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CONFIRMATION HEARING ON THE NOMINATION OF THOMAS L. SANSONETTI TO BE ASSISTANT ATTORNEY GENERAL

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

NOVEMBER 6, 2001

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CONFIRMATION HEARING ON THE NOMINATION OF THOMAS L. SANSONETTI TO BE ASSISTANT ATTORNEY GENERAL

TUESDAY, NOVEMBER 6, 2001

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 2:00 p.m., in Room SD–226, Dirksen Senate Office Building, Hon. Maria Cantwell, presiding.

Present: Senators Cantwell, Leahy, Feingold, Hatch, Kyl, and Sessions.

OPENING STATEMENT OF HON. MARIA CANTWELL, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator CANTWELL. The hearing of the Senate Committee on the Judiciary will come to order. The hearing is for the purpose of taking up the nomination of Thomas L. Sansonetti to be Assistant Attorney General for the Environment and Natural Resources Section of the Department of Justice.

Mr. Sansonetti, you are nominated to an extremely important position and I am pleased that we are moving forward today on this process in this hearing.

Mr. Sansonetti has previously served as associate solicitor of the Interior and as solicitor of the Department of Interior. I will have a number of questions about your decision-making process in the past and the questions that you are likely to face in the job as Assistant Attorney General but I want to say that I have heard testimony from my colleagues on both sides of the aisle that compliment your legal skills and your willingness to work cooperatively toward responsible solutions, so I look forward to hearing your answers on many of our questions today.

The position of Assistant Attorney General for the Environment and Natural Resources Section of the Department of Justice is a job that comes with enormous responsibilities. The person holding this position has the duty both to uphold our environmental protection regulations in the face of challenges, and simultaneously to pursue responsible enforcement of our major environmental statutes that protect the air we breathe and the water we drink. The person who fills this position needs to have the confidence not only of the president and the attorney general but also of the American people. They need to know that the laws will be enforced in a way

that protects our public health, preserves our natural resources, and does that for future generations.

The person who holds this job is our nation's top environmental law enforcer, responsible not only for representing government agencies but also responsible for representing the American people as their chief advocate.

The public is strongly committed to protecting the environment. According to a March 2001 survey, 75 percent of Americans favor stronger enforcement of our environmental regulations and 75 percent believe that our current environmental laws should be maintained.

What the American people seek but are not finding is the same level of commitment from the administration to enforce our existing environmental protection laws. That may be why 57 percent of the American public believe that under the administration the quality of our environment is getting worse. The public has a right to be skeptical but I am hoping, Mr. Sansonetti, that you will change that in your position.

In the past 10 months the administration has repealed rules to keep arsenic out of drinking water, repealed requirements for energy-efficient air conditioners, reneged on our commitment to reduce greenhouse gas emissions, and contemplated repealing regulations protecting school lunches from Salmonella contamination. Just last week the administration announced that they would change the rules governing hardrock mining for gold and silver.

What we seek, Mr. Sansonetti, from you today is a strong commitment that as Assistant Attorney General the process will begin of restoring the public's confidence in the administration's commitment to environmental protection by upholding the laws and advancing strong pro-enforcement actions. In this job you will be responsible for prosecuting violations of the Clean Air and Clean Water Acts, the two federal laws most directly aimed at controlling pollution. You will represent the EPA in forcing the clean-up of contaminated Superfund sites and you will make the decisions that determine the continued existence of hundreds of endangered species.

When the department is sued to weaken environmental regulations you will be in charge of the litigation. These suits have already included efforts to invalidate the roadless area rule that protects 58 million acres of forests, and to overturn the air conditioning efficiency standards that would spare us the need to build 39 mid-size electricity-generating plants.

Finally, as Assistant Attorney General for the Environmental Section, you will have the responsibility for sending a message that this administration cares about the environment. You will have the opportunity to do this by advancing strong positions in negotiations and settlements and by refusing to let back-door settlements be used as a convenient under-the-radar means of weakening regulations.

I know that there are many here who want to talk about their support for you and we will get to that but I just want to make a final point, that in my view, shared by a significant majority of Americans, strong environmental protection should be a priority for this country, even in the face of new demands from what is likely

to be a long and costly war against terrorism. Vigorous enforcement and a strong posture in negotiations lead directly to creative solutions to the public health and environmental challenges we face.

Getting business and government to work together toward these solutions is essential to having livable communities. I believe that is one of the key reasons that business has been willing to make investments in creative technology solutions to protect our environment and public health over the past 10 years, because of the vigorous enforcement roles that the Department of Justice has taken.

So Mr. Sansonetti, we look forward to hearing your testimony today and your thoughts on the questions that my colleagues and I will pose to you. But first we will hear from two of, I believe, your ardent supporters, Senator Thomas and Senator Enzi of Wyoming, and I believe that Congresswoman Cubin may also be joining us here today.

It is definitely the practice of the Committee to ask the nominees who are supported by their members to make statements and the two of your senators are here and Senator Thomas, I believe that you may want to start with your statement.

[The opening statement of Senator Cantwell follows:]

OPENING STATEMENT OF MARIA CANTWELL, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Mr. Sansonetti, I'd like to welcome you here today. When we last saw each other in my office on September 6th I think we were planning to hold your hearing within the next ten days. Obviously a lot has changed since then—and we have had some delays in moving forward with your nomination due to the events that have consumed all of us.

Mr. Sansonetti, you are nominated to an extremely important position and I am pleased that we are moving forward with your hearing today, and I am also pleased to be able to chair this hearing.

Mr. Sansonetti has previously served as Associate Solicitor of the Interior and as Solicitor of the Department of Interior. I will have a number of questions about his decision making in these positions that has raised some concerns, in addition to questions about new issues the nominee is likely to confront as the Assistant Attorney General.

I have heard testimonials from my colleagues on both sides of the aisle as to Mr. Sansonetti's legal skills, and his willingness to work cooperatively toward reasonable solutions, and I look forward to hearing his answers to our questions here today.

The position of Assistant Attorney General for the Environment and Natural Resources Section of the Department of Justice is a job that comes with enormous responsibilities.

The person holding this position has the duty both to uphold our environmental protection regulations in the face of challenges, and simultaneously to pursue responsible enforcement of our major environmental statutes that protect the air we breath and the water we drink.

The person who fills this position needs to have the confidence, not only of the President and the Attorney General, but also of the American people. They need to know that the laws will be enforced in a way that protects our public health, preserves our natural resources for future generations, ensures a diverse biosystem with the continued existence of threatened species and plants, and protects the quality of our air and water.

The person who holds this job is the nation's top environmental law enforcer, responsible not only for representing government agencies, but also for representing the American people as the chief advocate for our environment.

The public is strongly committed to protecting the environment: according to a March 2001 Fox News poll, seventy- seven percent favor stronger enforcement of environmental regulations and seventy-five percent believe that our current environmental laws should be maintained.

What the American people seek—but are not finding—is the same level of commitment from the Administration to enforce our existing environmental protection laws. That may be why fifty-seven percent of the American public believes that under this Administration the quality of our environment is getting worse.

Americans are right to be skeptical of this Administration's commitment to environmental protection. In the past ten months, the Administration has repealed rules to keep arsenic out of drinking water, repealed requirements for energy efficient air conditioners, reneged on our commitment to reduce green house gas emissions, and contemplated repealing regulations protecting school lunches from Salmonella contamination.

Just last week the Administration announced that she would change the rules governing hardrock mining for gold and silver—so that the Bureau of Land Management would no longer prohibit mining where it would cause "substantial irreparable" harm to the environment or public health.

What we seek from Mr. Sansonetti today is a strong commitment that as Assistant Attorney General he will begin the process of restoring the public's confidence in the Administration's commitment to environmental protection by upholding the law and advancing strong pro-enforcement efforts.

In this job he will be responsible for prosecuting violations of the Clean Air Act and the Clean Water Act, the two federal laws most directly aimed at controlling pollution. He will represent the EPA in forcing the clean-up of contaminated Superfund sites, and he will make decisions that determine the continued existence of hundreds of endangered species.

When the Department is sued to weaken environmental regulations, he will be in charge of the litigation. These suits already include efforts to invalidate the Roadless Rule that protects 58 million acres of forests, and to overturn the air conditioning efficiency standard that would spare us the need to build thirty-nine mid-size electricity generating plants.

Finally, as Assistant Attorney General for the Environment Section, he will have the responsibility for sending a message that this Administration cares about the environment. He will have the opportunity to do this by advancing strong positions in negotiations and settlements, and by refusing to let backdoor settlements be used as a convenient and "under the radar" means of weakening valid regulations.

These questions are directed at ensuring that, as Mr. Sansonetti upholds the law and makes decisions that shape environmental enforcement—in deciding what cases to prosecute or appeal and what cases to settle—he takes into account the importance of strong environmental protection laws in a healthy economy.

In my view—shared by a significant majority of the American people—strong environmental protections should be a priority for this country and for this Administration, even in the face of new demands from what is likely to be a long and costly war on terrorism. Vigorous enforcement and a strong posture in negotiations lead directly to creative solutions to the public health and environmental challenges that we face.

Getting business and government to work together towards these solutions is essential to having livable communities with strong and diverse economies into the next century.

I believe that one of the key reasons that business has been willing to make investments in creative technologies to protect and preserve our environment and public health over the past ten years is the vigorous enforcement role taken by Department of Justice and specifically the Environment and Natural Resources section.

A continued commitment to strong enforcement is necessary to keep businesses moving forward in the development of creative solutions—rather than allowing a return to a focus on short-term benefits—and long-term losses—of a cut, drill, and mine philosophy.

Again, I would like to thank Mr. Sansonetti for his patience in the scheduling of this hearing. The position of Assistant Attorney General for the Environment and Natural Resources Section of the Department of Justice is a very important position. I look forward to hearing Mr. Sansonetti's views on the issues and challenges he will face if he is confirmed.

Thank you.

PRESENTATION OF THE NOMINEE BY HON. CRAIG THOMAS, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator THOMAS. Thank you very much.

I might say in the beginning that Congresswoman Cubin's husband has not been well and I think she has submitted a letter. She is fully in support of Tom Sansonetti.

Senator CANTWELL. Thank you.

Senator THOMAS. Thank you so much, members of the Committee. It is with great pleasure and pride that I join in introducing to the Committee Tom Sansonetti to be Assistant Attorney General for environmental and natural resources. As you know, his nomination is one that I have personally followed very closely and encouraged the Committee and the Senate to undertake as soon as possible, so thank you again for agreeing to do that.

I should share, as he will later, in introducing Kristi Sansonetti, a wonderful wife and partner, and she will provide a great deal of support for him.

I resist detailing every detail because I have known Tom for a very long time and we have worked together in several ways. Certainly, however, the Committee is familiar with his law background. Suffice to say he is a Wyoming lawyer, which, of course, is a good thing, a fine Wyoming lawyer with extraordinary experience in public service and private advocacy.

Just a few things from his positions in the past. After establishing his own firm and practicing law in Wyoming, Tom was named associate solicitor for energy and resources in the Department of Interior. As associate, Tom supervised the staff of attorneys that successfully handled all matters within the department dealing with public lands and water, mineral royalties, offshore and onshore oil and gas development.

In 1989 Tom returned the Wyoming. It was then, following Dick Cheney's resignation from the House to become secretary of defense, that Tom and I found ourselves engaged in a special election for that at-large seat. After the primary Tom agreed to be my campaign manager and later joined me in Washington as chief of staff.

Certainly he was an effective and magnanimous partner in that deal. He was invaluable in assisting me with the staff in all the things that we do there. His primary aid was in matters associated with the House Interior and Insular Affairs Committee, of which I was a member.

Unfortunately for me, President George Bush nominated Tom to be solicitor at the U.S. Department of Interior and he was confirmed by the Senate in 1990. It was there that Tom again distinguished himself as a productive advocate on behalf of the United States and became intimately involved in negotiating a host of high-profile cases.

And I should say, Madam Chairman, in some what response to your comments, I think Wyoming is particularly interested in environmental things. We are particularly interested in the multiple use of our lands and the keeping of our resources in good shape and Tom, of course, has been dedicated to that. He has a reputation in government of weighing carefully the concerns of the environment, natural resources and the law.

As you know, Tom is a long-time confidante and ally, so I certainly am proud to call him my friend. The president has nominated a talented and experienced lawyer who has been involved in all these issues that he will now be involved in and certainly I ask

the Committee to give his nomination its full and fair consideration. It would be a mistake and a disappointment if his nomination were to be held up by a senator for political reasons unrelated to the important job at hand. So I look forward to his appointment swiftly progressing hopefully through the Committee and through the U.S. Senate. Thank you, Madam Chairman.

[The prepared statement of Senator Thomas follows:]

PRESENTATION ON THE NOMINEE BY THE HON. CRAIG THOMAS, A U.S. SENATOR FROM THE STATE OF WYOMING

Thank you Mr. Chairman and members of the Committee.

It is with great pleasure and pride that I introduce to the Senate Judiciary Committee today Mr. Tom Sansonetti to be Assistant Attorney General of United States for the Environment and Natural Resources.

As you know, his nomination is one I have personally followed very closely and have encouraged this committee and the Senate to take up as soon as possible considering the importance of the position and Mr. Sansonetti's abilities to do the job.

Thank you again Chairman Leahy for agreeing to hold this hearing today.

I would also like to share in introducing Kristi Sansonetti, Tom's wonderful wife and partner. Tom will surely have more to say about her and the great support she provides, but I want to join in welcoming her here today.

I will resist detailing each and every one of Tom's many professional accomplishments, solid opinions and legal advice. The Committee is by now familiar with his background in law and public policy. But suffice it to say he is a Wyoming lawyer which is of course a good thing—a fine Wyoming lawyer, with extraordinary experience as a public servant and private advocate.

Please allow me to highlight just a few of the positions Tom has held that I believe make him uniquely qualified for this important post.

After establishing his own firm and practicing law in Wyoming, Tom Sansonetti was named Associate Solicitor for Energy and Resources, in the Department of the Interior. As Associate Solicitor, Tom supervised a staff of attorneys that successfully handled all matters within the Department concerning public lands, water, power, mineral royalties, onshore and offshore oil and gas development.

In 1989 Tom returned home to Wyoming. It was then, following

Dick Cheney's resignation from the House of Representatives to become Secretary of Defense, that Tom and I both found ourselves engaged in a special election for Wyoming's at-large seat.

It was after the primary that Tom agreed to be my campaign manager and later join me in Washington as my Chief of Staff.

Tom was as magnanimous as he was effective.

He was invaluable in helping me assemble a staff and office in Washington after a bruising 90 day campaign that quickly resulted in a professional Congressional organization that I'm proud to say accomplished a great deal. In addition, Tom was my primary aide dealing with matters associated with the House Interior and Insular Affairs Committee. I watched first hand, Tom's skill in navigating issues of public lands, Indian Affairs, and natural resource protection.

Unfortunately for me, President George H. Bush nominated Tom to be Solicitor at the U.S. Department of Interior, and was confirmed by the U.S. Senate in May 1990. It was there that Tom again distinguished himself as a productive advocate on behalf of the United States and became intimately involved in negotiating a host of high profile and important cases. I'm certain Secretary Lujan, if he were at this hearing today, would echo my endorsement of Tom's abilities.

Tom has a reputation in government of weighing carefully the concerns of the environment, our natural resources and the law. It is a studied, common-sense approach that lends itself perfectly to the job he is being asked to assume.

As you know Mr. Chairman, Tom is a long-time confidant and ally of mine—which in this case might help him or hurt him. Either way, I'm proud to call him my friend.

The President has nominated a talented and experienced lawyer, who has been through the trenches on the issues that are critical to the Environment and Natural Resources Division. His background will serve the Office of Attorney General, this Administration, and the American people well.

I respectfully ask that this committee give Mr. Sansonetti's nomination it's full and fair consideration. It would be a mistake and disappointment if his nomination were to be held up by a Senator for political reasons unrelated to the important job

at hand. I look forward to his appointment swiftly progressing through this committee and the full U.S. Senate.

Thank you Mr. Chairman and members of the committee.

Senator CANTWELL. Senator Thomas, I know senators' schedules are busy so we appreciate you being here and giving testimony.

Senator Enzi?

PRESENTATION OF THE NOMINEE BY HON. MIKE ENZI, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator ENZI. Thank you, Madam Chairman, and thank you for holding this hearing today so that I might have the opportunity to introduce Mr. Sansonetti to the Committee.

I have known him for 25 years. He moved to Gillette, Wyoming after he graduated from Washington and Lee University School of Law. He came to town in a 1966 Volkswagen and opened a one-man practice on Gillette's main street. I do remember that as part of his operation he actually did get to handle some criminal cases, including a couple of real gunslingers.

He eventually became intimately acquainted with Gillette's booming energy industry. He worked hard. He became a part of the community. Because of his dedication, when I was mayor I appointed him to the city's Board of Adjustment. He found out that that was an extremely difficult task since when you are on the Board of Adjustment there are no right answers, only wrong ones, and you are resolving them with people who will not appreciate either answer. He handled it admirably.

While he was in Gillette he also served as president of the Campbell County Bar Association. He was chairman of the Campbell County United Way. He was vice chairman of the Campbell County Parks and Recreation Board and made a huge increase in the number of parks that we had throughout the county at that time. He was vice chairman of the Campbell County Chamber of Commerce.

He developed his understanding of the environment, energy and natural resources by actually working in the trenches. During the time that he was in Gillette, the town almost tripled in size, which was due to the energy growth that we had. Gillette is in the heart of the Powder River Basin, an area that produces close to a third of the nation's coal. It is also expected to lead the nation in the production of coalbed methane, which is a form of natural gas; it may be one of the single largest deposits of natural gas in the United States.

At the same time, the area has been home to growing populations of deer, antelope, sage grouse, turkeys and elk, as well as a number of ranchers and farms. Through his associate with Gillette, he learned the true value of natural resources and I feel confident in saying that Tom would not do anything to compromise the continued sustainability of our nation's environment.

The experience there served him well in his later career as he represented the United States interests, as has been mentioned, as associate solicitor for energy and resources and then as Interior solicitor in 1990. As solicitor, Tom represented the United States in the Exxon oil spill litigation and signed the $1.1 billion settlement on behalf of the Department of Interior.

He also served as counsel to the Endangered Species Committee, which was a Cabinet-level group convened by former Secretary of Interior Manual Lujan to resolve issues surrounding the Northern spotted owl, a big issue in the Pacific Northwest, as the chairman knows.

Over the years I have watched Tom's legal progress and I am not surprised by his success. He is a thoughtful, creative person who enjoys a challenge and whom even his opponents like. He sees every side of an issue. He can negotiate the most contentious situation into a happy resolution. He is fair. He gets the job done and he gets it done well.

Part of my experience with Tom has been some annual dinners that he and a Wyoming district judge, who will be coming before this Committee to be a federal circuit judge, had on a regular basis. When we were having those dinners one would figure out the meal and one would provide the refreshment and the third would provide the issues and the discussions would go late into the night, solving the nation's and the state's problems. So I have had an opportunity to witness his thought process and his decision process and his values and I would highly recommend him to this Committee. He is a person who will do an outstanding job.

I am pleased that he is joined today with his wife Kristi, who is one of my new staff members. She is an outstanding attorney in her own right. I highly recommend to you Tom Sansonetti. Thank you, Madam Chairman.

Senator CANTWELL. Thank you, Senator Enzi, for your comments and your thoughts on Mr. Sansonetti's long record and I appreciate your time and focus today at the hearing.

Now I will ask my colleagues if they have any opening statements that they would like to make. Senator Hatch?

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Thank you, Madam Chairman.

It is a pleasure to be here this afternoon with someone as well qualified for this position as Tom Sansonetti. I congratulate you on being selected as President Bush's Assistant Attorney General for the Environmental and Natural Resources Division.

Now having reviewed your distinguished record, I have no doubt that you will provide great service to the citizens of this country upon confirmation.

The division you have been nominated to lead is essentially the nation's environmental law firm. The ENRD, as it is known, is responsible for litigation concerning the protection, use, and development of the nation's natural resources and public lands. It also handles lawsuits involving wildlife protection, Indian rights and claims, the clean-up of the nation's hazardous waste sites, and the acquisition of federal property for federal use. It also defends environmental challenges to governmental programs and activities.

The person who oversees this important division and its approximately 700 employees must be someone with experience and fortunately Tom Sansonetti has a proven track record. As the solicitor of the Department of Interior from 1990 to 1993, he acted as the primary legal advisor to then Secretary Manual Lujan, Jr. You

managed, Tom, a $32 million administrative budget and you oversaw the 900-case legal docket.

You served as one of the six federal negotiators for the Exxon Valdez oil spill settlement and you were appointed counsel to the Endangered Species Committee for the spotted owl hearings in Oregon. Previous to that, you served for two years as the Interior Department's associate solicitor for energy and resources.

Equally important, Mr. Sansonetti has also gained familiarity representing private sector clients as a lawyer specializing in environmental and natural resources law, including cases regarding endangered species, water law, mining regulations, and Superfund sites. In short, I believe you to be a well rounded and highly competent lawyer with a reputation for fairness. Tom Sansonetti is exactly the person we need to lead the Environment and Natural Resources Division.

So again, it is a great pleasure to welcome you to the Committee. I look forward to this hearing, working with Senator Cantwell, other members of the Committee, Chairman Leahy in particular, and others to make sure the Committee and the full Senate holds timely votes on your nomination.

Senator CANTWELL. Senator Kyl?

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF

Senator KYL. Madam Chairman, I just ask unanimous consent to submit my statement for the record and would just note that I think it is a little incongruous to be so critical of the Bush administration's enforcement of our environmental laws, note that Mr. Sansonetti will be the chief enforcer of those laws, but not get around to holding his confirmation hearing until November. I hope that we can quickly bring him to the Senate floor and get him confirmed so that he can join the administration and begin fulfilling those significant responsibilities.

Senator CANTWELL. Senator Sessions?

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Madam Chairman.

I had a brief opportunity to chat with Mr. Sansonetti and was most impressed but I have also enjoyed discussing this matter with the senators who testified here who know him intimately and have such a high opinion of him and their opinions mean a lot to me.

I would just say this. He has an outstanding background. University of Virginia undergraduate school, his MBA at the fine University of Virginia masters of business administration program and his law degree at Washington and Lee.

As the solicitor in the Department of Interior he got a first-hand look at the issues he will be dealing with in the Department of Justice. In many ways I would describe the Interior Department to be the in-house law firm for the government with the Department of Justice being the litigating branch ultimately, handling litigation that comes forth. Hopefully they will be able to advise or adhere to and support the Department of Interior regulations and ideas about how legal matters should be handled but they ultimately

have their obligation and commitment to the Constitution and to the law of the land if the Department of Interior is in error.

In many ways the Environment and Natural Resources Division impacts our nation. Mr. Sansonetti, I am glad that you have had in-house, in-government experience and I am glad you have represented private businesses. Businesses are not all evil and doing wrong. Most businesses want to do what the law says but so many of our environmental regulations are vague or hard to apply fairly and oftentimes lawsuits have tremendous import over the most arcane rules and regulations in the governmental statutes that we have passed and regulations that have been passed.

So I think it is healthy to have someone who has had a history of enforcing the laws through the Department of Interior and, at the same time, had a history of representing individuals.

And I do believe that there is a constitutional right to property in America and before property rights can be taken the government should have a legal basis to do so and I think and hope that you would have some sensitivity to that, Mr. Sansonetti. But fundamentally, the power of the Assistant Attorney General of environment and natural resources is not as great as some would say. Basically you are bound by the law and regulations that we pass here and the court rulings that have interpreted those regulations and statutes that we have passed and the Constitution, and I think your experience will put you in a good position to be a very effective leader.

Thank you, Madam Chairman.

Senator CANTWELL. Thank you, Senator Sessions.

Mr. Sansonetti, I think what we would like to do, since we are expecting a vote at 2:30, is to call you up and administer the oath and have your testimony, maybe make introductions of family members that are here, and then it may be that we adjourn for a short time for members to come vote and then start the question and answer period after that.

So if you will come forward and stand and raise your right hand, do you swear that the testimony you are about to give before the Committee will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. SANSONETTI. I do.

Senator CANTWELL. So you are free to make any kind of introductions and opening statement.

STATEMENT OF THOMAS L. SANSONETTI, OF WYOMING, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL FOR THE ENVIRONMENT AND NATURAL RESOURCES DIVISION

Mr. SANSONETTI. Thank you, Madam Chairwoman and members of this Committee.

First of all, Madam Chairwoman, I would like to introduce my wife Kristi. She is a Wyoming native, a Wyoming attorney who until recently worked as an attorney with Judge Brorby on the Tenth Circuit Court of Appeals.

I would also like to thank the members of the Wyoming congressional delegation for coming to my hearing today and I greatly appreciate their kind words this afternoon. I have had the good for-

tune to know both senators and work with them for over 20 years and I am honored that they spoke on my behalf.

I would also like to thank this Committee for scheduling this hearing, particularly when Congress is so engaged in responding to the aftermath of the terrorist attacks on September 11 and I appreciate the fact that you held this hearing today.

As far as my statement is concerned, Madam Chairwoman, 90 years ago both sets of my grandparents immigrated to America—one from Italy, the other from Slovenia. As they landed on these shores they hoped that their lives and the lives of their children would be better than the life that they had experienced in their countries. Both my parents were born in America into non–English-speaking families with little money but like me, they had the great American opportunity of education. And if they were alive today my grandparents would feel, as my parents and I do, that it is a special family achievement to appear before you today.

And I do feel extremely privileged to be President Bush's nominee for the position of Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. I am excited about the prospect of serving our nation and working with Attorney General John Ashcroft and Congress on the numerous natural resource and environmental challenges facing our country.

I strongly believe that it is our responsibility to conserve for future generations the opportunity to experience a cleaner, greener United States than we enjoy now. At the same time we must provide future generations with the same kind of opportunity for the quality of life and economic achievement that we enjoy today. The 21st century will be a better place for everyone to live if we make wise decisions during these next few years concerning clean air, clean water and the multiple use for public lands. I am excited at the prospect of playing a role in that decision-making process. And in carrying out the duties of the Assistant Attorney General, if confirmed, I look forward to working closely with members of this Committee and other members of Congress to deal successfully with issues involving America's natural resources.

So if recommended by this Committee and confirmed by the Senate, I will have the opportunity to serve in what I believe to be one of the premier legal posts in the federal government. I am well aware that the legal positions taken by the ENRD's attorneys directly affect the daily lives of all Americans.

Now my personal observations of the federal government's impact on its citizens' lifestyle and livelihood are based in large part on my first-hand experience. As the senators noted, I have resided in Gillette and Cheyenne, Wyoming for 25 years and I did first move to Wyoming after earning my degrees from U.Va. and Washington and Lee in 1976. I began practicing as an attorney, first as a sole practitioner and then in partnerships with other Wyoming law firms, with a total of over 300 court cases to my credit.

Now the variety of clientele I represented offered me a real-life perspective on the environment and natural resources issues facing our nation today. In particular, as a local attorney I experienced the benefits and the impacts of an oil, natural gas and coal boom on the citizenry of the nation's smallest populace. Likewise, I ob-

served the beneficial effects of federal environmental regulations which required reclamation after extraction of coal, gas, oil and other minerals. And I also witnessed the devastating economic effects of the inevitable bust that followed.

Now one of the assets that I believe I bring to the job of Assistant Attorney General, if confirmed, would be my previous government experience. I was the associate solicitor for energy and resources at the close of the Reagan administration and the solicitor of the Department of the Interior for three years during the early 1990s in the George Bush administration. In both capacities I had extensive interaction with many of the nine sections in the Environment and Natural Resources Division.

Serving in these previous administrations allowed me to develop an appreciation for the many positions in natural resources litigation and such litigation's potential impacts on our citizenry. I have been exposed to the workings of Congress, the White House, the Office of Management and Budget, and the Departments of Agriculture, Energy, Interior and the Environment Protection Agency. I understand the need to develop strong working relationships with the other legal and policy decision-makers in these institutions. And having served as solicitor, I also understand the West's thirst for scarce water resources that pits the federal government, individual states, sometimes Indian tribes against one another. I have visited reservations in eight states and know of the poverty and unemployment that can exist there. I believe that these life experiences will guide me as I work with attorneys under my supervision.

I bring to the job of Assistant Attorney General a solid grounding in the legislative process, not only through my prior service in the executive branch but also from the vantage point of having worked in a congressional office. As the administrative assistant and legislative director for then–Congressman Craig Thomas during the 101st Congress, I followed all of the proposed legislation before the House Resources Committee on which he served, plus monitored the actions of his Subcommittees on National Parks, Public Lands, and Water.

Thus, I believe I have a clear understanding of the interrelationship between the executive, legislative and judicial branches of our government, having worked in the executive and legislative branches since 1987 and having practiced before the judicial branch for a quarter century during my legal career.

I have met with several members of this Committee and am aware of many of your present concerns about the environment and natural resources issues. I understand the concern over the need to maintain strong field offices outside of Washington, D.C. while coordinating their activities with the policies established inside the Justice Department. I recognize that these field offices directly deal with many of the day-to-day concerns of your constituents. Accordingly, if confirmed, I plan to travel to those field offices regularly to ensure the best service possible is provided by the Environment and Natural Resources Division.

Lastly, I like to think of myself as a problem-solver and a mediator. My years in private practice have convinced me that clients are best served by vigorous attempts to resolve disputes short of trial. To that end my door would always be open to you and your

constituents in order to address their concerns in a fair manner. I need to hear their legal arguments and they need to hear mine.

I will be happy to answer any questions that you may have today and I thank you, Madam Chairwoman, for this opportunity.

[The biographical information of Mr. Sansonetti follows.]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

THOMAS LAWRENCE SANSONETTI

2. Address: List current place of residence and office address(es).

RESIDENCE: CHEYENNE, WY

WORK: 2515 WARREN AVENUE, SUITE 450, CHEYENNE, WY 82001

3. Date and place of birth.

MAY 18, 1949; HINSDALE, ILLINOIS

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address)es).

SPOUSE: KRISTI TODD SANSONETTI (FKA KRISTI ANN TODD)

OCCUPATION: LAW CLERK FOR HONORABLE WADE BRORBY

EMPLOYER: U.S. COURT OF APPEALS
FOR THE TENTH CIRCUIT
P.O. BOX 1028
CHEYENNE, WY 82003

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

9/73 to 6/76 - Washington & Lee University
Juris Doctor, 6/76

9/71 to 6/73 - University of Virginia
M.B.A., 6/73

9/67 to 6/71 - University of Virginia
B.A., Foreign Affairs, 6/71

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were

connected as an officer, director, partner, proprietor, or employee since graduation from college.

12/95-Present	Holland & Hart LLP, Partner
02/93-12/95	Holland & Hart LLP, Of Counsel
04/90-01/93	Department of the Interior, Solicitor
06/89-04/90	Congressman Craig Thomas (R-WY), Chief of Staff
03/89-06/89	Thomas for Congress, Campaign Manager
07/87-03/89	Department of the Interior, Associate Solicitor
10/78-06/87	Sheehan, Stevens & Sansonetti, Partner
10/76-10/78	Sole Practitioner
1976	Summer employment: Ashland Oil Company, Legal Department, Intern
1975	Summer employment: Sea Pines Plantation Co., Finance Department, Intern
1971-1974	Summer employment: Briar Wood Racquet Club, Tennis Professional

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

- Graduated with distinction from University of Virginia, 1971
- The Raven Society, 1971
- Omicron Delta Kappa, 1973
- Distinguished Service Award, Department of the Interior, 1988
- Distinguished Service Award, Department of the Interior, 1992

9. Bar Associations: List all bar associations, legal or judicial-related committees 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.

• 1976 - Present	Wyoming Bar Association
• 1977 - Present	American Bar Association, Section of Natural Resources, Energy and Environmental Law
• 1978 - Present	District of Columbia Bar Association
• 1990 - Present	Federal Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

The bar associations to which I belong may engage in lobbying.

Please list all other organizations to which you belong.

- St. Mark's Episcopal Church, Cheyenne, WY
- Metropolitan Club, Washington D.C. (Bylaws attached)
- Wyoming Republican Party
- Federalist Society
- University of Virginia Alumni Association
- Washington & Lee University Alumni Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

- U.S. Supreme Court, 1980
- U.S. Court of Appeals for the Tenth Circuit, 1978
- U.S. Court of Appeals for the Federal Circuit, 1990
- U.S. District Court for the District of Columbia, 2000
- U.S. District Court for the District of Wyoming, 1976
- Wyoming Supreme Court, 1976
- Wyoming District Court, 1976

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all

published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

- Solicitor Opinions from 1990-1993. (*attached*)
- *A Primer on the Federal Onshore Oil & Gas Leasing Reform Act of 1987 and Its Regulations*, UNIV. OF WYOMING LAND & WATER L. REV. (1990) (*attached*)
- Testimony before the House Appropriations Subcommittee on Interior, April 25, 1991
-
- Testimony before the House Appropriations Subcommittee on Interior, February 25, 1991
- Confirmation Hearing for Solicitor before the Senate Energy Committee, April 20, 1990
- Congressional testimony in support of S. 2300 before the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources, June 7, 2000. (*attached*)

13. Health: What is the present state of your health? List the date of your last physical examination.

    Excellent; 2000

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

    1996-2001 Wyoming Republican National Committeeman (elected)

    1993-1995 Chairman, Presidential Commission on Western Water Policy (appointed)

    1990-1993 Department of the Interior, Solicitor (appointed)

    1989 Primary Candidate for Congress (R-WY) (unsuccessful)

    1987-1989 Department of the Interior, Associate Solicitor (appointed)

1983-1987 Wyoming Republican State Chairman (elected)

15. Legal Career:

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

1. 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;

No.

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

Yes.
1976-1978 411 S. Gillette Avenue
Gillette, WY 82716

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

02/93-Present	Holland & Hart LLP 2515 Warren Avenue, Ste. 450 Cheyenne, WY 82001 Of Counsel and Partner
04/90-01/93	Department of the Interior 1849 C Street, NW Washington, D.C. 20240 Solicitor
06/89-04/90	Congressman Craig Thomas (R-WY) Longworth House Office Building Washington, D.C. 20510 Chief of Staff
03/89-06/89	Thomas for Congress 211 Center Street Casper, WY 82601 Campaign Manager
06/87-03/89	Department of the Interior 1849 C Street, NW Washington, D.C. 20240

Associate Solicitor

10/78-06/87 Sheehan, Stevens & Sansonetti
511 Kendrick Avenue
Gillette, WY 82716
Partner

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1976-87	I began a general practice concentrating on criminal defense and domestic relations. My practice grew to include general business transactions and environmental and natural resource issues.
1987-Present	My specialization developed in the environmental and natural resource area.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clientele is reflected by the evolution of my focus and specialization. Starting out my general practice in Gillette, Wyoming, the majority of my clients consisted of those requiring criminal defense and domestic relations representation, and eventually included representation of business clients. My current clients are representative of the typical corporations involved in the environmental and natural resource business.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

1976-87 Frequently

1987-93 Not at all
1993-2001 Occasionally

2. What percentage of these appearances was in:

(a) federal courts - **10%**
(b) state courts of record - **90%**
(c) other courts - **none**

3. What percentage of your litigation was:

(a) civil - **75%**
(b) criminal - **25%**

4. 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 50 cases to verdict or judgment as sole counsel.

5. What percentage of these trials was:

(a) jury - **10%**
(b) non-jury - **90%**

16. Litigation: Describe the ten 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 representations;
(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. Wyoming Refining Co., IBLA 98-362, MMS-95-0454-O&G (1998).

Background:

The Department of the Interior's Minerals Management Service (MMS) demanded the sum of $16.7 million in alleged underpayments for crude oil purchased by my client, Wyoming Refining Company (WRC), under the small refiners royalty-in-kind program. The crude oil price had been established by the producer, an affiliate of Shell Oil Company, the royalties to be paid per barrel were fixed by the MMS, and all amounts invoiced to WRC were paid. In 1994, eight years later, the MMS determined that Shell Oil Company had undervalued the crude oil and sent a retroactive notice for additional royalties due to WRC rather than to Shell Oil Company. A four- year litigation struggle then ensued before the Interior Board of Land Appeals (IBLA) over the MMS's authority to create retroactive price increases, the meaning of the applicable regulations and the applicability of the six-year statute of limitations to MMS royalty cases.

Result:

The IBLA remanded the case to the MMS for further findings after Congress passed a new law ratifying WRC's payments previously made as final. The MMS subsequently withdrew its order demanding that WRC pay the additional royalties and then filed against Shell Oil Company for misreporting the value of the oil.

Judges:

John Kelly
Administrative Judge
Interior Board of Land Appeals
Arlington, VA

Joan Anthony
Acting Administrative Judge
Interior Board of Land Appeals
Arlington, VA

Opposing Counsel:

Howard Chalker
Department of the Interior
Office of the Solicitor
Washington, D.C.
(202)208-4036

Geoffrey Heath
Department of the Interior
Office of the Solicitor
Washington, D.C.
(202)208-4036

2. Simons v. Bureau of Land Management, 135 IBLA 125 (1996).

Background:

My client had been involved in a 29-year-old legal fight with the Department of the Interior's Bureau of Land Management over his desire to obtain two trona leases in southwestern Wyoming that he had prospected for in 1967. Representing himself *pro se*, my client won numerous administrative appeals over the years but never saw the leases issued. I filed a Motion to Compel with the Interior Board of Land Appeals to issue the leases. While technically denying the motion on the grounds that the IBLA lacked supervisory authority over BLM employees, the IBLA stated that disregarding its previous final decision was serious and added that a BLM employee who did not follow the IBLA ruling might find himself in a position of personal liability. When I asked for the home addresses of BLM employees so that complaints could be served, the leases were issued to my client within a week.

Judges:

C. Randall Grant, Jr. and Franklin D. Arness
Administrative Judges
Interior Board of Land Appeals
Arlington, VA

Result:

Mr. Simons received leases to mine 275 million tons of trona from 5,0000 acres of federal land.

Opposing Counsel:

Lowell L. Madsen
Office of the Regional Solicitor
Denver, CO
(303)321-5353, Ext. 338

3. ASARCO v. Bureau of Indian Affairs & Bureau of Land Management, Interior Office of Hearings and Appeals Ad Hoc Board No. 91-11 (1996)

Background:

In this case, lengthy litigation ensued over the scope and extent of the powers of the Bureau of Indian Affairs and the Bureau of Land Management (BLM) to retroactively apply environmental statutes to a copper mining operation involved on both private and Indian reservation lands which resulted in a

government Cease and Desist Order halting all mining on the reservation. I was hired by the copper mine's management to work through the environmental issues with attorneys for the tribe and government and to get the mine operating once again. I conducted negotiations over water quality, air quality, bonding, endangered species, and mine plan of operation issues. These sessions lasted over three years and often involved over 20 negotiators at each session.

Result:

The BLM issued a Partial Lift Decision noting that environmental compliance with the statutes at issue had been attained and that mining could be resumed.

Judges:

Ad Hoc Board Judges Cheryl S. Rome
and Bruce Johnson
Office of Hearings and Appeals
Department of the Interior
Arlington, VA

Opposing Counsel:

Wayne Nordwall
Office of the Solicitor
Department of the Interior
400 N. 5th Street
Phoenix, Arizona 85004
(602)379-6600

Louis W. Barassi
San Xavier District Counsel
485 S. Main Avenue
Tucson, Arizona
(520)884-7777

Thomas E. Luebben
San Xavier Allottees Association Counsel
Law Offices of Thomas E. Luebben
211 12th Street NW
Albuquerque, NM 87102
(505)842-6123

4. Citizens Opposing Northern Alabama Pipeline Project, Wild Alabama and GASP Coalition v. U.S. Fish & Wildlife Service, et al., U.S. District Court for the Northern District of Alabama, Civil Action No. CV-99-B-0097-NE (1999)

Background:

I represented defendant Southern Natural Gas Co. (SONAT), along with local co-counsel George S. Lynn, before the U.S. District Court for the Northern District of Alabama, successful attempt to defeat a Motion for Temporary Restraining Order, filed by a natural gas competitor of my client. Had a restraining order been issued, the consumers in the cities of Huntsville and Decatur, Alabama would have been denied a second source of natural gas. SONAT's proposed new pipeline was to transport natural gas from Tuscaloosa to the Huntsville area and had to pass under the Tennessee River, home to an endangered snail. I worked with the Fish and Wildlife Service (FWS) to effect a slant drilling plan under the riverbed to bypass the snails.

Result:

The court denied Plaintiff's motion for a temporary restraining order, upheld the approval permit for the pipeline issued by the FWS and eventually dismissed the underlying complaint.

Judge:

Honorable Sharon Lovelace Blackburn,
U.S. District Court for the Northern District of Alabama

Co-Counsel:

George G. Lynn
Maynard, Cooper & Gale, P.C.
2400 AmSouth/Herbert Plaza
1901 Sixth Avenue North
Birmingham, Alabama 35203-2618
(205)254-1000

Opposing Counsel:

Ray Vaughn
Wildlaw
Suite 214
300-B Water Street
Montgomery, AL 36104
(334)265-6529

5. Hettinger Welding, Inc. v. Remedial Constructors, Inc., et al., Sixth Judicial District Court, Campbell County,

Wyoming, Civil Action No. 21858; Hettinger Welding, Inc. v. EARTHCO, et al., Sixth Judicial District Court, Campbell County, Wyoming, Civil Action No. 22222; Boss Industrial Constr., Inc. v. Wyodak Resources Devel. Corp., et al., Sixth Judicial District Court, Campbell County, Wyoming, Civil Action No. 22048; Blair Electric Svc. Co. v. EARTHCO, et al., Sixth Judicial District Court, Campbell County, Wyoming, Civil Action No. 22188.

Background:

In this case, I defended EARTHCO, a company using clean coal technology to produce clean energy briquettes from coal mines in northeast Wyoming. EARTHCO's creditors began filing lawsuits in 1998 seeking relief for millions of dollars in a complex set of parallel litigation involving Wyoming's lien statutes. EARTHCO's very existence was at stake during the year-long litigation.

Result:

Settlement was attained in late 1999 and the Wyoming District Court ordered that all creditors' demands had been satisfied against my client in September, 2000.

Judge:

Honorable Terrence L. O'Brien (Retired)
Sixth Judicial District Court
Campbell County
State of Wyoming

Opposing Counsel:

J. Stan Wolfe
Law Firm of J. Stan Wolfe
222 South Gillette Ave.
Suite 500
Gillette, WY 82716-3743
(307) 682-2151

C. Robert Klus, Jr.
1023 Teewinot Circle
Gillette, WY 82716-5063
(307) 692-6706

Paul J. Drew
Drew & Carlson
315 S. Gillette Avenue
Gillette, WY 82717-3530

(307)682-0216

6. Robertson v. Seattle Audubon Society, et al., 503 U.S. 429, 112 S.Ct. 1407 (1992)

Background:

As Solicitor for the Department of the Interior, I was involved in all aspects of this complex litigation filed against the Departments of Agriculture and Interior concerning the Bush Administration's forest management practices.

Result:

On March 25, 1992, the United States Supreme Court ruled unanimously in favor of the Department of the Interior in the consolidated cases Portland Audubon Society v. Lujan and Seattle Audubon Society v. Robertson (captioned Robertson v. Seattle Audubon Society et al., 112 S.Ct. 1407 (1992)). The Court held that Section 318 of Interior's FY 1990 Appropriations Act did not violate the Constitution by directing particular findings of fact or application of law in pending lawsuits. Rather, Section 318 merely implemented Congress' so-called Northwest Timber Compromise by which Interior's and Agriculture's compliance with certain specified forest management practices would release the agencies from meeting the statutory requirements that were the basis for the Portland Audubon and Seattle Audubon lawsuits. The Court agreed that Congress had referenced the lawsuits by name in Section 318 to fully identify the statutes to be modified rather than to direct a rule of law.

Judge:

Honorable Helen J. Frye
U.S. District Court
for the District of Oregon
Portland Division

Honorable William L. Dwyer
U.S. District Court
for the Western District of Washington
Seattle Division

Opposing Counsel:

Todd D. True
Earthjustice Legal Defense Fund
705 2nd Avenue, Suite 203
Seattle, WA 98104-1711
(206)343-7340

7. Lujan v. Defenders of Wildlife, 504 U.S. 555, 112 S.Ct. 2130(1992)

Background:

As Solicitor for the Department of the Interior, I was responsible for coordinating the defense of this Endangered Species Act (ESA) case, including the moot court preparation for the Solicitor General. The Bureau of Reclamation (BOR) had been authorized to oversee the rehabilitation of the ASWAN High Dam on the Nile River in Egypt where the endangered nile crocodile lives. Environmental groups sued the Department of the Interior claiming that BOR could not perform its duties without consulting with the Fish and Wildlife Service about the crocodile even though the proposed agency action was outside the boundaries of the United States.

Result:

On June 12, 1992, the Supreme Court rendered a judgment in favor of the United States. Six of the Justices agreed that the plaintiffs lacked standing to challenge the Secretary's regulatory interpretation that Section 7 of the Endangered Species Act, 16 U.S.C. 1536, does not apply to federal agency actions conducted within foreign countries. Therefore, the Supreme Court reversed the judgment of the Eight Circuit Court of Appeals and found that summary judgment should be granted for the United States.

Judge:

Honorable Donald D. Alsop
U.S. District Court
for the District of Minnesota

Opposing Counsel:

Brian B. O'Neill
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612)336-3000

8. Sierra Club v. Lujan, 504 U.S. 902, 112 S.Ct. 1927 (1992)

Background:

In 1988, the Sierra Club sued Secretary Lujan and others alleging that the Bureau of Reclamation had violated the Clean Water Act. Among other things, Sierra Club sought a court determination that Reclamation owed penalties for past violations. As Solicitor for the Department of the Interior, I supervised the defense of this case.

Result:

The U.S. District Court for the District of Colorado(728 F.Supp. 1513 (1990)) and the U.S. Court of Appeals for the Tenth Circuit (931 F.2d 1421 (1991)) held that Reclamation was responsible for such penalties, but the United States Supreme Court granted certiorari on May 18, 1992 (112 S.Ct. 1927 (1992)) and remanded to the Tenth Circuit with instructions to review its holding in light of the recently decided case Department of Energy v. Ohio, wherein the court had held that Congress had not waived sovereign immunity from payment of penalties under the Clean Water Act. The Tenth Circuit subsequently reversed its ruling and, following Department of Energy v. Ohio, ruled in favor of the Bureau of Reclamation.

Judge:

Lewis T. Babcock, Chief Judge
U.S. District Court
for the District of Colorado

Opposing Counsel:

Adam Babich
Denver, Colorado
(Unable to locate through Martindale Hubble or Colorado Bar Association)

9. Atlas Construction Co. v. Slater, 746 P. 2d 352 (Wyo. 1987)

Background:

I filed suit on behalf of a purchaser of a new home against the construction company, its subsidiary and individual shareholders for negligence and breach of implied warranty of liability. My client's house had been built by Defendants only seven year before it began to slowly slide down the hillside of its location. My motion to have the jury leave the courtroom to view the condemned house was granted.

Result:

A jury verdict was awarded in favor of my client. It was

upheld on appeal to the Wyoming Supreme Court. The case is often cited in Wyoming for the standards it set on obtaining a change of venue in a civil case and for the ability to receive compensatory damages for rental expenditures if your main residence was damaged beyond repair.

Judge:

Honorable William A. Taylor (retired)
Sixth Judicial District Court
Campbell County
State of Wyoming

Opposing Counsel:

Harold Buck
Cheyenne, Wyoming
(*Current address unknown*)

10. Collins v. Wyoming, 589 P.2d 1283 (Wyo. 1979)

Background:

Within 120 days of having passed the bar exam, I was appointed to defend an ironworker named Jessie Collins who was charged with two counts of first degree murder. The deceased were prominent members of the ranching community and the case received widespread publicity. This was my first jury trial and resulted in my first appellate argument before the Wyoming Supreme Court.

Result:

Mr. Collins was convicted of first degree murder.

Judge:

Honorable Paul T. Liamos, Jr. (Retired)
Sixth Judicial District Court
Campbell County
State of Wyoming

Opposing Counsel:

Willis Geer
Campbell County Attorney
Gillette, Wyoming
536 Potomac Avenue
Buffalo, NY 14222
(716)885-4805

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 the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

- Fort Mojave Indian Tribe Power Plant: For two years in the late 1990's I represented Calpine Corporation during negotiations with the Fort Mojave Indian Tribe in Arizona over the planned construction of a natural gas fired power plant on the reservation. The cost of the project was approximately $250 million. The electricity generated is being sold to the State of California. In addition to negotiating the terms of the extensive lease with tribal attorneys, I dealt with issues concerning the extent of the tribe's Colorado River water rights, employment preferences, taxation limitations and construction timelines. This relatively poor tribe has received over $30 million in payments to date.

During my tenure as Solicitor at the Department of the Interior (1990-93) I was actively involved in all major cases dealing with policies of the Bush Administration and Secretary Manuel Lujan. Among those cases were:

- Exxon Valdez Oil Spill: I worked with attorneys at the Department of Justice, Environment and Natural Resource Division to establish the dollar amount and the extent of the natural resource damages resulting from the spill. I was one of the federal negotiators and signatories to the eventual $1 billion settlement with Exxon.

- Spotted Owl Hearings: I served as Counsel to the Endangered Species Committee called into session in 1992 to review the Bureau of Land Management's application for an exemption under the Endangered Species Act for continued federal timber sales in Oregon.

  I supervised the discovery, motions and trial phases of the Endangered Species Committee hearing on the matter. I reviewed and revised the final report issued by the committee which granted roughly half of the Bureau of Land Management requests.

Management Experience:

As Associate Solicitor at the Department of the Interior I managed a $3.6 million administrative budget, 41 attorneys and 16 staff members. As Solicitor at the Department of the Interior I managed a $32 million administrative budget, 900 case legal docket and 397 employees in 23 cities.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List 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.

   Holland & Hart LLP Retirement Fund

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   I will consult with an ethics officer for the Department of Justice in the event of any potential conflict of interest.

3. 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.

4. 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.)

   SF278 (attached)

5. Please complete the attached financial net worth statement

in detail (add schedules as called for).

Attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

- As Wyoming's Republican State Chairman from 1983-1987 and Republican National Committeeman from 1996 to 2001, I have been involved as an adviser in a multitude of legislative, state and federal campaigns in Wyoming.

- I was the campaign manager for Craig Thomas for Congress in the 1989 Wyoming special election.

- I was the deputy campaign manager for the Bush for President campaign in Wyoming during 2000.

- I ran for Congress in March, 1989 at the Republican Convention in Wyoming to select a nominee for the special election to fill the seat vacated mid-term by Representative Dick Cheney when he was nominated and confirmed as Secretary of Defense. I finished second out of ten candidates. I later became the campaign manager for the successful candidate, Craig Thomas.

- I was the Campbell County, Wyoming Chairman for the Dick Cheney for Congress campaign in 1980.

- I was the Campbell County, Wyoming Chairman for the Alan Simpson for Senate campaign in 1978.

III. GENERAL (PUBLIC)

1. 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.

   I have served Wyoming communities as a volunteer board member to United Way, the Chamber of Commerce, City Board of Adjustments and Parks and Recreation Departments. I spent approximately 300 hours per year on these activities.

   I have participated as a volunteer tennis instructor for the Laramie County Tennis Association free tennis clinics, the Central High School boys and girls teams, and Cheyenne Women's USTA teams. I have spent an average of 200 hours per year.

   I have volunteered as a legal committee member, member of the board selection committee, and race course marshal for the Wyoming Affiliate of the Susan G. Komen Breast Cancer Foundation and Race for the Cure. I have spent an average of 4-6 hours per year.

   I participated in the formation of Holland & Hart Foundation which encourages all Holland & Hart offices to take part in local community activities. During the foundation's two-year existence, I have participated in the Cheyenne office activities wherein we raised money to sponsor Christmas for a family drawn by a local pre-school for developmentally challenged children. The Cheyenne office has also taken on projects to help paint the house of an elderly woman, design a garden project for an assisted housing facility, deliver Easter baskets to the local Safehouse and participated in the co-sponsoring and building a House for Humanities project.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   No.

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ba accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including deb mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		90	000	Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule		150	000	Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others		36	000
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule		150	000
Real estate owned—add schedule		220	000	Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property		40	000				
Cash value—life insurance		10	000				
Other assets—itemize:							
Household Items		76	000				
				Total liabilities		186	000
				Net worth		400	000
Total assets		586	000	Total liabilities and net worth		586	000
CONTINGENT LIABILITIES	NONE			GENERAL INFORMATION	No		
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							

ATTACHMENT 1
FINANCIAL STATEMENT
NET WORTH

REAL ESTATE OWNED: 7339 Prairie Hills Circle, Cheyenne, WY 82009

REAL ESTATE MORTGAGE: GMAC, Phoenix, Arizona

LISTED SECURITIES:

Holland & Hart LLP law firm retirement account is managed by Fidelity Investments. Contributions to the retirement account are placed in various mutual funds. I have no knowledge of individual stocks held.

U.S. Department of Justice

Washington, D.C. 20530

MAY 23 2001

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

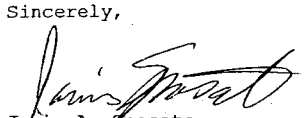
In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Thomas L. Sansonetti who has been nominated by the President to serve as Assistant Attorney General, Environment and Natural Resources Division, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Sansonetti recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. Pursuant to his partnership agreement with his law firm, he will receive a full return of his capital account within 30 days of withdrawal from his law firm. He will withdraw from the firm before assuming his position as Assistant Attorney General. Also, he will receive his partnership share for the previous quarter based on service performed during that quarter.

We have advised him that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have a covered relationship with his law firm and his clients and for at least 1 year after his withdrawal from his law firm he will seek advice before participating in matters involving the firm or his clients.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Janis A. Sposato
Acting Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
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: SANSONETTI			First Name and Middle Initial: THOMAS L
Position for Which Filing	Title of Position: ASSISTANT ATTORNEY GENERAL Environment & Natural Resources Division			Department or Agency *(If Applicable)*: DEPARTMENT OF JUSTICE
Location of Present Office (or forwarding address)	Address *(Number, Street, City, State, and ZIP Code)*: 7339 Prairie Hills Circle, Cheyenne, WY 82009			Telephone No. *(Include Area Code)*: (307) 778-4235
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: None			
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: SENATE JUDICIARY			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: Thomas L. Sansonetti			Date *(Month, Day, Year)*: 4.16.01
Other Review (If desired by agency)	Signature of Other Reviewer: Mary Boulden			Date *(Month, Day, Year)*: 5/9/01
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: Lauris [illegible]			Date *(Month, Day, Year)*: 5/11/01
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)*

Annotations per conversations w/ filer - Mary Boulden - OEO, DOJ.

(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 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

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U.S. Office of Government Ethics

Reporting Individual's Name: SANSONETTI, THOMAS L.

SCHEDULE A

Page Number: 2 / 5

Assets and Income — BLOCK A

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 th in $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 ☐

Examples
- Central Airlines Common — Dividends X; Amount: None (or less than $201); Other Income: Law Partnership Income $150,000
- Doe Jones & Smith, Hometown, State
- Kempstone Equity Fund — Amount: $5,001 - $15,000
- IRA: Heartland 500 Index Fund — Amount: $15,001 - $50,000

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

#	Asset	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)	$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	HOLLAND & HART LLP, Cheyenne, WY			✓																												Partnership Income $370,000	
2	FIDELITY INVESTMENTS - Defined Contribution Plan - See #4-6 below					✓								✓							✓												
3	WYOMING BANK & TRUST Cheyenne, WY				✓														✓					✓									
4	- Spartan Equity Index - Janus Aspen Aggressive Growth			X										X							X												
5	- TCW Galileo Small Cap II			✓										✓							X												
6	- Fidelity Magellan			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 th[illegible] with the spouse or dependent children, mark the other higher categories of value, as appropriate.

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Do not complete Schedule B if you are a new entrant, nominee, or Vice Presidential or Presidential Candidate

Reporting Individual's Name
SANSONETTI, THOMAS L.

SCHEDULE B

Part I: Transactions

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.

None ☐

	Identification of Assets	Transaction Type (x): Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	Amount of Transaction (x): $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				2/1/99												
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 Rook 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
1			
2			
3			
4			
5			

Prior B... ...annot Be Used.

OGE/PureEdge, v1 1 (3/30/01)

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Reporting Individual's Name
SANSONETTI, THOMAS L.

SCHEDULE C

Page Number
4 / 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	$1,000,001-$5,000,000	Over $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.											
	John Jones, 123 JSt., Washington, DC	Promissory note	1999	10%	on demand											
1	Sallie Mae Servicing Corp., Wilkes-Barre, PA	Spouse's student loan	1991	8%	25 yrs.		☑									
2																
3																
4																
5																

* This category applies only if the underlying 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 recieve lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1			
2	Defined Contribution Plan. Will make no more contributions after withdrawal.	Holland & Hart LLP Cheyenne WY	1/96
3			
4	Return of capital account will be done within 30 days	Holland & Hart LLP Cheyenne WY	1/96
5			
6			

Prior Editions Not To Be Used.

OGE/Turcliffe 1.01 (3/2000)

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Reporting Individual's Name: SANSONETTI, THOMAS L.

SCHEDULE D

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	Holland & Hart LLP, Cheyenne, WY	Law firm	Partner	01/96	Present
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	Holland & Hart, Cheyenne, WY	Legal services
2	Peabody Coal Co., St. Louis Mo	Legal services in connection with lobbying
3	Kennecott Energy Co., Gillette, WY	Legal services in connection with lobbying
4	Arch Minerals, St. Louis Mo	Legal services in connection with lobbying
5	Placid Refining Dallas TX	Legal services in connection with supplies of crude oil
6	TMA LC Cheyenne WY	Legal services in connection with wind farm construction

Prior Ed[illegible] not Be Used.

OGE/PureEdge 1.01 (3/300[illegible])

AFFIDAVIT

I, Thomas L. Sansonetti, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

5.24.01
(DATE)

Thomas L. Sansonetti
(NAME)

MERLA MILLER NOTARY PUBLIC COUNTY, WYOMING

Merla Miller 5.24-01
(NOTARY)

commission expires 9-23-01

CERTIFICATE OF INCORPORATION

CONSTITUTION

AND

BYLAWS

OF

THE METROPOLITAN CLUB

OF THE

CITY OF WASHINGTON

FOUNDED 1863
CURRENT INCORPORATION 1882

1700 H STREET, N.W.
WASHINGTON, D.C.
20006

Telephone 202-835-2500

June 1997

CERTIFICATE OF INCORPORATION

We, the undersigned, JOHN DAVIS, ARCHIBALD HOPKINS, and JAMES LOWNDES, being persons of full age, all of whom are citizens of the United States, and a majority of whom are citizens of the District of Columbia, pursuant to and in conformity with sections five hundred and forty-five, five hundred and forty-six, five hundred and forty-seven, five hundred and forty-nine, five hundred and fifty, five hundred and fifty-one, and five hundred and fifty-two of the Revised Statutes of the United States, relating to the District of Columbia, do hereby associate ourselves together for literary purposes and mutual improvement; and do hereby certify -

First, That the name by which our said Society shall be known in law is "THE METROPOLITAN CLUB OF THE CITY OF WASHINGTON."

Second, That the term for which our said Society is organized is twenty years.

Third, That the particular business and objects of our Society are the establishment, maintenance and management of a Club for literary purposes, mutual improvement, and the promotion of social intercourse; and that the place in said District in which the operations of said Club are to be carried on is in the City of Washington.

Fourth, That the number of Directors or Managers of our said Society for the first year of its existence, to wit, the year beginning with the date of these presents, is fifteen.

In testimony whereof we have hereunto set our hands this fifteenth day of March, in the year of our Lord, one thousand eight hundred and eighty-two.

JOHN DAVIS
ARCHIBALD HOPKINS
JAMES LOWNDES

DISTRICT OF COLUMBIA, *ss:*

Be it remembered on the fifteenth day of March A.D. 1882, before me, David Rittenhouse, notary public, appeared the above-named John Davis, Archibald Hopkins, and James Lowndes, persons known to me to be the same described in the foregoing certificate, and they severally before me made and signed the said certificate and acknowledged the same to be their certificate, act, and deed.

Witness my hand and notarial seal the date above written.

(SEAL) D. RITTENHOUSE,
Notary Public.

Under the provisions of the act of Congress of April 23, 1884, entitled "An act to amend the Revised Statutes of the United States relating to the District of Columbia, and for other purposes," the existence of this Corporation was extended to ninety-nine years from the 23rd of June, 1892.

Pursuant to Chapter 6 of Title 29 of the District of Columbia code, 1973 Ed., a certificate was filed on November 4, 1977 making the term of existence of the Club perpetual.

CONSTITUTION

I
OBJECT AND MEMBERSHIP OF THE CORPORATION

1. This Society, incorporated for literary, mutual improvement and social purposes, shall be called "THE METROPOLITAN CLUB OF THE CITY OF WASHINGTON," and shall consist of Resident and Non-Resident members.

2. The Resident members of the Club shall be termed "Members of the Corporation," and where the word "Members" is used it shall be held to mean "Resident members."

II
BOARD OF GOVERNORS

1. All the affairs of the Corporation shall be managed by a committee of fifteen Governors, who shall be Resident members of the Club and who shall hold their office as hereinafter provided.

The first Governors of the Club shall be -

JAMES LOWNDES
JOHN DAVIS
ARCHIBALD HOPKINS
WOODBURY BLAIR
JOHN A. BAKER
E. FRANCIS RIGGS
MARCELLUS BAILEY
JOHN C. HOWELL
DELOS B. SACKETT
WILLIAM B. HAZEN
SAMUEL R. FRANKLIN
CHAUNCEY MCKEEVER
GEORGE F. APPLEBY
JOHN L WORDEN
JOSEPH K. MCCAMMON

2. The Governors of the Club shall be elected for a term of five years. The terms of office of three of the Governors shall expire on the first Monday in November each year.

No Governor who has served one full term of five years shall be eligible for re-election until after the lapse of one year. Provided, however, a Governor elected to fill an unexpired term shall be eligible for re-election to a full term of five years.

3. Whenever a vacancy shall occur in the Board of Governors a notice shall be posted in a conspicuous place in the Club by the Board of Governors, stating a day and hour for an election to fill the vacancy, which notice shall be posted in the Club at least one week before the day set for said election.

4. All elections to fill vacancies in the Board of Governors shall be by ballot, and shall be conducted in such manner and under such regulations as the Board of Governors may hereafter provide.

III
HOUSE MANAGEMENT

The management of the Club House is vested in the Board of Governors. The Board may establish such committees, in addition to the Executive Committee provided for in Article VI, as may be necessary to provide efficient management but all matters affecting Club policy shall be referred by such committees to the Executive Committee or the Board.

IV
ELECTIONS

Resident members of the Club alone shall be entitled to vote at meetings of the Club, or to fill vacancies on the Board of Governors.

V
REMOVAL OF MEMBERS OF THE BOARD OF GOVERNORS

Any member of the Board of Governors may be removed therefrom by a vote of two-thirds of the whole Board, or four-fifths of the Resident members of the Club present at a meeting duly called for the purpose. In either case the voting shall be by ballot.

VI
OFFICERS AND EXECUTIVE COMMITTEE

1. The Board of Governors shall annually, and on or about the first Monday of November in each year elect from their own body, or from the Resident members of the Club, a President, and from its own body, two Vice-Presidents, a Treasurer, and a Secretary.

2. The President, and in his absence the first Vice-President, and in the absence of both, the second Vice-President, shall preside at all meetings of the Board of Governors or of the Club; but if all the said officers shall be absent, or decline to preside at any such meeting, the meeting shall elect its own presiding officer. The Treasurer and Secretary shall, in the discharge of their duties respectively, be subject to the immediate control of the Board of Governors.

3. The Board of Governors shall, on or about the first Monday of November of each year, appoint five of their number a subcommittee, who shall be the Executive Committee.

4. The general superintendence and also the daily receipts and expenditures of the corporation shall be under the control of the Executive Committee.

VII
ELECTION OF MEMBERS

1. Every member shall be elected by the Board of Governors by ballot. Every candidate for admission to Resident membership must be proposed by one Resident member and seconded by another. His name and residence, and the name of his proposer and seconder, shall be posted in a conspicuous place in the Club for at least fourteen days before balloting for him. No balloting shall be valid unless eight members of the Board of Governors shall be present, and two dissenting votes shall in any event exclude such candidate.

SUBSCRIPTION AND ENTRANCE FEE

2. The annual dues for Resident members shall be fixed by the Board of Governors. An entrance fee may be required from all new members as shall be determined by the Board.

HONORARY MEMBERS

3. The Board of Governors is authorized to admit by invitation, as Honorary members of the Club, the President and Vice-President of the United States, the persons who have held those offices, and such distinguished foreign visitors as the Board may deem proper.

NON-RESIDENT MEMBERS

4. Non-Resident members may be admitted upon such terms as the Board of Governors may prescribe: Provided, that their names shall be posted and they shall be voted for as in the case of applicants for Resident membership. Candidates for admission to Non-Resident membership may be proposed by either Resident or Non-Resident members and seconded by either Resident or Non-Resident members.

GUESTS

5. Guests may be introduced by a member upon such terms as may be from time to time prescribed by the Board of Governors.

VIII
MEETINGS

1. The Board of Governors shall meet once each month except that where, in the opinion of the Board, there is not sufficient business to warrant a meeting or it is apparent that a quorum will not be present, a regular monthly meeting need not be field.

2. The Executive Committee shall meet on the call of the Chairman thereof or on the request of any member of the Committee.

3. A meeting of the Club may be called at any time by the Board of Governors, or the Executive Committee,. and must be called by the Executive Committee upon receipt of a request in writing to that effect, stating the object of the meeting, and signed by at least fifteen Resident members; Provided, that at such meeting no business other than that stated in the request shall be considered, and the request shall be posted with the notice in a conspicuous place in the Club.

4. A meeting of the Board of Governors may be called by any three members thereof.

IX
AMENDMENTS

1. Any amendments to this Constitution may be proposed by the Board of Governors or may be in the form of a proposal to the Secretary signed by at least twenty-five Resident members. The Secretary shall post all proposed amendments on the Bulletin Board and in the case of proposals made by Resident members notify the Board of Governors at the first meeting thereafter.

2. Within a reasonable time after posting of a proposed amendment on the Bulletin Board, the Board shall refer the matter to the entire Resident membership by mailing ballots to each Resident member with a copy of the proposed amendment.

3. Signed ballots shall be returned to the Secretary within forty days from the date of mailing and at the expiration of said forty days the envelopes then received shall be delivered to a committee of three Resident members appointed by the Board of Governors.

4. Thereafter, the Committee shall count the ballots, and the result shall be certified by the Committee to the Secretary, who shall forthwith post said certificates upon the official Bulletin Board.

5. If two-thirds of the votes of the Resident members voting are in favor of an amendment it shall be considered as adopted.

6. No proposed amendment to the Constitution shall be considered by the Club except in the manner herein specified.

X
RULES AND REGULATIONS

The Board of Governors is authorized to make such rules and regulations as may be declared proper, not inconsistent with the object of the Club or this Constitution, and such rules and regulations when adopted, or as amended from time to time by the Board of Governors shall have the force of Bylaws.

BYLAWS

I
MEMBERSHIP

1. The membership of the Club shall consist of Resident, Nonresident and Honorary members.

2. A limit on the number of members in each category of membership may be set from time to time by the Board of Governors.

II
CANDIDATES FOR MEMBERSHIP AND RESIDENT GUEST PRIVILEGES

1. The name of every candidate for Resident and Nonresident membership shall be circulated, with the names of his sponsors, to the membership at least 30 days before consideration for election by the Board of Governors. No member shall propose or second more than two candidates for membership during any one calendar year. No member shall propose or second a candidate without his having been a member of the Club for a period of at least one year.

2. Candidates for Resident membership may be proposed and seconded only by Resident members. Candidates for Nonresident membership may be proposed and seconded by Resident or Nonresident members.

3. A candidate must be proposed and seconded on forms supplied by the Club which must be accompanied by letters of recommendation from the proposer and seconder giving the name and place of residence of the candidate, his profession or occupation, and such statement of his qualifications as they may deem proper. No candidate shall be considered for privileges of the Club until his file contains (a) in the case of a candidate for Resident membership, at least eight (8) letters of recommendation from Resident members and (b) in the case of a candidate for Nonresident membership, at least six (6) letters of recommendation from Resident or Nonresident members.

4. The names of candidates shall be called up for consideration by the Board of Governors in the order in which the candidates shall have been proposed, except that the Board of Governors may upon the written request of a sponsor take up for action out of the usual order the name of a child of a member or deceased member and the name of a candidate who is under age 35 when proposed. The Board of Governors may waive the provisions of this paragraph in circumstances where it determines that such action will be the best interests of the Club.

5. Under circumstances meriting special consideration the Board may extend Resident Guest Privileges to a limited number of qualified candidates for Resident Membership whose names have been circulated previously to the membership. These privileges may be revoked at any time at the discretion of the Board. Such Resident Guests shall enjoy all the privileges of Resident Members except those of voting and sponsoring candidates for membership. They shall pay Resident dues and an annual fee to be fixed by the Board. Resident Guest Privileges extended in recognition of a candidate's official status shall terminate 30 days from the date such status ends, unless sooner terminated or renewed at the Board's discretion. It shall be incumbent upon any such Resident Guest to notify promptly the Club Secretary of any change or termination of his official position. Such notification may be accompanied by a request for renewal of Resident Guest Privileges. If elected to Resident or Nonresident membership, the member shall be charged the entrance fee then in effect for the category of membership conferred and credited with the total of the annual fees paid, not exceeding the amount of the entrance fee. Should a person holding Resident Guest Privileges fail of election to membership such payments will not be refunded.

6. Every candidate for membership and for Resident Guest Privileges must be personally known to at least eight members of the Board of Governors. Every candidate for Nonresident membership must be personally known to at least six members of the Board of Governors. When a candidate for Resident or Nonresident Membership holds Resident Guest Privileges and was circularized to the membership and introduced to the requisite number of Governors at the time such privileges were granted the Board may waive further introduction to the Governors and circulation and may elect the candidate to membership.

7. When a candidate's name has been reached for consideration and it shall appear that the requirements of paragraph 3 of this Article have not been complied with, or that the candidate is not personally known to the minimum number of members of the Board as required by paragraph 6 of this Article, the name may be passed and in such event the Secretary shall so advise the proposer and the seconder. In case such requirements shall not have been met by the next meeting, the candidate's name may be dropped from the list of candidates and shall be restored to its previous position on the list only by action of the Board of Governors.

8. No member of the Board of Governors shall propose or second a candidate for admission to the Club.

III
NONRESIDENT MEMBERS

1. Persons who have neither their principal residence nor their principal place of business within 30 miles of the Clubhouse may be considered for election as Nonresident members.

2. Any such Nonresident member who acquires either a principal residence or a principal place of business within 30 miles of the Clubhouse shall promptly so notify the Secretary, and except for a Nonresident member who has become such by transfer from the Resident list, shall cease to enjoy the privileges of the Club unless within 30 days thereafter an application for Resident membership has been filed in accordance with the provisions of these Bylaws. The Board of Governors may take such action on the request as it may deem appropriate. Pending consideration of such request by the Board of Governors, a Nonresident member shall have the privileges of the Club provided that the member shall pay Resident dues on a pro-rated basis.

3. A member of the United States Congress may be considered for election to Nonresident membership even though he resides within the area specified in paragraph 1 of this Article. A member of the Congress elected as a Nonresident member who ceases to be a member of the Congress and maintains a principal place of business or continues to reside within the area specified in paragraph 1 of this Article shall become subject to the provisions of paragraph 2 of this Article.

4. Representatives of foreign Governments temporarily in Washington, with the rank of Chief of Mission, may be proposed for Nonresident membership. The Board of Governors may upon written request of the sponsor take up for action the name of such a candidate out of the usual order. If elected, the member shall pay the Nonresident entrance fee. Such a member shall have the privileges and be subject to the restrictions set forth in this Article, except that during the member's tour of duty in Washington, use of the Club shall not be confined to forty-five days, and the member shall pay the same annual dues as a Resident member, under the same terms and conditions. The Board of Governors shall have the discretion to waive the requirement that the candidate hold the rank of Chief of Mission. Upon completion of the tour of duty of a Nonresident member elected under this paragraph, that member shall be subject to the provisions of paragraph 2 of this Article.

5. If the request of a Nonresident member for election to Resident membership is denied by the Board of Governors, his membership in the Club thereupon shall cease.

6. Any Resident member who meets the conditions of paragraph 1 of this Article, on written notice to the Secretary may become a Nonresident member.

7. A Nonresident member who has become such by transfer from the Resident list may, upon making written request to the Secretary, be transferred to the Resident list without election or entrance fee.

8. A Nonresident member may utilize the privileges of the Club for a total of 45 days in any one calendar year upon payment of Nonresident dues, and may further utilize the Club only upon payment of additional dues as determined by the Board of Governors.

IV
ABSENT LIST

1. Any Resident or Nonresident member intending to leave the Continental United States for a period of not less than one year, may request that his name be transferred to the Absent List. The Secretary shall thereupon as of June 30 or December 3 1 of the current year, whichever date first arrives, place such member's name upon the Absent List, provided the member has actually left by such date. During the period such member remains out of the Continental United States with the exception of temporary visits covered in paragraph 3 below, he shall pay Absent Dues. In the case of a member transferring to the Absent List as of June 30, his Resident or Nonresident dues shall be remitted for the second half of the year and he shall pay for such period only one half of the annual dues provided for a member on the Absent List. While on the Absent List a member shall not be entitled to any privileges of the Club except as provided in paragraph 3 of this Article.

2. Any member on the Absent List upon return to the Continental United States, except in the case of temporary visits, shall promptly notify the Secretary of such return and shall forthwith be placed back on the list from which he was transferred, provided he is qualified therefor. Such member shall thereafter pay on a pro rata basis the dues prescribed for the applicable class of membership.

3. Any member of the Club on the Absent List temporarily present in the Continental United States may enjoy the privileges of the Club for a period not to exceed an aggregate of thirty days in any one calendar year.

V
ENTRANCE FEES AND DUES

1. An entrance fee shall be paid by all candidates elected to the club, except in the case of an Honorary Member.

2. The entrance fees and annual dues for members shall be fixed by the Board of Governors.

3. The Board of Governors may authorize payment of entrance fees by the installment method and in determining the availability of such method and the terms of payment may differentiate among classes of candidates according to age and residence at the time of election.

4. The entrance fee or the applicable first installment, if selected by the candidate, shall be due upon notification of election and unless paid within sixty (60) days thereof the action of the Board of Governors in electing the candidate to membership shall be rescinded. Exceptions to this provision may be granted by the Board of Governors should there be special and justifiable extenuating circumstances.

5. Members who reach age eighty (80) and have paid dues for twenty years or more (unless otherwise determined by the Board) or who reach eighty-five (85) years of age and have paid dues for five years or more shall not thereafter be required to pay further dues. A member who has paid dues for a period of fifty (50) years shall not thereafter be required to pay further dues. Annual dues for a member who has reached the age of seventy (70) and has been a member for thirty years or more may be at a reduced rate as determined by the Board.

6. All dues shall be payable on January 1 of each year, but Resident members may at their option pay their dues quarterly and Nonresident members at their option may pay their dues semiannually.

7. Newly elected Resident and Nonresident members shall become liable for dues for the calendar year in which they are elected less the pro rata amount allocable to the number of full months in such year prior to the election.

8. Nonresident members who are elected Resident members shall pay whatever difference there may be between the entrance fee already paid by them and that provided for Resident members at the time of election to Resident membership.

9. The Secretary shall notify candidates of their election to membership and advise them of the amount of their entrance fee and dues. A copy of the Constitution and Bylaws as last printed shall be sent to them by the Secretary. Payment of the entrance fee and dues shall constitute their assent to the Constitution, Bylaws and Rules of the Club, and their agreement to submit to the restrictions and the penalties they impose and to any amendments thereof. Membership shall date from the day of election.

10. Upon resignation a member shall pay all house and other charges to the effective date of resignation.

11. The Board of Governors shall have power to reinstate, upon such terms as it may impose, any member who shall have resigned from the Club.

12. Resident entrance fees, and Resident dues for members of the armed services of the United States on active duty and for members of the clergy shall be one half of those prescribed.

VI
EXPULSION AND SUSPENSION

1. Any member who willfully or repeatedly infringes the rules and regulations of the Club, whose conduct is disorderly or offensive, or who uses the Club, its name or facilities for purposes inimical to its best interests, shall be subject to expulsion upon a vote of two-thirds of the members of the Board of Governors or shall be subject to censure or suspension for a fixed period by vote of a majority of the members of the Board present at any regular meeting.

2. Any such member may be temporarily suspended from the privileges of the Club by the Executive Committee pending action by the Board of Governors, and said Committee shall report the suspension with reasons therefor to the Board of Governors at its next meeting.

3. When under the provisions of the foregoing paragraphs of this Article the Board of Governors shall suspend or expel a member, notice of such action of the Board shall be posted on the Bulletin Board for seven days.

VII
INDEBTEDNESS TO THE CLUB

1. Members are expected to settle their indebtedness to the Club within thirty days from the date of the rendition of the bills. Payment from the personal funds of the member only will be accepted, except that payment for duly-sponsored private functions may be made directly by a charitable, religious, or educational organization possessing a valid District of Columbia Certificate of Exemption. Members nonetheless remain ultimately responsible for the prompt payment of any indebtedness incurred in connection with private functions that they have sponsored.

2. If such indebtedness is not paid in full on or before the 30th day succeeding the day on which the bill was rendered, the member shall be notified immediately in writing and informed that unless such indebtedness is paid in full within the next fifteen days, his name will be posted and his credit thereby suspended without further notice. Upon his failure to pay the indebtedness within fifteen days after the date of posting, he thereby shall be suspended

from all privileges of the Club. If the total indebtedness then outstanding is not paid in full within thirty days of such posting, the delinquent shall cease to be a member of the Club.

3. If a member shall incur at any time an indebtedness in excess of $500, he shall be notified immediately in writing to that effect and of the provisions of this paragraph. Upon his failure to pay the indebtedness within fifteen days of such notification, his credit shall be suspended and his name shall be posted in the Clubhouse. Should said outstanding indebtedness not be paid in full within fifteen days of such posting, the member shall be suspended from privileges of the Club, and if the total indebtedness then outstanding is not paid in full within thirty days of such posting, the delinquent shall cease to be a member of the Club.

4. The Treasurer shall notify each member in writing when his credit has been suspended, when his name has been posted, and when he has been suspended from Club privileges. Members of all classes shall be bound by the provisions of this Article, notwithstanding failure to receive any specified notifications.

5. When a member's name is dropped from the rolls the Treasurer shall notify him thereof and of the date of the next meeting of the Board of Governors. The Treasurer shall immediately notify the Executive Committee of his action and shall report the facts to the Board of Governors at the next meeting thereafter. The Board of Governors shall have the power to reinstate such members upon such terms as it may impose.

VIII
GUESTS

1. Any person may be admitted to the Club when invited as a guest, provided that no such person shall be admitted for lunch except in a private dining room more than twice in any calendar month. The guest must be registered by the member introducing him and be accompanied by him. The restriction contained in this paragraph as to the frequency of the introduction of guests shall not apply to guests accompanied by a member after 5:00 p.m. weekdays or after 12:00 noon on Saturdays, Sundays and holidays, or to guests at any time in a private dining room.

2. Any nonresident guest may, by a card of invitation issued by the Secretary of the Club at the request of a member, enjoy the privileges of the Club for a period not exceeding one week. Upon the written request of two members of the Club such privileges may be extended by the Executive Committee for a period not exceeding two months. The charge for a guest card shall be fixed by the Board. No person may be extended guest privileges under this rule more than once in six months or enjoy the privileges of the Club more than two months and one week in any calendar year.

3. The Executive Committee, in its discretion, may withdraw any card of invitation, reporting its action to the Board of Governors at the next meeting thereafter.

4. Members shall be allowed not more than four cards of invitation in force at one time without permission from the Executive Committee.

5. On weekdays after 5:00 p.m. and on Saturdays, Sundays and holidays during those times when dining facilities are open to guests of members, the spouse of a member may use such facilities and the lounge areas, and may invite and register guests for that purpose, without being accompanied by the member. The member shall be responsible for all charges incurred on such occasions.

6. The spouse of a deceased person who was a Resident member at the time of his death may, until remarriage and under conditions, established by the Executive Committee, continue to enjoy such Clubhouse privileges as are available to the spouse of a living Resident member.

7. All guest charges and indebtedness shall be billed to and paid by the member.

8. No person shall be admitted to the Club who is not a member or introduced in accordance with these Bylaws.

IX
ELECTION OF GOVERNORS

1. The President of the Club shall, on or before April 1 of each year, appoint a Nominating Committee of five Resident members of the Club whose duty it shall be for the next succeeding twelve months or until their successors shall be appointed, to nominate candidates to fill all vacancies which may occur in the Board of Governors. The names of said Nominating Committee shall be posted in a conspicuous place in the Clubhouse during the time of their service.

2. Whenever there shall be a vacancy in the Board of Governors the Nominating Committee shall nominate a Resident member of the Club to fill the same, and the name of the member so nominated shall be posted in a conspicuous place in the Clubhouse at least fifteen days prior to the day of election.

3. Any twenty-five Resident members of the Club by posting a signed notice may place any Resident member or members in nomination for said vacancy or vacancies. All such nominations by members must be posted in a conspicuous place in the Clubhouse at least ten days prior to the date of election. As soon as possible thereafter the Secretary shall mail to each Resident member of the Club a notice of election with a list of candidates and a similar list shall be furnished by the Executive Committee to the tellers hereinafter provided for.

4. Whenever a vacancy or vacancies shall occur in the Board of Governors for other cause than that provided for in paragraph 2, Article 11, of the Constitution, the Board shall fix the date and hour of the election and shall direct the posting of the notice of election at least one week before the day of the election, pursuant to Article II of the Constitution.

5. Upon the day and during the hours fixed for an election, a ballot box shall be placed in a conspicuous place in the Clubhouse to receive the votes of the Resident members of the Club, who shall vote in person and not by proxy.

6. Prior to the election the Executive Committee shall designate from the Resident members of the Club three tellers, who shall act as inspectors of election and who shall count the votes cast and post the name or names of the member or members elected in a conspicuous place in the Clubhouse and shall report to the Executive Committee in writing the result of the election and the number of votes cast, the number received by each candidate and the name or names of the member or members elected, which report shall be submitted by the Executive Committee to the Board of Governors at its next meeting whether the same be a general or special meeting.

7. The candidate or candidates receiving the highest number of votes cast shall be declared elected to fill the vacancy or vacancies for which he or they may be a candidate or candidates, but no candidate shall be declared elected who shall not receive the votes of a majority of the members voting at said election.

8. If such vacancy or any of such vacancies be not filled by the election as aforesaid the tellers shall immediately report the fact in writing to the Executive Committee, reporting the number of votes cast and the number received by each candidate. The Executive Committee shall thereupon cause a notice to be posted in a conspicuous place in the Clubhouse informing the members that such vacancy was not filled at the first election and that a second election will be held at a time to be fixed in said notice. The notice shall be posted at least one week before the time set for the election, and the election shall be governed by the same rules as prescribed above. In case of failure of election of candidates at the second election the matter shall be referred to the Board of Governors for action.

X
TREASURER

1. The Treasurer shall supervise all financial affairs of the Club. He shall report thereon to the Executive Committee and to the Board of Governors at such times and in such form and detail as such Committee or such Board shall from time to time prescribe. The funds of the Club shall not be loaned to any member.

2. The Treasurer shall prepare an Annual Report showing the financial situation of the Club as of August 31 of each year.

XI
SECRETARY

1. The Secretary shall maintain a current record of the classes of membership and give notice of all meetings of the Club, and all meetings of the Board of Governors and shall keep minutes of meetings of the Club, of the Board of Governors and of the Executive Committee. He shall conduct the correspondence and keep the records of the Club. He shall furnish to the Treasurer the names of all persons elected to the membership and shall notify such persons of their election.

2. The records of the Board of Governors shall be in the custody of the Secretary and shall be shown only to the President and members of the Board unless otherwise directed by the Board.

XII
MANAGEMENT AND ACCOUNTING PROCEDURES

1. The Executive Committee shall appoint a General Manager of the Club who shall have charge of such of the business operations of the Club as may from time to time be prescribed by the Executive Committee. He shall receive such compensation as may be fixed by the Executive Committee, shall have full authority of employment and discharge over all employees of the Club, shall report to the Executive Committee and shall cooperate with other committees of the Club as appropriate.

2. The General Manager shall, among other duties which may from time to time be prescribed as hereinabove provided, (a) cause adequate accounts to be maintained and periodical reports thereon to be made for the use of the Treasurer, the Executive Committee and the Board of Governors; (b) collect all moneys due and deposit the same in the authorized bank accounts of the Club; (c) prepare vouchers properly substantiated, to cover the amounts of money to be disbursed in payments for materials and services; and (d) maintain proper records of all inventories.

3. The Executive Committee shall select, annually, an auditor who shall (a) audit the accounts, including inventories, at such times as may be directed by the Executive Committee, and report thereon to the Executive Committee; and (b) make an annual audit as of August 31 of each year, and report thereon to the Executive Committee.

XIII
BOARD OF GOVERNORS

1. A quorum of the Board of Governors shall consist of eight members.

2. Should a quorum not be present at a meeting of the Board of Governors, the meeting shall stand adjourned until the next succeeding business day at 12:15 p.m., or until such time as may be fixed by the members present.

3. The Board of Governors shall, at its meeting in October of each year, fix a day for its meeting for the annual election of officers, at which no business shall be transacted except the election of officers provided by Article VI of the Constitution.

XIV
LIMIT OF CLUB'S RESPONSIBILITY

1. The Club will not be responsible for supplies furnished it, nor engagements made involving payments from Club funds, without an order from the General Manager or Executive Committee.

2. The Club will not be responsible to members or guests for loss of or damage to their property in the Clubhouse.

3. (a) The Club, by resolution of the Board of Governors, may indemnify each and every person against any and all expenses and liabilities incurred by him or imposed on him in connection with any claim, action, suit or proceeding (whether actual or threatened, brought by or in the right of the Club or otherwise, civil, criminal, administrative or investigative, including appeals) to which he may be or is made a party by reason of his being or having been a Governor, officer or employee of the Club; provided, however, that there shall be no indemnification (i) as to amounts paid in settlement or other disposition of any threatened or pending action, or in satisfaction of a judgment rendered in an action, by or in the right of the Club, or (ii) as to matters in respect of which it shall be adjudged in such action, suit or proceeding that such person was liable for negligence or misconduct in the performance of his duty to the Club and, in the case of any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

(b) Any such person shall be entitled to indemnification as of right (i) if he has been wholly successful, on the merits or otherwise, with respect to any claim, action, suit or proceeding, or (ii) except as hereinabove provided, in respect of matters as to which the Board of Governors, acting by a quorum consisting of governors not parties to such claim, action, suit or proceeding, or a court or independent legal counsel shall have determined that he acted in good faith for a purpose which he reasonably believed to be in the best interests of the Club and, in addition, in the case of any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful. The Board of Governors or such court or independent counsel shall have the power to determine that such person is entitled to indemnification as to some matters even though he is not so entitled as to others. The termination of any claim, action, suit or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not in itself create a presumption that any such person did not act in good faith for a purpose which he reasonably believed to be in the best interests of the Club and, in the case of any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

(c) Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel fees and other fees, costs and disbursements, and judgments, fines or penalties against and amounts paid in settlement by such person. The Club, as authorized by resolution of the Board of Governors, may advance expenses to, or where appropriate may itself at its expense undertake the defense of, any such person; provided, however, that he shall have undertaken to repay or to reimburse such expenses if it should be ultimately determined that he is not entitled to indemnification under this Article.

(d) Payments of indemnification made pursuant to this Article shall be reported to the members in the next regular financial statement or otherwise, except that no such payments need be reported if such person has been wholly successful on the merits or otherwise.

(e) The provisions of this Article shall be applicable to claims, actions, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after the adoption hereof.

(f) The rights of indemnification provided for in this Article shall not be deemed to exclude any rights to which any such person may otherwise be entitled by any provision of law, constitution or bylaw of the Club, contract, vote of the Board of Governors or members or otherwise and all such rights shall enure to the benefit of the heirs, executors, administrators, or other legal representatives of such persons.

(g) If any part of this Article shall be found, in any action, suit or proceeding, to be invalid or ineffective, the validity and the effectiveness of the remaining parts shall not be affected.

XV
SERVICE MANAGEMENT

1 . Complaints of any deficiency in the service of the Club, and any suggestions as to the service of internal management, must be made in writing to the Chairman of the Executive Committee.

2. All matters connected with the service and management of the Club shall be under the direction of the Chairman of the Executive Committee, or in his absence, the senior member of the Committee, or as may be otherwise directed by the Executive Committee.

XVI
COMMITTEES

The Board of Governors shall appoint the following Committees and a Chairman for each. The members of the Committees shall hold office for one year or until their successors are duly appointed.

1 . The Executive Committee shall be appointed in accordance with Article VI of the Constitution.

2. The House Committee, under the general supervision of the Executive Committee, shall be responsible for planning Club services and activities, and the maintenance of the Clubhouse and its furnishings and fix the selling price of all food and beverages. The House Committee may appoint such sub-committees as it deems necessary.

3. The Library Committee shall, under the general supervision of the Executive Committee, be responsible for the operation and maintenance of the Library.

4. The Pension Committee shall have direct charge of and be responsible for the administration of the pension plan for the benefit of the employees of the Club and this Committee shall have the following members: the Treasurer, ex-officio; two Club members and the General Manager of the Club. The Committee shall meet at least twice a year.

5. Such other Committees as the Board of Governors may deem necessary.

XVII
GAMES

1. The following games are prohibited within the card rooms of the Clubhouse: faro, hazard, rouge et noir, roulette, all games of dice for money, all mechanical devices for wagers or chance, and any other game which the Board of Governors may at any time declare to be objectionable.

2. No games on which any wager whatever is pending, nor cards are permitted to be played in the rooms of the Clubhouse on Sunday before 1:00 p.m., nor shall any game be played after the hour fixed for closing the Clubhouse.

3. Conversation and remarks by persons not playing are not allowed in the card rooms.

XVIII
CLUB FLAG

1. The Club flag shall be of blue cloth, with the letters M.C. in gold, in monogram, placed in the center thereof.

2. Upon receipt of news of the death of a member of the Club, the Club flag shall be placed at half-staff until after the funeral.

3. Should news of the death not be received until after the funeral, the flag will be placed at half-staff for one day.

XIX
RULES AND REGULATIONS

1. No room in the Clubhouse shall be diverted from its ordinary use without express permission from the Executive Committee.

2. Members must sign chits for the amount of their orders. Employees are prohibited from receiving cash except at the office.

3. In accordance with rules adopted by the Board of Governors, invitations to the Club may be issued and entertainment at the Club may be held only in the name of or under the sponsorship of a member, the spouse of a member, the member and spouse jointly, or the spouse of a deceased Resident member in accordance with Article VIII, paragraph 6. All charges shall be billed to and paid by the member or, in the case of the spouse of a deceased Resident member, by such spouse.

4. No member shall (a) use the name of the Club in any statement intended for or likely to result in publicity other than as biographical information, (b) use any stationery bearing the name of the Club other than that furnished by the Club, (c) use Club stationery for any purpose other than personal correspondence, or (d) use the address of the Club in any advertisement.

5. On weekdays after 5:00 p.m. and on Saturdays, Sundays and holidays during those times when dining facilities are open to guests of members, a member or the spouse of such member may invite and register children under 16 of such member for the purpose of using such facilities and the lounge areas in the company of such member or spouse. Otherwise, they shall not be admitted to the Clubhouse or use its facilities except pursuant to Rules and Regulations approved by the Executive Committee.

6. No gratuity shall be given to any employee of the Club, but contributions to the Employees' Christmas Fund maintained by the General Manager are encouraged.

7. The House Committee shall have the power to promulgate additional House Rules not inconsistent with these Bylaws.

XX
GENDER REFERENCES

Any word used in the Constitution or these Bylaws which is in, or may imply, the male gender, shall be interpreted also to be in the female gender.

XXI
AMENDMENTS

These Bylaws may be altered or amended by the vote of not less than a majority of the Board at any meeting of the Board; provided that each proposed amendment shall have been presented to the Board at a Board meeting held not less than one week preceding the meeting at which the vote is taken.

Meetings called for the purpose of amending bylaws shall be upon at least one week's notice containing, the subject of the proposed change or upon shorter notice when unanimously consented to or subsequently ratified by the Board.

HOLLAND & HART LLP
ATTORNEYS AT LAW

DENVER • ASPEN
BOULDER • COLORADO SPRINGS
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September 17, 2001

The Honorable Patrick Leahy
United States Senator for Vermont
Senate Russell Building 433
1st and C Streets, N.E.
Washington, D.C. 20510

RE: Changes in Senate Questionnaire

Dear Senator Leahy:

On September 4, 2001 President Bush re-submitted my nomination for the position of Assistant Attorney General for Environment and Natural Resources. Consequently, I would like to update the Senate Questionnaire for Nonjudicial Nominees that I previously filed with the Judiciary Committee. The following additions and changes should be noted:

I. Biographical Information

2. Address: List current place of residence and office address:

ADDITIONAL RESIDENCE:

336 Eighth Street, S.E.
Washington, D.C. 20003

ADDITIONAL WORK ADDRESS:

801 Pennsylvania Avenue, N.W.
Suite 230
Washington, D.C. 20004

HOLLAND & HART LLP
ATTORNEYS AT LAW

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4. Marital Status: List spouse's occupation, employer's name and business address:

NEW OCCUPATION:

Legislative Counsel for United States Senator Mike Enzi of Wyoming

NEW EMPLOYER ADDRESS:

290 Russell Senate Building
Washington, D.C. 20510

I have also attached my updated financial net worth statement.

Sincerely,

Tom Sansonetti

Thomas L. Sansonetti, P.C.

TLS:md
Enclosure
cc: Honorable Orrin Hatch, Minority Ranking Member
Senate Judiciary Committee

FINANCIAL STATEMENT

NET WORTH

AS REVISED 9.18.01

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ba accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including deb mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	40,000	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	
Listed securities—add schedule	150,000	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	36,000
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	470,000
Real estate owned—add schedule	620,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property	40,000		
Cash value—life insurance	10,000		
Other assets—itemize:			
Household Items	125,000		
		Total liabilities	506,000
		Net worth	479,000
Total assets	985,000	Total liabilities and net worth	985,000
CONTINGENT LIABILITIES	NONE	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			No
Other special debt			

ATTACHMENT 1
FINANCIAL STATEMENT
NET WORTH
(Amended)

REAL ESTATE OWNED:

1) **7339 Prairie Hills Circle, Cheyenne, WY 82009**

   Real Estate Mortgage: GMAC, Phoenix, Arizona

2) **336 Eighth Street, S.E., Washington, D.C. 20003**

   Real Estate Mortgage: Bank of America, Charlotte, NC

LISTED SECURITIES:

Holland & Hart LLP law firm retirement account is managed by Fidelity Investments. Contributions to the retirement account are placed in various mutual funds. I have no knowledge of individual stocks held.

Senator CANTWELL. Thank you for your opening statement and again thank you for being here and for your wife being here. I am glad to see that Senator Enzi has used the judgment of both sides of the Sansonetti family in his political dealings.

I think that since we are expecting a vote, the best way to do this is to recess until 2:45, hoping that the vote will occur at 2:30, and then we will be back to start questions. It is the chair's intention to do rounds of 10-minute questions at that point in time, if that is helpful for members. Then we will rotate that and depending on how many questions members have, at least have two rounds and potentially three if there are people. Obviously we will submit questions and set a time frame for responses in writing for those but it is the chair's intention that I will suggest to the chairman of the Committee that we do move quickly after this process.

With that, we will recess until 2:45.

[Recess.]

Senator CANTWELL. The Senate Judiciary Committee will be in order. We are here this afternoon on the confirmation hearing of Mr. Sansonetti and thank you again for your opening statement.

As I said earlier, we will start with our round of questions, to be basically 10-minute rounds among members. Since the chair is the only member here, I might get in a few rounds myself before others show up but nonetheless, I will defer to them as they appear. And as stated earlier, we will keep the record open probably for a week after this for questions to be submitted in writing to you and for your response on that.

So let me begin with some general questions if I could, given your statement and comments, and then maybe get into some more specific questions about your background. And I know that Senator Enzi mentioned your involvement with the Endangered Species Act and the various dealings there, which are important to the Northwest, so I am sure I will have a few questions on that.

But basically I would like to start with this larger dilemma that I see facing us and the country right now, and that is that there is a public perception that the administration may have acted in a variety of areas—arsenic in clean drinking water—in ways that may be backing off of our environmental commitment. I wonder if you agree that that has been the case and what generally do you think that we need to do to, in this position, convince the public that we are going to have an aggressive enforcement of our environmental laws?

Mr. SANSONETTI. Thank you for the question, Senator. I think it is a very good one that individuals all across America are, of course, very concerned about their environment and to make sure the environment is protected. I happen to share in that belief, as I noted in my opening statement. I think it is our responsibility to conserve for future generations the opportunity to experience, as I said, a cleaner, greener United States than we have now and it will be this administration's job to make that happen.

Now obviously I have been on the outside practicing law in Cheyenne, Wyoming this year but I have been observing the administration's activities and frankly look forward to an opportunity, if confirmed, to deal with the individuals that are helping to make those decisions at the Department of Interior, Agriculture, Energy and

EPA. The key job is to enforce the law as it is written and to the degree that I am fortunate enough to be confirmed by this Committee, I promise you that I will enforce that law.

Senator CANTWELL. So do you agree that there is a perception there that the administration may not have been enforcing environmental laws?

Mr. SANSONETTI. There have been articles that have appeared that have hit on several of the decisions that have been made thus far by the administration and some probably do have a perception that the administration is perhaps not enforcing the law as well as they would like. But I think that to the degree that you have got an active Assistant Attorney General that is bound and determined to make sure that the law is enforced, if there is that negative perception out there I think that it can only improve for the better.

Senator CANTWELL. Let me turn to some specific questions when you served previously as solicitor for the Department of Interior, which I think was from 1989 to 1993 and you had responsibility for guiding their legal policy.

One of the issues that you were involved in was the Endangered Species Committee, the so-called God Squad, which is really a Committee of high-level administration officials who were to convene for the purposes of exempting an action from the Endangered Species Act. I am assuming you are very familiar with this.

Mr. SANSONETTI. Yes. It has been 10 years but it was a very active part of my life in 1992. It was, I believe, only the third time that the Endangered Species Committee had ever been called together. There was the Teleco Dam, the Grey Rocks Dam and then this was the third time that the group was called together.

I think the key import of my involvement in that, Senator, was that under the statute the solicitor is to be the general counsel to this special Committee and the secretary of the interior is to chair it along with, I believe it was several other Cabinet members were involved, individuals from the Department of Commerce, Agriculture, and the like.

The toughest part of the job was that in this particular instance the petitioner was the Bureau of Land Management, an agency within the Department of the Interior, and one of the other agencies that was basically responding to that petition was the Fish and Wildlife Service, which is another agency under the same umbrella, the Department of the Interior.

So I basically had to develop a system so that each group—the Bureau of Land Management and the Fish and Wildlife Service—had representation from the body of lawyers that I had working at the Office of the Solicitor, put up a wall between the two so that they could each represent zealously their particular client, and then I had to make sure that I removed myself from the daily fray because it was my job to advise the secretary on what the law was.

We ended up having an administrative hearing. A special judge was called in from Salt Lake City and that hearing was held actually in Oregon at the BPA headquarters for several weeks. At that time it was my job then to aid that administrative judge—his name was Harvey Schweitzer—through an act—by that I mean the portion of the act—that had never really been followed all the way through before.

As I recall, the decision of the Committee was to grant in part and to deny in part the application of the Bureau of Land Management to allow timbering to go forward in areas that were considered critical habitat to the spotted owl. That particular decision was then voted on by the Committee as a whole. I do not remember the vote. It was a split decision, as I recall, maybe 5–2, and after the decision was rendered there was an appeal and, as I recall, the law requires the appeal to go straight to a circuit court, in that case the Ninth Circuit, and it was at that stage of the game that the Clinton administration came into power January 20, 1993 and I went back to Cheyenne, Wyoming. So that was my involvement in that particular experience.

Senator CANTWELL. If I could ask a couple of follow-up questions, thank you for that explanation. I think that was a good summation of that process.

During that time, though, there were a couple of issues that came up during that process. Obviously it was a very sensitive process, given the issues that were at stake. But first the issue was a lawyer from the Fish and Wildlife agency, obviously representing BLM and the Fish and Wildlife agency, two different agencies within your jurisdiction, but the fish and wildlife agency responsible for arguing against the exemption—BLM wanting the exemption and Fish and Wildlife did not—the person responsible for arguing against the exemption resigned in protest after being instructed to remove legal arguments from the brief.

So my question is if you were aware of that request for removal of that information from the brief and when did you become aware of it?

Mr. SANSONETTI. The answer to the question is, and I am glad that I was able to give the initial discussion because an associate solicitor for energy and resources—I think the gentleman's name was Paul Cruzi—was the individual in charge of representing the BLM and an individual that was an associate solicitor named Dan Shilito was in charge of the Conservation and Wildlife Division, which represented the Fish and Wildlife Service, they found that during the period of time that the hearing was going on that they needed additional help. A request came from both of them to my office to see if they could hire outside counsel that had expertise in the spotted owl arena and I said yes, they could go ahead and hire those individuals to be part of their team.

The individual that you referred to that resigned, I believe his name was Parento, was one of those outside individuals who was hired. The circumstance was as you described. He wanted to make some changes in a brief or did not want to make some changes in a brief as he had been instructed by the associate solicitor, who was responsible for filing that brief.

I had removed myself from any of the day-to-day representation of either the BLM or the Fish and Wildlife Service because it was my job to represent the secretary on the Committee as a whole that was going to receive that brief. So I never got down and touched either sides—

Senator CANTWELL. How did you remove yourself? Officially remove yourself?

Mr. SANSONETTI. I signed a document that said look, Mr. Cruzi, you are responsible for representing the BLM; Mr. Shilito, you are responsible with your team for representing the Fish and Wildlife Service; I am representing the secretary on the Endangered Species Committee.

So I found out about what you are referring to long after the fact, which meant that the briefs were filed. This particular gentleman, who I never really even got to know because I was not part of that team, if you will, was the outside counsel who had been hired and he resigned. The brief was filed by the team representing the Fish and Wildlife Service.

Senator CANTWELL. Do you think that the associate solicitor should have recommended that those documents be suppressed? Basically his argument was that the Committee should have never been convened to begin with. Apparently from what you have just said, the associate solicitor advised him, the person from the Fish and Wildlife agency, on his documents and what should be presented and asked him to suppress that information.

Mr. SANSONETTI. I do not recall that particular part of what the argument was about. I do know that under the Endangered Species Act that the petition that began the process was one that was filed by the Bureau of Land Management. So I do not think that there is anything that the Fish and Wildlife Service could have done at the time to prevent the petition from being filed.

And as far as the petition being dismissed is concerned, I think that it would have had to have been dismissed either by the BLM on its own account for some reason that it had changed its mind over desiring the exemption or the Endangered Species Committee itself. And, of course, they did not meet until there was the administrative hearing because they had wanted a hearing to attract all of the information from both sides before they rendered a decision.

So if the dispute was over whether or not the petition should have been accepted, I think that would have been a moot question because the BLM had the right to file that petition.

Senator CANTWELL. I think maybe I will come back to this questioning after we allow some of my colleagues to make statements but I think the issue is that the overall agency basically giving legal advice to both entities prohibited one of the entities or suggested to one of the entities that they not present information, I think primarily because the argument was relevant to BLM in other arguments that they were making in other cases and consequently recommended that they not use that information.

But we will get back to this because it is an important issue in the process because it, I think, speaks to the significant challenge of representing a variety of agencies and the processes and procedures of adjudication and comment period. But I would like to thank my colleagues and the chairman of the Committee for being here and we obviously, before reconvening, had a chance for opening statements so I would like to give the chairman and Senator Feingold an opportunity—

The CHAIRMAN. Senator Feingold was already here. I will yield to him.

Senator FEINGOLD. Madam Chairman, do you intend that we ask questions at this point or—

Senator CANTWELL. If you would like to make an opening statement or questions; it is up to you.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Okay. I thank the chair and want to commend her for her leadership, particularly in this area on the Judiciary Committee. And, of course, I appreciate the courtesy of the chairman of the Committee.

I am glad we are having this hearing today. I know that we were trying to get together to have a hearing, actually trying to work out the details on September 11, so I do not need to go much further as to the reasons for the delay but I am glad this is happening today.

As you know, I have a strong interest in environmental and natural resources protection, which I would like to think is reflected in my legislative record. I share many of the concerns regarding the issues that senators have voiced today and you will hear from others on this Committee as well. I have worked with other members of this Committee in advocating for strengthening of federal environmental and natural resource law, including Senator Cantwell on her work on roadless policy; Senators Leahy and Durbin on mining law reform, Senator Durbin on protection of BLM lands in the West and our national monuments, and, of course, with Senator Kennedy, working with him to advocate retaining current federal court interpretations of takings law.

We in this Committee and in the legislative branch have the opportunity and the privilege of being advocates for change as have you during much of your career in the Interior Department and as a lobbyist. However, as you know, the job for which you are now nominated requires you to also demonstrate for this Committee your ability to avoid the appearance of conflicts of interest in the conduct of your job and to defend impartially the United States federal environmental and natural resource laws, despite potential conflicts with your personal views.

I am certain that in your time at the Interior Department you were required to show such impartiality and the questions that I am going to ask, Madam Chair, are in that spirit.

First, Mr. Sansonetti, much of the material you submitted to the Judiciary Committee describes the body of work that you have done and tends to be regionally focussed on Western and Alaskan issues. However, we are a very diverse Committee with members representing many regions of the country. Would you tell me, in your time as solicitor and as assistant solicitor at Interior, were you able to specialize in particular areas of decision-making? In addition to your Endangered Species Act work, can you describe other policies upon which you worked that are more national, rather than regional, in scope?

Mr. SANSONETTI. Thank you, Senator. That is a very good question and I appreciate the opportunity to tell a little bit more about the previous experiences that I have had.

I do come from a small town in Wyoming, Gillette, Wyoming. My practice was a local one to begin with and then it gradually developed into a specialty of environment and natural resources law be-

cause that is what Wyoming does. If you are an attorney out there, that is the type of clients that you have.

When I came into the government for the first time it was as associate solicitor for energy and resources at the Department of the Interior. I had three main clients, if you will, within the department: the Bureau of Land Management, the Bureau of Reclamation and the Mineral Management Service. I had a group of about 41 lawyers, $3–4 million budget.

The BLM lands are largely, of course, Western in nature so many of the issues that we got involved in dealt with the surface use of those lands—grazing, some timbering, oil and gas leasing, coal leasing. The Mineral Management Service was responsible for the royalty collections from there. I was also responsible for oil and gas leasing in the Gulf and Mexico and offshore. The Bureau of Reclamation has as its major chore to supply the water projects and to delve out the water already formed behind those water projects throughout the West.

What I found was that the reach of the Department of the Interior is really all 50 states and questions that came up that crosscut through the department can touch on things dealing with Indians. There is an associate solicitor for Indian affairs, for instance. Conservation and wildlife, which is our national parks, which are found in all the different states.

So as an associate solicitor—there are five all told—I found myself continually working with those who were involved with reclamation at OSM, the national parks, Indian matters, and the like.

That just broadened by a number of 100 when I got to be the solicitor myself. All of a sudden there were 225 attorney in 23 cities all across the United States. So for that three years that I was solicitor I had an opportunity to work with folks out of regional offices in Atlanta, Boston, field offices in Minneapolis–St. Paul, which happened to be the area that covered your home state of Wisconsin, got into Indian gaming matters, which certainly took me from the Connecticut case, which kind of formed the predicate of the Indian Gaming Regulatory Act that was filed by former senator, then Governor Lowell Weicker, to those very same questions in California and Hawaii.

We did a little group study of the associate solicitors and the deputy solicitor and myself at the end of my tenure and we found that during our three years that we had had matters that ended up touching 46 of the 50 states. And in that role I personally traveled to every one of those 23 field offices, from Anchorage to Atlanta, from Boston to Window Rock, Arizona, to make sure that I knew what was going on in those offices, got to meet the people personally and got a chance to work with the congressmen and the senators in those areas that had concerns about what the Department of the Interior was doing.

Senator FEINGOLD. Thank you for that answer. Now I would like to ask you about a matter. You appeared before a Senate Committee to testify on behalf of the National Mining Association in support of a measure to expand mining opportunities on federal lands controlled by the Bureau of Land Management. Companies are limited to leasing 46,000 acres of federal coal land in any one state and 100,000 acres nationwide. The legislation that you sup-

ported would have increased those limits to 75,000 acres in any state and 150,000 acres nationwide.

As the 3809 regulations and the milsite issues are controversial now and likely to be litigated, do you share a similar view regarding the need for additional lands in hardrock mining?

Mr. SANSONETTI. I think they are totally two different questions, totally two different questions between the need for additional lands for coal mining and that for hardrock mining. Of course, the hardrock mining comes under the 1872 mining law whereas the coal leasing comes under the 1920 Mineral Leasing Act, as amended.

The nature of the question, and I am really glad you asked this one because some people just see the numbers and they say jeez, if something was 47,000 acres and now it is 75,000 acres, that is a big amount.

The problem is merely this. Laws were passed right after World War II, later amended in the mid-'60s to make sure that no one or two companies could obtain a monopoly or an oligopoly over any of our minerals. There are these types of safeguards for all sorts of different minerals.

As far as coal was concerned, the law was passed at a time before strip mining had become popular. The states that produced the majority of coal were places like Pennsylvania and West Virginia. Today Wyoming happens to be the largest producer of coal in the United States, then Kentucky and then I think Illinois, largely through strip mining.

So the methodology for the extraction of coal made it such that 47,000 acres was already being bumped up against by the four or five or six major companies that were operating not only in Wyoming but in other states like Utah, which were affected. The amount of coal being taken out today from a Wyoming or an Illinois or a Kentucky are 20 times what they were back in the 1960s, so they needed to expand the limit so that existing companies did not have to stop and go out of business. So that was the purpose for the legislation and I believe it passed by the Senate and the House by large margins.

Senator FEINGOLD. I have just one more question. I thank the chair and especially the chairman of the Committee.

As recently as April 2001 you were listed as a member of the Defenders of Property Rights Lawyers Network on the organization's website. That organization has testified several times before this Committee about the need to establish bright line compensation rules and change plaintiffs' rights in court actions which are now, I think, reflected in a bill, S. 1412.

Is that a position you still hold, and, if so, is that a position you will give up upon becoming Assistant Attorney General?

Mr. SANSONETTI. I would like to ask you again what group I was supposedly listed in?

Senator FEINGOLD. You are listed, I am told, as a member of the Defenders of Property Rights Lawyers Network on that organization's website.

Mr. SANSONETTI. Mmm. I do not happen to be a card-carrying member of that organization. I would be curious to know how I got on it. I happen to be a fan of personal property rights and I think

that the Fifth Amendment is there for a particular reason but I am no dues-paying member and I am not sure how I would have gotten onto that particular website.

Senator FEINGOLD. I take it the Committee can assume that we can work to have your name removed from that website.

Mr. SANSONETTI. I would be delighted to have you help me do so.

Senator FEINGOLD. Well, I thank you and again I thank the chair.

Senator CANTWELL. Senator Leahy.

Chairman LEAHY. Thank you, Madam Chair.

Obviously if it is a group that is listing you as a member you would not need our help. That is something that simply a phone call from you would get it off there.

Mr. SANSONETTI. Yes.

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

Chairman LEAHY. I want to thank Senator Cantwell. We are all doing triple duty around here and I thank her for taking the time to do this. Most of the members of this Committee have been out of their offices for several weeks now. Even on the day when we were evacuating the Capitol, we still held hearings, a number of nomination hearings of the Judiciary Committee and a number of votes to confirm people within the Committee. And Senator Cantwell has made it possible, being one of those who has helped very much in putting together hearings that could not be done otherwise.

In your case we are talking about the Department of Justice environmental lawyers. They are the ones that have to ensure the preservation of wildlife, our indigenous people, have to preserve our natural resources, not just for us but for our children's children.

Earlier this year during the confirmation hearing for the position of attorney general of the United States there was considerable discussion about what following the law means in relationship to that office because the Department of Justice is really in many ways the law office for the agencies of the federal government. I say this because they have a great deal of discretion not only in which cases to prosecute but which ones to decide not to prosecute or even which ones to drop.

Environmental law is an important point in that case. The Department of Justice can provide a visible and responsible face for environmental law policy. I believe during the Clinton administration they showed stewardship and advocacy and they strengthened the federal government's institutional commitment to these important goals. In fact, they built up a very impressive cadre of professional talent, men and women lawyers, both Republicans and Democrats, who made those goals an impressive reality and I think it is essential that we continue the momentum that was created by them. I would like to see their accomplishments be built upon, not torn down.

So a number of questions have come up, I know, by other senators and I have heard it and it actually raises a question with me. Mr. Sansonetti, I enjoyed my talk with you and a number of my friends have spoken very highly of you in both parties. They also

noted that you worked long and extensively as a lobbyist for the largest coal companies in the country and I wonder what that means for some of the very important cases confronting the Environment and Natural Resources Division, what you do in those cases.

I am concerned about things like the enforcement of the new source review provisions of the Clean Air Act, especially as it relates to coal-fired utility plants.

And then the press says that the Bush administration is launching a quiet campaign to roll back environmental protections, not by seeking legislation, which would not pass, but by simply failing to enforce existing requirements; for example, refusing to defend pending cases, continuing to settle conflicts to the benefit of industry rather than environmental interests, almost by saying "Go ahead and pollute; we don't give a hoot" is really what it comes down to.

We have seen this once before. This happened about 20 years ago where a lot of these environmental laws could not be repealed, they were passed by bipartisan majorities, so simply they would not enforce them. And I know that it is a tremendous power that the enforcers have. They can enforce a law that the Congress has passed or they can ignore a law or they can enforce it so weakly that it might as well be off the books.

So I would ask, let us start with the new source reviews. The Clean Air Act requires such reviews whenever a major source of pollution, such as refineries and electric power plants, undergo major modifications. In the 1990s we saw vigorous enforcement of these requirements but now various energy interests, including the coal industry clients for whom you have been lobbying in recent years, are reportedly making efforts to rescind Department of Justice and EPA enforcement actions against energy producers under those new source review requirements.

[The prepared statement of Senator Leahy follows:]

PRESENTATION ON THE NOMINEE BY THE HON. PATRICK LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I welcome Mr. Sansonetti this afternoon.

The position of Assistant Attorney General in the Environment and Natural Resources Division has always been important, but it is especially so as we begin a new century, ever more aware of the fragility of our existence and the importance of the Earth which sustains us all. Important as well is the effort we are all making to ensure that Americans faith in their government, and its many institutions, is deserved and preserved in the wake of the special strains that have been placed upon all of us, as individuals and public servants, since the terrorist attacks of September 11.

We have all worked together to expedite the paperwork necessary to consider this important nomination and today, and I am pleased that we are able to proceed today.

Having begun his career as a small firm practitioner, Mr. Sansonetti has most recently worked in the private sector as well. But between 1987 and 1993, he served as Solicitor in the Department of the Interior, as Chief of Staff to Representative Craig Thomas, and as Associate Solicitor at Interior. The person who fills this position as Assistant Attorney General not only needs the full confidence of the President and the Attorney General; he also needs the confidence and trust of the Congress and the American people. We all look to the Department of Justice's environmental lawyers to ensure preservation of our precious wildlife, protection of our indigenous peoples, and principled approaches to managing our nations natural resources.

Earlier this year, during the confirmation hearings for the position of Attorney General of the United States, there was considerable discussion about what "following the law" means in relation to the responsibilities of that office. The Department of Justice, in many respects, is the law office for the agencies of the federal government. The Department and its officers have great discretion in what cases to prosecute, and which to settle or drop. Environmental law is an important case in point.

The leadership at the Department of Justice plays an important role in providing a visible and responsible face for environmental law enforcement and policy development. The stewardship and advocacy provided during the eight years of the Clinton Administration strengthened the federal government's institutional commitment to these important goals, and built up an impressive cadre of talent in the Division to make those goals into impressive realities. It is essential that the momentum created by these dedicated public servants be maintained, and that their accomplishments be built upon, as we continue as a nation to address the critical issues our society faces in terms of caring for our nation's natural resources and handling our society's environmental responsibilities.

With that said, there are several aspects to Mr. Sansonetti's nomination that give me cause for concern. They are reflected more broadly in the questions that I, and I believe other Senators, intend to ask today and in written follow-up, but I would like to highlight two of my most pressing concerns now. First, Mr. Sansonetti has long worked extensively as a lobbyist for the largest coal companies in the country, and I am very concerned that he will necessarily be recused from some of the most important cases confronting the Environment and Natural Resources Division because of that representation. But perhaps even more importantly, I am concerned that those ties will be reflected in his attitudes towards the many important issues dealt with in the Division, especially those involving enforcement of the "new source review" provisions of the Clean Air Act relating to coal-fired utility plants. The Bush administration is widely reported as having launched a quiet campaign to roll back environmental protections by simply failing to enforce existing requirements, refusing to defend pending cases, and continuing to settle conflicts to the benefit of industry rather than environmental interests. I am concerned about Mr. Sansonetti's role in these efforts, and whether he will be able to rise above his past practice and his apparent inclinations, in order to guarantee the American people the level of rigor and dedication that consistent and responsible enforcement of the environmental law demand.

Chairman LEAHY. Do you believe the new source review requirements are being met adequately in this administration?

Mr. SANSONETTI. Thank you for your question, Senator. And I did also enjoy our visit.

I would say as starters to answer your question that one of the first things I did after I was nominated in May to prepare myself, if confirmed, to take over this task was to actually go back and visit with previous Assistant Attorney Generals that have held this particular job. In fact, I have tracked them all the way back to the Ford administration. So I did have an opportunity to sit down for a couple of hours with the immediate predecessor, Lois Schiffer, and visited with her about the way that she brought cases, when to bring them, when to dismiss them, how to reach consensus with the different departments, and I think that I would try to do the same thing if I were so fortunate as to be confirmed by the Senate.

As far as the new source review is concerned, the law is the law is the law. Until you all in the legislative branch change it and the president were to sign that change into law, it is my view that it is the Department of Justice's job to enforce the law as it is written and to uphold that rule.

Chairman LEAHY. Do you see a less strict enforcement than has been in the last eight years?

Mr. SANSONETTI. I do not know that I would be a very good judge of that. I frankly have been practicing law in Cheyenne, Wyoming during this last eight and a half years so I have not been involved

in cases at the Department of Justice concerning the new source review.

Chairman LEAHY. But you have talked with the people who were in charge of enforcing that law.

Mr. SANSONETTI. I have and to the extent that I have visited with the people that are at the Department of Justice right now, I think that it is my opinion that they are enforcing the law and that they are doing an evenhanded application of it.

Chairman LEAHY. Well, how recently have you been a lobbyist for the coal companies?

Mr. SANSONETTI. As a formal lobbyist it was on the bill that I was referring to Mr. Feingold about and so I believe that was in the last Congress, so that is when that would have been, in the 106th Congress.

Chairman LEAHY. Well, those same coal companies or many of those coal companies oppose enforcement of these laws. How do you do your balance from that? I mean if you have a new source review case in question do you recuse yourself from those questions, having so recently had a client who opposed them?

Mr. SANSONETTI. I think that as far as when and if and how I should recuse myself I am first of all, quite aware of the fact of how ones background measures up against the new job that you have. In this case, as I noted before, I am a lawyer from Wyoming and I was proud to have the clients that I had. But if confirmed, I would abide by the Department of Justice's recusal policies and they have a list of who my clients have been over these years and I would go see the ethics personnel at the Department of Justice and say, "Is this a case I should be involved in or not be involved in?"

Chairman LEAHY. Well, let us take a couple of those clients. How about Peabody, Kennecott or Arch? Suppose you had cases directly involving them? Is that a black and white question for you?

Mr. SANSONETTI. I think if it is a matter that I personally dealt with or a subject matter that I specifically dealt with on behalf of those companies, yes, and I would have to recuse myself in that regard.

Chairman LEAHY. I am not talking about directly. I mean they might not have a case where they come in and say this case was pending earlier and counsel was Thomas Sansonetti; today's counsel is Mary Smith. There are related cases. You know the positions they took on how they felt this act should be enforced and now you have Peabody or Kennecott or Arch before you. Can you really, even if it is not the exact case you worked on, can you really separate yourself from that?

Mr. SANSONETTI. I think I can and I think that I have done so in the past. I think that to the degree that I have gone through this process twice before, the key to the answer to your question is that the attorney needs to keep in mind who his or her client is. I had those clients in the 1980s and when I became associate solicitor it was my job to enforce the law against those folks when they broke it.

The same thing in the 1990s. I was responsible for the Office of Surface Mining that was the organization that chased those coal companies that did not reclaim as they should and I have never

heard or been told that I did not do that job with vigor and I would do it again.

Chairman LEAHY. Well, you understand the appearance problem. I think Newsweek reported that you were in an energy lobbyist meeting at the American Petroleum Institute offices here in Washington, I believe, in January, helping develop a list of proposals for changes to federal environmental policies to forward to the new administration's transition team at the Department of Interior and then to Vice President Cheney's Energy Task Force.

Now there is nothing wrong with doing that. A lot of people I know very well and have a great deal of respect for were part of the new president's transition team. I think it is great when people are willing to give that time to whoever the president is. But now you have been nominated to a position that will allow you to give effect to the laws as they exist or as they might have been changed by the task force recommendations and the lobbyists that you had worked with.

Do you come into a situation where there is the appearance—for example, you made recommendations that there be certain changes or that there be less enforcement of such-and-such a law and now you are in a position to do that. Are you going to raise a question of appearance in the public, a justifiable appearance in the public?

Mr. SANSONETTI. I am delighted that you highlighted this issue. I have heard this from a number of different folks and I—

Chairman LEAHY. I told you I would give you a chance to answer these questions.

Mr. SANSONETTI. I welcome the opportunity to answer that question.

First of all, the Newsweek article that you referenced is one that I was never contacted by the writer of and I never got a chance to get my side of that story out. It was just hey, this person met with a group of individuals at the Petroleum Institute and heard what their ideas were as to what the new administration should do and somehow it had the connotation that that was bad.

Let me state for the record that I was honored to have been asked to be part of the Bush–Cheney transition team. I was assigned to the Department of Interior team, given my previous experience there. As part of our duties assigned by the vice president, who was placed in charge of the transition, besides resume review, preparing Gale Norton for her hearings and the like, it was our job to do an outreach program with all the different entities that would have a stake in what the new policies of the Department of Interior would be.

So while I did attend that particular meeting that you referred to that had individuals from the oil and gas community in it, I also held meetings with people from the Indian community from different tribes, I met with different environmental groups, I met with the Teamsters, different labor organizations, well over 20 different groups in meetings that were there. My job was just to extract from them what they thought the administration's policies would be.

Chairman LEAHY. Did you make any recommendations?

Mr. SANSONETTI. I wrote all of them down and turned them over lock, stock and barrel to the people that went over to the Department of the Interior. So recommendations, no.

Chairman LEAHY. Did you take part in any of the recommendations that were made for changes in the law or for enforcement of the law?

Mr. SANSONETTI. No, because our job was to gather the desires and facts of those that were out there and they were listed and delivered to those that went to the Department of the Interior.

Chairman LEAHY. Well, let me ask you on the specific ones, Senator Jeffords has introduced a bill, the Clean Power Act of 2001, that would amend the Clean Air Act to require reduced emissions at coal-fired plants beginning in 2007. Along with requiring reductions in sulphur dioxide, nitrogen oxide and mercury emissions, it would require reductions in carbon dioxide emissions. The Bush administration has taken the position that carbon dioxide is not a pollutant that should be regulated. What is your view on carbon dioxide and is it a pollutant?

Mr. SANSONETTI. I am afraid that I do not have a position on it, Senator. It is an area that I am not familiar with. I am an attorney, not a scientist, so I do not know the answer to that.

Chairman LEAHY. Fine. So you would expect that you would be obviously ultimately controlled by whatever the administration's position was?

Mr. SANSONETTI. I believe that ultimately whatever the policy may be, it will come from those client agencies that you referred to earlier. Maybe it is EPA, maybe Interior will be involved but whatever is decided, I am sure that it will be decided there. My role as the managing partner, if you will, of a 400-person law firm would be to defend cases either brought against the United States or to bring them when enforcement of a law is required.

Chairman LEAHY. The Clean Air Act allowed grandfathering of older plants and this bill I just referred to would not allow the older, more heavily polluting coal-fired plants to escape regulations because of their age. I think it says that if they reach their 30th year of operation they have to comply with the new source review standards of the Clean Air Act or by five years after passage of the bill that Senator Jeffords has recommended, either one.

The National Mining Association—you spoke for them at a hearing just last year; they said the reductions required are draconian. Do you believe that reducing greenhouse gas emissions is a reasonable objective of federal legislation?

Mr. SANSONETTI. I think that all of us in America are concerned about the potential negative effects of greenhouse gas and to the degree that they can be lowered, that that is a good result.

As far as the National Mining Association's opinion on that particular issue is concerned, if they do not like the law as it is presently written then it is their chore to change it. Once I am in position as Assistant Attorney General, it would be my role to enforce the law as it is written.

So consequently I would like to reemphasize that there is a difference and I hope it is one that is not confused, between my legal expertise and what I happen to have been working on and have that mixed with somehow that there would be a biased approach

to law enforcement because those used to be my clients. That has not happened in the past and it will not happen in the future.

Chairman LEAHY. We have a vote on and I understand the chair wishes to recess. Who has the final say on whether to defend a suit or bring a suit? Is it EPA or ENRD?

Mr. SANSONETTI. Again I have not been inside the building so I do not know what the protocols are within. When I was at the Department of Interior, Interior made its recommendations on cases at the district court level, working with the attorneys within Justice and usually they were a matter of consensus.

If there was a question on an appeal, if something should be appealed or not, then it was the solicitor general's office that had the final say.

Senator CANTWELL. Thank you. Since we do have a vote that I think is well under way, we are going to recess for 15 minutes and it is the chair's intention to hopefully reconvene about 3:50. So we stand at recess.

[Recess.]

Senator CANTWELL. The Senate Judiciary Committee will reconvene on the nomination of Mr. Sansonetti.

Thank you for your indulgence today, for these numerous vote interruptions. I think we are safe for at least another hour here so I appreciate your hanging in there with us as we go through a variety of remaining questions.

And I just will remind that members can submit questions in writing and that will be open for a week after this hearing and hopefully you can get the answers back to those written statements in an expeditious fashion.

I would like to go back to some questions that we had started in my first round related to the Endangered Species Committee and your time at Interior and talk about for a few minutes the fact that there was a second issue involved in that decision as it related to the Oregon case. That basically was the fact that there was a challenge in the Ninth Circuit that the members of the should have been protected from ex parte contacts with the White House and I am not sure if you are familiar but basically the proceedings with regard to political pressure, there were some comments from the White House to the Committee as it regarded their decision and I wanted to discus that with you.

As solicitor and counsel for the Endangered Species Committee you prepared a memorandum that asserted that the Committee proceedings qualified as a rulemaking rather than an adjudication under the Administrative Procedures Act and as that and as a result, the ex parte contacts between decision-making members of the Committee and interested parties, such as the White House, were not prohibited.

The Ninth Circuit subsequently found that not only were the Committee proceedings and adjudication, basically a quasi-judicial process, but even if they had been a rulemaking, ex parte contacts with the White House should not have been allowed. So I would like you to tell me your basis of the memo for determining the contacts and to your knowledge what kind of communication did happen between the Committee and the White House at that time.

Mr. SANSONETTI. Boy, it has been a while and to be perfectly honest, I did not even recall that until you just read it to me.

I guess the first thing is that I never was contacted myself by the White House. I think that the claimed ex parte contacts were probably made from the White House to members of the Committee themselves, perhaps the secretary or whatever. I was asked to evidently develop that memorandum as an aid to the people on the Committee as to whether or not they could receive input from the White House. Evidently I felt that the answer was yes, they could, the Ninth Circuit said no, you cannot.

So if this happens again and we are under the same law because to my knowledge this particular portion of the ESA has not been revised or amended since 1992, there would be no contact allowed. At least that is what I am reading into your statement.

Senator CANTWELL. Do you know if other members of that Committee were contacted by anybody from the White House at that time?

Mr. SANSONETTI. I personally do not, no, but the question would not have come up if it had not occurred so I assume that there were contacts. I am just not sure who was contacted and by whom.

Senator CANTWELL. And to my earlier question you said that you, through memo or process, recused yourself from that process at the time, that you had not given counsel to the assistant solicitor who then advised the Fish and Wildlife agency.

Mr. SANSONETTI. That was once the petition was filed. In other words, up to the point where the petition by the BLM was filed for an exemption from the ESA, then all the questions dealing with the spotted owl matter were handled under the umbrella of the Department of the Interior. So I had charge at that point over all 225 attorneys. Once the petition was filed, that is when we had to look at the statute and try and figure out how do we implement this because it is not something that had happened very often.

And in the for-what-it's-worth department category and getting back to a portion of my opening statement where I said that I hoped to be able to work with you and this Committee to make the laws better that we all want to enforce, after that exercise was over, having seen both the good parts and difficult parts of the statute to be able to implement, I obviously have some background now, what it is like to go through that process.

So when and if the time comes for the Endangered Species Act to be reauthorized and changed for the better I hope I have a chance to visit with you about the entire process and how to make it better.

Senator CANTWELL. Well, do you think that this document where you said that you recused yourself exists in a fashion that the Committee could have access to it?

Mr. SANSONETTI. I do not know. I really do not remember. It has been too long. But there would have been guidance given to the two associate solicitors saying you represent the Fish and Wildlife Service, you represent the BLM, and the solicitor is representing the Endangered Species Committee.

Senator CANTWELL. In several articles that were written at the time, mostly in the Oregon newspapers, there was quite a bit of discussion about this because again in this sense, we had two agen-

cies, one arguing for the endangered species and upholding and the other arguing against it, all within the purview of your responsibilities and one, it seems, assistant solicitor telling the agency not to present certain information that would have been damaging to the other agency. In that article it states that your responsibility included giving advise on litigation strategy to all agencies within Interior.

So it would be helpful if we just had that document or that information. It would be helpful to the Committee.

Mr. SANSONETTI. Okay, I will see what I can do about finding it, tracking it down.

Senator CANTWELL. Thank you.

I would like to turn now—I know my colleague from Wisconsin asked about mining issues so I would like to turn to another area. In a matter that you handled as solicitor of Interior you issued an opinion that was criticized by the District Court in Columbia for failing to comply with the public participation requirements of the Administrative Procedures Act. In this opinion you wrote that a provision of the mining law that protected the rights of surface landowners to be free from damage from mining did not apply to below-ground or subsistence mining.

The court did not take issue with the substance of the petition but it found that the Department of Interior ruling was a rulemaking governed by the Administrative Procedures Act and that Interior violated the acct by not allowing public participation in the form of notice and comment or preparing an environmental impact statement.

The reason why I am bringing this up is because there are so many issues now with the administration on questions of environment, whether it is the roadless area rule or others in following the Administrative Procedures Act, so I just want to ask you a few questions about that.

Specifically, do you agree with the decision of the court in this particular case, which was the National Wildlife Foundation versus Babbitt, that the Interior Department decision did not protect sensitive surface areas from the effects of subsistence mining and required public comment and preparation of an EIS? Do you agree with the decision?

Mr. SANSONETTI. Well, I frankly have no recollection of that decision and have not read it but to the degree that that is law then it does not matter whether I disagree with it or not. I will abide by it if that is what the law in place right now is, NWF versus Babbitt. Again I have not read it and am not familiar with its holding but if that is presently good law then I am bound to follow it.

Senator CANTWELL. I know we are bringing up questions from your past responsibilities and anything that you feel more comfortable with coming back to the Committee on is fine, as well, as you refresh yourself with information.

So in general as it relates to the applicability of the APA in allowing public comment in that process regardless of the time and expense, you support that process or you do not—

Mr. SANSONETTI. I certainly do. I support do support the APA and I would note that the rulemakings that would be coming out of this administration will actually be coming out of places where

I used to be, like the Department of the Interior, but also other agencies in departments like Agriculture, Energy, Defense and the like. So those rules are basically promulgated out there and they, of course, are going to need to abide by the APA in so doing and it is after those rules and regulations come into existence and are challenged that I would now get involved in it.

So I will not be involved in the actual drafting of those rules over at Interior in this particular role as Assistant Attorney General if I were confirmed.

Senator CANTWELL. Well, let me ask you a question then that is a little more specific and that is the roadless area rule, which would protect 58 million acres of our national forest and this rule was developed by a multi-year process of public input, over 1.6 million public comments, and something that a lot of people across the country support enthusiastically.

During his confirmation last January I asked Attorney General Ashcroft about this issue because I thought it was a clear case in which he may be coming into office on something that he may not have supported as a United States senator and may be coming in as attorney general to enforce a law that was done by the Administrative Procedures Act that would then be on the books but it may not be something that his new boss was enthusiastic about, so I thought it was a very relevant question for his hearing. And under oath he said, "I will uphold and defend any rule that has the full force and effect of law."

And since that time and that commitment the Boise Cascade Timber Company has sued the Forest Service and sought an injunction preventing the rule from taking effect and the Department of Justice has done the following, basically in defense of the rule, which really has not been much a defense is my point because they've failed to impose the injunction on the merits, they read a prepared statement and made no arguments at the hearing on the issuance of the injunction, they filed a follow-up brief with the District Court that was virtually identical to the press release issued by the Department of Agriculture, filed no appeal of the granting of the preliminary injunction, and filed no briefs when the appeals to the injunction were filed by environmentalist groups which granted expedited review by the Ninth Circuit, and failed to appear at the hearing before the Ninth Circuit just two weeks ago.

So here we have a rule that is basically on the books and yet we are not really defending it. So I guess my question to you is in your reaction to this do you think what the Department of Justice has done constitutes a defense of the rule?

Mr. SANSONETTI. Well first of all, I want to acknowledge that this is a very important issue. It is one that you and I discussed when we had a chance to visit last month and I know that this is high on your list of priorities. As a consequence, it is going to become high on my list of priorities.

As you also know, I have not had the opportunity of being inside the Department of Justice yet so while I have been paying more attention since our visitation about the roadless rule as I have been following it in the newspapers, I have not yet had the opportunity to visit with whoever the attorneys are that are assigned to this matter inside the Department of Justice or read the briefs or the

counterbriefs or, for that matter, visit with those that are at the Department of Agriculture that are responsible for enforcing the status of the rule as it exists.

I will do that and if confirmed, I will visit with the Department of Justice staff, hopefully will learn from their expertise as to why these decisions were made. I do not know why they were made but I will find out.

It is my position that if there is a law on the books and it has not been changed by Congress and the United States is sued on that particular application of that rule, then it is my job to defend the United States and all of its people.

So I think it is going to frankly be more than 50 percent of my time that I am put in that position. In fact, while I have not memorized the numbers, I think that there are over 9,000 cases, Senator, before this division—400 lawyers, 9,000 some cases—and over half of them—I think it is around 55 percent of them are defensive in nature, where the cases are there because someone sued the United States. About a third of them are offensive and the remainder are either criminal cases or fall into the other categories.

So I will fortunately or unfortunately have a great deal of experience in situations as you describe.

I would also note that in looking at the conflicts—you spelled out some of the conflicts that come because you have, say, two agencies in the same department at odds with one another—not only did I see that at Interior but you have Indian Affairs, Bureau of Reclamation, you could have all four of those agencies quarreling and then add in the fact that you could have the Forest Service involved at Agriculture, the Army Corps of Engineers involved in the Department of Defense. You can have three or four different departments, six agencies, all with a different position on a particular matter.

One of my aims and one of my tasks is going to be to pull the people in from those different agencies, as well as their general counsels, and see if there is a way that we can reach a consensus on what ought to be done.

Senator CANTWELL. So does that translate into a position if you are confirmed that will defend the roadless rule on its merits and instruct the attorneys to begin a substantive participation in the case?

Mr. SANSONETTI. Well again, I am not going to characterize what they have done thus far as either substantive or nonsubstantive because it would be prejudging what somebody else has done that I do not know, but as far as where I go once I get into the building is concerned, I am going to say what is the status of the roadless rule? What is the law right now as it exists? Then I will say our job is to defend that—

Senator CANTWELL. And defend it substantively?

Mr. SANSONETTI. And to substantively defend it, yes, ma'am.

Senator CANTWELL. And does that change at all if, in fact, the administration is pursuing a new rulemaking during that same time period?

Mr. SANSONETTI. No, because as long as the law in effect is the law in effect, just because there is perhaps either an attempt here in the legislative branch of the government or in the executive

branch of the government to change that does not mean that the law is not in effect. It is kind of like a reference to Senator Leahy's question about Senator Jeffords's three-pollutant bill. It is still here in the legislative branch. If that ends up being law then that is when I would have to be concerned about defending it or not.

Senator CANTWELL. Thank you.

I would now like to talk a little bit about an issue that both Senator Leahy and Senator Feingold referred to and that was your past activities from a lobbying perspective. In the past year you have advocated for the expansion of mining rights by testifying before the Senate on behalf of the National Mining Association, various coal companies. What will you do to ensure your impartiality in applying mining laws should you be confirmed? And what are your plans on recusing yourself from specific matters?

Mr. SANSONETTI. I think that any time that I am going to be involved in a case that either involves lawyers that I know, clients that I have had over the last 25 years, I will abide by the Department of Justice's recusal policies. They have a whole group of folks, as I understand it, that are part of their ethics personnel that you go to and say here is the case, I represented these folks in 1994, it was about A, this is about B; is this something I should handle, not handle? And I will abide by their decisions. You need that kind of help and I will seek it.

I also, since you referenced Senator Feingold's question, I want to go back and mention that just because a person lobbies on behalf of a company or an industry does not mean that they necessarily are beholden to every stance that that client or industry takes.

I started, as I said, as a sole practitioner in Gillette, Wyoming in criminal defense. I have defended rapists and all that but I am not a rapist. I have represented folks all down the line.

In regard to that particular matter on the coal that I was lobbying for, that ended up being passed unanimously by both the House and the Senate. It was very bipartisan and the Department of Interior was behind it, too. Secretary Babbitt was in favor of it and sent someone to testify, as well. So—

Senator CANTWELL. I think it is safe to say that if my colleagues all understood that point we would probably have more judges in both the Clinton administration approved faster and probably currently, too. People are definitely held accountable for their past practices and activities.

So nothing beyond what the ethics or the specific requirements of the agency are?

Mr. SANSONETTI. That is exactly where I should go. I think it is best to let them help me through the ethical thickets as they occur. That is where I will go for my advise on matters.

If I personally do not feel comfortable about taking a case, I will not.

Senator CANTWELL. And turning to broader enforcement questions if I could, and obviously that is one of the key responsibilities of the job, is enforcement and litigation. I might start actually with a broad question. You do not really actually have a lot of litigation experience in your background so I am assuming that you are planning on relying on the team of lawyers that will be working with you in that area.

Mr. SANSONETTI. Well, I may not have a lot of experience in trying cases, say, out of the EPA realm—clean air, clean water cases—but as far as litigation experience in and of itself, I have had well over 300 cases in front of judges, jury trials, appearances in front of the Wyoming Supreme Court. I have had some appellate cases. So I have had litigation experience, starting with criminal defense and going to a civil practice about 1982.

But regardless, everyone at the Department of Justice that will be part of that team is a litigator and so yes, I will be counting on their experience and borrowing their legal expertise to aid me in that regard.

Senator CANTWELL. And even in areas where you basically disagree with the law or the regulation? We are facing with the administration a number of areas where valid rules may not be defended or litigation may not be brought maybe because there is a difference within the administration about that particular rule or process.

So I am just asking as a nominee for attorney general for the Environment and Natural Resources section, do you believe that there is an obligation to defend the law and regulations even if you disagree with them?

Mr. SANSONETTI. I do.

Senator CANTWELL. And do you believe that the administration—I already asked you about the rulemaking authority.

Let me turn specifically to a couple of issues that are important to my state but I think probably are significant in the larger issue of enforcement because I think they speak to the challenge that your agency has.

First is the issue of Hanford, the Hanford Nuclear Reservation, which is our nation's worst Superfund site, which houses somewhere around 500 million gallons of high-level nuclear waste and it is basically located in aging tanks along the Columbia River. So the clean-up of this site is governed by an agreement between the state of Washington's Department of Ecology, Department of Energy, and EPA. It is called a triparty agreement and that agreement lays out specifically the milestones for how clean-up of Hanford must be done and the obligations that must be met.

The state of Washington has been levying fines against the Department of Energy since July of this year amounting to $50,000 because of its failure to begin the construction of a waste treatment facility that was stipulated in the triparty agreement.

So in the past the effort to move forward on this clean-up has been greatly aided when the Assistant Attorney General from the environmental section is a committed arbiter eon behalf of the clean-up, when he pushes the agencies involved to proceed with the agreement, with the triparty agreement.

So as the nominee for this section can you provide me assurances that you will continue to honor this triparty agreement and make sure that the Hanford clean-up process stays on track?

Mr. SANSONETTI. I think that you touch on a question that may be specific to your state but you are correct; all Americans are concerned that those areas that are part of the Superfund sites are cleaned up. So I think in general I need to associate myself to previous experience of having had, as solicitor, to order certain agen-

cies within Interior to clean up matters that had been left over from the World War II period. So I have had some experience with this.

To the degree that the Hanford case, which I, of course, am not specifically familiar with but as I follow your explanation of where things are right now, it looks like that is going to have to be high on the agenda, as well. I need to find out who is working on that case within the Department of Justice and see what we can do to move the tripartite agreement forward so that we can get those milestones met and let us get this Superfund site cleaned up.

Senator CANTWELL. Well, this is an important issue as it relates to working within the administration because in this particular budget year the Congress has very much supported a budget that helps us meet that triparty agreement and our responsibilities. The administration has not. So there has been a very, very bipartisan support for meeting those obligations in both the House and the Senate and on both sides of the aisle but it is critically important that the administration understands that the breaking of that triparty agreement is a very serious matter beyond the relative small fines that are being paid today.

I would like to go back if I could to the Endangered Species Act and an important decision that has recently been made and get your thoughts on it, although I think some of this process will play out prior to you actually being in a position to act on it. But on September 10 the District Court of Oregon issued an opinion that will have tremendous implications for the salmon in the Northwest and on the Endangered Species Act.

In that decision the District Court found that the National Marine Fisheries Service had erred in deciding that in a proceeding to list a particular species of salmon as endangered, hatchery salmon and wild salmon of the same species could be separately considered in most situations. More importantly, the court immediately removed the coho from the endangered species list until a new administrative process is developed.

The determination of whether or not to appeal this decision rests with the Division of Environmental and Natural Resources. Because the decision on taking an appeal to the Ninth Circuit will need to be made within the next couple of weeks you will not likely play a role in this. However, I would like to explore your views on the subject generally.

If the decision in this case is not appealed we will be left with an unclear standard for the listing of salmon throughout the Pacific Northwest and face the possibility of inconsistent rulings on different species of salmon. So do you agree that in situations like this the value of having an appellate court ruling is extremely important and should be a major factor in consideration within the Department of Justice about whether to file an appeal, even where you may agree with the underlying substantive holding?

Mr. SANSONETTI. Well, again I have to acknowledge the fact that this is a question obviously of keen importance to you and to those in the Pacific Northwest but it also seems to be a case that could have implications nationwide as far as the ESA standard that you are referring to.

I again am not familiar with what this particular case is. Is there a name of this case?

Senator CANTWELL. Yes, it is the Elisi Valley versus Evans.

Mr. SANSONETTI. The Evans case? I would obviously have to find out about the case once I went in but in general, because you were asking about what you do in general about cases when you appeal them and do not appeal them, it would be my practice to first start with the department from where this came from. If this one is NMFS, that would be the Department of Commerce, I take it, so I think it would be my obligation to go to the individuals at the Department of Commerce and say, "How did we get in this particular situation? What is at stake? What is the policy that you are trying to evince here?" And then seek their recommendations, as well. "What is your recommendation? Do we need to appeal this, not appeal this?"

And to the degree that it affects more than just the Department of Commerce and I sense from what you have told me, without reading the case, I sense from what you have told me that this could have an impact on, say, the Fish and Wildlife Service and the way that it handles recoveries of endangered species. Then I probably ought to make sure that people from my division go over to the Department of Interior, as well, and visit with the head of the Fish and Wildlife Service, maybe the assistant secretary for Fish, Wildlife and Parks. If it is that important it might even get to the secretary's level. Visit with the solicitor and say, "How would this affect cases that you have on-going over here right now?" Get that kind of input and from that hopefully be able to reach a consensus on what might be done.

I know that sometimes cases are appealed and sometimes they are not.

Senator CANTWELL. But do you think it is an extremely important factor, the fact that a decision at the District Court level could have such significant impacts and have inconsistency with how we are handling—

Mr. SANSONETTI. It well might. And I think one of the things that would be interesting to know in any given case is where that other inconsistency may develop. In other words, is that judge in Oregon's decision going to be inconsistent with another judge, say within the Ninth Circuit's purview, in which case maybe the Ninth Circuit would be interested in trying to determine whether the judge in Billings, Montana or the one in Oregon was correct.

But what if the inconsistency was with a judge in the Fourth Circuit or the First Circuit? You might have to consider where would you want that appeal to be brought, in which circuit? And, of course, appellate matters at that level are also dealt with with the solicitor general's area. That would not be a decision that would simply be a box that I could check off on. I would have to go visit with Mr. Olson and the people at the Solicitor General's Office because they are in charge of the ultimate appeal.

Senator CANTWELL. Well, we may submit some additional questions on that particular area but it is safe to say that there will be much discussion from that court decision.

I would like to, and there is not an endless pile up here of questions for you. We will get through this; I assure you. And, as I have

said twice now in the hearing and I will remind members who did not attend and their staffs that they can submit questions up to the following week for your response.

But the last area is just generally your views on the enforcement tools within the agency and the fact that you will have decisions about prosecuting environmental crimes. By that I mean the willful violation of our environmental laws that result in pollution damage to our environment.

So you have enormous discretion in making decisions about whether to proceed against polluters via a criminal prosecution or a less rigorous civil enforcement process. And I have often heard the view expressed that the environmental crimes are bad acts committed by good people, meaning that the industry polluters do not have the willful intent to violate the laws and pollute the environment.

What are your views on the importance of enforcement as a tool to ensure protection of the environment and our natural resources?

Mr. SANSONETTI. That is an excellent question and obviously if confirmed, I would like to note that I would actually look forward to enforcing our Clean Air and our Clean Water Acts and for those that willfully and intentionally are harming our air and our water, I look forward to chasing them, and I have done it before. When I was at the Department of Interior our role there was smaller, it dealt with surface mining and things like that, those that abused the BLM lands, and I was not shy to go after those individuals that had intentionally done that.

I believe that there will be in our Environmental Crimes Section—and I believe there are nine sections underneath this particular division, Environmental Enforcement and Environmental Defense and then the one you are referring to right now, which is Environmental Crimes Section, which has the ability to bring a criminal action against a polluter, as opposed to a civil action—that there are guidelines that are in place as to the things that one should consider before you file something criminally versus civilly.

Senator CANTWELL. What are your personal views?

Mr. SANSONETTI. My personal belief on it is that I would take into account was it a single perpetrator? Was it a company that is acting in concert with others? What is the nature of the damage? Did they know that there was going to be harm to the air or the water? Have they done it before? Was it somebody that had previously been convicted and paid a fine so they were chased civilly this time and they thought they could get away with it again and that they would just be chased civilly? Those are the kinds of folks I would come down hard on.

Is it somebody that left a gate open by accident and something got out? That would fall perhaps less so.

So I think you have to look at the facts of each individual case. You have to visit with the investigators because these things just do not pop up at the Department of Justice on their own; they are brought by either individuals at the Fish and Wildlife Service or they are brought by people from the EPA that have done the investigation and you need to sit down with them, say have similar cases been prosecuted criminally or civilly before, how did you

reach this particular recommendation, and then go from there. A lot of it will be decided on the basis of the facts of a particular case.

Senator CANTWELL. And how do you deal with the challenges of making sure that those decisions are free from political interference? What approaches will you have to make sure that the Hill and the White House do not exert or are not perceived to be exerting political pressures on your division?

Mr. SANSONETTI. I suppose those things will happen. I mean you cannot keep somebody from placing a phone call to you or sending you a letter encouraging you to do A, B, or C. But again it is nothing that I have not deal with before. I mean I have had calls from the White House and from the Hill on both sides of any number of different issues and it is one of the toughest parts about the job.

But in the end, as I mentioned in my opening statement and in my answers to Senator Leahy's questions, the key is to remember who your client is and the clients are the individuals that are part of our United States of America. And in the end will there be judgment that has to be utilized by myself? Yes. Am I going to be wrong sometimes? Probably. But I think that I can tell you that I will look at each case individually, look at the law, apply the facts to the law, and in an evenhanded, unbiased manner make my best judgment as to whether the case should be A, B, or C.

I cannot avoid phone calls from certain individuals or letters or something like that that are trying to influence that decision. That will happen and it is part of the process. But in the end you have to look at the hard, cold facts that are there, the law, the precedents that have previously been set and make your judgment and go forward.

Senator CANTWELL. One last area that I neglected to bring up earlier which if you could comment on and that is in your role and responsibility for protecting and enforcing the rights of Native Americans. Obviously this is a position in which, in addition to prosecuting those who violate our environmental law you will be responsible for representing the United States in support of rights of tribes, especially those confirmed by treaties. The Native American community will be relying on you for litigation on issues including establishment and protection of water rights, protecting hunting and fishing rights, collection of damages and establishing reservation boundaries.

If you are confirmed to this position will you be a diligent enforcer of Native American rights, particularly those conferred by treaty?

Mr. SANSONETTI. I would. Let me answer the question: I would be diligent in that regard. And you bring up a subject matter that I have had some experience with. Both when I was associate solicitor and as solicitor part of my legal venue concerned the Bureau of Indian Affairs and the assistant secretary for Indian affairs and many of the issues of a highly controversial nature got all the way to the secretary of the Interior and you have to deal with them. Indian gaming, Indian water, the rights to certain portions of the BIA budget are all of concern.

But I recognize right off that trust the responsibility that the United States has to the federally recognized tribes in the United States, many of which are in your home state of Washington and

several of which are in the state of Wyoming, and I think I have a reasonably good record with dealing with Indian questions during my previous tenures.

And in private practice I have had an opportunity to work with any number of companies working with Indian tribes to improve their economic circumstances across the United States. I have probably had dealings with seven or eight different Indian tribes in the last eight years.

So I recognize the issue, I associate myself with your concerns and if confirmed, I will work as best I can to uphold that trust responsibility to the Indian tribes as federally recognized by Congress.

Senator CANTWELL. Well, I thank you for your answer to today's questions and to the future answers that you will give on various questions. In ending this hearing I do not know if you have any additional comments that you would like to make but obviously our Committee has to make a decision about this position and your responsibility at a time when I think that many of us do have concerns about where the administration is heading and with you as the top law enforcer officer, that you are going to vigorously enforce the law and pursue those who are not abiding by it. So we look forward to further comments.

Mr. SANSONETTI. Thank you very much for your questions and the opportunity to have this hearing today, Madam Chairwoman.

Senator CANTWELL. Thank you. The hearing is now adjourned.

[Whereupon, at 4:44 p.m., the Committee was adjourned.]

[Questions and answers and a submission for the record follow.]

QUESTIONS AND ANSWERS

Responses of the Nominee to questions submitted by Senator Cantwell

Question 1: Please explain your understanding of the purpose of the APA and indicate how, if at all, your views about the procedural requirements of the APA have changed since the decisions in *National Wildlife Federation* v. *Babbitt*, 835 F. Supp. 660 (D.D.C. 1993.) and *Portland Audubon Society* v. *Endangered Species Committee, 984 F.2d 1534 (9*th Circuit 1993).

Answer: The purpose of the APA is to set out procedural requirements for various administrative activities, including provisions for notice find opportunity for public input. To the best of my knowledge, the decisions in the cited cases still stand, and if I am confirmed as Assistant Attorney General, I will give those cases the precedential and/or persuasive weight to which they are entitled.

Question 2: Do you believe that modifications to valid rules are best made by complying fully with the APA process, which includes public notice and comment, and that often requires preparation of a detailed Environmental Impact Statement setting out the possible harms caused by the rulemaking?

Answer: To the extent that modifications to existing rules amount to a rulemaking, then the modifications are, of course, governed by the requirements of the APA. The question of whether the modification of an existing rule requires preparation of an Environmental Impact Statement is an independent question to be determined by applying the requirements of the National Environmental Policy Act, and will depend on a factual analysis on a case-by-case basis.

Question 3: At the beginning of the Bush Administration, implementation of many final rules were initially delayed for sixty days pursuant to a memo issued by Chief of Staff Andrew Card. Since that time, multiple rules have been suspended by invoking the "good cause" exemption of the APA. The exemption provides that an agency may act without providing public notice and comment when it finds that notice and public process are impracticable, unnecessary, or contrary to the public interest.

Question a: In your view, does suspending a valid rule that a particular Administration does not agree with constitute a circumstance where public participation is impracticable, unnecessary, or contrary to the public interest?

Answer: Public notice and comment are generally an important part of agency rulemaking procedures, but as this question notes, the APA itself contains an exception to its general notice requirements for rulemaking procedures "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C.§ 553(b)(3)(B). Whether it rulemaking satisfies the requirements of this exception will be a highly fact-specific inquiry which the agency must make in the first instance, and which a court may ultimately review under the appropriate standards set forth in the APA.

Question b: May an agency ever invoke the good cause exception where there is a sufficient time to solicit public comment before suspending a rule?

Answer: The terms of the statute itself contemplate that there may be circumstances when, even though there is sufficient time to solicit public comment, the exception may he properly invoked. See APA § 4(6)(13), 5 U.S.C. § 553(b)(B) (empowering agencies to "for good cause find[] . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest") (emphasis added).

Question 4: At your hearing you stated that you were either not familiar with, or did not recall, the case of *National Wildlife Federation* v. *Babbitt* 835 F. Supp. 660 (D.D.C.1993), in which the Federal District Court for the District of Columbia ruled that the an opinion you issued as Solicitor of the Interior (M–36971) was in fact a major action that required a full rulemaking process in order to comply with the Administrative Procedures Act. That opinion concluded that subsidence from underground coal mining was exempt from section 522(c) of the Surface Mining Control and Reclamation Act, that protects surface landowners and uniquely vulnerable property from potential mining damage. Having now had additional opportunity to review the SOI opinion and the District Court decision, please answer the following:

Question a: What was the basis fur the determination that the decision to exempt subsidence mining did not require an APA ruler making process?

Answer: Solicitor's Opinion M–36971, entitled "Applicability of Sec. 522(e) of the Surface Mining Control and Reclamation Act to Subsidence," addressed a question of statutory interpretation involving which provision or provisions of SMCRA applied to subsidence resulting from underground coal mining operations. My legal conclusion that subsidence from underground mining was regulated exclusively under section 516 of SMCRA, and not under section 522(e), was based on an evaluation of the statutory language, its legislative history, past regulatory actions on this issue, and relevant case authority. *National Wildlife Federation* v. *Babbitt* (835 F. Supp. 654) did not address whether that opinion was subject to the APA, nor did the Solicitor's Opinion address that issue. The subject of *National Wildlife Federation* v. *Babbitt* was a Notice of Inquiry issued by the Secretary of the Interior.

Question b: What was your role in the process of preparing the opinion and issuing the notice indicating that the Department had adopted the opinion of the SOI and would not be undertaking further rulemaking proceedings?

Answer: Solicitors' Opinions are only written in response to requests from the Secretary of the Interior for a legal opinion. According to DOI regulations, such Opinions become binding on DOI if the Secretary concurs in them. In this case, the Secretary asked for a legal opinion regarding section 522(e) of SMCRA. To my knowledge, no Solicitor Opinion submitted to a Secretary has ever been subject to the Administrative Procedure Act's notice and comments requirements. Solicitor' Opinions are for the guidance and the use of the Secretary and those who work in DOI. As I did with all Solicitor Opinions that I authored, I reviewed this Opinion with Secretary Lujan, who signed the concurrence which made it binding on DOI. It is noteworthy that during the last Administration, DOI concurred with the legal conclusions contained in my Solicitor's Opinion M–36971 as evidenced by the "interpretative" rule promulgated on December 17, 1999, at 64 Fed. Reg. 70,838, concluding that subsidence due to underground mining is not a surface coal mining operation and accordingly, is not prohibited under section 522(c) of SMCRA. It is my understand that Secretary Lujan's decision to issue the Notice of Inquiry, which was the subject of *National Wildlife Federation* v. *Babbitt,* was made after consultation with the Assistant Secretary for Lands and Mineral Management and the Director of the Office of Surface Mining.

Question 5: You were asked a number of questions at your November 6, 2001, nomination hearing about your roll; in the convening. and the operation of, the Endangered Species Committee (ESC), also known as the God Squad. Some of those questions focused on the inherent conflicts resulting from the fact that the two par-

ties appearing before the ESC, the Bureau of Land Management (BLM) and the Fish and Wildlife Service (FWS), were both Divisions of the Department of the Interior, and both relied on the legal guidance of the Solicitor's office that you headed.

a) You have agreed to provide to the Committee the document you executed as Solicitor, in an attempt to create firewall protections within tile Solicitor's office to ensure that both FWS and BLM had adequate and independent legal guidance. Please describe that document including whether it contains a formal recusal by you from involvement with the proceeding of FWS and RLM

b) Please also .indicate whether that document sets forth any explanation or legal support for the Solicitor serving as legal advisor to the Secretary of the: Interior, to the Administrative Law Judge in the proceeding, and to the Endangered Species Committee its a whole.

Answer: Rather than restate what the document contains, enclosed herewith for the Committee's convenience is a copy of the document which has already been provided to the Committee on November 13, 2001, by FAX.

Question 6: At the first hearing convened by the Administrative Law Judge for the purpose of compiling a record to be presented to the ESC members, an attorney who had been hired by FWS for the proceeding and was under the supervision of an Associate Solicitor, advanced an argument to the Administrative Law Judge that the BLM application to convene the ESC for purposes of seeking the exemption had failed to meet the two required prerequisites, good faith consultation, and preparation of a detailed and specific Environmental Impact Statement, and that the request to convene the ESC should not have been granted by the Secretary of the Interior.

Is it correct that in your role as Solicitor,. You provided legal guidance to the Administrative Law Judge on this question, and that after conferring with you he ruled that the argument by FWS that the prerequisites for convening the ECS out of order?

Answer: It is correct that, as contemplated in the division of functions within the Office of the Solicitor for the entire ESC process, I provided guidance to the hearing officer presiding over the proceedings. (Judge Schweitzer was presiding over the hearing and the process, but did not act as the interim or ultimate decisionmaker and hence was not acting in the capacity that one normally associates with the term "Administrative Law Judge.") It is also correct that after the first hearing, the hearing officer determined that an argument made by FWS concerning the prerequisites for convening the ESC was not appropriately raised by tile FWS at that juncture. It is my understanding that this is because it was not within the sphere of responsibilities of the hearing officer presiding over the process.

Question 7: At the conclusion of the ESC proceedings before Administrative Law Judge, Judge Schweitzer issued an order that a number of legal issues should be briefed by the parties, including the arguments originally advanced by FWS that the BLM had failed to satisfy the prerequisites for convening the ESC. According to a former FWS attorney, an Associate Solicitor with the Department of Interior instructed him to remove arguments from legal briefs to be presented to the ESC, and the FWS attorney resigned in protest. Does your recollection of these events differ in any significant way?

Answer: My recollection of events was that at the conclusion of the ESC proceedings in January 1992, the hearing officer issued an order allowing the briefing of a number of issues, including the issue noted above. I understand that a brief setting out these arguments was withdrawn upon direction of the Associate Solicitor ultimately responsible for representing the FWS. I also understand that the withdrawal was based on mutual concerns of the FWS and the Department of Justice that the FWS not assert a position that could have been interpreted to be inconsistent with the position of the Administration in on-going litigation (*Lane County Audubon Society* v. *Jamison*) then being litigated before the Ninth Circuit Court of Appeals. I further understand that as a result of the direction of his supervisor that the argument in question be withdrawn, the outside attorney that had been hired by the FWS to represent it resigned.

Question 8: At your hearing you testified that because of the firewalls you had crected within the Solicitor's office between yourself, and between attorneys providing advice to FWS and to BLM, you were not aware of these events at the time, but learned of them later. Please state exactly when you became aware that a member of your staff in the Solicitor's office had instructed removal of arguments ordered by the ALJ. and explain what, if any, action you took upon learning of these events.

Answer: At no time did I suggest or recommend removal of arguments in briefs to be submitted to the hearing officer. I do not remember exactly when I became aware of the events recounted above, but I believe that I must have been aware of

these actions by the time the hearing ended in Portland in January 1992. I did not take any actions upon learning of these events since decisions on the presentation of the FWS and BLM positions were to he made by the appropriate Associate Solicitor.

Question 9: At your hearing, you also stated that, in your opinion, arguments challenging the Secretary of the Interior's decision to convene the ESC were not proper because the Committee had already been convened. Please state what process you believe should be followed in bringing a challenge to the decision to convene the ESC. Please explain why presenting that argument to the ESC itself and allowing the: ESC to certify the issue for consideration by a federal court would not be a proper process?

Answer: The provisions of the Endangered Species Act setting out the steps for applying for an exemption generally provide that upon receiving an application for an exemption, *the Secretary* shall determine whether various requirements to qualify for an exemption have been met. 16 U.S.C. § 1536(6)(3). If these conditions have not been met, *the Secretary* is to deny the application and the matter is not considered by the ESC. Generally, if a party believes the ESC should not consider an exemption, the threshold question is considered at that time by the Secretary. If the Secretary determines that the application should be denied at that stage, the decision is subject to judicial review. The Endangered Species Act also allows the review of "any decision" rendered by ESC and does not appear to contemplate a separate certification process by the ESC for what the Court of Appeals should review in the course of ESC's decisionmaking process and outcomes.

Question 10: Is it correct to state that, due to the actions of members of the staff of tile Office of the Solicitor of the Interior, arguments challenging the Secretary of the Interior's decision to convene the ESC: on the grounds that BLM had not satisfied the prerequisite requirements were never presented to the ESC members?

Answer: It is correct that ESC members did not consider whether the prerequisite conditions for convening the ESC were present in this case. After the first hearing, the hearing officer determined that an argument made by FWS concerning the prerequisites for convening the ESC was not appropriately raised by the FWS at that juncture. It is my understanding that the hearing officer made this determination because it was not within the sphere of his responsibilities.

Question 11: During the ESC process you played a number of roles. You served as Interior Secretary Lujan's designee on the ESC, as counsel to Secretary Lujan, as counsel to the full ESC, and as legal advisor to the ALJ. Moreover, although you testified that you created firewalls within the Solicitor's office, your office continued to provide legal advice to both parties before the ESC, the FWS, and the BLM. In hindsight, do you believe that providing counsel to the ALJ and to the Secretary at the same time presented conflicts that should not be repeated in a future ESC proceeding?

Answer: No. I believe that providing counsel to the hearing officer and to the Secretary was consistent with the letter aid the spirit of the Endangered Species Act. The ESA provides that "if the Secretary determines that the federal agency concerned and the exemption applicant have met the requirements. . . . he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption. . . ." 16 U.S.C. § 153G(g)(4). In this case, the Secretary chose the hearing officer that presided over this hearing. Since under the statute, the hearing was the responsibility of the Secretary and the Secretary selected the hearing officer, serving as the chief legal advisor to both the Secretary and the hearing officer was not a conflict. (I should note that I did not serve as the Secretary's "designee" on the ESC.)

Question 12: Do you believe that bringing in separate counsel for the parties, FWS and BLM rather than keeping the supervision of the legal arguments being advanced by both parties within the Solicitor's office would have protected the ESC against allegations of conflict of interest?

Answer: It is possible that other staffing arrangements could be considered, but I believe that the approach that I adopted was in accordance with the statute and the regulations in existence at the time. Moreover, it is probable that any alternative arrangements in such a contentious proceeding would have given rise either to allegations of conflict or some other serious concern, such as a lack of sensitivity to how positions taken in one agency matter can have adverse consequences for the public interest in another agency matter.

Question 13: You testified at the hearing that you did not have ex parte contacts with the White House during the ESC process, but that it was possible that other ESC members may have. Did you believe that those contacts were acceptable at the

time, and do you continue to believe that individuals serving in an adjudicatory role like the ESC should refrain from ex parte contacts with interested parties?

Answer: It was my legal conclusion at the time that the Endangered Species Committee exemption process was an informal rulemaking rather than an adjudication, and further that because it was an informal rulemaking, ex parte communications with members of the ESC were not prohibited. However, I am not personally aware that there in fact were such communications. In its ruling in *Portland Audubon Society* v. *Endangered Species Committee*, the Ninth Circuit ruled that the ESC exemption process was an adjudication and that ex parte contacts were not appropriate. To the extent that that decision is still the law, if confirmed as Assistant Attorney General, I will ensure that its requirements are met.

Question 14: Should the ESC be convened again in the future, if you are confirmed as the Assistant Attorney General for the Environment section, you may play an advisory role in its structure and in defending it against any legal challenges. Do you believe that in any such future proceeding, additional protections against inherent conflicts of interest and against political pressure should be implemented?

Answer: Any such decisions would be the primary responsibility of the Department of the Interior. I would, however, be open to considering and supporting appropriate possible safeguards against conflict or political pressure, real or perceived.

Question 15: A decision was recently made by the National Marine Fisheries Service and the Department of Justice not to appeal the decision of the Oregon District Court in the case of *Alsea Valley Alliance* v. *Evans*, and to instead initiate a new rulemaking aimed at creation of a new hatchery policy for Pacific salmon. Do you agree that all petitions or court challenges that seek to remove salmon not directly implicated in the *Alsea Valley Alliance* v. *Evans* decision from the protections of the Endangered Species Act should be stayed pending the outcome of the rulemaking on a new hatchery policy?

Answer: Although I am generally aware of the concerns about the protection of Pacific salmon under the ESA and I know this is an important issue to you, I am not familiar with the facts of the case in question or of any petitions or court challenge that may be pending regarding salmon not directly implicated by that case. Without obtaining a much more thorough understanding of the difficult issues surrounding these concerns and any such litigation, it would not be appropriate to express an opinion regarding a possible stay of such petitions or court challenges. If confirmed, I plan to become fully educated on this issue.

Question 16: What is your view of the role of state attorneys general relative to the U.S. Department of Justice in our system of government?

Answer: With respect to the work of the Division, I believe that the state attorneys general should be viewed as partners in the Department's effort to enforce the environmental laws in a fair and firm manner, and that we should develop cooperative working relationships to resolve any concerns or issues that may arise in the arena of environmental and resources law.

Question 17: Do you believe that lawsuits brought by state attorneys general collectively, and aimed at addressing national problems, are a useful way of addressing national legal issues?

Answer: Yes, 1 believe that in some situations they can be one useful way of addressing national legal issues.

Question 18: What specific cooperative efforts would you like to see the state attorney generals undertake in coordination with the Environment and Natural Resource Division to address national environmental issues?

Answer: If I am confirmed as Assistant Attorney General, I would encourage the state attorneys general to work with the Division on environmental enforcement initiatives of national and regional significance in both the civil and the criminal context. I would strive for greater cooperation in developing such initiatives and in sharing information to mutually support our efforts in this area, both by communicating directly with state attorneys general and through the National Association of Attorneys General.

Question 19: If confirmed, will you respect the efforts of those states that demonstrate the intent and capacity to enforce federal standards through the exercise of state authority by working cooperatively with those states? If so, in what ways will you demonstrate that commitment?

Answer: Yes. If confirmed, I will demonstrate this commitment by reaching out to cooperate and develop strong working relationships with the Division's enforcement counterparts in those states, and in the states more generally. I would encourage the state attorneys general to work with the Division on environmental enforcement initiatives of national and regional significance in both the civil and the crimi-

nal context. I would also strive for greater cooperation in developing such initiative and in sharing information to mutually support our efforts in this area, both by communicating directly with state attorneys general and through the National Association of Attorneys General.

Question 20: Will you work both in the courts and in Congress to ensure that federal agencies such as the Departments of Energy and Defense, which are responsible for some of the most polluted sites in the nation, are accountable for complying with state environmental and natural resource management laws?

Answer: Just as it is important that private parties take responsibility for pollution they may have caused, so too is it important that federal agencies comply with all applicable environmental and natural resource laws, including all applicable state laws in this area. To the extent that federal agency compliance with such state laws is an issue in matters handled by the Division, I will work to ensure that those agencies comply with the law.

Question 21: As the Assistant Attorney General for Natural Resources, you will be charged with guiding the litigation strategy in hundreds of cases and in supervising over 400 experienced environmental litigator. You would oversee attorneys in cases before state and federal courts, as well as federal agencies, and would be called upon to advise the rest of the Justice Department and to make decisions on behalf of other Departments including the EPA and Interior when the need arises. At your hearing you stated that you have handled over 300 litigation matters, yet can your questionnaire that was submitted to the Committee you indicated that you had tired to judgment approximately 50 matters. Could you provide clarification about your litigation experience, and provide details of the ten most recent cases in which you have been the primary person responsible for litigation strategy.

Answer: As this question indicates, I have extensive litigation experience. Since 1976, I have handled over 300 litigation matters dealing with civil and criminal law, and of those 300 matters, approximately 50 have been litigated through trial to judgment, which also gives me considerable experience as a trial litigator, experience that I hope will serve the Division well if I am confirmed. Of the remaining 250, those that are not ongoing have been resolved by settlement. What these numbers also demonstrate is that I strongly support settlement of matters where appropriate. Litigating a matter through trial can be a very expensive proposition, both in terms of resources and time expended, and it is often in a client's best interest to settle a case and obtain the certainty that it needs to proceed with its business, rather than await what may turn out to be a less favorable outcome after a trial. I also note that in my tenure as Solicitor at DOI, I gained considerable experience supervising large numbers of lawyers and developed great respect for the expertise and judgment of career attorneys working in public service.

Although I am prohibited from revealing specifics about cases that I have worked on by my bar associations' ethical requirements pertaining to attorney-client privilege, I can give you a general sense of the types of litigation matters that I have worked on recently. I have recently litigated an Endangered Species case in federal district court in Alabama, a grazing case in federal district court in Idaho, a tort case in state district court in Wyoming, approximately five cases before the Interior Board of Land Appeals (involving, for example, pipeline easements), and a case involving Indian jurisdiction before the Interior Board of Indian Appeals. As these cases show, I have diverse recent experience in litigating natural resource issues.

Question 22: If you are confirmed, will you work to support the enforcement authority and resources of federal environmental and resource protection agencies, both in the courts and the legislature?

Answer: Yes.

Question 23: Do you believe that, in representing agencies in court, the Department of Justice's client is simply the agency or does the Department also represent the public and the broader interests of United States citizen?

Answer: There is an Opinion of the Office of Legal Counsel of the Department of Justice that addresses this issue entitled "The Attorney General's Role as Chief Litigator for the United States," dated January 4, 1982, and signed by Theodore B. Olson, who was then the Assistant Attorney General for the Office of Legal Counsel and is now the Solicitor General. (This opinion is available on Westlaw at 1982 WL 170670.) The Opinion reaches the conclusion that the Attorney General must serve the broader interests of the United States as a whole in carrying out his professional duties as well as the interests of the "client" agency. It is my understanding that this Opinion still stands and I concur with its conclusion.

Question 24: One of the less prominent responsibilities of the AAG for ENR is the investigation and prosecution of takings of protected wildlife and marine species through poaching and far trade on the black market. Between $10 billion and $20

billion in plants and animals were illegally traded last year, with the buyers in the United States leading the list of violators, at about $3 billion. If you are confirmed will it be a priority for you to prosecute those who seek to profit form trade in endangered species?

Answer: It is my understanding that the ENRD has had a number of successes in the past few years in prosecuting those who seek to illegally import protected species into the United States, and if confirmed, I hope to work with the law enforcement agencies who are on the front lines of uncovering such violations to carry on this effort.

Question 25: On October 30, 2001, the Bureau of Land Management announced that it had modified a Clinton Administration decision by revising a rule on hardrock mining limiting, the Bureau of Land Management's discretion to bar mining where it would cause "substantial irreparable" harm. In your opinion and given your expertise on mining issues, why is it necessary to limit agency discretion to deny a permit when the mine would cause substantial irreparable harm?

Answer: Although I am generally aware of this announcement and the rule at issue, I believe that this rule is the subject of ongoing litigation being handled by the Division and it would be inappropriate for me to express an opinion on this question before becoming fully informed on the reasoning behind the relevant opinion.

Question 26: Is it your intention to recuse yourself from involvement in any legal challenges to this specific rule?

Answer: With regard to this question and any other question concerning recusal, I intend to consult with the appropriate officials in the Department and to abide by my ethical and professional obligations both as a Department of Justice official and as a member of the Wyoming and District of Columbia bars.

Question 27: Under former President Bush, a policy of no net loss of wetlands was created. The Army Corps of Engineers last week simultanoeusly announced that it would step up efforts to make certain that developers are meeting the requirements of the "no net loss" policy by rebuilding or purchasing wetland property for preservation, but it would also modify the permitting process, making it easier for developers to demonstrate that the proposed dredging or filling wetlands will result in "minimal impact to aquatic environments." Do you agree that in order for wetlands to be preserved that developers should be required to replace the destroyed wetlands can an acre by acre basis?

Answer: I support the goal of the "no net loss" policy regarding the nation's wetlands and the efforts that are being made to achieve that goal by the agencies that hive primary responsibility for the wetlands protection program under the Clean Water Act, the United States Army Corps of Engineers and the United States Environmental Protection Agency. To the extent that these agencies, which have special expertise in this area, believe that replacement of wetlands on an acre-by-acre basis is an important component of achieving that goal, I support them in that view.

Question 28: Do you agree that developers granted permission to dredge and fill wetlands should be granted discretion to replace destroyed wetlands with hedges or other vegetation instead of new wetlands if they think that would better protect the environment?

Answer: It is my understanding that the Department of Justice is not responsible for granting permission to dredge and fill wetlands protected under the Clean Water Act—this responsibility falls to the United States Army Corps of Engineers working with the United States Environmental Protection Agency. It is further my understanding that these agencies typically work with permit applicants to resolve issue concerning the appropriate mitigation for the dredging and filling of wetlands as part of the permitting process, and that there are published guidelines regarding such mitigation.

Question 29: The Clean Air Act New Source Review Program has led to a number of very significant settlements over the past two years. As part of the President's National Energy Policy document, released in May 2001, the Department of Justice was asked to review the program.

Question a: Do you agree with the need for such a review? If so, why?

Answer: The President's direction is consonant with the obligation of any new Administration to familiarize itself with litigation on-going at the time of transition. Moreover, it is not unusual for a new Administration to engage in comprehensive review of initiatives which may affect questions of national concern such as energy resource.

Question b: In your view, and given the recent settlements, what is the benefit of such a review?

Answer: I am not familiar with the review process or its conclusions so I am not in a position to opine on what the benefit to the Justice Department initiative may be. I generally believe that any review of ongoing litigation can provide important benefits in that the process helps familiarize new agency officials with significant actions that have been taken or are ongoing.

Question 30: Over the past few months the Department of Justice was involved in settlement discussions in a case challenging a regulation banning snowmobiling in Yellowstone and Grand Teton National Parks. The discussions were allegedly conducted with the plaintiff machine recreational interests and included no public process and no input from interested environmentalists or surrounding residents.

Do you believe that the Department of Justice should enter into settlement negotiations that have the potential to alter a valid rule, or is the public interest better served by the Department advising the agency to seek a modification of the rule through a rulemaking process?

Answer: In settlement negotiations in cases involving a challenge to regulations, there is often the potential to alter a rule because this is typically the goal of the challenge. To foreclose settlement discussions on this basis alone would therefore foreclose many situations in which it is possible to obtain a "win-win" situation for the public as well as the parties through an innovative settlement. Whether the public interest is better served by a settlement (which might for example include a commitment to engage in a proposed rulemaking), by litigating the case to judicial decision, or by resort to modification of a rule through a rulemaking process will depend on the facts of the given situation and should be decided with reference to those facts and the applicable law.

Question 31: The Supreme Court has recognized that a compensable "total taking" occurs whenever a private landowner is deprived of all "economically beneficial use" of his or her property. The question often arises how to define the property that is deprived of all value. In the recent case of *Palazzolo* v. *Rhode Island* 121 S.Ct. 2448, 2457 (2001), the United States filed an *amicus curiae* brief stating that "it is well-established that 'total taking' analysis involves examination of the parcel as a whole." The Court did not resolve the issue. In future litigation, would you advise the United States to take the same position as it took in *Palazzolo*, that, for purposes of takings analysis, the "property" in question is the parcel as a whole, rather than some discrete portion of the parcel?

Answer: As noted in the question, the Supreme Court in *Palazzolo* did not resolve how to define the scope of the property interest that must be deprived of all value to constitute "total taking." The lower courts will need to address this open issue on a case-by-case basis examining the facts of the matter before them. For example, the Federal Circuit in *Rith Energy, Inc.* v. *United States* rejected a lessee's contention that the alleged 91 percent reduction in the amount of coal Rith could mine constituted a categorical taking, 2001 WL 1380899 (Fed. Cir. Nov. 5, 2001). The Federal Circuit noted that the Palazzolo Court rejected the contention that a 94 percent diminution in value constituted a taking. Accordingly, given what will be an active, evolving area of the law and the factual nature of the inquiry, any advice I would give, if I am confirmed as Assistant Attorney General, would depend on lower court precedence and the facts in the case before me.

Question 32: Palazzolo also presented the question whether a takings claim is barred because the regulations causing the property to diminish in value were already in place at the time the landowner acquired that property. *Palazzolo* squarely rejected a rule that a "purchaser or a successive title holder . . . is deemed to have notice of an earlier-enacted restriction and is barred from claiming that it effects a taking," Id., at 2462. However, *Palazzolo* is less clear on the Question whether the timing of a regulation's enactment relative to the date of title acquisition is ever relevant to takings analysis. What position would you advise the United States to take on this issue? Under what.circumstances, if any, would you advise that post-regulation transfer of title may defeat a takings claims?

Answer: The area of takings law presents difficult issues concerning the appropriate balance between protecting private property rights and allowing necessary governmental activities. The environmental arena is only one of the many in which takings issues arise, and litigation positions with regard to those issues must be carefully coordinated throughout the Department, particularly with the Environment Division's career staff that have much experience in this area, the Solicitor General and the Civil Division. Moreover, the analysis of such issues is often very dependent on the facts presented by any particular case. Accordingly, the advice that I would give on this particular issue, which is an especially complex one, would depend on the facts and posture of the case and would also require close coordination with other affected parts of the Department and the relevant agencies.

Question 33: In *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Supreme Court held that when the government deprives property of all "economically beneficial use," the government has taken that property, *unless* the government's action merely enforces "restrictions that background principles of the State's law of property and nuisance already place upon land ownership." There appears to be some confusion over whether those permissible "restrictions" constitute a State's nuisance laws and other common law limits on property use, or instead include more general statutes directed at substantial public harms. What position would you advise the United States to take—that the government may, without compensation, deprive land of all value only when so doing implements common law property rules, or that the government may do so in a broader class of cases?

The question of what constitutes "background principles of law" raised by the *Lucas* decision presents an important question which is subject of the Supreme Court's decision in *Paloazzolo*, as well as significant legal scholarship and lower court interpretations. Therefore, before adopting a position on this question on behalf of the United States, I would look to these sources to gain a thorough grounding in the pertinent legal issues. However, even after establishing a thorough grounding in these questions of law, it is difficult to respond in precise terms to this question without a knowledge of the facts of whatever particular case(s) may be involved. What is a background principle of law for takings purposes could conceivably vary from factual setting to factual setting, and depend upon the evolution of the specific area of federal or other law involved.

Question 34: In January 1993 just prior to leaving office as Solicitor of the Interior, you issued controversial decisions denying fundamental powers of self-governance to Alaska Tribes and denying a trust relationship obligation between the United States and Native Hawaiians.

Question a) Please explain you rational behind these opinions and respond to Clinton Administration Solicitor John Leshy's withdrawal of your opinion M–36978 on January 19, 1993.

Answer: This question appears to refer to two Opinions that I issued as Solicitor of the Interior: "Governmental Jurisdiction of Alaska Native Villages Over Land and Nonmembers," Sol. Op. M–36975 (Jan. 11, 1993), and "The Scope of Federal Responsibility for Native Hawaiians under the Hawaiian Homes Commission Act," Sol. Op. M–36978 (Jan. 19, 1993). These Opinions are quite lengthy and explain in some detail the rationale for their conclusions; accordingly, I am providing copies of both for the convenience of the Committee.

Regarding Sol. Op. M–36975, that Opinion concludes that lands conveyed to Alaska Native corporations pursuant to the Alaska Native Claims Settlement Act of 1971 ("ANCSA") did not constitute "Indian country." A unanimous United States Supreme Court later reached the same conclusion in *Alaska* v. *Native Village of Venetie Tribal Government*, 118S. Ct. 948 (1998). It is notable that my Opinion concludes that, notwithstanding the absence of Indian country, many Alaska Native villages retain their sovereign status and may exercise governmental jurisdiction over their members. If I am confirmed as Assistant Attorney General, I will continue to respect and enforce all obligations and responsibilities owed to Alaska Natives under federal law.

Regarding Sol. Op. M–36978, that Opinion concludes that "the HHCA did not create a Jiduciary responsibility in any party, the United States, the Territory of Hawaii, or the State of Hawaii." Although the Supreme Court's majority opinion in *Rice* v. Cavetano did not reach that issue, Justice Breyer's concurrence did and it reached the same conclusion. See *Rice* v. *Cavetano*, 528 U.S. 495, 524 (2000). Accordingly, I stand by my Opinion. Moreover, if I am confirmed as Assistant Attorney General, I will continue to respect and enforce all obligations and responsibilities owed to Native Hawaiians under federal law.

Question b): In view of this history, what assurances can you provide that you will be committed to carrying out the federal government's trust relationship and protecting tribal rights even where they are adverse to other government entities?

Answer: When I was Solicitor at DOI, I took numerous actions to ensure that the federal government fulfilled its trust responsibilities to Native American Tribes. A few examples include: adopting procedures that required all the attorneys within the Solicitor's office to examine matters before them for Indian trust Implications and consult with the tribal or individual interests concerned; establishing a new field office in Palm Springs, California, to provide on-scene legal assistance for the bureau of Indian Affairs and its extensive real estate program in the Coachella Valley; assisting the Office of Self-Governance with the preparation of a model compact agreement which was used in negotiations between Indian tribes and the Department of the Interior and led to the adoption of seventeen tribal self-governance com-

pacts; assigning a full-time attorney from the Solicitor's office to work with the BIA in the area of child protection; and urging the Department of Justice to support Indian hunting and fishing rights, especially in the Pacific Northwest I can assure you that my commitment to these issues has not wavered.

Question 35: The question of the proper location of the eastern boundary of the 1748 Spanish land grant to the Pueblo of Sandia (adjacent to Albuquerque) in central New Mexico has been a matter of public controversy for many years. The Pueblo Indians first approached the Department of the Interior seeking a boundary correction in 1983. On April 4, 2000, after significant litigation and mediation, a settlement agreement was reached that remains in effect until November 15, 2002 if not ratified by. In January, 2001, the Interior Solicitor John Leashy issued an opinion, concurred in by Secretary Babbitt, that concluded that the Pueblo's eastern boundary extends to the crest of Sandia Mountain. Do you agree with the Solicitor's action regarding this matter and what action do you believe should be taken after November 15, 2002?

Answer: I recognize that this is an important and sensitive issue. For that reason and because this appears to be the subject of an ongoing matter being handled by the Division and the Departments of the Interior and Agriculture, and because I am not familiar with the facts concerning the medication, administrative decision, and settlement agreement that are referred to in this question, I do not believe it is appropriate to comment on this matter at this time, except to note that the extent to which action will be required after November 15, 2002, will depend at least in part on whether Congress acts on this matter between now and then. If I am confirmed, I look forward to working with congress on it.

Question 36: At your confirmation hearing, you mentioned that in order to better prepare for possible nomination to the Assistant Attorney General (AAG) for Environment and Natural resources (ENR) you met with every former AAG since the Ford Administration. After receiving the benefit of their combined wisdom, what do you see as the most significant challenges facing the Division over the next four years?

Answer: I appreciated very much the opportunity to meet with the many former AAGs for the Division and found them to be a valuable source of insight on the opportunities and the challenges facing the Division. What was particularly remarkable to me was a common theme that ran through my discussions with the more recent AAGs, which is the lack of resources with which the Division has been supplied to do its important work. They impressed upon me the need to undertake an inventory of where the Division's workload is and the importance of matching the resources that the Division does have with the needs that it must address ever day. They also emphasized the need to bring the technology available to the Division's litigators and staff up to workable standards that they can more effectively carry out their work on behalf of the American public. A vital part of this effort is reviewing the activities of the Division's field offices to make sure that their needs are met in terms of resources and personnel and to ensure that they are serving the Division well. Also, I believe that the Division should continue to develop close working relationships with the many United States Attorneys Offices and State Attorneys General—they can serve as major force multipliers for our work in enforcing and defending the environmental and natural resource laws.

Question 37: One of the successes of environmental years has been the partnering of government and private industry in creative solutions. How do you think that government and private entities can do a better job of creating partnerships that preserve and protect endangered and threatened species, preserve wetlands, lead to better and economically efficient compliance with Clean Air and Water laws and lead to natural resource policies that will protect resources for future generations?

Answer: I agree with Christine Todd Whitman, Administrator of the Environmental Protection Agency, who has said that the path to continued environmental improvements will require a new emphasis on partnerships. I firmly believe that some of the must creative solutions to our problems are generated at the local level by citizens, businesses, state and local governments, and other interested organizations, because I have experienced this in my own practice and life. One such example is the work that I did while Solicitor at DOI on the Exxon Valdez matter. The various federal entities involved in that matter (including DOI, DOJ, USDA, DOT, the Department of Cummerce and ,EPA) worked with the State of Alaska, local Chambers of Commerce, representatives of the fishing and logging industry and environmental groups to develop economic measurements of the damages to the natural resources in the area Thanks to the information we developed through this partnership, we were able to assist those who were engaged in negotiations and who ultimately helped determine the fine that was paid.

Although much of the work in forging these partnerships is being done by agencies such as the EPA and the Department of the Interior, the Department of Justice can play a role here as well by being open to creative settlements that improve environmental protections and protect resources in cost-efficient ways. Working together, we can achieve the next generation of environmental progress which will protect our resources and the special blessing that we as Americans have been given and that we have an obligation to pass down to our descendants.

Responses of the Nominee to additional questions submitted by Senator Cantwell

Thank you for providing two documents you generated as Solicitor of the Interior that established procedures for the handling of Endangered Species cases and the Endangered Species Committee (ESC) during your tenure.

The first directive supplied to the Committee establishes a set of guidelines for handling Endangered Species cases within the Solicitor's office and makes clear that any Associate Solicitor or staff involved in consultation on an endangered species case will be prohibited from providing legal advice to the Secretary during an ESC proceeding. It further prohibits the Associate Solicitor for General Law and his staff from participating in any substantive endangered species case consultation in order to ensure that they will remain available to provide guidance to the Secretary and the Administrative Law Judge in an ESC proceeding.

Question 1: With regard to your own role in the process, did you view yourself as exempted from the ban on advising the Secretary on ESC issues, even though you had previously advised him on consultation, under the "agency head exception" outlined in the document? If so, what was the basis for this determination and was a similar practice followed in previous ESC cases?

Answer: I do not have present recollection of the precise legal analysis I employed ten years ago in determining that I was not precluded from acting as a legal advisor to Secretary Lujan and the ESC. However, after reviewing the memoranda I provided to the Judiciary Committee in which I applied the APA's separation of functions provisions to various positions within the Department of Interior generally and the Solicitor's office specifically, I believe it is likely that I concluded that the Solicitor, as chief legal officer to the Secretary, was covered by the "agency heads exception." Similarly, I do not remember what weight may have been given to any previous separation of functions arrangements that may have been established within DOI under prior Endangered Species Committees. I believe, however, that the directives I issued in 1991 outlining the appropriate separation of functions within DOI represented my best interpretation of the applicable statutes, regulations, and case law as they existed at that time and as applied to the specific facts in the case under consideration.

Question 2: Upon the filing of the petition for exemption, you issued additional guidance that made clear a "Chinese wall" was to be erected, and that attorneys representing the Fish and Wildlife Service and the Bureau of Land Management were not to have substantive communications with you, the Deputy Solicitor, or staff of the Division of General Law. Were those separations adhered to?

Answer: To the best of my knowledge and recollection, those separations were adhered to.

Question 3: Did you contemplate the creation of additional separations between staff designated to provide guidance to the Administrative Law Judge, and staff designated to provide counsel to the Secretary? Why or why not?

Answer: No, since the hearing officer was appointed by the Secretary to receive the testimony that would result in a report to be given to the Secretary, the staff designated to provide guidance was working similarly for the benefit of the Secretary and the ESC. It is also important to remember that although Judge Schweitzer, who happened to be an ALJ, presided over the hearings and the ESC process, he did not act as the interim or ultimate decision-maker.

Responses of the Nominee to questions submitted by Senator Durbin

Question 1: What is your position on the Endangered Species Act? Please explain.

Answer: The Endangered Species Act has as its general purposes the conservation of endangered and threatened species, many of which have great aesthetic, ecological, educational, historical, recreational and scientific value, and the ecosystems upon which they depend. I support these purposes, and, if I am confirmed as Assistant Attorney General, I will both enforce and defend the provisions of the Endangered Species Act as the law of the land.

Question 2: In praising Gale Norton, the Secretary of the Interior, you reportedly made the following statement: "She understands the system. She is very good on national park issues and on Endangered Species Act law. There won't be any biologists or botanists able to come in and pull the wool over her eyes." Can you explain that statement for the Committee?

Answer: My tenure as Interior Associate Solicitor for Energy and Resources overlapped with Gale Norton's tenure as Associate Solicitor for Conservation & Wildlife. In that role, Ms. Norton was the chief attorney for the National Park Service and the Fish & Wildlife Service. I had the opportunity to observe her interaction with biologists and botanists on a variety of ESA listing, delisting and critical habitat delineation issues. My comment was intended to emphasize that her previous experience with ESA issues, which sometimes involve conflicting opinions being offered by biologists and botanists from the government and private sectors, would serve her well as Secretary of the Interior when she again-would be dealing with these types of complex issues.

Question 3: As Solicitor at the Department of the Interior during the first Bush Administration, you were involved with the Endangered Species Committee's proceeding regarding timber sales in the Pacific Northwest that threatened the habitat of the Northern Spotted Owl. Why were the Endangered Species Committee's proceedings treated as a formal rulemaking rather than an adjudication?

Answer: With no guidance being supplied in the statute or the regulations, the issues of a rulemaking versus an adjudication had to be handled as a matter of first impression. Under administrative law, if Congress does not specify by statute the appropriate procedural mode, an agency must make the decision. It was decided since the Endangered Species Committee members were not judges or lawyers, that it would be best to make the Committee's decision-making process less formal, thereby allowing the record to include more information rather than less. Thus, the Committee had an ample supply of information and further opportunity to solicit comments on that information, including unsworn reports and economic analyses not subject to cross examination, as would be found in a rulemaking. (An adjudicatory process, on the other hand, by its nature would have been more highly structured and exclusionary.)

Question 4: Mr. Sansonetti, during the proceedings on the Northern Spotted Owl overseen by the Endangered Species Committee, you had many potentially conflicting roles. You served as Interior Secretary Lujan's official representative to the Endangered Species Committee, Legal Counsel to the Endangered Species Committee, chief legal advisor to administrative law judge Harvey Sweitzer and Interior Solicitor. Were you concerned that serving in these capacities might require you to commingle decisional and investigative-prosecutorial functions? Do you believe your roles in thus case raised legitimate concerns about the fairness of the hearings conducted by the Endangered Species Committee?

Answer: Yes, I was concerned that, without an effective process in place, that carrying out my statutory duties might otherwise require me to commingle decisional and investigative prosecutorial functions. Consequently, I established a structure that allowed for both the Fish & Wildlife Service and the Bureau of Land Management to have their own counsel without interference from my immediate staff or me. This structure allowed me to concentrate on advising the Secretary and the members of the Endangered Species Committee without having to function in an investigative- prosecutorial role. As a consequence of taking these steps, I do not believe legitimate concerns could be raised about the fairness of the Endangered Species Committee hearings. The process established was a reasonable interpretation of the statute and accompanying regulations, as they existed in 1991.

Question 5: Environmental justice addresses concerns that minorities and low-income people tend to suffer disproportionately higher exposure to Environmental harm than the rest of us. In 1994, President Clinton issued Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which requires each agency to make environmental justice a part of its mission. The Order directs agencies to ensure that federal programs affecting human health or the environment do not subject individuals to discrimination based on race, color or national origin. I'd like to ask you about environ-

mental justice generally and thus Executive Order specifically. What is your position on thus issue?

Answer: I support the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and if confirmed as Assistant Attorney General of the Environment and Natural Resources Division, I would work to ensure that the Division's activities did not subject individuals to discrimination based on race, color or national origin.

Question 6: There is a close connection between environmental justice litigation and Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in programs and activities that receive federal financial assistance. Pursuant to Title VI, most federal agencies have adopted implementing regulations that prohibit not only intentional discrimination by the agencies, but also agency policies and practices that could have a discriminatory effect. Environmental justice litigants have routinely relied on Title VI in bringing judicial or administrative complaints against government agencies whose programs result in adverse discriminatory impacts. Last year, however, the United States Supreme Court in *Alexander* v. *Sandoval* ruled that there is no private right of action to enforce disparate impact regulations promulgated under Title VI. This case effectively shields state agencies that receive federal funding from private civil rights lawsuits over policies that have a discriminatory effect on minorities. While the Sandoval case dealt with an English-only law, environmental justice advocates are concerned that the ruling of this case effectively precludes the filing of future environmental justice lawsuits that rely on Title VI. This will have a detrimental effect on the ability of the public to hold government agencies accountable for continuing to implement the goals of environmental justice and other environmental statutes as, there are no other practical legal remedies available to the affected members of minority and low-income communities. Should you be confirmed, what assurances can you give that environmental justice litigants will continue to have their day ill court?

Answer: Although I am not familiar with whether Congress is taking any action in response to the ruling in *Alexander* v. *Sandoval* or whether the lower courts have relied on that ruling in the context of environmental justice lawsuits, I support the goal of Title VI of the Civil Rights Act of 1964, and if I am confirmed, I pledge to work with my counterparts in the Civil Rights Division and the Environmental Protection Agency on this important issue.

Responses of the Nominee to questions submitted by Senator Kennedy

Question 1: In *Solid Waste Agency* v. *United States Army Corp of Engineers* (U.S. 2001) the Supreme Court ruled that a federal regulation defining "navigable waters" under the Clean Water Act to include *intrastate* waters that provide habitat for migratory birds exceeded the agency's statutory authority. The Court declined to defter to the agency's interpretation of the statute under *Chevron, U.S.A.* v. *National Resources Defense Council* (U.S. 1984), holding that the statute, if so interpreted, would rare significant constitutional questions as to whether the statute exceeded Congress's authority under the Commerce Clause. Thus, the Court ruled, deference to the agency was unwarranted.

Question a: Do you believe that the interpretation of the statute urged by the agency—which would allow regulation of intrastate waters that provide habitat for migratory birds—would violate the Commerce Clause? Why or why not?

Answer: The question of the constitutionality of the "migratory bird rule" under the Commerce Clause was not squarely presented in *Solid Waste Agency* v. *United States Army Corps of Engineers* (SWANCC) because the Supreme Court invoked the principle of constitutional avoidance, designed to promote judicial restraint and thereby protect the prerogatives of the Legislative and Executive branches, by preventing courts from unnecessarily rendering decisions about constitutional questions. Given that the Court avoided the issue and that my knowledge of it is derived solely from a review of the SWANCC opinion, I presently lack sufficient information to form a belief regarding whether the interpretation of the statute advanced by the agency would violate the Commerce Clause. If confirmed as AAG, I would familiarize myself with the agency's arguments by reviewing the briefs filed in the case and consulting with those in the Department who oversaw the case.

Question b: Do you plan to take the position that any other federal environmental statutes—or agency interpretations of environmental statutes—exceed Congress's power under the Commerce Clause?

Answer: In general, it is the role of tile Department of Justice, as guided by tile Solicitor General's Office, to defend the constitutionality of the enactments of Congress and the regulations of the Executive branch issued pursuant to delegations of authority by Congress. I will work to act in and fulfill this role. It is my understanding that only in rare, and extremely clear, cases has the Department or Justice refused to defend the constitutionality of Congressional statutes.

Question 2: In recent years, federal courts leave entertained claims by developers and landowners that the application of certain environmental regulations violate the Constitution's Takings Clause. For instance, in *Florida Rock Indus., Inc.* v. *United States*, 18 F.3d. 1560 (Fed. Cir. 1994), the Federal Circuit held that the government may have to pay compensation for a partial regulatory taking or a reduction in property value caused by wetland regulations (on remand the trial court then found that a partial taking had occurred). In *Tulare Lake Basin Water Storage District v.* United States, 49 Fed. Cl. 313 (2001), the Court of Federal Claims found a taking where federal protections for endangered salmon and delta smelt resulted in reduction of water available to claimants under their contracts with the state of California.

The Assistant Attorney General for the Enviromnent and Natural Resources Division is responsible for defending legal challenges brought by parties seeking such compensation (*see, e.g., Flordia Rock*) and also, when appropriate, for *amicus briefs* when questions of takings arise before the federal courts (*see, e.g., Nollan* v. *California Coastal Commission* (U.S. 1986) (Brief for the United States supporting, reversal)).

Question a: Under what circumstances do you believe that the Takings Clause should apply to situations that do not involve physical expropriation or invasion of property by the government?

Answer: The Supreme Court has held that some non-physical. regulatory actions may constitute takings. *See Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393 (1922). The Court has also articulated a test for assessing when such regulatory takings have occurred. *See Penn Central Transportation Co.* v. *City of New York*, 438 U.S. 104 (1978); *Palazzolo* v. *Rhode Island*, 121 S. Ct. 2448 (2001). The Supreme Court and the lower courts interpreting the Court's precedent have made clear that the test as to whether a taking has occurred is highly fact-specific and must be evaluated on a case-by-case basis. Thus, to determine whether a particular regulatory action constitutes a taking would require careful examination of the specific facts. In most instances, I would apply the *Penn Central test*, which is applicable to the majority of regulatory takings suits.

Question b: When, in your view, is an environmental regulation sufficiently burdensome as to constitute a taking requiring compensation by the government?

Answer: In *Mahon*, the Supreme Court held that regulatory actions become takings when they go "too far." 260 U.S. at 415. Under the Penn Central test designed to flesh out when a regulation has gone "too far," burdensomeness (more commonly termed the economic impact) on regulated parties is only one part of the analysis of whether a regulatory taking has occurred. *See Penn Central*, 438 U.S. at 124. The other factors to be considered are the character of the governmental action and the claimant's distinct investmentbacked expectations. *Id*. Again, as Assistant Attorney General, I would apply *Penn Central* to answer this question. given the case's particular factual setting. Subsequent Supreme Court takings decisions such as *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003 (1992), address the unusual circumstance in which a regulatory action renders a particular parcel of property valueless and denies the owner of all economically viable use.

Question c: If confirmed as Assistant Attorney General how will you approach takings claims brought against federal agencies that seek to enforce environmental law such as those protecting endangered species and wetlands?

Answer: The facts of endangered species and wetlands cases are often complex, as is the statutory and regulatory law in these areas. The precise manner in which I would approach takings questions in these areas will depend upon the specific legal and factual context of a case. I will, of course, follow the applicable Supreme Court case law in determining my approach if confirmed as Assistant Attorney General.

Responses of the Nominee to questions submitted by Senator Leahy

Question 1: The Department of Justice best fulfills its law enforcement responsibilities when it presents the appearance, as well as the fact, of unbiased and impartlal exercise of prosecutorial judgement. Any suggestion, let alone the actuality, of political, interference with those important decisions would undermine the credibility and effectiveness of the critically important law enforcement efforts of the Justice Department. What approaches will you take to ensure that the Hill and the White House do not exert—and are not perceived to be exerting—political pressures on you and your division?

Answer: While I believe that it is desirable to have open lines of communication between the Justice Department, Congress, the White House, and the various federal agencies on issues of mutual interest and concern, I also believe it is important for those in the Department of Justice to maintain a proper institutional independence in their decision-making. Accordingly, if confirmed as Assistant Attorney General, I would ensure that my decisions and recommendations in the Environment and Natural Resources Division were based on my best judgement as informed by existing statutes, regulations, and controlling case law. I would abide by the Department's "pending matters policy", which addresses congressional involvement in pending litigation, as well as any other policies designed to avoid the appearance or reality of political interference.

Question 2: Following up on the discussion of the Clean Air Act New Source Review (NCR) enforcement eases against coal-fired power plants and refineries that we began at your hearing:

Question a: Do you have any opinion about the merits of these cases, and if so, what is the basis of your information?

Answer: The information I have on these cases comes from press accounts and a meeting I attended at which representatives of the Attorney General Offices of the States of Massachusetts, Pennsylvania, New York, Vermont and New Jersey mentioned these cases. Accordingly, my current familiarity with the litigation is insufficient to allow an opinion as to their merits.

Question b: Have you met with any representatives of industry about these cases, and have you been briefed about these cases by any parties and, if so, by whom?

Answer: I have not met with industry representatives about these cases. Representatives of the Attorney General Offices of the States of Massachusetts, Pennsylvania, New York, Vernmont, and New Jersey mentioned these cases to me at a meeting this past summer.

Question c: Do you plan to make any changes in the prosecution of these cases, and if you leave not yet decided that, how do you plan to go about making that decision?

Answer: If I am confirmed, I will ensure that these cases proceed consistent with the conclusions of the Presidentially-mandated DOJ review of the NSR cases.

Question d: Have you been briefed on DOJ's ongoing review of the NSR enforcement cases, called for by the Administration's national energy policy?

Answer: No.

Question e: Will you abide by whatever recommendation has been made or will you reevaluate the issue when you start?

Answer: If I am confirmed, I will ensure that these cases proceed in a manner consistent with the conclusions reached by the Presidentially-mandated review process.

Question f: What do you believe a business should do when faced with a regulation that may be capable of more than one reading?

Answer: The business should consult with its legal counsel. It may also want to consider relevant case law, agency guidance, and the rulemaking record. If appropriate, the business could contact the regulating agency for further guidance.

Question g: What do you understand about the defendants' fair notice defenses in the power plant cases?

Answer: I have not read the briefs in these cases and am unfamiliar with defendants' fair notice defenses. If confirmed, I will familiarize. myself with those briefs.

Question h: What do you understand about the defendants' "industry practice" arguments, in which defendants argue that anything done within the industry, no matter how infrequently, is "routine" for purposes of the NSR routine maintenance exemption?

Answer: I have not read the briefs in these cases and am unfamiliar with defendants' "industry practice" arguments. If confirmed, I will familiarize myself with those briefs.

Question i: What is your understanding of the environmental and public health impacts of the violations at issue in these cases?

Answer: Other than generalized descriptions in press accounts, I am unfamiliar with the impacts of the violations at issue. If confirmed, I would familiarize myself with the NSR cases, including the environmental impacts and public health issues raised by the alleged violations.

Question j: How should environmental impacts and public health issues be considered iin setting priorities?

Answer: Priorities regarding environmental impacts and public health issues are made in the first instance by the program agencies, rather than by the Department of Justice. However, I believe that these issues are an important factor in setting priorities.

Question k: Will you continue to devote extensive resources to these cases?

Answer: I am not familiar with the extent of the resources devoted to these cases. If firmed, I will review these cases in light of the Division's workload and budget to determine whether appropriate resources are devoted to them.

Question l: What is your view of the relationship hotween EPA and DOJ on the decisionmaking regarding these cases?

Answer: I any not familiar with the relationship of the two agencies on the decisioninaking regarding these cases.

Question m: If EPA recommends changes to the NSR rules, would that impact your view of the cases that concern past violations?

Answer: I am not familiar with the substance of the rules or the nature of any of EPA's potential recommendations and I do not have a view of the cases. If I am confirmed as Assistant Attorney General, I will familiarize myself with the litigation and any EPA recommendations to change the NSR rules.

Question n: What is your view of the role of states inenvironmental enforcement?

Answer: With respect to the work of the Division, I believe that the states should be viewed as partners in the Department's effort to enforce the environmental laws in a fair and firm manner, and that we should develop cooperative working relationships to resolve any concerns or issues that may arise in the arena of environmental and resources law.

Question o: What is your view of tile role of citizens in environmental enforcement?

Answer: A number of enviromnental statutes provide for citizen suit enforcement. I support the Congressionally-mandated role of citizens in errvironrnental 1enforcement. Also, several of these statutes require that the Department of Justice review proposed consent decrees in citizen suit actions for consistency with the underlying statute. This is an important obligation that the Division will continue to discharge.

Question p: Do you have any views oil working with citizen and state plaintiffs in enforcement cases?

Answer: I believe the Department can benefit from developing cooperative working relationships with citizen and state plaintiffs to enforce tile environmental laws in a fair and firm manner. Such relationships can help to resolve any concerns or issues that may arise in the arena of enviromnental and resources law. In particular, I would strive for greater cooperation and in sharing information to support mutual efforts in matters of both regional and national significance in the civil and criminal context.

Question 3: From your experience, what would you say that EPA and DOJ done wrong in the arena of envirownental enforcement, defense, and policy development? Do you have any plans for changing the emphasis of the agencies in these areas?

Answer: When I was Solicitor of the Department of the Interior, I learned the importance of constructive working relationships with the Department of Justice, and with other federal agencies, including EPA. If continued, I would look forward to ensuring that constructive relationships and open communication exists with EPA and agencies oil matters related to the Division's representation. It is the responsibility of the client agency to determine its priorities.

Question 4: In a few cases, the EPA is changing certain reulatory requirements prospectively: what effect should that have on existing enforcement cases brought under the regulations that are being changed?

Answer: The effect of a changed regulation on existing enforcement cases is highly dependent on the particarlar facts of the regulation and cases at issue, so it is difficult to make a general statement about how such cases would he handled. Aniong the factors to be considered would be: whether the regulatory change was substantive or procedural; the purpose of the regulatory change; the procedural status of the case at tile time the regulation is changed; and the nature of the relief sought.

Question 5: What is your impression of the quality of DOJ staff attorneys? Do you have any plans for changing the management of the litigating sections? Do you have any particular concers about particular sections? Do you have any plans for reallocating resources? Have you considered whether changes are merited for the Environment and Natural Resources Division budget?

Answer: In the last few months, I have met with the many former Assistant Attorney Generals (AAGs) for the Division and found them to be a valuable source of insight on the opportunities and the challenges facing the Division, and its extremely capable attorney staff. This latter observation is consistent with any experience as Solicitor of the Department of the Interior where I found the staff attorneys in the Division to be very professional, qualified, and dedicated. Particularly remarkable to me was a common theme that ran through my discussions with the more recent AAGs, that the Division suffers front a lack of resources necessary to accomplish its important work. The former AAGs impressed upon nee the need to bring available technology to the Division's litigators so that the attorneys can more effectively litigate on behalf of the American public. A vital part of this effort is ensuring that the needs of the Division's field offices are met. Also, I believe that the Division should continue to develop close working relationships with United States Attorneys Offices and State Attorneys General—these entities can provide invaluable resources in the Division's work in enforcing and defending the environmental and natural resource laws.

SUBMISSION FOR THE RECORD

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
November 6, 2001

Senator Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Building
Washington, DC 20510

Dear Senator Leahy:

I am writing to voice my strong support for Thomas L. Sansonetti as President George W. Bush's nominee to be Assistant Attorney General for the Environment and Natural Resources Division.

I have a great respect for Tom and complete confidence in his abilities. His illustrious career speaks volumes as does his strong desire to serve our country in the capacity of a public official.

His extensive background and experience in environmental and natural resources policy will surely benefit every American. Knowing Tom in both a personal and professional capacity, I am very familiar with his sound analysis and his fairminded judgment on these important public policy matters.

Mr. Chairman, I give my full support for his confirmation as Assistant Attorney General. Thank you for your timely consideration of his confirmation.

Sincerely,

BARBARA CUBIN
Member of Congress

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