

other legal opinion setting forth the authoritative legal interpretation is provided;”;

(III) in clause (ii), as so redesignated, by striking “subsection (a)(1)(C)(i)” and inserting “subsection (a)(1)(D)(i)”;

(IV) in clause (iii), as so redesignated, by striking “subsection (a)(1)(C)(ii)” and inserting “subsection (a)(1)(D)(ii)”;

(E) in paragraph (4), as so redesignated, by striking “subsection (a)(1)(C)(i)” and inserting “subsection (a)(1)(D)(i)”;

(4) in subsection (e)—

(A) by striking “(but only with respect to the promulgation of any unclassified Executive order or similar memorandum or order)”;

(B) by inserting “issues an authoritative interpretation described in subsection (a)(1)(C),” after “policy described in subsection (a)(1)(A),”.

SEPTEMBER 15, 2008.

Hon. PATRICK LEAHY,  
Chairman, Senate Committee on the Judiciary,  
U.S. Senate, Washington DC.

Hon. ARLEN SPECTER,  
U.S. Senate,  
Washington DC.

DEAR CHAIRMAN LEAHY AND SENATOR SPECTER: We write to convey our strong support for “The OLC Reporting Act of 2008,” to be introduced by Senator Feingold and Senator Feinstein. We respectfully urge the committee to give the bill prompt and serious consideration, because we believe that the addition of the reporting requirement it would create would have the effect of enhancing democratic accountability and the rule of law.

We both had the privilege to testify before Senators Feingold and Brownback, and the Subcommittee on the Constitution of the Senate Committee on the Judiciary, on April 30, 2008 in a hearing that examined “Secret Law and the Threat to Democratic and Accountable Government.” We served in different administrations, Brad Berenson as Associate Counsel to President George W. Bush and Dawn Johnsen as Acting Assistant Attorney General for the Office of Legal Counsel (OLC) under President Clinton. During our testimony, we found ourselves in substantial agreement about the desirability for new legislation that would require reporting to Congress regarding a limited category of OLC legal opinions.

As a general matter, we share a deep concern about safeguarding the legitimate need for confidentiality in the legal advice OLC provides to the President and others in the executive branch, by power delegated by the Attorney General. For example, in some instances national security information must be protected. In other instances, such as where OLC advises that a proposed action would be illegal, and that advice is accepted, the prospect of immediate and routine disclosure could deter executive branch officials from seeking advice in the first place.

We agree, however, that Congress has a legitimate legislative interest in receiving broader notice than current law provides with respect to certain categories of OLC opinions, which can generally be described as those in which OLC relies on constitutionally based interpretive doctrines to interpret a law in a way that might come as a surprise to Congress. These include the doctrine of “constitutional avoidance,” as well as implied repeals or modifications and certain presumptions against applying statutes to the executive branch officials. In our view, OLC opinions that place substantial reliance on such doctrines present the greatest potential for overreaching by the executive branch and thus the greatest need for notification to Congress. If Congress does not know about these interpretations, Congress

is unable to consider the possibility of legislative change or clarification.

For this reason, after the hearing we worked closely with Senate staff as well as with a group of other former executive branch officials and Office of Legal Counsel lawyers to help draft “The OLC Reporting Act of 2008.” The resulting bill text was the product of careful consideration and negotiation. The bill mandates reporting in a carefully defined category of cases and includes appropriate provisions to protect national security and privileged information. All in all, we believe it strikes a sensible and constitutionally sound balance between the executive branch’s need to have access to candid legal advice, to protect national security information, and to avoid being overburdened by unduly intrusive reporting requirements and the legislative branch’s need to know the manner in which its laws are interpreted. We both endorse the bill as introduced and urge its prompt enactment.

Sincerely,

BRAD BERENSON,  
Sidley Austin.  
DAWN JOHNSEN,  
Indiana University  
School of Law.

#### SUBMITTED RESOLUTIONS

SENATE RESOLUTION 662—RAISING THE AWARENESS OF THE NEED FOR CRIME PREVENTION IN COMMUNITIES ACROSS THE COUNTRY AND DESIGNATING THE WEEK OF OCTOBER 2, 2008, THROUGH OCTOBER 4, 2008, AS “CELEBRATE SAFE COMMUNITIES” WEEK

Mr. BIDEN (for himself, Mrs. CLINTON, Mr. KERRY, Ms. MIKULSKI, and Ms. STABENOW) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 662

Whereas communities across the country face localized increases in violence and other crime;

Whereas local law enforcement and community partnerships are an effective tool for preventing crime and addressing the fear of crime;

Whereas the National Sheriffs’ Association (NSA) and the National Crime Prevention Council (NCPC) are leading national resources that provide community safety and crime prevention tools tested and valued by local law enforcement agencies and communities nationwide;

Whereas the NSA and the NCPC have joined together to create the “Celebrate Safe Communities” initiative in partnership with the Bureau of Justice Assistance, Office of Justice Programs, Department of Justice;

Whereas Celebrate Safe Communities will be launched the 1st week of October 2008 to help kick off recognition of October as Crime Prevention Month;

Whereas Celebrate Safe Communities is designed to help local communities highlight the importance of residents and law enforcement working together to keep communities safe places to live, learn, work, and play;

Whereas Celebrate Safe Communities will enhance the public awareness of vital crime prevention and safety messages and motivate Americans of all ages to learn what they can do to stay safe from crime;

Whereas Celebrate Safe Communities will help promote year-round support for locally based and law enforcement-led community

safety initiatives that help keep families, neighborhoods, schools, and businesses safe from crime; and

Whereas the week of October 2, 2008, through October 4, 2008, is an appropriate week to designate as “Celebrate Safe Communities” week: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of October 2, 2008, through October 4, 2008, as “Celebrate Safe Communities” week;

(2) commends the efforts of the thousands of local law enforcement agencies and their countless community partners who are educating and engaging residents of all ages in the fight against crime;

(3) asks communities across the country to consider how the Celebrate Safe Communities initiative can help them highlight local successes in the fight against crime; and

(4) encourages the National Sheriffs’ Association and the National Crime Prevention Council to continue to promote, during Celebrate Safe Communities week and year-round, individual and collective action in collaboration with law enforcement and other supporting local agencies to reduce crime and build safer communities throughout the United States.

SENATE CONCURRENT RESOLUTION 99—HONORING THE UNIVERSITY OF NEBRASKA AT OMAHA FOR ITS 100 YEARS OF COMMITMENT TO HIGHER EDUCATION.

Mr. HAGEL submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 99

Whereas local leaders in the Omaha area formed a corporation known as the University of Omaha on October 8, 1908, for the promotion of sound learning and education;

Whereas, on September 14, 1909, the first 26 University of Omaha students gathered in Redick Hall, located west of 24th and Pratt Streets in the city of Omaha;

Whereas, during the first 10 years of existence, the key division of the University of Omaha was Liberal Arts College, designed to produce a well-rounded and informed student;

Whereas, in 1910, the University of Nebraska announced it would accept all University of Omaha coursework as equivalent to its own, a milestone in terms of recognition for the new institution and acknowledgement of its substantial and respected curriculum;

Whereas, in December 1916, the University of Omaha students had a farewell party for Redick Hall and moved into their new building, a 3-story, 30-classroom building named Joslyn Hall;

Whereas, in 1929, the University of Omaha board of trustees and the people of Omaha voted to create the new Municipal University of Omaha to replace the old University of Omaha on May 30, 1930;

Whereas, in 1936, the Municipal University of Omaha acquired 20 acres of land north of Elmwood Park and south of West Dodge Street, which would become the site of the present-day campus;

Whereas the University dedicated its beautiful Georgian-style administration building in November 1938, capable of accommodating a student body of 1,000;

Whereas the increased enrollment of World War II veterans in 1945 due to the Montgomery GI Bill led to the completion of several new buildings, including a field house,

library, student center, and engineering building;

Whereas, in 1950, the College of Education was separated from the College of Arts and Sciences, and within 3 years 1/3 of all teachers in Omaha public schools held degrees from the Municipal University;

Whereas the College of Business Administration was founded in 1952, and the business community responded by creating internship programs for accounting, insurance, real estate, and retailing at major firms and for students interested in the field of television at station KMTV;

Whereas 12,000 members of the military, including 15 who rose to the rank of general, were able to receive a Bachelor of General Education degree through the College of Adult Education "Bootstrap" program;

Whereas the University received a Reserve Officers' Training Corps (ROTC) unit in July 1951;

Whereas Municipal University became a leader in radio-television journalism by founding its own radio station in 1951, and in 1952 became the first institution in the Midwest to offer courses by television;

Whereas Municipal University became part of the University of Nebraska system in July 1968, and was renamed the University of Nebraska at Omaha, its present-day name;

Whereas, in 1977, the North Central Association of Colleges and Secondary Schools gave the University of Nebraska at Omaha the highest rating possible;

Whereas, in an effort to gain a more suitable location for conferences and an off-campus class site, the University opened the Peter Kiewit Conference Center in 1980;

Whereas the University has established innovative programs that enrich the community through service learning, support of the arts, outreach programs for business, education, and government, and creation of dual-enrollment programs for Nebraska high school students;

Whereas the University has 90,000 graduates, with nearly half of those still residing, raising families, and building careers in the Omaha metropolitan area; and

Whereas the year 2008 is the 100th anniversary of the founding of the University of Nebraska at Omaha, and the activities to commemorate its founding will begin on October 8, 2008: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress congratulates the University of Nebraska at Omaha on its 100 years of outstanding service to the city of Omaha, the State of Nebraska, the United States, and the world in fulfilling its mission of providing sound learning and education.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 5596. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 3001, to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table.

SA 5597. Mr. NELSON, of Florida submitted an amendment intended to be proposed to amendment SA 5272 submitted by Mr. NELSON of Florida and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5598. Mr. JOHNSON submitted an amendment intended to be proposed to amendment SA 5519 submitted by Mr. JOHNSON (for himself, Mr. THUNE, and Ms. STABE-

NOW) and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5599. Mr. BAYH submitted an amendment intended to be proposed to amendment SA 5437 submitted by Mr. BAYH and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5600. Mr. CARPER submitted an amendment intended to be proposed by him to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5601. Mr. BIDEN (for himself and Mr. LUGAR) submitted an amendment intended to be proposed to amendment SA 5441 submitted by Mr. REID (for Mr. BIDEN (for himself and Mr. LUGAR)) and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5602. Mr. BIDEN (for himself and Mr. LUGAR) submitted an amendment intended to be proposed to amendment SA 5566 submitted by Mr. BIDEN (for himself and Mr. LUGAR) and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5603. Mr. COBURN submitted an amendment intended to be proposed by him to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5604. Mr. DURBIN (for himself and Mr. BROWNBAC) submitted an amendment intended to be proposed by him to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5605. Mr. DURBIN (for himself and Mr. BROWNBAC) submitted an amendment intended to be proposed to amendment SA 5511 submitted by Mr. DURBIN (for himself and Mr. BROWNBAC) and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5606. Mr. REID submitted an amendment intended to be proposed to amendment SA 5355 submitted by Mr. GRAHAM (for himself and Mr. LIEBERMAN) and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5607. Mr. NELSON, of Florida submitted an amendment intended to be proposed to amendment SA 5536 submitted by Mr. SESSIONS (for himself, Mr. NELSON of Nebraska, Mr. LIEBERMAN, Mr. KYL, Mr. INHOFE, Mr. GRAHAM, Mr. VITTER, Mr. BROWNBAC, and Mr. CHAMBLISS) and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5608. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5609. Ms. KLOBUCHAR submitted an amendment intended to be proposed by her to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5610. Ms. COLLINS submitted an amendment intended to be proposed by her to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5611. Ms. COLLINS (for herself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by her to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5612. Mr. KERRY submitted an amendment intended to be proposed to amendment SA 5593 submitted by Mr. KERRY (for himself and Mr. SMITH) and intended to be proposed to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5613. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5614. Mr. LEVIN (for Mr. AKAKA) proposed an amendment to the bill S. 3023, to amend title 38, United States Code, to improve and enhance compensation and pen-

sion, housing, labor and education, and insurance benefits for veterans, and for other purposes.

SA 5615. Mr. SANDERS submitted an amendment intended to be proposed by him to the bill S. 3001, to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table.

SA 5616. Mr. KERRY (for himself and Ms. SNOWE) submitted an amendment intended to be proposed by him to the bill S. 3001, supra; which was ordered to lie on the table.

SA 5617. Mr. KERRY (for himself and Ms. SNOWE) submitted an amendment intended to be proposed by him to the bill S. 3001, supra; which was ordered to lie on the table.

#### TEXT OF AMENDMENTS

SA 5596. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 3001, to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

On page 452, between lines 9 and 10, insert the following:

#### SEC. 2806. EXPANSION OF AUTHORITY FOR PILOT PROJECTS FOR ACQUISITION OR CONSTRUCTION OF MILITARY UNACCOMPANIED HOUSING.

Section 2881a of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "The Secretary of the Navy" and inserting "(1) The Secretary of the Navy"; and

(B) by adding at the end the following new paragraph:

"(2) The Secretary of the Army may carry out a project under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing for all ranks at a location with significant identified barracks deficiencies.;"

(2) in subsection (b), by striking "The Secretaries of the Navy" and inserting "The Secretaries of the Army and Navy";

(3) in subsection (d)(1), by striking "The Secretary of the Navy" and inserting "The Secretaries of the Army and Navy";

(4) in subsection (e)(1), by striking "The Secretary of the Navy shall transmit" and inserting "The Secretaries of the Army and Navy shall each transmit"; and

(5) in subsection (f)—

(A) by striking "The authority" and inserting "(1) The authority"; and

(B) by adding at the end the following new paragraph:

"(2) The authority of the Secretary of the Army to enter into a contract under the pilot program shall expire September 30, 2010."

SA 5597. Mr. NELSON of Florida submitted an amendment intended to be proposed to amendment SA 5272 submitted by Mr. NELSON of Florida and intended to be proposed to the bill S. 3001, to authorize appropriations for fiscal year 2009 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy,