAT QUALIFICATIONS DO YOU HAVE TO EFFECTIVELY RUN A FEDERAL AGENCY?
ANSWER:

I have led the Seattle Police Department for nine years, an agency of 2,000 employees with a budget of $235million. Crime in Seattle is at a 40-year low. I held an SES Career Service position as the Deputy Director of the Office of Community Oriented Policing Services (COPS) where I was responsible for $6 Billion in Federal assets. Previously I led the Buffalo Police Department for almost five years. I was a visiting fellow for one year to the National Institute of Justice (DOJ) and I have served on numerous federal panels and advisory committees. Such career experience uniquely positions me to run the ONDCP.

QUESTION:
(4) WHAT QUALIFICATIONS DO YOU HAVE TO FORMULATE AND IMPLEMENT AN EFFECTIVE NATIONAL DRUG CONTROL POLICY?

ANSWER:

I bring 36 years of experience as a police officer dealing with drug problems in five different law enforcement agencies and localities. I was a detective in a narcotics unit and commanded a narcotics unit. I serve on the Board for the Northwest HIDTA. I have been the President of the Police Executive Research Forum, a group of police executives, and I have been elected twice as president of the Major Cities Chiefs Association (the 56 largest city and county law enforcement agencies in the U.S. and the seven largest Canadian cities). I have lectured throughout the United States and in many foreign countries on law enforcement issues.

QUESTION:
1) WHAT DO YOU SEE AS THE BIGGEST CHALLENGE FOR THE NEW DIRECTOR AT ONDCP?
ANSWER:

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I believe it is paramount for the Director to restore ONDCP to the primary role of policy development and coordination for all of the federal efforts related to drug control. It will be incumbent upon me to utilize the position to bring this issue to the public in an understandable and meaningful way.

QUESTION:
(6) WHAT DO YOU SEE AS YOUR MOST SIGNIFICANT ACCOMPLISHMENT?
ANSWER:

Leaving Buffalo and Seattle as significantly safer cities than when I started. Specifically, crime in Seattle is at a forty year low.

QUESTION:
(7) IF CONFIRMED, WHAT IS YOUR PLAN FOR ONDCP TO REDUCE THE DEMAND FOR NARCOTICS IN THE UNITED STATES?
ANSWER:

Preventing drug abuse and addiction as well as facilitating improvements in treatment capacity and effectiveness is critical to reducing drug-related crime in the United States and other countries. The nominee for Deputy Director is a recognized researcher and administrator in these areas and I would rely heavily on him for advice in this area. One key to improvement is to eliminate or reduce the silos which exist among these groups, from neighborhood-based prevention programs, to Drug Courts, to treatment facilities and for them to realize and recognize that by leveraging resources and collaborating in meaningful ways that greater goals in these areas can be achieved.

QUESTION:
(8) IN THE PAST FEW YEARS, MANY OF ONDCP'S RELATIONSHIPS WITH OTHER FEDERAL AGENCIES AND NONPROFITS HAVE ERODED.

A) IF CONFIRMED, HOW DO YOU PLAN TO REVIVE AND IMPROVE THESE RELATIONSHIPS?

ANSWER:

I have long recognized that to be successful as a police chief you have to rely on and work collaboratively with, other governmental and non-governmental entities. Establishing working relationships and trust is critical. Fortunately, I have a well-documented reputation for establishing such relationships and partnerships. If confirmed,

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establishing a robust inter-agency process federally and reaching out to re-establish valid working relationships with non-governmental entities and stakeholders will be a priority.

B) DO YOU ENVISION ONDCP'S ROLE AS AN OVERSEER OF OTHER PROGRAMS, OR AS A COLLABORATOR WORKING COOPERATIVELY WITH OTHER AGENCIES TOWARD COMMON GOALS?

ANSWER:

Meeting with agency heads and helping them understand our role and demonstrating willingness to work together is important. Congress has given the ONDCP powerful authorities which can be triggered to ensure that federal components work toward the President's drug strategy. However, it is also important to recognize that if partnerships are formed and clear goals are articulated that those components will work very hard to ensure that they meet the President's directives in a collaborative manner.

QUESTION:
(9) VICE PRESIDENT BIDEN, WHO HELPED WRITE THE LAW THAT CREATED ONDCP, ARGUED AT THAT TIME THAT ONDCP NEEDED TO BE A CABINET-LEVEL POSITION BECAUSE IT WAS NECESSARY TO GIVE THE OFFICE THE VISIBILITY DESERVED. HOWEVER, IT WAS RECENTLY ANNOUNCED THAT PRESIDENT OBAMA WILL BE LOWERING THE OFFICE'S DESIGNATION BELOW THE CABINET LEVEL.

A) IS THIS A SIGNAL THE OBAMA ADMINISTRATION IS DEEMPHASIZING THE IMPORTANCE OF CONFRONTING THE NATION'S DRUG PROBLEMS?

ANSWER:

No. Whether a position is Cabinet-level or not is less important than whether the director will have a seat at the table when important decisions are being made.
I have been assured that I will have access to and support from the President and the Vice President and that is what is critical to ensuring success.

B) IF CONFIRMED, DO YOU FEEL THAT YOUR ABILITY TO PLAN A COMPREHENSIVE COUNTER-DRUG STRATEGY WILL BE HINDERED BY LACK OF ACCESS TO THE PRESIDENT? WHY OR WHY NOT.

ANSWER:
Should I be confirmed by the Senate, I have been assured that I will have direct and unfiltered access to both the President and the Vice President on issues of international and domestic drug control policy. I am confident that ONDCP, working within the Executive

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Office of the President, can effectively and efficiently lead our nation's efforts against illegal drugs.

SOUTHWEST BORDER/ MEXICO

QUESTION:
(10) VIOLENCE IN MEXICO RELATED TO DRUG CARTELS HAS ESCALATED. IN 2008, MORE THAN 6,000 PEOPLE DIED IN DRUG-RELATED VIOLENCE IN MEXICO. THIS VIOLENCE HAS THE POTENTIAL TO SPILL ACROSS THE BORDER INTO THE U.S.

THE SECRETARY OF HOMELAND SECURITY AND THE ATTORNEY GENERAL RECENTLY UNVEILED A STRATEGY TO REDUCE CARTEL VIOLENCE AND SMUGGLING ALONG THE SOUTHWEST BORDER. THIS STRATEGY WOULD DOUBLE THE BORDER ENFORCEMENT SECURITY TASK FORCE (BEST) AGENTS AND TRIPLE ANALYSTS ALONG THE BORDER. ADDITIONALLY, THE BUREAU OF ALCOHOL, FIREARMS, TOBACCO, AND EXPLOSIVES WILL RELOCATE 100 AGENTS TO FORM GUNRUNNER IMPACT TEAMS (GRITS) AT THE BORDER. THIS INCREASE IN MANPOWER FROM VARIOUS AGENCIES WILL REQUIRE A NEW LEVEL OF COORDINATION AND COOPERATION AMONG FEDERAL LAW ENFORCEMENT PARTNERS IF IT IS TO BE SUCCESSFUL.

A) IF CONFIRMED, WHAT ROLE WILL THE OFFICE OF NATIONAL DRUG CONTROL POLICY (ONDCP) PLAY COORDINATING EFFORTS TO STOP TRAFFICKING AND VIOLENCE CAUSED BY MEXICAN DTOS?

ANSWER:

ONDCP will partner with Federal, state, and local agencies in numerous ways. For example, as the agency charged with coordinating our Nation's National Drug Control Strategy, I will review policies and programs to ensure our border activities are well implemented by agencies with different or overlapping missions. The ONDCP also has budget authorities to ensure departments and agencies dedicate sufficient resources to priority anti-drug missions, such as addressing border drug trafficking and related southbound weapons and bulk currency smuggling. In addition, as the EOP office which directs the National HIDTA Program, I will work to maximize collaboration between state and local agencies and the Federal government.

B) DO YOU BELIEVE THAT ONDCP SHOULD HAVE A ROLE IN PLANNING AND TASKING LAW ENFORCEMENT OPERATIONS TO COMBAT MEXICAN DTOS? WHY OR WHY NOT?

ANSWER:

No. As a policy agency ONDCP should not be involved in planning law enforcement operations. ONDCP does play an important policy coordination role that seeks to ensure drug control agencies are effectively and efficiently combating the threat posed by Mexican cartels in a manner consistent with the National Drug Control Strategy.

C) DO YOU BELIEVE THAT MEXICO SHOULD BEGIN CONDUCTING IN BOUND SEARCHES OF VEHICLES TO SEARCH FOR ILLEGAL CONTRABAND LEAVING THE U.S.? WHY OR WHY NOT?

ANSWER:

I strongly support a focus on southbound flow of bulk currency and weapons and have been very pleased to learn of Secretary Napolitano's initiatives in this area. Any effort by the Government of Mexico to supplement our own interdiction efforts of southbound flow by increased efforts on their side of the border would be extremely helpful. As in all border interdiction operations, law enforcement authorities must seek to conduct the vital work of cutting off the cartels in a manner which minimizes any negative impact on legitimate trade. However, the days when we or our Mexican partners allow southbound flow out of the U.S. and into Mexico unimpeded must come to an end. Last week the Seattle Police Department sent an officer and an explosive detective K-9 to the S.W. Border at the request of DHS. Other local agencies with these assets have also stepped up to the plate to assist. The border problems do not stop at the border.

D) GIVEN THE NEW INITIATIVES INSTITUTED BY THE DEPARTMENT OF JUSTICE AND DEPARTMENT OF HOMELAND SECURITY, DOES THE SOUTHWEST BORDER COUNTERNARCOTICS STRATEGY NEED TO BE AMENDED TO ENSURE THAT ANY GAINS THAT OCCUR AS A RESULT OF THE RECENT INCREASE IN LAW ENFORCEMENT ARE NOT LOST? WHY OR WHY NOT. IF CONFIRMED, WHAT ROLE WOULD ONDCP PLAY IF SUCH AN AMENDED STRATEGY WERE DRAFTED?

ANSWER:

My understanding is that an updated National Southwest Border Counter-Narcotics Strategy is under development by ONDCP, in collaboration with DHS and DOJ, as directed by a pre-existing statutory requirement. If confirmed, I will work to ensure all of the recent initiatives are taken into account in the new strategy.

QUESTION:
(11) LAST FALL, CONGRESS PASSED A COUNTERNARCOTICS SUPPORT PACKAGE FOR MEXICO KNOWN AS THE MERIDA INITIATIVE. THE MERIDA INITIATIVE PROVIDES FUNDING FOR EQUIPMENT, TRAINING, AND TECHNICAL ASSISTANCE TO MEXICO TO HELP ADDRESS CROSS-BORDER DRUG TRAFFICKING AND

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ORGANIZED CRIME. HOWEVER, MUCH OF THE EQUIPMENT AND ASSISTANCE HAVE BEEN DELAYED, AT THE SAME TIME THAT THE VIOLENCE IN MEXICO HAS ESCALATED.

A) WHAT ARE YOUR GOALS FOR THE MERIDA INITIATIVE, AND HOW WILL YOU WORK WITH THE OTHER AGENCIES TO IMPROVE COORDINATION OF OUR LIMITED RESOURCES?

ANSWER:

ONDCP is charged by statute to coordinate and oversee implementation of the National Drug Control Policy. If confirmed as Director, the President and Vice President will expect me to ensure that the multiple agencies contributing to our policy implementation are working productively and in harmony. The Secretary of DHS has asked that ONDCP play a great role in the border issues because of the clear connection between illegal drugs and the violence occurring in Mexico and along the Southwest border. I would work quickly with DOJ, DHS, State, DoD, and others to assist in carrying out the President's directive on assisting Mexico in combating drugs and in securing and protecting our border. The Merida Initiative should disrupt the powerful international drug trafficking organizations that prey on the people of Mexico and the United States, and in that context dramatically reduce the level of criminal violence and the availability of illegal drugs.

MARIJUANA

QUESTION:
(12) IN 2003, SEATTLE PASSED INITIATIVE 75, WHICH DIRECTED THE POLICE TO CONSIDER SIMPLE POSSESSION OF MARIJUANA A LOW PRIORITY. AT THAT TIME, YOU INDICATED THAT THE SEATTLE POLICE DEPARTMENT WOULD PLACE MARIJUANA ARRESTS AS A LOWER PRIORITY THAN ARRESTS FOR OTHER DRUG CRIMES. YOU DID NOT PUBLICLY FIGHT AGAINST INITIATIVE 75 AND APPEARED TO ACQUIESCE TO THE POLICY.

A) IF YOU ARE CONFIRMED AS DIRECTOR OF ONDCP, WILL YOU AGAIN PUT MARIJUANA AT THE BOTTOM OF YOUR LIST OF PRIORITIES? WHY OR WHY NOT?

ANSWER:

I publicly opposed the initiative. However, all law enforcement agencies and, to my knowledge, prosecutors, deploy resources based on strategic threats. That does not mean enforcing marijuana laws is, or will be, at the bottom of my list of priorities.

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B) IF CONFIRMED, WILL YOU PUBLICLY OPPOSE EFFORTS TO DECRIMINALIZE, LEGALIZE, OR OTHERWISE LOWER MARIJUANA CRIMES ON THE LIST OF COUNTER NARCOTICS PRIORITIES? WHY OR WHY NOT?

ANSWER:

Yes, I will publically oppose the legalization of marijuana.

C) DO YOU SUPPORT LEGALIZATION OF MARIJUANA? DO YOU SUPPORT EFFORTS TO LEGALIZE ANY CURRENTLY SCHEDULED NARCOTIC? IF SO, PLEASE PROVIDE A LIST AND A DETAILED EXPLANATION.

ANSWER:

No. I agree with the President and do not support the legalization of marijuana.

D) DO YOU BELIEVE THAT MARIJUANA IS A GATEWAY DRUG? WHY OR WHY NOT?

ANSWER:

I believe that far too many young people in this country use marijuana. Often, marijuana is the first illicit drug that young people use. I support efforts to educate young people about the dangers of illicit drugs, including marijuana.

E) DO YOU BELIEVE THAT MARIJUANA SHOULD BE ALLOWED FOR MEDICINAL PURPOSES?

ANSWER:

What constitutes safe and effective medicine should continue to be based upon the Food and Drug Administration's review of the appropriate science. Medical evidence does not support the medical efficacy of marijuana being smoked for medicinal purposes.

F) DO YOU BELIEVE STATE LAWS ALLOWING THE CULTIVATION AND USE OF MARIJUANA CAN BE RECONCILED WITH FEDERAL LAW PROHIBITING SUCH PRACTICES?

ANSWER:

As I understand it, they can and they must. In the Controlled Substances Act Congress created a dual Federal/State enforcement system under which both the Federal government and State governments are able to simultaneously exercise their vital and distinct interests in protecting their citizens from the ravages of illicit drug use and drug

trafficking. The CSA's dual Federal/State enforcement system is similar to dual systems existing in many other areas of law in which a particular criminal act may trigger both State and Federal prosecution.

G) DO YOU SUPPORT THE SUPREME COURT DECISION IN *GONZALES V. RAICH*, 545 U.S. 1 (2005)? WHY OR WHY NOT? DO YOU AGREE WITH THE OUTCOME? WHY OR WHY NOT?

ANSWER:

As I understand it, the Supreme Court's decision in Gonzales v. Raich is the current law of our land. As a result, whether as a law enforcement officer or a Federal official, I am duty bound to honor it and so I do until such time as the supreme law of our land on this subject changes.

H) WILL YOU ENCOURAGE LAW ENFORCEMENT TO AGGRESSIVELY PROSECUTE MARIJUANA OFFENSES? WHY OR WHY NOT?

ANSWER:

Based on media reports I am aware that the Federal Government's enforcement policy regarding marijuana is in the process of being thoroughly reviewed and revised. I know that some people feel strongly that marijuana helps them when other medications don't work. I also know that there is no current consensus in the medical profession regarding the medical benefits of smoked marijuana. I also know that some people have fraudulently attempted to misuse medical marijuana permits in some states to illegally distribute the drug to people who are not sick, exposing our young people to this dangerous drug and violating the Federal Controlled Substances Act. If confirmed as Director of National Drug Control Policy, I will work closely with Attorney General Holder, DEA and other Federal stakeholders to thoroughly review Federal law, science and medicine and thoughtfully balance the many competing considerations to refine the Administration's marijuana enforcement policy.

QUESTION:
(13) THE FINANCING OF DRUG CARTELS AND TERRORIST ORGANIZATIONS REMAINS A TOP PRIORITY. I BELIEVE THAT MORE WORK NEEDS TO BE DONE TO REFORM OUR NATION'S ANTI-MONEY LAUNDERING LAWS TO ENSURE WE CUT OFF THE LIFE BLOOD OF CRIMINALS, DTOS, AND TERRORIST ORGANIZATIONS—THEIR FINANCING. WE NEED WIDE RANGING REFORMS TO CURB ABUSES OF OUR FINANCIAL SYSTEM THAT HIDE AND TRANSFER MONEY FROM ILL GOTTEN GAINS. I PLAN TO REINTRODUCE COMPREHENSIVE LEGISLATION TO TARGET THE WEAKNESSES IN OUR CURRENT ANTI-MONEY LAUNDERING LAWS. THIS LEGISLATION WILL RESTRUCTURE OUR ANTI-MONEY LAUNDERING LAWS TO

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STOP NEW TRENDS SUCH AS BULK CASH SMUGGLING AND USE OF MONETARY INSTRUMENTS IN BLANK OR BEARER FORM. IT ALSO PROHIBITS UNLICENSED MONEY TRANSMITTING BUSINESSES, AND BRINGS STORED VALUE INSTRUMENTS WITHIN THE MONEY LAUNDERING STATUTES.

A) DO YOU BELIEVE THAT EFFORTS TO COMBAT ILLEGAL MONEY LAUNDERING OPERATIONS AND BULK CASH SMUGGLING ARE INTEGRAL TO EFFORTS TO COMBAT DTOS? WHY OR WHY NOT?

ANSWER:

I have long believed that detecting, understanding and attacking the flow of money to violent drug trafficking organizations is essential to combating DTOs. In fact, "following the money" is a necessary tool to penetrate the cartels and garner valuable investigatory information about the cartel leadership.

B) IF YOU ARE CONFIRMED, HOW WILL YOU DIRECT ONDCP TO ADDRESS MONEY LAUNDERING?

ANSWER:

If I am confirmed by the Senate, I will review current anti-money laundering policies and activities in consultation with the Departments of Treasury, Justice and Homeland Security, and will work to maximize the focus of our Federal, state, and local agencies on the importance of addressing bulk currency smuggling and other forms of money laundering. As a long-term local law enforcement official and strong advocate for intelligence-driven policing, I believe it is essential that state and local police agencies ensure any seizure of cash turns into an intelligence gathering operation in order to help us understand and take down the cartels.

C) WILL YOU PLEDGE TO WORK COOPERATIVELY WITH CONGRESS TO ENSURE THAT OUR ANTI-MONEY LAUNDERING LAWS ARE STRENGTHENED?

ANSWER:

I will most emphatically be committed to working with the Congress, and my colleagues at DOJ, DHS, and the Department of the Treasury to ensure that our Nation's money laundering laws provide sufficient authorities for this vitally important work.

QUESTION:
(14) IN THE MIDST OF THIS ECONOMIC DOWNTURN, OUR COUNTRY WILL FACE DIFFICULT BUDGET DECISIONS.

A) WHAT PROGRAMS AT ONDCP YOU WOULD FIGHT TO KEEP FUNDED?

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ANSWER:

The programs with which I am familiar are the Drug Free Communities Support Program, the High Intensity Drug Trafficking Area Program, and the National Youth Anti-Drug Media Campaign. I believe that these are important programs but that they are certainly subject to review and evaluation to determine if changes are warranted and to determine that they are deserving of proposed funding levels.

B) WHAT PROGRAMS WOULD YOU CUT OR DEEMPHASIZE?

ANSWER:

I am not currently part of the Administration and will have to evaluate this upon confirmation. I recognize the importance of having Federal programs as tools of the President's Drug Control Strategy.

AS THE DIRECTOR OF ONDCP, YOU WOULD HAVE A BUDGET CERTIFICATION POWER, WITH WHICH YOU COULD REFUSE TO CERTIFY THE BUDGET REQUEST PROVIDED TO YOU BY EVERY AGENCY IN THE NATIONAL DRUG CONTROL PROGRAM STRATEGY.

C) IF CONFIRMED, HOW WILL YOU USE THE BUDGET CERTIFICATION POWER?

ANSWER:

The Congress has given the Director of National Drug Control Policy numerous budget authorities which I will employ to their full extent of the Statute if I am confirmed. As the Bureaus and Departments submit their drug control budget requests, the ONDCP will be fully engaged in the summer and fall budget review and certification process. My intention is to have a robust dialogue with my colleagues throughout the interagency so that budgets fully resource the President's Drug Control Strategy. My philosophy of attaining their support up front from my colleagues early in the budget process will hopefully ensure that the goals and objectives of the Strategy will be reflected in their budget requests, and that decertification decisions will be unnecessary.

METHAMPHETAMINE

QUESTION:
(15) SINCE CONGRESS PASSED THE COMBAT METH ACT PROGRESS HAS BEEN MADE IN LIMITING DOMESTIC METHAMPHETAMINE PRODUCTION. HOWEVER, THE DRUG ENFORCEMENT ADMINISTRATION (DEA) ESTIMATES THAT OVER 80% OF THE METH IN THE U.S. NOW COMES ACROSS THE BORDER FROM MEXICO. THE NATIONAL DRUG INTELLIGENCE CENTER (NDIC) HAS STATED THAT RECENT ACTIONS BY THE MEXICAN GOVERNMENT TO REDUCE METH PRECURSOR CHEMICALS HAVE RESULTED IN A DECREASE IN THE AMOUNT OF METH COMING INTO THE U.S. AS A RESULT, THE NDIC BELIEVES THESE ACTIONS WILL RESULT IN AN INCREASE IN DOMESTIC METH PRODUCTION.

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THE NATIONAL METHAMPHETAMINE CHEMICAL INITIATIVE GATHERS TOGETHER REPRESENTATIVES FROM LAW ENFORCEMENT COMMUNITIES ACROSS THE COUNTRY TO COORDINATE A PROACTIVE APPROACH TO REDUCING METH'S PREVALENCE. THE PROGRAM FACILITATES THE SHARING OF INNOVATIONS IN THE FIGHT AGAINST METH AMONG LAW ENFORCEMENT COMMUNITIES IN DIFFERENT AREAS, BOTH RURAL AND URBAN.

A) IF CONFIRMED, WOULD YOU AWARD ANY DISCRETIONARY FUNDS TO THIS PROGRAM? WHY OR WHY NOT?

ANSWER:

From my understanding, the National Methamphetamine Chemical Initiative has been a very useful exercise, and has provided much needed information from the field to policy makers, in real-time. I do anticipate that I would support this Initiative once I have received a more formal briefing.

B) IF CONFIRMED, HOW WOULD YOU ENSURE THAT REGIONAL DRUG TRENDS—SUCH AS METHAMPHETAMINE EPIDEMICS IN THE MIDWEST—GET NATIONAL ATTENTION FROM ONDCP AND ARE SIMPLY NOT IGNORED?

ANSWER:

During my confirmation hearing, and in my written testimony, I have gone on the record to let Congress know that it is my intent to have drug policy under my tenure be led by data. To accomplish this, there must be a robust monitoring system in place. With such a system, we will know better how to respond to the ever-changing drug situation and will have the information required to guide the mission-essential coordination and collaboration efforts of the office.

Upon confirmation, I will assess the data that is and is not available to ONDCP and its Federal partners. Any gaps in these data collection systems will be assessed to determine if they are mission critical. Those that are, will be identified in the National Drug Control Strategy and the accompanying Budget.

Under my leadership, I can assure you that drug policy and the response to threats will be driven by an honest assessment of credible and reliable data.

C) WHAT IS YOUR PLAN TO EXPAND COUNTERNARCOTICS RESOURCES IN RURAL COMMUNITIES ACROSS THE COUNTRY?

ANSWER:

I understand the true constraints in capacity and resources that are felt in rural communities. These are real and will need to be taken into consideration. I am not yet in a position to offer specific steps that I will take with regards to rural communities. This is

something that will require me, if confirmed, to consult with my employees at ONDCP, across the Federal agencies, State and Local, and Congress, to get a true handle on what resources are needed, and where they are needed, before I offer a specific plan to expand those resources.

PRESCRIPTION DRUGS

QUESTION:
(16) THE MONITORING THE FUTURE SURVEY HAS FOUND THAT MOST DRUG USE AMONG YOUTH HAS CONTINUED IN A GRADUAL DECLINE THROUGH 2008. HOWEVER, THAT SAME SURVEY NOTED THAT THE ABUSE OF PRESCRIPTION MEDICATIONS, INCLUDING NARCOTICS, OXYCONTIN, VICODIN, TRANQUILIZERS, AND SEDATIVES, HAS REMAINED STEADY AT OR NEAR PEAK USE LEVELS.

A) IF CONFIRMED, HOW WOULD YOU ADDRESS THE RISE IN PRESCRIPTION DRUG ABUSE AMONG YOUTH ON A NATIONAL SCALE?

ANSWER:

I agree with you that prescription drug use is a growing and serious problem in our country and the data appears to support that conclusion.

With this issue in particular, given where people are getting these drugs, education will be key; I believe that once people understand where the drugs are coming from, they will begin to modify their behavior and reduce the availability of prescription drugs to potential abusers.

Beyond the education of the public, there are numerous, complex issues related to production, distribution, and disposal that will require the expertise of DEA, FDA, EPA, private industry, and others to develop an intelligent approach to limiting the current easy availability, and ultimately, to reduce the rates of prescription drug abuse. If confirmed as the Director of ONDCP, I will use my position to ensure that all of these agencies and parties come together so that the Administration can develop effective and realistic strategies to deal with this very real issue.

B) THE SURVEY FOUND THAT STUDENTS OBTAIN PRESCRIPTION DRUGS FROM DIFFERENT SOURCES COMPARED WITH TRADITIONAL STREET DRUGS. IF CONFIRMED, WHAT IS YOUR PLAN TO COORDINATE A COMPREHENSIVE STRATEGY TO ADDRESS BOTH THE SOURCES OF TRADITIONAL STREET DRUGS AND THE SOURCES OF PRESCRIPTION DRUGS?

ANSWER:

These drugs require different approaches, given that prescription drugs have a valid place in the market place.

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I will attack these problems using the authorities that Congress has bestowed upon the Office I seek. They state that the Director of ONDCP shall:

- **consult with and assist State and local governments with respect to the formulation and implementation of National Drug Control Policy and their relations with the National Drug Control Program agencies.**

- **seek the support and commitment of State, local, and tribal officials in the formulation and implementation of the National Drug Control Strategy**

For the National Drug Control Strategy to be an effective tool, and for it to develop realistic and achievable goals, it must be informed by the best and brightest. I can assure you that I will seek the advice and counsel of all invested parties and develop policies based on evidence, research, and sound scientific principles.

C) HOW DO YOU PLAN TO INFORM AND CHANGE THE PUBLIC'S PERCEPTION OF PRESCRIPTION DRUG ABUSE AS THE DIRECTOR OF ONDCP?

ANSWER:

One certain tool that will be at my disposal is the National Youth Anti-Drug Media Campaign. This campaign has the ability to educate youth, but also parents, family members, friends, mentors and the general public, and to shape their perceptions. I would certainly use that as a vehicle to positively change the public's perception on this issue.

I will also have the power of the position to educate the public through numerous mass communication outlets such as television, radio, and internet. I will make full use of my position to bring this issue into the fore.

D) IF CONFIRMED, HOW WOULD YOU SEEK TO CHANGE THE PERCEPTIONS OF YOUTH THAT PRESCRIPTION AND OVER-THE-COUNTER DRUGS ARE SAFE TO USE?

ANSWER:

As I stated above, the National Youth Anti-Drug Media Campaign will be a tool at my disposal to seek to change youth perceptions. This campaign is specifically created and targeted to educate our Nation's youth, and to shape their perceptions regarding drug abuse. I would certainly use that as a vehicle to positively change the perception of youth on this issue.

I will also have the power of the position to educate the youth and their parents through numerous mass communication outlets such as television, radio, and internet. I will make full use of my position to bring this issue into the forefront of our youth's consciousness.

COLOMBIA

QUESTION:
(17) THE SITUATION IN COLOMBIA HAS IMPROVED DRAMATICALLY SINCE 1999 WHEN THE PLAN COLOMBIA PROGRAM WAS FIRST PROPOSED. HOWEVER, NARCO-TERRORIST GROUPS, SUCH AS THE FARC, CONTINUE TO USE THE PROCEEDS FROM COCAINE TO CAUSE VIOLENCE AND INSTABILITY. PLAN COLOMBIA PROGRAMS FOCUSED ON ECONOMIC GROWTH, REFORM OF THE JUSTICE SYSTEM, DEMOCRACY AND SOCIAL DEVELOPMENT, AND ENSURING PEACE AND SECURITY, AND THE GOVERNMENT OF COLOMBIA IS SHOWING PROGRESS IN THOSE AREAS.

A) IF CONFIRMED, WHAT STEPS WILL YOU TAKE AT ONDCP TO ENSURE THAT THE INTERDICTION AND ERADICATION PROGRAMS IN COLOMBIA CONTINUE TO RECEIVE ADEQUATE FUNDING?

ANSWER:

Our support to Colombia over the last decade has paid huge dividends to the security and prosperity of the Colombian people, strengthened Colombian democratic institutions and respect for human rights, and reduced the flow of cocaine and heroin out of Colombia. Though weakened, Colombian drug trafficking organizations and the FARC still threaten Colombian democracy and the rule of law. I will work with the Department of State and the US interagency to ensure sufficient counterdrug support to the Government of Colombia to consolidate the gains it has made over the last decade in improving governance and the economy and reducing drug production and violence.

B) HALF OF THE COCAINE PRODUCED IN COLOMBIA EACH YEAR IS TRANSITED THROUGH VENEZUELA. THE CHAVEZ GOVERNMENT DOES VERY LITTLE TO HALT COCAINE MOVEMENT AND HAS SIGNIFICANTLY REDUCED THE NUMBER OF DEA AGENTS ALLOWED INTO THE COUNTRY. IF CONFIRMED, HOW WILL YOU ADDRESS THE DRUG TRAFFICKING AND NARCO-TERRORISM PROBLEMS IN VENEZUELA?

ANSWER:

Should I be confirmed, I will work closely with the Department of State, Defense, and the interagency to review our options in regions where lack of cooperation and performance seem to contribute to international production and trafficking of drugs. The United States must work closely with our friends and allies to encourage each member of the community of nations to fulfill their international commitment under numerous UN conventions to cooperate against the production and trafficking in illicit drugs.

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C) IN ADDITION TO COLOMBIA, THERE ARE OTHER COUNTRIES OF CONCERN FOR THE UNITED STATES WITHIN THE ANDEAN REGION. THE PRESIDENT OF BOLIVIA SUPPORTS AN INCREASE IN THE PRODUCTION OF WHAT HE CONSIDERS "LICIT" COCA AND HAS SIGNIFICANTLY REDUCED ERADICATION EFFORTS. WHAT IS YOUR STRATEGY FOR ADDRESSING THE INCREASE IN COCA CULTIVATION IN BOLIVIA, CONSIDERING THE EXPULSION OF AMBASSADOR GOLDBERG AND THE DEA CONTINGENCY LAST FALL?

ANSWER:

Upon confirmation, I will work closely with the Department of State, Defense, and the interagency to review our options in regions where lack of cooperation and performance seem to contribute to international production and trafficking of drugs. The United States must work closely with our friends and allies to encourage each member of the community of nations to fulfill their international commitment under numerous UN conventions to cooperate against the production and trafficking in illicit drugs.

D) THE UNITED STATES HAS SIGNIFICANTLY REDUCED THE DRUG INTERDICTION ASSETS IN THE EASTERN CARIBBEAN AND ELSEWHERE IN THE TRANSIT ZONE, BUT DRUG TRAFFICKING ORGANIZATION ACTIVITIES IN THESE AREAS CONTINUE TO GROW. IF CONFIRMED, HOW WILL YOU WORK WITH THE OTHER AGENCIES TO IMPROVE THE COORDINATION OF OUR LIMITED RESOURCES?

ANSWER:

Should I be confirmed, I will work very closely with my colleagues to review the interagency drug interdiction coordination machinery, including the Interdiction Committee and the United States Interdiction Coordinator, to ensure drug interdiction program budgets, resources, and activities are fully coordinated.

AFGHANISTAN

QUESTION:
(18) BILLIONS OF DOLLARS GENERATED BY POPPY GROWING IN AFGHANISTAN AND ARE BEING USED TO FUND TERRORISM THAT THREATENS TO DESTABILIZE THE AFGHAN SOCIETY AND GOVERNMENT. PRESIDENT OBAMA HAS PLEDGED TO SEND MORE TROOPS TO AFGHANISTAN IN AN ATTEMPT TO SECURE THE REGION.

A) DO YOU HAVE A COMPREHENSIVE PLAN FOR REDUCING THE GROWTH AND CULTIVATION OF POPPIES IN AFGHANISTAN?

ANSWER:

Poppy production in Afghanistan produces little heroin that is consumed in the United States. Supporting the Afghan government's attempts to eliminate poppy production is important because the illegal drug industry contributes substantial funding to the Taliban and other terrorist networks. I would work closely with Ambassador Holbrooke and the other leading architects of our Afghanistan-Pakistan policy to better understand how counter-drug tools can best be integrated into the larger international objective of a safe and stable Afghanistan and Pakistan.

B) IF CONFIRMED, WHAT ROLE WILL ONDCP PLAY IN REDUCING POPPY PROTECTION IN AFGHANISTAN?

ANSWER:

If confirmed I would expect ONDCP to coordinate the production of a clear counter-drug strategy in Afghanistan and work in the interagency community to see that it is properly resourced and implemented.

SENTENCING

QUESTION:

(19) CONGRESS HAS OFFERED SEVERAL BILLS THAT WOULD REVISE THE CURRENT SENTENCING STRUCTURE FOR CONVICTIONS FOR CRIMES RELATED TO BOTH CRACK AND POWDER COCAINE. WHILE THESE IDEAS REMAIN IN PROPOSAL FORM, THE U.S. SENTENCING COMMISSION HAS UNDERTAKEN AN EFFORT TO REDUCE THE DISPARITY IN SENTENCES FOR CONVICTIONS OF CRACK AND POWDER COCAINE OFFENSES.

A) DO YOU SUPPORT ANY PROPOSAL TO REDUCE A SENTENCING DISPARITY BETWEEN CRACK AND POWDER COCAINE OFFENSES? IF SO, WHICH PROPOSAL WOULD YOU ENDORSE?

ANSWER:

I share the view of President Obama and Vice President Biden that the current disparity under Federal law between crack and powder sentencing guidelines is wrong and should be eliminated. I have not reviewed any particular proposals, but agree with the U.S. Sentencing Commission that the current law should be amended to reflect parity in the drug quantity threshold amounts for sentencing purposes

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B) DO YOU SUPPORT EFFORTS TO REPEAL MANDATORY MINIMUM SENTENCES FOR SIMPLE POSSESSION OF CRACK COCAINE? WHY OR WHY NOT?

ANSWER:

Yes. Under federal law, crack cocaine is the only drug that a non-violent first-time offender can receive a mandatory minimum sentence for possessing. The provision in the Drug Abuse Act of 1986 that created this penalty for simple possession should be repealed.

(C) DO YOU SUPPORT MANDATORY MINIMUM SENTENCES FOR ANY DRUG CRIMES? WHY OR WHY NOT?

ANSWER:

There are more than 150 mandatory minimum provisions in Federal criminal statutes. I believe mandatory minimum sentences may be less effective than discretionary sentencing and drug treatment in reducing drug-related crime. I support a review of the criminal statutes that contain minimum mandatory sentences to determine if a smarter criminal justice policy can be implemented to more effectively reduce crime.

MEDIA CAMPAIGN

QUESTION:
(20) THE PREVIOUS ADMINISTRATION DEVOTED A LOT OF OUR NATION'S RESOURCES TO THE NATIONAL YOUTH ANTI-DRUG MEDIA CAMPAIGN (MEDIA CAMPAIGN).

IN FEBRUARY 2005, A RESEARCH COMPANY HIRED BY THE NATIONAL INSTITUTE ON DRUG ABUSE REPORTED THAT THE GOVERNMENT'S AD CAMPAIGN AIMED AT DISSUADING TEENS FROM USING MARIJUANA, A CAMPAIGN THAT COST $1.4 BILLION BETWEEN 1998 AND 2006, FAILED. AFTER ITS OWN EXAMINATION OF THE CAMPAIGN IN 2006, THE GAO AGREED. AFTER THE FEBRUARY 2005 REPORT WAS RECEIVED, THE OFFICE CONTINUED THE AD CAMPAIGN, SPENDING $220 MILLION ON THE ANTI-MARIJUANA ADS IN FISCAL YEARS 2005 AND 2006. IN RESPONSE, CONGRESS STRIPPED THE MEDIA CAMPAIGN'S BUDGET DOWN FROM $100 MILLION IN 2007 TO $60 MILLION IN 2008.

A) DO YOU BELIEVE THE MEDIA CAMPAIGN IS EFFECTIVE? WHY OR WHY NOT?

ANSWER:

The Media Campaign is an important part of our current national effort to prevent drug use among young people. While I have not fully evaluated the prior studies of and

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reports on the Campaign, is my understanding that the work cited only evaluated the Campaign through the Spring of 2004. I am told that improvements have been made since that time and the Campaign has been demonstrating results. I have been told that a more comprehensive and robust evaluation of the Media Campaign is about to be conducted. I will monitor this process very closely to make sure that taxpayer funds are being used in the most effective way.

B) IF CONFIRMED, HOW WILL YOU IMPROVE THE CAMPAIGN?

ANSWER:

The Media Campaign would be a high priority for me, if confirmed. Youth are media-oriented and a variety of resources and media outlets are needed to combat the continuing message they receive from society that says drugs are not dangerous or that drugs are something they should do if they wish to "fit in." This is especially a problem with the troublesome trend of teen abuse of prescription drugs, in part because both parents and youth seen to underestimate the risk of prescription drug abuse and because parents do not seem to be talking to their teens about the issue.

PREVENTION

QUESTION:
(21) STUDIES SHOW THAT IF A YOUNG PERSON AVOIDS EXPERIMENTING WITH DRUGS BEFORE THE AGE OF 20, CHANCES ARE THAT PERSON WILL NEVER EXPERIMENT WITH DRUGS.

A) WHERE DO YOU PUT PREVENTION AS A PRIORITY IN ANY COUNTERNARCOTICS STRATEGY?

ANSWER:

Prevention is critical, and must receive at least equal attention provided to treatment and market disruption. I can assure you that, if confirmed, under my watch, there will be a renewed focus on evidence-based approaches to reduce this country's demand for drugs, through prevention.

B) ONE PREVENTION PROGRAM THAT HAS PROVEN ITS EFFECTIVENESS IS THE DRUG FREE COMMUNITIES (DFC) PROGRAM, WHICH I HELPED TO CREATE. THIS PROGRAM IS ADMINISTERED BY THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA) AND OVERSEEN BY ONDCP. IF CONFIRMED, DO YOU PLAN TO DEVOTE ADEQUATE RESOURCES AND ATTENTION TO THIS PROGRAM AND OTHER EFFECTIVE PREVENTION PROGRAMS?

ANSWER:

Absolutely. I know that the DFC Program has been evaluated and has been shown to be effective, and therefore deserves continued support. Approaches that have shown themselves to be effective (evidence-based) will be given top priority in the development of the National Drug Control Strategy and the National Drug Control Budget.

C) THE DFC PROGRAM WAS DESIGNED TO PROVIDE AN EASY APPLICATION PROCESS FOR APPLICANTS. HOWEVER, A NUMBER OF MY CONSTITUENTS HAVE TOLD ME THE PROCESS IS BECOMING MORE DIFFICULT TO FOLLOW. IF CONFIRMED, WILL YOU BE COMMITTED TO SIMPLIFYING THE DFC APPLICATION PROCESS, AS ORIGINALLY INTENDED? WHY OR WHY NOT?

ANSWER:

I am a strong believer in grass roots organizations as a mechanism to prevent drug abuse and addiction, and ensuring our youth get effective drug prevention messages is critical. Having served as Deputy Director of COPS, I am very familiar with the grant process, particularly in how Federal funds can be channeled directly to local organizations. As written into law, the application process was very straightforward and uncomplicated, and it is clear that the intent was to ensure people who had never received Federal funding before could easily apply and compete for this funding, even without a grant writer. If confirmed, I will make sure that the process remains simple and transparent for all who apply.

D) WILL YOU ENSURE APPLICANTS HAVE ACCESS TO A FAIR, TRANSPARENT, AND TIMELY APPEALS PROCESS AFTER THEY HAVE RECEIVED AN ADVERSE DECISION?

I would be a strong advocate for this program. That would include providing assistance to first time grantees and ensuring that, if denied, ONDCP would ensure a satisfactory answer and a fair appeal process. It is critical that the DFC program, as well as any Federal program, is administered with the highest level of integrity. I understand there was a problem during the previous Administration with the appeals process, and that it has been taken care of to the satisfaction of the members of the Senate Caucus on International Crime. A transparent appeals process is now in place, grantees are provided details of this process; I believe that this process has been posted on the ONDCP Website. If confirmed, I am committed to ensuring all of the programs under my jurisdiction are handled with the highest level of integrity.

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QUESTION:
(22) THE DEA AND LOCAL LAW ENFORCEMENT ARE ALSO ENCOUNTERING THE PRESENCE OF CANDY FLAVORED METH ON THE STREETS IN AT LEAST 12 STATES. METH COOKS FLAVOR HIGHLY ADDICTIVE AND DESTRUCTIVE DRUGS, MAKING IT MORE APPEALING TO USERS, INCLUDING CHILDREN UNDER THE AGE OF 18. CURRENT LAW ENHANCES THE PENALTY FOR DRUG DEALERS WHO SELL DRUGS TO CHILDREN, BUT NO LAW IS IN PLACE THAT WOULD ENHANCE THE PENALTIES FOR THOSE WHO FLAVOR OR DISGUISE DRUGS TO MAKE THEM MORE ATTRACTIVE TO CHILDREN.

A) DO YOU SUPPORT EFFORTS TO INCREASE FEDERAL CRIMINAL PENALTIES FOR THOSE WHO MANUFACTURE, FLAVOR, OR DISGUISE DRUGS IN ORDER TO MAKE THEM MORE APPEALING TO CHILDREN UNDER THE AGE OF 18? WHY OR WHY NOT?

ANSWER:

Purposeful manufacturing or marketing techniques which make any dangerous substance more attractive to our Nation's youth are abhorrent. If confirmed to the position I seek, I would certainly work closely with states as well as the Department of Justice to determine what the most appropriate response to such activity may be. From where I sit now, I cannot commit to the perspective that a new Federal law that is specifically focused on increased Federal criminal penalties is necessarily the most effective tool that could be employed, though it may very well be. This is an issue which would require some time on the job for me to develop rational and effective policy responses. These responses may include seeking a change in Federal law, in which case I would work closely with you and your staff to offer any proposed changes which may be necessary.

STEROIDS
QUESTION:
(23) THE PRESENCE OF PERFORMANCE-ENHANCING DRUGS IN PROFESSIONAL SPORTS AND ENTERTAINMENT CONTINUES TO HAVE A DETRIMENTAL IMPACT ON AMERICA'S YOUTH AND THE INTEGRITY OF SPORTS. THE DAILY, ONGOING REVELATIONS OF STAR ATHLETES WHO HAVE USED DESTRUCTIVE SUBSTANCES TO CHEAT THEIR WAY TO THE TOP RAISES CONCERNS ABOUT THE IMPACT THESE STORIES AND ATHLETES HAVE UPON IMPRESSIONABLE YOUTH. FOR INSTANCE, THE MOST RECENT NSDUH FOUND THAT 2.2% OF HIGH SCHOOL SENIORS HAVE ADMITTED TO USING STEROIDS AT LEAST ONCE IN THE LAST YEAR.

A) IF CONFIRMED, WHAT WILL YOU DO AT ONDCP TO DISCOURAGE YOUNG ATHLETES FROM TURNING TO STEROIDS?

ANSWER:

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I agree that the use of steroids and performance-enhancing drugs poses a number of public health and drug control challenges. The use of drugs for doping purposes creates a number of serious health risks for the athlete. Equally important, doping sends the wrong message to young people about drug use and the importance of competing in sport, at any level, with integrity and in conformance with rules and laws.

The U.S. Government has taken significant steps to combat performance-enhancing drug use in sport. I understand that we help fund (though nearly a $10 million Federal grant) a vibrant and highly regarded independent anti-doping agency (USADA), which oversees the drug testing for Olympic sport in the U.S. The United States also plays an influential role within World Anti-Doping Agency, which harmonizes and coordinates anti-doping for Olympic Movement internationally. Additionally, the U.S. Government is a party to a United Nations international convention to combat drug use in sport. The convention, which Vice President Biden played a leadership role in shepherding through the Senate last year, strives to coordinate governmental efforts worldwide to address the problem of drugs in sport, with a particular emphasis on youth education, research, and prevention efforts.

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NOMINATION OF GIL KERLIKOWSKE TO BE DIRECTOR OF NATIONAL DRUG CONTROL POLICY
UNITED STATES SENATE COMMITTEE ON THE JUDICIARY
QUESTIONS OF SENATOR TOM COBURN, M.D.

MARIJUANA

QUESTION:

1) DO YOU BELIEVE THAT MARIJUANA SHOULD REMAIN LISTED AS A SCHEDULE I DRUG IN THE CONTROLLED SUBSTANCES ACT?

ANSWER:

Yes

QUESTION:

2) DO YOU SUPPORT THE USE OF SMOKED MARIJUANA FOR MEDICAL PURPOSES?

ANSWER:

What constitutes safe and effective medicine should continue to be based upon the Food and Drug Administration's review of the appropriate science. From what I have read, there is no consensus reflected in existing medical evidence with respect to the medicinal benefits of smoking marijuana.

QUESTION:

3) AS YOU KNOW, THE FDA IS RESPONSIBLE FOR APPROVING DRUGS AS SAFE AND EFFECTIVE FOR THEIR INTENDED USES. ALTHOUGH IT HAS NOT APPROVED MARIJUANA FOR ANY MEDICAL USE, SOME STATES HAVE PASSED THEIR OWN LAWS ALLOWING SUCH USE IN LIMITED CIRCUMSTANCES. IN YOUR OPINION, IS IT EITHER WISE OR SAFE FOR STATES TO ESSENTIALLY BYPASS THE FDA AND PERMIT USE OF A DRUG THAT HAS NOT BEEN APPROVED BY THAT AGENCY?

ANSWER:

I support the inclusion of marijuana as a Schedule I substance under the Federal Controlled Substance Act. At the same time, I understand and respect the ability of states, under the longstanding principles of federalism, to make state policy decisions within the scope of their authority and jurisdiction.

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QUESTION:

4) DO YOU HAVE ANY PREDISPOSITIONS OR PERSONAL CONFLICTS OF INTEREST THAT MIGHT INTERFERE WITH YOUR ABILITY TO STRINGENTLY ENFORCE THE NATION'S TRADITIONAL DRUG CONTROL POLICIES, PARTICULARLY WITH RESPECT TO MARIJUANA?

ANSWER:

No.

IMMIGRATION

QUESTION:

5) IN JUNE OF 2001, UNDER YOUR AUTHORITY AS POLICE CHIEF, THE SEATTLE POLICE DEPARTMENT ISSUED A DIRECTIVE ORDERING OFFICERS NOT TO ASK AN INDIVIDUAL ABOUT HIS OR HER IMMIGRATION STATUS OR TAKE ACTION DUE TO IMMIGRATION STATUS. YOU STATED OF THE POLICY: "WE DIDN'T WANT TO BE PERCEIVED AS A BRANCH OF THE IMMIGRATION AND NATURALIZATION SERVICE... OUR MISSION IS TO PROTECT PEOPLE AND NOT FRIGHTEN PEOPLE." WHILE TRUST IN LAW ENFORCEMENT IS IMPORTANT, THE DIRECTIVE YOU ORDERED HAS BEEN USED BY "SANCTUARY CITIES" TO PROTECT ILLEGAL IMMIGRANTS RESIDING IN OUR NATION IN DIRECT VIOLATION OF FEDERAL LAW.

- AS DRUG CZAR, WOULD YOU SUPPORT IMPLEMENTING SIMILAR POLICIES AT THE FEDERAL LEVEL?

ANSWER:

I will support the Administration's immigration policies. In 2001, I supported Seattle's existing immigration policy which was established before I became Chief of Police. Please note that Seattle's immigration policy is consistent with the policy adopted by the Major Cities Chiefs Association.

- WHAT IS YOUR POSITION ON CONTINUING DRUG-ENFORCEMENT FUNDING AND OTHER FEDERAL FUNDS TO "SANCTUARY CITIES" THAT REFUSE TO ENFORCE FEDERAL IMMIGRATION LAWS?

ANSWER:

I will uphold what I believe to be the primary duty bestowed upon the Director of National Drug Control Policy, which is to develop and implement a national drug control

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strategy designed to reduce the demand and supply for illicit drug use in the United States. My decisions concerning funding will be based solely on the facts and circumstances relevant and necessary to fulfill the Director's primary duty.

SOUTHWEST BORDER/ MEXICO

QUESTION:

6) IN 2007, THE BUSH ADMINISTRATION ANNOUNCED THE MERIDA INITIATIVE—A MULTI-BILLION DOLLAR INTERNATIONAL COUNTERDRUG AND JUDICIAL-SYSTEM-BUILDING INITIATIVE BETWEEN THE UNITED STATES AND MEXICO AND CENTRAL AMERICAN COUNTRIES. ALTHOUGH THE ADMINISTRATION DESIGNATED THE STATE DEPARTMENT AS THE LEAD FEDERAL AGENCY, MANY PROGRAM RESPONSIBILITIES ARE WITHIN DOJ. I HAVE GREAT CONCERN THAT THERE ARE STILL NO PROGRAM METRICS BY WHICH TO EVALUATE THE INITIATIVE'S SUCCESS.

   - WHAT WILL YOU DO AS DRUG CZAR TO ENSURE THAT DOJ COMPONENTS OF THE INITIATIVE ARE SUCCESSFUL?

ANSWER:

I would work closely with all of the agencies with a role in implementation to ensure the initiative's goals are clearly and consistently defined in terms of results. I would continue close coordination with these agencies and Mexico and the other Merida Initiative partners in the fight against drugs throughout the life of the initiative, to ensure goals are being measured and met.

QUESTION:

7) AS YOU KNOW, INCREASING VIOLENCE IN MEXICO OVER THE PAST YEAR AND A HALF CAUSED BY DRUG-CARTELS HAS CLAIMED MORE THAN 7,000 LIVES AND CURRENTLY THREATENS U.S. HOMELAND SECURITY. DEPUTY ATTORNEY GENERAL DAVID OGDEN RECENTLY TESTIFIED BEFORE CONGRESS ON DOJ'S FIVE-PRONG STRATEGY TO IDENTIFY, DISRUPT, AND DISMANTLE THE MEXICAN DRUG CARTELS, INCLUDING THE FOLLOWING STEPS: EMPLOYING EXTENSIVE AND COORDINATED INTELLIGENCE CAPABILITIES; ENSURING THE INVESTIGATION, EXTRADITION, PROSECUTION, AND PUNISHMENT OF KEY CARTEL LEADERS; PURSUING INVESTIGATIONS AND PROSECUTIONS RELATED TO THE SMUGGLING OF GUNS, CASH, AND CONTRABAND FOR DRUG-MAKING FACILITIES FROM THE UNITED STATES INTO MEXICO; USING TRADITIONAL LAW ENFORCEMENT APPROACHES TO

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ADDRESS SPILLOVER EFFECTS OF CARTEL VIOLENCE IN THE UNITED STATES; AND PROSECUTING CRIMINALS RESPONSIBLE FOR THE SMUGGLING, KIDNAPPING AND VIOLENCE, IN FEDERAL COURT.

FURTHERMORE, DOJ MUST COORDINATE WITH A NUMBER OF FEDERAL AGENCIES WITHIN DHS, SUCH AS IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) AND CUSTOMS AND BORDER PROTECTION (CBP), TO ENSURE AN EFFECTIVE COUNTER-NARCOTICS STRATEGY. WHAT WILL YOU DO AS DRUG CZAR TO ENSURE YOU ARE EFFECTIVELY ADVANCING THE STRATEGY ALREADY OUTLINED BY DOJ AND COORDINATING WITH ICE AND CBP?

ANSWER:

If the Senate confirms me as Director of National Drug Control Policy I will make combating the Mexican drug cartels a top priority. Upon taking office I will meet with my counterparts at DOJ and DHS to receive an update on our Southwest border initiatives and to review our strategy and its implementation. As you know, the Mexican cartels are not just impacting the border areas, but our entire country, since they control the drug trade in over 230 U.S. cities. My 36 years of experience in law enforcement will enable me to not only work to ensure close coordination among Federal agencies, but also to make sure the knowledge, talent, and energy of our state and local law enforcement agencies are brought into the effort against the Mexican cartels.

Gil Kerlikowske
Chief of Police
Seattle Police Department

Every individual who saw what happened in our city at the "Fat Tuesday" event was sickened. Now, as every community does after a terrible event, we want to blame someone or something; the chief of police, the mayor, club owners, Seattle "culture;" the list is endless.

Violent, criminal acts led to one death, and many injuries. The violence that erupted in Seattle was not exclusive to Seattle. It also struck Mardi Gras celebrations coast-to-coast in Philadelphia, Austin, and Fresno (CA). Those communities also experienced property destruction and injuries (including two people stabbed in Fresno) and they too are now in the process of trying to understand what occurred. This makes what happened in Seattle no less terrible, but it broadens our understanding of the nature of the event. Stop for one minute to listen to the facts and understand what occurred.

As a result of the violence and rioting we experienced on Friday and Saturday nights, I brought in a record number of officers to oversee Tuesday's event. They were pre-positioned early in the evening and for the first several hours there was mostly celebration. Then, as the crowd in the street exploded in size, the attitude shifted. This party crowd quickly devolved into a mob, with some of its members bent on violence.

The police commanders at the scene knew that they might have to order the crowd to disperse. They also knew, based on experience, that the crowd would do no such thing and that we would need to follow through with other tactics. Crowd estimates at midnight, always difficult to establish accurately, were thought to be 3,500 on the streets, and another 3,500 in surrounding venues. With that many people on a narrow street lined with glass windows, we made the decision to hold off for a short time before we dispersed the crowd. We did this for only one reason: the safety of the people in the streets. In my professional estimation, and that of the commanders in charge, acting earlier would turn a crowd into a panicked mob, resulting in people being trampled and injured. Then, just as the crowd was beginning to thin, a sharp, sudden escalation in violent acts called for new tactics and immediate action to disperse the crowd.

Let's also set the record straight on two points. First, those who say I held back officers attempting to get into the crowd because of my concern that they would be hurt are completely wrong. I place officers at risk everyday and I have, in my career, had to tell the families of three police officers that their loved one was killed in the line of duty. It was clear to me that sending in officers any earlier would have been ineffective, and would have escalated the violence and mayhem that did occur.

Second, the misconception that the race or ethnic background of a law-breaker is given one second of consideration as to whether or not we are going to arrest someone. A violent criminal is a criminal, period.

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What is most important, right now, is to focus our immediate attention on apprehending those who are responsible for this tragedy: the people responsible for violence. We have already received overwhelming public support that has led to several arrests. I have also invited police representatives from the other three cities affected by Mardi Gras violence to Seattle to discuss what happened and to develop strategies to deal with public events. We need a long-term fix. All of us need to take responsibility for understanding and dealing with an emerging culture of violence by young people.

Responses to Senator Specter's Written Questions for Ronald Weich, Nominee to be Assistant Attorney General, Office of Legislative Affairs

1. A 1995 Congressional Research Service report summarized the broad scope of Congressional authority to conduct oversight on the Department of Justice as follows:

> [A] review of congressional investigations that have implicated DOJ or DOJ investigations over the past 70 years from the Palmer Raids and Teapot Dome to Watergate and through Iran-Contra and Rocky Flats, demonstrates that DOJ has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending, so that Congress is not delayed unduly in investigating misfeasance, malfeasance, or maladministration in DOJ or elsewhere. A number of these inquiries spawned seminal Supreme Court rulings that today provide the legal foundation for the broad congressional power of inquiry. All were contentious and involved Executive claims that committee demands for agency documents and testimony were precluded on the basis of constitutional or common law privilege or policy.
>
> In the majority of instances reviewed, the testimony of subordinate DOJ employees, such as line attorneys and FBI field agents, was taken formally or informally, and included detailed testimony about specific instances of the Department's failure to prosecute alleged meritorious cases. In all instances, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases, confidential instructions outlining the procedures or guidelines to be followed for undercover operations and the surveillance and arrests of suspects, and documents presented to grand juries not protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure, among other similar "sensitive" materials. Congressional Research Report, "Investigative Oversight: An Introduction to the Practice and Procedure of Congressional Inquiry", pp. 23-24 (April 7, 1995).

   a. Do you agree with the Congressional Research Service's analysis of the scope of Congressional authority to investigate the Department of Justice pursuant to its oversight function?

I have read the 1995 Congressional Research Service report and agree with its general conclusion that Congress has broad authority to conduct oversight of Executive Branch agencies, including the Justice Department. Moreover, as a longtime Senate staff member, I personally appreciate Congress' interest in obtaining timely, accurate information from the Department in furtherance of such oversight.

   b. If not, with which part(s) do you disagree?

It is my understanding that the Justice Department has historically declined to accept certain aspects of the CRS analysis related to the interaction of Congress'

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oversight responsibilities and the Justice Department's law enforcement and litigation responsibilities in individual cases. Nonetheless, if confirmed I will work to accommodate the Judiciary Committee's need for information consistent with the Department's responsibilities, and will seek to resolve any disputes between the branches in an amicable and constructive fashion so that Congress can carry out its oversight responsibilities.

2. If confirmed as Assistant Attorney General for Legislative Affairs, one of your primary responsibilities will be to facilitate Congressional oversight of the Department of Justice. What specifically will you do to expedite the flow of information between the Department of Justice and Congress?

    a. Will you pledge to promptly respond to requests for information and documents from either the majority or the minority?

    If confirmed, I will work with others in the Department to respond promptly to all Congressional requests for information and documents.

    b. What specific steps will you take to ensure that this Committee and/or individual Members receive the information they need?

    I will familiarize myself with the systems currently in place to track requests and will explore adjustments to improve the timeliness of the Department's responses to Congressional requests.

    c. Will you commit to making line prosecutors and various agents available to answer questions from Committee Members?

    I am not in a position to make this commitment because I am not currently serving at the Department. It is my understanding that the Department has historically made available Senate-confirmed officials such as the Attorney General, the Deputy Attorney General, the Associate Attorney General and Assistant Attorneys General to answer questions from Members of Congress in order to shield line attorneys and agents from political influence. If confirmed, I will work to accommodate the Committee's oversight needs, consistent with the Department's responsibilities.

    d. What are some of the goals you would like to accomplish during your tenure in the Office of Legislative Affairs, if confirmed?

    If confirmed, I would seek to strengthen the relationship between Congress and the Justice Department so that they work in partnership for the benefit of the American people. I would work to ensure that the views and concerns of Members of Congress are made known to Department of Justice officials. Similarly, I would work to ensure that the views and policies of the Justice Department are communicated effectively to Members of Congress.

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3. While serving as counsel for Senator Kennedy, you wrote an article entitled, "The Battle Against Mandatory Minimums: A Report from the Front Lines," 9 Federal Sentencing Reporter 94 (1996). A footnote states that the views expressed therein were your own. In that article, you opined that mandatory minimum sentences are bad public policy and that the Justice Department should instead "work to build congressional and judicial support for the sentencing guideline system." You also recount Senator Kennedy's opposition to mandatory minimums even for recidivist child abusers, child pornographers, and illegal alien smugglers. In many cases, you say, Senator Kennedy sought to replace mandatory minimums with enhanced guidelines over the opposition of other senators, including Senators Hatch and Feinstein, who argued that "judges don't always follow the guidelines." You also described efforts to modify or halt legislation containing mandatory minimums for certain drug dealers (including methamphetamine and Rohyphynol (the "date rape" drug)) and youth gang members.

    a. Since you published this article, the Supreme Court's decisions in *United States v. Booker*, 543 U.S. 220 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004), rendered the sentencing guidelines advisory. How have your views changed, if at all, since the Supreme Court's decisions in these cases?

At the outset, please note that if confirmed I intend to recuse myself from legislation concerning mandatory minimums because my wife – who I married three years after I wrote the article you have referenced – is president of an organization that advocates against mandatory sentencing. I have already consulted with Department of Justice ethics officials to establish a recusal protocol for such matters.

Nonetheless it remains my personal view that mandatory sentencing laws are unnecessary and unwise. I came to this view during my service as Special Counsel to the U.S. Sentencing Commission from 1987 to 1989. The Commission itself has long adhered to this position, as have many leading criminal law scholars and federal judges. The late Chief Justice William Rehnquist, for example, was a critic of mandatory sentencing laws.

The basis for my personal opposition to mandatory sentencing laws is stated in my 2004 testimony before this Committee in the aftermath of the Blakely decision:

> **"Both mandatory minimums and sentencing guidelines limit judicial discretion, but guidelines do so in a more balanced and sophisticated fashion. Guidelines take account of far more sentencing factors than mandatory minimums, which are typically triggered by a single factor like the quantity of drugs sold or the use of a gun. Also the departure mechanism in a guidelines system preserves needed judicial discretion; mandatory minimums, in contrast, can only be avoided by the actions of the prosecutor through charging decisions, plea practices and cooperation agreements. For this reason mandatory sentencing laws, more so than sentencing guidelines, transfer sentencing power from the judge to the prosecutor."**

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It is true, as you have suggested, that the Blakely and Booker decisions have changed the landscape of federal sentencing law. Yet Sentencing Commission statistics demonstrate that judges are largely complying with the now-advisory sentencing guidelines. Moreover, Congress can always consider proposals to make the guidelines enforceable again by simplifying them and putting key sentencing factors to the jury in order to comply with the Sixth Amendment principle articulated in Blakely and Booker. In my personal view, that would be preferable to a regime of mandatory sentencing.

b. One of the arguments in favor of mandatory minimums was that they sought to cure disparity between sentences for the same crime in different parts of the country. Do you have concerns about these disparities? If so, how would you address these concerns?

I am deeply concerned about unwarranted sentencing disparities. In my time at the Sentencing Commission I worked to strengthen the federal sentencing guidelines in order to limit such disparities, and in the numerous articles I have published in this field I have condemned sentencing disparities based on race or other factors. I personally believe, however, that mandatory minimums promote rather than cure such disparities. I associate myself with the views of Senator Kennedy, who was a leading proponent of mandatory sentencing laws in the 1970's because he believed they would reduce racial disparity, but who later came to oppose mandatory minimums because he concluded that sentencing guidelines, rather than mandatory minimums, are the right tool to address unwarranted disparities.

c. How would you address Senators Hatch and Feinstein's concerns that "judges don't always follow the guidelines"?

Under the Sentencing Reform Act of 1984, which was still in full force in 1996 when I wrote the article in question, judges were legally required to impose a sentence within the range established by the Sentencing Commission unless they identified a valid departure factor. Any departure from the guidelines was subject to appellate review. Even after Blakely and Booker, Sentencing Commission statistics demonstrate that judges are largely complying with the now-advisory sentencing guidelines.

d. In the same article, you state that the United States Sentencing Commission suffered a "grievous blow when it courageously but unsuccessfully took on the politically explosive issue of the disparity between crack cocaine sentences and powdered cocaine sentences." Please set forth your position on that issue.

If confirmed, I expect to recuse myself from working on crack-powder disparity legislation because my wife's organization advocates a position on that issue. My personal view, informed by detailed empirical analysis from the Sentencing Commission, is that the 100-to-1 ratio in current law is unjustified.

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4. In The Bush Administration Takes Aim: Civil Rights Under Attack, a report prepared by you for the Leadership Conference on Civil Rights, you are harshly critical of proponents of states' rights in the area of civil rights legislation stating: "[t]here is indeed a legitimate role for states as sovereign bodies and policy laboratories in our system of federalism, but when it comes to discrimination there is no room for experimentation." However, in your testimony before this Committee in July 2004 regarding "*Blakely v. Washington* and the Future of the Federal Sentencing Guidelines," you contend that the states are a "source of criminal justice expertise [that] deserve[] an amplified voice in the process of developing long-term post-*Blakely* reforms."

    a. Please explain why you believe states can be trusted to make determinations as to civil rights in one arena and not another.

    The report you reference was issued by the Leadership Conference on Civil Rights in its own name, not in my name. I was retained by that organization to draft the report based on positions advocated by the organization rather than my own personal views. That said, the sentence you have quoted seems to me accurate. It acknowledges the role of states as sovereign bodies and policy laboratories in our federal system, but suggests that such state-by-state experimentation is constrained by the Equal Protection Clause of the 14th Amendment.

    I also stand by my 2004 testimony (which does express my own personal views) promoting the role of states as a source of criminal justice expertise. I see nothing inconsistent between that proposition and the proposition that states may not violate the Equal Protection Clause.

5. In a report that you authored for the Leadership Conference on Civil Rights entitled "Justice on Trial: Racial Disparities in the American Criminal Justice System," you state:

    > many of the discriminatory practices that characterize the criminal justice system – from racial profiling to the crack/powder sentencing divide – may well constitute violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which condemns laws and practices that have invidious discriminatory impact, regardless of intent. The United States has declined to make the CERD self-executing, which means that in the absence of legislation granting the rights conferred by the Convention, CERD is without legal effect in the United States. The combination of the United States' reluctance to confer the rights guaranteed by CERD on its own citizens, combined with its failure to eradicate practices which violate the guarantees therein, surely damage our government's credibility when it seeks to lead the charge against racism and intolerance abroad.

    You also argue that felony disenfranchisement laws violate international law, specifically Article 25 of the International Covenant on Civil and Political Rights.

    a. Do you believe that United States criminal laws should be changed to conform to principles of international law?

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This report, like the report referenced in the previous question, was issued by the Leadership Conference on Civil Rights in its own name, not in my name or my coauthor's name. Again, we were retained by that organization to draft the report based on positions advocated by the organization rather than our own personal views. My own view is that the United States is not obligated to change its criminal laws to conform to principles of international law.

6. According to your questionnaire, as a lobbyist you represented the National Pawnbrokers Association "on bankruptcy and firearms issues." Please describe the "bankruptcy and firearms issues" to which you refer in your questionnaire.

I worked on two separate issues for the National Pawnbrokers Association. First, the Association sought an amendment to federal law to resolve conflicting case law concerning the status of pawned property in bankruptcy proceedings. On behalf of the Association, I argued that such property should be deemed to be the property of the pawnbroker rather than included in the estate of the bankrupt individual.

Second, I assisted the Association in arguing that the retrieval of a pawned firearm from a pawn shop should not occasion a background check under federal law because the gun owner never abandoned legal ownership of the firearm. A contrary interpretation of law by the Bureau of Alcohol, Tobacco and Firearms had caused many gun owners to refrain from pawning their firearms between hunting seasons, a common practice in some parts of the country.

7. It is imperative that Justice Department officials, including Assistant Attorneys General, have the independence and integrity to stand up to the Attorney General and/or the President if they disagree with the Administration's position on a particular issue. You have spent a substantial portion of your career working for Democrats in the legislative branch and lobbying and/or advocating for certain politically-charged issues.

   a. Do you think that your prior work will have any influence on your ability to disagree with the Administration?

I have always provided candid private advice to the Senators for whom I have worked and the clients who retained me in private practice. My prior work has given me a breadth of experience and perspective that will enable me to "stand up to" the Attorney General and other high ranking officials in private if I disagree with them.

At the same time, I believe that after differing views are aired in private, a lawyer must be prepared to represent the position of his or her clients in any public setting. If confirmed as an Assistant Attorney General, my client would be the Department of Justice. Even if I personally disagree with a decision by the Attorney General, I am confident I can represent the Department's views effectively before Congress.

   b. Can you provide any examples from your previous work experience in which you disagreed with the position of your employer or a client?

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I have occasionally disagreed with positions taken by Senators for whom I have worked and clients who retained me in private practice. For example, it is well-known that Senator Reid is "pro-life" whereas I am "pro-choice" on the issue of reproductive rights. I disagreed with some of the votes cast by him and other Senators for whom I have worked. Also, I did not personally agree with every position contained in the policy reports I drafted for clients in private practice.

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Responses to Senator Grassley's Written Questions for Ron Weich, to be Assistant Attorney General for the Office of Legislative Affairs of the United States Department of Justice.

April 8, 2009

Timeliness of Responses to Congressional Inquiries:

Unanswered and non-responsive Congressional requests for information and questions from Senate hearings have continued to plague the Department of Justice. For example, just last month FBI Director Mueller testified that questions from FBI Oversight hearings remain outstanding despite the fact that the FBI submitted answers to those questions to the Justice Department for "clearance". Director Mueller testified that the FBI submitted answers from the March 2008 hearing to the Department in June 2008, and from the September 2008 hearing in December 2008. Notwithstanding the FBI's submissions, the Department of Justice has not provided these answers to the Committee. Further, letters often take months, if not years, to come back to Congress and even then, they are often in incomplete and unanswered form.

1. Will you pledge to work with Congress to ensure that answers to Congressional correspondence, including Committee hearing questions, and investigative document requests are answered and returned in a timely fashion?

Yes. As a longtime Senate staff member I have a great appreciation for Congress's need for timely responses from executive branch agencies. If confirmed, I look forward to working with the Senate Judiciary Committee and other Committees and intend to respond to requests in a timely fashion.

2. Will you pledge to ensure that answers are responsive and complete?

Yes. If confirmed, I will work to ensure that answers are responsive and complete.

3. If confirmed, will you clear out the backlog of outstanding requests?

Since I am not serving at the Department of Justice I am unaware of the circumstances surrounding outstanding requests, but if confirmed I will work hard to address your concerns about such requests.

4. If you are confirmed, what is your plan to reduce the immediate backlog of outstanding Congressional requests?

If confirmed, I will promptly review the systems in place and explore adjustments to improve the timeliness of the Department's responses to

Congressional requests. Specifically, I will work to expedite responses to currently outstanding requests.

5. Please describe in detail your plan to speed up the clearance process at the Department to ensure that questions, from both the Department and subordinate agencies, are answered thoroughly and delivered in a timely fashion.

Since I am not serving at the Department I am not familiar with the clearance process. If confirmed, I will promptly review that process and explore adjustments to improve the timeliness of the Department's responses to Congressional requests.

6. Will you commit to informing the Committee and individual members when you experience a delay from the Office of Management and Budget related to clearing responses for release?

If confirmed, I will keep the Committee appropriately informed about the status of responses to its requests.

7. Will you commit to informing Congress when the Department receives answers to Committee requests from subordinate agencies, such as the FBI, to ensure members understand where responses are in the chain of correspondence?

If confirmed, I will keep the Committee appropriately informed about the status of responses to its requests.

Congressional Oversight:

1. Do you believe that Congress has a constitutional duty to conduct oversight of the Executive Branch? Why or why not?

Yes. As a longtime Senate staff member I have a great appreciation for Congress' responsibility to conduct oversight of the Executive Branch. Committees of Congress need information about agency activities in order to fulfill their legislative duties. In my view, congressional oversight can enhance executive branch activities.

2. Do you believe that the Executive Branch has a constitutional duty to be forthcoming with information that Congress requests? Why or why not?

I agree that the Executive Branch has a constitutional duty to be forthcoming with information that Congress requests, subject to the constitutional and statutory responsibilities of the Executive Branch. Congress itself has limited the Department's authority to disclose certain information such as grand jury testimony, and of course no member of Congress would want the Department to

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disclose information that could compromise an ongoing investigation or litigation. But in general, the Justice Department should seek to accommodate the oversight needs of Congressional committees in a manner consistent with the Department's responsibilities.

3. What, if any, impediments do you envision limiting your ability to ensure timely and accurate responses to any and all congressional requests? If citing any form of privilege, please provide updated case law citations to support any claims of privilege.

Since I am not serving at the Department I do not know what impediments, if any, may limit my ability to ensure timely and accurate responses to Congressional requests, but I will work with others in the Department to overcome any such impediments to the extent possible.

OLC Opinion on Ranking Member access to Documents and Information:

On December 5, 2001, the Office of Legal Counsel (OLC) issued a Letter Opinion to the General Counsel at the Department of the Treasury. The Letter Opinion was titled "Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members." The Opinion concludes that the Privacy Act "prohibits the disclosure of Privacy Act-protected information to the ranking minority member" of a congressional committee of jurisdiction that requests information from a Federal agency. The Opinion reached this conclusion despite the fact that the Privacy Act allows disclosures, "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." Nowhere in the statute does it define "committee" to mean only the Chairman and not the Ranking Member.

Courts have also held views contrary to that of the Opinion. For instance, the D.C. Circuit Courts of Appeal held that members of Congress have "constitutionally recognized status entitling them to share in general congressional powers and responsibilities, many of them requiring access to executive information." *Murphy v. Dep't of the Army,* 613 F.2d 1151, 1157 (D.C. Cir. 1979). Further, the 2nd Circuit held that information sent to a congressman in his official capacity as a *member* of a subcommittee fell "squarely within the ambit of § 552a(b)(9)". *See Devine v. United States,* 202 F.3d 547, 551 (2nd Cir. 2000).

Despite the plain language and the court interpretations, this opinion is used as a shield to prevent disclosure of information to Ranking Members. It erroneously relies upon the "longstanding executive branch practice on this question," and, perhaps more surprisingly, the dicta from Congressional Research Service memorandum, to reach this conclusion. I believe this opinion is a hindrance to the American people who have a right to know what goes on in the Government.

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1. Do you support the position taken by DOJ in this OLC Letter Opinion?

I am not an expert in the Privacy Act and am not familiar with the OLC opinion you have referenced. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.

2. Do you believe that, as a general matter, Ranking Minority members of a Committee should be prohibited from obtaining information from an agency absent the approval of the Chairman? If so, why?

I have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.

3. In your opinion, couldn't the wording of the Privacy Act that allows disclosure "to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof" be construed to allow disclosure to Ranking Members if the Administration was willing to do so? Please explain why or why not.

I am not an expert on the Privacy Act and have no personal view of the issue you have raised. If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.

4. Will you pledge to provide documents and information to Ranking Minority Members regardless of this interpretation?

If confirmed, I will work with others in the Department to respond to all Congressional requests for information -- including requests from Ranking Members -- in a timely and respectful manner.

Responses to Questions of Senator Tom Coburn, M.D.
Nomination of Ron Weich to be Assistant Attorney General, Office of Legislative Affairs
United States Senate Committee on the Judiciary
April 8, 2009

1) As Assistant Attorney General in the Office of Legislative Affairs, will you commit to responding in a timely fashion to inquiries from minority members and staff?

Yes. I intend to respond in a timely and respectful manner to all congressional inquiries, including those from minority members and staff.

2) As Assistant Attorney General in the Office of Legislative Affairs, will you help facilitate a more timely delivery of DOJ Views Letters, in advance of Senate consideration of a measure?

Yes. I intend to facilitate the timely delivery of DOJ Views Letters and other materials that aid Congress in carrying out its duties.

3) As Assistant Attorney General in the Office of Legislative Affairs, will you commit to continuing with all minority staff the same courteous, candid interactions you have always conducted with my staff in the Senate?

Yes. I very much appreciate the cordial professional relationship I have developed with your staff in the years I have worked for Senator Reid. I will certainly work to continue that relationship and will seek to replicate it with other members of the minority staff.

It has been reported that you served as a member of President Obama's "transition team" and that you ushered Eric Holder through his nomination process. Please clarify the following related items:

4) Did you serve as a member of President Obama's "transition team"? If so, what did your duties entail? Were you compensated for your service? If so, by whom?

Yes, I served as a member of the congressional affairs staff of the Presidential Transition. In this role I facilitated communication between Congress and several policy and agency review teams within the Transition. In addition, I assisted several nominees including, Attorney General nominee Eric Holder, during the Senate confirmation process. I was not compensated for this work separately from my regular compensation as a member of Senator Reid's staff.

My role with the Transition was approved first orally and then in writing by the Senate Ethics Committee. I attach a letter dated January 16, 2009 from Ethics Committee Chief Counsel John Sassaman describing and approving of the role that I played, which Mr. Sassaman describes as consistent with prior practice.

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5) In what capacity did you usher Eric Holder through his nomination process? (i.e., transition team, Senate staff, private lawyer, etc.) What did your duties entail? Were you compensated for your service? If so, by whom?

With the approval of the Senate Ethics Committee, I assisted Mr. Holder as a member of the congressional affairs staff of the Presidential Transition. I accompanied him to meetings with Senators, developed materials in support of his confirmation and helped Mr. Holder prepare for his confirmation hearing. I was not compensated for this work separately from my regular compensation as a member of Senator Reid's staff.

6) During your service as a member of the transition team (if you served in such a role), were you also serving as Senate staff?

Yes, with the approval of the Senate Ethics Committee I continued to serve as a member of Senator Reid's staff during my service as a member of the Transition staff.

7) During the time that you escorted Eric Holder through his nomination process, were you also serving as Senate staff?

Yes, with the approval of the Senate Ethics Committee I continued to serve as a member of Senator Reid's staff during the time I assisted Mr. Holder.

8) At any point, have you done work on behalf of the executive branch, the transition team, or a nominee during regular Senate office hours? If so, how much time do you estimate was spent working on these matters?

Yes, with the approval of the Senate Ethics Committee I divided my time between my Senate office and the Office of the President-Elect. I estimate that, in the aggregate, I spent approximately 50% of regular Senate office hours on transition-related activities.

9) Did you use any Senate resources (i.e., phones, computers, email, etc) while working on behalf of either the transition team or executive branch nominees, such as Eric Holder?

Yes, with the approval of the Senate Ethics Committee I utilized Senate resources on behalf of the Transition Office and also utilized Transition Office resources on behalf of the Senate. Mr. Sassaman's letter contemplates that I "would engage in these activities from both offices."

10) Due to your activities on behalf of either the transition team or then-nominee Eric Holder, has your Senate salary been reduced, or have you been removed from the Senate payroll for any period of time?

No.

11) During the time that you escorted Eric Holder through his nomination process, did you advise any member of the Senate on Mr. Holder's nomination? If so, do you feel that you were able to give objective advice, given your work on behalf of the nominee?

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No. I explicitly recused myself from staffing Senator Reid on the Holder nomination. Other members of Senator Reid's staff advised him with respect to this nomination. Nor did I advise other members of the Senate about the Holder nomination. When I spoke to other members of the Senate or their staff about the nomination, I made a point of explaining that I was representing the Presidential Transition and not Senator Reid.

12) As Senate staff, is providing objective evaluations and advice about nominees part of your official duties?

Yes, although as noted above I recused myself from advising Senator Reid or any other Senator with respect to the Holder nomination.

13) At any point during your service on behalf of the transition team and/or Eric Holder, was the possibility of your nomination to serve at the Department of Justice ever discussed with any member of the executive branch, including Mr. Holder? If so, with whom? If so, did those discussions influence any advice you may have given on the Senate's consideration of the nomination?

Yes, I discussed the possibility of serving at the Department of Justice with Mr. Holder and with Transition officials during the period of time I served in the Transition Office. As noted above, I recused myself from advising Senator Reid or any other Senator with respect to the Holder nomination.

14) On February 23, 2000, you testified before this Committee, and on July 21, 1999, before the Subcommittee on the Constitution of the House Committee on the Judiciary, regarding the "Unborn Victims of Violence Act." You stated that the purpose of that bill was "to score rhetorical points in the never-ending struggle over abortion rights." You also described the bill as "purely symbolic: to bestow statutory personhood on fetuses, even those that are not viable." You further testified that the bill itself "is just one more step in the anti-abortion movement's methodical strategy to humanize fetuses, marginalize women, demonize abortion providers, and make the image of abortion less palatable to the American people." At the beginning of your testimony, you stated that the views you expressed were "strictly [your] own."

    a. Are the views you represented at the above-referenced hearings still your personal views?

    I was invited by members of the House and Senate Judiciary Committees to testify about this legislation as an expert on criminal law and federal sentencing law, having earlier served as a state prosecutor and as Special Counsel to the U.S. Sentencing Commission. The essence of my testimony was that the legislation was unnecessary because then-current federal law and sentencing guidelines provided ample authority to prosecute and punish those who assault pregnant women and hurt fetuses. This testimony does represent my personal views. However Congress eventually passed the bill and if confirmed I will support enforcement of the statute.

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b. In your opinion, if a woman is injured and a miscarriage results, is there a separate victim?

Yes, I believe a fetus can be a victim and my testimony did not argue otherwise. In fact, I referenced the well established common law doctrine that "fetal death subsequent to birth due to fetal injuries may be prosecuted as homicide," and I cited favorably a case (U.S. v. Spencer, 839 F.2d 1341 (9th Cir. 1988)) in which such a homicide prosecution was upheld. I also stated in my testimony: "There is no dispute that causing harm to a fetus during commission of a federal felony should generally result in enhanced punishment, and courts have uniformly held that such enhancements are available under the current sentencing guidelines." My testimony simply contended that a new federal criminal law was not necessary to prosecute or punish those who harm fetuses.

c. In your opinion, at what stage of pregnancy, if any, should a fetus be considered a separate victim?

There is no doubt that an injury to the fetus is a separate and additional harm when a pregnant woman is assaulted. Under common law, an assault on a pregnant woman that results in the death of a viable fetus constitutes homicide. See, Annotation, Homicide Based on Killing of Unborn Child, 64 A.L.R. 5th 671 (1998). And, as expressed in my testimony, I believe that an assault resulting in injury to a pre-viable fetus also warrants additional punishment.

d. When do you believe a fetus becomes a "person," for purposes of federal law? More specifically, when do you believe a fetus becomes a "person" for purposes of being recognized as a victim of a federal crime?

In enacting the Unborn Victims of Violence Act, Congress recognized that fetuses at any stage of development may be victims of a crime. I did not dispute this proposition in my testimony. I merely contended that a new federal criminal law was not necessary to prosecute or punish those who harm fetuses. Congress concluded otherwise. If confirmed I will support enforcement of the statute.

e. In your opinion, is there a separate victim where there is intent to cause a miscarriage?

I believe a fetus can be a victim whether or not the defendant intends to cause a miscarriage.

f. Please explain what you mean by "humanize fetuses."

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The essence of my testimony was that the legislation was unnecessary because then-current federal law and sentencing guidelines provided ample authority to prosecute and punish those who assault pregnant women and hurt fetuses. I therefore concluded in my testimony that the purpose of the bill was "symbolic: to bestow statutory personhood on fetuses, even those that are not viable."

That said, the phrase strikes me now, ten years later, as unnecessarily provocative. I regret my use of that phrase.

g. National polls have shown strong support for recognizing two victims when there is a criminal assault on a pregnant woman, even among those who identify themselves as pro-choice, and especially among women. How, then, does the Unborn Victims of Violence Act "marginalize women"?

The essence of my testimony was that the legislation was unnecessary because then-current federal law and sentencing guidelines provided ample authority to prosecute and punish those who assault pregnant women and hurt fetuses. I expressed concern that the bill's focus on the fetus had the effect of marginalizing the pregnant woman who was assaulted.

Again, I regret my use of unnecessarily provocative language in the course of presenting my views on criminal law aspects of the bill.

g. Consider the recent case of Lisa Montgomery, who brutally murdered a pregnant woman, then delivered her unborn child with a kitchen knife and took the kidnapped baby across state lines. A federal grand jury indicted Montgomery under S.C. Section 1201, the federal kidnapping law. The defense argued that the law did not apply because the baby, Victoria Jo Stinnett, was not a "person" until birth, and therefore not a "person" at the time that Montgomery murdered her mother. The Justice Department argued, and the district court ruled, that Victoria Jo Stinnett enjoyed "person" status prior to birth for federal criminal law purposes, based in part on enactment of the Unborn Victims of Violence Act of 2004, a law that you strongly opposed in your 1999 and 2000 testimony. Montgomery was convicted. She is now appealing to the Eighth Circuit, arguing that 18 U.S.C. Section 1201 cannot be applied because Victoria Jo Stinnett was not a "person" at the time that her mother was murdered. Do you believe that the Justice Department should continue to argue the position that it took in the district court, that Victoria Joe Stinnett was indeed a person for purposes of the statute, as illuminated by enactment of the UVVA?

I am not familiar with the facts or legal arguments involved in the Montgomery case beyond what I have heard and read in press reports. I certainly agree that a defendant convicted of brutally murdering a pregnant woman deserves substantial punishment. I expect that such punishment would be imposed with or without the Unborn Victim of Violence Act. I have

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no cause to question the Justice Department's arguments in the course of this prosecution.

i. As you know, the Department of Justice is charged with enforcing the Unborn Victims of Violence Act (UVVA). I understand that the first UVVA prosecution is under way in New Mexico. The defendant in that case is Frederick Beach, who is accused of beating a 29-year-old to death with a baseball bat, resulting in the death of her unborn child. Given your past opposition, do you nevertheless believe the Department should vigorously defend the statute in this case? In general, do you commit to support the legislative integrity of the statute and its vigorous enforcement by the Department?

Yes, I believe the Justice Department should vigorously defend laws enacted by Congress unless there is no reasonable argument to be made in support of its constitutionality. I am personally unaware of any argument that this law is unconstitutional. If confirmed as the Assistant Attorney General for Legislative Affairs, I will support enforcement of the statute.

j. In your 1999 and 2000, you attacked the proposed Unborn Victims of Violence Act on both policy grounds, and as in tension with Supreme Court cases such as *Roe v. Wade*. Nevertheless, the law was enacted in 2004, with strong bipartisan support. Moreover, a total of 35 states now have laws that recognize unborn children as homicide victims in at least some circumstances. The supreme courts of multiple states (including California, Minnesota, Pennsylvania, Texas, and Wisconsin) have rejected arguments that these laws conflict with *Roe v. Wade* or its progeny; no state supreme court has held otherwise. The constitutionality of fetal homicide laws has also been defended by many prominent defenders of *Roe v. Wade*, including Walter Dellinger and Richard Parker. Do you believe that the Justice Department should vigorously defend the constitutionality of the UVVA in any case in which the issue may arise?

My testimony did not argue that the bill in question was unconstitutional under Roe v. Wade. Rather, I argued that the purpose of the bill was to undermine public support for Roe v. Wade by treating an assault on a fetus as separate from an assault on the pregnant woman carrying the fetus. I agree that the Justice Department should defend the constitutionality of this statute, just as it defends the constitutionality of any statute enacted by Congress unless there is no reasonable argument to be made in support of its constitutionality. As noted above, I am unaware of any argument that this law is unconstitutional.

15) I am concerned about the over-federalization of criminal law. Although it may sometimes require unpopular decisions, I believe both the executive and legislative branches should avoid contributing to this problem. Under what circumstances do you

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believe it is appropriate to add offenses to the federal criminal code? What criteria do you use to determine whether proposed new crimes are appropriate?

I personally share your concern. In my personal view, Congress should enact new federal criminal laws only when there is a demonstrated need and constitutional basis for federal involvement.

United States Senate

SELECT COMMITTEE ON ETHICS
HART SENATE OFFICE BUILDING, ROOM 220
SECOND AND CONSTITUTION AVENUE, NE
WASHINGTON, DC 20510-6425

January 14, 2009

Mr. Ronald Weich
Office of the Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Weich:

This responds to your recent letter seeking Committee approval for you to work with the Transition Team of President-Elect Obama. You currently serve as Chief Counsel to Senator Harry Reid. You have been asked to work with the Transition team on legal and legislative issues facing the Department of Justice.

The Committee understands that you would serve in essence as a legislative coordinator and would work with the transition team to guide Presidential appointees to the Department of Justice through the Senate confirmation process. You would not receive compensation from the Office of the President-Elect and would divide your time between your Senate office and the Office of the President-Elect, and would engage in these activities from both offices. The Committee understands that Senator Reid has approved your proposed work with the Transition Team.

The Committee has previously approved Senate employees, from both Senators' personal staff and the staff of committees, serving as "legislative coordinators" to work with the Transition Team of a President-Elect. The Senate employees performed the same functions as Senate staff ordinarily performs when they work with an administration's officials in developing bills and legislation. This included the assessment of existing government programs, analysis of alternative programs and policies, and the development of recommendations for new or amended statutory provisions. Preparation of legislative authorization and appropriations bills, and the underlying studies, were also included. All of those functions were related to the legislative ramifications of the transition team's work. Additionally, the Senate employees worked under the direction and authority of their Senators, did not receive compensation from the Office of the President-Elect, and engaged in those activities, both from their offices in the Senate and at the facilities of the Office of the President-Elect.

The Committee noted that since the function the Senate employee was to perform for the transition team was an integral part of their Senate duties, no rule of the Senate precluded Senate staff participation with the consent of their supervisor.

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It appears that prior rulings of the Committee provide sufficient precedent for you to work with the Transition Team of President-Elect Obama as a "legislative coordinator" under the conditions set forth above.

Sincerely,

John C. Sassaman
Chief Counsel and Staff Director

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SUBMISSIONS FOR THE RECORD

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169

LEROY D. BACA, SHERIFF

March 20, 2009

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

RECOMMENDATION OF SEATTLE POLICE DEPARTMENT CHIEF GIL KERLIKOWSKE FOR APPOINTMENT AS DIRECTOR OF THE OFFICE OF NATIONAL DRUG CONTROL POLICY

As Sheriff of Los Angeles County, I am writing to express my strong support for the nomination of Seattle Police Department Chief Gil Kerlikowske to Director of the Office of National Drug Control Policy.

The position of Director of the Office of National Drug Control Policy requires that the individual not only be abreast of all drug enforcement issues, but must be willing to undertake the management of this agency. Chief Kerlikowske's diverse background and experience make him the ideal candidate to serve in this important role. His thirty-six year career in law enforcement includes serving as Chief of Police for the City of Seattle Police Department, and being the former deputy director of the U.S. Department of Justice, Office of Community Oriented Policing Services.

Throughout his distinguished career, Chief Kerlikowske has served in positions in which he has gained critical knowledge in drug enforcement and education. Chief Kerlikowske has the experience and proven organizational management results to lead this vital agency in its efforts to establish policies, priorities and objectives for the nation's drug control program. Currently, he is serving as president of the Major Cities Police Chiefs' Association and is respected throughout the nation for his leadership.

A Tradition of Service

I respectfully urge you to consider Chief Gil Kerlikowske for appointment as Director of the Office of National Drug Control Policy and thank you for your kind consideration of my request.

Sincerely,

Lee Baca

LEROY D. BACA
SHERIFF

P.S. I am a member of the Major Cities Chiefs Association. Bill and I recently gathered our executives together to exchange our best practices in Washington. He is a terrific partner and doer!

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http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Evan Bayh

United States Senator
Indiana
April 1, 2009

STATEMENT OF SENATOR BAYH

Chairman Leahy, Ranking Member Specter, and other distinguished members of the Judiciary Committee, thank you for the opportunity today to introduce an individual for whom I have great respect and admiration, Judge David Hamilton.

Before I speak to Judge Hamilton's qualifications, I would like to comment briefly on the judicial nominations process generally. In my view, this process has too often been consumed by ideological conflict and partisan acrimony. During the last Congress, I was proud to work with Senator Lugar to recommend Judge John Tinder as a bipartisan, consensus nominee for the Seventh Circuit Court of Appeals. Judge Tinder was nominated by President Bush and unanimously confirmed by the United States Senate by a vote of 93-0. It was my hope that Judge Tinder's confirmation would serve as an example of the benefits of nominating qualified, non-ideological jurists to the federal bench.

In selecting Judge Hamilton as his first judicial nominee, President Obama has demonstrated that he also appreciates the benefits of this approach. I was proud to once again join with Senator Lugar to recommend Judge Hamilton to President Obama, and I hope that going forward other Senators will adopt the "Hoosier approach" of working together to select consensus nominees.

On the merits, Judge Hamilton is an accomplished jurist who is well qualified to be elevated to the Seventh Circuit Court of Appeals. He has served with distinction as a United States District Judge for almost 15 years, during which time he has presided over approximately 8,000 cases. Since January 2008, he has served as the Chief Judge for the Southern District of Indiana, where he has been widely praised for his effective leadership style. Throughout his career, Judge Hamilton has demonstrated the highest ethical standards and a firm commitment to applying our country's laws fairly and faithfully.

In recommending Judge Hamilton, I have the benefit of being able to speak from personal experience, as I had the opportunity to work closely with him while I was Governor of Indiana. In his role as Counsel to the Governor, Judge Hamilton helped me to craft bipartisan solutions to some of the most pressing problems facing our state. In particular, he helped to favorably resolve several major lawsuits that threatened our state budget and drafted a tough new ethics policy to ensure that our state government was operating openly and honestly. In addition to his insightful legal analysis, I could always count on David for his sound judgment and the common-sense Hoosier values he learned growing up in southern Indiana.

During his service in state government, Judge Hamilton also developed a deep appreciation for the separation of powers and the appropriate role of the different braches of government. If confirmed, Judge Hamilton will bring to the Seventh Circuit a unique understanding of the important role of the States in our federal system and will be ever mindful of the appropriate role of the appropriate role for a judge is to interpret our laws, not to write them.

On a personal note, I have known Judge Hamilton for over 20 years. I know him to be a devoted husband to his wife, Inge, and loving father to his two daughters, Janet and Devney. He is the nephew of former

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Congressman Lee Hamilton and the embodiment of good judicial temperament, intellect, and even-handedness. I have high confidence that, if confirmed, Judge Hamilton will be a superb addition to the Seventh Circuit Court of Appeals, and I am pleased to give him my highest recommendation.

Mr. Chairman and Ranking Member Specter, it is my distinct pleasure to present for this committee's consideration Chief Judge David Hamilton.

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March 18, 2009

The Honorable Patrick Leahy
United States Senate
433 Russell
Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

It is with great pleasure that I am writing you on behalf of Seattle Police Chief Gil Kerlikowske's nomination as Chief of the Office of National Drug Control Policy.

I have known Chief Kerlikowske for over fourteen years and can testify that I know he is a man of honor, vision, and strength. During his tenure as the Chief of the Buffalo Police Department, I had the opportunity and good fortune to work closely with him, including professionally on Diversity Projects with the Police Department, and on Community Issues, as well as on the Board of Directors of the National Federation for Just Communities of WNY (previously known as The National Conference for Community and Justice of WNY).

His concern for the people of Buffalo was always his highest priority, but he also demonstrated a concern for our country and maintained a strong connection with the law enforcement community throughout the United States. He is a committed and hardworking American leader; a role model for all.

His inclusive and strong style of leadership was respected by the men and women with whom he worked and by the community he served. He was focused, clear and energetic. Among the many new programs he initiated were diversity workshops that he mandated for his entire department. As a partner in this work, I can attest to Gil Kerlikowske's dedication to improving intergroup relations, community policing, and dealing with bias, bigotry, and racism in our society.

He always knew what needed to be accomplished and accordingly initiated, planned and implemented projects and policy with diplomacy and success. His innovative spirit was responsible for change and growth within the department and with his collaborative efforts with other agencies and organizations. He is a leader, who not only is open to change, he encourages that same openess in others.

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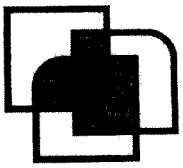

The Chief is an active listener, responsive and a proactive leader. In addition, he is intelligent, well versed and a scholar interested in research and evaluation.

Personally, I have always found him to be a very nice person; a gentleman and a good and decent man. Most of all, Gil Kerlikowske is a man of integrity and strength, well suited for this position.

Our country will be well served when he is appointed to the position of Chief of the National Drug Control Policy.

If you have any further questions regarding this recommendation, please contact me at [redacted].

Sincerely,

Lana D. Benatovich

Lana D. Benatovich
President
The National Federation for Just Communities of WNY, Inc.

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March 31, 2009

Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
Dirksen Senate Office Building
Room 224
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

We write in strong support of the nomination of Ronald H. Weich to the position of Assistant Attorney General, Office of Legislative Affairs (OLA) at the Department of Justice. Collectively we have many years of service in the Office to which Mr. Weich has been nominated. We understand and have great respect for the strong and effective leadership that OLA demands, given its crucial role in being responsive to the needs of Congress, and of this Committee in particular.

Mr. Weich is extremely well-suited for this job. First, his work in the U.S. Senate has given him deep knowledge of and respect for the U.S. Congress. He understands the needs of the First Branch and will be an advocate within the Department for those interests. He also understands law enforcement from the viewpoint of a line attorney given his early career as a prosecutor. These experiences, in addition to his tenure in the private sector, have honed Mr. Weich's exceptional capacity for calm, reasoned, and smart advocacy. As important, he has the temperament and demeanor to take on one of the most demanding posts at the Department of Justice, and will do so with an unfailing respect for those with whom he serves because of these exceptional qualities.

Each of the signatories to this letter has experience working with Congress on difficult and complex policy issues on behalf of an administration's Department of Justice. We know that, to do its job, Congress relies on information provided by the Justice Department on a range of issues. Mr. Weich is sensitive to the institutional needs of Congress and will be a constructive partner in the legislative process. Mr. Weich has consistently demonstrated good judgment, collegiality and legal acumen which will enable him to lead the DoJ's legislative efforts.

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We enthusiastically support Mr. Weich for the position of Assistant Attorney General, Office of Legislative Affairs. We are confident that, once confirmed, he will manage the Office well, serve as a talented addition to the new Administration, and work cooperatively and constructively with the Senate Judiciary Committee and the full Congress on solutions to some very complex challenges.

Sincerely,

Brian A. Benczkowski

Dennis Burke

Andy Fois

Ann Harkins

Will Moschella

Robert Raben

Pat Wald

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Greg Berman, director

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March 18, 2009

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy,

We are writing to enthusiastically endorse Gil Kerlikowske for the position of Director of the Office of National Drug Control Policy. We encountered Chief Kerlikowske during research for a book we are writing on the trial and error process of criminal justice innovation. At the time, we were looking for a national leader who exemplified the virtues of patience and reflection that we believe are critical to achieving lasting innovation. To our surprise, one name kept coming up in our interviews with scholars and other criminal justice practitioners around the country: Chief Kerlikowske. In our subsequent conversations with him, these recommendations were borne out. Chief Kerlikowske possesses a rare combination of management acumen, intellectual curiosity and a willingness to bring broad coalitions together to embrace new solutions to old problems.

It's fair to say that we were thrilled when we heard that Chief Kerlikowske had been nominated to head ONDCP. He's the perfect man for the job. We cannot think of anyone else with the kind of credibility that he has with both the law enforcement and drug treatment community.

Chief Kerlikowske's nomination is also welcome news for our institution. The winner of the Innovations in American Government Award from the Ford Foundation and Harvard University, the Center for Court Innovation is a nonprofit think tank dedicated to justice system reform. Founded in 1993, the Center was created to help the justice system respond more effectively to difficult problems like addiction, delinquency, child neglect, and domestic violence. The Center has made a significant investment in drug courts, working with the New York State court system to help create more than 170 drug courts in New York, as well as with the U.S. Department of Justice to disseminate lessons learned from its drug court experiments to a national audience. We look forward to working with Chief Kerlikowske in advancing ONDCP's mission.

Please let us know if you need any more help or information.

Regards,

Greg Berman

Aubrey Fox

Carnegie Mellon

Alfred Blumstein
University Professor and
J. Erik Jonsson Professor of
Urban Systems and Operations Research

H. John Heinz III School
of Public Policy and Management
Carnegie Mellon University
5000 Forbes Avenue
Pittsburgh, Pennsylvania 15213-3890
(412) 268-8269
Fax: (412) 268-2175
[redacted]

March 23, 2009

Senator Patrick Leahy
Chair, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I think we can all probably agree that many of the appointments made by Pres. Obama have been excellent. One of the more difficult appointments to make was director of the Office of National Drug Control Policy. In the past that position has been filled by individuals strong and methodology and/or ideology but weak on background and pragmatism. My sense of his current nomination of Chief Gil Kerlikowske is particularly inspired because he has a rich and appropriate background and he is an individual who will be very pragmatic in dealing with the complex problems posed by drug abuse in the United States.

Having served as a police chief in two very different major cities, Buffalo and Seattle, and two smaller cities in Florida, Chief Kerlikowske has a rich understanding of the problems of drug abuse as well as many of the costs and the limited benefits attained through our current policies. The situation in Seattle, for example, reflects the rich mix of standard enforcement along with a variety of associated approaches intended to diminish the abuse as well as the consequences of the abuse.

His 36 years of law enforcement experience and his multiple stints as a police chief gains him an impressive credibility in the policing community. His recognition in that community is certainly reflected in his election as President of the Police Executive Research Forum (PERF) and of the Major Cities Chiefs Association and by the many awards he has received as a role model for modern sophisticated police leadership.

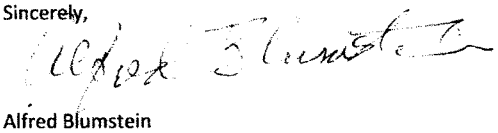
His recognition and appreciation comes not only from the policing world. He has been called upon by the US Department of Justice, is chairman of the board of Fight Crime: Invest in Kids, and serves as an adjunct faculty member in various academic institutions. His skills and interests are obviously broad ranging and appreciated in a wide variety of relevant communities.

I have served on a variety of committees with Chief Kerlikowske and have found him to be most impressive in his wisdom, his sophistication in dealing with complex issues, and his pragmatism

in sorting through complexities such as those that pervade the drug-abuse problem. I have no doubt that that judgment about him is shared widely. That judgment was also reflected in his appointment as the deputy director of the COPS program in the Justice Department, where I know he served with distinction.

It should be clear that I consider Gil Kerlikowske a truly outstanding candidate to provide solid leadership to the Office of National Drug Control Policy (ONDCP). I strongly support the appointment and urge his easy confirmation.

Sincerely,



Alfred Blumstein

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MERRICK J. BOBB
[redacted]
e-mail: [redacted]

March 19, 2009

Hon. Patrick J. Leahy
433 Russell Senate Office Building
Washington, DC 20510

By US mail and e-mail to [redacted]

Dear Senator Leahy:

I write to express my strong support for the nomination of Gil Kerlikowske as Director of the Office of Drug Control Policy.

I have known Chief Kerlikowske professionally and personally for more than 15 years and have always considered him one of the strongest voices for progressive, accountable, and effective policing in the United States. I first met Chief Kerlikowske in his capacity as Deputy Director of the COPS Office, in connection with DOJ's "best practices" projects on police oversight, use of force, and police ethics. He performed extraordinarily in that effort. I admire the Chief for his work in Seattle, where he has brought down the crime rate and took bold steps to increase police accountability and transparency by his appointment of a civilian to head the Seattle PD's Office of Professional Accountability— the Department's internal affairs unit. He is ideal for this job. The combination of high intellect, deep experience in drug policy, and sensitivity to both the supply and demand side of the drug problem presages the success of his leadership of this vital office.

I have long been involved in law enforcement. I served as a staff lawyer and as a Deputy General Counsel of Warren Christopher's commission to investigate the LAPD in the wake of the Rodney King incident. I was appointed as General Counsel of the Kolts investigation of the Los Angeles County Sheriff's Department (LASD) by the County's Board of Supervisors. Since 1993, I have served as the first police monitor in the country as Special Counsel to the Los Angeles County Board of Supervisors respecting the LASD. I frequently consulted with DOJ in its efforts to implement its Section 14141 authority with respect to patterns or practices of police misconduct.

I currently am the Executive Director of the Police Assessment Resource Center (PARC) which PARC was formed in 2001 with the financial backing of the Ford Foundation. PARC has established a national presence as a leading authority on contemporary American policing. PARC is dedicated to the advancement of effective, respectful, accountable, and constitutional policing. PARC's work is also national in scope. Among

61992I.067

other assignments, the Bureau of Justice Assistance (BJA) made a major grant to PARC to formulate proposed national guidelines for monitors of law enforcement agencies. PARC was the recipient of a substantial subgrant from the COPS Office to the LAPD to develop proposed national standards for Internal Affairs Bureaus. PARC speaks authoritatively and with great credibility to a wide spectrum of persons interested in law enforcement, from its strongest critics to its ardent supporters. There is no other national voice providing a neutral, thoughtful perspective, and consistent and prolific commentary, on law enforcement while maintaining independence from any interest group or cause.

I write to you today in my personal capacity only, not in my role at PARC or as Special Counsel to Los Angeles County. I strongly urge your support of Chief Kerlikowske's nomination.

Yours very truly,

Merrick J. Bobb

619921.068

Office of the
Special Narcotics Prosecutor
for the City of New York
Bridget G. Brennan, Special Narcotics Prosecutor

80 CENTRE STREET, SIXTH FLOOR
NEW YORK, NY 10013
212-815-0413, OFFICE
212- 815-0144, FAX

March 31, 2009

Honorable Patrick J. Leahy, Chairman
Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

I am writing to endorse the nomination of Ronald H. Weich to the position of Assistant Attorney General heading the Office of Legislative Affairs of the U.S. Department of Justice.

I have known Ronald Weich for more than 25 years, both as a colleague and as a personal friend. I first became acquainted with Ronald in 1983, when we started together as new Assistant District Attorneys in the New York County District Attorney's Office. Among the 50 bright, eager and talented attorneys hired by Robert M. Morgenthau that year from top law schools around the country, Ron stood out for his quick mind, legal acumen, and above all, for his dedication to justice.

Even as a new Assistant District Attorney, Ron distinguished himself with his comprehensive grasp of legal principles and sophisticated application of statutes to law enforcement issues. His approach was always thoughtful, thorough, practical, and fair minded. I marveled at Ron's ability to quickly process thorny legal issues in an objective and principled way.

During his time in the District Attorney's Office, Ron was highly regarded by law enforcement officers as a fearless advocate, and for his intelligence, work ethic, and ability to get things done. Ron also had an excellent reputation among judges, because, along with outstanding legal skills, he was always open to considering another perspective. None of Ron's former colleagues are surprised that he has had a distinguished career in positions of great responsibility, and that he has never strayed too far from public service.

Through the years, I have often discussed with Ron the professional issues he has faced. I know that, in his role as Special Counsel to the U. S. Sentencing Commission, he made great contributions in efforts to reform sentencing law. During his extensive career as a high level member of the United States Senate staff, Ron contributed to the development and enactment of legislation that

aimed to ensure the just and fair administration of justice. He also played a primary role in the enactment of the Honest Leadership and Open Government Act of 2007, which provided clear guidelines in government ethics. While working for Senator Edward Kennedy, Ron worked tirelessly to enhance federal funding for research into the link between substance abuse and mental illness and to increase funding for drug treatment. My office has long recognized the connection between mental illness, drug addiction and criminal behavior; we were extremely grateful for his efforts to promote funding for the rehabilitation of criminal defendants who are mentally ill and drug addicted.

Several years ago, by happenstance, I had the great pleasure of testifying before the United States Sentencing Commission on the same day and on the same issue as Ron. His thoughtful analysis, deep sense of justice, and compassion were intact and as impressive as ever.

I recommend Ronald Weich for this critical position, not just on the basis of his exceptional abilities and extraordinary career, but for his sense of fairness and deep understanding of law enforcement issues. As the head of an agency dedicated to the investigation and prosecution of high level narcotics traffickers, I can unequivocally say that having someone with Ron's comprehensive vision leading the Legislative Affairs Office of the Justice Department will benefit law enforcement and the nation as a whole. Please feel free to contact me if you have any questions.

Sincerely,

Bridget G. Brennan

Bridget G. Brennan
Special Narcotics Prosecutor
for the City of New York

bgi Brown Group International

March 24, 2009

The Honorable Patrick Leahy
Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington D.C. 20510

Dear Chairman Leahy:

I am writing this letter in support of Gill Kerlikowske's nomination to serve as Director of the White House Office of National Drug Control Policy. Gill is uniquely qualified by both experience and dedication for this position.

Gill has had a distinguished career in law enforcement. He has served in different parts of the country, which gives him a diverse perspective on the problems of law enforcement and drug abuse. He is well respected in the law enforcement community, as well as by the people in the communities where he has served. As you can see from his resume that has been submitted, he has been very active in both professional and community organizations.

As you know, I had the honor of serving as the nation's "Drug Czar" under President Bill Clinton. Based on that experience, I can attest to the fact that Gil, someone I have known professionally for years, not only understands the complexity of the problem, but also has the requisite experience and ability to bring people and organizations together to make a difference.

If confirmed, he would bring to the job a broad and wise perspective on how to direct this nation's efforts to reduce the use of illegal drugs.

I have no doubts that any trust bestowed upon him will not be betrayed. I urge you to support his nomination.

Sincerely yours,

Lee P. Brown, PhD
Chairman and CEO

1001 McKinney St., Suite 1650 • Houston, Texas 77002
Tel: 832-366-1584 • Fax: 713-571-7311

OFFICE OF THE CITY COUNCIL · CITY OF SEATTLE

March 23, 2009
Via Facsimile and Mail

The Honorable Patrick Leahy
Chairman, Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington DC 20510

The Honorable Arlen Specter
Ranking Member, Judiciary Committee
United States Senate
711 Hart Senate Office Building
Washington DC 20510

Re: **Nomination of Gil Kerlikowske, Director, Office of National Drug Control Policy**

Dear Senators Leahy and Specter,

I am writing to endorse the nomination of Gil Kerlikowske as director of the Office of National Drug Control Policy and to urge your confirmation of his appointment. I believe Chief Kerlikowske will bring a reasoned and street-wise voice to drug enforcement in our country, and a progressive approach to federal drug policy-making.

As Chief of the Seattle Police Department, Chief Kerlikowske instituted community policing practices that partner the police with citizens and neighborhood groups in solving problems, resulting in more sensible approaches to addressing drug activity and other crime. Chief Kerlikowske led the police force by personal example, respecting and supporting innovative, yet practical, services for those struggling with addictions, such as our needle exchange and methadone van programs, as well as a local housing project for chronic alcoholics.

Traditional drug enforcement methods aimed at first-time and casual users have not worked well. New approaches are needed. Chief Kerlikowske will lead this policy debate at the national level effectively and with reason. I enthusiastically, and without reservation, urge you and your colleagues to expeditiously confirm Chief Kerlikowske. Thank you for your consideration.

Respectfully,

Tim Burgess, Chair
Public Safety, Human Services and Education Committee

619921.072

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Maria Cantwell

United States Senator
Washington
April 1, 2009

U.S. SENATOR MARIA CANTWELL
WASHINGTON
FOR IMMEDIATE RELEASE
APRIL 1, 2009
CONTACT: PRESS OFFICE
(202) 224-8277

Cantwell: Chief Kerlikowske Demonstrates that in Order to Fight Drugs and Crime, We Must Break Down Walls

Chief Gil Kerlikowske Will Address Prevention, Treatment and Enforcement as Head of ONDCP

WASHINGTON, DC –Today, Senator Maria Cantwell (D-WA) introduced Seattle Police Chief Gil Kerlikowske during his nomination hearing before the Senate Judiciary Committee. Kerlikowske has been nominated by the Obama Administration to head the Office of National Drug Control Policy.

Senator Cantwell's opening statement, as prepared for delivery, is below:

"Chairman Leahy and Ranking Member Specter, thank you for holding this important hearing today.

"I'm very pleased to introduce Chief Gil Kerlikowske. And, I urge my colleagues to swiftly confirm him as the next Director of National Drug Control Policy.

"I have known Gil for almost a decade. In his 36 years in law enforcement, he has demonstrated that to fight drugs, we must break down the wall between prevention and treatment, and enforcement.

"One of the reasons he was hired in Seattle, was because of his expertise in community policing.

"He also has a unique ability to understand the long-term implications of what you do today.

"During his time as Deputy Directory of COPS, Gil launched critical programs like the COPS Meth Initiative, the COPS in Schools Program, and the Tribal Resources Grant Program.

"As a member of the High Intensity Drug Trafficking Area (HITDA) Executive Board, Gil was a vocal advocate for the resources needed to deal with the meth threat.

"Thanks to the hard work of Gil and his Washington state colleagues Washington State had a sharp decrease in domestic production.

"In 2001, Washington state had more than 1,400 clandestine lab seizures. In 2008, that number plummeted to only 26.

"As Chief of Seattle's Police Department for over 8 years, Gil has also been a leader in transforming the way

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we combat crime in the 21st Century.

"In 2004, he established a partnership between the Seattle Police Department and INTERPOL to help combat local crime with international ties such as human trafficking and drug smuggling operations.

"He will bring this kind of comprehensive approach to his work combating drug crimes working with federal, state, local and international partners.

"Today, we face an increasingly globalized threat from drug trafficking organizations that's going to take a new, collaborative, comprehensive approach. This is evidently clear by looking at the news stories coming out of Mexico daily.

"According to the U.S. Director of National Intelligence, Mexico is the major conduit for cocaine bound for the United States. And it is the chief foreign supplier of methamphetamine to the U.S. market.

"Criminal networks in Asia and Europe supply Mexican drug cartels with the pseudoephedrine (Sudo-Ephedrine) and other pre-cursor chemicals they need to mass produce meth.

"Even as federal, state, and local law enforcement shut down meth labs across my state and throughout our country, meth and other illegal drugs continue to flow across our borders to be distributed by local street gangs.
Gil knows you need a comprehensive approach and must address BOTH supply AND demand.

"The Obama administration has recognized the need for decisive action. Just last week, Department of Homeland Security Secretary Napolitano announced that hundreds of federal agents and high-tech surveillance equipment will be sent to the Southwest to stop the flow of drugs and guns.

"I know Gil will work closely with Secretary Napolitano, Secretary of State Hillary Clinton, and Attorney General Eric Holder, as well as with local and state governments to meet these challenges head on.

"The U.S. can make a huge difference both at home and abroad. I saw this success firsthand when I visited Colombia in 2007 which has made great progress in fighting drug trafficking organizations with assistance from the United States.

"And, even though Colombia still faces serious challenges, the murder rate in Medellin is lower than Washington, D.C. today.

"Our experience in Colombia has shown it is going to take a comprehensive strategy involving stakeholders at every level, and partnerships around the world, to end the flow of drugs that have such a disastrous impact on our communities.

"I'm confident that Gil will bring the collaborative approach needed to succeed. He is the right man for the job and the cop we need on this beat.

"I very much look forward to working with him.

"Thank you."

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The City of
OKLAHOMA CITY
POLICE DEPARTMENT
William Citty
Chief of Police

April 12, 2009

The Honorable Patrick Leahy
United States Senator
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

I am writing you in support of Chief Gil Kerlikowske and his nomination for the Director of the Office of National Drug Policy.

I've known Gil five years since becoming a member of Major Cities Chiefs. It was clear from my first meeting with Major Cities Chiefs that Gil was well respected among his peers. After knowing him personally, I too came to respect him for a number of reasons, but most of all for his sincerity and dedication to law enforcement. I found him to be sincere and passionate about law enforcement's role to address issues and challenges facing our communities. It was obvious that Gil worked hard at keeping up with advancements in technology, changing laws, homeland security and innovations in law enforcement.

Gil has been in informal and formal leadership roles with Major Cities Chiefs and demonstrated an ability to unite individuals with diverse backgrounds, opinions and conflicting interests that include the local, state, federal and private sectors. Major Cities Chiefs has had a greater voice and impact in the areas of homeland security and federal legislation primarily due to his leadership.

Gil has the unique ability to balance a tough stance on crime, while understanding the importance of prevention and intervention. A philosophy that is critical to reducing the growing number of violent crimes associated with illegal drug use. Gil's integrity, respect, knowledge and passion will be an asset to the Office of National Drug Policy.

Sincerely,

William Citty
Chief of Police

pc: Senator Tom Coburn
Senator Arlen Specter

701 Colcord Drive • Oklahoma City, OK 73102 • 405/297-1000

CADCA®

March 20, 2009

Senator Patrick Leahy
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

On behalf of Community Anti-Drug Coalitions of America (CADCA) and our more than 5,000 coalition members nationwide, I would like to express our strong support for Police Chief, Gil Kerlikowske's swift confirmation as Director of the Office of National Drug Control Policy (ONDCP). Throughout Chief Kerlikowske's 36 years of experience in law enforcement and drug policy issues, he has demonstrated the highest level of dedication, passion, and commitment to effectively addressing our nation's crime, substance abuse and addiction problems.

Chief Kerlikowske has served as the highest ranking law enforcement officer in four cities in the United States, and for the last nine years he was the Chief of Police in Seattle. In addition, he also served as President of the Major City Chiefs Association, and Deputy Director of the COPS program at the Department of Justice. As a result of his vast experience, Chief Kerlikowske understands that the national drug control strategy must be comprehensive and coordinated. He also recognizes that the perspectives of those closest to the ground - state and local law enforcement, prevention, treatment and recovery professionals - play a critical role in this strategy. CADCA and its members whole-heartedly support Chief Kerlikowske's nomination.

Chief Kerlikowske is singularly qualified to lead the nation's drug control efforts. He embodies all of the attributes needed to be both an effective manager and a visionary leader, and is a fierce defender of community policing principles that remove barriers between the criminal justice, and prevention and treatment community. I am confident that Chief Kerlikowske's law enforcement background at the federal and city levels make him uniquely qualified to serve as Director at ONDCP.

Chief Kerlikowske is universally respected by the law enforcement, prevention, and treatment fields as a result of his steadfast work ethic, honesty, and demeanor. CADCA fully supports Chief Kerlikowske's nomination and strongly urges you to see that he is favorably considered and promptly confirmed as the Director of the ONDCP. Thank you for considering our views on this important nomination.

Sincerely,

Arthur T. Dean
Major General, U.S. Army, Retired
Chairman and CEO

Sue Thau
Public Policy Consultant

cc: Bruce Cohen

Building Drug-Free Communities

Community Anti-Drug Coalitions of America
625 Slaters Lane, Suite 300, Alexandria, VA 22314
P 703-706-0560 F 703-706-0565 1-800-54-CADCA cadca.org

JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS
Collaborative Approaches to Public Safety

March 31, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
United States Senate
224 Dirksen Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee
United States Senate
152 Dirksen Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Council of State Governments Justice Center board of directors—leaders of a national organization that serves policymakers at the local, state, and federal levels from all branches of government to increase public safety and strengthen communities—we are writing to urge you to approve the nomination of Gil Kerlikowske to direct the Office of National Drug Control Policy (ONDCP). Chief Kerlikowske has been a national leader on drug issues and is committed to a balanced and common-sense approach to reducing related crimes and the destructive influence drugs have had on our communities and families. As a board member of Fight Crime: Invest in Kids and as chief in four cities, he has been dedicated to addressing juvenile drug issues. He knows on both a professional and personal level what it will take to achieve meaningful reform in this country. Chief Kerlikowske in all of his positions in law enforcement and as President of the Major Cities Chiefs Association has demonstrated that he can achieve consensus among diverse stakeholders and understands the value of the kind of true collaboration that can only come from years of successfully conducting community policing efforts.

As elected and appointed state officials, we know that it will take someone with vision, an ability to navigate partisan politics, a comprehensive understanding of the issues, and a successful management style to direct ONDCP. Chief Kerlikowske has demonstrated these abilities time and again. He understands that tough enforcement alone cannot solve our nation's problems related to illegal drugs and has proposed an approach that state leaders know is needed: one that includes treatment, prevention, and evidence-based practices. No one knows better than someone who has spent more than three decades on the front lines of policing how complex the set of factors are that affect drug abuse and crime. Chief Kerlikowske has stated that without a comprehensive approach that involves courts, law enforcement, border security, prisoner reentry, and other systems and initiatives working hand-in-hand, we cannot begin to address this country's drug problems. He is not only correct in how he has framed the complexity of the problems facing the next director, he knows how to address them.

We thank you for considering the views of state legislators, judicial leaders, and executive branch officials as you decide the appointment of the next ONDCP director.

Sincerely,

Pat Colloton

Rep. Pat Colloton (R-KS)
Chair, Committee on Corrections and Juvenile Justice
Justice Center Executive Committee Member

100 WALL STREET, 20TH FLOOR · NEW YORK, NY 10005 · 212.482.2320 · 212.482.2344 (FAX) · WWW.JUSTICECENTER.CSG.ORG
4630 MONTGOMERY AVE., SUITE 650 · BETHESDA, MD 20814 · 301.760.2401 · 240.497.0568 (FAX)
504 W. 12TH STREET · AUSTIN, TX 78701 · 512-482-8298 · 512-474-5011 (FAX)

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San José Police Department

March 23, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Robert L. Davis
Chief of Police

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City of Milwaukee

Police Department

Edward A. Flynn
Chief of Police

March 30, 2009

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senator Leahy:

With this letter I express my support for Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). I am one of many law enforcement executives pleased that our President of the Major Cities Police Chiefs Association has been nominated to serve in this important position.

Chief Kerlikowske has the qualities and leadership needed for success at ONDCP. He has years of policing experience and is very familiar with our nation's struggle with drugs after serving in Florida police departments, as Commissioner of Police in Buffalo, and Chief of Police in Seattle. Following executive experience at the U.S. Department of Justice, he is also familiar with Washington and has proven his ability to accomplish the tasks at hand.

We need an ONDCP Director that is prepared and ready to address the violence and tragedy that results from drug abuse. America is facing serious issues in relation to drug control, prevention and treatment. I believe Gil Kerlikowske is qualified to address these challenges.

Law enforcement executives around the country have witnessed Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to support him in his new position. Please consider moving the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP. He understands the struggles of local law enforcement agencies in the fight against drugs, and will direct appropriate resources to assist in this nation-wide battle.

Sincerely,

EDWARD A. FLYNN
CHIEF OF POLICE

Police Administration Building, 749 West State Street, Post Office Box 531, Milwaukee, Wisconsin 53201-0531 (414) 933-4444
Web Site: http://www.milwaukee.gov/police

GAVIN NEWSOM
MAYOR

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603

HEATHER J. FONG
CHIEF OF POLICE

March 31, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senators Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP, and qualities he has evidenced throughout his law enforcement career. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. I have great faith in Gil's ability to "get the job done" and he has my enthusiastic and unqualified support. I will conclude by saying that American law enforcement has always looked to both of you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

HEATHER J. FONG
Chief of Police



Board Chair
Robert W. Overell
PhaseRX, Inc.

Immediate Past Board Chair
Justice Bobbe Bridge (retired)
Center for Children & Youth Justice

Directors
Aaron Alhadeff
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Peter G. Bateman, Ph.D.
Microsoft

Betty R. Carter
Community Advocate

Susan L. Coskey
Seabold Group

Mary M. Hammons, CPA
Community Advocate

Renata Hasle
Community Advocate

Brian Heagler
Key Bank

Brian Johnston, MD MPH
Harborview Medical Center

Karen Jones
Riddell Williams

Martha Jordan
Community Advocate

Christopher Merrywell
Union Bank of California

Stephen J. Rotella
Community Advocate

Barton Shilvock
Boeing Company

Mark Solomon
Seattle Police Department

Hugh Straley, MD
Group Health Cooperative (retired)

Deidra Wager
Starbucks Coffee Company (retired)

Melinda A. Giovengo, Ph.D.
Executive Director

YouthCare Administrative Offices
The Kenneth & Marleen Alhadeff
Home of Hope
2500 NE 54th Street
Seattle, WA 98105-3142
Phone (206) 694-4500
Fax: (206) 694-4509

March 23, 2009

The Honorable Senator. Patrick Leahy, Chairman, Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Senator Arlen Specter, Ranking Member.
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Specter,

It is a privilege to recommend Seattle Police Chief Gil Kerlikowske for Director of the Office of National Drug Control Policy. While serving as Seattle's chief law enforcement officer for over eight years, he has changed the image and relationship of his department in our community. He truly believes that law enforcement must include community involvement and aim at root causes.

Issues such as youth gangs and youth violence, homelessness, mental health and substance abuse all contribute to crimes on our streets and Chief Kerlikowske has actively integrated awareness and use of community-based alternatives to arrest and punishment in policing related to such issues.

As the director of YouthCare, the largest youth services agency in this community - serving over 2000 runaway and homeless youth each year, I have seen this community approach first hand. His officers have been encouraged to help young people avoid jail by utilizing our services. He has deployed resources to develop partnerships and community ties that make law enforcement officers and officials active participants in diverting at-risk young people from paths that lead to incarceration. We have regular meetings at local precincts and are welcomed to be part of the discussions and honest dialogue. Officers take time to come into our center to introduce themselves as a positive face and welcome smile so that young people see them as a resource on Seattle's streets.

We know our police support by names not just badges. Prioritizing development of this kind of rapport and relationship building comes from leadership at the top - from someone who believes that social crimes happen for social reasons and that social responses are part of the solution. That helps us reduce the need for jails and helps us put lives on positive paths.

Chief Kerlikowske stood by YouthCare as an advocate in our pursuit of special funds to develop a new community treatment approach to helping young people victimized through prostitution. He stood with us when we lobbied the state

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legislature to change the law to defer these cases to treatment where services were available. We stood together to put mental health providers into patrol cars with Seattle police officers to help mediate stressful encounters with the public. He understood that this resource could help defuse tensions during arrests or help bring appropriate services to the situations and avoid arrests all together. These innovative alternatives to an "us against them" mentality are part of why Seattle now enjoys its lowest crime rate in four decades.

Chief Kerlikowske also lives these principals and believes that community involvement is something we do in our personal lives as well. He served on YouthCare's Capital Campaign for the recently opened Orion Center which helped us build a state-of-the-art urban facility for runaway and homeless youth that provides education and employment solutions to youth and young adult homelessness. He and his wife have helped build Seattle and contribute as people to the welfare of our community. I speak often to officers under his leadership and they say this is a man who inspires and who understands; a compassionate man of the highest integrity.

The drug problem in America requires a new vision for solutions that extends beyond law enforcement. It requires a person who will look at the issue from many angles with fresh eyes and who will champion and put resources into community solutions. Chief Kerlikowske is such an individual. We will miss him on the Seattle streets. Thank you for the opportunity to speak on his behalf and please do not hesitate to call on me if you have any questions.

Sincerely yours,

Melinda Giovengo, Ph.D.
Executive Director
YouthCare

61992I.083

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT
DOUGLAS C. GILLESPIE, Sheriff

Partners with the Community

March 23, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Douglas C. Gillespie, Sheriff

400 Stewart Avenue • Las Vegas, Nevada 89101-2984 • (702) 795-3111
www.lvmpd.com • www.protectthecity.com

The Phoenix Plaza
21st Floor
2929 North Central Avenue
Phoenix, Arizona 85012-2793

P.O. Box 36379
Phoenix, Arizona 85067-6379

Telephone 602.640.9000
Facsimile 602.640.9050

OSBORN MALEDON
A PROFESSIONAL ASSOCIATION ATTORNEYS AT LAW

www.osbornmaledon.com

Larry A. Hammond

Direct Line
Direct Fax

[redacted]om

March 24, 2009

Hon. Senator Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Hon. Senator Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

RE: Gil Kerlikowske

Dear Senators Leahy and Specter:

I learned last week that the President has nominated Gil Kerlikowske for the position of Director, Office of National Drug Control Policy. I am writing you this letter to endorse this gifted nomination.

I first became acquainted with Gil Kerlikowske through my work and his with the American Judicature Society (AJS). We both worked along with former Attorney General Janet Reno to help develop greater focus on the need to improve, and in some cases reform, the criminal justice system. Gil has always been an important voice on this topic. Having been the Police Chief in Buffalo, New York and Seattle, Washington, he comes at all law enforcement and criminal justice issues with a hard-edged experience-based perspective. Yet he has always been the law enforcement official most likely to want to encourage open dialogue with all participants in the criminal justice arena. To that end, he has given of his time over and over again on questions having to do with the causes of wrongful convictions.

For instance, a couple of years ago, I asked him to come to Arizona to speak to our police chiefs about eyewitness identification. He readily agreed to do so and his remarks were powerful, focused and remembered to this day by police chiefs who I encounter here.

Gil Kerlikowske has also served on the AJS National Advisory Council since its creation several years ago. He continues to be an important sounding board for the work of this organization. His resume will speak for itself but all of us who have worked with him would warmly endorse his nomination and hope that it will lead to a swift confirmation.

Thank you.

Sincerely,

Larry A. Hammond

LAH:djt
2508093

619921.086

City of Phoenix
OFFICE OF THE POLICE CHIEF

April 6, 2009

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Senator Specter:

Re: Nomination of Gil Kerlikowske as Director of the Office of National Drug Control Policy (ONDCP)

As head of the largest law enforcement agency in the state of Arizona, I offer my support for Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

JACK F. HARRIS
Public Safety Manager
Phoenix Police Department

620 West Washington Street, Phoenix, Arizona 85003 602-262-6747

619921.067

B.L.E.A.W.
BLACK LAW ENFORCEMENT ASSOCIATION OF WASHINGTON INC.
P.O. Box 18493
Seattle, WA 98118
206-315-4669

28 March 2009
The Honorable Senator Patrick Leahy, Chair Senate Committee on the Judiciary
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Re: Endorsement of Chief of Police R. Gil Kerlikowske

Dear Senator Leahy:

On behalf of the Black Law Enforcement Association of Washington, I am writing to express our support of Chief R. Gil Kerlikowske for the position of Chief of the Office of National Drug Control Policy.

Chief R. Gil Kerlikowske service to the community and his influence in policing started long before his arrival to the Seattle Police Department. His decorated honors in the Army and his years of service with the St. Petersburg Police Department helped him to define his role in policing and his commitment to the communities he served.

There is no doubt policing has changed dramatically over the past 20 years and Chief Kerlikowske is a change agent making policing better. Through his hard work in many positions across the country Chief Kerlikowske's insight, commitment to community policing and professionalism has been embedded into the leadership across the country. For example as the Chief of Police for Fort Pierce and Port St. Lucie Florida, his departments received the Attorney General Crime Prevention Award. As Commissioner for the Buffalo, New York Police Department, even as the first outsider appointed in thirty years he was able to build bridges with entities that often didn't talk to each other. Chief Kerlikowske is known for his hard work, creative approaches to policing, his fairness and openness.

His appointment as the Deputy Director of the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) Program he provided local grants to police departments all across the United States. The position with COPS fit many of his basic principals he held true throughout his career. Chief Kerlikowske understands the foundation and fundamentals of policing. He wants the men and women of law enforcement to be safe and have the tools to address serious concerns many communities in crisis are facing. It was his diverse approaches to policing that prepared him for the major challenges in his future. This was never more prevalent than when he accepted the position as the Chief of the Seattle Police Department in August of 2000.

When he arrived in Seattle it was clear he wanted Seattle residents to know things would be different. He modeled his actions with his expectations and drew from his past experiences. He wanted everyone from his most senior officers, highest-ranking officer and all civilian personnel to know this was their department and they were important to how this department would develop through the years. He instructed his command staff to develop policies and

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directives within the department that showed prevention and intervention were just as important as enforcement.

As Chief of the Seattle Police Department he worked with local leaders, grass root organizers, homeless advocates, ministers, numerous diverse community representatives, a variety of legal perspectives (ACLU, Defense Associations, corporate, civil, private), and included a countless number of other police agencies to address City of Seattle issues. He worked with members of the African American community to establish a less lethal option program to provide officers with alternatives to lethal force when the situation allows. Chief Kerlikowske's hiring and promoting of minority officers has not gone without notice. He went into the communities of color and actively recruited individuals to the Seattle Police Department. He also promoted officers of color and placed them in recognizable and strategic positions within the department. Every individual that is promoted, every position available within the department and each rank from detective to deputy chief were routinely analyzed by Chief Kerlikowske. It was common to see him engaged in settings that allowed him to meet frequently with diverse community members some of whom felt disenfranchised from the police department. Relying on his eleven Demographic Advisor Councils he was able to address issues quickly and directly. Chief Kerlikowske believed the Seattle Police Department should be transparent. He not only worked on the image of the department but he also addressed its professionalism. Chief Kerlikowske took great pride in getting the Seattle Police Department accredited. In 2006 he received the "James V. Cotter Award" from the Communications Assistance for Law Enforcement Act (CALEA) committee, marking the first time the Seattle Police Department has ever been nationally accredited.

Through the years Chief Kerlikowske has spearheaded initiatives and encouraged problem solving thinking to address crime issues. He will research, solicit and seek out ways to better address community concerns and to address crime. Chief Kerlikowske has been outspoken about alternatives to minority confinement and the use of social services to better address problem areas in the community. He supported a wide variety of programs such as Re-Investing In Youth, GOTS (Get Off the Streets) which is a program that provided treatment for offenders, the restoration of voting rights for convicted felons under specific conditions and working with King County Juvenile Detention to reduce the disproportionate minority confinement. His active oversight of the department and his participation in the community has resulted in City of Seattle being one of the safest major cites in the United States.

The Black Law Enforcement Association of Washington strongly supports the recommendation of Chief R. Gil Kerlikowske for this position as Chief of the Office of National Drug Control Policy knowing that his leadership and expertise will well serve the American people because of his sound principles of public safety and public health. He will demonstrate to criminal organizations threatening to undermine stability that he takes seriously the responsibility to reduce drug use in the United States.

Sincerely,

John F. Hayes Jr.

John F. Hayes Jr.
President of B.L.E.A.W.

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CITY OF HOUSTON

Houston Police Department

Bill White, Mayor

1200 Travis Houston, Texas 77002-6000 713/247-1000

CITY COUNCIL MEMBERS: Toni Lawrence Jarvis Johnson Anne Clutterbuck Wanda Adams Michael Sullivan M.J. Khan, P.E. Pam Holm
James Rodriguez Peter Brown Sue Lovell Melissa Noriega Ronald C. Green Jolanda "Jo" Jones CITY CONTROLLER: Annise D. Parker

Harold L. Hurtt
Chief of Police

The Honorable Patrick Leahy
The Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

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Sincerely,

Harold L. Hurtt
Chief of Police

CC: Senator John Cornyn
Committee on the Judiciary

hlh:ncb

COLONEL DANIEL ISOM, *CHIEF OF POLICE*

Service, Integrity, Leadership And Fair Treatment To All.

METROPOLITAN POLICE DEPARTMENT

CITY OF ST. LOUIS • 1200 CLARK AVENUE • ST. LOUIS, MISSOURI 63103

March 31, 2009

The Honorable Patrick Leahy
Chairman,
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

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Sincerely,

Colonel Daniel Isom
Chief of Police
St. Louis Metropolitan Police Department



March 25, 2009

Senator Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510
Via Fax: 202-224-3479

RE: Drug Czar Nomination: Chief R. Gil Kerlikowske

Dear Senator Leahy,

In the best interest of the kids throughout our nation, Boys & Girls Clubs of America highly recommends **Chief R. Gil Kerlikowske** as Drug Czar for the United States of America.

Chief Kerlikowske has not only dedicated over 36 years of his life to law enforcement throughout our nation, he has also been a Champion for our Youth as Chairman of the Board of **Fight Crime: Invest in kids**, which is a national organization that looks into the research and reasons on how to prevent kids from becoming criminals.

Most importantly, the Chief has fully understood that prevention is a critical component to the decrease in youth violence and crime and drug and alcohol abuse which directly supports the core values of Boys & Girls Clubs of America's life saving programs in character and leadership development, education and career development, health and life skills, the arts and Sports, Fitness and Recreation.

With genuine enthusiasm, on behalf of the 4.2 million children served by Boys & Girls Clubs nationwide, we wholeheartedly support Chief Kerlikowske's nomination as Drug Czar, as we have the faith, belief and trust in his leadership and abilities to serve our country in this vital role.

In the best interest of the kids,

Respectfully yours,

Richard Inukai
President

Country Chrysler Jeep Dodge
767 SW Baseline • P.O. Box 1388 • Hillsboro, Oregon 97123 • Phone (503) 640-1050 • www.dicksautogroup.com

GLENN F. IVEY
STATE'S ATTORNEY

J. PATRICIA WILSON SMOOT
CARLOS ACOSTA
DEPUTY STATE'S ATTORNEYS

State's Attorney for Prince George's County
14735 Main Street, Suite M3403
Upper Marlboro, Maryland 20772
301-952-3500

March 30, 2009

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Ronald H. Weich

Dear Chairman Leahy:

I am honored to support President Obama's nomination of Ronald H. Weich, Esq. for the position of Assistant Attorney General for Legislative Affairs.

I have known Mr. Weich for many years. I first worked with him during the Senate Whitewater Hearings when he served on the staff of Senator Edward Kennedy and I served on Senator Tom Daschle's leadership staff. Our paths continued to cross when he went to work for Senator Arlen Specter. In that time I developed great respect for his talents and abilities.

Mr. Weich has a rare combination of bipartisan legislative experience developed over twelve years of service on Senate committee and leadership staffs. Highly regarded by his colleagues, Mr. Weich's expertise reflects a strong understanding of congressional oversight, Senate rules and floor procedure.

His career includes work as a trial prosecutor in Manhattan, as a criminal defense attorney and as a civil practitioner. He has played a key role in the passage of very significant legislation, and worked with Justice Department officials in both Republican and Democratic Administrations on major issues. His combination of legal and political experience provides him the optimum ability to represent the needs and interests of the Department of Justice.

I strongly urge you to support Mr. Weich's nomination.

Sincerely,

Glenn F. Ivey

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate
WASHINGTON, DC 20510–2101

March 30, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee
On the Judiciary
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member, Senate Committee
On the Judiciary
Washington, D.C. 20510

Dear Pat, Arlen and Members of the Committee:

I write to enthusiastically endorse Ron Weich's nomination to be Assistant Attorney General for Legislative Affairs in the Department of Justice. You know Ron through his work for Arlen, followed by his impressive service on my Judiciary Committee staff when I was a member of the Committee, and his equally impressive service in recent years to our Majority Leader Harry Reid. I believe he's an exceptional choice for this position and I urge his prompt confirmation.

Ron served with distinction on my staff for nearly seven years, beginning in 1990 on the Labor and Human Resources Committee, as it was then known, and becoming my Chief Counsel on the Judiciary Committee in 1995. During his years with me, he had a major role in bringing the treatment of substance abuse and mental illness into the mainstream of medical issues, helping to develop and pass legislation consolidating the federal efforts in these areas in NIH, and also working to combat substance abuse.

Ron also worked to improve our justice system through his efforts on the 1994 crime bill, which significantly strengthened partnerships between local, state and federal law enforcement, as well as through his efforts to strengthen the Legal Services Corporation and his contributions on sentencing, racial justice and judicial nominations.

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In all he did, Ron consistently showed himself to be a lawyer of exceptional intelligence, skill and sound judgment. He has a remarkable ability, which he has demonstrated in his current position with Sen. Reid, to work extremely well with Members and staff on both sides of the aisle and to guide us toward creative solutions to seemingly intractable problems.

Ron's success in working with people of all political persuasions is a result of his unfailing professionalism, integrity and civility. He listens fairly to all sides of the issues and keeps the lines of communication open, but never loses his commitment to a fair and just result.

Ron's career in the law and in the Senate has given him a breadth of knowledge and experience that will serve him well as head of the Office of Legislative Affairs. He has thorough knowledge of Congress and a deep familiarity with the policy and legislative issues facing the Department of Justice, and I'm sure the Committee and all Members of Congress will benefit from Ron's service in this important position. I strongly urge the Committee to report his nomination favorably.

Sincerely,

Edward M. Kennedy

STATEMENT OF R. GIL KERLIKOWSKE
NOMINEE TO BE DIRECTOR OF NATIONAL DRUG CONTOL POLICY
BEFORE THE COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES SENATE
APRIL 1, 2009

Mr. Chairman, Ranking Member Specter, and Members of the Committee, it is a great honor and privilege to be sitting before you today as the nominee for Director of National Drug Control Policy. I am deeply humbled by President Obama's request that I serve in a position of such importance. I wish to thank the members of the Committee and your staffs for providing me with the opportunity to meet with many of you over the past few weeks. Each of these meetings has been productive and informative, and if confirmed, I look forward to our forming closer relationships and engaging in richer discussions about the future course of the nation's drug control strategies.

I want to specifically thank Senator Murray and Senator Cantwell for their support today. As Chief of Police in Seattle, I relied on their assistance and leadership in helping me reduce crime rates in that city to record lows. I also want to thank my wife, Anna Laszlo, who is here with me today. She has supported my commitment to public service these many years. Additionally, while they are not here today, I must acknowledge the support of both my mother, Norma Shands, and of Anna's mother, Eva Laszlo. Anna and I, both only children, are deeply grateful to these two women for their commitment to us over the course of our lives and careers. I would also be remiss if I did not recognize Judge Thomas W. Shands, my step-father, who has since passed but would be very proud to see me appearing before you today. He was an inspiration to me while growing up as an individual who could hand down stiff sentences when necessary but also was in the forefront of campaigning for modern treatment for incarcerated juveniles.

I would also like to thank the many organizations and individuals who have offered their support for my nomination. I look forward to conducting expansive and open dialogue with all stakeholders as I develop a powerful and effective national drug strategy.

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I have proudly spent the past 36 years of my life in law enforcement and public service. It has been my privilege to lead two of this country's largest police departments over a period of thirteen years. In my current role as the Chief of Police in Seattle, where I have led for nearly nine years, I have brought innovative solutions to the problems of drugs and crime, and their effect on society. A key element in my approach while in Seattle has involved enlisting the support of the entire community to reduce crime. While this approach is commonly referred to as, "community policing", I prefer it be recognized as "policing". The transparency and collaborative approach of this concept has ultimately led to the lowest drug use and serious crime rates in Seattle since 1967. My goal is to use similar principles in the development, articulation, and implementation of an effective, comprehensive, and coordinated national drug control strategy.

Let me assure you that I know President Obama is committed to developing and implementing a rigorous drug control agenda, while bringing ONDCP back to its original leadership position. I am also grateful for the strong support of Vice President Biden. Our Vice President has long been a leader in protecting communities and families from the harms of illegal drugs. His continued dedication to solving the drug problem will be a key resource for ONDCP's success.

Upon confirmation, I will immediately coordinate with my colleagues in the federal government, as well as our counterparts at the state and local level, to ensure that the national drug control strategy is:

- Balanced and comprehensive, based upon the best possible understanding of the drug threat, and incorporates a science-based approach to public policy;
- Vigorously implemented through development of a national drug budget that contains proven, effective programs; and
- Rigorously assessed and adapted to changing circumstances,

Essential to these efforts is restoration of the vitality of the Office of National Drug Control Policy by recommitting the agency to its policy leadership mission. ONDCP was created by the Congress—under the guidance of this Committee—to focus this nation's efforts toward solving

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the drug problem by developing and implementing a balanced, comprehensive national drug control strategy. ONDCP will effectively build consensus on how best to use interdiction efforts, law enforcement, treatment, prevention, and sound research to achieve measurable results in reducing drug use and its consequences. Dialogue will be continuous. Debate will be inclusive of disparate ideas. Deliberation will be comprehensive and collaborative.

I will work diligently to ensure that our efforts are supported by a properly balanced federal drug control budget—one which logically implements research-based programs to support and implement that Strategy. There will be a renewed focus on evidence-based approaches to reduce demand for drugs, through prevention as well as treatment. Additionally, we must also work to create strong partnerships to reduce the overall impact of drug trafficking and use.

Increased cooperation with the international community must also be included in any comprehensive strategy. Our nation's demand for drugs often fuels drug production and trafficking, as well as violence and corruption, within other nations. Domestic drug use directly funds the terrible drug-related crime currently wracking Mexico and fuels illegal armed groups in Colombia. Our international drug control programs help strengthen law enforcement and judicial institutions, while providing alternative livelihoods for poor farmers.

While these international supply reduction programs play a vital role in improving security, supporting the rule of law, and denying terrorist and criminal safe havens around the world, the greatest contribution we can make toward stability would be to reduce our demand for illicit drugs.

Finally, under the assumption that if you can't measure it, you can't improve it, I will set a goal for the development of a strong, transparent monitoring system. While highly complex, performance evaluation of the national drug strategy is key to both validating and tracking the efficacy of the strategic goals and objectives established by the National Drug Control Strategy and the individual programs which are funded to support it. With a robust monitoring system in place, we will know better how to respond to the ever-changing international drug situation and will have the information required to guide the mission-essential coordination and collaboration

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efforts of the office. We will be better able to report on our progress, justify the level of funding requested, and satisfy the interest of the citizens of this nation that their money is being well-spent and that their needs for a safer and more secure environment are being met.

I want to thank you again for the opportunity to appear before you today. It would indeed be an honor to serve this nation in its effort to reduce drug use and the problems it creates for every American and the international community. I look forward to answering any questions the Committee may have.

Centennial
Continuing the Struggle for Justice
NCCD
National Council on Crime and Delinquency
1970 Broadway, Suite 500 • Oakland, CA 94612
tel 510/208-0500 • fax 510/208-0511 • nccd-crc.org

Senator Patrick Leahy
433 Russell Senate Office Bldg
United States Senate
Washington, DC 20510

Dear Senator: March 23, 2009

I am writing in enthusiastic support of the confirmation of Gil Kerlikowske as the Director of the Office of Drug Control Policy. I have known him for almost 15 years and can think of no one better suited to provide leadership in this crucial area.

My first dealings with Chief Kerlikowske were when he ran the police department in Fort Pierce, Florida. My organization, the National Council on Crime and Delinquency, had been selected by the U.S. Department of Justice to assist dozens of communities to implement data-driven, evidence-based responses to youth violence. We picked Fort Pierce as one of our early sites because of the reputation of Chief Kerlikowske as one of the most progressive law enforcement officials in America. Because of his leadership, our youth violence project was very successful.

I also worked with Chief Kerlikowske when he was a leader of the Police Executives Research Forum and when he worked for the COPS Office in Washington, D.C. He was a champion of community policing and always placed a high value of learning from the best research.

In Seattle, Chief Kerlikowske inherited a department that was know for enlightened policing but was surrounded by intense political and community controversy. He was able to advance the most positive aspects of the Seattle Police Department, while restoring public support and confidence in the Department. Chief Kerlikowske showed his skills at communicating with and working with the very diverse Seattle community.

I urge you to confirm him. He brings a great knowledge of many aspects of drug control policy. The key issue is balance, and Chief Kerlikowske knows how to harmonize the difference resources of law enforcement, prevention, and intervention. We urgently need a leader at the Office of Drug Control Policy who can utilize the best science that we have to combat the addiction problem. We need an open minded person now more than ever—someone who can respectfully listen to many points of view and arrive at a consensus. Gil Kerlikowske is not an ideologue on one side of the drug policy debate. Moreover, his experience will assist in the complex coordination that must be managed by the Office of Drug Control Policy. His standing as a law enforcement leader will enhance the prestige of the National Office.

I can support his nomination without reservations. The National Council on Crime and Delinquency will work with him to achieve the successes that the nation so urgently needs.

Respectfully yours,

Barry Krisberg

Barry Krisberg Ph.D.

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CITY OF DALLAS

DAVID M. KUNKLE
CHIEF OF POLICE

April 1, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—áll qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

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Respectfully submitted,

David M. Kunkle
Chief of Police

DALLAS POLICE DEPARTMENT JACK EVANS POLICE HEADQUARTERS 1400 S. LAMAR STREET DALLAS, TEXAS 75215

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
April 1, 2009

Statement of Senator Patrick Leahy
Chairman, Senate Judiciary Committee,
Hearing On Judicial and Executive Nominations
April 1, 2009

Today, the Senate Judiciary Committee holds a hearing on President Obama's first judicial nominee, and for two more well-qualified nominees for senior leadership positions in the Executive Branch. Each of these nominees has spent their professional lives in public service.

This afternoon we will hear from Judge David Hamilton, a highly-qualified and experienced jurist nominated for the Court of Appeals for the Seventh Circuit. His nomination has the bipartisan support of his home state Senators. I thank Senator Lugar and Senator Bayh for their consideration of this nominee, and I am pleased to welcome them to the Senate Judiciary Committee.

I said when this nomination was announced on March 17 that after the partisan and divisive approach that President Bush took with judicial nominations, I appreciated President Obama's seriousness in making his selection, and his constructive engagement with both Senator Lugar and Senator Bayh, the Republican and Democratic home state Senators. The President is doing his part to remove these matters from partisan politics, and that's a healthy change for the Nation and for all three branches of government. I hope that the Republican members of this Committee will respect the views of Senator Lugar, the most senior Republican serving in the United States Senate, and treat this nomination accordingly. Judge Hamilton is a well-respected Federal judge not known for partisanship or an ideological agenda. He should be confirmed quickly with a strong bipartisan majority.

Judge Hamilton currently serves with distinction as the Chief Judge of the Southern District of Indiana. He had an outstanding record at Yale Law School and Haverford College. After law school, he clerked for Judge Richard Cudahy of the Seventh Circuit. He practiced law for eight years in Indiana with the law firm of Barnes & Thornburg before he entered public service as counsel to then-Governor of Indiana, and now Senator from Indiana, Evan Bayh. He has also taught law as an adjunct professor at the Indiana School of Law.

In 2007, Judge Hamilton was honored with the Indiana Lawyer's Distinguished Barrister Award, which recognizes members of the legal community for their exemplary leadership in the legal profession and devotion to the betterment of their communities. That same year, he was awarded the distinction of being named one of the 500 Leading Judges in America by Lawdragon Magazine for presiding over complex or high profile cases with aplomb. In 1991, Judge Hamilton received the Sagamore of the Wabash Award from the Governor of Indiana, the highest honor that the Governor of Indiana can bestow, for his distinguished service to the State of Indiana.

Mr. Hamilton's nomination has also earned support from across the political spectrum. The President of the Indianapolis Lawyers Chapter of the conservative Federalist Society, Geoffrey Slaughter, who two months ago invited Judge Hamilton to speak before the conservative group, called him "an excellent jurist with a first-rate intellect," and described his judicial philosophy as "well within the mainstream, between the 30-yard lines."

When President Obama first announced this nomination, he noted that "Judge Hamilton has a long and impressive record of service and a history of handing down fair and judicious decisions." In light of his

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superb record, broad support, and unanimous "well qualified" rating from the American Bar Association, it is no wonder Judge Hamilton's nomination for this important appellate seat has the support of both home state Senators.

I am glad President Obama has picked an experienced jurist and consensus candidate to be his first judicial nominee. I hope the leadership that Senator Lugar and Senator Bayh have shown in coming together to support Judge Hamilton's nomination is a good sign that we will have the bipartisan cooperation that President Obama has called for, that some of us are working hard to create, and that the American people have every right to demand. President Obama is off to a good start. I commend the White House for consulting with the distinguished Senators from Indiana – a Republican and a Democrat – to put forth a consensus nominee whose proven record and bipartisan support should lead to swift approval by this Committee and the Senate.

We will also hear from two more of President Obama's highly-qualified nominees for important posts in the Executive Branch.

Ron Weich is nominated to be Assistant Attorney General for the Office of Legislative Affairs at the Department of Justice. In more than a decade on Capitol Hill, he has advised three Senators: Senator Specter, Senator Kennedy, and Majority Leader Reid. I want to put into the record a letter of support for Mr. Weich I received from Senator Kennedy, a former Chairman of this Committee and a Member for more than four decades. In addition, Mr. Weich has a distinguished record of public service as an Assistant District Attorney in Manhattan, and as a Special Counsel to the United States Sentencing Commission. He is an experienced Senate hand who has earned the respect of Senators on both sides of the aisle. We know him well as a former member of the staff of this Committee. I am confident he will be a welcome addition to the leadership at the Justice Department, and will make the Department more responsive to congressional concerns than we have seen over the last several years.

I thank Senator Specter for agreeing to add the nomination of R. Gil Kerlikowske to today's proceedings, as well. Chief Kerlikowske has 36 years of experience in law enforcement, including his current service as Chief of Police for the Seattle Police Department. He is the former Deputy Director of the Office of Community Oriented Policing Service at the Department of Justice, and is currently President of the Major Cities Police Chiefs Association. He is nominated to serve as the Director of National Drug Control Policy.

Chief Kerlikowske's nomination has received numerous letters of support, including strong endorsements from Republican and Democratic public officials, State and local law enforcement officials, the National Center for Victims of Crime, the United States Conference of Mayors, the Community Anti-Drug Coalition of America, the Washington Association of Sheriffs and Police, and the National Council on Crime and Delinquency.

Mary Lou Leary, the Executive Director of the National Center for Victims of Crime, describes Chief Kerlikowske as a "strong manager," who is "committed to crime prevention" and who "understands the connection between illegal drugs and crime." Arthur T. Dean, the Chairman and CEO of the Community Anti-Drug Coalition of America, wrote that Chief Kerlikowske understands that drug policy "must be comprehensive and coordinated" and "recognizes that the perspectives of those closest to the ground – state and local enforcement, prevention, treatment, and recovery professionals – play a critical role in this strategy."

As a former prosecutor, I have always advocated vigorous enforcement and punishment of those who commit serious crimes. But I also know that punishment alone will not solve the problems of drugs and violence in our rural communities. I am pleased that Mr. Kerlikowske supports combating drug use and crime with all the tools at our disposal, including enforcement, prevention, and treatment.

His nomination comes at a crucial time given the concerns that many of us - Democrats and Republicans – share about drug policy. The situation along our southern border, and that in Afghanistan, are made all the more difficult by the illegal drug trade. In addition, if he is confirmed, Mr. Kerlikowske will play an important role in formulating a more rational and fair Federal sentencing policy. I look forward to working with Chief Kerlikowske.

It is unfortunate that there has been partisan criticism of our proceeding today. We are proceeding at a reasonable pace for the Committee's consideration of an experienced jurist whom the Senate has previously confirmed by unanimous consent. The fact is Judge Hamilton is rated unanimously well-qualified by the ABA. The fact is his nomination has the support of both home state Senators – a respected senior Republican, and a Democrat. The fact is we now have more than 65 vacancies on the Federal bench, and additional vacancies will arise. And the fact is we have only one judicial nomination before us at this time. There is no good reason in my view to delay, and every reason to proceed promptly.

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Some on the other side of the aisle may feel rushed because of the weeks they have spent working to delay consideration of President Obama's nominations to lead the Justice Department. We still have been unable to obtain a time agreement to consider the nomination of Professor Dawn Johnson to head the Office of Legal Counsel, for example, even though her nomination was reported favorably by this Committee two weeks ago on March 19.

I have considered Republican objections and concerns throughout the year and tried to be accommodating. I delayed hearings this year for the nominees to be Attorney General, Solicitor General, and the head the Office of Legal Counsel. Our last confirmation hearing was on March 10, three weeks ago. Despite those accommodations, Senate Republicans have chosen to delay Committee, as well as Senate, consideration of nominees.

I understand that Senators could always use more time to prepare, and that this is a busy week. However, with a two-week Easter recess approaching, I did not want to delay this proceeding another two weeks. Last year, as he had earlier in President Bush's term, Senator Specter proposed a protocol for consideration of judicial nominations that called for hearings on judicial nominees within 30 days of nomination. The demand to delay this hearing on Judge Hamilton's nomination past the Easter recess would violate that very protocol. I trust that once they consider his qualifications, the Republican members of this Committee will work with us to consider the nomination promptly upon our return, and not needlessly delay proceeding as has been threatened.

In that regard, it was a bad sign that last month all 41 Senate Republicans signed a letter to President Obama threatening filibusters of his judicial nominees before they were even named. I trust that position is being reconsidered in light of the reality that President Obama has consulted with Senators. These threats of obstruction are not helpful.

I urge Republican Senators to work together with the President to fill vacancies on the Federal bench. Our demonstrated ability to work together to fill judicial vacancies will go a long way toward elevating public trust in our justice system, and ensuring that the American people receive equal justice under law.

I believe this President's appreciation for the Constitution, the rule of law, and the role of the courts motivates him to nominate people, like Judge Hamilton, of the highest caliber and qualifications. Just as I have urged Senators to work with the President, I have urged the White House to work with the Senate. I am pleased to see that the President has proceeded expeditiously after consultation to nominate Judge Hamilton. He has also reformed the selection practice by restoring the peer review by the American Bar Association to the front end of the process. That is how every President since Dwight D. Eisenhower had proceeded. When President Bush unilaterally chose to exclude that professional peer review from the process, the result was significant delay because they could not begin their review until after the nomination was made. That meant weeks went by before a nomination was considered ready for a hearing. This hearing shows that restoring that process can result in prompt hearings to fill judicial vacancies.

All three of the nominees before us are exceptionally well qualified to fulfill the duties of the positions to which they have been nominated. I look forward to hearing from them today.

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United States Senate
Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Richard Lugar

United States Senator
Indiana
April 1, 2009

Lugar Introduction of Judge David Hamilton
Senate Judiciary Committee
April 1, 2009, 2:30 pm

Thank you, Mr. Chairman, for this opportunity to join my friend and colleague from Indiana in introducing Judge David Hamilton, whom the President has nominated to serve on the United States Court of Appeals for the Seventh Circuit. Senator Bayh and I are proud that President Obama's first judicial nominee is from our State, and that he has chosen to elevate such an exceptionally talented jurist to the Federal appellate bench.

I first had the pleasure of introducing David Hamilton to this Committee almost 15 years ago, when he was nominated to the Federal district court. I said then that "the high quality of his education, legal experience, and character well prepare him for this position," and expressed my belief that "his keen intellect and strong legal background will make him a great judge." This confidence in David Hamilton's character and abilities was shared by all who knew him, regardless of political affiliation, throughout Indiana's legal and civic communities. Judge Hamilton's distinguished service on the United States District Court for the Southern District of Indiana, of which he is now the Chief Judge, has more than vindicated that faith.

I have known David since his childhood. His father, Reverend Richard Hamilton, was our family's pastor at St. Luke's United Methodist Church in Indianapolis, where his mother was the soloist in the choir. Knowing first-hand his family's character and commitment to service, it has been no surprise to me that David's life has borne witness to the values learned in his youth.

David graduated with honors from Pennsylvania's Haverford College, won a Fulbright Scholarship to study in Germany at the University of Tuebingen, and then earned his law degree at Yale. After clerking for Seventh Circuit Judge Richard Cudahy, David joined the Indianapolis office of Barnes & Thornburg where he became a partner and acquired extensive litigation experience in the Indiana and Federal judicial systems. When our colleague Senator Bayh was elected Governor of Indiana, he asked David to serve as his Chief Legal Counsel. Among other achievements in that role, David supervised the overhaul of State ethics rules and guidelines, and coordinated judicial and prosecutorial appointments.

In the latter capacity, David worked closely with Judge John Tinder, then a Reagan-appointee to the district bench, whom President Bush recently appointed to the Seventh Circuit with the unanimous support of this Committee and the full Senate. When David was nominated to the district court, Judge Tinder wrote to me that David was "meticulous in asking the difficult questions of and about judicial nominees," and that his approach to these duties "typifies the deliberate and sensitive way in which he approaches matters in his professional life."

The same is true of David's approach to his judicial duties. Leading members of the Indiana bar testify to his brilliance and, as important, to his character, dedication and fairness. David Hamilton is the type of lawyer and the type of person one wants to see on the Federal bench. His colleagues on the Southern District of Indiana bench, a talented and exceptionally collegial group from both parties, unanimously endorse that

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conclusion.

Allow me to close with a few further thoughts. Members may recall, when I introduced now Chief Justice Roberts to this Committee in 2005, my concern that today's Federal judiciary is seen by many as another "political branch," with the confirmation process often accompanied by the same over-simplifications and distortions that are disturbing even in campaigns for offices that are in fact political. This phenomenon is most pronounced at the Supreme Court level, and traces to several causes that I will not try to address today. I mention it, however, to underscore my commitment to a different view of judicial nominations, which I believe comports with the proper role of the judiciary in our constitutional framework.

I do not view our Federal courts as the forum for resolving political disputes that the Legislative and Executive Branches cannot, or do not want to, resolve. Our Founders warned, in words quoted in my statement at the time of Chief Justice Roberts' nomination, against allowing "the pestilential breath of faction [to] poison the fountains of justice," which they knew "would stifle the voice both of law and of equity."

This is why I believe our confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will "vote" on particular issues of public moment or controversy. I have instead tried to evaluate judicial candidates on whether they have the requisite intellect, experience, character and temperament that Americans deserve from their judges, and also on whether they indeed appreciate the vital, and yet vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws, rather than seeking to impose their own policy views. I support Judge Hamilton's nomination, and do so enthusiastically, because he is superbly qualified under both sets of criteria.

Finally, permit me to thank my colleague from Indiana on the thoughtful, cooperative, merit-driven attitude that has marked his own approach to recommending prospective judicial nominees from our State. The two most recent examples are his strong support for President Bush's nominations of Judge Tinder for the Seventh Circuit and of Judge William Lawrence for the Southern District of Indiana. I am confident Senator Bayh and I will continue to approach nominations by President Obama in the spirit that brings us before you today.

Thank you very much.

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DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

March 23, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on-the-job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

J. Thomas Manger
Chief of Police

JTM:mam

Office of the Chief of Police
2350 Research Boulevard • Rockville, Maryland 20850 • 240-773-5000 • 301-762-7619 TTY
www.montgomerycountymd.gov



Personal

March 23, 2009

Hon. Patrick Leahy, Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy,

As a former National Drug Policy Director for five years, I want to express my strong support for Gil Kerlikowske for Director of the Office of National Drug Control Policy.

Gil Kerlikowske has demonstrated a comprehensive understanding of narcotics issues as Police Chief of Seattle. He served as the elected President of the Major Cities (Police) Chiefs Association, was named Outstanding Military Police Officer Honor Graduate in the U.S. Military Police in 1970, and worked as an undercover narcotics detective. He brings a wide level of experience to the issue. He has also served as Buffalo's Police Commissioner.

Gil understands how to work in coordination with the Justice Department, having been Deputy Director of the COPS Program. He has a natural team relationship with our new Attorney General Holder.

Since becoming Seattle Police Chief on 2000, Gil Kerlikowske brought the City's crime rate to a forty-year low. In addition, Chief Kerlikowske is known and highly respected internationally for his knowledge of crime and drugs. He has been an invited speaker at forums around the world. He brings a deep and wide knowledge of law enforcement and the international drug threat that will be of enormous assistance to Secretary of State Hillary Clinton.

Moreover, he is able to work with all areas of the drug issue from treatment to incarceration, understanding that it takes the entire framework of tools to break the chain of drug abuse and crime. He is a strong supporter of drug courts to expand treatment to nonviolent offenders and stop the cycle of recidivism that otherwise continues both crime and drugs.

Of recently added importance, Gil Kerlikowske will be helpful in curtailing the newly increased threat of numerous cross-border Mexican and other international drug cartels entering American cities, because he is experienced in undercover drug enforcement.

We must take action quickly to restore the priority to the drug issue that directly kills over 50,000 a year and is a very real threat to our citizens. Gil Kerlikowske knows

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the need for action against drug abuse deaths at home and drug supply routes abroad. He will improve border operations and confront international suppliers. He will be an integral part of President Obama's national security team and will work well with Homeland Security Secretary Janet Napolitano, Secretary Clinton, Attorney General Holder, and the many other cabinet secretaries with anti-drug missions.

Strongly support prompt confirmation of Gil Kerlikowske as Director of the Office of National Drug Control Policy.

Sincerely,

Barry R. McCaffrey
General, USA (Ret.)
Director, Office of National Drug Control Policy
1996-2001

Thanks for your continued dedicated public service.

619921.109

City of Cleveland
Frank G. Jackson, Mayor

Department of Public Safety
Division of Police
Michael McGrath, Chief
1300 Ontario Street
Cleveland, Ohio 44113-1648
216/623-5005 • Fax: 216/623-5584

March 23, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

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Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Michael McGrath
Chief of Police

MM/e

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EDWIN MEESE III

[redacted]

31 March 2009

The Hon. Sen. Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Chairman Leahy:

It is a pleasure to recommend to the Senate Judiciary Committee the confirmation of Gil Kerlikowske as Director of the Office of National Drug Policy.

I have known Chief Kerlikowske for over 20 years, during which time he has held several highly responsible positions in the law enforcement profession. I first met him during his fellowship with the National Institute of Justice. I have followed his career since then, including his work as Chief of Police in Buffalo, New York, and most recently in Seattle, Washington.

In all of his activities, Gil Kerlikowske has been an outstanding leader of policing in the United States. He has demonstrated creativity and innovation and has been an inspiration to others who have worked with him and to many others throughout the U.S. who have witnessed his accomplishments.

Because of his experience, character, and personal qualifications, Chief Kerlikowske would be an outstanding leader for the nation's efforts to combat drug abuse and drug trafficking. As a former Attorney General of the United States, I enthusiastically support his confirmation. If further information is needed, please do not hesitate to contact me.

Thank you for your consideration of this recommendation.

Sincerely,

Edwin Meese III

Edwin Meese III

CIRCUIT COURT OF THE STATE OF OREGON
FOURTH JUDICIAL DISTRICT
KEITH MEISENHEIMER
JUDGE
MULTNOMAH COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OR 97204-1123
PHONE (503) 988-3985
FAX (503) 276-0963

Senator Patrick Leahy
United States Senate
711 Russell Senate Office Building
Washington, DC 20510
Via Fax: 202- 224-3479

3/25/09

Re: Drug Czar Nomination: Chief R. Gil Kerlikowske

Dear Senator Leahy,

I write in support of the nomination of Chief R. Gil Kerlikowske as Drug Czar for the United States of America.

My support for Chief Kerlikowske arises from my experience of twenty three years as a prosecutor handling primarily major crimes of violence and crimes against children and nine years as a circuit court judge in Multnomah County, Oregon. Over the course of that career, I became firmly convinced that no matter how well the justice system responds to a crime, we can never make the victim whole. The burglary victim never again feels as safe in their own home, even if we get their property back. The child sex abuse victim has suffered a trauma and loss of trust we can address in counseling but can never erase. Prevention of crime is truly worth ten pounds of cure.

In this regard, Chief Kerlikowske's professional background is extraordinarily impressive. In addition to excelling at traditional aspects of law enforcement, his chairmanship of the board of directors of Fight Crime: Invest in Kids speaks volumes to his recognition that protecting the community begins with investing in proven programs which lower rates of delinquency and subsequent adult crime.

It is this kind of broad experience in law enforcement and creative thinking about approaches to attacking root causes I believe we urgently need in our next Drug Czar.

Sincerely,

Keith Meisenheimer
Circuit Court Judge
Co-Chair, Portland Boys and Girls Club

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USF
UNIVERSITY OF
SOUTH FLORIDA

The Honorable Senator Patrick Leahy, Chairman
Honorable Senator Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C.

Dear Senators Leahy and Specter:

I write to support the nomination of Gil Kerlikowske as the Director of the White House Office of National Drug Control Policy. Chief Kerlikowske started his impressive law enforcement career in the Tampa Bay Area and received both his bachelor's and master's degrees in our Criminology program at the University of South Florida.

As a professor, social scientist and director of a top-ranked graduate program in Criminology, I am particularly impressed by Chief Kerlikowske's science-based approach to policy. An emphasis on research, reason and evidence to guide the nation's policies on drug control is critically important. There is a considerably body of social science literature on the causes, consequences and remedies for drug abuse. My longstanding familiarity with this literature extends back to my own dissertation research on heroin drug markets on the streets of Detroit. The research findings have too often been neglected because of the political, ideology-driven nature of the national discussion. Chief Kerlikowske can and will provide the link between science and practice in addressing the nation's drug problems. His evidence-based pragmatism has earned him the well deserved reputation among his peers for being "smart on crime." Although Kerlikowske has dedicated his life to the police profession, he has a healthy respect for the limits of law enforcement to solve the nation's drug problems. I expect him to identify and implement policies and practices that reflect the best ideas and experiences from multiple disciplines, social services, and the public health arena and beyond.

There is also a considerable social science literature on implementation; much of the research highlights the many and varied ways that good ideas *do not* come to fruition ("implementation failure"). To avoid implementation failure, the multi-faceted nature of this issue requires a strong and credible *leader* who can bring diverse viewpoints and perspectives together to identify the best prospects for success (and who can wean policy makers from their reliance on politics and ideology in this sphere). This issue also requires an effective *administrator* who can then implement those identified change efforts - someone who can *get things done*. In Chief Kerlikowske you get both a strong leader and effective administrator. He has manifested these important strengths in his capacity as chief in four cities, as the Deputy Director of the USDOJ Office of Community Oriented Policing Services, and as the President of the Major Cities Chiefs Association. Throughout his career, he has evidenced willingness, indeed eagerness, to listen to all perspectives. He has the ability to bring people with diverse viewpoints together to identify "what works" and then to motivate those partners to facilitate implementation.

I feel confident that I can speak on behalf of my peers in academic Criminology; we stand ready to assist Chief Kerlikowske in identifying and implementing multi-disciplinary, research-based policies and programs to address the serious national issue of drug abuse. We are heartened by this choice and the prospect for change that it represents.

Sincerely,

Tom Mieczkowski, Ph.D.
Professor and Chair

DEPARTMENT OF CRIMINOLOGY • COLLEGE OF ARTS AND SCIENCES
University of South Florida • 4202 E. Fowler Avenue / SOC107 • Tampa, Florida 33620-8100
(813) 974-2815 • FAX (813) 974-2803 • http://www.cas.usf.edu/criminology

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Tucson, Arizona 85701-1917

March 30, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Chairman Leahy:

I am writing to offer my support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). As a law enforcement executive, I am proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this very important position.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. Law enforcement agencies across the nation have always looked to you for leadership. Once again, we are asking for your assistance by moving the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Please feel free to contact my office should you need additional information in support of this very important nomination.

Sincerely,

Kermit Miller
Chief of Police

KM:ck

POLICE CHARLOTTE-MECKLENBURG POLICE DEPARTMENT

March 30, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

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Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Rodney D. Monroe
Chief of Police

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DISTRICT ATTORNEY
OF THE
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ROBERT M. MORGENTHAU
DISTRICT ATTORNEY

March 27, 2009

Honorable Patrick J. Leahy, Chairman
Honorable Arlen Specter, Ranking Member
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

I write to support the nomination by the President of Ronald Weich, Esq., as the Assistant Attorney General for Legislative Affairs in the Department of Justice. Based on his work in this Office and his record of federal service in the years since then, I am confident that Mr. Weich would prove to be a conscientious and effective Assistant Attorney General.

Mr. Weich served as an Assistant District Attorney in this Office from 1983 to 1987, and I am fully familiar with his work during that period. I have followed his legal career since he entered federal service in late 1987, including the years he served as a counsel to your Committee. In both New York and Washington, Mr. Weich has maintained a reputation for probity, diligence and sound judgment.

In the District Attorney's Office Mr. Weich was assigned to the Trial Bureau, where he led the investigation and prosecution of hundreds of criminal cases, ranging from misdemeanors to violent felonies. Under our system of vertical prosecution, Mr. Weich was responsible for each case from start to finish, including arraignment, presentation of the case to the grand jury, motion practice, plea bargaining and trial. Records from this Office indicate that Mr. Weich tried approximately 20 cases to verdict in his years as a prosecutor. He was known as a careful and fair-minded advocate who always sought the just result. He was admired by his colleagues, his adversaries and the judges in our courts for his skill and temperament.

After leaving my Office, Mr. Weich remained in government service for many years. He served as Special Counsel to the United States Sentencing Commission just as the federal guidelines were taking effect, and played a key role in the development of sentencing law in those years. He then worked in the U.S. Senate on a range of issues related to law enforcement. Members of my staff and I consulted with Mr. Weich regularly, including on occasions when I testified in Congress.

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It appears to me that Mr. Weich has precisely the right credentials to lead the Legislative Affairs Office at the Justice Department. As a former prosecutor, he understands the real world of criminal practice and the needs of state and local law enforcement. As a long-time Senate staff member, he understands the needs of Congress and the complex relationship between the branches of government. As a former United States Attorney myself, I would be pleased to see the Justice Department represented in Congress by someone with the experience and abilities that Mr. Weich possesses.

For these reasons, I am happy to recommend Mr. Weich to the Judiciary Committee. Please feel free to contact me if you have any questions.

Sincerely,

Robert M. Morgenthau

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http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate Committee on the Judiciary

< Return To Hearing

Statement of

The Honorable Patty Murray

United States Senator
Washington
April 1, 2009

Murray Introduces Seattle Chief Kerlikowske at Senate Confirmation Hearing

(Washington, D.C.) – U.S Senator Patty Murray (D-WA) today introduced Seattle Police Chief R. Gil Kerlikowske at his confirmation hearing to be Director of the White House Office of National Drug Control Policy (ONDCP).

Murray delivered the following remarks at Kerlikowske's Senate Judiciary Committee hearing:

"Thank you, Mr. Chairman, Ranking Member Specter, and Members of the Committee.

"Along with my colleague Senator Cantwell and members of our House delegation, it's my pleasure to introduce Gil Kerlikowske, the Chief of the Seattle Police Department, at this important hearing.

"I want to welcome Chief Kerlikowske and his wife, Anna Laszlo [Laz-Lo], to this hearing and congratulate his entire family on the honor of being nominated as the next Director of the Office of Drug Control Policy.

"I'd also like to thank Chief Kerlikowske and his family for accepting this responsibility at this important time in our nation's history.

The Challenges

"Mr. Chairman, we know the next ONDCP Director will face a number of key challenges.

"ONDCP will play a leading role in addressing the drug-related violence in Mexico and along the southwest border. If we don't take the right steps to tackle this problem now, we will find these drugs and this violence in towns and neighborhoods thousands of miles from the Mexican border.

"We also know from history, that as the economy falls, crime rises.

"Crime is growing at the same time that law enforcement agencies across the country face painful cutbacks and greater strains on personnel and resources. Law enforcement from all different levels must work smarter, forge new relationships and leverage the resources they have.

Personal

"Mr. Chairman, Chief Kerlikowske is the right man to address these challenges.

"He brings a fresh, new perspective to the job as the nation's drug czar. He is a cop's cop, and his perspective was shaped patrolling the streets in Florida, New York and Washington state.

"Along the way he has helped thousands of people touched by violence and drugs. He, and the people he has led, have been on the front lines of our nation's war against illicit narcotics and in keeping our communities safe.

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"He'll bring this hands-on perspective to ONDCP.

A New Perspective at ONDCP – State and Local

"Chief Kerlikowske understands the importance of partnerships between ONDCP and our state and local law enforcement because he has been on the local level.

"As the head of the Major Cities Chiefs organization, which represents the 63 largest police departments in the US, he sees the common problems facing cities across the country.

"I've seen his work first-hand as the Seattle Police Chief. This past December, the Seattle Police Department, in cooperation with county, state and federal law enforcement agencies to bust a drug ring that stretched from Mexico to Idaho to Seattle.

"And Chief Kerlikowske worked cooperatively to create a regional response to gang violence in Seattle and King County.

"He built a coalition with the King County Sheriff's Office, other King County police chiefs, the Washington Department of Corrections, the ATF and other community leaders to tackle persistent gang violence in our neighborhoods.

"These multi-agency, federal-local partnerships require cooperation and compromise. They require a leader with Chief Kerlikowske's experience to bring them together.

"Local police chiefs and sheriffs have told me that they are "Sorry to see him go" but that the nation is gaining a true innovator in Gil Kerlikowske.

"I know he will continue to work on these relationships with state and local law enforcement across the country – and that this approach will make all of America's communities safer.

A New Perspective – Fight Crime, Invest in Kids

"Mr. Chairman, Chief Kerlikowske also understands that the drug war will not be won on the streets.

"For the past 9 years, he has been the National Board Chairman for the group, Fight Crime: Invest in Kids.

"As this committee knows, this is a group of police chiefs, sheriffs, prosecutors, and other law enforcement leaders who could easily be fighting only for more cops, more jails and longer prison sentences.

"But instead, under the guidance of Chief Kerlikowske, they are working on prevention. They are fighting for early childhood intervention funding, after school programs, and efforts to prevent child abuse as an effective way to fight crime.

"Chief Kerlikowske knows that the best way to end the use of drugs and spread of crime is to prevent it. He will bring this common-sense thinking to ONDCP.

"Chief Kerlikowske has served the people of our state well, and will serve the people of our nation well. And I'm proud to support his confirmation.

"Thank you."

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NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS
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West Huddleston

March 30, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

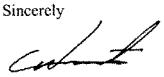
On behalf of the over 22,000 judges, prosecutors, public defenders, probation and law enforcement officers, court administrators, substance abuse and mental health treatment professionals, and community leaders the National Association of Drug Court Professionals represents, it gives me great pride to strongly support the nomination of R. Gil Kerlikowske for the position of Director of the White House Office of National Drug Control Policy.

Throughout his career in law enforcement, Gil Kerlikowske has pioneered innovative approaches to community policing that have greatly enhanced the communities in which he has served. In doing so, Chief Kerlikowske understands the critical role treatment plays in ending the cycle of substance abuse and crime.

While serving as Police Commissioner in Buffalo and Chief of Police in Seattle, Gil Kerlikowske was a proponent of diversion programs, such as Drug Court, that treat substance abusing offenders. In Seattle, he developed a strong relationship with Drug and other Problem Solving Courts and made sure his officers did the same. He has spoken at a Drug Court graduation and has seen first hand the transformation Drug Courts bring about in individuals, their families and their communities. Gil Kerlikowske truly understands that treatment must be part of the solution to the drug epidemic in this country.

The nomination of Gil Kerlikowske presents an opportunity for the White House Office of National Drug Control Policy to stem the tide of substance abuse and crime by implementing a policy that incorporates enforcement, prevention and treatment. Chief Kerlikowske is the right choice to develop and execute this policy and his expedient confirmation is soundly endorsed by the National Association of Drug Court Professionals. Thank you for your continued leadership and for considering this letter of support.

Sincerely



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Interim Executive Director
Robert I.L. Morrison

March 31, 2009

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the National Association of State Alcohol and Drug Abuse Directors (NASADAD), thank you for your leadership as Chairman of the Senate Judiciary Committee on issues pertaining to addiction prevention, treatment and recovery. We are very appreciative of your work and continue to stand ready to partner with you and others to make further progress.

I am writing today to express support of Chief R. Gil Kerlikowske as the next Director of the Office of National Drug Control Policy (ONDCP). We are pleased the Committee has chosen to consider this important nomination and recommend action that will lead to a quick confirmation process.

As Chief Kerlikowske noted during his White House appointment announcement, the "...success of our efforts to reduce the flow of drugs is largely dependent on our ability to reduce demand for them... and that starts with our youth." We could not agree more. Chief Kerlikowske recognizes that effective substance abuse prevention represents a core component of any successful national drug control strategy. In particular, Chief Kerlikowske is known for his commitment to working closely with a cross section of State and local law enforcement officials, parents, educators and others to make our communities and neighborhoods safer and healthier places to live. We appreciate his dedication and stand ready to partner with the Chief to expand and improve our prevention services.

During his 36 year career, Chief Kerlikowske has promoted the benefits of helping more Americans find the path to treatment and recovery. The Chief displayed this focus whether he was serving as Chief of Police, Deputy Director of the Department of Justice (DOJ) COPS program, or President of the Major City Chiefs Association. As the managers of State prevention, treatment and recovery systems across the country, we appreciate Chief Kerlikowske's frontline experience and pledge to serve as an active partner in expanding and improving our treatment and recovery services.

1025 Connecticut Avenue NW, Suite 605 • Washington, DC 20036 • (202) 293-0090 • Fax: (202) 293-1250 • Email: rmorrison@nasadad.org

In sum, we are pleased with Chief Kerlikowske's commitment to bring a balanced and thoughtful approach to our nation's drug control policy. In addition, we are impressed with Chief Kerlikowske's career and commitment to our communities and neighborhoods. As a result, we recommend quick action in order to confirm Chief Kerlikowske as the next Director of ONDCP.

Again, thank you for your leadership. Should you or your staff have any questions ore require additional information, please do not hesitate to contact me at (202) 293-0090 x106.

Sincerely,

Robert I.L. Morrison
Interim Executive Director

NATIONAL BLACK POLICE ASSOCIATION, INC.

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26 March 2009

The Honorable Senator Patrick Leahy, Chair Senate Committee on the Judiciary
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Re: Endorsement of Chief of Police R. Gil Kerlikowske

Dear Senator Leahy:

On behalf of the National Black Police Association, I am writing to express our support of Chief Kerlikowske for the position of Director of the Office of National Drug Control Policy.

Chief R. Gil Kerlikowske service to the community and his influence in policing started long before his arrival to the Seattle Police Department. As a student at Fort Meyer's High School a number of students regarded him as a focused, studious and got a long with everyone. One person stated that he was then considered a "very honest man". He definitely was regarded as a person you could trust. Wherever Chief Kerlikowske went that same thought about his character was second to none. Following graduation from high school it was clear that the law enforcement field was his destiny. In the United States Army he was recognized for his work by being bestowed the honor "outstanding military police officer." His years of service with the St. Petersburg Police Department help him to define his role in policing and his commitment to the communities he served.

Policing has changed dramatically over the past 20 years. It became clear after meeting Chief Kerlikowske that many of those changes rooted themselves in the leadership of individuals like him. As the Chief of Police Fort Pierce and Port St. Lucie Florida, his departments received the Attorney General Crime Prevention Award. As Commissioner for the Buffalo, New York, he was the first outsider appointed in thirty years. Chief Kerlikowske was know for his creative approaches to policing and his ability to build bridges with entities that often didn't talk to each other. He was known for his fairness and openness. Most of all he

worked hard. As the Deputy Director of the U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) Program he provided local grants to police departments all across the United States. The position with COPS fit many of his basic principals he held true throughout his career. His expectations about policing are that it should be fair, comprehensive, and attentive to the concerns of communities of color, supportive of direct and positive communication. He wanted officers to be safe and have the tools to address serious concerns many communities in crisis were facing. This was never more prevalent than when he came to Seattle, Washington in August of 2000.

While in Seattle Chief Kerlikowske brought every tool he had acquired over his career in policing to resurrect the tarnished image of the Seattle Police Department. It would be impossible to name all of the things he did to turn things around. When he arrived in Seattle it was clear he wanted Seattle residents to know things would be different. He modeled his actions with the expectations that officers would do the same. He wanted policies and directives with in the department that showed prevention and intervention were just as important as enforcement. He wanted officer to have safe working conditions and exceptional equipment and tools to do the job. Chief Kerlikowske focus was on the big picture, a picture that included everyone.

As Chief of the Seattle Police Department he worked with local leaders to establish the Seattle Police Foundation. The Foundation has raised over a million dollars in funds to get the department additional equipment and resources. He established a less lethal option program to provide officers with alternatives to lethal force when the situation allows. Chief Kerlikowske's hiring and promoting of minority officers has not gone without notice. He has promoted officers of color and placed them in recognizable and strategic positions within the department, everyone from the ranks of Sergeant to Deputy Chief. Chief Kerlikowske participated in several settings that allowed him to meet frequently with diverse community members and often those individuals that felt disenfranchised from the police department. Relying on his eleven Demographic Advisor Councils he was able to address issues quickly

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and directly. Chief Kerlikowske believed the Seattle Police Department should be transparent. As he engaged community members, officers, grass root organizer, outside consultants and the business community he took the department to a higher standard. He took great pride in getting the Seattle Police Department accredited. In 2006 he received the "James V. Cotter Award" from the Communications_Assistance_for Law_Enforcement_Act (CALEA) committee, marking the first time the Seattle Police Department has ever been nationally accredited.

Through the years Chief Kerlikowske has spearheaded initiatives and encouraged problem solving thinking to address crime issues. He has never been shy about taking risks on ways to better address community concerns and crime. Chief Kerlikowske has been outspoken about alternatives to minority confinement and the use of social services to better address problem areas. He supported programs like Re-Investing in Youth, GOTS (Get Off the Streets) program that provided treatment for offenders, the restoration of voting rights for convicted felons under specific conditions and working with King County Juvenile Detention to reduce the disproportionate minority confinement. His active over site of the department and his participation in the community has resulted in City of Seattle being one of the safest major cites in the United States.

The National Black Police Association strongly supports the recommendation of Gil Kerlikowske for this position knowing that his leadership and expertise will well serve the America people with his sound principles of public safety and public health and demonstrates to criminal organizations threatening to undermine stability that we take seriously our responsibility to reduce drug use in the United States.

Sincerely,

Ronald E. Hampton

Ronald E. Hampton
Executive Director

Cc: John F. Hayes, Jr., National Chairman

THE NATIONAL CENTER FOR
Victims of Crime

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March 11, 2009

Senator Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20010

Senator Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20010

Re: Nomination of Gil Kerlikowske to be the Director of the Office of National Drug Control Policy

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my strong support for the nomination of Gil Kerlikowske to be the Director of the Office of National Drug Control Policy (the "Drug Czar"). I have known Mr. Kerlikowske since 1998, when I worked closely with him during my time as a deputy associate attorney general and acting director of the Office of Community Oriented Policing Services (COPS). Mr. Kerlikowske impressed me as a strong manager and a smart, ethical, devoted public servant.

I have kept in touch with Mr. Kerlikowske over the years and continue to be impressed with his abilities. He is a leader in policing circles and a strong advocate for improving the effectiveness of law enforcement. For example, he and I made a joint presentation to the Major City Chiefs Association on new research and innovations in community policing. I can assure you he is highly regarded by his peers.

Furthermore, Mr. Kerlikowske is committed to crime prevention, as evidenced by his work with Fight Crime: Invest in Kids. He will bring that important perspective to the position of Drug Czar.

As the head of a national victim-serving organization, I understand the connection between illegal drugs and crime. The National Center for Victims of Crime believes that our nation needs a Drug Czar who is a skilled manager, is open to new research, and has a strong reputation with the law enforcement community. Mr. Kerlikowske embodies those qualities, and we urge his swift confirmation.

Sincerely,

Mary Lou Leary

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† denotes Executive Committee

March 30, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

Thank you for this opportunity to express our support for Gil Kerlikowske to become the next Director of the Office of National Drug Control Policy (ONDCP). Members of the National Criminal Justice Association (NCJA) include the state, territorial and tribal chief executive officers of criminal justice agencies charged with managing federal, state, and tribal justice assistance resources as well as practitioners from all components of the criminal and juvenile justice systems. As an association and as the representatives of their individual jurisdictions, our members work closely with many federal agencies including the Department of Justice and ONDCP on issues related to substance abuse prevention, treatment, and control.

Chief Kerlikowske, as the chief of police for Seattle, Washington, and former chief of police in Buffalo, New York, has broad experience in developing policies and strategies to address substance abuse and its consequences. His experience as an official in the COPS Office and as a leader of the Major City Chiefs Association has given him a national perspective on policing and the challenges facing the public safety community. He understands the environment we in state, tribal, and local governments face as we seek to improve the functioning and efficiency of the nation's justice system.

Throughout his career, Chief Kerlikowske has shown a deep commitment to, and passion for, using the criminal justice system to protect Americans and bring positive change to communities nationwide. In this environment of tight budgets and a worsening economy, it is critical that public officials use all available resources of the federal government to keep our streets safe, protect our kids, and respond to the needs of crime victims. Chief Kerlikowske's experience, record of public service, and prior tenure at the COPS Office demonstrates that he has the judgment, experience, temperament, depth of knowledge, and commitment to best practices to lead the Office of National Drug Control Policy.

We strongly urge his speedy confirmation.

Sincerely,

Cabell C. Cropper
Executive Director

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27 March 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Specter,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for Ronald H. Weich to be the next Assistant Attorney General for the Office of Legislative Affairs at the U.S. Department of Justice.

Throughout his long and sterling career as a public safety policymaker, he has been a friend to the FOP, an advocate for law enforcement, and a passionate champion for justice. From the start of his legal career as an Assistant District Attorney in New York City to his current post as Chief Counsel to the Senate Majority Leader, Ron has the policy knowledge and experience to lead the Office of Legislative Affairs at a Department in sore need of leadership.

After leaving New York City for Washington, Ron served as Special Counsel to the United States Sentencing Commission, and worked with the law enforcement community to strengthen the Federal guidelines system and defended the constitutionality of the Sentencing Reform Act. He left the U.S. Sentencing Commission for Capitol Hill, and the FOP worked extensively and successfully with Ron to develop and enact the Armed Career Criminal Act while he was a member of Senator Arlen Specter's staff on the Committee on the Judiciary. We also worked with him while he was a member of Senator Edward M. Kennedy's Judiciary staff on anti-gang legislation, and on law enforcement labor issues when Senator Kennedy asked him to move over to work for him on the Senate Committee on Health, Education, Labor and Pensions. We continued our relationship with him when he left private practice and returned to the Hill to serve as the Senate Majority Leader's Chief Counsel.

I believe that the President has made a fine choice in Ronald H. Weich to be the next Assistant Attorney General for Legislative Affairs, and I urge you and your Committee to expeditiously confirm his nomination. If I can be of any further assistance in this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

Chuck Canterbury
National President

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Illinois Drug Enforcement Officers' Assn.
Indiana Drug Enforcement Assn., Inc.
Kansas Narcotic Officers' Assn.
Louisiana Narcotic Officers' Assn.
Minnesota State Assn of Narcotic Investigators
Mississippi Narcotic Officer's Assn.
Nevada Narcotic Officer's Assn.
New England Narcotic Enforcement Officers' Assn.
New Jersey Narcotic Enforcement Officers' Assn.
County Narcotic Commanders Assn. of New Jersey
New York Narcotic Officers' Assn.
North Carolina Narcotic Enforcement Officers' Assn.
Narcotic Assn. of Regional Coordinating Officers of Ohio
Assn. of Oklahoma Narcotic Enforcers
Oregon Narcotics Enforcement Assn.
Pennsylvania Narcotic Officers' Assn.
Puerto Rico Narcotic Officers' Assn. (TERR)
R.I.S.S. Projects
Tennessee Narcotic Officers' Assn.
Texas Narcotic Officers' Assn.
Utah Narcotic Officers' Assn.
Washington State Narcotics Investigators' Assn.
Wisconsin Narcotic

March 30, 2009

The Honorable Patrick Leahy, Chairman
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing on behalf of the forty-four state narcotic officer's associations and the more than 69,000 law enforcement officers represented by the National Narcotic Officers' Associations Coalition (NNOAC), to offer our strong support for the appointment and confirmation of Chief R. Gil Kerlikowske as Director of the Office of National Drug Control Policy (ONDCP).

America's narcotic officers and every other person or organization involved in drug enforcement, treatment and prevention, have come to rely upon the services, support and leadership of the Office of National Drug Control Policy (ONDCP). Having a well-qualified person leading this office is important to the safety and well being of every American. We believe that Chief Kerlikowske's many years of law enforcement service, his life-long commitment to the safety and welfare of our fellow citizens and his experience in addressing drug prevention, treatment and enforcement issues make him an ideal candidate to fill this critically important position.

Through his 36 year law enforcement career – most notably, as Seattle's Chief of Police for the past nine years – and through his work as President of the Major Cities Chiefs Association (MCCA), Chief Kerlikowske has worked on all sides of the drug problem and has provided steady leadership on a range of issues, including prescription drug abuse, enhancing drug courts, and tackling methamphetamine production. Additionally, by serving as Deputy Director for the Community Oriented Policing Services (COPS) office within the U.S. Department of Justice (DOJ), Chief Kerlikowske understands the importance of working closely with federal, state and local law enforcement and is experienced in administering federal programs.

The NNOAC is very concerned with the growing movement to legalize or decriminalize illegal drugs including marijuana and the efforts by some groups to advocate in favor of a strategy of harm-reduction rather than our nation's proven abstinence based drug prevention message. During the past twelve years, we have witnessed attacks against our nation's comprehensive drug strategy of prevention, treatment and enforcement by those who would support changes to our drug laws and policies. These reckless proposals to change successful drug policies are being made despite dramatic reductions in meth labs and teen drug use and without regard for the impact on the health and well being of our children or communities.

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As you consider Chief Kerlikowske's nomination, the NNOAC would ask the Committee on the Judiciary to use this as an opportunity to work with Chief Kerlikowske to re-focus our government's attention on the need for a clear and consistent national drug control policy that strongly opposes drug legalization or decriminalization and that reinforces the threat that illicit drugs pose to every community in America.

Chief Kerlikowske is a dedicated and well qualified professional and we can think of no one more qualified than him for appointment as Director of the Office of National Drug Control Policy, Executive Office of the President. The NNOAC would urge you to confirm Chief Kerlikowske's nomination as Director of ONDCP as soon as possible.

Please feel free to contact me at [redacted] if you require further information as you work through the nomination process.

Thank you again for taking time to review our position.

Sincerely,

Ronald E. Brooks, President
NNOAC

CC: Senate Committee on the Judiciary

619921.130

INNOCENCE PROJECT

Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.
Directors

Maddy deLone, Esq.
Executive Director

Innocence Project
100 Fifth Avenue, 3rd Floor
New York, NY 10011

Tel 212.364.5340
Fax 212.364.5341
www.innocenceproject.org

March 23, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy,

We are the co-founders and co-directors of the Innocence Project, and are writing to recommend Gil Kerlikowske as Director of the Office of National Drug Control Policy.

Our relationship with Chief Kerlikowske developed through our work with the Innocence Project during his tenure as Chief of the Seattle Police Department in Washington. During that time we have seen him express and demonstrate significant regard for the reforms that can prevent wrongful convictions, and take affirmative steps to address and prevent police misconduct. We have also noticed and respect the policies that he implemented to help ensure that his officers would be sensitive to the disparate needs of the various ethnic and racial communities throughout the city of Seattle, thus enhancing the value of his department's role therein.

The country would be well served by placing a person of Gil Kerlikowske's character and regard for effective policies to the position of Director of the Office of National Drug Control Policy.

We hope that you, the Committee, and the Senate will see fit to confirm his nomination.

Sincerely,

Peter Neufeld
Co-Director

Barry Scheck
Co-Director

cc: Ranking Member Arlen Specter
Benjamin N. Cardozo School of Law, Yeshiva University

Gregory J. Nickels
Mayor of Seattle

March 23, 2009

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

It gives me great pleasure to offer my full and unequivocal endorsement for the nomination of Chief R. Gil Kerlikowske as the Director for the Office of National Drug Control Policy (ONDCP). Gil has served as the Chief of Police in the City of Seattle for nearly nine years, and this nomination is a tremendous recognition of his accomplishments throughout his law enforcement career.

Shortly after I became mayor, Gil and I had a long conversation about our approach to public safety. We formed a close working relationship, and Gil has led with distinction. He oversees a department that is one of the most transparent in the nation, setting a high standard for professionalism and accountability. Crime rates have dropped to historic lows during his tenure, and we continue to find innovative was to reach our young people and prevent violence.

It is a privilege to support Gil. Our nation would be well-served by Gil's appointment as Director of ONDCP. I look forward to assisting him in any way I can. Thank you for your consideration.

Sincerely,

GREG NICKELS
Mayor of Seattle

Seattle City Hall, 7th Floor, 600 Fourth Avenue, P.O. Box 94749, Seattle, WA 98124-4749
Tel (206) 684-4000 • TDD (206) 615-0476 • Fax (206) 684-5360 • www.seattle.gov/mayor
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Miami-Dade Police Department

Director's Office



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March 30, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I am the Metropolitan Sheriff for Miami-Dade County, Florida and I take great pleasure and pride in strongly recommending the appointment of Chief Gil Kerlikowski to serve as the next Director of the Office of National Drug Control Policy (ONDCP). Chief Kerlikowski currently serves as President of the Major Cities Chiefs Association (MCC). Prior to that appointment, he served with distinction as Commissioner of Police in Buffalo, New York and Chief of Police in Seattle, Washington.

Chief Kerlikowski is a proven high performance manager and a seasoned administrator who is able to make reasoned, well thought out decisions that greatly benefit the MCC organization. Moreover, he fosters effective working relationships and has earned the respect of his staff and senior management by displaying outstanding professionalism and assistance to the various member departments and community as a whole. Therefore, I have no reservations that he is capable of managing the ONDCP and I urge you to move his nomination quickly through the confirmation process.

Should you have other concerns regarding this recommendation, please contact me at [redacted]. Thank you for your continued support of law enforcement.

Sincerely,

Robert Parker, Director
Miami-Dade Police Department

9105 NW 25 Street • Miami, Florida • 33172-1500
Telephone (305) 471-2100 • Fax (305) 471-2163 • Website http://www.mdpd.com

TEACHING KIDS TO RESIST DRUGS & VIOLENCE

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March 19, 2009

The Honorable Patrick Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy & Ranking Member Specter:

I have closely followed Chief Gil Kerlikowske's nomination to serve as the Director of the Office of National Drug Control Policy. As the Senate considers Chief Kerlikowske's nomination, I would ask that you take note of the important role that he has played in supporting community policing activities, including drug prevention efforts, over the last thirty-five years. With this in mind, on behalf of D.A.R.E. America and the thousands of DARE officers throughout the United States, I would like to wholeheartedly support Chief Kerlikowske's nomination.

Gil Kerlikowske's experience as a police officer over three decades will provide a much needed front line perspective on the need for prevention, enforcement and treatment efforts to effectively address the epidemic of drug abuse. Since his time as a police chief in Florida, where he guided two cities to the Attorney General's Crime Prevention Award, Gil has been at the forefront of understanding the critical role that the community - with parents, teachers, and law enforcement officers working together - can have on crime and drug prevention. He firmly believes that the long-term answer to drug abuse starts with our youth and championed prevention efforts, including D.A.R.E., during his tenure as Commissioner of Police in Buffalo.

During his time with the Office of Community Oriented Policing Services (COPS) and more recently as the President of the Major Cities Police Chiefs, Chief Kerlikowske always made an effort to work closely with drug prevention and education organizations like D.A.R.E. This dedication to a balanced approach on drug abuse is a perspective that will serve him well at the Office of National Drug Control Policy.

Chief Kerlikowske's dedication and knowledge have given him the support of law enforcement across the nation. Likewise, his sincerity and integrity have earned him the respect and trust of the criminal justice community. Taken together, I cannot imagine an individual better suited for the challenges of re-focusing the nation's attention on the critical issue of youth drug abuse. Therefore, as the head of D.A.R.E. America and on behalf of the officers, students and communities we serve, I would hope that you will give Chief Gil Kerlikowske positive consideration for Director of the Office of National Drug Control Policy.

Sincerely,

Charlie J. Parsons
President & CEO

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CITY OF ATLANTA

Shirley Franklin
Mayor

675 Ponce De Leon Ave. NE
Atlanta, Georgia 30308
(404) 817-6900

Atlanta Police Department
Richard J. Pennington
Chief of Police

March 31, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Richard J. Pennington
Chief of Police

Chester J. Culver
Governor
Patty Judge
Lt. Governor

Eugene T. Meyer
Commissioner

March 27, 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Specter:

I am writing about the nomination of Seattle, Washington Police Chief Gil Kerlikowske to become the next Director of the Office of National Drug Control Policy (ONDCP). On March 26, 2009 in Washington, DC, I spoke in person with The Honorable Charles E. Grassley, U.S. Senator from Iowa, about this nomination. I have also sent a copy of this letter to Senator Grassley, a member of the Committee.

By way of introduction, I have been a local and state law enforcement officer since 1978. I am now the Director of the State of Iowa Intelligence Fusion Center at the Iowa Department of Public Safety. For more than twenty-five years, I have specialized in criminal intelligence and information sharing, and I currently serve as the chairman or as a member of numerous national boards, councils, and other bodies engaged in this important work. These groups work closely with many federal agencies and their components, including the U.S. Department of Justice, the U.S. Department of Homeland Security, and the ONDCP and its High Intensity Drug Trafficking Area (HIDTA) Program.

As you know, the principal purpose of ONDCP is to establish policies, priorities, and objectives for the nation's drug control program. Among other things, the Director of ONDCP is charged with producing the National Drug Control Strategy, which directs our nation's anti-drug efforts and establishes a program, a budget, and guidelines for cooperation among federal, state, and local entities. Effective criminal intelligence and information sharing capabilities are critical to producing this Strategy, and to successfully achieving ONDCP's purpose and specified goals.

In recent years, Chief Kerlikowske and I have served together on councils and at events which produce policy recommendations and publications covering a wide range of criminal intelligence and information sharing issues. Even as a busy police chief in a major U.S. city, he has always been accessible and fully committed to this work, and he has made the time to actively contribute to it in meaningful ways. His availability, participation, and steadfast support demonstrate the value and importance that Chief Kerlikowske places on criminal intelligence and information sharing – work that is central to the development of the National Drug Control Strategy, and vital to achieving ONDCP's goals to reduce illicit drug use, manufacturing, and trafficking, and drug-related crime and violence. I am also confident that his history as a collaborative, innovative leader and his extensive experience as a local police executive will help him coordinate the anti-drug efforts of executive branch agencies, while ensuring that such efforts sustain and complement state and local anti-drug activities.

Each day hundreds of thousands of state, local, and tribal law enforcement officers work in partnership with federal agents on the front lines in our fight against the illicit drug trade. Effective coordination and the sharing of intelligence and investigative information are crucial in the fight against violent drug trafficking organizations. Chief Kerlikowske is committed to these essential activities, which will serve all of us well during his tenure as ONDCP Director.

Sincerely,

Russell M. Porter

RUSSELL M. PORTER, Director
Intelligence Fusion Center

cc: Senator Charles E. Grassley

STATE OF IOWA INTELLIGENCE FUSION CENTER • 215 EAST 7TH STREET • DES MOINES, IOWA 50319-0049 • 515-725-6330



POLICE EXECUTIVE
RESEARCH FORUM

Chuck Wexler
Executive Director

March 17, 2009

The Honorable Patrick J. Leahy, Chairman
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, D.C. 20510-6275

Dear Senator Leahy,

On behalf of the Police Executive Research Forum (PERF), I am writing to wholeheartedly endorse the nomination of Seattle Chief of Police Gil Kerlikowske to be Director of the Office of National Drug Control Policy (ONDCP).

PERF is a Washington, D.C.-based professional association of police chiefs and other leaders of local and state police departments. PERF also serves as a research and consulting firm specializing in helping police agencies to improve their policies and operations. PERF is governed by a board of directors of leading police chiefs.

PERF has had a long and productive relationship with Chief Kerlikowske. In 1990, when he was chief of police in Fort Pierce, Fla., Gil was the recipient of PERF's Gary P. Hayes Award, which is given to up-and-coming police executives who are recognized for their leadership abilities and achievements on the critical issues affecting law enforcement agencies. In 1996, PERF's member chiefs across the nation elected Chief Kerlikowske for a two-year term as President of PERF. And in 2006, Gil received PERF's highest honor, the Leadership Award, for his outstanding contributions to the field in developing community policing and other innovations.

Even though Chief Kerlikowske has already had a brilliant career, PERF is pleased to see that President Obama recognizes that some of Gil's greatest contributions may be yet to come, as he takes on the task of coordinating the nation's entire campaign against illegal drug abuse. As a seasoned police chief, Chief Kerlikowske has no illusions about the devastating impact that illegal drugs have had on American cities. He knows firsthand that drug markets drive the violent crime in many cities, and he will bring a street-level view to the formulation of national drug policies.

At the same time, throughout his career Gil has demonstrated a broad understanding that enforcement is only one part of a comprehensive approach, and that drug abuse prevention, treatment, and education initiatives bring long-term reductions in drug abuse and drug-related crime.

Thus, Chief Kerlikowske is the right person at the right time to serve as President Obama's drug czar. He will bring the balanced view to drug abuse policy that was envisioned when Congress created the Office of National Drug Control Policy.

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CITY OF PHILADELPHIA

POLICE DEPARTMENT
HEADQUARTERS, FRANKLIN SQUARE
PHILADELPHIA, PA 19106

CHARLES H. RAMSEY
Commissioner

March 27, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Messrs. Leahy and Specter:

I am writing in support of Mr. Gil Kerlikowske as President Obama's nominee for the Director of the Office of National Drug Control Policy. I have known Gil for many years and most recently as the Chair of Major City Chiefs. He understand the demands and needs of local law enforcement as well as the benefit of preventive programs.

I am confident that as the Director of the Office of National Drug Control Policy, he will bring his knowledge and experience to advance our efforts in controlling illegal drugs in this country. Gil has worked to combat the affects of illegal drugs in our urban centers, on families, and individuals' lives.

The recent events on our southern border highlight the importance of a coordinated national drug control policy and its relationship with homeland security and neighborhood safety. I know that Mr. Gil Kerlikowske will perform the duties of this position with commitment and skill. I ask that you move his nomination in front of the Committee on the Judiciary as soon as feasible.

Thank you for considering this request. As always, please call on me if I can be of any assistance.

Sincerely,

Charles H. Ramsey
Police Commissioner
Philadelphia Police Department

http://judiciary.authoring.senate.gov/hearings/testimony.cfm

United States Senate Committee on the Judiciary

< Return To Hearing

Testimony of

The Honorable Harry Reid

U.S. Senator
Nevada
April 1, 2009

U.S. Senate Majority Leader Harry Reid
Remarks on Nomination of Ron Weich
Wednesday, April 1, 2009

As the members of the committee know, United States Senators have the opportunity over the course of our careers to work with a tremendous number of staff members.
We are grateful for every one of them. But among this dedicated group of men and women, a few stand out -- with intellect, dedication and work ethic that make them indispensable.
On my staff, Ron Weich stands out. As part of my senior staff since 2005, he has been by my side for every critical legal question we have faced.
I recommend Ron for the position of Assistant Attorney General for Legislative Affairs with some measure of sadness to lose him in my office, but with absolute confidence that he will serve Attorney General Holder and the American people with the utmost skill and dedication.
Like his mother, who was one of the first women to graduate from Brooklyn Law School, Ron began his legal career in the courtroom.
After attending Columbia University and Yale Law School, Ron tried cases involving violent crimes as an Assistant District Attorney in Manhattan.
There is no question that part of what makes Ron so effective at his job is the "real-world" experience he learned in those courtrooms. This experience gives him the perspective to understand how to make legal policy that will actually work in practice.
While many of his colleagues were entering the private sector, Ron has spent almost his entire career in public service. We become a better country when men and women like Ron make the choice to make a difference.
After his tenure in the Manhattan District Attorney's office, Ron served at the U.S. Sentencing Commission and for Senator Specter and Kennedy. Following a stint at a law firm, Ron returned to government service to work as my senior and then chief counsel after I became Democratic leader following the 2004 elections.
Ron's work for Senators Kennedy and Specter are indicative of a character trait that will serve him well as Assistant Attorney General for Legislative Affairs: he has built a foundation of trust and friendship among key Members of Congress and staff on both sides of the aisle.
For example – Ron was a voice of reason during debate over the "nuclear option" and worked closely with members of the "Gang of 14" as they negotiated a solution to that potential legislative crisis. Ron also took a lead role in the landmark ethics and lobbying reform legislation we passed last year, working to pass a bill that would be both meaningful and practical.
In his new role, Ron will be responsive to requests from both sides. In the best tradition of our Department of Justice, he will serve in a manner blind to partisanship, blind to politics, with a clear eye only toward ensuring equality in our laws.
Ron's parents, Robert and Cecile, his wife, Julie, and their two daughters, Sophie and Sara, are all here today. I am grateful that they have shared Ron with us so generously through the years.
In his new role, Ron will be an integral role of rebuilding the Department of Justice to be once again a place where all are equal under the law, all are protected by the law, and no one is above the law.
I am confident that he will serve President Obama, Attorney General Holder, and most importantly, the American people, exceptionally well.

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March 27, 2009

The Honorable Patrick Leahy
The Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Republican Member Specter:

As individuals who formerly worked for Republican members of Congress, we write in support of the nomination of Ronald Weich to be the Assistant Attorney General for Legislative Affairs.

Each of us worked with Ron during our time as a Republican staff member. While it should be obvious we did not always agree with every policy position that Ron advanced on behalf of the Senators for whom he worked, we could always rely on the fact that Ron is honorable and trustworthy. He dealt with us fairly and cordially. He respected opposing views and sought to find common ground with adversaries. We can attest to the fact that he is highly regarded among staffers – both Democrats and Republicans – for his knowledge of the Senate rules and his constructive approach to difficult legal issues.

We believe that Ron has the solid credentials to head the Legislative Affairs Office at the Justice Department. He currently serves as Chief Counsel to Majority Leader Reid, and previously worked for Senator Kennedy on both the Labor and Human Resources and Judiciary Committees. As you well know, Senator Specter, he also worked for you on the Judiciary Committee. These experiences have given Ron a keen understanding of the legislative process. He appreciates the importance of oversight and the prerogatives of Congress. He is also a former prosecutor and worked as Special Counsel to the U.S. Sentencing Commission.

In short, it seems to us that Ron Weich is an excellent choice to head the Office of Legislative Affairs at DOJ, and we urge that he be confirmed by the Senate.

Sincerely,

BRUCE ARTIM
Chief Counsel and Staff Director,
Senate Judiciary Committee (2003-2005)

MAKAN DELRAHIM
Chief Counsel and Staff Director,
Senate Judiciary Committee (2001-2003);
Deputy Assistant Attorney General,
Antitrust Division, U.S.
Department of Justice (2003-2005)

MICHAEL O'NEILL
Chief Counsel and Staff Director,
Senate Judiciary Committee (2005-2007)

MANUS COONEY
Chief Counsel and Staff Director,
Senate Judiciary Committee (1997-2001)

61992I.161

MARK DISLER
Chief Counsel (1995-1996) and Minority Staff Director (1993-1994); Minority Chief Counsel, Patents, Copyrights and Trademarks Subcommittee, (1989-1992), Senate Judiciary Committee

MICHAEL VOLKOV
Counsel, Senate Judiciary Committee (2002-2004); Chief Counsel, Subcommittee on Crime, Terrorism and Homeland Security, House Judiciary Committee (2005-2008)

MARK HEILBRUN
Deputy Staff Director and General Counsel, Senate Judiciary Committee (2004-2005); Chief Counsel to Senator Arlen Specter (2001-2004); General Counsel, Senate Select Committee on Intelligence (1995-1997)

KEVIN S. MCGUINESS
Chief of Staff to Senator Orrin Hatch (1988-1991); Minority Staff Director, Senate Labor and Human Resources Committee (1987-1988)

JAMIE BROWN
Special Assistant to the President for Legislative Affairs (2004-2006)

AMY F. DUNATHAN
Senior Republican Counsel, Senate Banking Committee (2000-2002); Professional Staff Member, Senate Environment and Public Works Committee (1998-1999); Legislative Director to Senator John Chafee (1988-1998)

JESSICA NICKEL
Legislative Assistant to Rep. Rob Portman (2003-2005)

MARK BARNES
Staff Attorney and Chief Counsel, Senator Ted Stevens (1981-1984)

PETER MADIGAN
Deputy Assistant Secretary, Department of Treasury (1986-1989); Deputy Assistant Secretary, Department of State (1989-1991)

HAROLD H. KIM
Deputy Chief Counsel and Chief Civil Counsel (2005-2007); and Senior Counsel (2003-2005) Senate Judiciary Committee

THAD STROM
Chief Counsel (1991-1993); Chief Counsel, Antitrust Subcommittee (1994-1997); General Counsel (1988-1991), Senate Judiciary Committee

ALLAN HICKS
Chief Counsel, Senate Majority Leader Bill Frist (2004-2007)

PATRICIA KNIGHT
Chief of Staff to Senator Orrin Hatch (1998-2007); Professional Staff Member, Senate Judiciary Committee (1995-1997)

NIELS HOLCH
Chief of Staff to Senator Mitch McConnell (1987-1991)

MICHAEL TONGOUR
Chief Counsel to the Assistant Republican Leader, Alan Simpson (1989-1995); Legislative Director to Senator Strom Thurmond (1986-1987)

NANCY TAYLOR
Health Policy Director, Senate Committee on Labor and Human Resources (1981-1991)

CARL HAMPE
Counsel, Senate Judiciary Committee, (1983-1992); Deputy Assistant Attorney General, Office of Legislative Affairs, Department of Justice (1992-1993)

MORRIE RUFFIN
Legislative Assistant to Senator Arlen Specter (1989-1994)

619921.162

May 3, 2005	CNET Conference San Francisco, CA *CBS Interactive* *235 Second Street* *San Francisco, CA 94105-3124*	"Session II: EULAs and You-Knows: What Is Meaningful Disclosure?"
May 12, 2005	NAI Strategic Forum	eCommerce in the Age of Spyware
December 7, 2005	European Commission DG Justice, Libery and Security	The EU Data Protection Panel: Workshop – Safe Harbor Framework Bridging Differences in Approaches to Data Protection
March 8-10, 2006	IAAP National Summit 2006	Panel moderator on issue of national privacy legislation – No prepared remarks
June 19, 2006	Berkman Center for Internet & Society, Harvard Law School, Identity Mashup Conference, *23 Everett Street, Second Floor* *Cambridge, MA 02138* Cambridge, MA	Panel: Privacy and Civil Liberties in Benign and Hostile Environments – No prepared remarks
June 19, 2006	Berkman Center for Internet & Society, Harvard Law School, Identity Mashup Conference *23 Everett Street, Second Floor* *Cambridge, MA 02138* Cambridge, MA	Panel: "What you Need to Know about Identity" – No prepared remarks.
June 19, 2006	Berkman Center for Internet & Society, Harvard Law School, Identity Mashup Conference *23 Everett Street, Second Floor* *Cambridge, MA 02138* Cambridge, MA	Panel: "Adequacy of Regulatory Frameworks for Privacy" – No prepared remarks.
September 27, 2006	ITAA Conference	Privacy legislation – No prepared remarks
December 12, 2006	Building Trust in Affiliate Marketing (forum) Network Advertising Initiative New York, NY	Panel: A Regulatory Line in the Sand?
March 8, 2007	IAPP Privacy Summit	Panel: Online Marketing: Industry Innovation and Government Enforcement
March 28, 2007	Liberty Alliance Public Policy Expert Group	"A Contractual Framework Outline for Circles of Trust"

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CITY COURT OF BUFFALO

ROBERT T. RUSSELL, JR.
ACTING ERIE COUNTY COURT JUDGE
CITY COURT JUDGE
DRUG TREATMENT, MENTAL HEALTH TREATMENT
VETERANS TREATMENT COURT JUDGE

50 DELAWARE AVENUE
BUFFALO, NEW YORK 14202-3898

SUITE 250
[redacted].US

Buffalo City Court
50 Delaware Avenue, Suite 250
Buffalo, NY 14202

March 27, 2009

Hon. Patrick Leahy, United States Senator
Chairman, U.S. Committee on the Judiciary
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

Hon. Arlen Specter, United States Senator
U. S. Committee on the Judiciary, Ranking Member
711 Hart Building
Washington, D.C. 20510

Re: Letter of Recommendation – R. Gil Kerlikowske

Dear Senator Leahy and Senator Specter:

It is with great admiration that I offer this recommendation in support of R. Gil Kerlikowske, President Barack Obama's nominee for the Director of the Office of National Drug Control Policy.

I had the privilege of first meeting and working with R. Gil Kerlikowske when he was appointed, after a national search, as Police Commissioner of the Buffalo, New York Police Department.

It was apparent that Commissioner Kerlikowske had a unique personal style which earned him respect from Buffalo's diverse communities. He was embraced by block clubs, neighborhood crime watch groups, and small and large businesses. During the time he served as Police Commissioner, his progressive and engaging law enforcement leadership was able to transcend Buffalo's political and ethnic cultures.

Commissioner Kerlikowske's personable style was direct, forthright, honest and sincere. I found him to be a caring person who was concerned about the plight of crime victims, the sincerity of his officers, and the safety and stability in our neighborhoods. He brought refreshing innovative ideals to the Buffalo Police Department. Commissioner Kerlikowske updated the department's equipment and also implemented community police tactics and procedures that reduced the City's crime rate.

Commissioner Kerlikowske was always available to work with the local courts on new initiatives such as Buffalo's first Drug Treatment Court, which I currently preside over. He was excellent at providing a law enforcement perspective. He was able to balance the need to be aggressive in enforcement initiatives against profiteers and distributors of street drugs, and at the same time be sensitive to the court initiative of strong judicial oversight and judicial monitoring of treatment programs for the addicted offenders as a strategy to reduce recidivism and the demand for drugs.

Commissioner Kerlikowske brings a wealth of experience in law enforcement as an administrator, an undercover officer, and as a street officer. He has broad knowledge and perspective on strategies to address our country's drug distribution and abuse challenges. His personal leadership style, progressive problem solving techniques, and superb law enforcement skills are all strong attributes. I sincerely believe, and I am firmly convinced that he will make an exceptional choice as our country's next Director of the Office of the National Drug Control Policy.

I enthusiastically recommend R. Gil Kerlikowske's confirmation by this Honorable Body.

Respectfully Submitted,

Judge Robert T. Russell, Jr.
Buffalo City Court
Presiding Judge: Drug Treatment Court,
Mental Health Court, and Veterans' Treatment Court

RTR:sdm

61992I.141

METROPOLITAN POLICE DEPARTMENT
of Nashville and Davidson County

Karl F. Dean, Mayor

Ronal W. Serpas, Ph.D.
Chief of Police

March 30, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I respectfully submit this letter to offer my strong support and confident recommendation for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). I join with fellow Law enforcement executives in taking great pride that President Obama has recognized and honored the Major Cities Police Chiefs Association by nominating the acting President of our Association to serve in this extremely important position.

Chief Kerlikowske has consistently demonstrated excellence in integrity, professionalism and strength of leadership in his role in leading the Nation's largest police departments on matters of public policy. He has led and served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. He will be well equipped to face the challenges of critical issues in Washington from his outstanding executive experience at the U.S. Department of Justice. The time is crucial in addressing the violence and tragedy that results from drug abuse in our country and the devastating effects in the lives of people. Chief Gil Kerlikowske is exceptionally qualified to serve in the position of Director of ONDCP to encounter and contend with superlative resolve the serious issues in drug control, prevention and treatment in America.

Personally and in conjunction with fellow Law enforcement leaders, we have witnessed Gil's superb leadership as President of the Major City Police Chiefs Association. We are committed and prepared to join partnership and support with him in his new position. American law enforcement continues to look to your leadership and we collectively offer our respectful requests that you regard the nomination of Gil Kerlikowske with full affirmation and prompt action in confirmation process so that he may begin the valuable work at ONDCP.

Sincerely,

Ronal W. Serpas, PhD
Chief of Police
Metropolitan Nashville Police Department

RWS: bss

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PATRICK J. LEAHY, VERMONT, CHAIRMAN

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STEPHANIE A. MIDDLETON, Republican Staff Director
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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

March 24, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Patrick:

I write to request that you not schedule a hearing for the nomination of Judge David Hamilton to the Court of Appeals for the Seventh Circuit before the upcoming Senate recess. While I also have some concerns about scheduling a hearing on the nominations of Mr. Ron Weich to be Assistant Attorney General for Legislative Affairs and Mr. Gil Kerlikowske to be the Director of the Office of National Drug Control Policy for Wednesday, April 1, 2009, these concerns are not as significant as those I have about Judge Hamilton's nomination schedule.

On February 6, 2009, I wrote to you to convey my concern over the expedited schedule for consideration of several executive nominations and I suggested that, at a minimum, Senators should be afforded at least two weeks to evaluate executive nominees' records prior to their hearings. The Judiciary Committee did not receive Mr. Weich's or Mr. Kerlikowski's questionnaires until after 6 p.m. on Wednesday, March 18 and supplements to those materials were received on Friday, March 20. An April 1 hearing does not give the Committee a full two weeks to examine their records. Notwithstanding, I recognize the need to fill these important executive positions, and I am willing to move forward on these nominations before the Senate recess. A hearing for Judge Hamilton on April 1 is a different matter.

Judge Hamilton's nomination was announced on March 17, but the Committee did not receive his questionnaire until after 8:30 p.m. on March 18 and the attachments to his questionnaire arrived after 5:00 p.m. on March 19. Those materials were still not complete, and Judge Hamilton supplemented his materials on March 23. Judge Hamilton has been a district court judge for almost 15 years and has authored over 1200 opinions. In addition, he has submitted approximately 2000 pages of speeches, articles, and public policy papers relating to his nomination. Members cannot prepare for a hearing for a lifetime appointment to a circuit court in a mere thirteen days, especially when they are expediting review of two executive nominations. I also would note that, during the Bush Administration, Members were afforded an average of 138 days to evaluate a circuit court nominee prior to a hearing, and no nominee was considered in this short a period of time. Similarly, during the Clinton Administration, Members were afforded an average of 117 days to evaluate circuit court nominations. There are no extraordinary factors counseling expedited review of this nomination; the Seventh Circuit seat is not a judicial emergency and the seat has only been vacant for a few months.

I hope you will agree to postpone the hearing for Judge Hamilton until after the recess in order to give Members an appropriate amount of time to prepare.

Sincerely,

Arlen Specter

Pat — If you insist on this schedule for Hamilton, you will start off the first Pro Obama nomination in a very contentious manner which will provoke opposition & prove counter productive.

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PATRICK J. LEAHY, VERMONT, CHAIRMAN
EDWARD M. KENNEDY, MASSACHUSETTS
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JON KYL, ARIZONA
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
TOM COBURN, OKLAHOMA
Bruce A. Cohen, Chief Counsel and Staff Director
Stephanie A. Middleton, Republican Staff Director
Nicholas A. Rossi, Republican Chief Counsel

United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

March 31, 2009

The Honorable Patrick J. Leahy
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

We write to express our serious concern over the abbreviated hearing schedule for Judge David Hamilton's nomination to the U.S. Court of Appeals for the Seventh Circuit, and to express our disappointment that you have decided to hold this hearing despite the request by Ranking Member Specter to reschedule the hearing after the Easter recess to give senators adequate time to prepare.

Holding a hearing on Judge Hamilton's circuit court nomination a mere fifteen days after he was nominated is a significant departure from past Committee practice. None of President Bush's circuit court nominees received a hearing so quickly. In fact, on average, senators were afforded 166 days to prepare for hearings on President Bush's circuit court nominees, and 117 days for President Clinton's circuit nominees.

This nomination is ill-suited to being rushed. The vacancy to be filled is not a judicial emergency. In fact, it is the only vacancy in the Seventh Circuit, which is currently the federal appellate court with the most efficient docket. Moreover, Judge Hamilton has been a district court judge for almost 15 years and, by his own calculation, has authored "roughly 1,150 written opinions." He has also written and spoken extensively, generating roughly 2,000 pages of material for the Committee to review.

We have been unable to properly prepare for this hearing on a nomination to a lifetime position in this short timeframe; therefore, we request that Judge Hamilton be invited back to answer senators' questions once we have had an opportunity to prepare. We believe this request is consistent with past practice and would note that past Republican chairmen of this Committee acceded to Democrat requests and held multiple hearings for at least five of President Bush's circuit court nominees, including John G. Roberts' nomination to the D.C. Circuit. Following Justice Roberts' initial hearing on January 29, 2003, senators asserted that they had not had an opportunity to question him sufficiently and a second hearing was held on April 4, 2003. Justice Roberts was confirmed to the D.C. Circuit by voice vote later that year. Consideration of the views of the minority is one of the hallmarks of the United States Senate, and the importance of minority participation is enshrined in numerous Senate and Committee Rules. One such rule is

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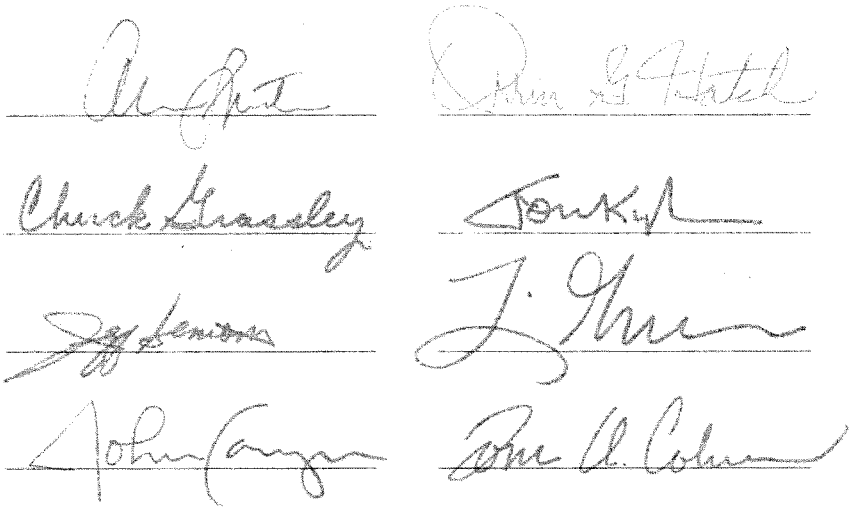
Senate Standing Rule XXVI(4)(d): "Whenever any hearing is conducted by a committee (except the Committee on Appropriations) upon any measure or matter, the minority on the committee shall be entitled, upon request made by a majority of the minority members to the chairman before completion of such hearing, to call witnesses selected by the minority to testify with respect to the measure or matter during at least one day of the hearing thereon."

In accordance with this Committee's past precedent and Senate procedure, we respectfully request that you invite Judge Hamilton back for a second hearing after the upcoming recess to afford the minority enough time to properly review his record and prepare appropriate questions. Additionally, this recognition of precedent and accommodation of minority rights would be an important signal of cooperation on President Obama's first judicial nomination.

Sincerely,



LEGAL ACTION CENTER

Director/President
Paul N. Samuels

Director for National Policy
Gabrielle de la Guéronnière
202-544-5478 • fax 202-544-5712
www.lac.org

SAAS
STATE ASSOCIATIONS OF ADDICTION SERVICES

Executive Director
Becky Vaughn
202-546-4600 • fax 202-544-5712
www.saasnet.org

236 Massachusetts Avenue, NE, Suite 505, Washington, D.C. 20002

March 31, 2009

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

As nonprofit organizations dedicated to advocating for sound national drug policy, the State Associations of Addiction Services and the Legal Action Center write to express our strong support for Chief Gil Kerlikowske's nomination as the Director of the Office of National Drug Control Policy (ONDCP). The State Associations of Addiction Services is a national association of 44 state associations of drug and alcohol addiction prevention and treatment providers, and the Legal Action Center is a national law and policy organization that advocates for people with drug and alcohol addiction histories, criminal records and HIV/AIDS.

We believe that Chief Kerlikowske will provide the leadership necessary to shape a new and much more effective vision for our nation's drug and alcohol policies. We are extremely pleased with recent remarks by President Obama, Vice President Biden and Chief Kerlikowske that call for a change in our national policy to a coordinated, comprehensive approach that expands the health responses to addiction, including prevention and treatment. We are excited by President Obama's support for such policy reforms as expansion of addiction prevention and treatment, and sentencing reform that eliminates racial injustice and emphasizes treatment instead of incarceration where appropriate. While more than 23 million Americans need care for drug and alcohol addiction and misuse, 90% of them – nearly 21 million people – never receive it. Prevention techniques that have proven successful reach far too few of our young people, and therefore drug and alcohol use has become an epidemic. People in recovery or still suffering from this disease too often are treated as second-class citizens.

Throughout his 36-year career in law enforcement, Chief Kerlikowske has demonstrated a great commitment to effectively addressing addiction to alcohol and other drugs in our country. We are pleased that Chief Kerlikowske recognizes that solving our nation's drug problems requires strong support for both enforcement and demand reduction efforts including prevention, treatment and recovery supports. Chief Kerlikowske has been a strong supporter of ensuring that adults and young people with drug and alcohol problems can, where appropriate, be diverted from the criminal justice system into addiction treatment. Chief Kerlikowske's support for diverting young people with addiction histories into treatment where appropriate and his support for the work of our nation's drug courts is consistent with clear scientific findings that addiction is a preventable and treatable disease – and that prevention and treatment are the most effective and cost-efficient strategies for reducing drug and alcohol problems.

We strongly commend Chief Kerlikowske's work at the community level and his ability to partner with individuals and organizations representing various important segments in the community who are working on the front lines to fight our nation's problems with drugs. Chief Kerlikowske's breadth of experience in community policing makes him uniquely qualified to bring in the various groups of people, including addiction prevention and treatment providers, people in recovery and their family members, members of the law enforcement community and other allies, to work together in the coordinated way required to successfully fight against drug and alcohol addiction in this country. We strongly believe that Chief Kerlikowske's extensive experience at the community level will provide him with the understanding necessary to implement critically important, effective reforms to our drug policy at the national level.

Thank you for the opportunity to share our views. We strongly endorse the nomination of Chief Kerlikowske to direct the ONDCP and encourage his swift confirmation.

Sincerely,

Paul N. Samuels
Director/President

Becky Vaughn
Executive Director
State Associations of Addiction Services

Gabrielle de la Gueronniere, JD
Director for National Policy
Legal Action Center/National HIRE Network

619921.144

March 27, 2009

Senator Patrick J. Leahy, Chairman
Senator Arleen Specter, Ranking Republican Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510-6275

Dear Mr. Chairman, Senator Specter, and Distinguished Members of the Committee:

I am John R. Steer, former General Counsel and Vice Chair of the United States Sentencing Commission. I write to support the confirmation of Ronald H. Weich as Assistant Attorney General for Legislative Affairs.

I employed Ron Weich in November 1987 as a Special Counsel on the legal staff of the Sentencing Commission, subsequent to his work with the Manhattan District Attorney's office. During his time with the Commission his valuable contributions included: 1) helping draft significant amendments to the sentencing guidelines, 2) successfully defending the constitutionality of the guidelines and the Sentencing Reform Act against nationwide separation of powers challenges, and 3) helping maintain a good working relationship with Congress as our lead legislative liaison. Mr. Weich proved to be an outstanding attorney with exceptional legal skills and excellent judgment.

After leaving the Sentencing Commission for service on Capitol Hill with, successively, Senator Specter, Senator Kennedy, and Majority Leader Reid, the Sentencing Commission has continued to regularly call on him for guidance and assistance. On a number of occasions he has worked with his principal to provide critical staff leadership in crafting important amendments to the Commission's legal authority and other sentencing statutes.

I believe Mr. Weich is well suited and superbly qualified to serve the Nation well as Assistant Attorney General for Legislative Affairs. He is obviously knowledgeable of the legislative processes and has developed an excellent understanding of the variety of Justice Department issues and programs. Perhaps most importantly, Ron has accrued a well deserved reputation for fairness and professionalism. He is trusted and respected by Members of Congress and staff of both political parties as an attorney with exceptional ability and integrity. I strongly urge his prompt confirmation.

Sincerely,

John R. Steer

Senior Partner, Allenbaugh Samini Ghosheh LLP
General Counsel, US Sentencing Commission, 1987-1999
Vice Chair, US Sentencing Commission, 1999-2007

619921.145

Stewart Konduros & Associates, LLC

April 20, 2009

Senator Patrick J. Leahy
433 Russell Office Building
Washington, D.C. 20510

Dear Senator Specter,

I am writing to recommend Senate confirmation of R. Gil Kerlikowske as Director of the Office of National Drug Control Policy. I recently retired as Chief of the South Carolina Law Enforcement Division after serving 30 plus years with that agency. I have known Chief Kerlikowske since 1995 when we were participants in the Federal Bureau of Investigation's National Executive Institute.

Currently serving as Seattle' Chief of Police, he has had an outstanding career with service ranging from police chief to deputy director of the Department of Justice Community Oriented Policing Services. He has led three police organizations to national accreditation by the Commission on Accreditation for Law Enforcement Agencies. He is president of the Major Cities Chiefs Association and a past president of the Police Executive Research Forum.

Chief Kerlikowske is a professional, innovative, experienced law enforcement leader. I have every confidence that he has all the qualities necessary to competently perform in this position that is so important to our nation and the well being of its citizens. I am certain he will seek ways to combat illegal drugs by strong enforcement, demand reduction, prevention, and treatment. In conclusion I wholeheartedly recommend confirmation of this fine gentleman.

Sincerely,

Robert M. Stewart
CEO

Post Office Box 1971
Lexington, South Carolina 29071

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City of Cincinnati

Thomas H. Streicher, Jr.
Police Chief

Police Department
310 Ezzard Charles Drive
Cincinnati, Ohio 45214
(513) 352-3536
(513) 352-2949 (FAX)

March 30, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I am writing to offer my support for the nomination of Gil Kerlikowske for Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs in Florida police departments, as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, Gil is no stranger to Washington. He possesses the knowledge and expertise so vital to achieving the changes necessary for law enforcement across the nation. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified than Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major Cities Police Chiefs Association and we stand ready to work with him in his new position. I support the nomination of Gil Kerlikowske and urge that you move quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Thomas H. Streicher, Jr.
Police Chief
Cincinnati Police Department

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THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7330
FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org/uscm

March 19, 2009

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

The U.S. Conference of Mayors enthusiastically endorses the nomination of R. Gil Kerlikowske as Director of the Office of National Drug Control Policy and encourages the Committee to act quickly on the nomination.

Chief Kerlikowske is a longtime ally of mayors throughout this nation. He worked with us when he was Chief of Police in Buffalo and President of the Police Executives Research Forum and when he was Deputy Director of the COPS Office. Most recently, as Chief of Police in Seattle and President of Major Cities Chiefs Association, he worked closely with us last summer in the development of our National Action Agenda on Crime for the Next President of the United States.

President Obama's choice of Chief Kerlikowske as the next ONDCP Director is good for our cities and for our nation. He is a top-flight police executive who understands the complexity of the drug problem and its impact on our cities. We look forward to working with him to build the federal-state-local partnership needed to reduce the use and trafficking of the illegal drugs that continue to plague this nation.

Sincerely,

Tom Cochran

Tom Cochran
CEO and Executive Director

619921.148

NATIONAL ACADEMY OF ENGINEERING
OF THE NATIONAL ACADEMIES

CHARLES M. VEST
President

March 25, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I write to express strong support for the confirmation of Mr. Gil Kerlikowske as Director, Office of National Drug Control Policy.

I am president of the National Academy of Engineering and president emeritus of the Massachusetts Institute of Technology (MIT).

Chief Kerlikowske recently served on a major National Academies study that I co-chaired with former U.S. Secretary of Defense William Perry. The topic of our study was Protecting Individual Privacy in the Struggle Against Terrorists. This complex study examined the nexus of technology, counterterrorism, and personal privacy and produced a framework for program assessment that we hope will be adopted throughout the federal government.

Chief Kerlikowske was an outstanding contributor to this study, and displayed an excellent ability to communicate and work with the entire spectrum of participants that included former intelligence community officials, attorneys, academic computer experts, statisticians, and private sector IT specialists. Gil brought on-the-ground law enforcement experience and perspective that were invaluable. Although this was a limited interaction during a two-year period, it was an excellent window into his ability to work at a high policy level while remaining grounded in practical experience.

It is a privilege to support his confirmation.

Sincerely yours,

Charles M. Vest

CMV/lbm

THE NATIONAL ACADEMIES
Advisers to the Nation on Science, Engineering, and Medicine

500 Fifth Street, NW, NAS 218
Washington, DC 20001

Phone: 202 334 3201
Fax: 202 334 1680
E-mail: cvest@nae.edu

Statement of Ronald H. Weich

Senate Committee on the Judiciary

April 1, 2009

Chairman Leahy, Ranking Member Specter and members of the Judiciary Committee:

Thank you for the opportunity to testify in connection with my nomination to be the Assistant Attorney General for Legislative Affairs. It is a special honor for me to appear before this Senate Committee with which I have worked closely for many years.

I am grateful to President Obama for nominating me to this important position. If my nomination is reported favorably by this committee and confirmed by the full Senate, I will work hard every day to justify the confidence that the President, Attorney General Holder and you have shown in me.

I am proud to be accompanied today by members of my family: my wife Julie Stewart, my daughters Sophie and Sara, and my parents Robert and Cecile Weich. Their love and support over many years makes me whole, and allows me to be here today.

Senator Reid was kind to introduce me to you, and I am grateful to him for that. But in fact, I owe a debt of gratitude to each of the three Senators for whom I have worked. Each has taught me something important that I would put to use if confirmed to head the Legislative Affairs Office in the Justice Department.

From Senator Specter, who gave me my first job in the Senate 20 years ago, I learned the importance of rigorous legal and factual analysis. He and I share a background as state prosecutors in large cities, where the practice can be a bit rough and ready. But I learned from Senator Specter that when you're writing federal law, every word counts and you'd better get it right.

From Senator Kennedy, I learned the value of bipartisan compromise. He is always guided by a set of unwavering ideals, but he is never afraid to find common ground with those who hold different ideals. That philosophy has led Senator Kennedy to partner with many of the Republican members of this committee and other Republicans over the years to pass so many landmark laws, and it is why he has earned the respect and affection of all of his colleagues.

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And from Senator Reid, I have learned to revere the legislative branch -- and especially the Senate. Senator Reid, like his mentor Senator Byrd, is known to pull a worn copy of the Constitution from his breast pocket and remind everyone that Congress does not work for the President. It is a co-equal branch of our tripartite federal system, and it is described in Article I of the Constitution because it is the branch closest to the people.

Each of these three lessons would inform my work if I am confirmed as an Assistant Attorney General. I would approach the job with intellectual discipline, always striving to get the law, the facts and the policy right. I would endeavor to work closely with all members of this committee, Republicans and Democrats, because I know that in the effort to keep the American people safe and protect their rights, there is much more that unites us than divides us. And I would always respect the role and the prerogatives of Congress.

I have spent about half of my professional life working for the Senate. For the last few years, I have been privileged to have an office in the United States Capitol, just steps from the Senate floor, with a view of the Supreme Court and the Library of Congress. Every single day I come to work, I marvel at the genius of the Framers in establishing our time-honored system of government in which Congress makes the laws, the President executes the laws, and the judiciary interprets the laws.

Our Constitution establishes a natural tension among the three branches. But that tension need not breed animosity if leaders in the respective branches respect and trust each other, and communicate productively. In particular, a healthy relationship between the Justice Department and this Committee is crucial to the success of federal law enforcement.

If confirmed as the Assistant Attorney General for Legislative Affairs, I will do my small part to strengthen that relationship and help the Justice Department function effectively for the benefit of the American people.

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LOUISVILLE METRO POLICE DEPARTMENT

JERRY E. ABRAMSON
MAYOR

ROBERT C. WHITE
CHIEF OF POLICE

March 23, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Colonel Robert C. White
Chief of Police

RCW/sb

633 WEST JEFFERSON STREET LOUISVILLE, KENTUCKY 40202
OFFICE PHONE 502.574.7660 FAX 502.574.2450

619921.152

EL PASO COUNTY SHERIFF'S OFFICE
Richard D. Wiles, Sheriff
Sylvia Aguilar, Chief Deputy
3850 Justice Drive
El Paso, Texas 79938
Email: [redacted]

We Serve with Pride

Administration
3850 Justice Drive
El Paso, Texas 79938
915-538-2217
915-538-2028 *fax*

Job Line 915-546-2286

Region VIII Training Academy
12501 Montana Avenue
El Paso, Texas 79938
915-856-4850
915-856-4883 *fax*

Criminal Investigations Bureau
850 Justice Drive
El Paso, Texas 79938
915-538-2291
915-538-2148 *fax*

Detention Bureau
691 East Overland
El Paso, Texas 79901
915-546-2228
915-543-3810 *fax*

Jail Annex Bureau
12501 Montana Avenue
El Paso, Texas 79938
915-856-4800
915-856-4849 *fax*

Patrol Bureau
Traffic Division
3850 Justice Drive
El Paso, Texas 79938
915-538-2210
915-538-2212 *fax*

Montana Station
12501 Montana Avenue
El Paso, Texas 79938
915-856-4875
915-856-4896 *fax*

Vinton Station
436 East Vinton
Vinton, Texas 79838
915-886-2724
915-886-3100 *fax*

Special Operations Bureau
6825 Cielo Vista Drive, Box 4
El Paso, Texas 79925

Metro Narcotics Task Force
915-772-8865
915-775-0369 *fax*

HIDTA Enterprise Task Force
915-832-6011
915-832-6356 *fax*

Volunteer Program
3850 Justice Drive
El Paso, Texas 79938
915-538-2117
915-538-2028 *fax*

Emergency 911
Non-Emergency *546-2280*

March 23, 2009

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
U.S. Senate
Washington DC 20510

The Honorable Arlen Specter
Ranking Member, Committee on the Judiciary
U.S. Senate
Washington, DC 20510

Dear Messrs. Leahy and Specter:

I write to offer my strong support for the nomination of Gil Kerlikowske to become Director of the Office of National Drug Control Policy (ONDCP). Law enforcement executives are proud that President Obama has nominated the President of the Major Cities Police Chiefs Association to serve in this extremely important position.

Leading the Nation's largest police departments on matters of public policy, Chief Kerlikowske demonstrates conviction, professionalism and strength—all qualities needed for success at ONDCP. He has served on the front lines of our Nation's struggle with drugs, in Florida police departments and as Commissioner of Police in Buffalo and Chief of Police in Seattle. With executive experience at the U.S. Department of Justice, he is no stranger to Washington and knows how to get things done. We can ill afford "on the job training" to address the violence and tragedy that results from drug abuse in this country. With America facing serious issues in drug control, prevention and treatment, there is no one better qualified then Gil Kerlikowske for the position of Director of ONDCP.

Law enforcement leaders have seen firsthand Gil's leadership as President of the Major City Police Chiefs Association and we stand ready to work with him in his new position. American law enforcement has always looked to you for leadership and we again turn to you to move the nomination of Gil Kerlikowske quickly through the confirmation process so that he may begin the important work at ONDCP.

Sincerely,

Richard D. Wiles
Sheriff

cc: Senator John Cornyn

First Nationally Accredited Sheriff's Office in Texas
First Two Nationally Accredited County Jails in Texas

NEXSEN PRUET

William W. Wilkins
Member
Admitted in SC

March 30, 2009

VIA ELECTRONIC AND FIRST CLASS MAIL

Senator Patrick J. Leahy, Chairman
Senator Arlen Specter, Ranking Republican Member
Committee on the Judiciary
United States Senate
Washington, DC 20510-6275

Re: Ronald H. Weich

Dear Mr. Chairman, Ranking Member Specter, and
Distinguished Committee Members:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

I am a retired Chief Judge of the United States Court of Appeals for the Fourth Circuit and served as the first Chair of the United States Sentencing Commission and as Chair of the Criminal Law Committee of the United States Judicial Conference. I write to enthusiastically support the confirmation of Ronald H. Weich for the position of Assistant Attorney General for Legislative Affairs.

I came to know Mr. Weich when he was hired to serve as a Special Counsel on the legal staff of the U. S. Sentencing Commission. In that position he provided valuable assistance in helping the Commission to promulgate the sentencing guidelines and subsequent amendments submitted to Congress. He also capably served as a part of our legal team that successfully defended the constitutionality of the guidelines and the Sentencing Reform Act against separation of powers challenges in federal courts throughout the country. As the Chair of the Sentencing Commission, I regularly called on Mr. Weich seeking his legal advice on a variety of issues. He was always responsive, hard-working and dependable.

After Mr. Weich took a position on the Senate staff of Senator Specter, and later with Senator Kennedy, the Sentencing Commission continued to call upon him for assistance on a variety of legislative issues. Throughout his years on Capitol Hill, his knowledge of criminal justice issues, Justice Department programs, and the legislative process has made him an invaluable contact for the Sentencing

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Suite 400 (29601)
PO Drawer 10648
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www.nexsenpruet.com

[redacted]
Nexsen Pruet, LLC
Attorneys and Counselors at Law

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Commission and the federal judiciary. He is an outstanding attorney with excellent legal skills and an in-depth knowledge of public policy issues.

I always found Mr. Weich to be open-minded, realistic, and insightful in his judgments. He is widely respected and trusted for his integrity, ability, and professionalism. I am pleased to support his nomination for the position of Assistant Attorney General for Legislative Affairs and I am confident that, if confirmed, he will perform outstanding service to our nation.

Sincerely,

William W. Wilkins

WWW:dd

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March 23, 2009

William G. Milliken
Chairman of the Board
Hubert Williams
President

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I am writing to wholeheartedly support R. Gil Kerlikowske, nominee for the position of Director of the Office of National Drug Control Policy ("Drug Czar"). I have known Chief Kerlikowske for over 15 years, and during this period, he has served as the Deputy Director of Community Oriented Policing Services and is currently the Chief of Police of the Seattle Police Department.

I have seen the devastating effect that drugs have had on our communities and recognize the value that the Drug Czar's position could have in assisting cities, towns, and villages across our country to find new and more effective remedies for addressing this problem. As a former Police Chief in Buffalo, New York, and now Chief in Seattle, Washington, Gil Kerlikowske is accustomed to making tough decisions under difficult circumstances. He knows that the coordination of efforts and sharing of information between the various departments and agencies of our government is the key to the resolution of this problem, and he has the leadership skills to motivate others to work cooperatively in the accomplishment of this objective.

As President of the Police Foundation[1] for the past 24 years, I have had the opportunity to work with law enforcement organizations throughout the nation to improve policing and enhance the quality of public safety. Gil Kerlikowske has stood out during this

[1] *The Police Foundation is an independent and unique resource for policing. It has been a catalyst for change and an advocate of new ideas, in reminding ourselves of the fundamental purposes of policing, and in ensuring that an important link remains for the police and the public they serve.*

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time as one of the most significant policing leaders due to his interest in scientific research and his commitment to make necessary reforms, as well as his balanced approach to prevention and law enforcement.

As a former Deputy Director of the COPS Office for the U.S. Department of Justice, Gil is highly respected with the law enforcement community for his work in Community Oriented Policing. He has the strength, character, and intellect to elevate to the status of the Drug Czar and to help the country find solutions to this complex and difficult problem. I fully support Chief Kerlikowske's appointment as Director of the Office of National Drug Control Policy, based on his impressive law enforcement career, as well as his professional integrity. I believe that Gil is an exceptional candidate for this position.

Sincerely,

Hubert Williams

Hubert Williams

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