

# NOMINATION OF ARNOLD I. HAVENS

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## HEARING

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

ARNOLD I. HAVENS, TO BE GENERAL COUNSEL FOR THE  
DEPARTMENT OF THE TREASURY

NOVEMBER 18, 2003



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# CONTENTS

## OPENING STATEMENTS

	Page
Thomas, Hon. Craig, a U.S. Senator from Wyoming .....	1
Smith, Hon. Gordon, a U.S. Senator from Oregon .....	1

## ADMINISTRATION NOMINEE

Havens, Arnold I., nominee to be General Counsel for the Department of the Treasury .....	2
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## ALPHABETICAL LISTING AND APPENDIX MATERIAL

Baucus, Hon. Max: Prepared statement .....	7
Havens, Arnold I.: Testimony .....	2
Prepared statement .....	8
Responses to questions from Senator Grassley .....	9
Biographical .....	12
Smith, Hon. Gordon: Opening statement .....	1
Thomas, Hon. Craig: Opening statement .....	1



**NOMINATION OF ARNOLD I. HAVENS, TO BE  
GENERAL COUNSEL FOR THE DEPARTMENT  
OF THE TREASURY**

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**TUESDAY, NOVEMBER 18, 2003**

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 1:00 p.m., in room 215, Dirksen Senate Office Building, Hon. Craig Thomas presiding.

Also present: Senators Smith and Bingaman.

**OPENING STATEMENT OF HON. CRAIG THOMAS, A U.S.  
SENATOR FROM WYOMING**

Senator THOMAS. Welcome. I think we will get started here. There are lots of things going on today, but we are happy to be able to go ahead and hold this session.

I would like to welcome Arnold Havens to the Finance Committee this morning. Mr. Havens has been nominated for the important position of General Counsel for the Department of Treasury, a position for which I believe he is well qualified.

Mr. Havens has most recently served as senior vice president of Governmental Affairs for SCX Corporation. Mr. Havens has also held a number of other posts in local and Federal Government, including service as Assistant Legislative Counsel for the House Energy and Resource Committee.

As General Counsel for the Department of Treasury, Mr. Havens will be called upon to serve as a senior legal and political advisor to the Secretary, to the Deputy Secretary, and other senior departmental officials. The General Counsel also serves as head of the Treasury Legal Division and works with responsibility for all legal work of the department.

Would you like to make a statement, Senator?

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

Senator SMITH. Thank you, Mr. Chairman, colleagues. I am very pleased to be here to support Arnie Havens, whom the President has nominated to be the General Counsel of the Department of Treasury. I have known Arnie for many years and have admired his work with John Snow at CSX Corporation. He has been responsible for providing advice and counsel on Federal and State affairs to that company.

I think, given his experience as Minority Counsel and Staff Director to the House Energy and Commerce Committee, he is very, very well qualified to serve in this, and I know he enjoys the support of the Secretary of the Treasury, who has confidence in his counsel.

So, it is my real pleasure to welcome you, Arnie, to this committee and tell you how anxious I am to see you confirmed and to get on with your duties of public service once again.

Thank you, Mr. Chairman.

Senator THOMAS. Senator Bingaman, did you want to speak now?

Senator BINGAMAN. Mr. Chairman, I just wanted to ask a question after the nominee makes his statement, if I could.

Senator THOMAS. All right. Very well.

Senator Baucus has a statement he would like to have submitted to the record, and we will do that.

[The prepared statement of Senator Baucus appears in the appendix.]

Senator THOMAS. I just left a meeting with family practice consultants and your wife was to have been there, but needed to be here, I understand. So that's great.

So, Mr. Havens, if you would go right ahead, sir. We appreciate having you here and look forward to your comments.

**OPENING STATEMENT OF ARNOLD L. HAVENS, TO BE GENERAL COUNSEL FOR THE U.S. DEPARTMENT OF TREASURY, WASHINGTON, DC**

Mr. HAVENS. Well, thank you, Mr. Chairman. Thank you, Senator Smith and Senator Bingaman, for the opportunity to appear before you today, and especially for the prompt scheduling of this hearing.

I am honored to be President Bush's nominee to serve as the General Counsel for the Department of Treasury and I am grateful to Secretary Snow for his confidence in me.

I know the time is brief. If you would permit, Mr. Chairman, I would like to introduce—although you have already started that process—the members of my family that are here.

Senator THOMAS. Absolutely, if you will, please.

Mr. HAVENS. My wife, Deb Hardy Havens, who is an inspiration to all of us the family, and my best friend. My daughter Brittany, who is currently in eighth grade at Cooper Middle School in McLean, and who is quite a student, but whose real passions are horses, music, and basketball.

And my son Jonathan, who is in his third year at the University of Virginia in Charlottesville, and who aspires to be a lawyer, and also 1 day hopefully run for elected office.

Senator THOMAS. Wonderful. Welcome. Good to have you here.

Mr. HAVENS. And I would mention just briefly, although she could not be here, my daughter Alyssa, who is an on-air reporter for an NBC affiliate in Michigan.

Mr. Chairman, as you may know, I grew up in Evanston, Illinois. My parents were passionate about a number of things, but chief among them was assuring that my sister and I received a quality education. They sacrificed much to give us that opportunity.

They also taught us, by example, the importance of giving back to our community in recognition of the obligation we have as citizens living in a democracy. Volunteering and assuming positions of responsibility in community organizations, albeit at times challenging, is simply a given in our family.

These important lessons, and others, help explain why, for me, public service is both a privilege and an obligation. The opportunity to return to public service at this time seems especially important in this post-9/11 environment. Today our Nation faces many challenges that we can, and must, meet so that our children and their children's futures and freedoms remain bright.

I welcome the opportunity, if confirmed, to contribute what I can towards meeting these challenges. I understand the responsibilities of the General Counsel of the Department of Treasury are great.

The legal issues confronting the Department are both important and wide-ranging, among the most sweeping in government, ranging from the financial war on terrorism to interpretation of the Tax Code. Decisions of the Department directly impact individual citizens in businesses in very profound and personal ways.

It is clear to me that assuming leadership of the Treasury's Legal Division and providing candid advice to the Secretary and Treasury clients will be both challenging and immensely rewarding, if I am confirmed.

I welcome this challenge and pledge to you that I will work hard every day to carry out my responsibilities should the Senate choose to confirm me. I thank you again, Mr. Chairman, for allowing me to appear before you today, and I am happy to respond to your questions.

[The prepared statement of Mr. Havens appears in the appendix.]

Senator THOMAS. Thank you very much.

There are several questions that are asked of all nominees, if I may do that now, please.

First, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. HAVENS. No, Senator.

Senator THOMAS. Second, do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. HAVENS. I do not.

Senator THOMAS. Finally, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if you are confirmed?

Mr. HAVENS. I do.

Senator THOMAS. All right. Thank you.

Senator Bingaman?

Senator BINGAMAN. Thank you very much. Congratulations to you on your nomination. I have every reason to believe you will serve with distinction.

I wanted to raise one issue, and really ask you to look into it, if you would, then report back to the committee, or to the Chairman, Ranking Member, and myself.

I have recently been reading something about an Office of Independent Review at the Internal Revenue Service. This office, several months ago, reversed the position of the Internal Revenue Service in a Tax Court ruling on a case involving charitable organizations affiliated with former Speaker Gingrich.

I understand the Internal Revenue Service has recently announced that they would no longer be using this process. Although they have not made any formal announcement of that, as I am aware, and there has been no change in the Internal Revenue Manual, the information I have is that a decision was made to eliminate the process, effective in August.

As far as I can tell, and this is sort of quoting from newspaper accounts which could be inaccurate here. This is in a Roll Call article a couple of weeks ago, or a week ago. It says, "The independent review process established in 2002 was created to provide another avenue of appeal for taxpayers involved with complex cases, according to IRS officials.

"Critics have said that it was an extraordinary process with no accountability. The decisions involving the Gingrich groups are the only matters publicly known to have been handled under the review process." Then, as I say, the latest word is that the review process has now been disbanded.

Obviously, this raises real questions about whether there we have a circumstance that is less than an even-handed enforcement of our tax laws. I guess what I would like you to try to find for us and report to the committee on, is explanation about how this Office of Independent Review was established, what was the impetus for it, what decisions it did make, why was it disbanded, if it was, as this account indicates.

I am informed that some earlier inquiries to the IRS have been responded to by a claim of privilege under IRC Section 6103. If you think that that kind of a privilege applies to this kind of information and that the committee cannot have access to it on that basis, I wish you would give us a full explanation of your grounds for concluding that.

Mr. HAVENS. Senator, if I am confirmed, I would be pleased to look into that matter and report back to the committee.

Senator BINGAMAN. Thank you very much. That was the only issue that I wanted to raise. I think it is important that the average taxpayer have confidence that the tax laws are being fairly applied and fairly administered by the IRS. I think they have a great tradition of doing that over many, many years, and I would hate to see that lost here because of this kind of incident. Thank you.

Thank you, Mr. Chairman.

Senator THOMAS. Thank you.

One quick question, then we will go to Senator Smith. Will you have a role in efforts to police corporate fraud, and what is your general view and thought about that matter?

Mr. HAVENS. Senator, I have had an opportunity to briefly discuss that with Secretary Snow. If confirmed, it is my understanding that he would ask me to continue some of the fine work that former General Counsel David Aufhauser was engaged in in serving on the Corporate Fraud Task Force headed by the Depart-

ment of Justice. I would look forward to doing that, given the opportunity.

Senator THOMAS. So it is your feeling that is a legitimate role for the Department?

Mr. HAVENS. Yes, I believe it is.

Senator THOMAS. Senator Smith?

Senator SMITH. I have no questions for the witness. Just, again, to welcome him and thank him for his service.

Senator THOMAS. What would—and I know this could be long, but you do not need to do that—you see as your priorities as you enter into this challenge?

Mr. HAVENS. Senator, in the first instance, if confirmed, my principle responsibility would be to serve, as you indicated in your opening remarks, as the chief legal officer for the Department and provide advice to the Secretary and other Treasury clients.

Beyond that, it seems to me that some of the work that, again, David Aufhauser has been involved with in helping the Secretary manage, particularly in the era of terrorist financing, is one that I would anticipate, certainly preliminarily, helping the Secretary continue to be involved with.

There are a range of other issues that the Department, as I indicated in my opening statement, touches, the pension area and the tax area. My sense is that I will be there and be involved in those things as directed by the Secretary and as needed by the other clients of the Treasury Department, should I be confirmed.

Senator THOMAS. Thank you. Well, it is interesting that, more and more, there are aspects of financial Treasury business expanding into all different kinds of things in the private sector. I presume that's one of the things that you will be concerned with.

So, I think we are delighted to have you here. I think everyone is looking forward to your confirmation and to get into the task before you. Even though this has been very short, it is an important aspect of it and we appreciate your being here. We welcome your family. We look forward to working with you in the Department.

Mr. HAVENS. Thank you, Mr. Chairman, very much.

Senator THOMAS. Thank you very much.

The committee is adjourned.

[Whereupon, at 10:19 a.m., the hearing was concluded.]



## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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#### PREPARED STATEMENT OF HON. MAX BAUCUS

Mr. Chairman, today this Committee meets to consider the nomination of Mr. Arnie Havens to become the chief legal and policy advisor to the Treasury Secretary.

Mr. Havens, I'd like to welcome you and your family. Public service is a noble undertaking. While serving requires sacrifices by you—your family will also share this burden. We appreciate your willingness to accept this important position.

The Treasury General Counsel is responsible for the supervision of more than 1,400 Treasury Department lawyers. These attorneys are actively engaged in tax, banking, finance, and international affairs. Their legal analyses and decisions affect us all.

But the position of General Counsel is not just the managing partner of one of the government's largest law firms. The General Counsel carries a heavy, substantive load.

The General Counsel serves as they Chairman of the National Security Council policy coordinating committee on terrorist financing. He is the Secretary's representative on the Department of Justice Corporate Fraud Task Force and counsel to the Committee on Foreign Investment in the U.S.

In addition, the General Counsel is responsible for overseeing the Treasury Department and IRS's vast rulemaking authority. Rule-making is one of the most important tasks that Treasury performs. The General Counsel has a special responsibility to ensure that Treasury facilitates rulemaking procedures in a manner consistent with Congressional intent.

As the top lawyer at Treasury, the General Counsel has direct oversight over Treasury's economic sanctions program, financial crime, investigations and USA Patriot Act regulatory responsibilities.

Mr. Havens, you will have plenty on your plate, but for the time being, you will not have much help. There are many empty seats at Treasury. This is a troubling fact, particularly when considering the important role Treasury is playing in the war on terrorism.

These vacancies include the Deputy Secretary, the Under Secretary for Domestic Finance, the Assistant Secretary for Economic Policy, the Under Secretary for Enforcement, the Assistant Secretary for Enforcement, the Inspector General for Tax Administration, and the IRS Chief Counsel. It is important that these positions be filled.

Today's hearing provides an opportunity to hear your plans for the Office of General Counsel. I am particularly interested in the role you personally expect to play in the war on terrorism.

As you know, the Treasury Department is the principal policymaker in five areas of enforcement that concern national security: (1) terrorist financing, (2) money laundering, (3) economic sanctions, (4) counterfeiting, and (5) the development of resilient financial infrastructure.

Your predecessor, David Aufhasuer, recently testified before Congress about the war on terrorism.

He said "nothing in this shadow war is more achievable and more sustainable—nothing has more immediate real world consequence—than to deny terror of its currency. There may be an infinite number of ways that a terrorist cell can divine how best to apply one hundred thousand dollars in funds to jihad. But all such violent invention is forfeit if the money never materializes."

However, Mr. Aufhauser recently acknowledged that what is frequently lacking at Treasury is direct authority and resources to ensure that policy initiatives for which Treasury is held accountable are put into practice.

He said "Treasury no longer has a police force to investigate counterfeiting. It does not have auditors to ensure compliance with the Patriot Act. It does not have investigators to pursue the priorities of the National Money Laundering Strategy. And Treasury does not have an intelligence office that is fully integrated into the national intelligence community."

Last year, the Department of Homeland Security was created to concentrate resources for the protection of our borders against terrorism. In doing so, however, it broke apart much of the system for pursuing financial crimes, which was once housed in the Treasury Department.

I concur with the comments by Mr. Aufhauser: "while it is plain that there must be shared responsibilities between Justice, Treasury and Homeland Security in the borderless war on terror, someone's hand has to be at the helm to protect the integrity of the U.S. financial system."

Today, there is no longer a central venue within the Federal Government vent for developing, coordinating and implementing an effective strategy for combating financial crimes. I think there should be one. And I think it should be part of Treasury.

Treasury is undergoing significant structural, resource and management changes. I would like to get your thoughts on how the government can better combat financial crimes.

Thank you Mr. Chairman.

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PREPARED STATEMENT OF ARNOLD I. HAVENS

Mr. Chairman, Senator Baucus, and Members of the Committee, thank you for the opportunity to appear before you today, and especially for your prompt scheduling of this hearing. I am honored to be President Bush's nominee to serve as General Counsel for the Department of the Treasury, and I am grateful to Secretary Snow for his confidence in me. If you will permit me, I will take a moment to introduce the members of my family that are here today.

As you may know, I grew up in Evanston, Illinois. My parents were passionate about a number of things, but chief among them was assuring that my sister and I received a quality education, and they sacrificed much to give us that opportunity. They also taught us by example the importance of giving back to our community in recognition of the obligation we have as citizens living in a democracy. Volunteering and assuming positions of responsibility in community organizations, albeit at times challenging, was simply a given in our family. These important lessons and others help to explain why—for me—public service is both a privilege and an obligation. The opportunity to return to public service at this time seems especially important in this post 9/11 environment. Today, our Nation faces challenges that we must and can meet so that our children's and their children's freedoms and futures remain bright. I welcome the opportunity, if confirmed, to contribute what I can toward meeting these challenges.

Mr. Chairman, I believe that the solid education my parents encouraged and helped me achieve along with the professional experiences that followed have prepared me well for the responsibilities I will undertake as General Counsel, if I am confirmed by the Senate. My legal training has prepared me throughout my career to solve complex problems by identifying issues, assessing relevant statutory and regulatory provisions, and crafting solutions to meet the goals of my clients.

My government service as an Assistant Legislative Counsel for the House of Representatives and the Minority Counsel and Staff Director of the House Energy and Commerce Committee taught me to be precise, analytical and thorough in developing legal proposals, and gave me a detailed understanding of the legislative and regulatory processes.

In the private sector, I have provided strategic advice to my clients, and have advocated their interests in a variety of forums. This has helped me to formulate clear and cogent legal and policy arguments, and to present them in a persuasive and effective manner.

I understand the responsibilities of the position to which I have been nominated are great. The legal issues facing the Treasury Department today are among the most important and sweeping in government, ranging from the financial war on terrorism to interpretation of the tax code. Decisions of the Department directly impact individual citizens and businesses in very profound and personal ways. It is clear to me that assuming leadership of the Treasury's legal division and providing can-

did advice to the Secretary and other Treasury clients will be both challenging and immensely rewarding. If confirmed, I welcome this challenge, and pledge to you that I will work hard every day to carry out my responsibilities.

I thank you again, Mr. Chairman, for allowing me to appear before you today, and I am happy to answer any questions that you and other members of the Committee may have.

## RESPONSES TO QUESTIONS FROM SENATOR GRASSLEY

### TERRORIST FINANCING

*Question 1.* The Treasury Department is responsible for fighting money laundering, and for administering the Patriot Act and the Bank Secrecy Act. However, Treasury does not have compliance officers and investigators to fulfill these missions. What is your plan for dealing with this situation?

*Answer.* Treasury's Financial Crimes Enforcement Network administers the Bank Secrecy Act and has, pursuant to Title III of the USA PATRIOT Act, implemented several rules that regulate a much broader range of the financial services sector. It is my understanding there is concern that FinCEN will need additional dedicated personnel to ensure proper administration of these new regulatory programs. If confirmed, I will commit to learning more about the resources that are dedicated to these regulatory programs; to working with officials at Treasury and FinCEN to determine whether those resources are sufficient to competently discharge FinCEN's responsibilities for administering those programs; and, if I believe those resources are insufficient, to assisting Treasury and FinCEN to work with the Administration and the Congress to get FinCEN the resources necessary to properly administer the programs.

*Question 2.* One of the most important efforts in the war against terrorism is cutting off terrorists' funding sources. The departing General Counsel has suggested structural changes to make Treasury more effective in choking off terrorist financing. What changes do you recommend?

*Answer.* I am aware that Mr. Aufhauser made recommendations to Secretary Snow regarding how Treasury should structure its assets that relate to terrorist financing and financial crime after the reorganization resulting from the Homeland Security Act. If confirmed, I will certainly study Mr. Aufhauser's recommendations and consider other ideas people may have about how best to organize Treasury's assets and put those resources to the most productive use in this critical endeavor. If, after study, I determine that changes need to be made, I will make those recommendations to Secretary Snow, consult with all appropriate parties—including the Congress—and do all I can to see that the recommendations are implemented.

*Question 3.* The Secret Service and Customs were moved from Treasury to the new Department of Homeland Security, decreasing the coordination of financial crime and counterfeiting efforts. What do you think needs to happen to make sure that all the financial intelligence is appropriately coordinated so nothing slips through the cracks?

*Answer.* I understand that Treasury has a central role in coordinating U.S. policy relating to financial crime—notwithstanding the transfer of these agencies to the Department of Homeland Security. If confirmed, I commit to you that I will help Secretary Snow ensure that these critically important programs are fully coordinated and successfully implemented for the security of the financial system and the good of the country.

### REGULATION MAKING AUTHORITY

*Question 1.* There has been a disturbing trend in recent years with the Treasury Department issuing regulations and other guidance that exceed its authority. Obviously, Treasury has some degree of flexibility in drafting regulations to make the law work. Nobody would challenge that. But that flexibility can be pushed too far. And we can end up with regulations that are not based on anything that has come out of Congress. The recently proposed regulations dealing with the deduction and capitalization of certain expenses—the so-called INDOPCO regulations. It is widely thought that the INDOPCO regulations do much more than interpret any law made by Congress—they create new law.

What actions would you take to insure that Treasury properly executes its regulation-making function and does not continue to draft invalid regulations?

*Answer.* I can assure this Committee that if I am confirmed as General Counsel, I will carefully monitor regulations issued by the Department to ensure that they do not exceed the Department's authority.

*Question 2.* In your opinion, what should the Treasury Department do if it perceives a need for there to be additional guidance in an area, but Congress has yet to provide it?

*Answer.* If I perceive that a legislative solution is necessary, I will not hesitate to work within the Administration and with the Congress to achieve such a change.

*Question 3.* In your opinion, what effect does the proliferation of invalid regulations have on the integrity and the clarity of our tax laws?

*Answer.* I am not aware that there has been a proliferation of regulations that exceed the Treasury Department's authority. Certainly, if there were such a proliferation, it would have a negative effect on the tax laws.

#### CHINA CURRENCY

*Question 1.* The Department of the Treasury issued a report a few weeks ago that concluded that none of our major trading partners is manipulating its currency. That conclusion came despite overwhelming evidence and statements by many in the Administration to the contrary, specifically about China and Japan. I don't think the Administration is taking this issue seriously. China's actions weakening its currency is wreaking havoc in international currency markets as other economies in Asia, including Japan, also artificially depress the value of their currencies in an attempt to compete with China and stimulate their economies. Yet, the Administration chose to duck the problem in the Treasury report.

What would you do as General Counsel to the Department of the Treasury to address the issue of currency manipulation by our trading partners?

*Answer.* If confirmed as Treasury General Counsel, I would make sure that Treasury officials understood the requirements of Sections 3004 and 3005 of that Act for determining whether a country is engaging in currency manipulation for purposes of preventing effective balance of payments adjustments or gaining unfair competitive advantage in international trade, and that determinations made were consistent with those requirements.

*Question 2.* If you had been responsible for the currency report—as I imagine you will be in the future if you are confirmed—would you have found there to be no currency manipulation by any of our trading partners?

*Answer.* I understand that extensive work on the part of Treasury policy and legal officials went into the report that was sent several weeks ago. Given the complexity of the manipulation issue, I am unable to say whether I would have advised that, as a legal matter, there was no currency manipulation by any of our trading partners, according to the terms of Section 3004 and 3005. What I can say is that I recognize the importance of the manipulation issue and, if I am confirmed, will give very considered advice to the Secretary of the Treasury and other Treasury officials concerning it.

#### TAX SHELTER SETTLEMENT INITIATIVES

*Question.* One of the many problems with tax shelters is that they threaten to clog the system and take IRS resources away from where they are needed. To minimize lengthy and costly litigation, the IRS and Treasury have recently issued several settlement initiatives aimed at quickly dealing with particular tax shelters. I agree that something has to be done to keep the system from being overwhelmed, but the settlement process raises some concerns. I'm concerned that some IRS settlements may be letting tax shelter participants off the hook too easily. Some taxpayers are confident that they can come out of a settlement and still be way ahead—especially in the case of the most complicated tax shelters.

What role do you see for settlement initiatives in the future in resolving the tax shelter problem?

*Answer.* Although I am not aware of the specific initiatives you describe, I can envision their use in certain cases. Unfortunately, the tax code is not always a model of clarity. As a result, the IRS cannot always take cases to court with the assurance that the Government will prevail. In such cases, it may be better to bring taxpayers into compliance through settlement. While such initiatives should never completely take the place of litigation, they may be a useful tool for the Government in appropriate circumstances.

#### LACK OF RESOURCES FOR THE TREASURY INSPECTOR GENERAL

*Question.* Last year, the Treasury Department transferred to the Department of Homeland Security about 35 percent of the Treasury Inspector General's workload. However, Treasury took away 70 percent of the Treasury IG's budget and staff.

Last month, I received a copy of Treasury's Federal Information Security Management Act report on its compliance with technology security measures. The report

was supposed to include an independent evaluation by the Treasury IG. But it was not included. It is my understanding that Treasury and OMB told the IG that they did not have to finish that report by its due date since the IG did not have the resources to do both the information security report and the Treasury's financial audit.

How can you ensure that Treasury employees are complying with the laws, regulations, and policies if its investigative arm has been cut off?

*Answer.* Senator, I know how important inspectors general are to the Executive Branch's departments and agencies. In fact, as Chief Minority Counsel for the House Energy and Commerce Committee, I worked on amendments that created an office of inspector general for the Railroad Retirement Board. If I am confirmed as Treasury General Counsel, to ensure that Treasury employees are complying with all the laws and regulations, I will work closely with Inspector General's office on any sensitive issues that require cooperation.

#### OFAC REGULATION OF CUBA TRAVEL RESTRICTIONS

*Question.* Last March OFAC tightened the restrictions against travel by Americans to Cuba. Notably, OFAC effectively eliminated "people-to-people" travel. The revised rules also effectively expanded the amount of remittances available to Cuban citizens. I was very disturbed by these new rules, because I think the travel restrictions are counter productive, since they only shelter the Castro regime from American influence. I was also disturbed because the Administration justifies the travel ban by arguing that travel by Americans to Cuba would be a primary source of hard dollars, and therefore financial support, to the Castro regime. Yet, remittances are one of the largest sources of hard currency to the Cuban government. Finally, tightening the restrictions only means that more and more of OFAC's resources are wasted on enforcing the travel ban. It is my understanding that OFAC spends as much 10% of its operating budget, and dedicates 21 full-time employees not counting supervisory resources, to enforce the Cuba travel ban. This is particularly alarming given that OFAC could otherwise use these resources to carry out far more important work in monitoring international financing of terrorism.

With all the dangers that we face in the Middle East, with ongoing operations in Iraq and Afghanistan, and with the very serious threats that our troops, our embassies, and our citizens face abroad, do you think that the use of 10% of OFAC's budget and 21 full-time employees to enforce the travel ban is a wise use of OFAC's resources?

*Answer.* It is my understanding that OFAC's recent amendment of the Cuban Assets Control Regulations eliminated only the licensing provision related to non-academic educational tours of Cuba and that many other licensing provisions that promote people-to-people contact with Cubans remain available. I also understand that the 21 full-time employees working on the Cuba program include supervisory resources and administration as well as enforcement of the entire Cuba embargo, not just its travel-related aspects.

On October 10, President Bush announced new initiatives intended to hasten the arrival of a free and democratic Cuba. As General Counsel of the Treasury Department, I would work to assist OFAC in enforcing these and other U.S. sanctions initiatives in a full and fair manner.

SENATE FINANCE COMMITTEE  
STATEMENT OF INFORMATION REQUESTED OF NOMINEE

**A. BIOGRAPHICAL INFORMATION**

**1. Name:**

Arnold I. Havens  
Arnie Havens (Nickname)

**2. Position to which nominated:**

General Counsel for the Department of the Treasury

**3. Date of nomination:** October 29, 2003

**4. Address:**

Residence – 8105 Ridings Court, McLean, VA 22102  
Office – CSX Corporation, 1331 Pennsylvania Ave., NW #560, Wash., DC 20004

**5. Date and place of birth:**

12/26/47 - Chicago, Illinois

**6. Marital status:**

Married – Debra M. Hardy Havens, Maiden name: Debra Mae Hardy

**7. Names and ages of children:**

Alissa Brooke Havens – Age 24  
Jonathan Alban Havens – Age 20  
Brittany Jean Havens – Age 13

**8. Education:**

9/70 – 6/73, College of Law, University of Illinois, J.D., 6/73  
9/65 – 6/69, University of Illinois, B.A., 6/69  
9/61 – 6/65, Evanston Township High School, High School Diploma, 6/65

**9. Employment record:**

2/01 to present, Senior Vice President, Government Affairs, CSX Corporation  
1331 Pennsylvania Ave., NW #560, Wash., DC 20004  
1/97 – 2/01, Vice President, Federal Affairs, CSX Corporation  
1331 Pennsylvania Ave., NW #560, Wash., DC 20004  
2/95 – 1/97, Vice President, Washington Counsel, CSX Corporation  
1331 Pennsylvania Ave., NW #560, Wash., DC 20004  
5/94 – 2/95, President, The Havens Group  
1200 G Street, NW #800, Wash., DC 20005

- 2/94 – 5/94, President, The Havens Group  
1341 G Street, NW #1040, Wash., DC 20005
- 2/93 – 2/94, Senior Vice President, The Pagonis & Donnelly Group  
1620 Eye Street, NW #202, Wash., DC 20006
- 5/91 – 2/93, Special Assistant to the President for Legislative Affairs, Executive Office  
of The President, The White House, Wash., DC 20500
- 2/89 – 5/91, Partner, White, Fine & Verville  
1156 15<sup>th</sup> Street, NW #1100, Wash., DC 20005
- 6/86 – 2/89, Partner, Eckert Seamans Cherin & Mellott  
2100 Pennsylvania Ave., NW, Wash., DC 20037
- 1/83 – 6/86, Minority Counsel & Staff Director, Energy & Commerce Committee  
U.S. House of Representatives, 2322 Rayburn Building, Wash., DC 20515
- 3/81 – 1/83, Associate Minority Counsel, Energy & Commerce Committee  
U.S. House of Representatives, 2322 Rayburn Building, Wash., DC 20515
- 7/79 – 3/81, Assistant to the Chairman, U.S. Railroad Retirement Board  
844 Rush Street, Chicago, IL 60611
- 9/73 – 7/79, Assistant Legislative Counsel, Office of Legislative Counsel  
U.S. House of Representatives, 136 Cannon Building, Wash., DC 20515
- 6/72 – 7/73, Interviewer, Survey Research Lab  
University of Illinois, 1407 W. Gregory Drive, Urbana, IL 61801
- 6/72 – 7/73, Alumni Rep., College of Law  
University of Illinois, 504 E. Pennsylvania Avenue, Champaign, IL 61820
- 7/71 – 9/71, Caseworker, Cook County Department of Public Aid  
3910 W. Ogden Avenue, Chicago, IL 60623
- 6/71 – 7/71, Substitute Teacher, Chicago Board of Education  
228 N. LaSalle, Chicago, IL 60601
- 2/70 – 6/70, Substitute Teacher, Chicago Board of Education  
228 N. LaSalle, Chicago, IL 60601
- 8/69 – 12/69, U.S. Army – Pvt., Active Duty  
U.S. Army Reserve
- 6/69 – 8/69, Market Research, Reserve Insurance Company  
65 E. South Water Street, Chicago, IL 60601

**Government experience:**

Advisor to a member of the National Commission on Economic Growth and Tax Reform,  
1995-1996.

**11. Business relationships:**

Senior Vice President, Government Affairs, CSX Corporation

- Vice President, Federal Affairs, CSX Corporation
- Vice President, Washington Counsel, CSX Corporation
- Also registered agent for following CSX Subsidiaries:
  - The Real Estate and Improvement Company of Baltimore City
  - Terminal Realty Baltimore Co.
  - Terminal Realty Baltimore Second Co.
- Association of American Railroads (CSX, Board Alternate)

**12. Memberships:**

<u>Organization</u>	<u>Position</u>	<u>Tenure</u>
Illinois State Bar Assoc.	Member	9/1973 to Present
D.C. Bar Association	Member	10/1974 to Present
American Bar Assoc.	Member	9/1974 to 2000
Ridings of McLean Homeowners Assoc.	Member Treasurer	1990 to Present 1996
Bryce Harlow Fndtn.	Board Member	2000 to Present
Business-Government Relations Council	Member President Vice President Member of Board Membership Chairman	1997 to Present 10/2000 to 10/2001 1999 2002 2003
The Carlton Club	Member	6/1997 to Present
Lowes Island Club	Member	10/1993 to Present
Kenwood Country Club	Member	11/1987 to 10/1994
City Club of Washington	Member	3/1993 to Present
Capitol Hill Club	Member	1991 to Present
116, Inc.	Member	1993 to Present
John E. Cribbett Society	Life Membership	4/2003

**13. Political affiliations and activities:**

a. *List all public offices for which you have been a candidate.*

None

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

I currently serve as Chairman of the CSX Good Government Fund (previously known as CSX Transportation PAC), a Political Action Committee.

Over approximately the last decade, to the best of my recollection and records, I have served as a host, or on the host or steering committees for election or reelection campaigns of numerous candidates as well as for multicandidate political action committees:

Bluegrass Leadership PAC	7/08/2003 Event	Steering Cmt
Oxley for Congress	6/30/2003 Event	Finance Cmt
Bush-Cheney '04	6/17/2003 Event	Host Committee
Evan Bayh Committee	6/18/2003 Event	Host Committee
John Breaux Senate Cmt	9/18/2003 Event	Co-Host
Friends of Clay Shaw	10/3/2002 Event	Host Committee
Quinn for Congress	10/2/2002 Event	Host Committee
Collins for Congress	9/19/2002 Event	Host Committee
Portman for Congress	08/6/2002 Event	Host Committee
Bush-Cheney 2000	5/30/2000 Event	Host Committee
George Allen for Senate	2000 Event	Co-Host

- c. *Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.*

Nat'l Rep Congressional Cmt	\$ 500	6/17/97
Anne Northup for Congress	\$ 500	8/21/97
McCain for Senate '98	\$ <u>500</u>	12/17/97
<b>Total given 1997</b>	<b>\$1,500</b>	
Nat'l Rep Congressional Cmt	\$ 250	7/02/98
Mike Crapo for US Senate	\$ 500	7/06/98
Bud Shuster for Congress Cmt	\$ <u>500</u>	7/16/98
<b>Total given 1998</b>	<b>\$1,250</b>	
McCain 2000	\$1,000	3/29/99
Friends of George Allen	\$ <u>1,000</u>	12/31/99
<b>Total given 1999</b>	<b>\$2,000</b>	
Terry Lierman for Congress	\$1,000	2/02/00
Terry Lierman for Congress	\$1,000	2/02/00
Bush for President	\$1,000	5/30/00
Tiberi 2000	\$ 316.80	6/19/00
Ensign for Senate	\$ 500	6/26/00
Texans for Perry	\$ 250	7/27/00
Friends of George Allen	\$1,000	10/3/00
Abraham Senate 2000	\$1,000	10/14/00
10 <sup>th</sup> District Republican Cmt (VA)	\$ 100	10/16/00
Santorum 2000	\$1,000	10/19/00
Callahan for Delegate (VA)	\$ <u>500</u>	11/20/00
<b>Total given 2000</b>	<b>\$7,666.80</b>	

Callahan for Delegate (VA)	\$ 500	4/15/01
Callahan for Delegate (VA)	\$ 500	5/10/01
Portman for Congress Cmt	\$ 500	7/31/01
Callahan for Delegate (VA)	\$ 250	10/14/01
Friends of Mark Early (VA)	\$ 250	10/14/01
<b>Total given 2001</b>	<b>\$2,000</b>	
Julie Adams for Metro Council (KY)	\$ 500	1/27/02
Over The Hill Pac (Geo. Allen)	\$1,000	3/07/02
Over The Hill Pac (Geo. Allen)	\$1,000	3/13/02
John Warner for Senate	\$1,000	4/24/02
Gordon Smith for US Senate 2002	\$1,000	5/09/02
Senator John Warner Cmt	\$1,000	5/20/02
Friends of George Allen	\$1,000	6/29/02
Portman for Congress Cmt	\$ 500	7/24/02
Julie Adams for Metro (KY)	\$ 250	8/04/02
Portman for Congress Cmt	\$ 500	8/06/02
Callahan for Delegate (VA)	\$ 250	9/15/02
Team Sununu	\$ 500	10/01/02
NY Republican Fed Camp Cmt	\$1,000	10/18/02
Callahan for Delegate (VA)	\$ 250	11/24/02
<b>Total given 2002</b>	<b>\$9,750</b>	
Bush-Cheney 04	\$2,000	6/16/03
Portman for Congress Cmt	\$ 500	6/24/03
Stirrup for Supervisor (VA)	\$ 250	9/05/03
George Allen Victory Fund	\$1,250	9/09/03
<b>Total given 2003</b>	<b>\$4,000</b>	

## 14. Honors and Awards:

None

## 15. Published writings:

Havens and Anderson, *The Federal Employers' Liability Act: A Compensation System in Urgent Need of Reform*, **Federal Bar Journal**, September, 1987.

Havens, Riker & Rowe, *Striking a Balance Between Competition and Regulation*, **Frontiers of Health Service Management**, VO.2 #4, May, 1986.

Havens and Heymfeld, *Small Community Air Service Under the Airline Deregulation Act of 1978*, **Journal of Air Law & Commerce**, Spring, 1981.

## 16. Speeches:

None

## 17. Qualifications:

I believe that my professional background has prepared me well for the responsibilities I will undertake as General Counsel of the Department, if confirmed by the Senate.

Throughout my career, I have employed my legal training to solve complex problems by identifying the issue presented, assessing relevant statutory and regulatory provisions, and crafting solutions to meet the goals and objectives of my clients. For part of my career, I served as an Assistant Legislative Counsel for the House of Representatives. The challenges presented in drafting legislation taught me the need to be precise, analytical and thorough in developing legal proposals.

In addition, I have provided strategic and tactical advice to my clients, and have served as an advocate for them, representing their interests in a variety of forums. These opportunities required that I research and formulate cogent arguments, and present them in a sound, understandable and persuasive manner. I have been called upon to negotiate among competing interests, in some instances holding to my position and, in others, compromising as appropriate. I have learned from these experiences the necessity of being open to differing arguments and views, but also of maintaining one's position when required.

Another aspect of my experience relates to managing groups of attorneys, paraprofessionals and clerical employees. Specifically, I have overseen the activities and budget of the minority staff of the House Energy and Commerce Committee, as well as the government relations activities of CSX Corporation. I also have served as managing partner of a law firm specializing in regulatory and legislative matters. These situations have helped me to refine the skills needed to oversee personnel. I believe that I have the ability to motivate, guide and direct a staff to achieve the organization's goals.

I enjoy attempting to solve difficult issues in collaboration with my colleagues, and I anticipate that my professional training and experience will serve me well in my new duties, if confirmed.

#### **B. FUTURE EMPLOYMENT RELATIONSHIPS**

1. **Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.**

Yes, I intend to sever my connections with my employer, CSX Corporation, except for my employee pension.

2. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.**

No

3. **Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.**

No.

4. **If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.**

Yes

**C. POTENTIAL CONFLICTS OF INTEREST**

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

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflict of interest arise in the future, I will seek guidance from a Treasury ethics official.

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

Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflict of interest arise in the future, I will seek guidance from a Treasury ethics official.

- 3. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.**

Since February 1995, I have represented CSX Corporation and its subsidiaries on a range of issues before the Congress and the Executive Branch in the areas of transportation, trade, energy, environment, tax, pension, general law and legal system matters, technology and labor law policy. From February 1993 through 1995, I represented clients (including CSX Corporation, Burlington Northern Railroad, American Commercial Lines and Dow Chemical) before the Congress and the Executive Branch on a range of issues in many of these subject areas. These representations involved numerous contacts with Members and staff of the Congress, various Departments of the Federal Government and regulatory agencies. In addition, on occasion I have interacted with Members and staffs of state legislatures and governments.

After a review of my records and to the best of my recollection, the following are the significant issues on which I have engaged in activities seeking to influence the passage, defeat or modification of legislation and the administration and execution of law and public policy:

**Transportation**

**Railroad**

- Passenger rail (Amtrak, commuter, high-speed)
- Rail labor-management issues
- Rail safety
- Railroad employee welfare
- Hazardous materials transportation

**Railroad (Continued):**

- Surface transportation programs (ISTEA, TEA-21)
- “One Call” notification
- Rail customer issues
- Railroad relocation assistance
- Government regulation of the freight railroad industry
- Conrail acquisition by CSX and Norfolk Southern
- Burlington Northern Sante Fe
- Chicago rail infrastructure project
- Truck size/weight regulations
- Homeland security
- Surface Transportation Board matters
- Department of Transportation matters (including Federal Railroad Administration)

**Aviation**

- Air Traffic Control Subcommittee

**Maritime**

- Maritime security
- Ocean Shipping Reform Act
- Jones Act trade
- Port issues
- Coast Guard issues relating to waterborne trade
- Inland waterway and water resource issues
- Sale of Sea-Land, Inc. to Maersk
- Carlyle Group acquisition of majority stake in CSX Lines

**Environment/Energy/Natural Resources**

- United Nations Framework Convention on Global Climate
- National Park Service issues
- Mountaintop mining
- Clean air/emissions
- Clean coal technologies
- Price Anderson nuclear indemnification
- Interstate waste transportation
- Superfund

**Law and Legal System**

- Punitive damage awards
- Class action litigation
- Asbestos litigation
- Corporate accountability (“Sarbanes-Oxley”)
- Terrorism insurance

**Pension/Retirement**

- Railroad retirement system
- Pension system adjustments

Tax

- General business and corporate tax issues
- Barge/inland waterway operator taxes
- Repeal of 4.3 cents-per-gallon fuel tax on railroads
- Accelerated (“bonus”) depreciation of qualified property

Trade

- Most Favored Nation status for China
  - Trade agreement implementation (“fast track”)
  - World Trade Organization coverage of service issues
  - CSX World Terminals in the Dominican Republic, South Africa, and Russia
4. **Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with two copies of any trust or other agreements.)**
- Any potential conflicts of interest have been identified and resolved in accordance with the terms and conditions of my ethics agreement with the Department of the Treasury, which is documented by letter to Kenneth Schmalzbach, Designated Agency Ethics Official and Assistant General Counsel for General Law and Ethics. Should any potential conflicts of interest arise in the future, I will consult with Treasury ethics officials.
5. **Two copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.**
6. **Questions for USTR candidates.**

N/A

**D. LEGAL AND OTHER MATTERS**

1. **Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.**
- No
2. **Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.**

3. **Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.**

2/88 – Civil Action, Divorce Decree, Havens v. Havens, Maryland District Court, Rockville, MD

2/90 – Civil Action, Settled, FDIC v. Eckert, Seamans, Cherin & Mellott (including all the named partners of the firm at the time of the alleged cause of action). It is my understanding that the case was filed as a result of a divestiture transaction on which the Eckert firm represented Guardian Bank. The case was dismissed by stipulation dismissal pursuant to a settlement agreement confirmed by order of the court on May 22, 1992.

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

No

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

None

**E. TESTIFYING BEFORE CONGRESS**

1. **If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so?**

Yes

2. **If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?**

Yes

