

**CONFIRMATION HEARINGS ON FEDERAL
APPOINTMENTS**

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

APRIL 29, MAY 12, JUNE 24, 2009

Serial No. J-111-4

PART 2

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U.S. GOVERNMENT PRINTING OFFICE

62-198 PDF

WASHINGTON : 2010

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NOMINATION OF ANDRE M. DAVIS, OF MARYLAND, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT; THOMAS E. PEREZ, OF MARYLAND, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE; AND DAVID F. HAMILTON, OF INDIANA, NOMINEE TO BE CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

WEDNESDAY, APRIL 29, 2009

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

The Committee met, pursuant to notice, at 2 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Benjamin L. Cardin, presiding.

Present: Senators Cardin, Feingold, Schumer, Durbin, Whitehouse, Kaufman, and Coburn.

OPENING STATEMENT OF HON. BENJAMIN L. CARDIN, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. The Senate Judiciary Committee will come to order. Let me welcome everyone here today. I particularly want to welcome our three nominees and their families and thank each of them for their public service and their continued desire to serve the public, and thank their families for the sacrifices that they make in order that their spouses can serve in public life.

I want to thank Chairman Leahy for allowing me to chair the hearing. It is my understanding that Senator Coburn will act as the Ranking Member at today's hearing and that he is on his way to the Committee and has told me through staff that we should get started. So in order to keep to the schedule, not too clear as to when the next votes will be on the floor of the Senate, we will start today's hearing.

I just want first, to Judge Hamilton, I hope you will allow me, with just a little bit of Maryland pride, talk about today's hearing. We are very proud of the connection that our two nominees have to the State of Maryland. Judge Andre Davis is well known in Maryland. He is a graduate of the University of Maryland School of Law that you will hear frequently mentioned today. He is a former professor at the University of Maryland School of Law. Tom

Perez is a former professor at the University of Maryland School of Law. I am a graduate of the University of Maryland School of Law. Senator Mikulski is a graduate of the University of Maryland at Baltimore School of Social work. And Senator Sarbanes in his career in the U.S. Senate was a strong proponent of the University of Maryland School of Law.

[Laughter.]

Senator CARDIN. So it is with pride that we have this hearing today for three nominees, two for positions on the circuit court of appeals, and one to head up the Assistant Attorney General for the Civil Rights Division, all three extremely important positions.

So I welcome David Hamilton, Judge Hamilton. I welcome Judge Andre Davis and Tom Perez, and I look forward to this hearing today and look forward to your service in the positions that you have been nominated to by President Obama.

Judge Andre Davis, if I were not chairing today's hearing, I would be sitting next to my senior Senator, Senator Mikulski, in introducing and supporting Judge Davis' nomination for the court of appeals. I think he is eminently qualified. His experience—and let me just comment briefly about his experience for this position. He is a former Assistant U.S. Attorney. He has the experience in the judiciary which is unique. He started on the District Court of Maryland, which is our judicial level that you have the most contact with the people, and he did an outstanding job on the district court in our State, serving there for 3 years before moving on to be a circuit court judge in Baltimore City. Again, that is our trial court level. He served with great distinction and then was appointed to the United States District Court, where he has been a judge since 1995.

He is praised by lawyers as being smart, evenhanded, fair, and open-minded in the manner in which he conducts his court. He has been rated by the ABA rating as well qualified. He has been a professor, as I pointed out before, and a mentor to many young attorneys. One in particular I would like to mention who is my counsel to the Judiciary Committee, Bill Van Horne, clerked for Judge Davis.

His roots are deep in Maryland, which is something that we find a great advantage. This seat is a Maryland seat. Judge Davis was born in Baltimore, raised in Baltimore, and lives in Baltimore. He is active in the Maryland community in his entire life, and the history of this vacancy is Judge Francis Murnaghan, who died in August of 2000. The seat has been open. I think this is a most appropriate replacement. Judge Davis clerked for Judge Murnaghan.

Judge David Hamilton from Indiana, this is his second appearance before our Committee. He enjoyed himself so much last time, he decided he wanted to come back. I regret that you have to come back for a second hearing. At the first hearing, there were no Republican members to ask questions, and no Republican members proposed written questions. And at the request of the Republicans, we have scheduled a second day of hearings for Judge David Hamilton.

His record has already been placed in our record, his experience and his resume. But let me just point out very briefly that it includes 14 years on the Federal district court, an ABA rating of well

qualified. He is supported by both Indiana Senators, Senators Bayh and Lugar. And just quoting very quickly from what is in the record from Senator Lugar when he said, "I do not view our Federal courts as the forum for resolving political disputes. That is why I believe our confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will vote on a particular issue of public moment or controversy. I have instead tried to evaluate judicial candidates on whether they have the requisite intelligence, experience, character, and temperament that America deserves from their judges and also on whether they indeed appreciate the vital, yet vitally limited role of the Federal judiciary faithful to interpret and apply our laws rather than seeking to impose their own policy views. I support Judge Hamilton's nomination and do so enthusiastically because he is superbly qualified under both sets of criteria."

I think that is quite a tribute by Senator Lugar, and it expressed the desires that we would like to see in all the nominees that we consider for the court.

Then, last, we will hear from Tom Perez to be Assistant Attorney General for the Civil Rights Division. He is extremely well qualified. He currently serves as the Secretary of the Maryland Department of Labor, Licensing, and Regulation. He has broad experience within the Department of Justice, having served there for 10 years, beginning in the Civil Rights Division as a trial attorney in the Criminal Section, and became the Deputy Assistant Attorney General for the Civil Rights Division. He was detailed during his career to Senator Kennedy's office where he was his principal adviser on civil rights and criminal justice. In the Civil Rights Division, he took on white supremacists, police brutality cases, corruption cases, and many additional civil rights violations. He received the Attorney General's Distinguished Service Award. He also served in the United States Department of Health and Human Services as the Director of the Office for Civil Rights and pursued medical privacy issues at that time.

He is also well known because he has ventured into elected office, serving on the Montgomery County Council. Those of us who are familiar with Maryland politics know that that is a real test of someone's ability to serve in Montgomery County on the County Council.

He is a professor at the University of Maryland School of Law. I particularly mention that a second time because he was a professor in the Clinical Law Program, a program that I helped start as a result of a survey that was done about 20 years ago in Maryland showing a real void in training lawyers sensitive to public interest law, and Tom was one of the real leaders in that program, training a generation of attorneys in our State who understand their commitment to public service. He graduated from Brown University and Harvard Law School cum laude.

One last point about the Civil Rights Division. Elie Wiesel said, "Indifference, after all, is more dangerous than anger and hatred." And the Civil Rights Division is not only our Nation's moral conscience but it is charged with protecting all citizens against all

forms of discrimination, whether it is in employment, education, housing, voting rights, personal liberties, or hate crimes.

During President Bush's years, we saw an inactive Civil Rights Division that did not take on the cases of importance. There was very little enforcement authority used during the years. The voting rights cases were not brought. Hate groups were not targeted. And worse than that, the Department acted in a very partisan manner on personnel decisions. The Inspector General's report of January 13th of this year confirmed that by saying they "considered political and ideological affiliations" in personnel decisions, contrary to Federal law.

Well, we look to the Assistant Attorney General for the Civil Rights Division as someone who will restore that Division to its historical role as the premier agency in our Government to protect the rights of all of our citizens, and I have the greatest confidence that Tom Perez will do that, and I am sure during this hearing we will have a chance to ask some questions in that regard.

At this point I am going to turn first to the senior Senator from Maryland, Senator Mikulski, and then it is always a pleasure to have back Senator Paul Sarbanes. I am honored to be labeled "holding the Paul Sarbanes seat in the U.S. Senate."

Senator Mikulski.

PRESENTATION OF ANDRE M. DAVIS, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, AND THOMAS E. PEREZ, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE, BY HON. BARBARA MIKULSKI, A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MIKULSKI. Thank you very much, Mr. Chairman. This is indeed an exciting day for Maryland. We will be able to introduce a distinguished jurist from Maryland being called to serve our country, Judge Andre Davis, from our home town of Baltimore, who has been nominated to the Fourth Circuit Court of Appeals, and Secretary Tom Perez, who is playing a leadership role now in the O'Malley administration and we hope will be playing a leadership role in the Obama administration to head up the Department of Justice's Civil Rights Division.

I really want to thank Senator Leahy for being so prompt in scheduling these hearings and also to allowing us to testify today. And it is great seeing you in the chair. You look like you belong there.

Mr. Chairman, I also am sorry that Judge Hamilton has had to come back for a second hearing, and I note that there are no other people from the other party who are present at this hearing. I hope we will not face that same situation where people do not come and do not submit letters. So we would hope that the Davis hearing would be able to be completed today.

Mr. Chairman, I take nominating judges very seriously, and I have four basic criteria: one, they have to be people of absolute integrity; they have to have judicial competence, judicial temperament, a commitment to core constitutional principles, and a history of civic engagement in Maryland. This is why we believe that Judge Andre Davis will be an outstanding nominee. I am honored

to introduce him today, and he has with him his family, who I am sure he will introduce to the Committee. But he brings great integrity, a keen intellect, sound judicial experience and temperament.

He was also nominated for this position by President Clinton. At the time of his nomination nearly a decade ago, he received the highest of the ABA ratings, and today as he comes before you, know that he has been an outstanding judge, and he brings a compelling personal story. He comes from a family of modest means. His father was a teacher, his stepfather a steelworker. His mother worked in food service. He grew up in our neighborhood of East Baltimore, a community that valued hard work and a community that valued service.

He earned a scholarship to Phillips Andover Academy and was one of four African Americans in a school of 800 students. And even as a young man, he knew that with opportunity comes responsibility. During those days at Andover, he volunteered at a juvenile detention facility and mentored juveniles on Saturdays. He went on to earn his B.A. at the University of Pennsylvania and graduated from the University of Maryland Law School where he won the Best Advocate Award in the moot court competition. The law faculty awarded him the prestigious Roger Howell Award at graduation. He then went on to work as a lawyer in public housing and to also work in a variety of other positions.

Judge Davis is known for having outstanding competence. As I said, when President Clinton nominated him, the ABA gave him the highest rating. I note for the Chairman that I have here a letter from the Maryland Bar Association highly recommending Judge Davis, and I ask unanimous consent that the Maryland Bar Association letter be included as part of the record.

Senator CARDIN. Without objection, it will be included in the record.

Senator MIKULSKI. He has been known as a judge to handle difficult situations. He brings thoughtful temperament, is well respected among his colleagues, and has served as a distinguished judge and also served as a prosecutor. He worked in the U.S. Attorney's Office and the Civil Rights Division. He also brings a history of integrity, a strong work ethic, and a commitment to public service. He is an independent thinker and is dedicated to the rule of law.

Well respected by his colleagues, he received the Benjamin L. Cardin Award of Public Service, as you noted, named in your honor, that was meant to be someone who would have an unassailable record in the community as a lawyer and a judge.

In addition to all of the things that would make him a great judge—intellect, integrity, competence—there is that sense that a judge has to be wise. And we believe that people are wise when they are also civically engaged.

Judge Davis has repeatedly in his career been an outstanding participant in the community, whether he has tutored juveniles, whether he has been on the board of the Urban League, whether he has worked as President of the Big Brothers and Sisters of Central Maryland serving on that board, also working with other organizations on prison re-entry, prison education reform, and also community entrepreneurship. He brings, I believe, every characteristic

that a smart judge but a wise judge and an honest judge would do. And I would hope that the Committee would expeditiously approve him and move him to the Senate for deliberation.

Mr. Chairman, I would also like to take this opportunity to comment on another nominee before you, Secretary Tom Perez. I want to also bring him to the Committee's attention. He is President Obama's nominee to head up the Civil Rights Division at the Justice Department.

I am the appropriator for the Justice Department working with my colleague, Senator Shelby of Alabama. Working with Eric Holder, we hope to restore and reinvigorate the Justice Department by not only having the right financial resources for them to do the job, but the right people in the right place to make the right decisions to restore the vitality of the Justice Department. Secretary Perez has those characteristics. We believe that he will be able to do that.

As you know, the Civil Rights Division was created in 1957 and has been a source of great pride in our country. And we want to be able to have someone who brings, again, integrity, competence, and a commitment to the mission of the agency.

For Tom Perez, his entire career has been in public service. He has been a teacher. He has been a prosecutor. He has helped run agencies. He has been a Cabinet member in the O'Malley administration. He has brought skill; he has brought integrity; he has brought experience in turning an agency around. And he has had those qualities where he can deal with crisis management.

When he took over the Secretary of Labor job for Governor O'Malley, there were many unexpected things that came his way, which he could handle. And then, working with the Maryland General Assembly, he was shown that he could work across party lines.

I sure hope we confirm Tom Perez to be that Assistant Secretary. He is a graduate of Harvard Law School cum laude. He brought extensive experience in civil rights. He actually was the chief at the Division and worked also in the Civil Rights Office at HHS.

As a civil rights attorney for himself working at the Justice Department, he worked combating racial profiling and also being able to deal with racially motivated hate crimes, like the despicable incident that occurred in Lubbock, Texas. Defendants went on killing sprees directed at African Americans. They were brought to justice, and part of that was because of the work of Tom Perez.

Integrity, he comes from a very hard-working immigrant family, and he has also worked to prosecute public officials for corruption.

I believe that Tom Perez will bring energy, intellect, to the office of civil rights, and I, too, urge the Judiciary Committee to move this nomination so President Obama and Eric Holder have the team they need at the Justice Department to enforce the laws that we have on the books and to have this sense of justice and fairness in our society.

Mr. Chairman, I would be happy to answer those questions, but in a thumbnail, I think we are really proud of our nominees today, and we would hope they would be given quick and expeditious approval.

Senator CARDIN. I thank Senator Mikulski.
Senator Sarbanes.

PRESENTATION OF ANDRE M. DAVIS, NOMINEE TO BE CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, BY HON. PAUL S. SARBANES, A FORMER U.S. SENATOR FROM THE STATE OF MARYLAND

Senator SARBANES. Mr. Chairman, Senator Coburn, thank you very much for giving me the courtesy of appearing before the Committee today.

I came primarily to talk about Judge Davis, and I will outline why in just a moment. But I do want to take a moment first to note with respect to Judge Hamilton that his uncle, his father's brother, was one of the most distinguished Members of the Congress of our generation, Congressman Lee Hamilton, who rendered such extraordinary service here in the Congress and continues to render extraordinary service as the head of the Woodrow Wilson Center. So there is a great Hamilton tradition in American public service, and I would be remiss not to note it at the outset.

I also want to concur and underscore the words of Senator Mikulski with respect to Tom Perez, who has been a dynamic force in our State for a decent and fair society. He has done a magnificent job as the Secretary of the Department of Labor, Licensing, and Regulation. He has had extensive experience in the Department of Justice over the course of his outstanding legal career. And, Mr. Chairman, as you pointed out, he handled being a county councilman in Montgomery County, no easy task, I might add, as you noted.

With respect to Judge Davis, let me tell you how pleased I am to come on his behalf here today. Senator Mikulski and I had the privilege of recommending his nomination some years ago to this Fourth Circuit seat. He was nominated, but the nomination came late in the day of that administration, and it was not acted upon. And we are pleased that he is back before the Committee here today.

He reflects something that is important to us. Senator Mikulski outlined it in the standards she set out. Maryland has had a great tradition since the early—even before the early days of the Republic—in colonial times, of having a very distinguished bar. Maryland lawyers and judges have really ranked at the very top of the workings of our political system, and we are proud of that in our State, and I think deservedly so.

Andre Davis is a Maryland product, simply put. He was born in Baltimore, raised in Baltimore, went to the University of Pennsylvania, came back to the University of Maryland Law School, where he had a very distinguished academic career. He clerked for Judge Frank Kaufman in the United States District Court in Maryland, and then the following year he clerked for Judge Francis Murnaghan on the Court of Appeals for the Fourth Circuit—the very position for which he is seeking confirmation here today.

He then worked for the Civil Rights Division of the U.S. Department of Justice. He joined the U.S. Attorney's Office in Baltimore. He taught at the University of Maryland Law School and in 1987 was appointed to the district court in Baltimore. In 1990, he was moved up to the circuit court, the trial court of general jurisdiction, and served there until 1995, when he was appointed to the Federal district court. He has been on the Federal bench now—it will be

14 years this coming August. So this is a distinguished jurist, and he has a prior record that people can evaluate, I think an outstanding record, at the State trial level and then at the Federal trial level.

He has been very active in our community, something I think which is of importance. Judges, I think, in addition to the outstanding performance we expect from them on the bench, I hope would be people of stature in the community who would serve the broader community in a leadership role. And Judge Davis has been Director of the Baltimore Urban League; he has been President of the Legal Aid Bureau, a trustee of Goucher College. He has been a driving force in the Big Brothers and Big Sisters of Maryland. He has been President and Vice President of the Executive Committee of the Maryland Judicial Conference. He has been a member of the board and President of the University of Maryland School of Law Alumni Association, and highly, highly respected in his performance on the bench.

The Committee, I understand, has before it a letter that has come from many, many of the former Murnaghan clerks, those men and women who had the honor to clerk for Judge Murnaghan. I am sensitive to that because Judge Murnaghan was a mentor of mine in private practice many, many years ago, and a person of just extraordinary commitment and distinction.

In that letter, the Murnaghan clerks say, and I quote them, "Judge Murnaghan showed us how important it is for a wide range of cases to be addressed by a person of powerful intellect, deep learning, intuitive sympathy for all, and a steely commitment that judges should unflinchingly see that fairness prevails. Andre Davis will be unflinching in that duty." And they go on in their conclusion to say, "Judge Davis' life and career fully express the ideals and sense of duty that Judge Murnaghan so magnificently embodied."

I could not agree with an evaluation more than I agree with this one by all of these former Murnaghan clerks. Judge Davis will be a superb addition to the Federal bench. I clerked in that court my first year out of law school for Judge Morris Soper, and I have always been sensitive since to the necessity of having excellence on the Federal bench. Judge Davis reflects that excellence, and I very much hope the Committee will act positively and expeditiously on his nomination.

Thank you very much.

Senator CARDIN. Senator Sarbanes, I want to thank you for being here and speaking in regards to these nominees. I know it is very helpful to our Committee, your observations, and we thank you for returning. And, Senator Mikulski, it is always nice to have you in our presence on the Judiciary Committee any time you want to.

Senator Coburn.

**STATEMENT OF HON. TOM COBURN, A U.S. SENATOR FROM
THE STATE OF OKLAHOMA**

Senator COBURN. First of all, Senator Sarbanes, great to see you again. Thank you.

Senator SARBANES. Thank you, Tom.

Senator COBURN. Senator Mikulski, thank you both for your input. I understand that you are taking both the Ranking and the Chairmanship in my absence, and I apologize for being late. I also would apologize for other members of our Caucus. I think I had three hearings scheduled at 2 o'clock as well, so I would announce ahead of time I have another one at 3:00, so I will be leaving, and will be submitting a large number of questions for the record.

I appreciate your recommendations. They mean a lot. I think one of the things we do want to do is we want to make sure President Obama gets qualified judges and the ones he selects. That is his right. But I also think we ought to have the due diligence and the time to explore the areas that we might want to know. And so we will be expeditious but also thorough, and we will try to work with the majority to make sure that happens.

Thank you for your testimony.

Senator CARDIN. Thank you, Senator Coburn.

Thank you.

Senator SARBANES. Thank you.

Senator CARDIN. We will now invite the three nominees to come forward. And if Judge Davis and Judge Hamilton and Secretary Perez will remain standing for one moment. Thank you. And if you would raise your right hand and repeat after me. Do you affirm that the testimony you are about to give before the Committee will be the truth, the whole truth, and nothing but the truth?

Judge DAVIS. I do.

Mr. PEREZ. I do.

Judge HAMILTON. I do.

Senator CARDIN. Thank you. Please have a seat.

We will start with Judge Davis, and it is the tradition of our Committee, we want to make sure that you maintain a good relationship at home, so if you would introduce your families, that would be helpful, I think, to us and to you.

**STATEMENT OF ANDRE M. DAVIS, NOMINEE TO BE CIRCUIT
JUDGE FOR THE FOURTH CIRCUIT**

Judge DAVIS. Thank you very much, Senator. Let me say, if I might, how honored I am to have Senator Sarbanes here to speak on my behalf, and I thank him for that. And, of course, I thank you and Senator Mikulski so deeply for your support and for your long service, each of you, on behalf of the people of Maryland. We are all grateful for that.

I am joined today by a contingent of family and friends and acquaintances: my wife, Jessica Strauss; my son, Ahmed Davis; my daughter, Loni Harris; my mom and my dad, brothers, sister, brothers-in-law, sisters-in-law, and my larger family, my wonderful family of clerks, who have served me so diligently and faithfully for so many years, and I appreciate the presence of all of them.

Thank you, Mr. Chairman.

[The biographical information of Judge Davis follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Andre Maurice Davis

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

United States Circuit Judge for the Fourth Circuit

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

Office: United States Courthouse
Room 5B
101 W. Lombard Street
Baltimore, MD 21201

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

1949; Baltimore, MD

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

1972, 1975-1978; University of Maryland School of Law, Baltimore, MD; J.D. 1978

1967-1971; University of Pennsylvania, Philadelphia, PA; B.A. 1971

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

Employment

August 14, 1995 to present
United States District Court for the District of Maryland
101 W. Lombard Street

5B Garmatz Federal Courthouse
Baltimore, MD 21201
United States District Judge

December 19, 1990 to August 13, 1995
Circuit Court for Baltimore City
100 N. Calvert Street
Clarence Mitchell Courthouse
Baltimore, MD 21201
Associate Judge

August 3, 1987 to December 18, 1990
District Court of Maryland for Baltimore City
Wabash Avenue
Baltimore, MD 21215
Associate Judge

University of Maryland School of Law
500 W. Baltimore Street
Baltimore, MD 21201
Visiting Professor of Law (July 1984 – June 1985)
Assistant Professor (July 1985 – July 1987)
Adjunct Professor of Law (part time - January 1982 to May 1984, Sept. 1987 to present)

July 1983 to June 1984
Frank, Bernstein, Conaway & Goldman (now dissolved)
Baltimore, MD
Associate Attorney

January 1981 to June 1983
Office of the United States Attorney
U. S. Courthouse
Baltimore, MD
Assistant United States Attorney

September 1980 to January 1981
Civil Rights Division
U.S. Department of Justice
Washington, DC
Appellate Attorney

August 1979 to August 1980
United States Court of Appeals for the Fourth Circuit
United States Courthouse
Baltimore, MD
Law Clerk to Judge Francis D. Murnaghan, Jr.

May 1978 to June 1979
United States District Court for the District of Maryland
United States Courthouse
Baltimore, MD
Law Clerk to Judge Frank A. Kaufman

Summer 1977
Piper & Marbury
36 S. Charles Street
Baltimore, MD 21201
Law Clerk

June 1976 to May 1977
Law Offices of William H. Murphy, Jr.
1007 N. Calvert Street
Baltimore, MD 21202
Law Clerk (full time summer; part-time during school year)

August 1975 to May 1976
Office of the Dean
University of Maryland School of Law
Baltimore, MD
Office Assistant

July 1972 to August 1975
Housing Authority for Baltimore City
401 E. Fayette Street
Baltimore, MD 21201
Assistant Housing Manager (July 1972 to November 1973)
Equal Employment Opportunity Specialist (November 1973 to August 1975)

November 1971 to April 1972
Baltimore News American
Baltimore, MD
District Circulation Manager

October 1971 to June 1972
Two Guys Department Store
Baltimore, MD
Retail Sales Associate

May 1971 to September 1971
Belvedere Camera Shop
Baltimore, MD
Sales Associate

Other affiliations

Baltimore Urban League
 Baltimore, MD
 Board Member, 1975 to 1978

Legal Aid Bureau, Inc.
 Baltimore, MD
 Member, 1983 to 1987; President 1985 to 1987

Goucher College
 Towson, MD
 Board Member, 1985 to 1991

Judicial Institute of Maryland, Inc.
 Annapolis, MD
 Board Member, 1987 to 1990

Big Brothers/Big Sisters of Central Maryland, Inc.
 Baltimore, MD
 Board Member, 1989 to 2005; Vice-President, 1992 to 1994; President 1994 to 1998

Open Society Institute – Baltimore
 Baltimore, MD
 Board Member, 2000 to present

Community Law in Action, Inc.
 Baltimore, MD
 President of the Board, 2001-2006

Baltimore Urban Debate League, Inc.
 Baltimore, MD
 Board Member, 2002 to 2008; President of the Board, 2002 to 2006

Foundation for Research on Economics and the Environment (FREE)
 Board Member, 2003 to 2004

Park Heights Academy
 Board Member, 1989 to 1990

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

I have not served in the military. I registered for selective service as required.

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

2008 - Benjamin L. Cardin Public Service Award, University of Maryland School of Law Alumni Association

1985 - Order of the Coif, University of Maryland School of Law

1977 - Best Advocate, Meyerwitz Moot Court Competition, University of Maryland School of Law

1977 - Best Advocate, Marshall-Wythe Invitational Moot Court Competition, William and Mary School of Law

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

1990 to present: Member, American Bar Association

2004-2005: Member, Justice Kennedy Commission

2002-2004: Member, Judicial Advisory Board, Committee on Judicial Ethics

2002-2004: Member, Criminal Standards Committee

1998-2003: Member of the Executive Committee, Secretary, and Chair, Conference of Federal Trial Judges/Judicial Division

2000-2003: Member, National Bar Association

1989-1999: Member, Maryland State Bar Association

1989-1999: Member, Section Council, Section of Correctional Reform

1992-2001: Member, J. Dudley Digges Inn of Court

1995 to 1996: President

2004 to present: Member, American Judicature Society

1997-2004: Member, Einstein Institute for Science, Health, and the Courts

1997-2004: Co-chair, International Committee

2003-2005: Member, National Judicial College Faculty Council

2001 to present: Member, Board of Visitors, University of Maryland School of Law

1991-2002: Member, Alumni Association of the University of Maryland School of Law

2000-2001: President

- 1997 to present: Member, Lawyer's Roundtable Law Club
- 1998 to present: Member, Wranglers Law Club
- 1994 to present: Member, Rule Day Law Club
- 1984-2001: Member, The Serjeant's Inn Law Club
- 2005-2006: Member, Working Group on DNA Evidence, National Institute of Justice
- 2003 to present: Member, Judicial Conference Committee on International Judicial Relations
- 1991-1995: Executive Committee of the Judicial Conference of Maryland
 - 1991-1995: Member and Circuit Representative
 - 1992-1993: Vice President
 - 1993-1994: President
- 1983-1987: Legal Aid Bureau, Inc.
 - 1983-1987: Member of the Board
 - 1985-1987: President of the Board
- 1995 to present: United States District court for the District of Maryland; Chair, Committee on Automation & Technology.
- 1999, Lawyers at Bail Project; Advisory Board member
- 1999 to present: Maryland Bar Foundation, Fellow
- 1986 to present: Bar Association of Baltimore City
- 1982 to present: Monumental City Bar Association
- 1986-1987: Maryland Attorney Grievance Commission, Inquiry Committee member
- 1983-1994: Judicial Conference of the United States Court of Appeals for the Fourth Circuit
- 1987-1996: District Court of Maryland, commissioner Education Committee
- 1994 to present: National Judicial College, Reno, NV; faculty member

10. Bar and Court Admission:

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

Maryland, November 1979

There have been no lapses in membership. I have been on "Inactive" status since June 5, 1991 because of my position as a Judge.

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

Maryland State Courts, November 1979 – Inactive Status

United States District Court for the District of Maryland, June 1980

United States Court of Appeals for the Fourth Circuit, June 1980

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

2000 to present: Trustee, Open Society Institute-Baltimore

1999 to present: Member, Sigma Phi Chi Professional Fraternity ("the Boule")

2002-2008: Baltimore Urban Debate League, Inc.,
 2002-2008: Member of the Board
 2002-2006: President of the Board

2001 to present: Member, Community Law in Action, Inc.
 2001-2006: President of the Board

2003-2004: Member of the Board, Foundation for Research on Economics and the Environment (FREE)

2002-2003: Member, RFK Memorial, Kenya Support Group

1989-2005: Big Brothers/Big Sisters of Central Md., Inc.
 1989-2005: Member of the Board
 1992-1994: Vice President
 1994-1998: President

1985-1991: Trustee, Goucher College

1989-1990: Member of the Board, Park Heights Academy

1975-1978: Member of the Board, Baltimore Urban League, Inc.

1968 to present: Member, Alpha Phi Alpha Fraternity, Inc.

1991 to present: Life Member, National Association for the Advancement of Colored People, Inc.

1993-1996: Member, Law Program, Advisory Panel, Lake Clifton/Eastern High School

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the listed organizations presently or formerly engaged in invidious discrimination in any form.

12. Published Writings and Public Statements:

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

March 18, 2009; Letter to the Editor in *Baltimore Sun*

May 9, 2008; "To the Man Who Called Me N-Word," *Baltimore Sun*

Dec. 3, 2007; "Young People Need Mentors" in OSI Blog

June 25, 2006; "Summer Reading" *Baltimore Sun*

Winter 2004; Chair's Column, in *Federal Trial News*, American Bar Association

Spring 2004; "In Praise of 'Nose-Holding'", Chair's Column, in *Federal Trial News*, American Bar Association

2004; "Have the Promises of Brown Been Fulfilled," *ABA Judges Journal*

March 2002; "The Least Dangerous Branch," *ABA JD Record*

2001; "Musings on the Jury System," 66 Brooklyn Law Review 1249

Feb. 2000; "Genetic Technologies and Courts of Law," OECD Workshop

2000; "Doing Science in the 21st Century," *Journal of BioLaw and Business*

1998; "In Memoriam: Frank A. Kaufman," 57 Md.L.Rev. 621

1985 Book Review of *Thimblerriggers: The Law vs. Governor Marvin Mandel*, in Maryland Historical Magazine

Dec. 1993; "Today's District Court," *Maryland Bar Journal*

From Spring 1991 to late 1992, under the auspices of the Monumental City Bar Association, I was an occasional columnist for a column called "All About Law" published from time-to-time in the Baltimore Afro-American newspaper. The column was designed to give useful information about the legal and court system to non-lawyers.

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

International Bar Association Report on Zimbabwe 2001

Report to the House of Delegates of the Justice Kennedy Commission, American Bar Association, August 2004

ABA Standards on Criminal Justice: Collateral Sanctions

ABA Standards on Criminal Justice: Speedy Trial

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

I have done my best to identify any items responsive to this question but I have not uncovered any such testimony, official statements or communications.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you

do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

January 2009; Presenter, Caseflow Management Workshops for Judges and Lawyers, sponsored by USAID in locations in South Africa

October 21, 2008; Co-Presenter, "Confidentiality and Litigation Holds," Association of Corporate Counsel, in Seattle, WA (no notes)

October 2008; "Mapp v. Ohio: The Untold Story" delivered to Rule Day Law Club

September 27, 2008; Moderator, Panel on "Courts and the Media," Just the Beginning Foundation Bi-annual Meeting, Washington, DC

May 2008; Co-Presenter, Training for Liberian Judges and Magistrates, Monrovia, Liberia, for USAID

April 2008; Genetics Roundtable, University of Maryland School of Law (Reported in *Washington Post*, April 20, 2008)

March 21, 2008; "Confidentiality and the Media" panel discussion, Reynolds National Center for Courts and Media, National Judicial College, Reno, NV (video to be found at <http://www.youtube.com/watch?v=oKR6eBRqeGU>)

April 2007; Co-Presenter, "Judicial Philosophy in American Law," Sedona, AR, for the National Judicial College

February 17, 2007; "The Role of Judicial Independence in a Democracy," keynote address, Seminar for South African Judges, for the U.S. Department of Justice

December 13, 2006; Remarks to New Admittees, Maryland Court of Appeals, Annapolis

March 2006; Co-Presenter, U.S. Department of Justice Seminar on Plea Bargaining for Nigerian Judges, Lagos and Abuja, Nigeria

March 2006; Moderator of Panel, Forum on the Justice Kennedy Commission, University of Maryland School of Law, Baltimore, MD

September 27-29, 2006; Co-Presenter, "Criminal Enforcement of Intellectual Property Laws," Kampala, Uganda, for the U.S. Department of Justice

September 11-14, 2006; Co-Presenter, "Judicial Philosophy in American Law," Savannah, Georgia, for the National Judicial College

May 11, 2006; Panelist, "Genetic Evidence," American Society for Law, Medicine and Ethics, Harvard University, Cambridge, MA

January 2006; Co-presenter, "Equitable Relief in Intellectual Property Cases" a seminar for Egyptian Judges Alexandria, Egypt, for USAID

November 14-15, 2005; Remarks, "Justice and Journalism" Symposium, Vanderbilt School of Law and the First Amendment Center, Nashville, TN (no notes)

October 6-7, 2005; Remarks at "Video and the Law" seminar, Law Enforcement and Emergency Services Video Association, Coeur d'Alene, ID (no notes)

September 15, 2005; Co-Presenter, "Today's Justice," National Judicial College, Washington, DC

August 2005; Remarks, "CSI Meets the Courts" panel discussion, ABA Annual Meeting, Chicago, IL

July 27, 2005; Panelist, "Litigation Skills Workshop," Association of Trial Lawyers of America Annual Meeting, Toronto, Canada

November 10, 2005; Federal Open Doors Program for High School Students, U.S. Courthouse, Baltimore, MD (no notes)

November 2004; Facilitator, Bench Book Development Meeting, for Latvian judges, Prague, Czech Republic

October 4, 2004; Remarks at Conference on Race and Genetics, Congressional Black Caucus, Washington, DC (no notes)

September 17, 2004; "DNA Fingerprinting and Civil Liberties" at American Society of Law, Medicine & Ethics, Harvard University, Boston, MA

August 11, 2004; Co-Presenter, "Genetics in the Courtroom," National Bar Association Annual Meeting, Atlanta, Georgia (no notes)

August 2004; Remarks: The Courts and Terrorism, Steamboat Seminars, Steamboat, CO

June 17, 2004; Panelist, "Right to Counsel," Maryland State Bar Association, Ocean City, MD (no notes)

June 2004; Co-Presenter, "The Role of Judges in Democracies," Mbanie, Swaziland, for USAID (no notes)

December 2003; Remarks, Jonathan Luna Memorial Service, Baltimore, MD

October 2003; Remarks, "Applications of the Human Genome" at University of North Carolina, Chapel Hill, NC (no notes)

October 2003; Co-Moderator, Panel on "The Promise v. Board: Yesterday, Today and Beyond," Judicial Division of the American Bar Association Meeting, San Antonio, TX

August 2003; Panelist, "Reinventing Sentencing" for the Administrative Office of the Courts/Defender Services Division, Park City, Utah

January 2003; Remarks at American Judicature Society (AJS) conference, "Preventing the Conviction of Innocent Persons," Washington, DC

January 31, 2003; Panelist, Regional Judges Forum for the Roscoe Pound Institute, Honolulu, HI

October 2002; Panelist for "Sentencing and the Federal Judiciary" American Constitution Society at the University of Maryland School of Law, Baltimore

January 8, 2002; Remarks, "Criminal Sentencing: I Know Why the Caged Bird Sings" given at the Rule Day Club, Baltimore

October 2001; Moderator for Panel, Public Forum on Local Crime Fighting Policies, University of Maryland School of Law, Baltimore, MD

October 26, 2001; Remarks, "IT in the District Court" Maryland Federal Bench/Bar Conference, Baltimore

November 2000; Remarks, Francis J. Murnaghan, Jr., Memorial Service, Baltimore

September 2000; Panelist for "Trial of a Patent Case" ALI-ABA in Chicago

June 22, 1999; "Court Appointed Experts" (PowerPoint/National Judicial College)

July 2002; Panelist, "Teen Speak Out," Baltimore, MD

March 1999; "Ethical Pratfalls in Employment Cases" CLE Program, Columbia, MD

March 1999; Remarks, Frank A. Kaufman Memorial Service, Baltimore

November 1998; "Admissibility of DNA Evidence" at Science and the Courtroom course, National Judicial College, Reno, NV

May 1997; Remarks, John R. Hargrove Memorial Service, Baltimore

February 1997; Remarks on the Celebration of Black History Month, Baltimore

December 9, 1996; "Politics of Jury Nullification" Law Club address

June 28, 1996; "Baby Judge" Speech, Fourth Circuit Judicial Conference, White Sulphur Springs, WV

May 23, 1996; Commencement Address, University of Maryland School of Law, Baltimore

April 19, 1996; Remarks at Investiture as U.S. District Judge

June 1, 1992: Keynote Address, Baltimore County Public Schools

January 1992: Remarks, "Decline and Resurgence of Professionalism," University of Maryland School of Law

June 23, 1991; Commencement Address, Park Heights Academy, Baltimore

June 14, 1991: Announcement of Candidacy for State Circuit Court Judge, Baltimore

August 3, 1987; Remarks at Investiture as Judge of the District Court of Maryland, Baltimore

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

January 2009, Interview with daily newspaper, Durban, South Africa

Fall 2008, Interview, University of Maryland School of Law Alumni Magazine

September 2008, Interview, "Tracking Marshall's Steps to the Supreme Court" *Washington Post*

April 20, 2008, Interview, "Second Generation of DNA in Halls of Justice" *Washington Post*

November 2006, Interview, "Visiting Egyptian Judges" *Baltimore Daily Record*

February 2006, Interview, Electronic Filing, *ABA Journal*

December 20, 2005, Interview, "Polygraph Loomed for MD Prosecutor" *Washington Post*

June 26, 2005, Interview, "Summertime Reading" in the *Baltimore Sun*

July-August 2004, Interview, "What do Judges think about the Feeney Amendment?" in *Judicature Magazine*, American Judicature Society

February 2, 2004, Interview, "Philanthropy: The Open Society Institute" in the *Baltimore Sun*

December 2003, Interview, "Who Killed Jonathan Luna?," *People Magazine*, Philadelphia Inquirer

Fall 2000, Interview, University of Maryland School of Law Alumni Magazine

July 1996, Interview, "Attorney Manners" *Baltimore Daily Record*

July 1996, Interview, "Genetic Questions Sending Judges Back to Classroom" *New York Times*

January 15, 1995, Interview, "Maryland Judges Issue More Lenient Sentencing Guidelines" in the *Washington Post*

May 8, 2003, Interview, "Drug Policies Wrong, Judges Say: Are Wrong People Jailed?" in *Baltimore Afro-American*

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On August 14, 1995, I was appointed United States District Judge for the District of Maryland by President Clinton, following confirmation by the United States Senate on August 11, 1995. I took the oath of office on August 14, 1995.

On December 19, 1990, I took the oath as Associate Judge of the Circuit Court for Baltimore City (a general jurisdiction court), following appointment by Governor William D. Schaefer, to serve until the general election in November 1992. In November 1992, I was elected to a 15 year term of office.

On August 3, 1987, I took the oath as Judge of the District Court of Maryland for Baltimore City (a court of limited jurisdiction), following appointment by Governor Schaefer to a ten-year term. Subsequently, the appointment was confirmed by the Maryland Senate.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? Approximately 5300 (federal cases only).

As a federal judge, I have presided over the closing of approximately 5300 cases. Of that number, approximately 4300 went to judgment based on a trial and/or decision I made, with approximately 450 opinions available in electronic databases. Approximately 75 to 85 have gone to verdict or decision after a trial.

i. Of these, approximately what percent were:

jury trials? 80%; bench trials 20% [total 100%]

civil proceedings? 25%; criminal proceedings? 75% [total 100%]

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached lists of citations from Westlaw.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. U.S. v. Savoy, affirmed in part, vacated in part, 2009 WL 567325, (4th Cir. March 6, 2009) (drug conspiracy prosecution in which defendant shot a law enforcement officer)

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2. U.S. v. Ulrich et al., convictions affirmed, 28 Fed.Appx. 248, 2007 WL 1578172 (4th Cir. June 1, 2007) (four-defendant mail fraud prosecution in connection with real estate flipping scheme)

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 (410) 554-3602

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3. U.S. v. Iskander et al., convictions affirmed, 407 F.3d 232 (4th Cir.2005) (unusual tax evasion prosecution involving cash skimming from business receipts)

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 (410) 727-6600

Jonathan M. Mastrangelo
 White & Case LLP
 701 Thirteenth Street, NW
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 (202) 626-3615

4. U.S. v. Bush, conviction affirmed, 404 F.3d 263 (4th Cir. 2005) (identity theft prosecution in which defendant wished to undertake self-representation but was not allowed to do so)

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5. U.S. v. Hsu, et al., convictions affirmed, 364 F.3d 192 (4th Cir.2004) (conspiracy prosecution arising from attempt by national of People's Republic of China to export prohibited item from the United States)

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6. U.S. v. Montgomery, et al., convictions affirmed, 262 F.3d 233 (4th Cir. 2001) (multi-defendant ten-week trial in narcotics conspiracy prosecution)

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7. U.S. v. Gray, conviction affirmed, 137 F.3d 765 (4th Cir. 1998)(en banc) (racketeering murder prosecution)

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8. U.S. v. Cohn, et al., appeal dismissed, 166 Fed.Appx. 4, 2006 WL 149071, (4th Cir. January 18, 2006) (mail fraud prosecution of an attorney)

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9. U.S. v. Katz, et al., convictions affirmed, remanded for resentencing, 122 Fed.Appx. 613, 2005 WL 102986, (4th Cir. Jan. 19, 2005)

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10. U.S. v. Mitchell, et al., 405 F.Supp.2d 602 (D.Md. 2005); U.S. v. Gardner, 417 F.Supp.2d 703 (D.Md. 2006) (four-defendant racketeering/murder trial).

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.
1. Richter v. Maryland, --- F.Supp.2d ----, 2008 WL 5377676 (D. Md. 2008).
 Plaintiff's Counsel: Robin R. Cockey
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- Defendant's
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2. Baltimore County FOP Lodge 4 v. Baltimore County, 565 F. Supp. 2d 672 (D. Md. 2008).

Plaintiff's Counsel: Warren Gary Kohlman
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3. First Penn-Pacific Life Ins. Co. v. Evans, Not Reported in F.Supp.2d, 2007 WL 1810707 (D. Md. 2007), aff'd, 2009 WL 497394 (4th Cir. February 26, 2009).

Plaintiff's Counsel: Bryan D. Bolton
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4. McFadden v. Grasmick, 485 F.Supp.2d 642 (D. Md. 2007).

Plaintiff's Counsel: Lauren Young
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5. Neuberger Berman Real Estate Income Fund, Inc. v. Lola Brown Trust No. 1B, 485 F.Supp.2d 631 (D. Md. 2007).

Plaintiff's Counsel: David Clarke, Jr.
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6. Equal Rights Center v. Equity Residential, 483 F.Supp.2d 482 (D. Md. 2007).

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7. Andrew v. Clark, 472 F.Supp.2d 659 (D. Md. 2007).

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8. Walker v. Todd Village, LLC, 419 F.Supp.2d 743 (D. Md. 2006).

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9. Broccoli v. Echostar Communications Corp., 229 F.R.D. 506 (D. Md. 2005).
Note: Also called Sklar v. Echostar Communications Corp.

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10. U.S. v. Mitchell, 405 F.Supp.2d 602 (D.Md. 2005).

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- e. Provide a list of all cases in which certiorari was requested or granted.

MidAtlantic Medical Services, Inc. v. Sereboff, 303 F.Supp.2d 691, 316 F.Supp.2d 265 (D.Md. 2004), aff'd in part and vacated in part, 407 F.3d 212 (4th Cir. 2005), aff'd, 527 U.S. 356, 126 S.Ct. 1869 (2006).

S.E.C. v. Zandford, 238 F.3d 559 (4th Cir. 2001), rev'd, 535 U.S. 813, 122 S.Ct. 1899 (2002).

Gray v. State, 667 A.2d 983 (Md.App. 1995), rev'd, 687 A.2c 660 (Md. 1997), rev'd sub nom. Gray v. Maryland, 523 U.S. 185, 118 S.Ct. 1151 (1998).

U.S. v. Siegel, 536 F.3d 306 (4th Cir. 2008), cert. denied, 129 S.Ct. 770 (2008).

Onawola v. Johns Hopkins University, 2007 WL 5428683 (D.Md. Sep 24, 2007), aff'd 276 Fed.Appx. 358 (4th Cir.(Md.) May 05, 2008), cert. den. 129 S.Ct. 637 (2008).

The Piney Run Preservation Ass'n v. The County Com'rs Of Carroll County, MD, 523 F.3d 453 (4th Cir. 2008), cert. den. 129 S.Ct. 258 (2008).

U.S. v. Kimbrough, 477 F.3d 144 (4th Cir. 2007), cert. den. 128 S.Ct. 154 (2007).

U.S. v. Holland, 985 F.Supp. 587 (D.Md. Nov 04, 1997), and U.S. v. Holland, 59 F.Supp.2d 492 (D.Md. Aug 31, 1998), convictions and sentences aff'd, 262 F.3d 233, 57 Fed. R. Evid. Serv. 572 (4th Cir. 2001), cert. den. sub nom. Montgomery v. U.S., 534 U.S. 1034 (2001).

Walton v. Guidant Sales Corp., 417 F.Supp.2d 719 (D.Md. Mar 06, 2006), aff'd 203 Fed.Appx. 510 (4th Cir. Oct 17, 2006), cert. den. 549 U.S. 1254 (2007).

AJ v. Skojec, 161 Fed.Appx. 283 (4th Cir. Jan. 5, 2006), cert. den. 549 U.S. 823 (2006).

Neighborhood Development Collaborative v. Ginsberg, 2003 WL 23941712 (D.Md. Sep 02, 2003), aff'd, 102 Fed.Appx. 811 (4th Cir. Jul 22, 2004), cert. den. 543 U.S. 1052 (2005).

U.S. v. Stone, 85 Fed.Appx. 925, 93 A.F.T.R.2d 2004-579 (4th Cir. Jan 22, 2004), cert. den. 542 U.S. 943 (2004).

U.S. v. Gray, 28 Fed.Appx. 280 (4th Cir. Feb 7, 2002), cert. den. 535 U.S. 1107, 122 S.Ct. 2317 (2002).

U.S. v. Dangerfield, 230 F.3d 1354 (4th Cir. Sept. 14, 2000), cert. den. 531 U.S. 1153, 121 S.Ct. 1100, 148 L.Ed.2d 972 (2001).

Pollard v. High's of Baltimore, Inc., 281 F.3d 462 (4th Cir. 2002), cert. den. 537 U.S. 827, 123 S.Ct. 122, 154 L.Ed.2d 39 (2002).

U.S. v. Gray, 137 F.3d 765 (4th Cir. 1998), cert. den. 119 S.Ct. 157 (1998).

Motor Club of America Ins. Co. v. Hanifi, 145 F.3d 170 (4th Cir. 1998), cert. den., 525 U.S. 1001, 119 S.Ct. 509, 142 L.Ed.2d 423 (1998).

Andrews v. Anne Arundel County, 931 F.Supp. 1255 (D.Md. 1996), aff'd, 114 F.3d 1175 (4th Cir. 1997), cert. den. 118 S.Ct. 600 (1997).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. Sharp Electronics Corp. v. Deutsche Financial Services Corp., 216 F.3d 388 (4th Cir. 2000).

I granted summary judgment in favor of the plaintiff in this commercial dispute arising under a written contract controlled by Illinois law. On appeal, the Fourth Circuit reversed and entered judgment in favor of the appellant/defendant.

2. Nagy v. Baltimore Life Ins. Co., 215 F.3d 1320, 2000 WL 718391 (4th Cir. June 5, 2000)(unreported), affirming in part and reversing in part, 49 F.Supp.2d 822 (D.Md. 1999).

The plaintiffs asserted that the insurance company discriminated against them by refusing to issue insurance policies. I granted summary judgment in favor of defendant. The Fourth Circuit affirmed in part, but concluded that summary judgment was not appropriate as to two of the plaintiffs and reversed and remanded as to them.

3. Robinson v. New Line Cinema Corp., 211 F.3d 1265, 2000 WL 380124 (4th Cir. April 14, 2000)(unreported), reversing, 42 F.Supp.2d 578 (D.Md. 1999).

This is a copyright infringement case. I granted summary judgment in favor of defendants. The Fourth Circuit concluded that disputes of material fact made summary judgment inappropriate and reversed and remanded.

4. Prudential Real Estate Affiliates, Inc. v. Long & Foster Real Estate, Inc., 208 F.3d 210, 2000 WL 248170 (4th Cir. March 6, 2000)(unpublished).

This non-jury case presented a claim for intentional interference with contractual rights under Maryland law. I granted summary judgment in favor of defendant. The Fourth Circuit concluded that disputes of material fact made summary judgment inappropriate and reversed and remanded.

5. Dukuly v. Woodmen of World Life Insurance Society, 202 F.3d 258, 1999 WL 1257220 (4th Cir., December 28, 1999)(unreported).

I dismissed this prisoner's civil rights claim against police officers. The Fourth Circuit reversed and remanded because the plaintiff was entitled to amend his complaint.

6. Kubicko v. Ogden Logistics Services, 181 F.3d 544 (4th Cir. 1999).

The plaintiff was terminated from his employment and sued on the ground that his termination was retaliatory because he assisted a female subordinate who had been sexually harassed by their supervisor. I granted summary judgment in favor of defendants. The Fourth Circuit concluded that disputes of material fact made summary judgment inappropriate and reversed and remanded.

7. Monumental Paving & Excavating, Inc. v. Pennsylvania Manufacturers' Ass'n Ins. Co., 176 F.3d 794 (4th Cir. 1999), affirming in part and reversing in part 948 F.Supp. 496 (D.Md. 1996).

This is an insurance coverage dispute which I resolved on summary judgment. The Fourth Circuit affirmed in part and reversed in part.

8. Motor Club of America Ins. Co. v. Hanifi, 145 F.3d 170 (4th Cir. 1998).

This is a personal injury action arising out of a motor vehicle accident. I granted summary judgment to defendants. The Fourth Circuit concluded that, contrary to my ruling, the Maryland Court of Appeals would likely apply a New York statute even though the accident occurred in Maryland, and that, in any event, disputes of material fact made summary judgment inappropriate and reversed and remanded.

9. Harold v. Cendo, 131 F.3d 134, 1997 WL 734028 (4th Cir., November 26, 1997)(unreported).

In this medical malpractice case, I concluded that a release signed by the plaintiff foreclosed her claims. The Fourth Circuit concluded that disputes of material fact over the effect of the release made summary judgment inappropriate and reversed and remanded.

10. Rich v. Bruce, 129 F.3d 336 (4th Cir. 1997).

The plaintiff was a Maryland prison inmate who was stabbed by an enemy inmate who was allowed out of his cell in violation of several regulations applicable to the maximum security prison in which they were housed. I found after a non-jury trial that one correctional officer had demonstrated "deliberate indifference" under the Eighth Amendment and I awarded damages to the inmate. The Fourth Circuit concluded that my underlying factual findings did not reasonably support the conclusion that the subjective element of an Eighth Amendment claim had been established and reversed the judgment.

11. U.S. v. Siegel, 536 F.3d 306 (4th Cir. 2008).

Reversed and Remanded. Defendant was charged with numerous fraud-based offenses, including mail and wire fraud. A week before trial, I granted defendant's motion to strike as surplusage allegations in the indictment about certain crimes that were not the subject of a substantive criminal count and her motion to preclude the government from

introducing in its case-in-chief evidence about those crimes and other crimes not mentioned in the indictment. Fourth Circuit reversed and held that (1) the order granting defendant's motion in limine was appealable; (2) other bad acts evidence was relevant to motive; (3) other bad acts evidence was relevant to show defendant's modus operandi; and (4) probative value of other bad acts evidence outweighed danger of unfair prejudice.

12. U.S. v. Tate, 524 F.3d 449 (4th Cir. 2008).

Vacated and remanded. Defendant was convicted in district court of being a felon in possession of a firearm, entering a conditional plea that reserved his right to appeal the denial of his motion to suppress the firearm on Fourth Amendment grounds. The Fourth Circuit held that the defendant was entitled to an evidentiary hearing regarding the integrity of the affidavit supporting the search warrant for his residence.

13. U.S. v. Jamison, 509 F.3d 623 (4th Cir. 2007).

Reversed and remanded. Defendant was charged with being a felon in possession of a firearm and I granted defendant's motion to suppress the firearm. The government appealed on the issue of whether a defendant subjected to police questioning in a hospital emergency room after he sought treatment for a gunshot wound was "in custody," triggering the protections of *Miranda v. Arizona*, 384 U.S. 436 (1966). The Fourth Circuit held that (1) affixing bags to defendant's hands pending gunshot-residue test, after he had requested treatment for gunshot wound in hospital emergency room, did not in itself render questioning by police custodial; and (2) defendant was not in custody, such that privilege against self-incrimination would attach, when police questioned him in hospital emergency room.

14. Three Lower Counties Community Health Services, Inc. v. Maryland, 498 F.3d 294 (4th Cir. 2007).

Affirmed in part, reversed in part, and remanded with instructions. Federally qualified health center (FQHC) providing services to medically underserved Medicaid patients filed suit seeking declaratory judgment and injunctive relief, claiming that state Department of Health and Mental Hygiene violated Medicaid Act. I granted summary judgment to Maryland on all issues. The Fourth Circuit reversed on the first two issues and affirmed on the second two, holding that (1) the Department failed to pay FQHC fully compensatory supplemental payments; and (2) the out-of-network FQHC was entitled to full compensation for emergency services; but (3) market rate paid to in-network FQHCs did not violate Act; and (4) state did not delegate supplemental payment determination.

15. U.S. v. McNeill, 484 F.3d 301 (4th Cir. 2007).

Reversed. Defendant who was charged with bank robbery moved to suppress statements he made to FBI agents, contending that they were given following an illegal arrest by Baltimore City police. I granted a motion to suppress and denied reconsideration, and the

government filed an interlocutory appeal. The Fourth Circuit held that (1) district court did not abuse its discretion in accepting government's motion for reconsideration; (2) government's failure to timely file certification did not warrant dismissal of appeal; and (3) warrantless arrest was supported by officer's probable cause to believe that defendant committed Maryland misdemeanor offense of harassment partially in officer's presence.

16. U.S. v. Kimbrough, 477 F.3d 144 (4th Cir. 2007).

Reversed and remanded. Defendant charged with possession of stolen firearms, possession of firearm in relation to drug trafficking crime, and possession of cocaine with intent to distribute moved to suppress gun, drugs, and his post-arrest statements made in response to questions asked by his mother in presence of police in mother's home. I denied the motion in part and granted it in part and the government appealed. The Fourth Circuit held that defendant's post-arrest, unwarned statements in response to questioning by his mother were not required to be suppressed, as mother spontaneously asked the questions at issue without direction by, or a tacit understanding with, the police officers, and because the officers' actions did not constitute interrogation under Miranda and its progeny.

17. U.S. v. Bradley, 455 F.3d 453 (4th Cir. 2006).

Vacated and remanded. On appeal from sentences based on their guilty pleas entered late in the trial, defendants argued that I had participated in plea negotiations, effectively encouraging them to plead guilty. The Fourth Circuit vacated the judgments. The Court concluded that the district court's involvement in plea discussions constituted plain error. Case remanded for new trial.

18. U.S. v. Allen, 450 F.3d 565 (4th Cir. 2006).

Vacated and remanded. I sentenced defendant, an armed career criminal, to 63 months in prison, granting a departure from the statutory mandatory minimum sentence of fifteen years. The 4th Circuit vacated the sentence because the district court was precluded from imposing a sentence below the mandatory minimum without an explicit government motion based on the statute; motion mentioning only the Sentencing Guidelines not sufficient.

19. U.S. v. Dickey-Bey, 393 F.3d 449 (4th Cir. 2004).

Reversed and remanded. Concluding that the police did not have probable cause to believe that defendant had knowledge that the package he possessed contained cocaine, I suppressed the evidence that the police had seized from his vehicle. Furthermore, I concluded that even if there was probable cause for defendant's arrest, the search of defendant's vehicle was not a valid search incident to an arrest. The Fourth Circuit reversed, concluding that, as a matter of law, the police officers (1) had probable cause to believe that defendant knowingly possessed cocaine and (2) had independent probable

cause to believe that defendant's automobile was being used as an instrumentality of a crime.

20. Olatunji v. Ashcroft, 387 F.3d 383 (4th Cir. 2004).

Reversed. I denied a petition for habeas corpus. Petitioner was a resident alien who had been deemed inadmissible upon his return to the United States following nine-day trip abroad based on his previous guilty plea to crime of moral turpitude. The Fourth Circuit reversed because the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) provision that prevented petitioner's reentry was not in effect at the time he had pled guilty to the crime of moral turpitude.

21. Brickwood Contractors, Inc. v. Datamet Engineering, Inc., 369 F.3d 385 (4th Cir. 2006).

Reversed. I imposed Rule 11 monetary sanctions on contractors who had asserted claims of defamation and tortious interference with business relationship against successful bidders for a county project. The Fourth Circuit held that (1) the safe harbor provisions of Rule 11 did not implicate the district court's subject matter jurisdiction, and (2) the district court committed plain error in imposing Rule 11 sanctions, notwithstanding failure of appellant to have objected on the ground of the safe harbor provision.

22. Snowden v. CheckPoint Check Cashing, 290 F.3d 631 (4th Cir. 2002).

Vacated and remanded. I denied motions to compel arbitration and to stay court proceedings, or in the alternative to dismiss all claims in this "pay-day loan" case. The Fourth Circuit held that the Arbitration Agreement fell within the scope of the Federal Arbitration Act, and the party opposing arbitration failed to show sufficient justification to hold the Arbitration Agreement unenforceable.

23. Williams v. Ironworkers Local 16 Pension Fund, 178 Fed. Appx. 235 (4th Cir. 2006).

Reversed. Employee of employers that contributed to a union pension plan brought an action against plan seeking benefits under Employee Retirement Income Security Act (ERISA). I granted summary judgment to the Fund, finding that the claim was barred by the statute of limitations because the statute began to run upon the exhaustion of the Fund's first review process in 1996. The plaintiff appealed, and the Fourth Circuit held that the claim accrued when plan formally denied plaintiff's second request for funds.

24. U.S. v. Custis, 150 Fed.Appx. 265 (4th Cir. 2005).

Vacated and remanded. I granted defendant's motion to dismiss in a prosecution for various federal drug and firearm offenses, finding the warrant for a residential search defective and insufficient. The government appealed and the Fourth Circuit vacated and remanded for further proceedings, holding probable cause supported issuance of the search warrant.

25. Saad v. Baltimore Life Ins. Co., 47 Fed.Appx. 228 (4th Cir. 2002).

Affirmed in part, reversed in part, and remanded. Resident aliens filed a § 1981 action alleging that an insurer's rejection of their applications for life insurance policies constituted alienage discrimination. I granted summary judgment in favor of the insurer. The Fourth Circuit held that (1) the issue of whether the insurer had a policy of denying coverage to non-citizens was for the jury, and (2) there was no abuse of discretion in refusing to admit the insurer's former general counsel's deposition testimony.

26. Witcher v. Westphal, 45 Fed.Appx. 300 (4th Cir. 2002).

Vacated and remanded. I dismissed a complaint for failing to provide a short and plain statement showing that the pleader was entitled to relief. The Fourth Circuit's one-paragraph opinion stated that although the complaint did not comply with the district court's instruction to allege claims clearly, in one-sentence paragraphs, it was adequate to inform the defendant of the nature of the pleader's claims, as well as the factual basis for those claims.

27. Mutual Ben. Ins. Co. v. Jordan, 11 Fed.Appx. 79 (4th Cir. 2001).

Reversed and remanded. In an action between a landlord and its insurer, I issued an order declaring that insurer had no duty to defend or indemnify landlord in a lead poisoning case. The Fourth Circuit held that the language in the insurance policy and complaint in initial tort action entitled the landlord to benefit of the doubt as to whether the original plaintiff resided in apartment during the landlord's policy period.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Beginning with my service on the District Court in 1995, I endeavored to make available all of my written opinions of more than strictly routine application of law to undisputed facts to Westlaw and Lexis for inclusion in electronic databases. Since late the late 1990s, our court has maintained a publicly-available website and I have endeavored to post all such opinions on the website.

With the advent of CM/ECF in our court in 2003, all opinions in civil cases, with the exception of some opinions in pro se cases, are available through the PACER system.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have decided a countless number of federal and state constitutional issues in the course of my 21+ year tenure as a judge. Many of these decisions are quite routine. For example, I have decided a host of cases presenting collateral attacks on state and federal criminal judgments brought pursuant to 28 U.S.C. § § 2254, 2255, each of which of necessity

involves one or more constitutional issues. Similarly, I have heard innumerable motions to suppress evidence on the basis of alleged constitutional violations in the course of criminal prosecutions. The following opinions are some significant constitutional decisions in civil and criminal cases:

1. Concerned Citizens of Carderock v. Hubbard, 84 F.Supp.2d 668 (D.Md. 2000).
2. Andrews v. Anne Arundel County, Md., 931 F.Supp. 1255 (D.Md. 1996), aff'd, 114 F.3d 1175 (4th Cir.)(unpublished), cert. denied, 522 U.S. 1015 (1997).
3. Rich v. Bruce, 129 F.3d 336 (4th Cir. 1997). The plaintiff was a Maryland prison inmate who was stabbed by an enemy inmate who was allowed out of his cell in violation of several regulations applicable to the maximum security prison in which they were housed. I found after a non-jury trial that one correctional officer had demonstrated "deliberate indifference" under the Eighth Amendment and I awarded damages to the inmate. The Fourth Circuit concluded that my underlying factual findings did not reasonably support the conclusion that the subjective element of an Eighth Amendment claim had been established and reversed the judgment.
4. While a state court judge, I presided over the homicide trial which is the subject of Gray v. Maryland, 523 U.S. 185, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998), reversing State v. Gray, 344 Md. 417, 687 A.2d 660 (Md. 1997), reversing Gray v. State, 107 Md.App. 311, 667 A.2d 983 (1995). At trial, I admitted a redacted confession of one co-defendant. Ultimately, the Supreme Court held that under the circumstances of the case, the admission of the redacted confession in a joint trial violated the Sixth Amendment right of confrontation of the non-confessing defendant.
5. Burke v. City of Charleston, 139 F.3d 401 (4th Cir. 1998) I wrote this opinion while sitting by designation with the Fourth Circuit. I held that the plaintiff/appellant, an artist who painted a mural on the exterior wall of a building in Charleston, lacked Article III standing to challenge Charleston's architectural review ordinance.
6. Municipal Mortg. & Equity v. Southfork Apartments Ltd. Partnership, 93 F.Supp.2d 622 (D.Md. 2000)(motion to dismiss granted for lack of personal jurisdiction).
7. Associated Utility Contractors of Maryland, Inc. v. Mayor and City Council of Baltimore, 83 F.Supp.2d 613 (D.Md. 2000)(declaring Baltimore City racial and gender set-aside law unconstitutional under the Equal Protection Clause).
8. Anthony v. Schuppel, 86 F.Supp.2d 531 (D.Md. 2000)(denying relief to state inmate challenging her conviction).
9. Agora, Inc. v. Axxess, Inc., 90 F.Supp.2d 697 (D.Md. 2000)(rejecting online defamation claim in favor First Amendment protection of speech, in part).
10. Cavanagh v. Grasmick, 75 F.Supp.2d 446 (D.Md. 1999)(rejecting due process challenge to state scheme for adjudicating claims of disabled children).

11. Ivy Hall Geriatric and Rehabilitation Center, Inc. v. Shalala, 50 F.Supp.2d 447 (D.Md. 1999)(rejecting due process challenge to statute regulating nursing homes).
12. Greer v. Anne Arundel County, Md., 46 F.Supp.2d 416 (D.Md. 1999)(rejecting civil claims based on alleged Fourth Amendment violations by county police).
13. Thomas v. Corcoran, 40 F.Supp.2d 691 (D.Md. 1998)(denying relief to state inmate challenging his conviction).
14. United States v. Nieves, 27 F.Supp.2d 636 (D.Md. 1998)(granting motion to suppress evidence for violation of Fourth Amendment).
15. United States v. Holland, 985 F.Supp. 587 (D.Md. 1997), subsequent opinion, 59 F.Supp.2d 492 (D.Md. 1998)(granting in part and denying in part motions to suppress evidence on constitutional grounds)(appeals pending).
16. Ritz Camera Centers, Inc. v. Wentling Camera Shops, Inc., 982 F.Supp. 350 (D.Md. 1997)(motion to dismiss granted for lack of personal jurisdiction).
17. Andrews v. Anne Arundel County, Md., 931 F.Supp. 1255 (D.Md. 1996), aff'd, 114 F.3d 1175 (4th Cir.)(unpublished), cert. denied, 522 U.S. 1015 (1997)(rejecting contract clause challenge to local government pension plan).
18. Richter v. Maryland, 2008 WL 5377676 (D.Md. 2008)(denying summary judgment as to First Amendment retaliation claim).
19. Munyiri v. Haduch, 585 F.Supp.2d 670 (D.Md. 2008) (granting in part and denying in part motion to dismiss Fourth Amendment claims against state officials).
20. Jackson v. Clark, 564 F.Supp.2d 483 (D.Md. 2008)(denying motion to dismiss due process claim).
21. Andrew v. Clark, 472 F.Supp.2d 659 (D.Md. 2007)(dismissing First Amendment and Fourteenth Amendment retaliation claims), appeal pending.
22. Wilson v. Board of Trustees, 333 F.Supp.2d 192 (D.Md. 2004)(dismissing First Amendment claims).
23. Simms v. Hardesty, 303 F.Supp.2d 656 (D.Md. 2003)(denying summary judgment and qualified immunity respecting due process claim for damages), aff'd . 104 FedAppx. 853, 2004 WL 1595700 (4th Cir. July 19, 2004).
24. Martin v. Mendoza, 230 F.Supp.2d 665 (D.Md. 2002)(granting summary judgment as to Fourth Amendment claim).

25. Duckworth v. State Board of Elections, 213 F.Supp.2d 543 (D.Md. 202)(dismissing constitutional challenge to state redistricting map), aff'd 332 F.3d 769 (4th Cir. 2003).
- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

Published opinions I authored:

1. Yarmouth Sea Products Ltd. v. Scully, 131 F.3d 389, 1998 A.M.C. 825 (4th Cir. 1997)(admiralty issues regarding liability for ship collisions).
2. Burke v. City of Charleston, 139 F.3d 401 (4th Cir. 1998)(holding that the plaintiff/appellant, an artist who painted a mural on the exterior wall of a building in Charleston, lacked Article III standing to challenge Charleston's architectural review ordinance)
3. PSINet, Inc. v. Chapman, 362 F.3d 227 (4th Cir. 2004)(published concurring opinion)(split decision affirming injunction against operation of state statute on First Amendment grounds)

Other opinions I joined while sitting by designation

1. Ale House Management, Inc. v. Raleigh Ale House, Inc., 205 F.3d 137, 2000 WL 232010, 2000 Copr.L.Dec. P 28,029, 54 U.S.P.Q.2d 1040, , C.A.4 (N.C.), March 01, 2000(No. 99-1175.)
2. Teal v. Angelone, 54 Fed.Appx. 776, 2003 WL 61216, , C.A.4 (Va.), January 09, 2003(Nos. 01-7758, 01-8029, 02-6502.)
3. Jones v. Buchanan, 325 F.3d 520, 62 Fed. R. Evid. Serv. 522, C.A.4 (N.C.), April 15, 2003 (NO. 01-2280.)
4. U.S. v. Parson, 57 Fed.Appx. 134, 2002 WL 31888188, C.A.4 (N.C.), December 30, 2002(No. 01-6642.)
5. U.S. v. Sandalis, 39 Fed.Appx. 798, 2002 WL 1434246, 90 A.F.T.R.2d 2002-5121, 2002-2 USTC P 50,516, C.A.4 (Va.), July 03, 2002(Nos. 00-4748, 02-4073.)
6. U.S. v. Ponce, 50 Fed.Appx. 614, 2002 WL 31513384, C.A.4 (S.C.), November 12, 2002(No. 00-4287.)

7. Carrigan v. Reliance Standard Life Ins. Co., 55 Fed.Appx. 630, 2003 WL 132981, 29 Employee Benefits Cas. 2710, C.A.4 (N.C.), January 17, 2003(No. 02-1196.)
8. Gannett Co., Inc. v. Clark Const. Group, Inc., 286 F.3d 737, 2002 WL 596379, C.A.4 (Va.), April 18, 2002(No. 01-2475.)
9. Consolidated Diesel Co. v. N.L.R.B., 263 F.3d 345, 2001 WL 920667, 168 L.R.R.M. (BNA) 2026, 144 Lab.Cas. P 11,067, C.A.4, August 15, 2001(Nos. 00-2545, 01-1064.)

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

In assessing the need for recusal, I have scrupulously adhered to all extant ethical and legal requirements. Recusals for financial conflicts are straightforward and prompt. Apart from potential financial conflicts, there are two attorneys who are my close friends and in whose cases I will not preside or participate, as a result. With the exceptions mentioned below, no attorney has sought my recusal during my judicial career on the basis of any alleged conflict of interest or other reason.

One exception mentioned above arises from an extraordinarily contentious case that has now been on my docket for more than ten years. The case is Contract Materials Processing, Inc. v. Katalena GmbH, No. AMD 98-147 (D.Md.). The claims and counterclaims arise out of the failure of a series of multi-million dollar agreements entered by a Maryland-based chemical services company and certain German companies. I have issued a number of published opinions in the case, including a lengthy opinion following a non-jury trial on some of the claims presented. See Contracts Materials Processing, Inc. v. Katalena GmbH Catalysts, 164 F.Supp.2d 520 (D.Md.2001) (granting in part and denying in part cross-motions for summary judgment); 222

F.Supp.2d 733 (D.Md.2002) (interlocutory award of attorney's fees to KataLeuna); 303 F.Supp.2d 612 (D.Md.2003) (findings of fact and conclusions of law, and entering judgment on counterclaim). As a result of bankruptcy proceedings and other delays, the case has not yet reached final judgment; accordingly, there has been no final, appealable judgment permitting appellate review of my rulings.

Recently, plaintiff's (CMP's) counsel, Mr. Paul Richter, Esq. (Richter Miller and Finn 1900 L St NW Ste 610 Washington, DC 20036-5032 (202)467-6200) has made repeated requests and motions that I recuse from this case. As best as I understand his basis for seeking recusal, he seems to rely on two arguments. First, he contends that because I served (briefly) on the Board of the Foundation for Research on Economics and the Environment ("FREE"), and because one or more of the donors to FREE, e.g., Shell Oil Co., once had a financial interest in one or more of the defendants in this case, my recusal was required by law. Second, he has indicated that he believes I have some unspecified animus towards him and/or his client. I have found the motions for recusal specious and pretextual, and that they constitute simply an indirect attack on adverse rulings in my management of the litigation. Mr. Richter has filed at least two mandamus petitions in the United States Court of Appeals for the Fourth Circuit in an effort to have me removed from the case. The Fourth Circuit has rebuffed Mr. Richter's efforts to have me removed at every turn. Counsel for defendants is Barbara Susan Wahl, Esq. (Arent Fox PLLC 1050 Connecticut Ave NW Ste 5th Fl Washington, DC 20036 (202)857-6000).

One other instance of an adjudicated motion for recusal is Peeples v. Coastal Office Products, Inc., 203 F.Supp.2d 432, 462 n. 1 (D.Md.2002), aff'd, 64 Fed.Appx. 860, 2003 WL 21019353 (4th Cir. May 7, 2003). I set forth in my opinion the circumstances surrounding the filing of the motion for recusal and my reasons for denying it:

"The motion for recusal was filed under the following circumstances. Upon my initial review of the cross-motions for summary judgment and the supporting memoranda, it became immediately apparent that (1) as the party with the burden of proof, plaintiff's motion for summary judgment was plainly not well-taken; (2) the failure-to-accommodate and retaliation claims asserted pursuant to the ADA failed as a matter of law; and (3) a bare scintilla of evidence could be said to support the FMLA claim. The conclusion that the FMLA claim should survive summary judgment rested in significant part on my erroneous belief, created by plaintiff's representation in his memorandum in opposition to the defendant's motion for summary judgment, that the plaintiff's diagnosis of depression, which was rendered by hospital emergency room personnel on the day he abruptly left the workplace, never to return, had been faxed to plaintiff's supervisor on the next business day after plaintiff commenced his leave. (In fact, as discussed infra in text, plaintiff and his primary care physician never advised defendant of plaintiff's diagnosis of clinical depression or of his prognosis, and specifically, plaintiff did not fax the emergency room discharge instructions, which included the diagnosis of depression, to his supervisor on March 13, 2000, as I thought.) Moreover, there is overwhelming evidence in this record, including the plaintiff's own testimony that he believed defendant terminated his employment on the basis of a sincere belief that plaintiff would not or

could not return to work at Coastal, of defendant's good faith belief in the lawfulness of its termination of plaintiff's employment.

"Consequently, on March 18, 2002, I wrote to counsel setting a June 2002 trial date and an April 2002 pre-trial conference. I also stated to counsel in that same memorandum, in the naive belief that I might foster a settlement of the case by reflecting on my perception of its lack of merit (counsel had requested, and I had allowed, a suspension of the briefing schedule on dispositive motions to permit the parties to continue settlement discussions), that "I believe it is highly likely, indeed, a virtual certainty, that I will grant a motion for judgment at the close of the plaintiff's case." I noted that summary judgment was being withheld on the FMLA "claim(s)" because "the 'he said, she said' nature of the factual record . . . , coupled with the plentitude of ambiguous medical records amassed by plaintiff . . . render summary judgment on the FMLA claim inappropriate." In addition, I candidly stated that "I agree with defendant that the plaintiff's affidavit is an embarrassment, but that must be laid at the feet of counsel and not used to penalize plaintiff himself." (The description of plaintiff's affidavit as an "embarrassment" was based on the remarkably sloppy drafting of the plaintiff's affidavit, in which the plaintiff, who generally refers to himself therein in the first person, is made to refer to himself in several paragraphs in the third person, obviously as a result of the failure of plaintiff's counsel carefully to differentiate the use of language in the affidavit from the identical language appearing in the memorandum in support of plaintiff's cross-motion for summary judgment and in opposition to defendant's motion for summary judgment. See, e.g., Affidavit of Plaintiff, Exh. 31, at ¶¶ 3 ("The Manager job required plaintiff"); 4 ("During the time period from my promotion ... no one ever indicated to me that he was not performing his duties"); 11 ("Ziskind ... asked me if his illness was something from which he could recover"); 18 ("I never stated that he had any second thoughts about the manager position"; "I never expected ... that Ziskind would do my job for him.")(emphases added).)

"Plaintiff (or plaintiff's counsel) took great umbrage at my candid assessment of the merits of the case and notified me in the proposed pretrial order (which was submitted in advance of the scheduled pretrial conference in accordance with the court's local rules) that a motion for recusal would be filed in advance of the pretrial conference. Indeed, plaintiff did so, asserting that I had improperly "prejudged" the case, that plaintiff would not receive a fair trial and/or, of equal importance, would not feel that he had received a fair trial even if he did receive a fair trial, and arguing that I should transfer the case to another judge for trial pursuant to 28 U.S.C. § 455. Plaintiff also pointed out, correctly, that as the standards for summary judgment and for judgment as a matter of law were precisely the same, see, e.g., *Dennis v. Columbia Colleton Medical Center, Inc.*, --- F.3d ---, --- (4th Cir.2002) ("A Rule 50(b) motion for judgment as a matter of law follows the same standard as a Rule 56 motion for summary judgment."), a contradiction inhered in my prediction that a motion for judgment would likely be granted in respect to the FMLA claim, in the face of a contemporaneous denial of summary judgment.

"A further review of the dispositive motions prompted by the motion for recusal, clarified that, indeed, as discussed *infra* in text, plaintiff failed to trigger defendant's duties under

the FMLA because plaintiff failed to provide adequate and timely notice of the need for FMLA leave, and therefore, summary judgment should indeed be granted to defendant on that claim as well, as there is no genuine dispute of material fact.

“I take very seriously motions for recusal, as every federal judge must. In almost seven years on this bench, and in the eight years before that on the state bench, this is to my recollection only the third non-frivolous one I have had occasion to review. Having fully reflected on the matter, I am satisfied that, a reasonable person fully informed of the factual and procedural circumstances which gave rise to plaintiff's decision to file his motion for recusal in this instance would not reasonably conclude that I harbored a bias against plaintiff arising from an extra judicial source such as to call in to question the appearance of propriety in my presiding over this case. See *In re Beard*, 811 F.2d 818, 827 (4th Cir. 1987). Accordingly, the motion for recusal shall be denied and summary judgment entered in favor of defendant for the reasons stated in this opinion.”
203 F.Supp.2d at 462 n. 1.

On appeal, the Fourth Circuit affirmed the judgment in its entirety, specifically stating, as to the motion for recusal, “We likewise see no basis for the district court's recusal.” 2003 WL 21019353, at **2, n. 2.

15. Public Office, Political Activities and Affiliations:

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

I served as an Assistant United States Attorney (District of Maryland) from January 1981 through June 1983. I was appointed by the then United States Attorney, Russell T. Baker.

I was nominated by President Clinton in October 2000 to a vacancy on the United States Court of Appeals for the Fourth Circuit; I did not have a confirmation hearing and the nomination expired. The nomination was returned to the President on December 15, 2000.

In July 1994, I was one of four Baltimore City trial judges nominated by the Appellate Judicial Nominating Commission for elevation to the intermediate appellate court in Maryland, the Court of Special Appeals. Another nominee was appointed by the Governor to that vacancy.

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

In 1971 (while in college) I was a volunteer in the democratic mayoral primary on behalf of Hardy Williams

16. Legal Career: Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
 - i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk for Judge Francis D. Murnaghan, Jr., United States Court of Appeals for the Fourth Circuit from August 1979 through September 1980.

I served as a law clerk for Judge Frank A. Kaufman, United States District Court for the District of Maryland from May 1978 through June 1979.
 - ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

August 14, 1995 to present
United States District Court for the District of Maryland
101 W. Lombard Street
5B Garmatz Federal Courthouse
Baltimore, MD 21201
United States District Judge

December 19, 1990 to August 13, 1995
Circuit Court for Baltimore City
100 N. Calvert Street
Clarence Mitchell Courthouse
Baltimore, MD 21201
Associate Judge

August 3, 1987 to December 18, 1990
District Court of Maryland for Baltimore City
Wabash Avenue
Baltimore, MD 21215
Associate Judge

July 1983 to June 1984
 Frank, Bernstein, Conaway & Goldman (now dissolved)
 Baltimore, MD
 Associate Attorney

January 1981 to June 1983
 Office of the United States Attorney
 U. S. Courthouse
 Baltimore, MD
 Assistant United States Attorney

September 1980 to January 1981
 Civil Rights Division
 U.S. Department of Justice
 Washington, DC
 Appellate Attorney

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.
- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From September 1980 through January 1981, I was an appellate attorney in the United States Department of Justice, Civil Rights Division, Washington, D.C. I researched legal issues and wrote briefs in cases pending before the various courts of appeal.

From January 1981 through June 1983, I was an Assistant United States Attorney for the District of Maryland in Baltimore. I tried jury and non-jury civil and criminal cases, briefed and argued appeals of such cases, sought indictments before federal grand juries, and supervised criminal investigations by the FBI and other federal agencies, among other duties.

From July 1983 through June 1984, I was an associate attorney in the litigation department of the law firm Frank, Bernstein, Conaway & Goldman, in Baltimore. I had general responsibility for a range of legal matters, mainly commercial disputes involving merchants and other businesses. The firm dissolved in 1992.

Starting in Spring 1982, and continuously since then, I have taught the course on constitutional criminal procedure in the evening division of the University of Maryland School of Law.

As a full-time member of the faculty from 1984 through 1987, I taught federal civil procedure; constitutional criminal procedure; legal reasoning, research and writing; oral advocacy; and legal ethics. In addition, I served on several law school committees, including the Committee on Admissions.

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

As an Assistant United States Attorney from 1980 through 1983, I represented the interests of the United States and its agencies before federal and state courts. Although government agencies were usually my clients, there were instances in which I represented an individual, e.g., Veterans Reemployment Rights Act cases. In the area of criminal prosecution, which commanded the majority of my attention as an Assistant U. S. Attorney, I served a public prosecutor role.

During my stint of private practice from July 1983 through June 1984, I represented the private interests of individuals and corporate and similar business entities.

- i. Indicate the percentage of your practice in:

- | | | |
|-----------------------------|-----|-------------|
| 1. federal courts: | 99% | (1981-1983) |
| 2. state courts of record: | 99% | (1983-1984) |
| 3. other courts: | | |
| 4. administrative agencies: | | |

- ii. Indicate the percentage of your practice in:

- | | | |
|--------------------------|---------|-------------|
| 1. civil proceedings: | 15%-18% | (1981-1983) |
| | 90-95% | (1983-1984) |
| 2. criminal proceedings: | 82-85% | (1981-1983) |
| | 5-10% | (1983-1984) |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In approximately eight cases, I was sole counsel.

In approximately five cases, I was chief counsel.

In approximately six cases, I was associate counsel.

- i. What percentage of these trials were:
 - 1. jury: 40%
 - 2. non-jury: 60%
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I have not practiced before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- 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) Monumental Health, Inc. v. Dept. Health & Human Servs., 510 F.Supp. 244 (D.Md. 1981).

In February 1981, a group of Baltimore physicians sued the U.S. Department of Health and Human Services, seeking injunctive and monetary relief for alleged discriminatory termination of federal funding of a local health maintenance organization. As sole counsel for defendants, I tried a four-day, non-jury trial before Judge Shirley B. Jones in the United States District Court for the District of Maryland in February 1981.

Agreeing with my interpretation of the controlling federal statutes and regulations, and accepting my arguments supporting the individual defendants' exercise of discretion, the court ruled in favor of the defendants. The case was significant in that there had been no prior litigation of the particular statutory and regulatory provisions. An appeal was withdrawn. Opposing counsel were David R. Cohan, Esq., Suite 820, 2 N. Charles Street, Baltimore, MD 21201 ((410) 332-1400); and Charles J. Piven, Esq., Suite 2700, 111 S. Calvert Street, Baltimore, MD 21202 ((410)332-0030).

2) United States v. Anderson, et al. (no reported opinion). In Fall 1982, I supervised a grand jury investigation conducted with the assistance of the United States Postal Inspectors into a large-scale fraudulent benefits scheme perpetrated by an employee of a Washington, D.C.-based health insurer. Under my direction, a federal grand jury in Baltimore (many of the co-conspirators lived in Maryland, and cashed checks in Maryland) returned a multi-count indictment charging 19 people with mail fraud and

related offenses. The particular significance of the case was that the total loss over the life of the scheme exceeded \$100,000, and the prosecution of the participants made clear to the victim corporation the need for improved security. The case against one defendant was dismissed; 16 defendants pleaded guilty to one or more counts; and two defendants went to trial before Judge James R. Miller, of the District Court, in late 1982. They were convicted by a jury of various mail fraud and conspiracy counts. Defense counsel in the case that went to trial was Jay Fred Cohen, Esq., (deceased).

3) Green v. Lehman, 544 F.Supp. 260 (D. Md. 1982), aff'd 744 F.2d 1049 (4th Cir. 1984).

In the early 1980's several lawsuits were filed in the United States District Court for the District of Maryland, and elsewhere, by Naval Academy midshipmen, challenging aspects of their treatment by the Academy. I represented the Academy and the Secretary of the Navy in several of such matters. These cases were particularly significant to the continued maintenance of the longstanding regime of military order and discipline within the structure of the Naval Academy. In Green, I represented the Navy in the early stages of one such action. Green challenged his disciplinary discharge from the Academy (and orders to active duty) as discriminatory and arbitrary. With research help from the Navy lawyer, I appeared before Judge Edward J. Northrop in the District Court, who agreed with my arguments that, despite the seeming hardship on individual mids under the disciplinary regime of the Academy, larger institutional considerations were properly controlling. Judge Northrop dissolved a temporary restraining order, denied a preliminary injunction, and ultimately dismissed all claims. Counsel for Green, Weldon Leroy Mattox, Esq., is deceased. I was co-counsel in the early stages of a similar action before Judge Alexander Harvey II in Wimmer v. Lehman, 705 F.2d 1402 (4th Cir. 1983)(reversing grant of preliminary injunction in favor of discharged midshipman).

4) Armed bank robbery prosecution is a regular part of the prosecution docket in Maryland and elsewhere. These cases are significant criminal prosecutions because they very often involve genuine threats of physical injury and potentially death to bank employees, customers and passersby. I was involved in three such cases that posed especially difficult issues of identification, turning, as they do, upon the testimony of victims and witnesses who often have but fleeting observations of the perpetrators.

i. In United States v. Moore, 710 F.2d 157 (4th Cir. 1983), I was co-counsel at trial (occurring in Spring 1982), and I handled the appellate brief-writing and oral argument alone. A cooperating co-defendant committed perjury at trial, in violation of his plea agreement with the government, and he gave testimony in front of the jury that was favorable to the defendant. Vigorous objection was made to my closing argument, which was indeed animated; however, the trial judge, District Judge Herbert R. Murray, overruled the objections. The convictions were affirmed on appeal. Co-counsel was Lynne A. Battaglia, Esq., (now) Associate Judge, Maryland Court of Appeals, Murphy Court Building, Annapolis, MD 21401 ((410) 962-2458). Defense counsel was David Carey Woll, Esq., 18526 Office Park Drive, Gaithersburg, MD 20879 ((301) 926-4811).

ii. In United States v. Henderson, 717 F.2d 135 (4th Cir. 1983), cert. denied, 465 U.S. 1009, 104 S.Ct. 1006, 79 L.Ed.2d 2338 (1984), I tried, with another prosecutor, a bank robbery with significant witness problems, e.g., a co-conspirator who agreed to testify under a plea agreement, but who had credibility weaknesses; and a bank security guard who was not alert on the job, and whose testimony at trial was internally inconsistent. District Judge Joseph C. Howard presided at trial in Summer 1982. On appeal, the Fourth Circuit approved introduction of a written plea agreement in the government's case-in-chief. Co-counsel was James A. Rothschild, Esq., 201 N. Charles Street, Baltimore, MD 21202 ((410) 752-1630). Defense counsel were Bruce C. Bereano, Esq., 195 Duke of Gloucester Street, Annapolis, MD 21401 ((301) 269-5330); and (now) retired Chief Judge Martha F. Rasin, District Court of Maryland, Sweeney District Court Building, 361 Rowe Blvd, Annapolis, MD 21401 ((410) 260-1525).

iii. In United States v. Hicks, 748 F.2d 854 (4th Cir. 1984), I was co-counsel with another prosecutor in a difficult case based upon mainly circumstantial evidence against the getaway driver. District Judge Norman P. Ramsey refused to give an alibi instruction because the only basis for the instruction in the evidence was a police officer's testimony as to certain "false" declarations by the defendant upon his arrest. The Fourth Circuit panel, with one judge dissenting, held there was a sufficient basis for the requested instruction, and the conviction of one defendant was reversed. Co-counsel was Herbert Better, Esq., 100 E. Pratt Street, Baltimore, MD 21202 (410) 332-0444. Defense counsel were Stephen D. Langhoff, Esq., 400 E. Pratt Street, Baltimore, MD 21202 ((410) 539-3737); and Fred Warren Bennett, Esq., (deceased).

5) In Dixon v. Westinghouse Electric Corp., 615 F.Supp. 538 (D.Md. 1985), aff'd 787 F.2d 943 (4th Cir. 1986), remanded, 486 U.S. 1019, 108 S.Ct. 1990, 100 L.Ed.2d 222 (1988), rev'd on remand, 857 F.2d 945 (4th Cir. 1988), I was one of counsel to defendant Westinghouse during the discovery/summary judgment stage of the litigation, which involved claims of sex discrimination under Title VII of the 1964 Civil Rights Act. The significance of this case is that it foreshadowed a further development in the law under Title VII. As I predicted during the preparation of the motion for summary judgment filed on behalf of the defendant, the Supreme Court ultimately held that, under "workshare" agreements in "deferral" states, the Equal Employment Opportunity Commission could lawfully accept for processing a complaint of discrimination even if the complaint would have been untimely if it had been filed directly with the state "deferral" agency. The Supreme Court so held in EEOC v. Commercial Office Products Co., 486 U.S. 107, 108 S.Ct. 1666, 100 L.Ed.2d 96 (1988), and upon the remand of the Dixon case to the Fourth Circuit, the appellate court reversed itself and the contrary holding of Judge Joseph H. Young of the District Court in Maryland. My co-counsel were Leonard E. Cohen, Esq., Piper and Marbury, 6225 Smith Avenue, Baltimore, MD 21209 ((410)580-3000) and Monte Fried, Esq., 3rd Floor, 100 Light Street, Baltimore, MD 21202 ((410) 659-1312). Opposing counsel was Mark E. Herman, Esq., 14 W. Madison Street, Baltimore, MD 21201 ((410) 837-2144).

6) In addition, I played a major role in the following significant appeals (opinions attached):

- i. In Iron Arrow Honor Society, etc., et al. v. Heckler, 652 F.2d 445 (5th Cir. 1981)(involving the application of Title IX: non-discrimination in federal educational programs), I wrote the brief for the federal defendants. In subsequent proceedings in this case, the Supreme Court dismissed the action as moot. 464 U.S. 67, 104 S.Ct.373, 78 L.Ed.2d 58 (1983)(per curiam).
- ii. In United States v. Hess, 691 F.2d 188 (4th Cir. 1982)(appeal of RICO forfeiture), I presented oral argument on behalf of the government.
- iii. In State v. Standifur and Henry, 310 Md. 3, 526 A.2d 955 (1987), aff'g 64 Md.App. 570, 497 A.2d 1164 (1985)(application of the "declaration against penal interest" exception to the Hearsay Rule in Maryland; convictions reversed), I wrote the brief and presented oral argument on behalf of defendant Colonel Henry, in both appellate courts.

18. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have been active in the Maryland Bar Association and the American Bar Association, in which I served, *inter alia*, as Chair of the Executive Committee of the Conference of Federal Trial Judges, a constituent unit of the Judicial Division of the ABA.

I served as a facilitator at the 1997 Judicial Conference of the United States Court of Appeals for the Fourth Circuit, leading a panel discussion. I have served as a panelist on numerous legal education programs, including employment law, patent litigation and scientific evidence.

Since 1994, I have been a volunteer instructor at the National Judicial College, located in Reno, NV.

Since 2002, I have served as a member (by appointment of the Chief Justice) of the Judicial Conference of the United States, Committee on International Judicial Relations. In this connection, I have traveled to more than a dozen countries as a "Judicial Ambassador" to conduct numerous education and training workshops and seminars, including Rule of Law activities.

In summer 2007, I hosted a group of five Russian judges during their week-long visit to Baltimore to study American judicial systems (the "Open World" Program). I have hosted

numerous groups of foreign judges, prosecutors, and lawyers at my court who were visiting the United States.

- 19. Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have taught as an adjunct at the University of Maryland School of Law for many years. I have taught mainly constitutional criminal procedure, covering Fourth, Fifth, Sixth, and Fourteenth Amendment Supreme Court jurisprudence. I have also taught the course on federal jurisdiction, covering the law of federal courts and related issues, as well as appellate advocacy. My syllabi consisted simply of readings from selected casebooks.

I also serve as an occasional lecturer (once annually) for a one-day course on Maryland State Civil Procedure in a course for bar exam applicants seeking admission to the Bar of Maryland.

- 20. Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

- 21. Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I plan to continue to teach one course per year as an adjunct professor at the University of Maryland School of Law.

- 22. Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

- 23. Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. Potential Conflicts of Interest:

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I am not aware of any such potential conflicts-of-interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I employ the Judicial Conference-mandated computerized conflicts software to avoid and discover potential financial conflicts in the cases assigned to my docket. In addition, I remain vigilant by examining every matter assigned to me to uncover promptly any potential conflict. I do not anticipate conflicts apart from those arising from, and requiring recusal as a result of, financial holdings of myself and family members in accordance with federal law and the Code of Judicial Conduct for United States Judges.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have engaged in a wide variety of activities of a pro bono publico nature throughout my career as a lawyer and judge. I have visited elementary and secondary schools, especially around the annual May 1 "Law Day" observances, but at other times during the year as well.

While an attorney for the government I could not represent private persons; however, while in private practice, I represented indigent persons in court for no fee. Approximately 5% of my time while in private practice was devoted to pro bono matters.

Since becoming a judge in 1987, I have been prohibited from the practice of law. However, I have served on committees for non-profits, continued to participate in "Law Day" (and similar) activities, and I serve on the Board of a local high school "Law-Related Education" program.

Also, as a judge, I have been especially active in connection with issues of gender and racial equality in the judicial system and in the legal system. I have appeared as a panelist and participant in a number of bar association meetings and seminars. I appeared in a training video produced under the sponsorship of the State Justice Institute and the National Center for State Courts.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in Maryland.

I understand that Senator Mikulski consulted with respected members of the Maryland bar as to her decision on whom to support for this nomination. I communicated my desire to be considered for nomination to Senators Mikulski and Cardin in early January 2009. Senator Mikulski spoke to me in early January and told me that she intended to recommend me for nomination to the White House. On or about January 30, 2009, I spoke to the Office of White House Counsel and received by email forms to complete to commence the vetting process. A few days later, I received additional forms from the Justice Department. In early February 2009, I was interviewed by a representative of the ABA and, in mid-February, by agents of the FBI. On March 24, 2009, I met with lawyers from the Counsel's Office at the White House. That meeting was followed by an additional telephone conference. On March 27, 2009, I met with the Attorney General for approximately fifteen minutes in his office.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Andre M. Davis, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

April 1, 2009
(DATE)

Andre M. Davis
(NAME)

[Signature]
(NOTARY)

My Commission expires
on November 2009

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLANDCHAMBERS OF
ANDRE M. DAVIS
UNITED STATES DISTRICT JUDGEU.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-6801
FAX (410) 962-6820
MDDAMDCchambers@mdd.uscourts.gov

April 17, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to update my Senate Questionnaire with the following additional information relevant to Question 12(c), which was inadvertently omitted from my earlier submission or was discovered through further searching for material.

October 21, 2008 - Panelist, "Confidentiality and Litigation Holds," Association of Corporate Counsel Annual Meeting, Seattle WA. This was a continuing legal education program sponsored by the Litigation Committee. I have attached a description of the program from the Program Guide and the PowerPoint slides prepared jointly by panelists.

September 27, 2008 - Moderator, Panel on Courts and the Media, Just the Beginning Foundation Bi-annual meeting, Washington, DC. A summary of this panel from the meeting program is attached. I have no notes or transcript of my remarks.

April 13-17, 2008 - National Judicial College, Judicial Philosophy and American Law, Sedona AZ. This was a "non-credit" course offered by the College, usually once a year. I have taught the course on two occasions as a co-presenter with a distinguished state judge from Houston, Texas. I included the course outline with my earlier submission, together with the PowerPoint slides I used in my presentations. The course outline shows the topics on which I presented and those presented by Judge Dorfman. I have no notes beyond the PowerPoint.

January 31, 2008 - Roundtable on Judging Genes: Implications of the Second Generation of Genetic Tests in the Courtroom, University of Maryland School of Law. I have attached a copy of the agenda for this program. I attended only the portion during which I was a panelist. I have no notes or transcript of my remarks.

February 17, 2007 - "The Role of Judicial Independence in a Democracy," Seminar for South African Judges, for the Department of Justice. This was a short after-dinner talk in connection with a Justice Department seminar on the new South African organized crime law. It focused on the Rule of Law and judicial independence. I have no notes or transcript.

Page: Two
To: Hon. Patrick J. Leahy
Date: April 17, 2009

March 2006 - Co-Presenter, U.S. Department of Justice Seminar on Plea Bargaining for Nigerian Judges, Lagos and Abuja, Nigeria. This was a two-day presentation by prosecutors from the U.S. Department of Justice, an American Public Defender, and myself designed to assist Nigerian judges, prosecutors, and defense lawyers practice under a new statute in their country.

March 2006 - Moderator of Panel, Forum on the Justice Kennedy Commission, University of Maryland School of Law, Baltimore, MD. This was a series of three panels, each discussion an aspect of the Report of the Justice Kennedy Commission (on which I served). The Report has been submitted. I have no notes or transcript.

September 11-14, 2006 - Co-Presenter, "Judicial Philosophy and American Law," Savannah, GA, for the National Judicial College. This is the same course listed above. I have no notes or transcript.

October 6-7, 2005 - Remarks at "Video and the Law" seminar, Law Enforcement and Emergency Services Video Association, Coeur d'Alene, ID. I have attached a short summary of this program. I presented as a judicial member of the ABA Section on Science, Technology and the Law. I have no notes or transcript.

September 15, 2005 - Co-Presenter, "Today's Justice," National Judicial College, Washington, DC. This is another "non-credit" course offered by the college which covers substantially the same material as the course titled "Judicial Philosophy and American Law." The course focuses on notable developments in constitutional law and founding documents. I have no notes or transcript.

August 2005 - Remarks, "CSI Meets the Courts" panel discussion, ABA Annual Meeting, Chicago, IL. This was a discussion of the extent to which modern crime shows do or do not have an impact on jury trials. I have no notes or transcript.

July 27, 2005 - Panelist, "Litigation Skills Workshop," Association of Trial Lawyers of America Annual Meeting, Toronto, Canada. I was a panelist with Federal District Judge Myron Thompson of Alabama. We discussed general "litigation tips" and effective advocacy. I have no notes or transcript.

November 2004 - Facilitator, Bench Book Development Meeting, for Latvian judges, Prague, Czech Republic. This three day meeting was under the auspices of the ABA Central and Eastern European Law Initiative at its then new training center in Prague. With the assistance of a translator, I served as a subject matter expert in helping Latvian judges to draft a "Bench Book" reflecting changes made in a new criminal code in their country. I have no notes or transcript.

September 17, 2004 - "DNA Fingerprinting and Civil Liberties" at American Society of Law, Medicine & Ethics, Harvard University, Boston, MA. I presented a short talk on the evolving role of DNA evidence in criminal cases as a part of a general seminar on related topics. I have no notes or transcript.

Page: Three
To: Hon. Patrick J. Leahy
Date: April 17, 2009

August 11, 2004 - Co-Presenter, "Genetics in the Courtroom," National Bar Association Annual Meeting, Atlanta, Georgia. This was a panel presentation for lawyers and laypersons on the evolving role of science and, in particular, DNA evidence, in legal matters. I have no notes or transcript.


June 17, 2004, Panelist, "Right to Counsel," Maryland State Bar Association, Ocean City, MD. This panel was presented during the Annual Meeting of the state bar association. The focus was on the issue of whether Maryland's use of bail bonds to secure release of those awaiting trial in criminal cases should be brought more in line with federal practice. I have no notes or transcript.

June 2004, Co-Presenter, "The Role of Judges in Democracies," Mbane, Swaziland, for USAID. This was a week-long presentation, a "Rule of Law" program, offered to judges, prosecutors, and defense lawyers on various aspects of criminal law and procedure, including judicial ethics and courtroom technology. My co-presenter was a lawyer expert on democratic governance. I have no notes or transcript.

October 2003, Co-Moderator, Panel on "The Promise v. Board: Yesterday, Today and Beyond," Judicial Division of the American Bar Association Meeting, San Antonio, TX. This was a panel discussion to commemorate the anniversary of this famous case. The panelists were prominent Texans who had been affected in different ways by school segregation and desegregation. I have no notes or transcript.

March 1999, "Ethical Pratfalls in Employment Cases" CLE Program, Columbia, MD. I was a co-presenter with two employment law practitioners, one who represented plaintiffs and one who represented defendants. My PowerPoint slides are among my original attachments.

Very truly yours,



Andre M. Davis
United States District Judge

AMD:tt
cc:
The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
ANDRE M. DAVIS
UNITED STATES DISTRICT JUDGE

U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-0801
FAX (410) 962-0820
MDDAMDCChambers@mdd.uscourts.gov

April 21, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to update my Senate Questionnaire with the following additional information relevant to Question 12(c).

April 20, 2009 - Keynote Speaker, Graduation Ceremonies for the FBI's Citizen Academy, Baltimore. A description of the Citizen Academy is attached. I gave a brief overview of the FBI's importance to law enforcement, the esteem in which it is held internationally, and remarks concerning the importance of full community involvement in fighting crime. I did not use notes and I have no transcript.

Very truly yours,



Andre M. Davis
United States District Judge

AMD:tt
cc:
The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

FBI Citizens Academy Speaking Request
Costigan, James J.

to:

judge_andre_davis@mdd.uscourts.gov

04/15/2009 10:46 AM

Show Details

History: This message has been replied to.

Toni,

It was good to talk to you today. Due to a speaker falling through we are in need of a Keynote Speaker for our next graduating Citizen's Academy class on Monday the 20th. The dinner starts at 7:00 pm and will be held at Martins West in Woodlawn, the program can be adjusted due to the short notice for the Judge's arrival anytime between 8:45 to 9:30.

The Citizen's Academy is a multi-cultural community outreach program to business and community leaders to educate them regarding the role of the FBI and Federal Law Enforcement. This graduation is a culmination of eight weeks (30 hours) of training regarding the various FBI programs. The class met on their own time at nights and on weekends. This was comprised of 25 individuals from across the state. If the Judge could speak for fifteen minutes regarding the Federal Court and the responsibilities of citizens with respect to the federal judicial system we would be most appreciative.

Again, I apologize for the late notice and understand the demands of the Judge's time. Please extend my congratulations to the Judge on his nomination to the Fourth Circuit. Please call if you have any further questions.

Thank You,

Jim Costigan
A/ASAC
Baltimore FBI
410-277-6203

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
ANDRE M. DAVIS
UNITED STATES DISTRICT JUDGE

U.S. COURTHOUSE
101 W. LOMBARD STREET
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MDDAMDCChambers@mdd.uscourts.gov

April 27, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In connection with my pending nomination, enclosed herewith are the following documents:

(1) The ethics complaint filed against me on August 5, 2004, by Community Rights Counsel, regarding my membership on the Board of the Foundation for Research on Economics & the Environment ("FREE");

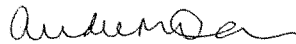
(2) My request to the Codes of Conduct Committee for an Advisory Opinion, submitted on February 28, 2005;

(3) The Advisory Opinion delivered to me by the Codes of Conduct Committee on March 30, 2005; and

(4) The Memorandum and Order of then Chief Judge William W. Wilkins dismissing the ethics complaint on the ground that I had resigned from the Board of FREE, filed on April 5, 2005.

I have received advice from the Chair of the Codes of Conduct Committee, Honorable M. Margaret Mckeown, that the Committee's policy on disclosure permits this submission.

Very truly yours,



Andre M. Davis
United States District Judge

AMD:tt
cc:
The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

04-9034

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

MAIL THIS FORM TO THE CLERK, UNITED STATES COURT OF APPEALS, 1100 EAST MAIN STREET, ROOM 501, RICHMOND, VIRGINIA 23219-3517. MARK THE ENVELOPE "JUDICIAL MISCONDUCT COMPLAINT" OR "JUDICIAL DISABILITY COMPLAINT." DO NOT PUT THE NAME OF THE JUDGE ON THE ENVELOPE.

1. Complainant's name: Douglas T. Kendall
Address: 1301 Connecticut Ave NW
Suite 502, Washington DC, 20036
Daytime telephone: (202) 296-6889

2. Judge complained about:
Name: U.S. District Judge Andre Davis
Court: District of Maryland

3. Does this complaint concern the behavior of the judge in a particular lawsuit or lawsuits?
 Yes No

If "yes," give the following information about each lawsuit:

Court:

Docket number:

Are (were) you a party or lawyer in the lawsuit?

Party Lawyer Neither

NOV 15 - 4 10:00
COURT OF APPEALS
FOURTH CIRCUIT

If a party, give the name, address, and telephone number of your lawyer:

Docket numbers of any appeals to the Fourth Circuit:

4. Have you filed any lawsuits against the judge?
[] Yes [x] No

If "yes," give the following information about each lawsuit:

Court:

Docket number:

Present status of suit:

Name, address, and telephone number of your lawyer:

Court to which any appeal has been taken:

Docket number of the appeal:

Present status of the appeal:

5. On separate sheets of paper, not larger than the paper on which this form is printed, describe the conduct or the evidence of disability that is the subject of this complaint. See Rule 2(b) and 2(d). Do not use more than 5 pages (5 sides). Most complaints do not require that much.
6. You should either
(1) check the first box below and sign this form in the presence of a notary public; or
(2) check the second box and sign the form. You do not need a notary public if you check the second box.

I swear (affirm) that --
 I declare under penalty of perjury that --

- (1) I have read Rules 1 and 2 of the Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct or Disability, and
- (2) The statements made in this complaint are true and correct to the best of my knowledge.

Doyle Kendall
(Signature)
Executed on 7/30/04
(Date)

Sworn and subscribed to
before me _____
(Date)

(Notary Public)

My commission expires:

STATEMENT OF FACTS

This petition is being filed pursuant to 28 U.S.C. § 351 because Judge Andre Davis is engaging in “conduct prejudicial to the effective and expeditious administration of the business of the courts” by serving on the Board of Directors of a Montana-based organization called the Foundation for Research on Economics and the Environment (FREE). The evidence summarized below and exhaustively detailed in the two enclosed Community Rights Counsel (CRC) reports¹ demonstrate that service on FREE’s board is inconsistent with several canons of the Code of Conduct for United States Judges. The remarkably disturbing conduct of FREE during the time *American Trucking Ass’n, Inc. v. Environmental Protection Agency*, 175 F.3d 1027, revised, reh’g denied, 195 F.3d 4 (D.C. Cir. 1999), *rev’d sub nom. Whitman v. American Trucking Ass’n, Inc.*, 531 U.S. 457 (2001), was pending before the D.C. Circuit vividly illustrates the need to prohibit judges from serving on boards of organizations like FREE that take money from interested parties to host judges on vacation-style trips designed to advance one side’s perspective in a particular area of the law.

This petition is filed reluctantly, and only after efforts to promote reform by members of Congress, a former chief judge of the D.C. Circuit, and the American Bar Association have failed to limit the participation by judges in FREE’s operations and programs. Similar petitions have already been filed regarding the board service of Chief Judge Douglas Ginsburg of the D.C. Circuit, Chief Judge Danny Boggs of the Sixth Circuit, and Judge Jane Roth of the Third Circuit.² Petitioner is not alleging actual impropriety by Judge Davis in any case. Petitioner’s hope is that Judge Davis will respond to this petition by resigning from membership on FREE’s board, an action that would warrant dismissal of this petition pursuant to 28 U.S.C. § 352(b)(2). If he fails to resign, petitioner respectfully asks the Judicial Council to issue an opinion finding that his continued service on FREE’s board constitutes a violation of 28 U.S.C. § 351.

Judge Davis’s Service on FREE’s Board of Directors Undermines Public Trust in the Judiciary and Reflects Adversely on His Impartiality.

FREE is a Montana-based non-profit organization that hosts multi-day private trips for judges with lectures on environmental topics. FREE flies judges to Yellowstone-country, Montana, hosts them at picturesque dude ranches and historic railroad hotels, pays their room and board, assembles course materials, and brings speakers from around the country to lecture to the judges. FREE assures judges that there will be plenty of “time for cycling, fishing, golfing, hiking and horseback riding.” *NFF* at 14. FREE’s tax filings for 2000 and 2001 indicate that it spent \$273,057 for judicial seminars in 2000 and \$217,580 for judicial seminars in 2001. *TJ* at 22. During those same years, judges report attending 20 and 15 FREE trips, respectively. These figures indicate that FREE is spending more than \$10,000 per judge per trip. *Id.*

FREE’s funding comes almost entirely from corporations, corporate-controlled foundations, and a collection of highly-ideological foundations, including Sarah Scaife Foundation (run by Richard Mellon Scaife), Charles Koch Foundation and Claude Lambe Foundation (both controlled by Charles Koch and other employees of Koch Industries), and Castlerock Foundation (run by the Coors family of

¹ Community Rights Counsel, *Tainted Justice: How Private Judicial Trips Undermine Public Trust in the Federal Judiciary* (2004) [hereinafter *TJ*]; Community Rights Counsel, *Nothing for Free: How Private Judicial Seminars are Undermining Environmental Protections and Breaking the Public’s Trust* (2000) [hereinafter *NFF*].

² This petition is being filed later than these original petitions because Judge Davis’s role as a FREE trustee was unknown to petitioner at the time the initial petitions were filed and not, to petitioner’s knowledge, made public by FREE until after the initial petitions were filed.

Coors, Inc.). *Id.* FREE's corporate funders – which have included Texaco, Exxon, General Electric, General Motors, Koch Industries, Monsanto, Pfizer, and Shell – are frequently involved in environmental disputes in federal court. Almost all of FREE's major foundation funders also finance other organizations, such as the Pacific Legal Foundation (PLF) and the Washington Legal Foundation (WLF), that bring environmental litigation in federal court. *Id.* at 23-26. Thus, nearly every one of FREE's major funders has a clear interest in the results of environmental litigation in federal courts. FREE's funders also share the same perspective on federal environmental protections: either for pecuniary or ideological reasons, FREE's funders desire judicial rulings that limit or cut back on federal environmental protections.

FREE's seminars advance the interests of its funders. In the words of John Baden, FREE's founder and Chairman, FREE's judicial trips advance “a coherent new vision” with a “unifying theme” of “rejection of top-down, command and control environmentalism.” *TJ* at 26; *NFF* at 27. According to long-time FREE trustee and frequent FREE lecturer James Huffman, FREE's trips amount to “educational programming” of judges that complement the efforts of groups like PLF and WLF, which are challenging environmental laws in federal court. *TJ* at 25-26. A sense of FREE's perspective can be gleaned from the fact that both Mr. Baden and FREE's Program Director Pete Geddes have published articles in the last 18 months that invoke the names of murderous despots such as Stalin, Hitler, and Pol Pot in condemning environmental positions. *Id.* at 28-29. Describing a message delivered to federal judges at a FREE program, FREE's John Downen writes that environmentalists seeking action to prevent global warming “hold humanity in low regard.” *Id.*

The corporations that fund FREE, and groups such as PLF and WLF that are supported financially by FREE's funders, are frequently involved in litigation before judges who attend FREE seminars. *Id.* at 26-27, 42-43. FREE also allows officials of its corporate funders to participate as lecturers to federal judges at its seminars, including, in several documented cases, to a judge then presiding over a case involving the corporation. *Id.* at 23-24, 42-43. In recent years, FREE has enabled representatives of six of its corporate funders to lecture to more than 100 federal judges at 10 different FREE seminars on such topics as “The Environment: A CEO's Perspective.” *Id.* at 23. Participation in these seminars also allows these representatives to spend nearly a week at a vacation resort riding horseback and even, on occasion, sharing a cabin with a federal judge. *Id.* at 21-22. In this respect, FREE's judicial seminars stand in contrast to those run by George Mason University's Law and Economics Center, which assures judges that “no corporate donor is ever allowed to interact with any program participants in any way whatsoever.” *Id.* at Ch. 4 n.23.

FREE is proud of its efforts to influence the decision making of federal judges in environmental cases. As one of FREE's funders has stated, FREE is “keen to attract those [judges] with the most decision making authority in the realm of environmental law, namely, judges on the Court of Federal Claims, the Federal Circuit and the District of Columbia Circuit.” *Id.* at Ch. 4 n.155. As FREE's James Huffman has said in response to criticism of FREE's seminars: “If people feel strongly about ideas and they want to influence someone in government they can – that's the way the system works.” *Id.* at 26.

Judge Davis's service on FREE's board is in violation of Canon 5B(1), which prohibits judges from serving as an officer, director, or trustee of an organization where it “reflect[s] adversely upon the judge's impartiality.” The companies that fund FREE are involved in important environmental cases before this Circuit, *see, e.g., Castles Auto & Truck Service Inc., v. Exxon Corp.*, 16 Fed. Appx 163 (4th Cir. 2001) and regularly appear before Judge Davis, *see e.g., Hannon v. Exxon Co., U.S.A.*, 1:98cv01822 (D. Md. May 10, 1999); *Hernandez v. General Motors Corp.*, 1:01cv01462 (D. Md. Dec. 18, 2001); *Baltimore Refuse Energy Sys. Co. v. General Elec. Energy & Indus. Svcs., Inc.*, 1:01cv01340 (D. Md.

Jan. 13, 2003); *Santacroce v. Pfizer, Inc.*, 1:01cv02459 (D. Md. July 9, 2002). Serving on the board of an organization that takes money from corporations and promotes those corporations' points of view reflects adversely on Judge Davis's impartiality in environmental cases of interest to FREE's funders. As Stephen Gillers, Vice Dean of New York University's School of Law, told the *The Washington Post* in response to the filing of CRC's petition against Chief Judge Ginsburg, sitting on FREE's board "compromises the public's view of the impartiality of panels on which he sits in every case of interest to FREE's members." Carol D. Leonnig, *Judges Are Asked to Quit Board Positions*, WASH. POST, Mar. 23, 2004, A2.

The formal and informal advisory opinions issued by the judiciary's Committee on Codes of Conduct confirm that Judge Davis's membership on FREE's board cannot be squared with ethical mandates. These rulings prohibit judges from serving on the boards of organizations that litigate or sponsor or promote litigation. See Advisory Opinions 15 & 40; U.S. Judicial Conference Policy Statement, *quoted in* Advisory Op. No. 34. Recusal rules already ensure that a judge could not preside over a case in which he is a fiduciary of one of the litigants. 28 U.S.C. § 455(b). The prophylactic rule against service on boards of organizations like the Sierra Club and the ACLU prevents judges from adding the weight of their office to one side of a contentious policy issue that may ultimately come before the judge. Advisory Opinion No. 40. That is why a judge may not even sit on an advisory board of an organization such as the American Enterprise Institute – which apparently has never appeared as a party or an amicus party in federal court – if such service “would reasonably be viewed as endorsing the views of that organization on issues which are likely to come before the court.” Compendium § 5.3-2(d); see also JEFFREY M. SHAMAN, ET AL, JUDICIAL CONDUCT AND ETHICS 302 (2000) (“Thus, judges should avoid membership in even the most praiseworthy and noncontroversial organizations if they espouse, or are dedicated to, a particular legal philosophy or position.”). As a trustee of FREE, Judge Davis is reasonably viewed as endorsing FREE's position on environmental topics that come before this Circuit.

Service on FREE's board also violates Canon 2A, which requires judges to “act at all times in a manner that promotes confidence in the integrity and impartiality of the judiciary,” and Canon 2B, which prohibits judicial activities that “convey or permit others to convey the impression that they are in a special position to influence the judge.” Since they were first chronicled in a front-page story in a national newspaper in April 1998, FREE's programs have been criticized by members of Congress, ethics experts, a former chief judge of the D.C. Circuit, and more than 30 major newspaper editorial pages spanning the political spectrum. *TJ* at 5. There does not appear to be a single editorial page in the country that has supported FREE's judicial trips. The service of jurists like Judge Davis on FREE's Board of Directors enables FREE to continue to attract judges to its programs despite this controversy, undermining public confidence in the judiciary.

Similarly, Judge Davis's service on FREE's board conveys to the public that FREE's board members, who have included a prominent litigator, several corporate executives, and many vitriolic critics of environmental laws, are in a special position to influence him. FREE's board gives these individuals remarkable access to some of the nation's most important environmental decision makers to discuss FREE's mission to promote “rejection of top-down, command and control environmentalism.” *Id.* at 26. The Committee on Codes of Conduct has interpreted canon 2B to bar a judge from attending a brown bag lunch at a law firm because of the concern that this might convey the impression that the firm is in a special position to influence the judge. Compendium § 2.10(d). The same concerns bar Judge Davis's membership on FREE's Board.

Judge Davis's service on FREE's Board lends the considerable weight of his judicial office to the positions on environmental law topics adopted by FREE, it undermines public trust in the judiciary

as a whole, and reflects adversely on his own impartiality. For all these reasons, he cannot properly sit on FREE's board.

FREE's Conduct While *American Trucking Ass'ns v. EPA* was Pending Before the D.C. Circuit Suggests that FREE Manipulates Its Board Membership and Seminar Programs in an Effort to Influence the Outcome of Cases.

The *American Trucking Ass'ns v. EPA*³ case was one of the most important environmental cases decided in the last decade. The case involved clean air protections for soot and smog designed to protect 125 million Americans from the health hazards associated with air pollution. *TJ* at 46. When these standards were proposed, industry, fearing compliance costs in excess of \$5 billion, launched what the *The Washington Post* called an "extraordinary, multimillion-dollar campaign" to prevent them from going into effect. *Id.* at 47-48. When this lobbying effort failed, the industry coalition filed suit in the D.C. Circuit. In May 1999, a divided panel of the D.C. Circuit struck these regulations down. The panel's most important ruling was a 2-1 holding, written jointly by Chief Judge Ginsburg and Judge Williams, finding that the Clean Air Act provided no "intelligible principle" for setting air pollution standards and thus represented an unconstitutional delegation of legislative authority from Congress to EPA. *Id.* at 50. The Court denied rehearing en banc, with five judges voting in favor of rehearing and four against (Judges Henderson and Wald were active at the time, but did not participate, meaning that six votes were required for rehearing). The decision was then unanimously reversed by the Supreme Court. *Id.* at 50.

The stakes at issue in the *ATA* case are important because they illustrate that the corporations that fund FREE had every reason to want to influence the D.C. Circuit's consideration of the case. FREE's funders certainly knew about this critical case – they were very much involved in it. For example, Texaco (which gave FREE \$75,000 in 1998-1999), Exxon (which gave FREE \$20,000 in 1999), and Koch Industries (which gave FREE \$195,000 through two company-controlled foundations in 1998 alone) were all members of the American Petroleum Institute (API), one of the lead industry petitioners in *ATA*. *Id.* at 23, 54. These same Koch foundations and David Koch also control the Citizens for a Sound Economy (CSE) Foundation, which paid for an amicus brief written by C. Boyden Gray, Chairman of the Board of CSE, focusing solely on the non-delegation doctrine. *Id.* at 54. Texaco, Exxon, and Koch all faced very large compliance costs if the clean air protections at issue in *ATA* were upheld by the D.C. Circuit.

While the *ATA* case was pending before the D.C. Circuit, FREE provided all-expense paid trips to Montana to three of the court's judges. Chief Judge Ginsburg – who serves with Judge Davis on FREE's Board – attended a FREE board meeting in July 1998 and then joined Judge Williams on the faculty of a FREE trip for judges immediately thereafter. *Id.* at 46-47, 51. The Charles Koch Foundation is listed as one of three sponsors of this program. *Id.* at 54. Judge Sentelle, who joined Chief Judge Ginsburg and Judge Williams in voting against rehearing of *ATA*, attended an August 1998 FREE seminar for judges. *Id.* at 57-58. The Claude Lambe Foundation, also controlled by Charles Koch and Koch Industries, is listed as one of two sponsors of Judge Sentelle's trip. *Id.* at 54.

During approximately this same time period, Edward Warren – the lawyer who briefed and argued *ATA* for the industry petitioners – was added to FREE's Board of Directors. *Id.* at 51-54. After he filed his reply brief in *ATA*, and before oral argument, FREE twice brought Mr. Warren – who

³ 175 F.3d 1027 (D.C. Cir. 1999), *revised, reh'g denied* 195 F.3d 4 (D.C. Cir. 1999), *rev'd sub nom* Whitman v. American Trucking Ass'ns, Inc., 531 U.S. 457 (2001).

appears to have had no prior contact with FREE – to Montana to participate on the faculty of FREE’s programs for judges, including the August 1998 program attended by Judge Sentelle. *Id.* Based on Mr. Warren’s lecture topic, entitled “Applying More Harm than Good: Principles in Environmental Decision Making,” *id.* at 51, and a law review article he published with a very similar title, it appears that Mr. Warren’s lecture closely paralleled the arguments he made in his briefs to the D.C. Circuit in *ATA*. *Id.* at 48-51. Mr. Warren appears to have resigned from FREE’s Board at approximately the same time that the panel decided *ATA*, concerned that his presence on FREE’s Board might look bad. *Id.* at 51. FREE then failed to disclose Mr. Warren’s service on its board in apparent violation of federal tax laws, thus making it difficult for these facts ever to come to light. *Id.* at 51-52.

It strains credibility to suggest that FREE had no knowledge of *ATA* – the most important environmental case then pending in the country – when it selected Warren for its board and program schedules. As discussed above, many of FREE’s funders plainly knew of the case because they were involved in it. Certainly also Mr. Warren and Chief Judge Ginsburg both knew about the case. No later than at oral argument, when Mr. Warren appeared before him, Chief Judge Ginsburg must have realized that he was sitting on the Board of Directors of FREE with the lead counsel for the industry petitioners in the then-pending *ATA* case. Chief Judge Ginsburg had to know that, if discovered, his role on FREE’s board with Mr. Warren would raise questions about his impartiality in *ATA*. Yet there is no evidence that Chief Judge Ginsburg raised these issues with the parties in *ATA* to give them the opportunity to seek his recusal. Rather, Chief Judge Ginsburg apparently stayed silent and ruled in Mr. Warren’s favor. Meanwhile, Mr. Warren quietly resigned from FREE’s board.

FREE’s funding from corporations that had enormous stakes in *ATA* gave FREE a clear motive to try to influence the outcome of the *ATA* case. FREE’s decision to add Mr. Warren to its board, which already included Judge Ginsburg, and its decision to provide Mr. Warren with the opportunity to lecture to federal judges (including Judge Sentelle) at two seminars while the *ATA* case was pending, suggests that FREE is indeed bold enough even to try to influence cases pending before Chief Judge Ginsburg. FREE’s failure to report Mr. Warren’s membership on their board on their tax forms suggests FREE is willing even to violate tax laws to keep their operations secret.

The Codes of Conduct Committee has flatly prohibited judges from attending private judicial seminars where there is even an “appearance of attempting to influence decision of specific cases.” Compendium § 5.4-6(a). A fortiori, Judge Davis cannot serve on the board of an organization that is attempting to, or even appears to be attempting to, influence the decision of a case actually pending before a judge, particularly when interested corporations are paying the expenses the judge incurs in participating in the organization’s activities.

Conclusion

One of the most disturbing aspects of FREE’s conduct in the *ATA* case is that it took place just a few months after a national paper ran a highly-critical front page story on FREE’s operations, a story that led to a significant amount of criticism of FREE in Congress and on editorial pages across the country. FREE plainly cannot be expected to respond to criticism by conforming its operations to the ethical restrictions that apply to federal judges. The judiciary must take steps to contain the damage that FREE’s operations are doing to its reputation. The necessary first step is for this Judicial Council to rule that Judge Davis may not with propriety serve on FREE’s Board of Directors.

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
ANDRE M. DAVIS
UNITED STATES DISTRICT JUDGE

U.S. COURTHOUSE
101 W. LOMBARD STREET
BALTIMORE, MARYLAND 21201
(410) 962-0801
FAX (410) 962-0820

February 28, 2005

Judicial Conference of the United States
Committee on Codes of Conduct
ATTN: Ms. Marilyn J. Holmes
Associate Director and General Counsel
Administrative Office of the U.S. Courts
7-290 Thurgood Marshall Federal
Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20002

Dear Mr. Chairman and Members of the Committee:

On August 6, 2004, Community Rights Counsel filed a complaint against me, by its Executive Director, Douglas Kendall, with the Circuit Council of the United States Court of Appeals for the Fourth Circuit alleging that my service on the Board of Trustees of the Foundation for Research on Economics and the Environment ("FREE") constitutes a violation of 28 U.S.C. § 351 (and related Canons of the Code of Conduct for United States Judges) as "conduct prejudicial to the effective and expeditious administration of the business of the courts." I became a member of the FREE Board in the Spring of 2004. A copy of the complaint, together with the attachments thereto, is enclosed. A copy of the complaint is available at www.communityrights.org/TaintedJustice/DavisPetition.pdf. The attachments to the complaint are available at <http://tripsforjudges.org/crc.pdf>. The complaint is careful to note that it does not allege that I have actually committed an improper act, but that it is based on the appearance of impropriety.

As the within complaint notes, substantially identical complaints have been filed against the other federal judges on the FREE Board: Chief Judge Douglas Ginsburg of the Court of Appeals for the District of Columbia Circuit; Chief Judge Danny Boggs of the Court of Appeals for the Sixth Circuit; and Circuit Judge Jane Roth of the Court of Appeals for the Third Circuit.

I have briefly discussed this complaint with Chief Judge Wilkins, speaking on behalf of the Judicial Council. He and I agreed that I should request an advisory opinion from the Code of Conduct Committee as to its view on the propriety of my service on the FREE Board of Trustees. Needless to say, I can discern no impropriety in my service, as I have discerned no impropriety in my attendance at FREE's seminar series for federal judges. Indeed, it is difficult to me to reconcile attendance at FREE seminars with the notion that service on FREE's Board (whose role it is, in part, to ensure a balanced and comprehensive presentation of views by seminar leaders) is improper. If the latter is not appropriate, it seems to me that the former is likewise inappropriate.

The Committee's view in this matter is hereby requested. I will abide by any recommendation that might be forthcoming. I am pleased to provide any and all additional information that might be desired by the Committee.

Very truly yours,



Andre M. Davis
United States District Judge

cc: Honorable William A. Wilkins w/o enclosure

COMMITTEE ON CODES OF CONDUCT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
UNITED STATES DISTRICT COURT
482 GERALD R. FORD FEDERAL BUILDING
110 MICHIGAN STREET, N.W.
GRAND RAPIDS, MI 49503-2363

JUDGE WILLIAM H. BARBOUR, JR.
JUDGE KAREN K. BROWN
JUDGE WILLIAM C. BRYSON
JUDGE CAMERON MCGOWAN CURRIE
JUDGE ROBERT H. HENRY
JUDGE FRANK MAYS HULL
JUDGE DENIS R. HURLEY
JUDGE JAMES F. MCCLURE, JR.
JUDGE M. MARGARET McKEOWN
JUDGE JAMES MAXWELL MOODY
JUDGE THOMAS C. MUMMERT, III
JUDGE RUDOLPH T. RANGA
JUDGE DAVID B. SENTELLE
JUDGE MARK L. WOLF

MARILYN J. HOLMES
COUNSEL
(202) 502-1100

JUDGE GORDON J. QUIST
CHAIRMAN

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March 30, 2005

Honorable Andre M. Davis
United States District Court
United States Courthouse
101 West Lombard Street
Baltimore, MD 21201-2605

Re: Docket No. 1798

Dear Judge Davis:

Thank you for your inquiry.

You have requested an opinion from the Committee on Codes of Conduct (the "Committee") about whether you can, consistent with the Code of Conduct for United States Judges (the "Code"), continue to serve on the Board of Trustees of the Foundation for Research on Economics and the Environment ("FREE"). You have served on the FREE Board since the Spring of 2004.¹

The propriety of a judge's service on the board of an organization depends upon the nature of the organization and its activities and members. For purposes of evaluating your serving on the Board of Trustees of FREE, we rely upon FREE's description of itself from its website. See <http://www.free-eco.org> (last visited March 22, 2005).

¹Your letter advises that there is a pending complaint (the "Complaint") against you with the Circuit Council of the United States Court of Appeals for the Fourth Circuit. The Complaint alleges that your service on the FREE Board constitutes a violation of 28 U.S.C. § 351 and Canons 2A, 2B, and 5B(1) of the Code. The Complaint makes various allegations about the activities and goals of FREE and its Board members. It is not within the Committee's purview to consider allegations in complaints filed against a judge or to evaluate or make factual findings regarding those allegations. In addition, this Committee is not authorized to interpret 28 U.S.C. § 351, and this response thus addresses whether you can continue to serve on the Board only under the relevant Canons of the Code.

In light of the information you provided as well as the publicly available information about FREE, your inquiry poses specific, difficult questions. Although we have generally considered the question of service on various boards of trustees, we consider this inquiry sui generis and thus understand your desire to seek the Committee's view.

FREE's Purpose and Activities

According to FREE's website, FREE's mission is to "advance[] conservation and environmental values by applying modern science and America's founding ideals to policy debates." FREE describes itself as "intellectual entrepreneurs, explaining how economic incentives, secure property rights, the rule of law, and responsible prosperity can foster a healthy environment." To those ends, FREE conducts seminars and conferences and produces books and articles, focusing on federal judges, law professors, business leaders, and environmental entrepreneurs; in which it "appl[ies] economics and scientific analysis to generate and explore innovative solutions to environmental problems." FREE states that its seminars are "explicitly pro-environment," but "explain why ecological values are not the only important ones" and "stress that trade-offs among competing values are inescapable." Further, the seminars "show why it is ethically and materially irresponsible to pretend such choices can be avoided." [Http://www.free-eco.org](http://www.free-eco.org).

FREE's stated objectives are to: (1) "describe how incentives and voluntary cooperation can be used to protect and enhance environmental values while fostering economic prosperity"; (2) "show how the application of economics and science to public policy provides insights that advance the public interest"; (3) "explain the importance of secure property rights and economic freedom to the efficient and sensitive use of environmental resources"; and (4) "examine the dangers of legislating 'risk-free' laws and make explicit the linkages among science, risk analysis, and economics."

FREE's seminars address a wide range of law and policy topics. For example, current program offerings include the following: Exploring the Ecology, Economics, and Public Policy of Water Resources and Fisheries; Entrepreneurship, Telecommunications, and Social Change; Illicit Drugs, Civil Society, and the Environment; Terrorism, Energy, and Civil Society; and Biotechnology, Risk Analysis, and the Environment: Implications for Federal Judges.

FREE's website also describes the history of the organization. FREE was founded in 1985 by its current chairman, John Baden, and has its roots in the Center for Political Economy and Natural Resources (the "Center"), established by Baden at Montana State University in 1978. The Center did much of the pioneering work on "New Resource Economics," and critiqued prevailing natural resource management systems. FREE's website states that while the Center's work was widely accepted and highly successful, it met with some anger:

Some commodity groups were outraged that "their" University would harbor these outspoken critics of crony capitalism. And a generation ago, many Greens had more than a tinge of pink. They were livid that a bunch of libertarian economists had trespassed into their domain and claimed the intellectual, ethical, and ecological environmental high ground.

Federal bureaucracies, such as the Forest Service, were irate that they, the apostles of “scientific management” (and supporters of university research), were attacked with solid data on government malfeasance and causal models explaining it: incentive structures that lead agency budget maximization to trump the public interest.

[Http://www.free-eco.org](http://www.free-eco.org). The website explains that “FREE has consistently fought corporate subsidies . . . fostering exploitation and strongly advocates such efforts as wolf reintroduction to the federal lands of the West. The intellectually naive confuse FREE’s classical liberal, pro-market process orientation with that advocated by supporters of a subsidized, pro-business position that exploits the environment (e.g., below-cost timber sales on the national forests).” *Id.*

Based on its self-description, FREE (through its Board) is primarily devoted to specific issues of social and governmental policy regarding the environment, including environmental issues currently being addressed by not only the executive and legislative branches of government but also by the federal judiciary. FREE’s goal is to advance certain environmental values and points of view regarding those issues.

With this factual background, we discuss the applicable Canons.

Canon 5

Two Canons of the Code address a judge’s involvement in extrajudicial activities: Canon 4 addresses participation in law-related activities, and Canon 5 addresses participation in non-law-related, civic and charitable activities. Because FREE’s purpose is to advance particular approaches to environmental policy (albeit through the law), FREE is not an organization devoted to the improvement of the law for purposes of Canon 4 of the Code. *See* Advisory Opinion No. 93 (stating that to qualify as a Canon 4 activity, the activity must be “directed toward the objective of improving the law, *qua* law, or improving the legal system or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective”). Thus, your service on the FREE Board is subject to review under Canon 5 rather than Canon 4.

Canon 5 of the Code provides that a judge may be a member and may serve as an officer, director, or trustee of a civic or charitable organization subject to certain limitations. Specifically, Canon 5B provides:

A judge may participate in civic and charitable activities that do not reflect adversely upon the judge’s impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(Emphasis added.) To the Committee's knowledge, FREE is not likely to be engaged in proceedings that would ordinarily come before you or regularly engaged in adversary proceedings in any court. If FREE is likely to be engaged in proceedings before you or regularly engaged in adversary proceedings in any court, then your participation on FREE's Board is improper. The Committee also understands that you are not involved in fund-raising, in the type of membership-solicitation described in Canon 5B(2), or in financial or legal advising to FREE. However, if you are engaged in any of these activities, your participation is improper.

Even assuming that Canon 5B(1)-(3) is inapplicable, our inquiry does not end. We must still decide whether your service on the FREE Board reflects adversely upon your impartiality. See Canon 5B. The Committee previously has advised that "[i]f the judge believes that his or her personal, direct advocacy to the public of the policy positions advanced by the organization might reasonably be seen as impairing the judge's capacity to decide impartially any issue that may come before the judge, and the affiliation may reasonably be seen as indirect advocacy of those policy positions, the judge should not be a member of the organization." Advisory Opinion No. 82.

Because you are serving on the Board of FREE, there is no practical way for you to disassociate yourself from the policies advanced by FREE, and your affiliation would reasonably be seen as personal advocacy of FREE's policy positions. See Compendium § 4.5(c-1) ("A judge should not chair an American Bar Association section responsible for developing positions on controversial political and social matters that are frequently the subject of federal court litigation, where the judge could not properly advocate such policies individually and cannot as a practical matter be disassociated from the section's policies."). In addition, we note that on FREE's website your name is listed as a Board member, and, as outlined above, the website emphasizes the policy positions of FREE. Thus, the website further increases the link between your leadership affiliation with FREE and its policies. Accordingly, the Committee concludes that your leadership affiliation with FREE would be seen as personal support for the policy positions of FREE.

The next question is whether your personal, direct advocacy of FREE's policy positions could reasonably be seen as impairing your capacity to decide impartially any issue that may come before you. The Committee has advised that a judge should not serve as a director of the Lawyers Alliance for Nuclear Arms Control. See Compendium § 5.3-2(a). The Committee also has advised that whether a judge should serve on the national board of an ethnic group depends upon the extent to which the group principally espouses particular points of view on public issues and whether the judge would reasonably be perceived as personally and publicly supporting these positions. See Compendium § 5.3-2(b). The same considerations govern a judge's service on a health-system

ethics committee. *See id.* Further, in advising a judge against signing a petition regarding a contentious social or political issue, the Committee expressed the view that a judge should avoid public expressions of personal opinion regarding such controversial issues. *See* Compendium § 5.3-2(j).

The Committee has advised that it saw no impropriety in a judge serving on the Board of the Urban League. *See* Compendium § 5.3-6(c). However, that advice was expressly subject to the caveat that if a judge believes that his or her personal, direct advocacy to the public of the policy positions advanced by an organization might reasonably be seen as impairing the judge's capacity to decide impartially any issue that may come before the judge, and the affiliation may reasonably be seen as indirect advocacy of those policy positions, the judge should not be a member of the organization.

It is the Committee's view that your service on the FREE Board of Trustees violates Canon 5B. It is clear from FREE's website that FREE espouses particular points of view on a broad array of public policy issues, both through its seminars and conferences and through its publications. Indeed, FREE takes an active stance on environmental issues that are frequently before the courts. While FREE is not a party to those cases, your impartiality reasonably could be questioned in environmental cases because you personally advocate FREE's values and positions on environmental issues through your service on FREE's Board of Trustees.

Thus, because FREE espouses particular points of view on controversial public issues frequently before the courts, and you as a Board member would reasonably be perceived as personally supporting these positions, it is the Committee's view that your service as a Board member is inconsistent with Canon 5B of the Code.

Canon 2

Because your service on FREE's Board could create in reasonable and informed minds a perception that your impartiality may be impaired as to certain issues likely to arise in federal court, your service also runs afoul of Canon 2A of the Code, which requires a judge to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Further, Canon 2B provides that "[a] judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the judge." The commentary to Canon 2B states that "[a] judge should be sensitive to possible abuse of the prestige of office."

It is the Committee's view that your service on the Board of FREE lends prestige to FREE and allows FREE to exploit the prestige of the office. *See* Compendium § 2.12(I) ("It is inappropriate for a law clerk to serve on the governing board of an advocacy organization that actively lobbies state officials on issues that are subject to debate in the political arena. Such service would be likely to lend the prestige of the law clerk's office to the organization and the positions it espouses."). FREE's website and brochures state that its seminars focus on federal judges and law professors. The presence of federal judges on the Board of FREE advances FREE's interests in advocating its environmental policy positions, in soliciting funds, and in appealing to its target groups. To that end, FREE lists each of its Board members on its website, brochures, and letterhead.

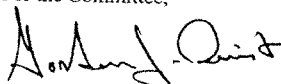
Your picture is displayed prominently on the website, as is your title: The Honorable Andre M. Davis, District Judge, United States District Court, District of Maryland, Baltimore, Maryland. Because your service on the Board lends the prestige of your office to advance the interests of FREE, it is inconsistent with Canon 2B as well.

We note that your inquiry is a very difficult one. It was debated at length by the Committee. We understand that the advice we give you today would not be obvious from reviewing the Canons and our previous advisory opinions. In the past, the Committee often has assumed that the inquiring judge is in the best position to evaluate the activities of a board on which he or she serves and has deferred to the inquiring judge's determination about the propriety of service. However, in light of the wealth of information about FREE that is now available to us and to the public, we believe that we are in a position to provide you with advice, as you requested. Thus, while we never before have advised judges about this issue and acknowledge that you reasonably could have arrived at a different conclusion after diligently reviewing the most relevant Code of Conduct materials available to you, we advise you now that your continued service on the FREE Board in the future is inconsistent with Canons 2 and 5 of the Code of Conduct.

We also note that this response does not address the propriety of a judge attending a seminar conducted by FREE. That inquiry would be governed by a different set of factors, articulated in recently-revised Advisory Opinion No. 67. While you as a Board member would reasonably be perceived as personally supporting the positions advocated by FREE, the same is not necessarily true of a judge whose only affiliation with FREE is attendance at a FREE seminar or conference. *See* Advisory Opinion No. 67 ("That a lecture or seminar may emphasize a particular viewpoint or school of thought does not necessarily preclude a judge from attending. Judges are continually exposed to competing views and arguments and are trained to consider and analyze them."); *see also* Compendium § 5.4-6(g), (h) (to be published) (concluding that a judge may, under the factors set forth in Advisory Opinion No. 67, attend a seminar at George Mason University and a Medina seminar conducted at Princeton University). Thus, this response does not answer the separate issue of the propriety of a judge attending FREE seminars, which has not been posed to the Committee.

We hope this response has been helpful. If you have any further question, please call or write.

For the Committee,



Gordon J. Quist
Chairman

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
APR 5 2005
U.S. Court of Appeals
Fourth Circuit

In the Matter of a *
Judicial Complaint * No. 04-9039
Under 28 U.S.C. § 351 *

MEMORANDUM AND ORDER

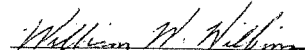
This complaint is brought pursuant to 28 U.S.C. § 351(a), which provides an administrative remedy for "conduct prejudicial to the effective and expeditious administration of the business of the courts" and for judicial inability to "discharge all the duties of office by reason of mental or physical disability."

Complainant brings this judicial misconduct complaint against a district judge due to his service on the board of directors of an organization that complainant contends is a corporate-sponsored advocacy group. The respondent judge has informed the undersigned that he has resigned his membership on the board of directors of the organization in question.

In light of the respondent judge's actions, the complaint is dismissed pursuant to Rule 4(d) of the *Rules of the Judicial Council of the Fourth Circuit Governing Complaints of Judicial Misconduct and Disability* and 28 U.S.C. § 352(b)(2), because appropriate action has been taken to remedy the problem raised by

the complaint, and action on the complaint is no longer necessary because of intervening events.

IT IS SO ORDERED.


William W. Wilkins
Chief Judge

Senator CARDIN. Thank you.
Judge Hamilton.

**STATEMENT OF DAVID F. HAMILTON, NOMINEE TO BE
CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT**

Judge HAMILTON. Thank you, Mr. Chairman. It is a pleasure to be here again to answer any questions the Committee may have. Not exactly the same group of people are here as those who were here on April 1st, but my wife, Inge Van der Cruyss, and my father, Dick Hamilton, are here. I feel I should also introduce next the two members of the contingent who have Baltimore connections under the circumstances.

Senator CARDIN. That might be helpful to you.

[Laughter.]

Judge HAMILTON. My cousin, Doug Schmidt, and my long-time friend, Judge Jim Bredar, who is a magistrate judge in the District of Maryland; also Bill Schmidt, my uncle; his wife, Casiana Schmidt; Sarah Schmidt; my cousin, Tracy Souza; my long-time staff members, Jenny McGinnis and Chuck Bruess; law clerks Alison Chestovich, Allison Brown, Jordana Rubel, Jim Trilling, and Kathleen DeLaney; and a long-time friend, Bill Moreau, are all here today.

Senator CARDIN. Thank you.

[The biographical information of Judge Hamilton follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

David Frank Hamilton

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

United States Circuit Judge for the Seventh Circuit

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

Office: United States District Court for the Southern District of Indiana
46 East Ohio Street
330 Birch Bayh United States Courthouse
Indianapolis, Indiana 46204

Residence: XXXXXXXXXX

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

1957; Bloomington, Indiana

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

1980 – 1983; Yale Law School, New Haven, Connecticut; J.D. 1983

1979 – 1980; University of Tuebingen, Tuebingen, Germany
Fulbright Scholarship – no degree

1975 – 1979; Haverford College, Haverford, Pennsylvania; B.A. 1979

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

Full-time Positions

October 28, 1994 to present
 United States District Court for the Southern District of Indiana
 46 East Ohio Street
 330 Birch Bayh United States Courthouse
 Indianapolis, Indiana 46204
 United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994
 Barnes & Thornburg
 11 South Meridian Street
 Indianapolis, Indiana 46204
 Partner

January 1989 to July 1991
 Office of the Governor of the State of Indiana
 206 State House
 Indianapolis, Indiana 46204
 Counsel to the Governor

October 1984 to January 1989
 Barnes & Thornburg
 11 South Meridian Street
 Indianapolis, Indiana 46204
 Associate

September 1983 to September 1984
 United States Court of Appeals for the Seventh Circuit
 219 South Dearborn Street
 Chicago, Illinois 60604
 Law clerk to Judge Richard D. Cudahy

Summer 1983
 Kirkland & Ellis
 200 East Randolph
 Chicago, Illinois 60601
 Law clerk

Summer 1982
 Barnes & Thornburg
 11 South Meridian Street
 Indianapolis, Indiana 46204
 Law clerk

Summer 1982
 Latham & Watkins
 (now located at 555 Eleventh Street, NW, Suite 1000)
 Washington, D.C.
 Law clerk

Summer 1981 (and part-time during 1981-82 academic year)
 Jacobs, Grudberg & Belt
 350 Orange Street
 New Haven, Connecticut 06511
 Law clerk

May -June 1979
 Association of Community Organizations for Reform Now
 Philadelphia, Pennsylvania
 Fundraiser

Part-time Positions and Activities

2008 and 2009: Judge on selection panel for Hon. Richard D. Cudahy Prize, an annual writing competition on administrative law underwritten by donations from Judge Cudahy's former law clerks and staff, and sponsored by the American Constitution Society, 1333 H Street NW, 11th Floor, Washington, DC 20005

2006 to present: Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

Spring 2004: Adjunct Professor of Law, Indiana University School of Law (course on federal jurisdiction), 211 South Indiana Avenue, Bloomington, Indiana 47405

1999 to 2007: Member, Board of Visitors, Indiana University School of Law, 211 South Indiana Avenue, Bloomington, Indiana 47405

1993 to 2008: Director of William E. Schmidt Foundation (charitable foundation established by and named for my mother's brother)

1991 to 1994: Partner, BT Building Company, a partnership that owned and operated the building where Barnes & Thornburg has its Indianapolis office

Spring 1988: Adjunct Professor of Law, Indiana University School of Law (course on antitrust law), 211 South Indiana Avenue, Bloomington, Indiana 47405

1987 to 1988: Vice president for litigation and board member, Indiana Civil Liberties Union, Indianapolis, Indiana

1985 to 1986: Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

Fall 1982: Teaching assistant, Professor Peter Schuck, Yale Law School, 127 Wall Street, New Haven, Connecticut

Spring 1981: Research assistant, Assistant Dean Edward Dauer, Yale Law School, 127 Wall Street, New Haven, Connecticut

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

I have not served in the military. I did not register for selective service; there was no registration requirement in effect for men my age.

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

2007 – Distinguished Barrister Award, Indiana Lawyer newspaper

2007 – Lawdragon 500 Leading Judges in America

Approximately 1998 – North Central High School, Alumni Hall of Fame

Approximately 1996 – 40 Under 40, Indianapolis Business Journal

1991 – Sagamore of the Wabash (award by Governor of Indiana)

1979-80 – Fulbright Scholar, for study of theology at University of Tuebingen, Germany

1979 – Phi Beta Kappa, B.A. magna cum laude, with departmental honors (philosophy) and high honors (religion) at Haverford College

1975 – Magill-Rhoads Scholar, Haverford College

1973 – Eagle Scout

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

2007 to present: Member, Judicial Conference Committee on Space and Facilities

2000 to 2006: Member, Judicial Conference Committee on Criminal Law. Chair of Sentencing Subcommittee, approx. 2005-06

1998 to present: Founding member, Sagamore American Inn of Court. President, 2001-03; Program Chair, 1998-2001.

1985 to present: Member, Seventh Circuit Bar Association

1985 to 1994: Member, Indiana State Bar Association

1985 to 1986: Member, Indianapolis Bar Association

1985 to 1994: Member, American Bar Association

10. **Bar and Court Admission:**

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

Indiana October 23, 1984

There has been no lapse in membership.

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

Indiana Supreme Court; October 23, 1984

United States District Court for the Southern District of Indiana; October 23, 1984

United States Court of Appeals for the Seventh Circuit; February 26, 1985

Supreme Court of the United States; November 2, 1992

There have been no lapses in admission to any court.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

2006 to present – Associate director and advisory board member, Center for Constitutional Democracy in Plural Societies, Indiana University School of Law, Bloomington, Indiana

2004 to present – Lifetime Fitness (health club)

1999 to 2007 – Member, Board of Visitors, Indiana University School of Law, Bloomington, Indiana

1998 to present – Member, Lawyers Club of Indianapolis

1993 to 2008 – Director, William E. Schmidt Foundation

1995 to present – Member, Federal Judges Association

1987 to 1988 – Vice president for litigation and board member, Indiana Civil Liberties Union

1985 to 1986 – Treasurer and board member of Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in Indianapolis

1984 to 2004 – Indianapolis Athletic Club, Indianapolis, Indiana (club closed and dissolved in 2004)

1973 to present – North United Methodist Church, Indianapolis, Indiana

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

The Indianapolis Lawyers Club is a social club of lawyers and judge that holds quarterly dinner meetings. I have been a member since 1998. The club membership was all male until sometime in the late 1980s, but women have been members, officers, and presidents before and throughout the time I have been a member. The other organizations also do not discriminate on any of the stated criteria.

12. Published Writings and Public Statements:

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

The Importance and Overuse of Policy and Custom Claims: A View from One Trench, 48 DePaul L. Rev. 723 (1999).

Dedication of Birch Bayh United States Courthouse, 37 Indiana L. Rev. 613 (2003). (remarks on Senator Birch Bayh's Senate career).

Naturalization Remarks – Excerpts from my remarks at a naturalization ceremony shortly after the terrorist attacks of September 11, 2001, published in the Indianapolis Star on November 4, 2001.

Letter to United States Sentencing Commission, September 4, 2007, urging the Commission to make retroactive its 2007 amendments to the Sentencing Guidelines adjusting the base offense level for crack cocaine offenses.

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Letter from Judicial Conference concerning HR 1528, June 2005, to House Judiciary Committee

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

February 2, 2009 – Testimony before the Civil Rules Advisory Committee meeting in San Francisco regarding proposed amendments to Rule 56 of the Federal Rules of Civil Procedure.

In February 2006, Judge Paul Cassell, then Chair of the Judicial Conference Committee on Criminal Law, presented testimony to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security regarding legislative responses to the Supreme Court's decision in *United States v. Booker* holding the Sentencing Guidelines as advisory rather than mandatory. I was then a member of the committee and approved of the testimony before it was given.

August 19, 2003 – As a member of the Criminal Law Committee, I testified before the United States Sentencing Commission regarding the implementation of the PROTECT Act of 2003, particularly with respect to departures under the then-mandatory Sentencing Guidelines.

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Jan. 16, 2009 - Remarks at investiture ceremony for U.S. Magistrate Judge Debra M. Lynch.

Jan. 13, 2009 - The Federalist Society – Indianapolis chapter: "Textualism – Not Always the Last Word"; remarks on statutory interpretation as part of panel discussion.

Jan. 10, 2009 - Remarks at ceremonial oath of office for U.S. Representative Baron Hill, U.S. Courthouse in New Albany, Indiana. (No notes – welcomed visitors to courthouse and commented on peaceful transitions of power after elections in the United States.)

Dec. 12, 2008 - Federal Bar Association continuing legal education conference, Indianapolis, Indiana.

Nov. 21, 2008 - Groundbreaking for new U.S. Courthouse in Terre Haute, Indiana.

Nov. 13, 2008 - Indiana University Law School – Bloomington, course on Constitutional Design, remarks on judicial independence.

Oct. 15, 2008 - Panelist in Zionsville Public Library forum discussing Jeffrey Toobin's book *The Nine*, as part of annual "One Town, One Book" program for Zionsville, Indiana.

Sept. 12, 2008 - Remarks at investiture ceremony for U.S. District Judge William T. Lawrence.

May 19, 2008 - Seventh Circuit Conference, Chicago, Illinois – panel discussion on jury comprehension, education, and persuasion. No notes available; as a panel member, I responded to remarks of jury experts on their research findings.

May 1, 2008 - Law Day event for Indianapolis high school students.

March 19, 2008 - Zionsville High School Economics Club. Spoke regarding the constitutional drafting process for the Burmese opposition.

March 18, 2008 - Indianapolis Bar Association bar leader program.

March 6, 2008 - Remarks to legal writing classes at Suffolk University Law School, Boston, on legal writing.

Dec. 13, 2007 - CLE Presentation on federal practice – Marion County Bar Association, Indianapolis.

Nov. 20, 2007 - Indianapolis chapter of the American Constitution Society speech regarding the constitutional drafting process for the Burmese opposition.

Oct. 22, 2007 - Speaker at Red Mass Dinner of the St. Thomas More Society, Indianapolis, Indiana.

July 16-20, 2007 - Presentations on the Rule of Law, judicial independence, and courts in federal nations in constitutional design for State Constitutional Drafting Committees working under auspices of the Ethnic Nationalities Council (Burmese democratic opposition in exile) in Chiang Mai, Thailand, as part of work with Center for Constitutional Democracy in Plural Societies.

April 10, 2007 - Introduction for Hon. Lee H. Hamilton at Rotary Club meeting, Indianapolis, Indiana.

March 20, 2007 - Indianapolis Bar Association bar leader series.

Jan. 6, 2007 - Remarks at ceremonial oath for U.S. Representative Baron Hill, New Albany, Indiana.

Dec. 7, 2006 - Federal Bar Association seminar on federal practice, Indianapolis. No notes available; spoke to federal practitioners on court rules, updates, practices.

Nov. 10, 2006 - Presentation on judicial independence and parallel court structures in federal systems to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Nov. 1, 2006 - Presentation on Rule of Law and judicial independence in constitutional design, to members of the Federal Constitutional Drafting Committee of the Burmese democratic opposition in exile, in Bloomington, Indiana, as part of work with Center for Constitutional Democracy in Plural Societies.

Oct. 25, 2006 - Federal Judicial Center workshop, panel on sentencing, Lake Geneva, Wisconsin.

Oct. 22 & 29, 2006 - North United Methodist Church, Indianapolis; Sunday School classes on "Thomas and 'Q': Early Collections of Sayings."

July 24, 2006 - National Sentencing Institute, Washington, D.C. – chair, introducing speakers and programs.

June 23, 2006 - Memorial Ceremony for Judge S. Hugh Dillin of the Southern District of Indiana.

June 2, 2006 - Federal Sentencing Guideline Seminar, Miami Beach, program on sentencing in firearm cases. No notes available.

May 16, 2006 - Indianapolis Bar Association bar leader program. No notes, but remarks very similar to remarks on March 18, 2008 and March 20, 2007.

March 5 & 12, 2006 - North United Methodist Church, Indianapolis. Sunday School presentation on "Church-State Relationships: Applying Eighteenth Century Principles in the Twenty-first Century."

Sept. 29, 2005 - Federal Judicial Center, Chicago. First and Seventh Circuit workshop: panel on sentencing issues. No notes available; this was an educational meeting for Circuit and District Judges from the two circuits.

July 30, 2005 - American Constitution Society national convention, Washington, D.C. – panel discussion on sentencing issues after United States v. Booker.

July 11, 2005 - National Sentencing Institute to respond to United States v. Booker, Washington, D.C.

May 27, 2005 - National Sentencing Guidelines Seminar – presentation on sentencing after United States v. Booker, San Francisco.

May 23, 2005 - Seventh Circuit Conference – introduction of Hon. Lee H. Hamilton as the principal speaker of the annual conference in Indianapolis, Indiana.

May 23, 2005 - Seventh Circuit Conference – presentation regarding early effects of United States v. Booker on sentencing practices, Indianapolis, Indiana.

May 20, 2005 - Indiana Bar Admission Ceremony, Indianapolis, Indiana.

Dec. 3, 2004 - Indianapolis Kiwanis Club re: federal courts.

Oct. 8, 2004 - Top Ten Tips for Federal Practice – continuing legal education talk in Indianapolis.

October 2004 - Speaker at Indiana University Law School – Indianapolis, course on judicial processes. (no notes; text of questions available)

July 21, 2004 - Remarks on investiture of new regional director of NLRB, Indianapolis, Indiana.

May 7, 2004 - Six Hot Topics in Federal Jurisdiction – continuing legal education presentation in Indianapolis, Indiana.

April 14, 2004 - Presentation of American Inn of Court professionalism award to Hon. Jon D. Krahulik, former Justice of the Indiana Supreme Court.

Dec. 19, 2003 - Federal Bar Association continuing legal education talk in Indianapolis – Practical Tips from the Bench. No notes available – this is an annual event in which judges rotate presentations on updates for court rules and practices.

Dec. 12, 2003 - Federal Community Defenders, Indianapolis – Federal Criminal Practice Seminar for federal criminal defense attorneys – remarks on sentencing policies and procedures.

Oct. 28, 2003 - Multi-District Litigation Transferee Judges Conference – Multiple State-wide Class Actions, remarks, Palm Beach, Florida.

Oct. 24, 2003 - Dedication of the Indianapolis Courthouse as the Birch Bayh United States Courthouse – reviewing Sen. Birch Bayh's Senate career.

Nov. 2002 - Indiana University School of Law, Bloomington, American Constitution Society chapter, remarks on federal sentencing law and practices – “Two Cheers for the Sentencing Guidelines” No notes available. I spoke to students and explained how guidelines work in a bank robbery, for example, then discussed advantages and disadvantages of mandatory guideline system.

Dec. 20, 2001 - CLE presentation: Trial and Civil Procedure Update, Indianapolis, Indiana

May 21, 2001 - Seventh Circuit Conference – panel discussion on the use of summary judgment after *Reeves v. Sanderson Plumbing* at annual conference in Indianapolis.

July 27, 2000 - Indianapolis Bar Association speech. Topic unknown. No notes available.

July 8, 1999 - Sidebar for Young Lawyers section of a bar association Topic unknown. No notes available.

Dec. 3, 1998 - Indiana Lawyer program on EEO litigation, Indianapolis.

Oct. 28, 1998 - Panelist at Indiana University Law School, Bloomington, to discuss Prof. William Popkin's book on statutory interpretation.

Sept. 24, 1998 - CLE Presentation on federal practice, Indianapolis.

March 13, 1998 - DePaul University Law School, Chicago, Illinois: Symposium on Section 1983 Municipal Liability in Civil Rights Litigation. Formal paper published at 48 DePaul L. Rev. 723 (1999).

Jan. 21, 1998 - Floyd County Bar Association, remarks in New Albany, Indiana

Dec. 19, 1997 - Indiana State Bar Assoc. Young Lawyers Division – Roundtable – remarks on civility, Indianapolis.

Oct. 17, 1997 - Federal Criminal Defense Seminar, Indianapolis. No notes available; spoke to annual seminar for federal criminal defense attorneys sponsored by Federal Community Defender of Indiana.

June 13, 1997 - ICLEF program on employment discrimination, Indianapolis.

June 6, 1997 - Indiana Bar Admission remarks, Indianapolis.

May 9, 1997 - Indiana Civil Liberties Union – CLE lunch presentation regarding 42 U.S.C. § 1983, in Indianapolis. No notes available.

Dec. 16, 1996 - Zionsville High School – speak to government classes about role of federal courts. No notes available.

Oct. 18, 1996 - ICLEF seminar on employment litigation, Anderson, Indiana.

Oct. 4, 1996 - Speech to patent lawyers in Indianapolis on Markman decision in patent law.

Sept. 12, 1996 - Federal Bar Association federal practice seminar, Indianapolis.

April 8, 1996 - CLE presentation – Recent Seventh Circuit Developments in Civil Procedure and Evidence, Indianapolis.

Dec. 22, 1995 - Remarks upon swearing in of class of new Indiana State Police Troopers, Indianapolis.

Nov. 16, 1995 - CLE Presentation on Professionalism and Civility, Indianapolis.

Aug. 22, 1995 - Zionsville Lions Club, on federal courts.

June 9, 1995 - Indiana Bar Admission remarks, Indianapolis.

April 13, 1995 - CLE Presentation – Class Actions: A Judicial Perspective, in Indianapolis.

Naturalization Ceremonies: Over the past fourteen years, I have presided over approximately 20 to 25 naturalization ceremonies. At each ceremony, I have given a speech that has evolved slowly over those years. Available texts are collected together.

Seventh Circuit Conference: Each year at the Seventh Circuit Bar Association and Judicial Conference, my colleagues in the Southern and Northern Districts of Indiana and I participate in a panel discussion with attorneys who practice in our courts to discuss a variety of procedural and court administration issues. I do not have notes of these discussions.

There have been a number of other occasions at which I have spoken briefly, such as investitures of new judicial officers in the district and court visits by new lawyers and school groups, but I have not been able to locate notes from those events.

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

Fox 59 News – March 3, 2008 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. No copies available.

Indiana Lawyer – December 2007 regarding retroactive amendments to U.S. Sentencing Guidelines for crack cocaine cases. Article appeared in December 26, 2007 edition.

Indiana Lawyer – January 2008 regarding new role as chief judge. I do not recall any specific article appearing from that interview.

NUVO – March 8, 2006 issue.

UPN Focus – television interview with Judge John Daniel Tinder hosted by Milt Thompson. No copy available.

- 13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On October 11, 1994, I was appointed United States District Judge for the Southern District of Indiana by President Clinton, following confirmation by the United States Senate on October 7, 1994. I entered duty in that office on October 28, 1994.

I have served as Chief Judge, United States District Court for the Southern District of Indiana, since January 1, 2008.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? Approximately 3000.

As a judge, I have presided over the closing of approximately 8,000 cases. Of that number, approximately 3,000 went to judgment based on a trial and/or decision I made, with roughly 1,150 written opinions available in electronic data bases. Approximately 150 to 200 have gone to verdict or decision after a trial.

- i. Of these, approximately what percent were:

jury trials? 60%; bench trials 40%

civil proceedings? 60%; criminal proceedings? 40%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached lists of citations from Westlaw. (Two lists cover two date ranges because of the large number.) In addition to the cases on the lists, see *Sefick v. United States*, 1999 WL 778588 (N.D. Ill. 1999), in which I sat by designation in the Northern District of Illinois.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Watkins v. Anderson*, 92 F. Supp. 2d 824 (S.D. Ind. 2000). Granted writ of habeas corpus. Watkins was wrongly convicted of the rape and murder of a young girl. After the trial, early DNA tests showed it was nearly impossible for Watkins to have committed the crimes, but state courts rejected the conclusions from those tests. In the federal habeas proceedings, Watkins showed (a) that the DNA test results undermined the conviction and (b) that the prosecution had violated his constitutional rights under *Brady v. Maryland* by failing to disclose the statement of an eyewitness who described the girl's abduction by a man who did not fit Watkins' description and at a time when time-clock records showed that Watkins was at work. Watkins therefore met the stringent standards for habeas relief under the Anti-terrorism and Effective Death Penalty Act of 1996. The state filed an appeal but dismissed the appeal after a newer, more sophisticated DNA test confirmed the results I had relied upon. The State of Indiana did not attempt to re-try Watkins.

Counsel for petitioner Watkins were Joseph Cleary, Hammerle & Cleary, Indianapolis, Indiana, tel. 317-630-0137, and William E. Marsh, Federal Community Defender, Indianapolis, tel. 317-383-3520. Counsel for respondent were Michael A. Hurst and Thomas D. Perkins, Deputy Attorneys General. Mr. Hurst of Indianapolis is now at 317-598-8685. Mr. Perkins is still with the Office of the Indiana Attorney General and can be reached at 317-232-6201.

2. *Nelson v. IPALCO Enterprises, Inc.*, 480 F. Supp. 2d 1061 (S.D. Ind. 2007). This was a class action under the Employee Retirement Income Security Act (ERISA) involving employee investments in the employer's stock as an investment option in a retirement savings plan. IPALCO owned the electric power company in Indianapolis. IPALCO was acquired by AES Corporation in 2001 in a stock-for-stock exchange. Several months after the closing of the acquisition, AES stock lost 90 percent of its value, with devastating effects on the retirement accounts of many IPALCO employees who had invested in company stock. The plaintiff class argued that the plan fiduciaries (1) should have removed company stock as an

investment option, (2) wrongfully promoted investment in company stock while they were selling their own company stock, and (3) wrongfully allowed the employer-match part of the plan assets to be converted into AES stock. Plaintiffs sought damages in excess of \$100 million. I denied a motion to dismiss, 2003 WL 402253 (S.D. Ind. Feb. 13, 2003), certified a plaintiff class, 2003 WL 23101792 (S.D. Ind. Sept. 30, 2003), and denied cross-motions for summary judgment on the major issues, 2005 WL 1924332 (S.D. Ind. Aug. 11, 2005). After a bench trial, I found for defendants in the cited opinion. The Seventh Circuit affirmed. *Nelson v. Hodowal*, 512 F.3d 347 (7th Cir. 2008). The case was important not only because of the number of plaintiffs and the financial stakes but also because of the possible tension between company executives' fiduciary duties to employees under ERISA and their duties to all shareholders under federal securities laws.

Plaintiffs' counsel were Nicholas Styant-Browne, Steve Berman, and Andrew Volk of Hagens Berman Sobol Shapiro, Seattle, Washington, tel. 206-623-7292; and John R. Price, Indianapolis, Indiana, tel. 317-844-8822. Defense counsel were Dane Butswinkas and R. Hackney Wiegmann of Williams & Connolly, Washington, DC, tel. 202-434-5000; and James H. Ham III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300.

3. In re AT&T Fiber Optic Cable Litigation, MDL No. 1313. The Judicial Panel on Multi-District Litigation assigned this multi-district litigation to me to manage the pretrial aspects of similar cases around the country. In this litigation, twenty-first century technology met nineteenth century law. Plaintiffs were thousands of owners of property adjoining railroad rights of way where AT&T had laid fiber optic telecommunications cables in the 1980s and 1990s. Plaintiffs alleged that laying the cables violated their property rights, asserting claims of trespass, slander of title, and unjust enrichment. Plaintiffs sought to pursue the claims with class actions, initially with a nationwide class, and later with a series of statewide classes. After some early procedural sparring, see *In re AT&T Fiber Optic Cable Installation Litigation*, 2001 WL 1397295 (S.D. Ind. Nov. 5, 2001) (denying motion to remand), a Seventh Circuit decision in a similar case showed that plaintiff classes could not be certified for litigation. The parties agreed to general principles for a series of statewide class action settlements, and the cases proceeded on that path over several years. During that time, I decided a series of contested issues. See, e.g., 2001 WL 1224726 (S.D. Ind. July 6, 2001) (denying leave to submit briefs under seal); 2002 WL 1364157 (S.D. Ind. June 5, 2002) (denying motion to compel production of settlement agreement between AT&T and its insurers); 2003 WL 22080739 (S.D. Ind. Aug. 21, 2003) (denying request for additional attorney fees).

On the merits of some claims, I decided *Home on the Range v. AT&T Corp.*, 386 F. Supp. 2d 999 (S.D. Ind. 2005), which addressed how several federal land grant statutes from the nineteenth century – the Pacific Railroad Act of 1862, the

Northern Pacific Act of 1864, and the General Railroad Right of Way Act of 1875 – allocated property rights among the railroads, the adjoining landowners, and the United States government. That decision was not appealed and provided the foundation for a settlement for the plaintiff classes who own property adjoining federal land-grant railroads. In essence, the property owners adjoining railroads established under the earlier statutes did not have any interest in the railroad right of way. Property owners adjoining railroads built under the later General Railroad Right of Way Act had a limited property interest in the adjoining railroad rights of way. Most of the statewide class settlements have been fully implemented. The last few settlements are still in the final stages of distribution of claims. Baltimore County, Maryland opted out of the class settlement and that case remains pending against AT&T.

Plaintiffs' lead counsel were Henry J. Price, Price Waicukauski & Riley, Indianapolis, Indiana, tel. 317-633-8787 ; Nels Ackerson, Ackerson Kauffman Fex, Washington, DC, tel. 202-833-8833; and Daniel J. Millea, Zelle Hofmann, Minneapolis, Minnesota, tel. 612-336-9170. Lead defense counsel were B. Haven Walling, Jr., tel. 202-420-2658; Peter Morgan, tel. 202-420-2287; and Howard N. Feldman, tel. 202-420-4707 of Dickstein Shapiro, Washington, DC.

4. Eli Lilly & Co. v. Emisphere Corp., 408 F. Supp. 2d 668 (S.D. Ind. 2006). Eli Lilly entered into contracts for a joint biotechnology research program with Emisphere, a much smaller start-up company. After a bench trial, I found that Eli Lilly had breached the contracts by trying to appropriate for itself the intellectual property of Emisphere. Eli Lilly had conducted secret research projects that should have been joint projects and distributed Emisphere's confidential information to other scientists within Eli Lilly who were not entitled to access to it. Before a final determination of the remedy, the parties settled the case without an appeal.

Plaintiff's counsel were Donald E. Knebel and Dwight D. Lueck, Barnes & Thornburg, Indianapolis, Indiana, tel. 317-236-1313. Defendant's counsel were Colin A. Underwood, tel. 212-969-3350, and Aliza Ross, tel. 212-969-3142, both of Proskauer Rose, New York City, New York.

5. In re Lawrence Inlow Accident Litigation, No. IP 99-830. In terms of damages sought, this may have been one of the largest single-victim wrongful death cases in the U.S. Lawrence Inlow was the general counsel of Conseco Insurance. He was killed when he was hit in the head by a helicopter rotor blade as he was exiting a company helicopter on a windy day. At the time of his death, he was earning tens of millions of dollars each year. Several cases were consolidated into one case. I eventually granted summary judgment for the foreign helicopter manufacturer on the Inlow family's wrongful death claims. 2002 WL 970403 (S.D. Ind. April 16, 2002). I held that the danger posed by the decelerating blades under windy conditions was open and obvious and that the helicopter pilots were

“sophisticated intermediaries” under Indiana law, so that the manufacturer did not have a duty to warn passengers of the specific risk. The Seventh Circuit affirmed that decision. *First National Bank and Trust Corp. v. American Eurocopter Corp.*, 378 F.3d 682 (7th Cir. 2004). In earlier decisions, I dismissed Inlow’s life insurer’s claim against the manufacturer, holding that the life insurer did not have standing to pursue its own wrongful death claim against an alleged tortfeasor, 2001 WL 1781927 (S.D. Ind. Dec. 13, 2001), and resolved a host of other issues to streamline the litigation, 2001 WL 331625 (S.D. Ind. Feb. 7, 2001). Those decisions were not appealed.

Counsel for the Inlow plaintiffs were James T. Crouse, Mineo & Crouse, Raleigh, North Carolina, tel. 919-861-0500; John R. Howie, Howie & Sweeney, Dallas, Texas, who has died. Counsel for Conseco was Joseph H. Yeager, Jr., Baker & Daniels, Indianapolis, Indiana, tel. 317-237-1278. Counsel for defendants were Stephen C. Johnson, Lillick & Charles (now Nixon Peabody), San Francisco, California, tel. 415-984-8222; and Martin E. Rose, Rose Walker, Dallas, Texas, tel. 214-752-8600.

6. *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. I then denied a motion to amend the judgment, 2005 WL 3544300 (S.D. Ind. 2005), and denied a stay pending appeal, 410 F. Supp. 2d 745 (S.D. Ind. 2006). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs’ taxpayer standing and the merits of the Establishment Clause issue. *Hinrichs v. Bosma*, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in *Establishment Clause cases in Hein v. Freedom from Religion Foundation*, 127 S. Ct. 2553 (2007). Based on *Hein*, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. *Hinrichs v. Speaker of House of Representatives*, 506 F.3d 584 (7th Cir. 2007). The Seventh Circuit did not revisit the merits of the Establishment Clause issues.

Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendant were Thomas Fisher, Solicitor General of Indiana, 317-232-6201, and William Bock III, Indianapolis, Indiana, tel. 317-692-9000.

7. *A Woman’s Choice–East Side Women’s Clinic v. Newman*, 132 F. Supp. 2d 1150 (S.D. Ind. 2001). This was a challenge to Indiana legislation imposing a new informed-consent requirement for abortions that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had initially granted a temporary restraining order

and then a preliminary injunction against enforcement of the statute. 904 F. Supp. 1434 (S.D. Ind. 1995). At the same time, I certified a question of state law, at the state's request, to the Indiana Supreme Court concerning the scope of the health exception to the new law's requirements. The state court answered the question, 671 N.E.2d 104 (Ind. 1996), and I responded by narrowing the scope of the preliminary injunction so as to enjoin only the requirement that required information be given "in the presence" of the woman at least 18 hours before the procedure. 980 F. Supp. 962 (S.D. Ind. 1997). The other portions of the law then took effect. The parties then undertook an extended discovery process to evaluate the effects of similar statutes in other states and to explore other issues. I held a court trial and received additional evidence in writing after the trial, and issued a permanent injunction tracking the narrowed scope of the preliminary injunction. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction. 305 F.3d 684 (7th Cir. 2002).

Counsel for plaintiffs were Simon Heller, then with the Center for Reproductive Law & Policy, New York City, tel. 646-549-3881, Kenneth J. Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059, and Mary J. Hoeller, Indianapolis, Indiana, tel. 317-633-4002. Counsel for defendants were Jon Laramore, then a Deputy Attorney General and now with Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300, Arend J. Abel, also then a Deputy Attorney General and now with Cohen & Malad, Indianapolis, Indiana, tel. 317-636-6481.

8. *Hoosier Environmental Council v. U.S. Department of Transportation*, 2007 WL 4302642 (S.D. Ind. Dec. 10, 2007). The case was an environmental challenge to construction of a new interstate highway between Indianapolis and Evansville as part of Interstate 69. I held that the federal and state agencies had not acted arbitrarily or capriciously in selecting the preferred route for the highway. The case is interesting because of the approval of "tiering" for environmental analysis of the government decisions. "Tiering" allows the government to look at some issues on a broad scale initially, and to defer some of the more detailed environmental analysis (of a specific highway route, for example) to a second stage of analysis. My decision approving of the chosen route was not appealed. Early construction has begun near Evansville.

Counsel for plaintiffs were John N. Moore, Chicago, Illinois, tel. 312-782-9503/312-795-3706, and Michael K. Sutherlin, Indianapolis, Indiana, tel. 317-634-6313. Counsel for the federal defendants were Jill E. Zengler and Shelese M. Woods of the U.S. Attorney's Office, tel. 317-226-6333. Counsel for the state defendants was Albert M. Ferlo, Akin Gump Strauss Hauer & Feld, LLP, Washington, DC, tel. 202-887-4000.

9. *United States Securities and Exchange Commission v. Church Extension of the Church of God*, 429 F. Supp. 2d 1045 (S.D. Ind. 2005). The financial arm of the

Church of God issued more than \$85 million in bonds to church members. The stated purpose for the bonds was to help finance the construction and remodeling of churches all over the world. The leaders of the financial arm, however, began investing the church assets in much riskier real estate and other investments. The church's financial arm eventually became insolvent. The SEC brought a civil enforcement action in 2002. I have supervised a receivership to marshal as many assets as possible, which has included a number of related actions and written opinions. A jury trial in 2005 found that the two leaders of the financial arm had committed securities fraud over several years by misleading bond buyers as the financial position worsened. The cited opinion decided the civil sanctions against those two leaders, who were unusual among securities fraud defendants because they did not line their own pockets. But they were reckless with the money entrusted to them, and investors lost tens of millions of dollars. The challenge was to tailor the penalties to those unusual facts. The receivership should conclude in the near future after recovering more than \$50 million for the church members who had invested in the fraudulent bonds.

Counsel for plaintiff SEC were Steven J. Levine and Tina K. Diamantopoulous, Chicago, Illinois, tel. 312-353-7390; counsel for defendants were Thomas M. Knepper and Jill Gladney, Chicago, Illinois, tel. 312-957-1300. Receiver was Jeff Marwil, Chicago, Illinois, tel. 312-962-3540. Counsel for bondholders was Elliott D. Levin, Indianapolis, Indiana, tel. 317-634-0300.

10. Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc. This is a patent case involving implantable cardiac defibrillators. I have issued approximately twenty substantive decisions in the case, and the case has been before the Federal Circuit on five occasions. After claim construction and extensive motion practice, the case was tried to a jury on four claims of two patents. The jury found that one patent was not infringed but the other was infringed, and the jury awarded \$140 million. I set aside that verdict on multiple grounds and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. July 5, 2002). The plaintiffs did not appeal the loss of their \$140 million verdict, but they sought to pursue just one method claim of the patent the jury had found not infringed. The Federal Circuit affirmed in part and reversed in part, ordering further proceedings on that one method claim. I later granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that decision in part and reversed in part. 2008 WL 5257333 (Fed. Cir. 2008), but that decision has been vacated and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.

Lead counsel for plaintiffs are J. Michael Jakes, tel. 202-408-4045 and Kara Stoll, tel. 202-408-4119 of Finnegan Henderson, Washington, DC; and Robert Stanley and John Schaibley of Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300. Lead counsel for defendants are Denis R. Salmon of Gibson Dunn & Crutcher, Palo Alto, California, tel. 650-849-5301; Mark A. Perry, Gibson Dunn,

Washington, DC, tel. 202-887-3667; Jeffrey Olson, Sidley Austin Brown & Wood, Los Angeles, California, tel. 313-896-6041; Phillip Whistler, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Eckles v. Consolidated Rail Corp.*, 890 F. Supp. 1391 (S.D. Ind. 1995), *aff'd*, 94 F.3d 1041 (7th Cir. 1996). The issue of first or second impression was whether the Americans with Disabilities Act required an employer to provide a "reasonable accommodation" to one employee by violating the seniority rights of other employees under a collective bargaining agreement. The statutory language of the ADA did not address the issue. The legislative history showed that Congress had recognized the issue but had not reached any definite conclusion. I granted summary judgment for the defendants, finding that the ADA did not require the employer to violate the collective bargaining rights of the other employees. I reasoned that rights under collective bargaining agreements were so well established under federal law that they could not be limited by implication, without explicit limitation by Congress. The Seventh Circuit agreed and affirmed, and other circuits have followed the lead of *Eckles*.

Counsel for plaintiff was Susan L. Kuss, now at Law Office of Susan L. Brach, LLC, Bluffton, SC, tel. 843-706-5977. Counsel for the defendant employer was Cynthia L. Wodock, Stewart & Irwin, Indianapolis, Indiana, telephone unknown; counsel for the union defendant were Kevin C. Brodar, United Transportation Union, Cleveland, Ohio, tel. 216-228-9400; and Frederick W. Dennerline, III, Fillenwarth Dennerline Groth & Baird, Indianapolis, Indiana, tel. 317-353-9363.

2. *Henderson v. Irving Materials, Inc.*, 329 F. Supp. 2d 1002 (S.D. Ind. 2004). Plaintiff Henderson was the first African-American cement truck driver at the defendant's facility. He sued for race discrimination under Title VII of the Civil Rights Act of 1964, alleging that co-workers and one supervisor had created a racially hostile work environment. I denied the employer's motion for summary judgment on the key claim, finding that the cumulative effect of the harassment was sufficient to allow a finding of a racially hostile work environment under Seventh Circuit law. I also found that some forms of facially non-racial harassment could be viewed as racial when taken in context of other harassment and historic forms of violence directed against African-Americans.

Plaintiff's counsel was Denise H. LaRue, Haskin Lauter & LaRue, Indianapolis, Indiana, tel. 317-955-9500. Defendant's counsel was Paul H. Sinclair, Ice Miller, Indianapolis, Indiana, tel. 317-236-2100.

3. *Eaton v. Onan Corp.*, 117 F. Supp. 2d 812 (S.D. Ind. 2000). This was one of the early cases challenging “cash balance” pension plans as a form of age discrimination. The question arose at the intersection of the Internal Revenue Code, the Age Discrimination in Employment Act, and the Employee Retirement Income Security Act. I granted summary judgment in favor of the pension plan and employer, concluding that cash balance pension plans are permissible under the law and are not inherently a form of unlawful age discrimination. This decision was not appealed, but the Seventh Circuit later agreed with this conclusion. See *Cooper v. IBM Personal Pension Plan*, 457 F.3d 636 (7th Cir. 2006).

Counsel for plaintiffs were William K. Carr, Denver, Colorado, tel. 303-296-6383; and William C. Barnard and Mary Doherty of Sommer & Barnard of Indianapolis. Mr. Barnard has died. Ms. Doherty is now with Taft Stettinius & Hollister, LLP in Indianapolis, tel. 317-713-3500. Counsel for defendant were Arthur P. Kalleres and Marc Sciscoe of Ice Miller, Indianapolis, Indiana. Mr. Kalleres has also died. Mr. Sciscoe’s telephone number is 317-236-2100.

4. *Watkins v. Anderson*, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See description above in Answer 13(b).
5. *Doe v. Prosecutor*, 566 F. Supp. 2d 862 (S.D. Ind. 2008). An Indiana law enacted in 2008 allowed law enforcement authorities to search the homes and computers of convicted sex offenders at any time, and without a search warrant, probable cause, or reasonable suspicion. The new law applied not only to offenders on parole or probation, but also to offenders who had completed their sentences. Two offenders who had completed their sentences brought a class action challenging the new law under the Fourth Amendment. I found that the pre-enforcement challenge to the law was ripe, and I held that the new law violated the Fourth Amendment as applied to offenders who had already completed their sentences, including any terms of probation or parole. There was no appeal.

Counsel for plaintiffs was Kenneth Falk, ACLU of Indiana, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was David A. Arthur, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

6. *Zehner v. Trigg*, 952 F. Supp. 1318 (S.D. Ind. 1997), *aff’d*, 133 F.3d 459 (7th Cir. 1997). Prisoners who alleged they had been exposed to asbestos while working in a prison kitchen sued for violation of their Eighth Amendment rights. No plaintiff had suffered any physical injury, but they sought damages for emotional distress. The Prison Litigation Reform Act of 1995 provided in 42 U.S.C. § 1997e(e): “No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” Plaintiffs argued that the new legislation violated their constitutional rights under the Eighth and Fourteenth

Amendments. I granted judgment on the pleadings for the defense and upheld the constitutionality of the new statutory limit on damages. I concluded that although the new law limited remedies for constitutional violations, the limit was not so severe as to reach beyond the constitutional power of Congress or to violate other constitutional provisions. The Seventh Circuit affirmed.

Counsel for plaintiffs was John Emry, Franklin, Indiana, tel. 317-736-5800.
Counsel for defendants was Wayne E. Uhl, Deputy Attorney General, now with Stephenson, Morow & Semler, Indianapolis, Indiana, tel. 317-844-3830.

7. *Williams v. Humphreys*, 125 F. Supp. 2d 881 (S.D. Ind. 2000). After federal welfare reform legislation established the Temporary Assistance for Needy Families (TANF) program, Indiana required that all children in families receiving TANF benefits assign to the state their rights to child support from non-custodial parents. But TANF also excluded from the benefit calculations many “after-born” children. The result was that TANF provided no benefits directly to those after-born children but required that those same children give up their child support rights to the state. I held that the policy requiring assignment of child support rights from those children amounted to an unconstitutional taking of private property for a public purpose without compensation. I issued a permanent injunction against the policy. There was no appeal.

Counsel for plaintiffs were Jacquelyn E. Bowie and Kenneth Falk, Indiana Civil Liberties Union, Indianapolis, Indiana, tel. 317-635-4059. Counsel for defendants was Frances Barrow, Deputy Attorney General, Indianapolis, Indiana, tel. 317-232-6201.

8. *MCI, LLC v. Patriot Engineering & Environmental, Inc.*, 487 F. Supp. 2d 1029 (S.D. Ind. 2007). This is one of many recent cases involving accidental cuts of high-capacity fiber optic communications cables. Damages in such cases ordinarily should include the costs of repair and a reasonable sum for lost use of the cable. MCI and other telecommunication companies have pursued some much more aggressive damages theories. In this case, for example, the repairs took about eight hours and cost MCI \$22,000. MCI sought damages of more than \$630,000 based on the supposed rental costs for such high capacity cables. MCI used as evidence longer-term leases that included very high one-time or annual fees or deposits that amounted to 98 percent of the claimed loss-of-use damages. I rejected the attempt to base the damage calculation on cable leases with those high fees as unreasonable as a matter of law and granted summary judgment for the defendant on the issue. The parties later settled; there was no appeal.

Counsel for plaintiff MCI were Anthony J. Jorgenson and James John Proszek of Hall Estill Hardwick Gable Golden & Nelson, Tulsa, Oklahoma, tel. 918-594-0631, and Cathy Elliott, Bose McKinney & Evans, Indianapolis, Indiana, tel. 317-684-5248. Counsel for defendant Patriot were Jeffrey Musser, Scott Timberman,

and James D. Witchger of Rocap Witchger LLP, Indianapolis, Indiana, tel. 317-577-5380.

9. *Sakhrani v. Brightpoint, Inc.*, 78 F. Supp. 2d 845 (S.D. Ind. 1999). This was a relatively early case under the Private Securities Litigation Reform Act. The principal issue at this stage was whether the selection of a lead plaintiff in a securities case could be manipulated by having attorneys assemble an artificial “group” of investors who could pool their alleged losses to show that they had the largest stake in the case. I held that the statutory language allowing a “group of persons” to serve as lead plaintiff did not apply to a group of investors who had nothing in common with one another beyond their investment. I later granted the defendants’ motion to dismiss the case, and there was no appeal.

Counsel for plaintiffs were Kevin J. Yourman, formerly with Yourman, Alexander & Parekh, LLP, Los Angeles, California, firm now closed; for information on cases, send fax to 310-601-4109; Michael D. Braun, now with Braun Law Group, Los Angeles, California, tel. 310-442-7755; James A. Knauer, Kroger Gardis & Regas, Indianapolis, Indiana, tel. 317-692-9000; and William C. Potter, II, Indianapolis, Indiana, tel. 317-625-4834. Counsel for defendants were James H. Ham, III, Baker & Daniels, Indianapolis, Indiana, tel. 317-237-0300; and Ira A. Finkelstein, now with Harnik Wilker & Finkelstein, New York, New York, tel. 212-599-7575.

10. *Eco Mfg. LLC v. Honeywell Int’l*, 295 F. Supp. 2d 854 (S.D. Ind. 2003), *aff’d*, 357 F.3d 649 (S.D. Ind. 2003). The familiar round Honeywell thermostat presented questions at the intersection of patent law and trademark law. Plaintiff Eco Manufacturing wanted to manufacture a round thermostat. Honeywell threatened to sue for trademark infringement. Honeywell had obtained a utility patent on the round thermostat design in the 1930s. As the utility patent was about to expire, Honeywell then obtained a design patent on the round design. After the design patent expired, Honeywell eventually managed to obtain a registered trademark on the round design. I denied Honeywell’s request for a preliminary injunction that would have stopped Eco from using a similar round design. I found that the trademark was invalid and conflicted with patent law. After a utility patent expires, the public has a right to practice the patented invention. I also found that Honeywell had misled the Patent & Trademark Office when it obtained the trademark on the round design. The Seventh Circuit affirmed the denial of the preliminary injunction. The case later settled.

Counsel for plaintiff Eco were Michael Beck, David Lockman, and Paul Maginot of Maginot Moore & Bowman, Indianapolis, Indiana, tel. 317-638-2922. Counsel for defendant Honeywell was Paul R. Garcia, Kirkland & Ellis, Chicago, Illinois, tel. 312-861-2327.

- e. Provide a list of all cases in which certiorari was requested or granted.

Kauble v. Pension Ben. Guar. Corp., 1994 WL 722966 (S.D. Ind. 1994), aff'd mem., 94 F.3d 647 (7th Cir. 1996), cert. denied, 519 U.S. 1057 (1997).

Grossbaum v. Indianapolis-Marion County Bldg. Auth., 909 F. Supp. 1187 (S.D. Ind. 1995), aff'd, 100 F.3d 1287 (7th Cir. 1996), cert. denied, 520 U.S. 1230 (1997).

Eckles v. Consolidated Rail Corp., 890 F. Supp. 1391 (S.D. Ind. 1995), aff'd, 94 F.3d 1041 (7th Cir. 1996), cert. denied, 520 U.S. 1146 (1997).

K.R. by M.R. v. Anderson Comm. School Corp., 887 F. Supp. 1217 (S.D. Ind. 1995), rev'd, 81 F.3d 673 (7th Cir. 1996), cert. granted and judgment vacated, 521 U.S. 1114 (1997), on remand, 125 F.3d 1017 (7th Cir. 1997), cert denied, 523 U.S. 1046 (1998).

Harmon v. OKI Systems, 902 F. Supp. 176 (S.D. Ind. 1995), aff'd, 115 F.3d 477 (7th Cir.1997), cert. denied, 522 U.S. 966 (1997).

Estate of Cole by Pardue v. Fromm, 941 F. Supp. 776 (S.D. Ind. 1995), aff'd, 94 F.3d 254 (7th Cir. 1996), cert. denied, 519 U.S. 1109 (1997).

Fleenor v. Farley, 47 F. Supp.2d 1021 (S.D. Ind. 1998), aff'd, 171 F.3d 1096 (7th Cir. 1999), cert. denied, 528 U.S. 891 (1999).

Snyder v. United States, 1998 WL 1181015 (S.D. Ind. 1998), aff'd mem., 172 F.3d 53 (7th Cir. 1998), cert. denied, 528 U.S. 968 (1999).

Mead Johnson & Co. v. Abbott Laboratories, 41 F. Supp. 2d 879 (S.D. Ind. 1999), rev'd, 201 F.3d 883 (7th Cir. 2000), amended on denial of rehearing, 209 F.3d 1032 (7th Cir. 2000), cert. denied, 531 U.S. 917 (2000).

Sefick v. United States, 1999 WL 778588 (N.D. Ill. 1999) (sitting by designation), aff'd, 164 F.3d 370 (7th Cir. 1998), cert. denied, 527 U.S. 1035 (1999).

Watts v. Network Solutions, Inc., 1999 WL 778589 (S.D. Ind. 1999), aff'd mem., 202 F.3d 276 (7th Cir. 1999), cert. denied, 530 U.S. 1088 (2000).

Lowery v. Anderson, 69 F. Supp. 2d 1078 (S.D. Ind. 1999), reconsideration denied, 1999 WL 778587 (S.D. Ind. 1999), aff'd, 225 F.3d 833 (7th Cir. 2000), cert. denied, 532 U.S. 959 (2001).

American Amusement Mach. Ass'n v. Kendrick, 115 F. Supp. 2d 943 (S.D. Ind. 2000), rev'd, 244 F.3d 572 (7th Cir. 2001), cert. denied, 534 U.S. 994 (2001).

Midwestern Gas Transmission Co. v. McCarty, 120 F. Supp. 2d 1155 (S.D. Ind. 2000), rev'd, 270 F.3d 536 (7th Cir. 2001), cert. denied, 535 U.S. 1053 (2002).

Gregory-Bey v. Hanks, 2000 WL 1909642 (S.D. Ind. 2000), aff'd, 332 F.3d 1036 (7th Cir. 2003), cert. denied, 540 U.S. 1052 (2003).

United States v. Evans, 2001 WL 243287 (S.D. Ind. 2001), aff'd, 282 F.3d 451 (7th Cir. 2002), cert. denied, 537 U.S. 918 (2002).

A Woman's Choice-East Side Women's Clinic v. Newman, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), rev'd, 305 F.3d 684 (7th Cir. 2002), cert. denied, 537 U.S. 1192 (2003).

Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 2002 WL 1801525 (S.D. Ind. 2002), aff'd in part and rev'd in part, 381 F.3d 1371 (Fed. Cir. 2004), cert. denied, 544 U.S. 1032 (2005).

Latner v. Delta-HA, Inc., 2002 WL 31255473 (S.D. Ind. 2002), aff'd mem., 72 Fed. Appx. 448 (7th Cir. 2003), cert. denied, 540 U.S. 1182 (2004).

United States v. Emerson, 501 F.3d 804 (7th Cir. 2007), cert. denied, 128 S. Ct. 1098 (2008).

Caskey v. Colgate-Palmolive Co., 438 F. Supp. 2d 954 (S.D. Ind. 2006), aff'd, 535 F.3d 585 (7th Cir. 2008), cert. denied, 129 S. Ct. 738 (2008).

United States v. McCotry, 2006 WL 2460757 (S.D. Ind. 2006), rev'd, 495 F.3d 795 (7th Cir. 2007), cert. denied, 128 S. Ct. 938 (2008).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.
1. United States v. Avila, No. 07-2404, — F.3d —, 2009 WL — (March 6, 2009). The Seventh Circuit affirmed the defendant's conviction in a methamphetamine conspiracy but vacated the sentence of 396 months because of an error in calculating the advisory sentencing guidelines.
 2. United States v. Osborne, 551 F.3d 718 (7th Cir. 2009). The Seventh Circuit vacated and remanded a sentence in a child pornography case for further consideration of whether the defendant's prior conviction qualified as a conviction for "abusive sexual conduct involving a minor," which requires a mandatory minimum sentence of 15 years. I held that the defendant's prior conviction

qualified for the higher minimum sentence. In a case of first impression at the appellate level, the Seventh Circuit held that the state statute (making it criminal for a person 18 years old or older to have sexual contact with a person 14 or 15 years old) might have some "non-abusive" applications, so the court remanded for further consideration of the circumstances of the defendant's prior conviction.

3. *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 2008 WL 5257333 (Fed. Cir. Dec. 18, 2008). After an earlier remand for a partial new trial on one method claim of one patent, I granted summary judgment (a) to the plaintiffs on the issue of infringement, (b) to the defendants based on a finding of invalidity for anticipation, and (c) to each side on several damages issues. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed the finding of infringement, reversed the finding of invalidity, affirmed the findings on damages issues, and remanded for a trial on damages only. The Federal Circuit panel decision has been vacated, and the Federal Circuit will rehear the case en banc regarding one damages issue that has divided that court.
4. *Gaylor v. Astrue*, 2008 WL 4206360 (7th Cir. Sept. 8, 2008), reversed my decision affirming the Social Security Administration's denial of disability benefits. 2007 WL 968733 (S.D. Ind. 2007). The Seventh Circuit found that the Administrative Law Judge had not sufficiently explained his decision. The case was remanded to the SSA for further proceedings.
5. *Chapman v. Airleaf Publishing Book Selling*, 2008 WL 3977527 (7th Cir. Aug. 28, 2008). I dismissed this pro se copyright case for failure to state a claim upon which relief could be granted. 2007 WL 2751780 (S.D. Ind. 2007). The Seventh Circuit held that the case was so lacking in merit that the dismissal should have been for lack of subject matter jurisdiction instead.
6. *United States v. Woolsey*, 535 F.3d 540 (7th Cir. 2008). The Seventh Circuit affirmed convictions after trial in a drug and firearm case, but on the government's cross-appeal, remanded for imposition of mandatory life sentence for a 55 year old defendant, as opposed to the 25 year sentence I had imposed. The issue was whether a 1974 conviction under the old Youth Corrections Act should be treated as expunged or whether it should count toward the "three strikes" sentencing law in 21 U.S.C. § 851. I had treated it as expunged because it should have been expunged but was not. The Seventh Circuit disagreed.
7. *Bright v. Hill's Pet Nutrition, Inc.*, 510 F.3d 766 (7th Cir. 2007). The Seventh Circuit affirmed in part and reversed in part the jury verdict for the defense in a trial for alleged sexual harassment and Family and Medical Leave Act violations. The Seventh Circuit remanded for a new trial on the sexual harassment claim because I excluded some evidence from plaintiff that the court deemed relevant.

8. *CSX Transportation, Inc. v. Appalachian Railcar Services, Inc.*, 509 F.3d 384 (7th Cir. 2007). The Seventh Circuit reversed my grant of summary judgment for defendant in a commercial dispute over whether CSX could recover payments it had mistakenly made for damage to railcars based on its misunderstanding of whether the rail accident had occurred on CSX track. 2006 WL 2264004 (S.D. Ind. 2006). The parties later settled.
9. *United States v. Cannon*, 253 Fed. Appx. 590 (7th Cir. 2007). The defendant pled guilty to conspiring to rob another drug dealer of cocaine. I sentenced him to 270 months in prison, plus 60 months in prison for a supervised release violation from an earlier case, without objection to the supervised release portion of the sentence. The Seventh Circuit had initially dismissed his appeal, 182 Fed. Appx. 558 (7th Cir. 2006), but both the defendant and the government later realized that because of the felony classification from the earlier case, the statutory maximum for the supervised release violation was 24 months. The Seventh Circuit vacated the 60-month sentence and remanded for a new sentence. I sentenced the defendant to 24 months on the supervised release violation, and the Seventh Circuit affirmed.
10. *Hinrichs v. Speaker of House of Representatives*, 506 F.3d 584 (7th Cir. 2007). On stipulated facts, I issued a permanent injunction directing the Speaker of the Indiana House of Representatives to take steps to ensure that official prayers to open legislative sessions were non-sectarian. *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). Initially, the Seventh Circuit denied a stay pending appeal and wrote that my decision was probably correct as to both the plaintiffs' taxpayer standing and the merits of the Establishment Clause issue. *Hinrichs v. Bosma*, 440 F.3d 393 (7th Cir. 2006). While the appeal was pending, the Supreme Court announced a more limited view of taxpayer standing in Establishment Clause cases in *Hein v. Freedom from Religion Foundation*, 127 S. Ct. 2553 (2007). Based on *Hein*, the Seventh Circuit changed course, held that the plaintiff taxpayers did not have standing to challenge the official sectarian prayers, and vacated the injunction. The Seventh Circuit did not revisit the merits of the Establishment Clause issues.
11. *Evroy v. RJM Acquisitions Funding LLC*, 505 F.3d 769 (7th Cir. 2007). Plaintiffs alleged that debt collectors' letters offering to settle for a specific discount by a specific date were misleading because the debt collectors actually would have been willing to settle for less money and at any time. I held that these allegations did not state a viable claim under the Fair Debt Collection Practices Act. *Headen v. Asset Acceptance, LLC*, 458 F. Supp. 2d 768 (S.D. Ind. 2006), and 383 F. Supp. 2d 1097 (S.D. Ind. 2005). The Seventh Circuit held that the theory was viable and reversed the dismissal. After remand, two of the cases are going forward with certified plaintiff classes.
12. *United States v. Hollingsworth*, 495 F.3d 795 (7th Cir. 2007). The Seventh Circuit affirmed one defendant's criminal conviction and sentence, but reversed my order

suppressing evidence against the other defendant. In the affirmance, the court found that I erred by admitting evidence from the suppression hearing and had made an Apprendi error in imposing the sentence, but that both errors were harmless. I granted a motion to suppress by the other defendant, where the police had obtained a search warrant for her apartment by twice interrogating her elementary school-age daughter in private at the public school. I held that such tactics under the circumstances violated the family's constitutional right of privacy. *United States v. McCotry*, 2006 WL 2460757 (S.D. Ind. 2006). The Seventh Circuit reversed the suppression of evidence, finding no constitutional violation. That defendant then pled guilty.

13. *Wieland v. Buss*, 185 Fed. Appx. 527 (7th Cir. 2006). The habeas corpus petitioner pled guilty to aggravated battery. He argued that he would not have pled guilty if his lawyer had explained the potential sentences more accurately. I denied his petition for a writ of habeas corpus, concluding that the state courts had not acted unreasonably in applying Supreme Court precedent. *Wieland v. Davis*, 1:04-cv-991 (S.D. Ind. July 27, 2005). The Seventh Circuit reversed and granted the writ, holding that the attorney's performance was ineffective and had prejudiced the defendant, and that the state courts had acted unreasonably in denying relief.
14. *Brown v. Bartholomew Consolidated School Corp.*, 442 F.3d 588 (7th Cir. 2006). I affirmed a state administrative ruling in a special education case under the Individuals with Disabilities Education Act. 2005 WL 552194 (S.D. Ind. 2005). By the time the parents' appeal was ripe, the case had become moot. The Seventh Circuit ordered dismissal for lack of jurisdiction as moot.
15. *Norfleet v. Webster*, 439 F.3d 392 (7th Cir. 2006). I granted summary judgment for three defendants in this pro se case challenging medical care in a federal prison, but denied summary judgment for two defendants – a doctor and physician's assistant. Cause No. 1:03-cv-458 (S.D. Ind. Dec. 29, 2004). The Seventh Circuit reversed the denial of summary judgment for the doctor and physician's assistant, finding no issue of fact as to whether they could have acted with deliberate indifference to the prisoner's serious medical need.
16. *United States v. Graves*, 418 F.3d 739 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this crack cocaine distribution case but remanded for re-sentencing because the sentence was imposed when the Sentencing Guidelines were still mandatory, before *United States v. Booker*, 543 U.S. 220 (2005). On remand, I imposed the same 30-year sentence, which was affirmed in a later appeal. 184 Fed. Appx. 579 (7th Cir. 2006).
17. *United States v. Miller*, 405 F.3d 551 (7th Cir. 2005). The Seventh Circuit affirmed convictions in this "ecstasy" distribution case but vacated for re-sentencing to reconsider whether the defendant might qualify under new case law

for a “minor role” adjustment under Sentencing Guidelines. I imposed the same sentence on remand, finding that the defendant did not play a minor role in the drug distribution.

18. *Canaan v. McBride*, 395 F.3d 376 (7th Cir. 2005). In this death penalty habeas corpus case, I affirmed the murder conviction and one finding of a death penalty aggravator, but found that a new trial was required as to another death penalty aggravator and that a new death penalty hearing was required. *Canaan v. Davis*, 2003 WL 118003 (S.D. Ind. 2003). The Seventh Circuit reinstated the aggravating factor finding but affirmed the ruling that a new death penalty hearing was required. The defendant was later sentenced to life without parole.
19. *Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc.*, 381 F.3d 1371 (Fed. Cir. 2004). This patent case was tried to a jury, which ruled for the plaintiff on one patent for implantable defibrillators and awarded \$140 million. I set the verdict aside and entered judgment for defendants. 2002 WL 1801525 (S.D. Ind. 2002). On appeal, the Federal Circuit held that I had erred in construing one ambiguous claim of one patent and on several defenses. The court remanded for further proceedings on one method claim. I later ruled that the case should be assigned to another judge based on an unusual blend of Seventh Circuit and Federal Circuit rules. 2005 WL 1070681 (S.D. Ind. 2005). In another appeal, the Federal Circuit reversed that decision and said I should continue to handle the remanded case. 144 Fed. Appx. 106 (Fed. Cir. 2005). I did so and eventually granted summary judgment for the defendants on the remaining claims. 483 F. Supp. 2d 734 (S.D. Ind. 2007). The Federal Circuit affirmed that in part and reversed in part on December 18, 2008, but that decision has been vacated for rehearing *en banc*. (See above).
20. *United States v. Allen*, 383 F.3d 644 (7th Cir. 2004). The Seventh Circuit reversed a conviction for felon-in-possession of firearm after a bench trial. The Seventh Circuit held that the government had not proved beyond a reasonable doubt that defendant David Allen was the same David Allen whose felony conviction record was put into evidence.
21. *Old Town Neighborhood Ass’n v. Kauffman*, 333 F.3d 732 (7th Cir. 2003). I granted injunctive relief against a highway project through an historic neighborhood. 2002 WL 31741477 (S.D. Ind. 2002). The Seventh Circuit held that I should have issued a narrower injunction only against use of federal funds to carry out the project.
22. *Precision Industries, Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537 (7th Cir. 2003). In a question of first impression at appellate level, the Seventh Circuit reversed a decision regarding how best to reconcile two apparently conflicting statutory provisions affecting a tenant's rights when the landlord goes into

bankruptcy and the rented property is sold. My decision is available at 2001 WL 699881 (S.D. Ind. 2001).

23. *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003). The Seventh Circuit affirmed a defense jury verdict in a Fair Debt Collection Practices Act case but reversed and remanded my grant of judgment as a matter of law on one claim.
24. *A Woman's Choice—East Side Women's Clinic v. Newman*, 305 F.3d 684 (7th Cir. 2002). The Seventh Circuit reversed my decision in an as-applied challenge to an informed-consent abortion statute that effectively required a woman to make two trips to an abortion clinic, one to be provided the information and a later trip for the procedure. I had held unconstitutional the requirement that information be provided to the woman in person at least 18 hours before the procedure. 132 F. Supp. 2d 1150 (S.D. Ind. 2001). The Seventh Circuit reversed the permanent injunction.
25. *United States v. Cannon*, 39 Fed. Appx. 342 (7th Cir. 2002). The Seventh Circuit vacated and remanded a sentence in a tax fraud case because of an error in calculating the defendant's criminal history points.
26. *New Hope Services, Inc. v. United States*, 285 F.3d 568 (7th Cir. 2002). A taxpayer prevailed at the administrative level in a tax dispute and then sued for attorney fees from the government under the Equal Access to Justice Act, 28 U.S.C. § 2412. I denied relief for failure to exhaust administrative remedies. Cause No. NA 96-C-116 (S.D. Ind. Aug. 18, 2000). The Seventh Circuit reversed, finding that the taxpayer had adequately exhausted administrative remedies.
27. *Higgs v. Carver*, 286 F.3d 437 (7th Cir. 2002). I dismissed this many-faceted prisoner civil rights case. 2000 WL 1902190 (S.D. Ind. 2000). The Seventh Circuit reversed on two counts, finding the dismissal premature.
28. *Midwestern Gas Transmission Co. v. McCarty*, 270 F.3d 536 (7th Cir. 2001). The state utility regulatory commission was considering a proposed "bypass" arrangement in which a large industrial user of natural gas sought to bypass the local gas utility and connect directly to an interstate pipeline. I abstained under *Younger v. Harris* and denied the gas pipeline's request to enjoin the state regulatory proceedings. 120 F. Supp. 2d 1155 (7th Cir. 2001). The Seventh Circuit reversed and held that the Federal Energy Regulatory Commission had exclusive jurisdiction over the question so that the state proceedings should have been enjoined.
29. *Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc.*, 261 F.3d 1329 (Fed. Cir. 2001). I granted summary judgment for defendants in this patent infringement action involving cardiac stents used to open blocked coronary arteries. Cause No. IP 98-1108-C (S.D. Ind. June 28, 2000). The Federal Circuit

affirmed in part and reversed in part, holding that I erred in construing some claims in the patents.

30. *American Amusement Machine Ass'n v. Kendrick*, 244 F.3d 572 (7th Cir. 2001). Indianapolis enacted an ordinance to require parental consent for children to have access to arcade video games with extreme violence or explicit sexual content. The video game industry challenged the ordinance as applied to violent games. I upheld the ordinance and denied an injunction, reasoning that the city could restrict children's access to extremely violent content much as it could restrict their access to explicit sexual content that would be legal for adults to possess. 115 F. Supp. 2d 943 (S.D. Ind. 2000). The Seventh Circuit reversed and held that the limits on children's access to violent video games violated the First Amendment.
31. *United States v. Arambula*, 238 F.3d 865 (7th Cir. 2001). The defendant in this cocaine case had testified against a co-defendant (also before me). At sentencing, I found that Arambula had lied in his testimony against the co-defendant to protect others involved in the cocaine distribution, and I enhanced his sentence under the Guidelines. The Seventh Circuit reversed and remanded for resentencing, holding that the lies were not material. I re-sentenced the defendant without that enhancement.
32. *Del Vecchio v. Conseco, Inc.*, 230 F.3d 974 (7th Cir. 2000). I granted summary judgment for a life insurance company on statute of limitations grounds in a case claiming fraud in marketing whole life insurance policies. Cause No. IP 98-91-C (S.D. Ind. Sept. 13, 1999). The Seventh Circuit held that the jurisdictional amount-in-controversy requirement was not satisfied, so that I should have dismissed the case instead for lack of jurisdiction.
33. *Weiss v. Cooley*, 230 F.3d 1027 (7th Cir. 2000). Prisoner sued jail officials for civil rights violations after he was attacked by other inmates. I granted summary judgment for defendants. Cause No. IP 97-471-C (S.D. Ind. May 29, 1998). The Seventh Circuit affirmed in part but reversed as to one defendant, finding a genuine issue of fact as to whether that defendant recognized the risk to the plaintiff.
34. *Zimmerman v. Tribble*, 226 F.3d 568 (7th Cir. 2000). I dismissed a prisoner's complaint stating several civil rights claims. Cause No. IP 97-1778-C (S.D. Ind. April 29, 1998) (copy not available). The Seventh Circuit affirmed in part but reversed as to the prisoner's claim that a library supervisor had retaliated against him by denying library access after the prisoner complained about his limited access.
35. *Walker v. O'Brien*, 216 F.3d 626 (7th Cir. 2000). In several consolidated cases challenging prison disciplinary decisions, a colleague and I denied habeas corpus

relief and then denied certificates of appealability. I also held that the petitioner was not entitled to proceed on appeal without payment of fees because he had accumulated three “strikes” in the form of frivolous cases. See *Finfrock v. Hanks*, Cause No. IP 97-861-C (S.D. Ind. Oct. 30, 1997) (denying certificate of appealability). The Seventh Circuit decided to overrule prior circuit law and remanded those determinations, finding that no certificate of appealability was needed in such appeals.

36. *Board of Trustees, Sheet Metal Workers’ Nat’l Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031 (7th Cir. 2000). I held that this pension fund could not exercise “long-arm” jurisdiction over the shareholder of the bankrupt employer that defaulted on its pension contributions. 46 F. Supp. 2d 852 (S.D. Ind. 1999); 64 F. Supp. 2d 839 (S.D. Ind. 1999). The Seventh Circuit reversed and held that such long-arm jurisdiction over an employer’s shareholder was permissible under ERISA.
37. *Mead Johnson & Co. v. Abbott Laboratories*, 201 F.3d 883 (7th Cir. 2000), on rehearing, 209 F.3d 1032 (7th Cir. 2000). I granted a preliminary injunction under the Lanham Act against advertising for infant formulas that I found was misleading. 41 F. Supp. 2d 879 (S.D. Ind. 1999). The Seventh Circuit reversed, holding that the advertising was not misleading and that I erred by setting too low an injunction bond.
38. *Smith v. U.S. District Court Officers*, 203 F.3d 440 (7th Cir. 2000). Plaintiff sought a writ of mandamus to obtain copies of audio tapes of all proceedings in his earlier federal criminal case. I dismissed the petition. Cause No. IP-97-1924-C (S.D. Ind. Feb. 4, 1998). The Seventh Circuit decided a question of first impression and vacated, holding that the petitioner had a right of access to at least some of the tapes.
39. *Velasquez v. Frapwell*, 165 F.3d 593 (7th Cir. 1999). Indiana University fired an attorney who alleged discrimination on several grounds, including his National Guard service. I dismissed his claim under the Uniformed Services Employment and Reemployment Rights Act based on the Eleventh Amendment. 994 F. Supp. 993 (S.D. Ind. 1998). The Seventh Circuit affirmed. 160 F.3d 389 (7th Cir. 1998). The court then learned that one day before its affirmance, Congress had enacted new legislation to apply to pending cases, directing them to state courts. The Seventh Circuit therefore vacated the portions of its and my decisions regarding the USERRA claim.
40. *Schleibaum v. Kmart Corp.*, 153 F.3d 496 (7th Cir. 1998). In this ERISA case, I found a violation of the employee’s procedural rights but found that the plaintiffs were not entitled to any substantial recovery. Cause No. IP 95-284-C (S.D. Ind. Feb. 12, 1997). The Seventh Circuit affirmed as to the violation but remanded for creation of an equitable remedy.

41. *K.R. v. Anderson Community School Corp.*, 125 F.3d 1017 (7th Cir. 1997). K.R. was a young child with special needs. Her parents chose to enroll her in a Catholic school. Federal regulations required public school districts to provide assistance to children enrolled in private schools that was “comparable” to the help they would receive in public school. I held that the regulations required an assistant for the child, which public schools would have provided if she had attended public school. 887 F. Supp. 1217 (S.D. Ind. 1995). The Seventh Circuit reversed, 81 F.3d 673 (7th Cir. 1996), while other circuits followed the approach I had taken. The Supreme Court granted certiorari and remanded this case and others for reconsideration in light of 1997 statutory amendments. 521 U.S. 1114 (1997). On remand, the Seventh Circuit again held that the student was not entitled to assistance, and the Supreme Court denied a second petition for certiorari.
42. *United States v. Talbott*, 78 F.3d 1183 (7th Cir. 1996). Defendant was convicted of being a felon in possession of a firearm on one occasion and ammunition on another occasion, and I sentenced him as an armed career criminal under the Guidelines. The Seventh Circuit held that I had erred by imposing the burden on the defendant to prove his defense of necessity. (The Supreme Court later overruled the Seventh Circuit's opinion in *Talbott* on this point. *Dixon v. United States*, 548 U.S. 1 (2006).) The Seventh Circuit also held that *Talbott* should be sentenced at one offense level lower under the Guidelines because his crime was not in connection with a crime of violence. I imposed a lower sentence on remand, and the Seventh Circuit affirmed, 107 F.3d 874 (7th Cir. 1997).
43. *Gregory-Bey v. Hanks*, 91 F.3d 146, 1996 WL 394011 (7th Cir. 1996). I dismissed a habeas corpus petition in this robbery-murder for failure to exhaust state remedies, which had been long delayed. Cause No. IP 94-903 (S.D. Ind. April 7, 1995). The Court of Appeals reversed, holding that the state courts' delay meant that no further exhaustion was required. On remand, after further discovery and evidentiary hearings, I denied relief on the merits, 2000 WL 1909642 (S.D. Ind. 2000), and the Seventh Circuit affirmed, 332 F.3d 1036 (7th Cir. 2003).
44. *Grossbaum v. Indianapolis-Marion County Building Authority*, 63 F.3d 581 (7th Cir. 1995). Plaintiffs sought to erect a large menorah in the lobby of the City-County Building. Their request was denied, and they sought an injunction. I denied relief, reasoning that the local government had not opened up the lobby as a public forum and that the government had imposed neutral and permissible restrictions on the subject matter of private displays in the lobby. The Seventh Circuit reversed, holding that the government's restrictions amounted to “viewpoint” discrimination barred by the First Amendment. The government responded by prohibiting all private displays in the public lobby. When the plaintiffs sued again, I held that the new restrictions did not violate the First Amendment, 909 F. Supp. 1187 (S.D. Ind. 1995), and the Seventh Circuit later affirmed that ruling. 100 F.3d 1287 (7th Cir. 1996).

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Before April 2000, a substantial majority of the written decisions I issued were not published even in electronic form. They were distributed to the parties and placed in the case file. I designated approximately ten to fifteen percent of those decisions for publication on Westlaw and Lexis, and designated a smaller percentage for publication in the bound Federal Supplement volumes. (Some decisions have also been published by those businesses upon request by parties or counsel rather than by me.) The unpublished decisions are available from the case files. I have paper copies of most that were drafted by my law clerks and me. (I do not have copies of most decisions first drafted by the court's pro se law clerks for my review and revision. Those would need to be retrieved from case files in storage.) The paper copies from those years fill approximately four standard file drawers.

In April 2000, the Southern District of Indiana introduced a system that allowed judges to designate unpublished decisions so that they would be made accessible electronically on the court's Internet website. The database is still maintained. The opinions are maintained in a searchable database, accessible at: http://www.insd.uscourts.gov/Search/opinions_search.htm. These opinions are stored on the court's Internet server, housed at the Indianapolis Courthouse. I designated a total of 446 decisions on this database, including decisions from as early as December 1994 and as late as April 24, 2005. Many of these opinions are also available through Westlaw or Lexis.

On April 24, 2005, in response to the E-Government Act, the court's Case Management/Electronic Case Filing (CM/ECF) was upgraded to permit judges to designate opinions as "written opinions," defined as "any document issued by a judge . . . that sets forth a reasoned explanation for a court's decision." Since April 24, 2005, I have designated nearly 850 documents as "written opinions" that were not specifically designated "for publication." These opinions are stored on the court's CM/ECF server in Indianapolis, and the information should also be available on a server maintained by the Administrative Office of the U.S. Courts. Many of these opinions are also available through Westlaw or Lexis.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.
1. Grossbaum v. Indianapolis-Marion County Building Authority, 870 F. Supp. 1450 (S.D. Ind. 1994). See discussion in Response 13(f).
 2. K.R. v. Anderson Community School Corp., 887 F. Supp. 1217 (S.D. Ind. 1995). See discussion in Response 13(f).

3. *A Woman's Choice-East Side Women's Clinic v. Newman*, 904 F. Supp. 1434 (S.D. Ind. 1995). I issued a preliminary injunction blocking enforcement of a 1995 Indiana law requiring a woman seeking an abortion to make two trips to a clinic (one for a face-to-face meeting with a doctor and a second trip at least 18 hours later for the procedure itself). I found that plaintiffs had made a sufficient showing that the new law was likely to impose an "undue burden" on a significant number of women's right to choose to have an abortion. The preliminary injunction was not appealed. I later narrowed the scope of the injunction after the Indiana Supreme Court construed the health exception in the statute so as to reduce the constitutional problems. 980 F. Supp. 962 (S.D. Ind. 1997). That modification also was not appealed. I later issued a permanent injunction against the requirement that information be provided in person, 132 F. Supp. 2d 1150 (S.D. Ind. 2001), and the Seventh Circuit reversed that decision, 305 F.3d 684 (7th Cir. 2002), as noted above.
4. *Estate of Cole v. Fromm*, 941 F. Supp. 776 (S.D. Ind. 1995). Cole committed suicide while in jail. His estate sued several jail officials alleging deliberate indifference to his safety. I granted summary judgment for the defendants, and the Seventh Circuit affirmed. 94 F.3d 254 (7th Cir. 1996).
5. *United States v. Simpson*, 944 F. Supp. 1396 (S.D. Ind. 1996). I granted a motion to suppress cocaine seized pursuant to a search warrant. I found that the police had violated the defendant's Fourth Amendment rights by making a recklessly false statement to obtain the warrant. The government did not appeal.
6. *Brownsburg Area Patrons Affecting Change v. Baldwin*, 943 F. Supp. 975 (S.D. Ind. 1996). A local political action committee challenged state campaign finance laws that applied to political action committees. I found that the statutes did not apply to the plaintiffs and therefore denied a preliminary injunction. The Seventh Circuit certified the question of state law to the Indiana Supreme Court, which agreed with my interpretation, 714 N.E.2d 135 (Ind. 1999), and the Seventh Circuit then affirmed. 1999 WL 33611333 (7th Cir. 1999).
7. *Zehner v. Trigg*, 952 F. Supp. 1318 (S.D. Ind. 1997), *aff'd*, 133 F.3d 459 (7th Cir. 1997). See discussion in Response 13(d), case # 6.
8. *Stovall v. McAtee*, 35 F. Supp. 2d 1125 (S.D. Ind. 1997). The plaintiff was badly injured by other inmates while he was detained in the Marion County Jail. He sued the sheriff in his individual and official capacities. I granted summary judgment for the sheriff in his individual capacity but denied summary judgment on the official capacity claims. There was no appeal; the case later settled.
9. *Fleenor v. Farley*, 47 F. Supp. 2d 1021 (S.D. Ind. 1998). Fleenor murdered his mother- and father-in-law in front of his wife and children. He was sentenced to death. I denied his petition for a writ of habeas corpus, addressing numerous

constitutional challenges to his convictions and death sentence. The Seventh Circuit affirmed.

10. *Velasquez v. Frapwell*, 994 F. Supp. 993 (S.D. Ind. 1998). See discussion in Response 13(f), case # 39.
11. *Bibbs v. Newman*, 997 F. Supp. 1174 (S.D. Ind. 1998). A deputy prosecutor in Marion County sued for sex discrimination on the job. Whether a deputy prosecutor is an "employee" entitled to protection under Title VII of the Civil Rights Act of 1964 depended on whether, under the First Amendment, the attorney position was one for which political affiliation could be considered in hiring and firing decisions. I found that the First Amendment and therefore Title VII did not protect the deputy prosecutor. There was no appeal.
12. *Mason v. Hamilton County*, 13 F. Supp. 2d 829 (S.D. Ind. 1998). Plaintiff Mason was high on drugs outside a Grateful Dead concert when he climbed a fence to "crash the gate." He refused a police officer's order to stop, and a deputy sheriff sent a police canine to stop Mason, resulting in serious injuries. A jury found that the deputy sheriff had not used excessive force by using the police dog to stop Mason from fleeing. I denied plaintiff's motion for judgment as a matter of law and a new trial, finding that whether the use of force was reasonable was a factual question for the jury to decide. There was no appeal.
13. *United States v. Gosha*, 78 F. Supp. 2d 833 (S.D. Ind. 1999). I denied motions to suppress drug evidence, finding that the police could conduct a warrantless walk-through inspection of house in which one defendant was arrested because they believed a child was left alone inside.
14. *Lowery v. Anderson*, 69 F. Supp. 2d 1078 (S.D. Ind. 1999). Lowery and another man murdered an elderly couple in their home, and Lowery was sentenced to death. I denied his petition for a writ of habeas corpus, deciding numerous constitutional challenges to the convictions and sentence. I later denied a motion to reconsider. 1999 WL 778587 (S.D. Ind. July 29, 1999). The Seventh Circuit affirmed. 225 F.3d 833 (7th Cir. 2000).
15. *Schornhorst v. Anderson*, 77 F. Supp. 2d 944 (S.D. Ind. 1999). Attorneys for D.H. Fleenor sought to stop his execution by asserting that he was incompetent to be executed. I held on an emergency basis that the state court finding that he was competent to be executed was reasonable, and denied the last-minute request to stop the execution.
16. *United States v. Gold*, 77 F. Supp. 2d 936 (S.D. Ind. 1999). I granted a defendant's motion to suppress a firearm seized after a traffic stop for which police had no probable cause. The government did not appeal.

17. *Sefick v. United States*, 1999 WL 778588 (N.D. Ill. 1999). While sitting by designation in the Northern District of Illinois, I held that the First Amendment did not entitle an artist to place a sexually suggestive artistic work in the lobby of a principal federal office building in Chicago. The decision was not appealed.
18. *Gray v. City of Columbus*, 2000 WL 683394 (S.D. Ind. Jan. 31, 2000). I denied summary judgment for the police department and police officers where a person who was not under arrest testified that she had been required to submit to a warrantless strip search and body cavity search. The case was later settled without an appeal.
19. *Porter v. City of Muncie*, 2000 WL 682660 (S.D. Ind. Feb. 16, 2000). Porter was mentally ill and, after a dispute with her husband, left her home on foot with two kitchen knives. Her husband called the police, and an officer located her. The encounter ended with the officer firing two shots that killed Porter. Her husband filed suit, claiming that the use of deadly force was unreasonable and excessive under the Fourth Amendment. After a bench trial, I found that the officer had been justified in shooting Porter to defend himself as she approached him with the knives and refused his orders to stop. There was no appeal.
20. *Watkins v. Miller*, 92 F. Supp. 2d 824 (S.D. Ind. 2000). See discussion in Response 13(c).
21. *Marion County Committee of Indiana Democratic Party v. Marion County Election Board*, 2000 WL 1206740 (S.D. Ind. Aug. 3, 2000). Indiana election law gives small political parties more time than it gives the two major parties to fill vacancies on the ballot. The plaintiff Democratic Party challenged the different treatment under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. I denied the Democratic Party's motion for a preliminary injunction, finding that the legislature had not discriminated unconstitutionally against the Democratic and Republican parties.
22. *American Amusement Machine Ass'n v. Kendrick*, 115 F. Supp. 2d 943 (S.D. Ind. 2000). See discussion in Response 13(f).
23. *Canaan v. Davis*, 2003 WL 118003 (S.D. Ind. Jan. 10, 2003). See description of *Canaan v. McBride* in Response 13(f).
24. *Porco v. Trustees of Indiana University*, 2005 WL 552462 (S.D. Ind. Feb. 24, 2005). Plaintiff had moved from Michigan to Indianapolis to attend law school. After paying the higher non-resident tuition for his first year, he sought the lower resident tuition rate for his second and third years. The university rejected his request, and he sued, alleging violation of his federal constitutional rights. I ruled in favor of the university, holding that lower tuitions at state schools for state residents do not violate the Constitution. The plaintiff's appeal was later

dismissed as moot because he had failed to seek a stay pending appeal to block distribution of the money deposited with the court. 453 F.3d 390 (7th Cir. 2006).

25. *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005). See discussion in Response 13(c), case # 6
26. *United States v. McCotry*, 2006 WL 2460757 (S.D. Ind. July 13, 2006). See discussion of *United States v. Hollingsworth*, 495 F.3d 795 (7th Cir. 2007), in Response 13(f), case # 12.
27. *Martin Marietta Materials, Inc. v. Brainard*, 2007 WL 4232184 (S.D. Ind. Nov. 28, 2007). Martin Marietta owned a long-established gravel and stone quarry. A suburb grew up around it. Residents of the area pushed the local government to restrict the mining activities. After numerous disputes and court cases, Martin Marietta sued the local government for breaching a contract and violating its constitutional property rights. I denied the local government's motion for summary judgment.
28. *Martin v. Indiana State Police*, 537 F. Supp. 2d 974 (S.D. Ind. 2008). Police obtained a warrant to search Martin's house for evidence of marijuana production and sales. In a garden bed just outside the house, the police found \$300,000 in cash sealed in buried pipes. The police seized the money and later turned it over to federal authorities for forfeiture. Martin later sued to recover the money. Among other issues, I found that the warrant was valid and was broad enough to authorize the search of the garden bed as part of the home's "curtilage." (I also found that the police may have violated state law by delivering the money to federal authorities without permission from the state court that had issued the warrant, but that any remedy would need to be pursued under state law in state courts.) No appeal was filed.
29. *Bowden v. Town of Speedway*, 539 F. Supp. 2d 1092 (S.D. Ind. 2008). Bowden was detained by police officers investigating unusual activity outside a business late at night. The detention lasted well beyond the point where it was clear that there was no criminal activity. Bowden sued for violation of his Fourth Amendment rights. On cross-motions for summary judgment, I held as a matter of law that a police officer had violated Bowden's rights by keeping him in a police car in handcuffs after it was clear that there was no criminal activity. I also granted defendants' motion for summary judgment in part and denied it in part. The case later settled; there was no appeal.
30. *Doe v. Prosecutor*, 566 F. Supp. 2d 862 (S.D. Ind. 2008). See discussion in Response 13(d), case # 5.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

None

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have always provided the Clerk's Office with an automatic recusal list. Judges provide the clerk with a list of parties from whose cases they would need to recuse, and no case with those parties should be assigned to that judge. My list for automatic recusal has included at various times one corporation in which my minor daughter held stock, two state agencies that my brother directed, a not-for-profit organization and then a city where my wife has worked as an attorney, and corporations in which the estate of my then father-in-law held stock. In addition, I recuse in any case in which my brother-in-law David J. Hensel is counsel.

For the first two years I served as a judge, I recused automatically from all cases in which my former law firm (Barnes & Thornburg) appeared as counsel. After those first two years, I recused from any cases in which Barnes & Thornburg had been involved while I was still with the firm. I do not have specific records or recollections of the particular cases.

During the first several years on the court, I also recused from almost all cases in which the law firm of Baker & Daniels appeared. Lawyers from that firm were then representing me and Indiana Attorney General Pam Carter and other defendants in lawsuits by former Attorney General's Office employees who had

been terminated or had resigned in connection with Attorney General Carter's transition, which I had served as volunteer transition director from November 1992 to January 1993. Several former employees filed federal lawsuits in the Southern District of Indiana claiming that they had lost their jobs because of improper considerations, including political affiliation, race, national origin, sex, and/or age. All cases were dismissed on the merits, holding that the applicable laws did not protect deputy attorneys general, without reaching the issues of the defendants' motives. The cases included *Americanos v. Carter*, 74 F.3d 138 (7th Cir. 1996) (affirming dismissal under Rule 12(b)(6)), which became the basis for dismissing other cases brought by deputy attorneys general. The other cases were *Wright v. Carter*, IP 94-C-1312; *Webster v. Carter*, IP 94-C-2104; and *Miller v. Carter*, IP 94-C-477. One example of such disqualification involving Baker & Daniels was *Robyns v. Community Centers of Indianapolis, Inc.*, IP 94-440-C-T/G, *aff'd*, 130 F.3d 1231 (7th Cir. 1997) (affirming Judge Tinder's grant of summary judgment), though I later handled a second related case several years later, and several years after the grounds for disqualification had been removed. See *Robyns v. Community Centers of Indianapolis, Inc.*, IP 98-1241, 2000 WL 1902193 (S.D. Ind. Dec. 28, 2000). The reason I recused from "almost" all of the Baker & Daniels cases is that this particular ground for recusal could be waived by all the parties through a "blind" process that prevented me from learning which parties declined to waive the ground for recusal. I recall that all parties did waive the ground for recusal in a few cases, but I have no specific records or memories of those cases. I also recused from cases involving the lawyers or the law firms adverse to me in those Attorney General transition lawsuits, but I do not have specific records or recollections of the particular cases. When I joined the bench, I had proposed this approach to the Judicial Conference on Codes of Conduct, and the committee endorsed the approach.

During approximately my first year or two on the bench, I also recused in any cases involving law firms that were involved in the case of *Nobles v. Cartwright*, 659 N.E.2d 1064 (Ind. App. 1995), in which I was a defendant stemming from my work as Counsel to the Governor. I do not have records or recollection of the specific cases affected. Shortly after the Indiana Court of Appeals decision, the matter was concluded successfully, and after that, I no longer recused in cases involving law firms that had been involved in the lawsuit.

I recused in an employment discrimination case against the South Indiana Conference of the United Methodist Church, *Cronin v. South Indiana Annual Conference*, 1:05-cv-1804 (S.D. Ind. Oct. 23, 2006). The plaintiff moved for my disqualification on the ground that my father is a retired United Methodist minister and had previously had administrative responsibilities in the conference, including service as a district superintendent of the church. I granted the motion to disqualify pursuant to 28 U.S.C. § 455(a) (disqualify where impartiality might reasonably be questioned).

I raised the issue of recusal in *Mead Johnson Co. v. Abbott Laboratories*, 1999 WL 778592 (S.D. Ind. Feb. 22, 1999). A few weeks after I heard evidence on a motion for preliminary injunction in a false advertising trademark case, my then father-in-law died. Shortly after his death, I learned that his estate included some stock in the plaintiff's parent company. Because my then-wife was a beneficiary of the estate, that meant I had unexpectedly acquired a disqualifying financial interest in the plaintiff. Under such circumstances, I could and did use the "safety valve" mechanism set forth in 28 U.S.C. § 455(f) to dispose of the disqualifying interest quickly and then proceeded to decide the case. I filed the cited opinion explaining the situation and my resolution of it.

I recused from *KnowledgeAZ, Inc. v. DeFosset*, No. 1:05-cv-1019, on April 11, 2007. After I had presided in the case for nearly two years, new attorneys for plaintiff filed a motion to disqualify Barnes & Thornburg from representing a defendant. The motion was based on a theory that an attorney for Barnes & Thornburg had done related work for a predecessor company of the plaintiff. My initial review of the motion indicated that its resolution might depend on whether the prior work was actually related to the issues and contracts in the current lawsuit. The problem for me was that the prior work had been done back in 1994 in my last few months as a partner of Barnes & Thornburg. I concluded that recusal was appropriate. The new judge assigned to the case later denied the motion for disqualification of the law firm.

Plaintiffs moved for my disqualification in 2008 in two parallel cases challenging conditions at a privately-managed jail facility in Indianapolis, *Kress v. CCA of Tennessee, LLC* (No. 1:08-cv-431) and *Olmstead v. CCA of Tennessee, LLC* (No. 1:08-cv-029). The motions asserted that I should recuse because one of the defendants' lawyers had worked for me as a law clerk (in 1999-2000) and because I had been a partner in the defendants' law firm (Barnes & Thornburg) before I was appointed to the court in 1994. I denied the motions to disqualify in an opinion available at 2008 WL 5216018 (S.D. Ind. Dec. 11, 2008). I explained that I have applied a one year "cooling off period" for law clerks after they leave employment with me, and that I had applied a two year cooling off period for cases with Barnes & Thornburg lawyers. In my judgment, recusal was not called for based on these prior relationships.

During my fourteen years service as a district judge, several pro se litigants who have been unhappy with my rulings in their current or previous cases have sought recusal. This is routine in a district court, and I did not keep records of all such requests. I have located several examples of cases in which pro se parties filed such requests. The following are examples of such cases:

Raphlah v. Roob, 2007 WL 3302440 (S.D. Ind. Nov. 5, 2007). This was a pro se habeas corpus case challenging the petitioner's state court commitment to a mental hospital in 2005. Several months after I dismissed the case as moot, the

petitioner filed a motion for my recusal. He argued that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration, which oversaw the hospital where petitioner had been confined, and would or should have been a witness. My brother had been the Secretary of the agency from 2001 until August 2003, long before the petitioner had been committed to the hospital. I denied the motion for recusal because it came too late and lacked merit. My brother had not been involved at any relevant time, and the habeas corpus case challenged the state court's decision to commit the petitioner to the hospital, not the management or conditions of the hospital.

Raphlah v. Indiana Medical Bd., 2007 WL 3285805 (S.D. Ind. Nov. 5, 2007). The same pro se litigant filed motion seeking recusal more than three years after the case was closed. The plaintiff again asserted that I should have recused because my brother John Hamilton had been the Secretary of the Indiana Family and Social Services Administration from 2001 until August 2003. I denied the motion. Neither that agency nor my brother nor any other agency personnel had been named as defendants, nor had the plaintiff challenged any agency policy.

Palmer v. United States, 2007 WL 3286414, *3 (S.D. Ind. Nov. 5, 2007). Palmer pled guilty to federal bank fraud and I sentenced her. She later sought relief under 28 U.S.C. § 2255 and asserted, among other arguments, that she should have been informed that one of the physicians she defrauded was the daughter of a former law partner from the firm where I was a partner from 1991 to 1994. I had never met the victim and had no relationship with her. I concluded that the partnership with the victim's late father more than a decade earlier was too tenuous to have required disqualification under 28 U.S.C. § 455.

Nottingham v. Acting Judges of District Court, 2006 WL 1042761 (S.D. Ind. March 24, 2006). Plaintiff had filed a nearly incoherent pro se complaint against all judges of the Southern District of Indiana, including myself, complaining about the results of previous lawsuits. He sought my recusal. If there had been a colorable claim against me or any of my colleagues, I would have recused. Because there was not even a colorable claim, I concluded that there was no need to recuse to allow a litigant to choose his or her judge, or to force the court to bring in a judge from another district, by filing frivolous claims against all the judges.

Robinson v. Gregory, 929 F. Supp. 334 (S.D. Ind. 1996). In a pro se case challenging alleged screening of prison mail, the plaintiff moved to disqualify me under 28 U.S.C. § 144, which requires a certificate of "good faith" signed by "counsel of record" stating that the judge has a personal bias or prejudice, apparently based on his disagreement with some of my earlier rulings in the case. I concluded that § 144 did not apply to such a request by a pro se litigant, and I

also found no reason to recuse under 28 U.S.C. § 455, the more general recusal statute.

15. **Public Office, Political Activities and Affiliations:**

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

Indiana State Ethics Commission. Chair, 1991 to 1994, appointed by Governor Evan Bayh to a four-year term. The Commission is responsible for developing, implementing, and enforcing ethical standards for the executive branch of state government, and for providing advisory opinions and education for state officers and employees. No reports were issued during my tenure. I resigned to accept appointment to U.S. District Court

Counsel to the Governor. January 1989 to June 1991, appointed by Governor Evan Bayh to serve as a member of his staff and as the chief lawyer for the administration.

Indiana State Recount Commission. November 1986 to January 1988, appointed pursuant to statute by the chairman of the Indiana Democratic Party (John Livengood) to serve as the Democratic member of the three-member commission for recounts in the 1986 election cycle, the first of the commission's existence.

Mayor's Task Force on Police Performance Assessment. October 1992 to 1994. I also served as a member of the task force. I was selected to serve by Marion County Prosecutor Jeff Modisett, though it is possible that Mayor Stephen Goldsmith made the formal selection. The task force developed a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers. As I recall, the proposal was made public some time in 1994 but quickly died for lack of support. Neither the chairman of the task force nor I have been able to locate a copy of the report.

Marion County Traffic Safety Partnership. Approx. 1993 to 1994. I served as chair of this multi-agency partnership to promote traffic safety. I served as a volunteer appointed by Marion County Prosecutor Jeff Modisett.

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

November 1992 to January 1993 – Transition Director, Indiana Attorney General-elect Pamela Carter (unpaid volunteer position). Volunteer on issues research during the campaign in 1992.

1987 to November 1988 – Evan Bayh for Governor. Volunteer to coordinate issues research and position papers for the gubernatorial campaign.

1985 to November 1986 – Evan Bayh for Secretary of State. Volunteer as counsel to the campaign and for issues research, particularly in the field of election and recount law.

1988 and 1992 – Organized fundraisers among my colleagues at Barnes & Thornburg for Evan Bayh in 1988 and 1992, and in 1992 for the Indiana House Democratic Caucus, Pamela Carter for Attorney General, and Stan Jones for Superintendent of Public Instruction.

1974 – Volunteer for Sen. Birch Bayh's campaign for re-election. I worked as a "gopher" at campaign headquarters for several hours each day during the summer.

1973 – Youth coordinator for Philip Hayes, candidate for the U.S. House of Representatives from Indiana's Eighth Congressional District.

16. **Legal Career:** Answer each part separately.

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

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

I served as a law clerk for Judge Richard Cudahy, United States Court of Appeals for the Seventh Circuit from September 1983 to September 1984.

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

I have not practiced alone.

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

October 28, 1994 to present
United States District Court for the Southern District of Indiana
46 East Ohio Street
330 Birch Bayh United States Courthouse

Indianapolis, Indiana 46204
United States District Judge; Chief Judge since January 1, 2008

July 1991 to October 1994
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Partner

January 1989 to July 1991
Office of the Governor of the State of Indiana
206 State House
Indianapolis, Indiana 46204
Counsel to the Governor

October 1984 to January 1989
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Associate

September 1983 to September 1984
United States Court of Appeals for the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604
Law clerk to Judge Richard D. Cudahy

Summer 1983
Kirkland & Ellis
200 East Randolph
Chicago, Illinois 60601
Law clerk

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator.

b. Describe:

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

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.
1. 1984-89 – Associate at Barnes & Thornburg in the firm’s Intellectual Property and Trade Regulation department and the Litigation department. The trade regulation work included antitrust law in both litigation and counseling of clients. Much of the counseling work involved application of antitrust law to joint ventures in health care and other industries. The trade regulation litigation included both prosecuting and defending efforts to enforce covenants not to compete and trade secret cases, often on an expedited basis involving temporary restraining orders and preliminary injunctions. I represented manufacturers in disputes with their distributors and/or franchisees. I counseled businesses on trade secret protection, covenants not to compete, and vertical distribution relationships. In general litigation, I was involved in prosecuting and defending civil claims for securities fraud, common law fraud, RICO violations, breaches of contract, and other causes of action between businesses. I had a blend of first chair and second chair responsibilities. In a junior capacity, I helped draft the briefs for CTS Corporation before the Supreme Court of the United States in *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987), in which the Supreme Court upheld Indiana’s control share laws regulating hostile corporate takeovers. I also did extensive legal and factual work in *Wabash Valley Power Ass’n v. Public Service Co. of Indiana*, a RICO and securities fraud case brought against our client, PSI, by the co-owner of the cancelled Marble Hill nuclear generating plant.
 2. 1989-91 – Counsel to the Governor: When Governor Bayh took office in 1989, I joined his staff as his counsel. My principal task was to provide legal advice for the Governor, other members of the staff, and agency directors. As the new administration took over the reins of state government, a wide range of legal issues arose, from personnel matters to litigation to the extent of executive powers.

When the new administration took office, several major lawsuits were pending that threatened the state with potential liabilities of hundreds of millions of dollars – enough to disrupt the state budget and Governor Bayh’s programs. Those lawsuits included several class actions seeking tax refunds, a class action by former patients of mental hospitals seeking payment for work performed at mental hospitals, and a state constitutional challenge to the school funding system. I managed those cases closely. By combining aggressive defenses and selective settlements, I reduced the threats to the administration’s programs and the state budget.

As Counsel to the Governor, I coordinated appointments of judges and prosecutors. While I worked for him, the Governor appointed one justice

to the Indiana Supreme Court, four judges to the Indiana Court of Appeals, and approximately 15 trial court judges.

As Counsel to the Governor I was the chief ethics officer for the Governor and the administration. I helped develop and implement a new, tougher ethics policy, first for the Governor's staff and then for the entire executive branch through legislation and rulemaking. I was the Governor's liaison to the State Ethics Commission, the State Election Board, the Attorney General, and the State's judiciary. I assisted the Governor and the chief of staff on selected personnel and legislative matters.

3. 1991-94 – Partner of Barnes & Thornburg: As a partner in the litigation department, I litigated, tried, and argued a variety of commercial, constitutional, and regulatory disputes at all levels of the federal courts and state courts and administrative agencies. I represented state and local governments in several constitutional challenges to government actions. I represented businesses and not-for-profit entities in contract and related disputes, including covenants not to compete and trade secret cases. I represented public utilities before the courts and the Indiana Utility Regulatory Commission. I represented the plaintiff in an antitrust case in the Southern District of Texas against Greyhound Lines, Inc., and I served as court-appointed counsel to a habeas corpus petitioner in the Southern District of Indiana.
- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

As an attorney in private practice, both as a partner and associate, approximately 75% of my practice was litigation. During that time, I appeared in court occasionally. Most of my private practice involved small numbers of complex matters in which most of the activity was outside the courtroom. As Counsel to the Governor, approximately 25% of my time was spent on litigation, but almost always in the role of a manager or client representative. As Counsel to the Governor, I appeared only once before a court.

- i. Indicate the percentage of your practice in:
- | | |
|-----------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 45% |
| 3. other courts: | |
| 4. administrative agencies: | 5% |
- ii. Indicate the percentage of your practice in:
- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Eight. Two as sole counsel; three as chief counsel; and three as associate counsel.

- i. What percentage of these trials were:

1. jury;
2. non-jury: 100%

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

As counsel of record, I filed a petition for certiorari in *Bayh v. Government Suppliers Consolidating Services, Inc.*, which was denied. 506 U.S. 1053 (1993). For details, see Answer 17, below (case #1).

Before I was admitted to the Supreme Court bar, I also assisted with the following matters:

Jurisdictional and merits briefing on behalf of CTS Corporation in *CTS Corp. v. Dynamics Corp. of America*, 481 U.S. 69 (1987), which upheld the Indiana Control Share statute against federal preemption and commerce clause challenges.

Petition for certiorari in *Johnson v. Duckworth*, which was denied. 479 U.S. 937 (1986). For details, see Answer 17, below (case #6).

Petition for certiorari in *Cambridge v. Duckworth*, which was denied. 489 U.S. 1056 (1989). I was court-appointed counsel for this habeas petitioner before the Seventh Circuit. The principal issue was whether a mistrial was required after a witness blurted out during the criminal trial that the petitioner had previously signed a guilty plea in the case.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;

- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
 - c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.
1. Government Suppliers Consolidating Services, Inc. v. Bayh, 975 F.2d 1267 (7th Cir. 1992). I was lead counsel for Governor Bayh in this lawsuit challenging the constitutionality of several Indiana laws regulating waste disposal and transportation. Two waste brokers brought suit in 1991 claiming that nine laws violated the Commerce Clause because they imposed an excessive burden on interstate waste shipments into Indiana. They also sought a preliminary injunction against enforcement of the statutes. After a hearing on the preliminary injunction, Judge Larry McKinney of the Southern District of Indiana denied the injunction and dismissed several of the challenges for lack of a ripe case or controversy or failure to state a claim. He held a bench trial to consider challenges to a statute that restricted "backhauling" of goods other than municipal waste on vehicles that had been used to carry municipal waste, and statutes requiring vehicles used to transport municipal waste for disposal in Indiana to be registered and labeled as municipal waste vehicles.

Judge McKinney found that these laws applied to both intrastate and interstate commerce. He found that both laws served legitimate state interests and did not unconstitutionally burden interstate commerce. On appeal, the Seventh Circuit reversed, concluding that the backhauling and vehicle registration laws would have a substantially greater effect on interstate commerce than on intrastate commerce. The Supreme Court denied certiorari.

Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Co-counsel for defendants were John Maley, Barnes & Thornburg, 11 South Meridian Street, Indianapolis, 46204, 317-236-1313; Rosemary G. Spalding, Spalding & Hilmes, PC, 330 South Downey Avenue, Indianapolis, Indiana 46219, 317-375-1140; Arend J. Abel, Cohen & Malad, Suite 1400, One Indiana Square, Indianapolis, Indiana 46204, 317-636-6481; and Robert S. Spear, formerly of the Office of the Attorney General, 7530 U.S. Highway 31 South, Indianapolis, Indiana 46227, 317-884-4166.

2. Department of Natural Resources v. Indiana Coal Council, Inc., 542 N.E.2d 1000 (Ind. 1989). Beginning in 1985, I was lead counsel, on a pro bono basis, for the Wabash Valley Archaeological Society and the Council for the Conservation of Indiana Archaeology to test whether the "lands unsuitable" provisions of federal and state surface mining laws could effectively protect significant archaeological sites. The subject of the case was the "Beehunter Site," a significant archaeological site that lay over substantial coal deposits

for which a coal company had sought a mining permit. Surface mining would have destroyed the site. I presented the case for preservation in two contested evidentiary administrative hearings before the Department of Natural Resources. Both ALJs found that the site was significant and was unsuitable for surface mining. The owner and the coal industry sought judicial review. The Dubois Circuit Court held in 1987 that the restriction on surface mining on this privately owned site amounted to an unconstitutional regulatory taking of private property without compensation.

The archaeology groups and the DNR appealed to the Indiana Supreme Court, which reversed the Dubois Circuit Court and upheld the DNR decision. The Supreme Court agreed with our arguments that the lands unsuitable designation did not interfere with the existing use of the land or deny all economically viable use of the property, and that the designation served legitimate state interests in protecting the state's heritage from unnecessary destruction. The U.S. Supreme Court denied certiorari.

The evidentiary hearings before the DNR were held in November 1985 and on December 19, 1985. The first was before Steve Lucas, Indiana Natural Resources Commission, Suite N-501, 100 North Senate Avenue, Indianapolis, Indiana 46204, 317-233-3322. The second was before Sue Shadley, Plews Shadley Racher & Braun LLP, 1346 North Delaware Street, Indianapolis, Indiana 46202, 317-637-0700. Judge Hugo Songer of the Dubois Circuit Court heard argument on two occasions, November 14, 1986, and July 9, 1987. He is now Senior Judge, and his address is Dubois Superior Court, One Courthouse Square, Jasper, Indiana 47546, contact phone number through the Clerk's Office at 812-481-7035. Counsel for the DNR on judicial review was Deputy Attorney General Myra Spicker, retired from the Office of the Solicitor, U.S. Department of the Interior, Sacramento, California, current location in Foothill Ranch, CA. Opposing counsel throughout the case were David R. Joest, current address unknown; and James Buthod, current address unknown. Opposing counsel before the Indiana Supreme Court was G. Daniel Kelley, Jr., G. Daniel Kelley, Jr., Ice Miller LLP, One American Square, Suite 3100, Indianapolis, Indiana 46282, 317-236-2100.

3. *Stewart v. Stewart*, 521 N.E.2d 956 (Ind. App. 1988). A divorce court terminated a father's parental rights because he was infected with HIV. On appeal I was the principal author of the amicus brief of the Indiana Civil Liberties Union arguing that this discrimination against the father – amounting to the total destruction of his relationship with his daughter – was an irrational and unconstitutional interference with the father's parental relationship with his daughter. The Court of Appeals decision in favor of the father was the first in Indiana, and one of the early reported decisions in the nation, preventing such discrimination against persons with HIV.

I was the principal author of the constitutional arguments in the amicus brief. Richard Waples of the ICLU was principally responsible for the brief's discussion of the available medical evidence. His address is 410 North Aububon Road, Indianapolis, Indiana 46219, Indianapolis, Indiana 46219; 317-357-0903. Lead counsel for the father was Timothy

Rowe, 22 East Washington Street, Suite 600, Indianapolis, Indiana 46204; 317-632-2524. Lead counsel for the mother was Mary T. Wolf, current address unknown.

4. Office of Utility Consumer Counselor v. Public Service Co. of Indiana, 608 N.E.2d 1362 (Ind. 1993). Almost four years after PSI had formed a holding company, the Indiana Court of Appeals ruled that PSI should have obtained prior regulatory approval for the transaction. That ruling created significant obstacles in issuing new securities and raising new capital for PSI and other Indiana utilities with holding companies. The Indiana Supreme Court ruled that PSI was not required to obtain regulatory approval before it created the holding company. The case was important for PSI and for other Indiana public utilities and their investors because it removed the legal uncertainty and obstacles to raising capital.

I took the primary role in writing the brief, and I worked closely on the brief with my partner, Stanley C. Fickle, who did the oral argument before the Indiana Supreme Court. Counsel for the Office of Utility Consumer Counselor were James Turner, now with Duke Energy, reachable through corporate offices at 526 South Church Street, Charlotte, North Carolina 28202, 704-594-6200; and Robert K. Johnson, 350 Canal Walk, Suite A, Indianapolis, Indiana 46202; 317-506-7348.

5. Reel Pipe & Valve Co. v. City of Indianapolis. I was lead counsel for the City of Indianapolis in a constitutional and procedural challenge to the city's power to acquire private property for an economic development project along the nineteenth century Central Canal in downtown Indianapolis. In an area declared blighted in 1981, the city took initial steps in 1992 to begin acquisition of some private property to clear and redevelop the area. Several property owners opposed the effort and sought judicial review of the decision to add their property to an acquisition list. In an unusual hearing before thirteen judges of the Marion Superior Court, sitting en banc, the court ruled in the city's favor in July 1992. That decision was affirmed on appeal. 633 N.E.2d 274 (Ind. App. 1994). The case was significant because of the economic development project for which the land was essential, the constitutional issues concerning the city's power to acquire private property in a blighted area for economic development purposes, and the procedural protections for property owners who sought to challenge the city's decision.

The case was argued to the Marion Superior Court, en banc, on July 24, 1992. The presiding judge was Judge James Kirsch, currently Judge, Indiana Court of Appeals, Room 415, 200 West Washington Street, Indianapolis, Indiana 46204, 317-232-6909. Opposing counsel for the property owners were Douglass R. Shortridge, 748 Woodview North Drive, Carmel, Indiana 46032, 317-846-4801; and Jerry W. Newman, current address unknown. Co-counsel for the city was Sue A. Beesley, Bingham McHale, Suite 2700, 10 West Market Street, Indianapolis, Indiana 46204, 317-635-8900.

6. Johnson v. Duckworth, 793 F.2d 898 (7th Cir. 1986). I was the court-appointed attorney in this habeas corpus appeal. The petitioner, Thomas Johnson, had shot and killed his brother in an altercation after both had been drinking. He was charged with murder but

claimed self-defense. The prosecutor offered to accept a guilty plea to voluntary manslaughter. Johnson was 17 years old at the time. His father and attorney decided for him to reject the plea offer. At trial Johnson was convicted of murder and sentenced to 30 years. In his habeas case, Johnson raised pro se the question whether his father and attorney could decide for him to reject the plea offer. The Seventh Circuit appointed me to serve as counsel for supplemental briefing and oral argument on this issue. I argued that the decision to reject a plea offer, like the decision to accept an offer and plead guilty, is a fundamental decision that only the client can make. Under applicable professional standards, the attorney's role in such matters is only to advise. I also argued that neither Johnson's age nor his emotional condition could justify denying him the right to make this basic decision about his own fate. The Seventh Circuit agreed with my legal arguments and held that a defendant generally has the right to decide for himself or herself whether to accept or reject a plea offer. At the end of its opinion, however, the court held that the "unique circumstances" of the case (Johnson's age and emotional state) required denial of his petition. 793 F.2d at 902. The Supreme Court denied certiorari.

Opposing counsel was Charles N. Braun II, 11935 Glen Cove Court, Indianapolis, Indiana 46236; (317) 823-0789.

7. *Government Suppliers Consolidating Services, Inc. v. Bayh*, 133 F.R.D. 531 (S.D. Ind. 1990). While still serving as Counsel to the Governor, I was involved in an earlier round of litigation with the same two trash brokers who sued again in 1991. The 1990 case challenged Indiana laws that facially discriminated against interstate waste shipments. The plaintiffs sought the deposition of the Governor and sought documents and testimony concerning internal deliberations on policy. I appeared and filed a motion to quash and brief on behalf of the Governor that successfully asserted (for the first time in Indiana) a Governor's general immunity from deposition, at least absent a specific showing of extraordinary need. (Judge John Tinder's unreported decision on this motion is referenced in his later opinion, 133 F.R.D. at 532.) Defense witnesses asserted the governmental deliberative privilege in response to plaintiffs' discovery requests for documents and testimony reflecting internal policy deliberations. When they moved to compel, I prepared the brief filed by the Office of the Attorney General to oppose the motion. That brief argued that the governmental deliberative privilege should be recognized in Indiana. The opinions of both Magistrate John Godich and Judge John Tinder recognizing the privilege and upholding it in the case are published at 133 F.R.D.532.

Judge Tinder is now a judge on the Seventh Circuit, tel. 317-229-3680. Opposing counsel were Ronald J. Waicukauski, Price Waicukauski & Riley, 301 Massachusetts Avenue, Indianapolis, Indiana 46204, 317-633-8787; and Bruce Thall, Spector, Gadon & Rosen, P.C., Seven Penn Center, 7th Floor, 1635 Market Street, Philadelphia, Pennsylvania 19103, 215-241-8802. Representing defendants from the Office of the Attorney General was Harry John Watson, III, Deputy Attorney General, 5th Floor, 302 West Washington Street, Indianapolis, Indiana 46204, 317-232-6201.

8. Valley Transit Co. v. Greyhound Lines, Inc. In August 1992 a national bus company terminated a small regional carrier's leases for use of bus terminals in Houston, San Antonio, and Corpus Christi, Texas. I worked with my colleagues Richard H. Streeter and Michael Klein of Barnes & Thornburg, and Rene Oliveira of Brownsville, Texas, to prepare and file a federal antitrust action for attempted monopolization in the Southern District of Texas. We sought a temporary restraining order, arguing that the three terminals were "essential facilities" under antitrust law. Immediately before the hearing on Valley Transit's motion for a temporary restraining order, the national carrier consented to an order that allowed Valley Transit to stay in the terminals, thus saving Valley Transit's business and an important public service in the Rio Grande Valley. I do not know how the case was ultimately resolved after I joined the court.

The case was before Judge Filemon Vela, former Senior District Judge for the Southern District of Texas, who died in 2004. Opposing counsel for Greyhound Lines were Gary Gurwitz, Atlas & Hall, LLP, 818 Pecan Boulevard, McAllen, Texas 78501, 956-632-8226; Mark Horning, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, 202-429-8126. Co-counsel for Valley Transit were Rene O. Oliveira, now State Representative, Room CAP 4N.10, P.O. Box 2910, Austin, Texas, 78768, 512-463-0640, also at 855 West Price Road, Suite 22, Brownsville, TX 78520, 956-542-1828; Richard H. Streeter, Barnes & Thornburg, 750 17th Street, N.W., Suite 900, Washington, D.C. 20006, 202-408-6933; and Michael A. Klein, last known address 4354 Idlewild Lane, Carmel, Indiana 46032, 317-843-2369.

9. NUCOR Corp. v. Aceros y Maquilas de Occidente, S.A. de C.V. I represented NUCOR in this declaratory judgment action before Judge Larry McKinney of the Southern District of Indiana. In early 1991, NUCOR entered into negotiations for a possible sale of steel to a steel broker, United Steel Corp. of Houston, Texas, for resale to a Mexican steel company, Aceros y Maquilas. After extended communications and negotiations, no steel was ever shipped. Aceros threatened to sue NUCOR for breach of contract and violation of the Texas Deceptive Trade Practices Act, but did not file suit. I filed a declaratory judgment action in federal court in Indiana against Aceros and United Steel. I was assisted by my colleagues Robert D. MacGill and Andrew J. Detherage. We sought a declaration that NUCOR had never entered into any binding contract with United Steel or Aceros, and had not violated the Texas Act. Judge McKinney granted NUCOR's motion for summary judgment. The legal issues were whether the statute of frauds under the Uniform Commercial Code was a defense to any contract claim, whether NUCOR had made United Steel its agent for dealing with Aceros, whether Aceros could assert a claim for promissory estoppel in the absence of an enforceable contract, and whether the Texas Deceptive Trade Practices Act could be applied to NUCOR's conduct, which was centered in Indiana. Judge McKinney ruled for NUCOR on all issues. The Seventh Circuit affirmed. 28 F.3d 572 (7th Cir. 1994). The case is representative of my commercial litigation work.

I was the principal author of the briefs in the district court and the Seventh Circuit, and argued the appeal. Judge McKinney's address is 204 U.S. Courthouse, 46 East Ohio

Street, Indianapolis, Indiana 46204; (317) 229-3650. Opposing counsel for Aceros were Richard C. Arroyo, 855 West Price Road, Brownsville, TX 78520, 956-541-4825; and Alan J. McLaughlin, Suite 702, 111 Monument Circle, Indianapolis, Indiana 46204, 317-287-3520. United Steel did not participate in the case.

10. **Diversified Computer Services, Inc. v. Kathy Ann Cox.** I represented the defendant Kathy Cox in this 1986 action to enforce a covenant not to compete. Ms. Cox was a computer programmer employed by Diversified to write and maintain software for its clients. She then accepted a job with one of the accounts she served and was planning to start work. Diversified sued her in the Marion Superior Court and obtained an ex parte temporary restraining order that enforced a covenant not to compete and barred Ms. Cox from taking her new job. I filed a brief for Ms. Cox and tried the preliminary injunction hearing, which was also consolidated with the trial on the merits, before Judge Gerald Zore of the Marion Superior Court. Judge Zore held that the covenant not to compete was not enforceable and entered judgment for Ms. Cox. Judge Zore also found that Ms. Cox was entitled to damages for the wrongful temporary restraining order, including the attorney fees for dissolving the TRO. No appeal was taken. The case is representative of my work on covenant not to compete cases.

Judge Gerald Zore has retired, and his current address is unknown. Counsel for Diversified was Michael J. Hebenstreit, Whitham, Hebenstreit & Zubek, LLP, Suite 2000, 151 North Delaware Street, Indianapolis, Indiana 46204, 317-638-5555.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In addition to matters described above, launching the Bayh administration in 1989-90 was the most significant. The Bayh administration took office after 20 years of control by the opposite party. The administration had many talented and energetic people but few with significant experience in state government or public life. We faced challenges ranging from personnel decisions and ethics policies to long-term strategic goals. There was a legal dimension to most of our issues. I participated in a wide variety of issues and decisions to try to avoid legal problems and recognize the opportunities we had.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

Indiana University School of Law, Bloomington, Indiana. Spring 2004 – Federal Jurisdiction.

Indiana University School of Law, Bloomington, Indiana. Spring 1988. Selected topics in Antitrust Law. I have not been able to locate a syllabus or notes. The course reviewed major doctrines in antitrust law, including conspiracies, concerted action and combinations that are illegal per se; combinations subject to the rule of reason; joint ventures; state action exception; monopoly power and attempted monopolization.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I hope to continue to work as a volunteer with the Center for Constitutional Democracy in Plural Societies (based at the Indiana University School of Law in Bloomington), especially in helping the Burmese democracy movement in exile develop effective federal and state constitutions for a future democratic Burma. This work involves occasional meetings in Indiana and possible foreign travel on vacation time to meet with members of the movement. I have no other plans, commitments, or agreements to pursue outside employment during service on the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Since becoming a District Judge, I have tried to minimize the potential for conflicts of interest by avoiding investments and other relationships likely to require recusal. For example, I do not invest directly in any corporate stocks. If appointed to the Court of Appeals, I would provide the Clerk of the court with a list of automatic disqualifying relationships, which would include the City of Bloomington, Indiana, where my wife is an attorney. I would also need to avoid cases in which my brother-in-law David J. Hensel is an attorney. (He practices in Indianapolis with Taft Stettinius & Hollister.) I would also plan to avoid any issues in which the Center for Constitutional Democracy in Plural Societies might be involved. (The Center has not been involved in litigation anywhere, let alone in the United States.) If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In all cases I will follow the Code of Conduct for United States Judges. If any issue of a potential conflict were to arise, I would consult the applicable statutes and seek advice from the Codes of Conduct Committee of the Judicial Conference, and in cases of uncertainty would err on the side of disqualification.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a judge, I may not practice law and thus have not done pro bono representation of the disadvantaged. I have assisted the Center for Constitutional Democracy in Plural Societies, as described above, in advising the Burmese democratic opposition in exile, and hope to continue to do so. (Such assistance is not the practice of law.)

In private practice, I spent more than 200 hours per year on pro bono work. I served as court-appointed counsel in *Johnson v. Duckworth*, described above in response to Question 17. (167 hours), and I served as court-appointed counsel in two additional federal habeas corpus cases. One was *Brian Cambridge v. Duckworth*, 859 F.2d 526 (7th

Cir. 1988), on which I spent approximately 180 hours. The second was a case in the Southern District of Indiana, *Leland Powell v. State of Indiana*, on which I spent more than 50 hours. Associates I supervised spent more time. The writ was eventually granted in that case, and there was no appeal.

The work on the coal v. archaeology "Beehunter Site" case described above was all pro bono, and over the three years that I worked on the case, I spent 341 hours on the matter.

I also served as a volunteer attorney, board member, and vice president of litigation for the Indiana Civil Liberties Union. The ICLU does not represent clients who can afford private counsel. In 1984-85, I was lead counsel for the ICLU in *Bruce Grau v. Indiana State Bd. of Nursing Registration*, which challenged the constitutionality of an Indiana law that discriminated against graduates of out-of-state nursing schools, and I spent 155 hours on that matter. I was the principal author of the ICLU's amicus brief in *Stewart v. Stewart*, described above, and I spent 52 hours on that matter. As vice president of litigation, I also participated in evaluating and selecting cases for the ICLU to handle, and I often provided advice and assistance to the lead attorneys.

From 1985 to 1987, I served as a board member and treasurer of the Mapleton-Fall Creek Housing Development Corporation, a not-for-profit corporation established by several churches in the Mapleton-Fall Creek neighborhood of Indianapolis to promote housing development, rehabilitation, and home ownership.

From October 1992 to 1994, I served as a member of the Mayor's Task Force on Police Performance Assessment, which studied and tried to develop a proposal for involving civilians in the review of police-action shootings, uses of deadly force, and civilian complaints against police officers.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission that operates in Indiana at this time.

In approximately June 2008, after I learned that Judge Kenneth Ripple had advised the President that he intended to take senior status, I spoke with Senator

Evan Bayh to express my interest in the event that Senator Obama would win the presidential election. A few days after the election, I spoke with Senator Bayh again about the matter. I was contacted by the White House Counsel's office on January 30, 2009, to ask if I would agree to a background check, and I said yes. On February 3, 2009, the White House Counsel's office contacted me by telephone and emailed a copy of a questionnaire and asked me to complete it. On February 4, 2009, I spoke by telephone with the White House Counsel's office with a few questions about how best to provide the requested information. Beginning on approximately February 7, 2009, I was contacted by the Office of Legal Policy (OLP) of the Department of Justice and received additional forms to complete, and I have been in touch with that office by telephone and email concerning the timing and logistics of those responses. In addition, I have been interviewed by the ABA Standing Committee representative for the Seventh Circuit. On March 16, 2009, I met with Attorney General Holder, Associate Attorney General Perrelli, and OLP staff in separate meetings at the Department of Justice. I also met with Counsel to the President Gregory Craig and members of his staff and then with members of the White House communications staff on that same day, and I met briefly with President Obama that same day. My nomination was submitted to the Senate on March 17, 2009.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, David Frank Hamilton, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

March 18, 2009


(SIGNED)


(NOTARY)

**Linda S. Carmichael
State of Indiana Notary Public
Resident of Marion County
My Commission Expires 9/11/2014**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CHAMBERS OF
CHIEF JUDGE DAVID F. HAMILTON

BIRCH BAYH U.S. COURTHOUSE
ROOM 330
46 EAST OHIO STREET
INDIANAPOLIS, INDIANA 46204

March 20, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

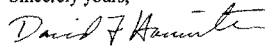
Dear Mr. Chairman:

I am writing to update my Senate Questionnaire with the following additional information, which was inadvertently omitted from my earlier submission.

Question 12(c):

On September 21, 1994, after I was nominated to the District Court by President Clinton, I testified before the Senate Committee on the Judiciary. I have attached four copies of that testimony.

Sincerely yours,



David F. Hamilton

DFH/jm
cc:

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

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I think it is a breadth of experience that we bring, and mostly a matter of perception. I cannot tell you the number of times that jurors who have come to me have come up to me after a trial and asked me how many women judges there are in our building, have asked me how many African American judges there are in our building.

It is something that our citizens find very important, and I think for that reason alone, in the perception of fairness, it is important. Obviously, I think the best qualified people for any of the positions should be selected.

Senator SIMON. As a magistrate, you have undoubtedly had to rule in cases where you disagreed with the law. Has that presented a problem to you?

Judge PERRY. Actually, I haven't found that that has been a problem at all. The law is fairly clear and I find it—I mean, it is not always clear, but once you can figure out what it is, it is fairly easy to apply and I don't think my personal beliefs or preferences enter into it at all. It has not been a problem in the past.

Senator SIMON. We thank you very, very much, and we wish you the best, Judge Perry.

Judge PERRY. Thank you very much.

Senator SIMON. Mr. Hamilton.

First, do you have friends and relatives that you would like to introduce, or associates?

TESTIMONY OF DAVID F. HAMILTON, ZIONSVILLE, IN, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF INDIANA

Mr. HAMILTON. I do, Senator. Thank you very much. With me today as an unexpected surprise are my wife, Brigid Hamilton, and our daughters, Janet Kathleen, who is 7—or 8—just turned 8—I'm sorry—and Devney Ann, who is 4½. They flew out from—

Senator SIMON. Your 8-year-old is skipping class today. Is that right? [Laughter.]

Mr. HAMILTON. I should add that just earlier this week she was elected to student council and we are hoping that this will give her an example, an opportunity to see what legislative representation might be like. [Laughter.]

Senator SIMON. That is great. I can see her blushing back there, wondering why her dad is relaying information like that.

Mr. HAMILTON. Also with me today are my parents, Richard and Anna Lee Hamilton, who also flew out this morning from Indiana, and my cousins, Doug Schmidt and Sara Schmidt, who live nearby here, who are also here. I am glad to have them, and my brother, John Hamilton, who has been my host.

Senator SIMON. You have an aunt here, I believe.

Mr. HAMILTON. My aunt, Nancy Hamilton, is also here and I am delighted to have her.

Senator SIMON. An old friend of the Simon family.

Mr. HAMILTON. We had thought this would be a much smaller group today, Senator, but I am delighted that the Indiana contingent was able to make it.

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QUESTIONING BY SENATOR SIMON

Senator SIMON. Let me mention representative of the bar association immediately afterwards, as I understand—but my understanding is that there ity. Certainly, Phi Beta Kappa and should not come into question.

But the question is your experience that criticism and, second, before you judge, how would you prepare your experience you may have? Here, let two people have done, and probably ited background in the Federal court or 3 weeks to go and sit in the Fed dures and become more familiar.

Mr. HAMILTON. Senator, thank you tunity to deal with that question. If first that you asked about, that is s doing in visiting with current judges diana, attending trials, learning to s pective as opposed to the advocate's more familiar. I appreciate their co in that process.

I very much appreciate the oppor cerns raised by the ABA, and I kno committee. I would like to say at t seems to me that in evaluating the a didate for the Federal courts that th ence is not as helpful as the quality the candidate's experience.

If I could, I would like to talk ab experience; first, my experience in p role in State government. In private Indianapolis, I have had principal a broad range of matters that have a range from complex antitrust and sa over battles, to civil rights, environ constitutional cases, including, in pa constitutional protections of the rights involved in a wide variety of commer to commercial torts, to trade secrets few moments ago, and non-compete co

I think in that litigation work, in t private practice, I have been deeply i gation, from the preparation of a cas tigation, the development of facts, th tion for trial, trials, and the appellate

The cases that I have handled, as I terials available to the committee, a complex, and cutting-edge issues of t experience in private litigation in th challenging as any that come before me well to serve on the Federal court.

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of experience that we bring, and mostly cannot tell you the number of times that we have come up to me after a trial and when judges there are in our building, have American judges there are in our

citizens find very important, and I think the perception of fairness, it is important that qualified people for any of the positions

magistrate, you have undoubtedly had to agree with the law. Has that presented

I haven't found that that has been as fairly clear and I find it—I mean, it is, you can figure out what it is, it is fairly think my personal beliefs or preferences not been a problem in the past.

Thank you very, very much, and we wish you

very much.

Hamilton.

Parents and relatives that you would like to

MR. HAMILTON, ZIONSVILLE, IN, TO BE
FOR THE SOUTHERN DISTRICT OF IN

Senator. Thank you very much. With me, surprise are my wife, Brigid Hamilton, and seven, who is 7—or 8—just turned 8—I'm, so is 4½. They flew out from—

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and of the Simon family.

I thought this would be a much smaller, I am delighted that the Indiana contin-

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QUESTIONING BY SENATOR SIMON

Senator SIMON. Let me mention, because there will be a representative of the bar association testifying against you immediately afterwards, as I understand—I have not read his testimony, but my understanding is that there is not a question of your ability. Certainly, Phi Beta Kappa and a Fulbright background—that should not come into question.

But the question is your experience. How would you respond to that criticism and, second, before you take that oath as a Federal judge, how would you prepare yourself for whatever deficiencies in experience you may have? Here, let me just tell you what I know two people have done, and probably many more, who have had limited background in the Federal courts. They have just taken two or 3 weeks to go and sit in the Federal courts just to learn procedures and become more familiar.

Mr. HAMILTON, Senator, thank you very much for the opportunity to deal with that question. If I might address the last point first that you asked about, that is something I have already begun doing in visiting with current judges on the Southern District of Indiana, attending trials, learning to see trials from the judge's perspective as opposed to the advocate's perspective, with which I am more familiar. I appreciate their cooperation and their assistance in that process.

I very much appreciate the opportunity to respond to the concerns raised by the ABA, and I know those are of concern to the committee. I would like to say at the outset, if I could, that it seems to me that in evaluating the ability and experience of a candidate for the Federal courts that the calendar measure of experience is not as helpful as the quality and the breadth and depth of the candidate's experience.

If I could, I would like to talk about two principal parts of my experience; first, my experience in private practice, and then my role in State government. In private practice with a large firm in Indianapolis, I have had principal litigation responsibility for a broad range of matters that have come before us. Those cases range from complex antitrust and securities cases, corporate takeover battles, to civil rights, environmental law cases, to various constitutional cases, including, in particular, questions about the constitutional protections of the rights of property. I have also been involved in a wide variety of commercial litigation, from contracts to commercial torts, to trade secrets that were being discussed a few moments ago, and non-compete covenants.

I think in that litigation work, in the years that I have been in private practice, I have been deeply involved in every phase of litigation, from the preparation of a case or its defenses to its investigation, the development of facts, the discovery process, preparation for trial, trials, and the appellate process.

The cases that I have handled, as I think are reflected in the materials available to the committee, are cases that reflect difficult, complex, and cutting-edge issues of the law. I think that kind of experience in private litigation in the kinds of cases that are as challenging as any that come before the Federal courts prepares me well to serve on the Federal court.

I know that the ABA committee has raised a particular concern about trial experience. I have discussed the trial experience I have that is in the materials available to the committee. As I think everyone recognizes, in civil practice the final trial on the merits is often the most expensive and one of the rarest ways to resolve cases. I work very hard to try to win my cases somewhere short of having to try them and impose that kind of expense on clients, and where it makes sense to settle, we settle.

In evaluating my credentials and the experience I bring to the Federal courts, I don't think it is possible simply to isolate one element of litigation practice and focus on that alone. In my experience, all aspects of litigation from every phase, from the beginning to the end, all work together, and I think I have substantial experience in all of those areas that will prepare me well for the kinds of case management and the kinds of issues that will come before me as a Federal judge, should I be so fortunate as to be confirmed by the Senate.

I would like to talk briefly about my role in State government, which is, I think, a very significant part of my legal experience. As I read the ABA statement, they don't seem to treat that as part of law practice. I think that is a misunderstanding of the role that I played in State government.

As the chief legal officer for the executive branch of Indiana's new administration, I dealt with a host of difficult legal and policy problems under intense public pressure, scrutiny, in some highly controversial matters. I was responsible for managing litigation, making strategy calls, evaluating the strength of our position in a series of tax cases; education cases involving both desegregation and funding balances; in a wide variety of constitutional issues, from first amendment to commerce clause to due process; a wide variety of labor law issues, as Governor Bayh took steps to provide for the benefits of collective bargaining for State employees without statutory authorization—a fairly complex legal job, I should add—and dealt frequently with some of the difficult separation of powers problems that I think are among the most difficult that our democracy faces, some of the most difficult for the judiciary.

In my role in State government, that was law practice. It was hands-on. I was developing strategy, working closely with the litigation counsel in all of those cases. So I think the significance and complexity of the issues that I had a chance to work with at a—I have to say I feel very fortunate to have had that kind of opportunity at a very young age, but Indiana politics had some funny turns back in the late 1980's and that opportunity came along.

I should add that in closing, perhaps, I am going to have to talk about not staying in the State of Illinois about this, but right after law school it was a privilege and honor for me to serve as a law clerk for, I think, one of the finest judges on the Federal bench, Richard Cudahy, on the seventh circuit in Chicago.

When I joined Judge Cudahy, I did not know whether I planned to stay and practice in Illinois, in Chicago, or whether I would return to Indiana, so I didn't take the bar exam until after I finished. I believe the result of that decision has been that the ABA does not give me credit for the year serving as a clerk, but I have to say

I think that was one of the most in preparing me for work in the Federal courts. In terms of deficiencies, I think in the area of criminal law, I learned some serving as court-appointed counsel on cases before the Federal courts, in the Southern District of New York.

Since my nomination, I have reviewed materials from the Federal Judicial Council, and consulting with judges, I try to get as practical an understanding as I can of how things play out in Southern District practice.

I can assure you that if I am given the energy to working to fill any of the vacancies forward to the challenge very much energy and talent needed to do that.

Senator SIMON. Thank you. You and Cindrich on the matter of court rules agree upon that. Do you have any other comments?

Mr. HAMILTON. It is a problem that comes to public attention. I have to suppose, under and against protest, that where there are significant issues clearly at issue, that has to be a timely appropriate for judges to seal and seal a settlement that is in the public safety.

I believe, at the same time, we in some of these cases may win settlements early with some desire to be able to seal that informational litigation. The natural result is more ferocious, more costly litigations are trying to deal with a particular problem. I am not sure exactly how that problems at all with specifically fore sealing a settlement.

Senator SIMON. We thank you.

Mr. HAMILTON. Thank you, Senator SIMON. Our final witness is the American Bar Association's Secretary, who is not a stranger to me.

We welcome you here, Mr. Watkins.

**STATEMENT OF ROBERT P. CHAIR, STANDING COMMITTEE OF THE AMERICAN BAR ASSOCIATION
E. WILLIS, CHAIR, STANDING COMMITTEE, AMERICAN BAR ASSOCIATION**

Mr. WATKINS. Good morning, President and having the pleasure of presenting 135 nominations, which

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committee has raised a particular concern about the trial experience I have available to the committee. As I think even practice the final trial on the merits is and one of the rarest ways to resolve a try to win my cases somewhere short to impose that kind of expense on clients, to settle, we settle.

and the experience I bring to the trial is possible simply to isolate one element and focus on that alone. In my experience from every phase, from the beginning to the end, and I think I have substantial experience that will prepare me well for the kinds of issues that will come before me. I am so fortunate as to be confirmed

about my role in State government, a significant part of my legal experience. As they don't seem to treat that as part of a misunderstanding of the role that I

for the executive branch of Indiana's with a host of difficult legal and policy issues, public pressure, scrutiny, in some highly responsible for managing litigation, using the strength of our position in a number of cases involving both desegregation and a wide variety of constitutional issues, a wide variety of due process; a wide variety of Governor Bayh took steps to provide arguing for State employees without a very complex legal job. I should add one of the difficult separation of powers among the most difficult that our democracy has for the judiciary.

that was law practice. It was a strategy, working closely with the litigants. So I think the significance and I had a chance to work with a number of people to have had that kind of opportunity in Indiana politics had some funny and that opportunity came along.

perhaps, I am going to have to talk of Illinois about this, but right after and honor for me to serve as a law finest judges on the Federal bench, a circuit in Chicago.

I did not know whether I planned in Chicago, or whether I would re-take the bar exam until after I finished. It has been that the ABA does not view as a clerk, but I have to say

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I think that was one of the most valuable parts of my experience in preparing me for work in the Federal courts.

In terms of deficiencies, I think I obviously have a lot to learn in the area of criminal law. I learned a little bit as a clerk. I have learned some serving as court-appointed counsel in habeas corpus cases before the Federal courts, the seventh circuit and the Southern District.

Since my nomination, I have also been working with the materials from the Federal Judicial Center, which have been very helpful, and consulting with judges, prosecutors, and defense counsel to try to get as practical an understanding of those issues as they play out in Southern District practice as I can.

I can assure you that if I am confirmed, I will devote all of my energy to working to fill any of these gaps in my experience. I look forward to the challenge very much, and I believe I bring the energy and talent needed to do that.

Senator SIMON. Thank you. You heard the question I asked Mr. Cindrich on the matter of court-imposed secrecy because the parties agree upon that. Do you have any reflections on that?

Mr. HAMILTON. It is a problem that I think has only recently come to public attention. I have some experience in litigating, I suppose, under and against protective orders of various kinds. I think that where there are significant issues of public safety that are clearly at issue, that has to be a grave concern and it is entirely appropriate for judges to examine those before going forward and sealing a settlement that may contain information important to the public safety.

I believe, at the same time, we need to recognize that defendants in some of these cases may wind up refusing to make reasonable settlements early with some deserving plaintiffs if they are unable to be able to seal that information and expose themselves to additional litigation. The natural result of that incentive is going to be more ferocious, more costly litigation for the first few plaintiffs who are trying to deal with a particular defective product, for example. I am not sure exactly how that debate comes out, but I have no problems at all with specifically examining those safety issues before sealing a settlement.

Senator SIMON. We thank you very much.

Mr. HAMILTON. Thank you, Senator.

Senator SIMON. Our final witness is Robert Watkins, the chair of the American Bar Association Standing Committee on Federal Judiciary, who is not a stranger to the Senate Judiciary Committee. We welcome you here, Mr. Watkins.

STATEMENT OF ROBERT P. WATKINS, IMMEDIATE PAST CHAIR, STANDING COMMITTEE ON FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION, ACCOMPANIED BY WILLIAM E. WILLIS, CHAIR, STANDING COMMITTEE ON FEDERAL JUDICIARY, AMERICAN BAR ASSOCIATION

Mr. WATKINS. Good morning, Senator. With me today is the current chairman of the ABA Standing Committee on Federal Judiciary. My chairmanship ended on August 6, after having sent to the President and having the President send to the Senate approximately 135 nominations, which was the largest number of nomina-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CHAMBERS OF
CHIEF JUDGE DAVID F. HAMILTON

BIRCH BAYH U.S. COURTHOUSE
ROOM 330
46 EAST OHIO STREET
INDIANAPOLIS, INDIANA 46204

March 23, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to update my Senate Questionnaire with the following additional information relevant to Question 12, which was inadvertently omitted from my earlier submission.

Question 12(c):

February 8, 1989 – Memorandum from Gov. Evan Bayh and Lt. Gov. Frank O'Bannon to their staffs announcing new ethics standards.

October 3, 1989 – Letter to Mr. Donald L. Euratte, then the State Examiner of the Indiana State Board of Accounts, concerning the proper handling of funds obtained by the Marion County Prosecutor in settlements of civil RICO cases. A question had been raised under Article 8, section 2 of the Indiana Constitution.

Question 12(e):

As Counsel to the Governor from January 1989 to July 1991, at the request of the Governor's Press Secretary, I occasionally responded directly to reporters' questions about particular issues. I no longer recall specific instances, but I have located several print-outs of newspaper reports that reflect such brief interviews as reported by United Press International and several stories available through on-line services, including two articles about cases I handled in private practice.

February 10, 1989 – UPI story on new ethics guidelines for staff of the Governor and Lieutenant Governor.

January 4, 1990 – UPI story on new legislative proposal to tighten ethics standards for executive branch employees.

The Honorable Patrick J. Leahy
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May 22, 1990 – UPI story on executive order providing state employees with limited collective bargaining rights.

August 15, 1990 – UPI story on State Election Board response to federal court decision striking down state election law limits on write-in votes.

August 17, 1990 – Chicago Tribune story on Indiana response to federal court decision striking down state election law limits on write-in votes.

February 14, 1991 – UPI story on opening of collective bargaining with state employees.

May 11, 1991 – Indianapolis Star article on review process for legislation approved by Indiana General Assembly.

August 1, 1992 – Indianapolis Recorder story on trial court decision in Reel Pipe & Valve Co. v. City of Indianapolis.

January 11, 1993 – States News Service story on Supreme Court's denial of certiorari in Government Suppliers v. Bayh.

Sincerely yours,



David F. Hamilton

DFH/jm

cc:

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

OFFICES OF THE GOVERNOR
AND THE LIEUTENANT GOVERNOR

E.A. Jobs
From: Evan Bayh and Frank O'Bannon
To: All Office Staff
February, 8, 1989
Re: Ethics Standards

We intend as part of this administration to tighten ethical standards and eliminate important loopholes in existing ethics rules. This process begins first in the Offices of the Governor and the Lieutenant Governor, and you will therefore be expected to observe the standards in this memorandum. These standards are based on three major ideas:

First and foremost, the State government is intended to serve all the people of Indiana.

Second, public service is a trust to be honored. That trust is not to be misused.

Third, the government is open to all people of Indiana.

Based on these general principles, you are expected to observe the following standards.

1. While employed by the State, you may not solicit political contributions from a person or firm whom you know to be doing business, or trying to do business, with a State agency under your supervision. As used in this memorandum, the term "doing business" means engaging in activity (a) for profit or gain (such as a contract with an agency), or (b) that requires an agency's license or permit involving some exercise of judgment or discretion by the agency. (Like current law concerning campaign contributions, this rule does not apply to candidates for elective office. Candidates are subject to extensive reporting requirements and are responsible directly to the voters of Indiana.)

(Current law prohibits state employees from soliciting contributions from a person or firm already doing business with the state, but not those trying to do business with the state. Also, the award of a contract may not be made in exchange for a political contribution.)

2. There will be no "political clearance" process that gives any political party officials veto power over hiring decisions or the award of contracts with the State. Where

permitted by law, we will consider information and recommendations from all sources, including other elected officials and party leaders. But the power to make decisions for the government will not be delegated to party officials.

(Current law allows use of the prior "clearance" system for a large number of state employees who are not "merit" employees. The law applicable to contract awards varies depending on the type of contract and the selection method.)

3. You may not ask any prospective employees about their past or future political contributions.

(Although current law prohibits conditioning state employment on any political contribution, supervisors may ask prospective employees about political contributions and put not-so-subtle pressure on prospective employees.)

4. You may not solicit political contributions from anyone while working on State time.

(Current law probably prohibits such activity through the so-called "ghost employment" prohibition, but an express prohibition would make the point clear.)

5. You may not personally solicit political contributions at any time from a State employee whom you supervise.

(Current law prohibits only forced contributions, but a personal request from an employee's supervisor unavoidably carries a suggestion of implicit coercion even if none was consciously intended.)

6. You may not ask the State Auditor to withhold political contributions from your paycheck.

(Current law prohibits only requiring a contribution as a condition of employment. While employees have a constitutional right to support the political party of their choice, the withholding procedure for political contributions by State employees is an invitation to subtle coercion.)

7. You may not wear partisan political buttons, pins, or other paraphernalia while conducting State business.

(Current law does not address this subject, but it is simply not appropriate to conduct the State's business while wearing a partisan button or pin. State employees work for all the people, not just one party.)

8. After you leave State government, you may not act as an agent, attorney, or other representative of a party (other than the State) in connection with any transaction, controversy, or

judicial or administrative proceeding involving the State if you participated personally and substantially in the matter on behalf of the State.

(Current law is less restrictive, applying only to contracts that the State employee negotiated, drafted, or approved.)

9. In addition, for one year after leaving the staff of the Governor, the Chief of Staff, Press Secretary, Counsel, and Executive Assistants may not personally contact or deal with the Governor's Office for profit on behalf of any private client, customer, or employer. The same restriction shall apply to the Lieutenant Governor's Executive Assistants, Press Secretary, and Counsel with respect to the Office of the Lieutenant Governor. (These restrictions on activities of their respective former staff will end, however, when the Governor or Lieutenant Governor leaves his present office.)

(Current law imposes no such restriction on senior State employees, but this restriction is similar to federal law governing senior federal officials.)

10. If your salary is more than \$40,000 per year, you must also file an annual statement of economic interests. That statement must include information not presently required by law, including information about (a) gifts to your spouse or children, (b) certain creditors, and (c) private clients of yours or your spouse's with whom you do business on behalf of the State. See separate memorandum from the Counsel to the Governor on the subject.

(Current law requires statements from officials elected statewide, legislators, judges, prosecuting attorneys, and candidates for these offices, as well as the chief executive officer of each department in the executive branch and the director of each division in the Department of Administration. The additional information required under our new policy is intended to identify other economic relationships that should be subject to public disclosure.

11. Gifts, Entertainment, Food, Drink, Favors, and Services: Existing law on this subject is already quite elaborate. See 40 IAC 2-1-6. The existing law says in essence that an employee should not accept gifts worth more than \$250 in a year from someone doing business or trying to do business with the employee's agency. If an employee receives gifts that exceed \$100 in a year from one person or firm, the gifts must be reported to the State Ethics Commission. This law is a good start and must, of course, be followed. There are significant exceptions under the existing law, however, that deserve our attention. See 40 IAC 2-1-6(B).

The purpose of this standard is to make clear that special treatment by the executive offices cannot be obtained through gifts to elected officials or their staffs. At the same time, however, we need to recognize the public and ceremonial aspects of the executive offices. This new standard applies to a wide variety of situations, and an unduly rigid approach could interfere with access to the information and ideas that we need in order to govern effectively. Therefore, this standard is being applied on an experimental basis in the Offices of the Governor and the Lieutenant Governor. After we have experience with it, we will evaluate it to see if changes are needed.

(a) Scope: This standard applies to gifts, food, drink, entertainment, and services that:

- (1) are for your personal use; and
- (2) are from a private individual or firm (other than a charitable, benevolent, or religious organization, educational institution, or political party); and
- (3) are from an individual or firm that you know does business with or is trying to do business with an agency for which you have oversight or supervisory responsibilities. (Again, the term "doing business" means an activity (a) for profit or gain (such as a contract or lease), or (b) that requires an agency's license or permit involving the exercise of judgment or discretion by the agency.)

Any such gift, food, drink, entertainment, or service worth more than \$10 must be reported in writing to the Counsel to the Governor on an annual basis. The report must include a description of the gift, its actual or estimated value, and the identity (and, if relevant, business affiliation) of the donor. The Counsel to the Governor will release to the public a list of all such reported gifts on an annual basis.

(b) The following shall not be considered gifts for your personal use:

- (1) food or drink consumed at a public meeting. A meeting will be considered "public": (A) if the news media are aware of your presence at the event, or (B) if the event is a reception or other large gathering for public officials, or (C) you are giving a speech or participating in a presentation to a meeting or other large gathering in your official capacity, or (D) the event is a meeting with a formal program that you are attending to assist you in the performance of your official duties.

(2) Mementos or souvenirs of nominal value received at public ceremonies or commemorating official business.

(c) This standard does not apply to genuinely social hospitality. (If your hosts are treating the occasion as a business expense, though, it is probably not a social gathering.)

(d) If a tangible gift should be accepted for protocol reasons or to save money for the State, the gift must be turned over to the State. (The Department of Administration or other agencies can accept the gift, or items useful in the office may be turned over to the office manager for use or disposal.)

(e) Although the existing gift regulations do not apply to tickets to political and charitable fundraising events, gifts of such tickets are subject to this standard and its reporting requirements.

CONCLUSION

Your observance of these standards -- both new and old -- is important. It is part of your job to observe and obey these standards. A breach of these standards will be grounds for disciplinary action, depending on the circumstances.

If you face a situation that seems to be a problem, discuss it with the Counsel to the Governor as quickly as possible. It is his job to help you resolve problems that may arise.



OFFICE OF THE GOVERNOR
INDIANAPOLIS, INDIANA 46204 - 3797

EVAN BAYE
GOVERNOR

October 3, 1989

Mr. Donald L. Euratte
State Examiner
State Board of Accounts
Indianapolis, Indiana 46204

Dear Mr. Euratte:

This letter addresses several related legal issues raised in connection with the State Board of Accounts review of financial transactions involving the Prosecuting Attorney of Marion County.

In Indiana, a prosecuting attorney may bring civil actions against persons alleged to have engaged in certain criminal activity under two separate statutes.

First, Indiana's civil RICO statute, IC 34-4-30.5-1 et seq., allows a prosecuting attorney to bring a civil action seeking injunctive relief and forfeiture against a person believed to have violated Indiana's criminal RICO statute, IC 35-45-6-2. The civil RICO statute also authorizes an aggrieved party to bring an action for damages, including treble damages, other punitive damages, attorney's fees, and costs, and gives that party's claims priority to proceeds derived from forfeited property. IC 34-4-30.5-5. The same provision also indicates that a government entity may seek damages as an "aggrieved party" through a prosecuting attorney.

Second, the Asset Forfeiture law, IC 34-4-30.1-1 et seq., authorizes the prosecuting attorney to bring an action to forfeit property that is either derived from specific crimes or used to facilitate those crimes in designated ways. Under Section 4(d) of this statute, the court is directed to include in its judgment specific provisions concerning the amount of law enforcement costs awarded and the amount of the judgment to be forfeited and deposited in the common school fund.

The Prosecuting Attorney of Marion County has settled civil RICO cases on terms providing for the defendant to make a payment to the prosecuting attorney's law enforcement fund established by

Mr. Donald Zuratta
 October 3, 1989
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ordinance by the legislative body of the county. In return, the prosecuting attorney has agreed to dismiss the civil RICO cases and agreed not to proceed with a criminal prosecution of the defendant on related charges. The settlement agreements have been approved by the courts in which the cases were pending.

Similarly, the prosecuting attorney has settled civil actions to forfeit assets under IC 34-4-30.1 under agreements providing that the defendant pays into the prosecutor's law enforcement fund the costs associated with the criminal investigation and prosecution, and the civil action. The prosecutor agrees to dismiss the civil case and may agree to dismiss related criminal charges. The settlement agreements have been approved by the courts where the cases were pending.

Article 8, section 2 of the Indiana Constitution provides in relevant part that the State's Common School fund includes "fines assessed for the breach of the penal laws of the State," and "all forfeitures which may accrue." Questions have been raised publicly by a former Attorney General of Indiana about the legality of civil RICO settlement agreements providing for deposit of the proceeds in the county's law enforcement fund, in light of Article 8, section 2. The same questions may apply to settlements of cases under IC 34-4-30.1.

In response to those questions, I have reviewed the law interpreting and applying Article 8, section 2. Based on that review, I have concluded that Article 8, section 2 does not apply to the proceeds of civil actions brought under IC 34-4-30.1 or IC 34-4-30.5, or to settlements of such actions.

The Supreme Court of Indiana has long held that the provision for "fines" in Article 8, section 2 applies only to fines imposed through criminal prosecutions. The provision does not apply to civil cases. In Burgh v. State ex rel. McCormick, 108 Ind. 132 (1886), a statute imposed a penalty of no less than \$50 and no more than \$5000 for making a false list of one's taxable property. The statute further provided that the penalty would be paid to the county treasury, minus a 10% commission for the prosecuting attorney who brought the case and an allowance for the docket fee in the case. The defendant argued that the penalty was unconstitutional because it would not be paid into the Common School fund, but the court rejected the argument:

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. . . the constitutional provision has reference to fines assessed in criminal prosecutions, and . . . the penalty provided in section 6339, *supra*, is not a fine in that sense. It is not to be recovered by a criminal prosecution, but by a civil action. At one place in the section, the penalty is spoken of as a fine, but the whole section shows that it is not a fine in the sense in which that word is used in [Article 8, section 2] of the Constitution.

108 Ind. at 135. Strictly speaking, this language in *Burgh* is dictum because the court disposed of the case on other grounds, but the court answered the constitutional question quite deliberately and after due consideration. The opinion was intended to state the law on precisely the issue presented here.

The court followed *Burgh* in *State v. Indiana & Ill. S. R. Co.*, 133 Ind. 69 (1892). There a statute required railroads to place blackboards at stations and to show whether trains were stopping, and whether they were on schedule or late. A penalty of \$25 was imposed for each violation, with half of the amount going to the prosecuting attorney who brought the case and half to the county's common school fund. The court upheld the penalty against the claim that it violated Article 8, section 2. The court viewed the railroad statute and the statute in *Burgh* as constitutionally identical. Both provided for civil penalties obtained in civil proceedings, and Article 8, section 2 simply did not apply to such penalties. 133 Ind. at 78-79.

One could argue that the statute in *Indiana & Illinois* is consistent with Article 8, section 2 only because it provided for a reasonable fee for the prosecuting attorney with the remainder of the penalty going to the county common school fund. The case is not so limited. The court in *Indiana & Illinois* pointed out that, because only a civil proceeding was involved, the legislature could have directed that the money from the penalty be paid to anyone. 133 Ind. at 79.

The court has consistently adhered to the rule limiting Article 8, section 2 to fines in criminal cases. See *Western Union Tel. Co. v. Ferguson*, 157 Ind. 37, 40-41 (1901) (penalty for violation of rules on priority of sending and receiving telegraph messages was not part of penal code and thus penalty not subject to Art. 8, sec. 2); *Judy v. Thompson*, 156 Ind. 533, 535 (1901) (penalty against mortgagee for failure to release a paid mortgage not subject to Art. 8, sec. 2 because imposed in civil action); *Toledo, St. Louis & K.C. R. Co. v. Stephenson*, 131 Ind. 203, 204 (1892) (Art. 8, sec. 2 did not apply to statutory penalty imposed

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in civil proceeding for obstructing a public highway, citing Burgh). Essentially the same conclusion was reached under a parallel provision of the 1816 Constitution in 1849, just two years before ratification of the 1851 Constitution. Town of Indianapolis v. Fairchild, 1 Ind. 315, 315 (1849) (penalty for selling liquor without a license was not for "breach of the penal laws" when imposed in a civil proceeding).

Although there is less law on the use of the term "forfeitures" in Article 8, section 2, essentially the same analysis applies. There is no indication that the term "forfeitures" applies any more broadly than the term "fines." As early as 1882, the Supreme Court limited the term:

Forfeitures are of different kinds. A forfeiture may be generally defined to be the loss of what belongs to a person in consequence of some fault, misconduct or transgression of the law. In the connection in which the term "forfeitures" is used in the Constitution, it evidently means the loss of a certain sum of money as the consequence of violating the provisions of some statute, or of the refusal to comply with some requirement of the law. [citation omitted] Under our present system of statutory laws, the term has a practical application mainly to forfeited recognizances.

State ex rel. Baldwin v. Board of Commissioners, 85 Ind. 489, 493 (1882) (emphasis added). See also State v. Elliott, 171 Ind. App. 389, 357 N.E.2d 276 (1976) (applying forfeiture provision of Article 8, section 2 to forfeiture of bond in criminal case).

It might be argued, however, that this limitation on Article 8, section 2 does not apply to cases under civil RICO or the asset forfeiture statute because such cases are, in some sense, "essentially criminal." Proceedings under both statutes, while denominated "civil," require the prosecuting attorney to prove a violation of the State's criminal laws. In addition, judgments or settlements in the civil proceedings are used to pay costs of law enforcement investigations, and the settlement agreements include a promise not to pursue criminal charges against the person paying the money.

This line of argument raises the fundamental question of just what is a "civil" case and what is a "criminal" case. While the answer to that question is usually clear, some features of the civil RICO and asset forfeiture statutes do resemble criminal cases. The issue here is whether, despite the legislature's decision to treat these cases as civil, the proceedings would be

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considered "criminal" for purposes of applying the Supreme Court's line of cases limiting the fine and forfeiture language in Article 8, section 2 to criminal cases.

The fact that precisely the same conduct gives rise to a civil case and a criminal case would not justify disregarding the legislature's decision to use civil proceedings. It is not at all unusual for legislatures to provide for criminal and civil penalties for the same conduct. For example, State and federal antitrust laws, securities laws, and consumer protection laws provide for both civil and criminal penalties. Those laws give law enforcement officials broad discretion to decide which penalties to pursue in particular cases. Such decisions are ordinarily made in light of the different standards of proof in criminal and civil cases and a judgment of the factual and legal strength of the case. Thus, the legislature's decision to provide for both civil and criminal sanctions for the same conduct has a strong policy foundation that has nothing to do with Article 8, section 2.

The decisions of the Indiana Supreme Court under Article 8, section 2 do not spell out a clear line between civil and criminal cases, but at least one decision shows considerable deference for the legislature's decision. In Western Union, supra, the court held that where the legislature chose not to make violations of the telegraph rules subject to the penal code of the State, Article 8, section 2 did not apply to the penalties. 157 Ind. at 40-41. In addition, I found no case or cases holding an Indiana statute unconstitutional on the basis of Article 8, section 2.

Although the mere use of a label cannot transform a truly criminal proceeding into a civil one, similar federal cases also defer to the judgment of the legislature, at least so long as the defendant is not subject to imprisonment. In various types of proceedings, the federal courts have decided whether to apply constitutional rights, such as the right to counsel, the right to trial by jury, the right to confront witnesses, and the protection against double jeopardy. A good example is United States v. J. B. Williams Co., 498 F.2d 414 (2d Cir. 1974), which imposed civil penalties for violations of Federal Trade Commission orders. The defendants claimed they were entitled to a jury. The court rejected the claim. After noting that Congress sometimes provides for criminal sanctions, sometimes only civil penalties and forfeitures, and sometimes both, the court said:

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When Congress has characterized the remedy as civil and the only consequence of a judgment for the Government is a money penalty, the courts have taken Congress at its word.

* * *

While Congress could not permissibly undermine constitutional protections simply by appending the "civil" label to traditionally criminal provisions, the statute here at issue is plainly not of that class.

498 F.2d at 421. Accord, Hepner v. United States, 231 U.S. 103, 108-11 (1909) (recognizing power of Congress to provide for statutory penalties in civil cases "although such penalty arises from the commission of a public offense"). See also Breed v. Jones, 421 U.S. 519, 528 (1975) (treating as "essentially criminal" a juvenile proceeding for violation of criminal statute where the juvenile could lose his liberty).

It appears that the single most important factor limiting the legislature's power to treat a proceeding as criminal or civil is whether the defendant may be imprisoned. While it is not the only factor, the fact that a defendant may not be imprisoned in a civil RICO or asset forfeiture case persuades me that the proceedings are essentially civil in character even for purposes of the constitutional rights accorded criminal defendants. Where the issue is not the defendant's rights but simply the blains of different governmental entities on any funds generated, the legislature is entitled to even broader discretion. Therefore, the courts should not apply Article 8, section 2 to the proceeds of judgments in civil RICO and asset forfeiture cases.

Even if the courts were to disagree on the application of Article 8, section 2 to judgments in civil RICO and asset forfeiture cases, their reasoning would not extend to settlements of such cases. In light of the broad latitude given to parties in the settlement of virtually any lawsuit and the general policy of promoting settlements to avoid unnecessary trials, I believe the courts would be reluctant to unravel the settlements in these cases. Moreover, by its own terms Article 8, section 2 applies only to "civil" and "forfeiture" cases. It does not purport to apply to voluntary payments made pursuant to a settlement agreement, and it has never been construed to apply to such settlements.

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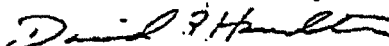
Finally, even if Article 8, section 2 were held applicable to judgments or settlements in civil RICO proceedings and asset forfeiture cases, the county would still be allowed to recover costs associated with the case, including the costs of investigation. In State v. Indiana & Illinois S. R. Co., supra, the defendant had objected to the practice of giving the prosecutor any interest at all in the amount of the penalty recovered. (There the statute gave the prosecutor half of all penalties.) The court rejected the argument in language directly applicable to criminal cases:

It has been the long established system in this State for the prosecuting attorneys to secure a fee taxed against and recovered from the defendant in criminal prosecutions, and his fee depends upon the success of the prosecution. He is likewise allowed a commission for the collection of forfeited recognizances.

133 Ind. at 79-80 (emphasis added). The asset forfeiture statute directs a court to award law enforcement costs to the general fund of the state of the unit that employed the law enforcement officers who seized the property. IC 34-4-30.1-4(d). Any costs that can be attributed to the case may be recovered from the proceeds of the case, and nothing in the statute appears to prohibit allowing a reasonable recovery for overhead and other expenses needed to support the particular investigation.

Conclusion: Based upon this analysis, the treatment of funds obtained in settlements of civil RICO cases and asset forfeiture cases should not be questioned solely on the basis of Article 8, section 2 of the Indiana Constitution.

Sincerely yours,



David F. Hamilton
 Counsel to the Governor

DFH/jm
 cc: Stephen Goldsmith

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FOCUS - 25 OF 36 STORIES

Proprietary to the United Press International 1989

February 10, 1989, Friday, BC cycle

SECTION: Regional News

DISTRIBUTION: Indiana

LENGTH: 367 words

DATELINE: INDIANAPOLIS

KEYWORD: Ethics

BODY:

There would be no "revolving door" powered by government influence for former state officials under ethics guidelines issued Thursday by Gov. Evan Bayh and Lt. Gov. Frank L. O'Bannon.

The offices of the two top Indiana government officials would do no business for a year with top state aides who leave their jobs, under the new guidelines. That provision is patterned after a 1978 federal ethics law under which two of President Reagan's advisers were convicted. They are Lyn Nofziger and Michael Deaver, convicted in connection with lobbying efforts.

The Bayh-O'Bannon guidelines also would forbid staff members to make voluntary payroll deductions to either political party, would ban the wearing of partisan political buttons while working on government time and would forbid soliciting political contributions from any individual or company doing business with the state.

The guidelines are not laws, so violators would not risk criminal prosecution.

David Hamilton, Bayh's legal counsel, drafted the five-page document.

Bayh has about 35 employees on his staff. he said the guidelines will be revised after six months and, if successful, could be extended to other state agencies. There are about 34,000 state employees.

Many of the guidelines are more stringent than existing laws. The guidelines call for Bayh and O'Bannon staff people to file annual disclosure statements listing "any such gift, food, drink, entertainment or service worth more than 10." The donor must be listed along with a description of the gift and its estimated value.

Employees flouting the guidelines could be disciplined by means as slight as a verbal reprimand or as grave as dismissal.

Employees would not have to list gifts defined for personal use, such as food consumed at a public meeting or souvenirs of nominal value, such as T-shirts or baseball caps.

If a tangible gift is accepted for protocol reasons or to save the state money, the new code says, it must be turned over to the state, which then

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could choose to use or dispose of such gifts. That would cover museum-worthy items.

Hamilton said staffers are strongly advised to ask for an interpretation of the rules if questions arise.

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FOCUS - 16 OF 36 STORIES

Proprietary to the United Press International 1990

January 4, 1990, Thursday, BC cycle

SECTION: Regional News

DISTRIBUTION: Indiana

LENGTH: 364 words

HEADLINE: Acting powers could make ethics law tougher

DATELINE: INDIANAPOLIS

KEYWORD: XGR-ETHICS

BODY:

Indiana's ethics law could be tougher and former state workers would have to follow restrictions similar to those in private industry if the proposals make it through the Indiana General Assembly.

Reps. John Day, D-Indianapolis, and Stephen Moberly, R-Shelbyville, are co-sponsoring the bills that would give the Indiana Ethics Commission more clout. If the bills pass, the commission would have the power to cancel contracts with companies that violate the ethics code while doing business with the state.

Currently, the five-member panel does not have the legal ability to take any enforcement action against businesses or former state employees. It acts primarily in an advisory capacity on matters such as moonlighting, conflict of interest, and acceptance of gifts.

"We want to ensure that our people are working for the government's interest, not their own benefit or the benefit of other groups or private interests," said David Hamilton, legal advisor to Gov. Evan Bayh.

The provision would not, however, prevent a former employee from accepting a position with a company associated with his state job.

"We don't want to disqualify an employee from practicing his profession when he leaves the state," Hamilton said.

"But if the employee participated on behalf of the state in a particular matter, then he would not be able to switch sides for a year," he said.

The proposals also would:

--Allow the commission to impose fines of up to three times the benefit the former employee received.

--Require new agency heads and elected officials to file financial disclosure statements with the commission within 60 days of taking office and within 30 days of leaving.

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--Require families of agency heads and elected officials to report gifts from businesses with state contracts.

--Give the panel the power to expand by rule the number of people required to file financial disclosure statements.

Hamilton said the proposals would give state employees a better idea of what was expected of them.

"We think this has a good chance of passing the legislature," he said, "It's something we will work hard to get through."

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FOCUS - 9 OF 36 STORIES

Proprietary to the United Press International 1990

May 22, 1990, Tuesday, BC cycle

SECTION: Regional News

DISTRIBUTION: Indiana

LENGTH: 631 words

HEADLINE: Bayh moving ahead on collective bargaining issue

BYLINE: BY BOB COOK

DATELINE: INDIANAPOLIS

KEYWORD: COLLECTIVE

BODY:

An executive order issued Tuesday by Gov. Evan Bayh will give state employees some rights regarding employee organization, but the governor stopped short of enacting true collective bargaining.

Employees will be able to choose a union, have dues removed from their paychecks and send representatives "to bring individual concerns to appropriate officials." But any change in workers' conditions and any creation of formal contracts between workers and the state would have to come from the General Assembly.

"They gained the opportunity to have a referendum, if you will, which can be taken to the General Assembly," said William Moreau, Bayh's chief of staff.

Bayh's staff determined that past laws, attorneys general opinions and court cases prevented the governor from fully enacting collective bargaining.

"I was surprised at the extent of the legal obstacles to collective bargaining by executive order," said David Hamilton, Bayh's legal counsel. "Given the history of unsuccessful legislative efforts and a very mixed bag of court decisions relevant to this subject, it was unlikely the governor could (re)establish collective bargaining in an executive order."

The purpose of the order, Moreau said, is to lay the groundwork for collective bargaining legislation in the 1991 General Assembly. A Senate bill was killed 26-24 last year, and a bill that passed the House was killed in the Senate Finance Committee, headed by Sen. Lawrence Borst, R-Indianapolis.

"We hope it'll lay a firmer foundation for the inevitable (collective bargaining) legislation," Moreau said. "We certainly hope that it will further evidence that collective bargaining is best for the state of Indiana."

Under the order, most non-management state employees will be divided into 11 personnel units consistent with terms established in last year's failed collective legislation. Beginning July 16, unions may file petitions asking for elections in these units.

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Robert McHenry, state personnel director, said a union must have 30 percent interest from a particular employee group before elections can be held. A five-member Public Employees Relations Board will be established to supervise elections, which are expected to begin in the fall.

If workers strike, the order allows the termination of involved employees, the end of the involved union's recognition and the end of deducting dues from employees' paychecks.

The executive order gives employees a choice in whether to accept union representation, McHenry said. The governor does not want to force collective bargaining on employees, he said.

"I don't think it's ever been the intention of the administration to give state employees to the unions," McHenry said.

Moreau said the costs of the executive order will be "nominal" and borne by the existing budget of the personnel department. Any reports of increased costs from collective bargaining, he said, are "wildly inflated figures intended to defeat legislation."

Bayh met with representatives of the AFL-CIO, the Indiana State Employees Association, the United Auto Workers, the American Federation of State, County and Municipal Employees and other unions to announce his decision.

Union leaders said the order is a step in the right direction, but it is not enough.

"I'm disappointed (Bayh) could not do more," said Chuck Deppert, president of the Indiana State AFL-CIO. "It's a small step and we're willing to get the best out of it."

Union leaders said they will continue their fight in the legislature to see collective bargaining enacted.

"It's up to us to lobby representatives and senators on the basis that we don't have what we want," said Joe Bolt, director of AFSCME Indiana Council 62.

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FOCUS - 7 OF 36 STORIES

Proprietary to the United Press International 1990

August 15, 1990, Wednesday, BC cycle

SECTION: Regional News

DISTRIBUTION: Indiana

LENGTH: 320 words

HEADLINE: Candidacies to be open by write-in

DATELINE: INDIANAPOLIS

KEYWORD: VOTING

BODY:

The State Election Board decided Wednesday candidates for public office won't be restricted by the state's write-in voting procedures.

The board held an emergency executive meeting by teleconference in an effort to arrive swiftly at a list of procedures acceptable to U.S. District Judge Sarah Evans Barker, who recently required the state to allow write-ins.

David F. Hamilton, counsel to Gov. Evan Bayh, said after the meeting that the state would submit a modified list of suggested procedures to Barker later Wednesday and the procedures will not require declarations of candidacy.

The new procedures still will incorporate Indiana's "sore loser" law, which forbids anyone who lost in the primary election to run in the general election, Hamilton said.

He said the board agreed to mostly minor changes suggested Monday by Barker in a meeting with attorneys involved.

The new procedures will not require that votes be tallied for anyone who gets less than 20 votes in a precinct, he said. The hope is to eliminate extra work caused by such frivolous write-ins as cartoon characters, movie and television stars and foreign leaders.

Hamilton said actual write-ins -- not stick-ons or other substitutes -- will be required. A previously suggested provision about unopposed candidates was eliminated in favor of one that says a single vote will be enough to legitimize a write-in candidate.

"So, in wide-open races, everyone's going to have to pay attention," he said.

The election board has asked Barker to either approve the detailed procedures or stay her decision until after this year's election.

Hamilton said write-in candidates also will be subject to the campaign finance reporting law. He said the next legislature will be asked to enact provisions governing write-in voting.

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He said the state hopes to hear back from Barker later this week or early next week.

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Chicago Tribune

August 17, 1990, Friday, NORTH SPORTS FINAL EDITION

Indiana alters request on handling write-in votes

BYLINE: From Chicago Tribune wires

SECTION: NEWS; Pg. 3; ZONE: M

LENGTH: 138 words

DATELINE: INDIANAPOLIS

State officials have amended their request for a federal judge to offer guidelines for handling write-in ballots in the November election, the governor's attorney said Thursday. David F. Hamilton, counsel to Gov. Evan Bayh, said the state has dropped its request that all potential write-in candidates be forced to formally declare their candidacies by Oct. 26. Instead, Hamilton said, the state is now suggesting that all ballots for write-in candidates be tallied at the precinct level. However, to have the votes for a candidate forwarded from the precinct to the county level, a candidate would need either to be a declared and an eligible candidate or to receive 20 or more votes in the precinct, he said. U.S. District Judge Sarah Evans Barker is expected to rule by early next week on the state's request.

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FOCUS - 3 OF 36 STORIES

Proprietary to the United Press International 1991

February 14, 1991, Thursday, BC cycle

SECTION: Regional News

DISTRIBUTION: Indiana

LENGTH: 445 words

HEADLINE: Unity Team opens negotiations with state

DATELINE: INDIANAPOLIS

KEYWORD: IN-UNITY

BODY:

The Unity Team coalition opened bargaining talks with the state of Indiana Thursday, but any agreement reached will not be binding unless the Legislature approves collective bargaining.

The Unity Team, composed of the United Auto Workers, the American Federation of Teachers and the Indiana State Employees Association, was chosen in a series of elections last year to represent about 15,000 of the state's 36,000 employees.

Sally Fay, a spokeswoman for the UAW, said the negotiations are proceeding under terms of an executive order from Gov. Evan Bayh -- the same order that allowed the representation elections in 10 employee units.

However, the legislature still controls the purse strings and would have to approve a collective bargaining bill before any agreement reached by negotiators involving money could take effect. Bayh conceivably could approve and implement changes that do not cost substantial amounts of money -- just as he approved the representation elections.

"This is not to downplay the negotiations," Bayh's legal counsel, David Hamilton, said. "There can be agreements made and honored." But he said they will be severely limited to what the governor can approve without legislation.

Nevertheless, William E. Osos, UAW Region 3 director, called the opening of talks "historic."

"State employees today reached a pinnacle in their efforts for dignity and respect," he said.

The Unity Team has a 15-member bargaining committee that began meeting with a state committee headed by Robert McHenry, who was appointed by the governor to be his chief negotiator. McHenry is the former state personnel director.

The Unity Team represents state employees in Unit 1 (labor, trades and crafts), Unit 2 (administrative and technical support), Unit 3 (regulatory, licensure and inspection nonprofessionals), and Unit 10 (correction and institutional security.)

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Other state employees are represented by the American Federation of State, County and Municipal Employees, which has not started any bargaining talks. There also are units of employees that rejected representation by either union group.

AFSCME spokesman Joe Lawrence said his union has not firmed up a negotiating schedule with the state but hopes to do so within a few days.

Fay said the Unity Team's arrangement is unique in labor history. The coalition will continue to do the bargaining for the three unions.

Each state employee eventually will have the opportunity to join one of the unions. That will be decided by a vote in each unit.

Until the union membership assignments are made, Fay said, no dues are being collected.

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DOCUMENT= 1 OF 1 PAGE = 1 OF 4

ACCESS # INDY302519

HEADLINE To sign legislation or not . . .
 . . . is what Bayh asks lawyers who review bills for him

Byline: DAVID J. REMONDINI

DATE 05/11/91

SOURCE THE INDIANAPOLIS STAR (INDY)

Page: b03

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Can you guess who the biggest losers of the Indiana General Assembly were?

* The answer: Indiana's coyotes.

At least that was the whimsical judgment of Gov. Evan Bayh's staffers and the volunteer attorneys who have been reviewing the 242 bills passed by the Indiana General Assembly.

The staffers and attorneys from five local law firms have had the dubious task of analyzing thousands of pages of mundane, intricate and often downright boring pieces of legislation before Bayh signs or vetoes them.

To break the monotony, the reviewers devised a set of categories and even picked winners and losers.

* They deemed that the coyotes took first place in the "Biggest Losers" categories because of Senate Bill 49.

* The measure allows open season on hunting coyotes in the Hoosier State. Bayh signed it last Sunday, despite the protest of several wildlife groups.

House Bill 1604 won first place in the "Most Pages of Legislation With the Smallest Impact." The highly technical, five-page bill has something to do with "filter strips" and "waste water runoff" in Allen County.

* Bayh signed it last Sunday after it was reviewed further by the Indiana Department of Environmental Management, said Bayh's chief counsel, David F. Hamilton.

Hamilton, who reviews every piece of legislation and coordinates the analysis work done by the volunteer crew, said there were other categories for judging.

Diplomatically, however, he agreed to name only the categories - not the winners - in deference to legislators who sponsored the bills.

There were several nominees for the category of "Most Trivial Piece of Legislation," he said.

Also, reviewers picked a winner for "Best Performance By A Special Interest Group."

Finally, he said, they even selected a candidate for top honors in the category for "Bills With the Narrowest Group of Beneficiaries."

"Some of the beneficiaries you could count on the fingers of one hand," he said.

Despite the bit of merriment reviewers had with the categories, Hamilton said the bills were given a thorough review.

The measures first were farmed out to the five biggest law firms in Indianapolis. Each firm reviewed the legislation and provided an analysis.

To date, Bayh has vetoed only one bill. House Bill 1235 involved the circumstances under which a township assessor can hire professional appraisers for reassessment.

But Hamilton hinted that one or two more bills may be vetoed by midnight Monday. By that deadline, Bayh must sign or veto the

remaining bills or watch them become law without his signature.
"It is a lot harder to veto a bill than it is to sign it. The governor can sign a bill and thereby defer to the judgment of the legislature," Hamilton said.

But under the state constitution, if he vetoes a bill he must explain why, write a veto message to the legislature and return the bill to the legislative house of origin. Also, the legislature could try to override his veto.

End of Story Reached

Current Source: Total INDY

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Indianapolis Recorder

August 1, 1992

Can the canal roll on?

BYLINE: Ramey, Mike

SECTION: Pg. 1

LENGTH: 844 words

Can the canal roll on?.

Hobart W. Banks and his sister, Eleanor P. Swatts, have lived on Fayette Street for a number of years. Banks remembers when the area had dirt streets. Swatts fondly remembers the sense of family that existed in this Near-Westside community.

That all may be a thing of the past if the city of Indianapolis has its way with the Canal Walk project, a 25-plus million project designed to bring more housing and development into what has been called a "blighted" area.

On July 24, Banks, Swatts and a number of residents and business owners gathered before a panel of Marion County Superior Court judges who met in a rare group session to hear arguments for and against a possible displacement of longtime residents to make way for the canal project, a project which, according to lawyers representing the city, will generate some 1,800 new housing units.

While the 13 judges later ruled against the homeowners and for the city by a 10-3 vote on July 27, the stage has been set for what could be considered a court-clogging showdown. Each of the more than 30 residents and business owners who live in that area could go to court to fight the taking of their land under the provisions of eminent domain.

Presiding Judge James S. Kirsch, while barred from commenting directly on the 11-page decision, did tell The Recorder both sides presented their cases well and had sound arguments.

At the July 24 hearing, it was revealed that the zone which the city is seeking for the project was quietly declared blighted in 1982, a fact one attorney, Douglass R. Shortridge objected to, saying that his client, Reel Pipe and Valve Company, had continued to do business as usual in the area unaware of

the blight designation by the city. The city contended that it provided proper notice of the blight designation in the newspapers, and made the determination based on its own research. Shortridge then showed the judges pictures of his client's company.

"How can the city say one side of the street is blighted and the other side, which has an Eli Lilly warehouse, isn't," said Shortridge, "and I know for sure that the city isn't going to take Lilly into court."

David F. Hamilton, lead attorney of Barnes and Thornburg representing the city, admitted that it would be quite a while before the city would initiate eminent domain proceedings against the homeowners. "This is an early stage to determine if eminent domain is needed," said Hamilton. "When eminent domain is used for public projects (urban redevelopment) it is powerful."

At the heart of the debate is whether or not the city can seize private land for private development of a public project, a fact which surfaced several times during the hearing. The proposed zone under consideration would affect property and businesses up Martin Luther King Street to the Interstate.

Jerry W. Newman, the attorney who represented the homeowners likened the land grab to an out-of-control political structure doing what it wanted against the citizens it was empowered to protect.

Newman presented statistics which showed that those who had bought land in the area of the canal project let their land deteriorate deliberately to bring the value of existing properties down.

"These houses and businesses are not blighted," said Newman. "The city wants to take all of this for private use. You can't do this in America."

The Metropolitan Development Commission, at an earlier hearing, decided that the area was blighted. Newman and Shortridge appealed, calling for the rare impaneling of all of the sitting judges of the county Superior Court. Thirteen of the court's 15 judges heard the appeal. Judges Webster Brewer and Carr Darden, among the most vocal of the judges during the questioning of both sides during the hearing, voted to reverse the commission's action. They were heavily outvoted.

Based on the ruling, all is not lost for the homeowners and businesses in the redevelopment zone. Point nine of the decision states the property owners have not been denied their day in court to contest the planned condemnation of their property. Since the hearing and subsequent decision was not the actual eminent domain proceeding, court challenges can still be launched.

In light of the already overburdened nature of the county court system, such challenges could bring the system to a standstill. The appeals alone would take months. Kirsch said during the hearing that this was not a typical

condemnation action and that the judges would have to spend some time seeing what laws would apply to the issue.

While the city has offered housing alternatives and payment for the homes and businesses in the blighted area, for Eleanor Swatts, it's not that simple to just pick up and move.

"I have no idea as to where I would move," said Swatts. "I need a place that's convenient for me."

States News Service

January 11, 1993, Monday

SUPREME COURT REFUSES TO HEAR INDIANA TRASH CASE

BYLINE: By Anne Hazard, States News Service

LENGTH: 594 words

DATELINE: WASHINGTON

The U.S. Supreme Court blocked Indiana's attempt to restrict out-of-state trash by siding on Monday with a lower court decision.

The high court declined to hear Indiana's appeal of a ruling by the U.S. Court of Appeals for the Seventh Circuit in Chicago. The appeals court last summer overturned a state law that forbade "backhauling."

Because the high court refused to hear the case, Indiana will not be able to prohibit backhauling of trash into the state from regions such as New York, New Jersey and Pennsylvania. Indiana challenged the practice of trucks returning to Indiana laden with trash after carrying food and other commodities from the Midwest to the East Coast.

The decision not to hear the case also bars Indiana from requiring trucks that bring solid waste into the state to identify themselves with stickers.

"Today's ruling was no surprise to us, but was a disappointment to us because what we tried to do was address the health and safety concerns" of backhauling, said Fred Nation, a spokesman for Gov. Evan Bayh.

During the first nine months of 1992, four Indiana landfills accepted 281,000 tons of out-of-state solid waste compared to 1991, when six of the state's landfills received 734,000 tons of East Coast trash, said Connie Barron of the Indiana Department of Environmental Management.

The law would have required trucks carrying out-of-state waste that were also used to transport other non-trash products to identify themselves with stickers. Firms that transported waste into Indiana in vehicles used for backhauling would have had to pay a \$100 fee.

The Supreme Court's decision marks the third time in recent months it has upheld a ban on state regulation of out-of-state trash or hazardous waste.

In two other rulings, the high court held that restrictions by states on the movement of such material across state lines interfered with interstate commerce, and was therefore unconstitutional.

Lawyers for the state had argued there was a possibility of contamination of food and items such as children's toys because of backhauling. They also maintained the state should be allowed to ban backhauling to "protect the commercial reputation of Indiana products from the taint of trash trucks," said lawyer David Hamilton, who represented the state.

Sen. Dan Coats, R-Ind., released a statement saying the Supreme Court's decision demonstrates the need for federal legislation allowing states to regulate out-of-state trash. Coats has introduced such a bill and last year successfully pushed it through the Senate. The House, however, failed to act on the measure.

Backhauling was limited by a federal law that was enacted in late 1990. It banned shipment of food products on vehicles that have been used to haul hazardous waste, such as bulk chemicals and other dangerous products like petroleum.

Nation said that although Indiana lost a legal battle, "we have been winning the out-of-state trash war." Because of state laws that have survived and pressure from Gov. Bayh, all landfills in Indiana except one have stopped accepting solid waste from outside of the state, he said. The only landfill that still permits the dumping of interstate garbage is the T.H. Landfill in Miami County.

Also, Indiana has negotiated agreements with New York and New Jersey, which previously exported huge volumes of trash to the Hoosier state. Under the agreements, Indiana inspectors stop trash trucks carrying loads from New York and New Jersey to make sure they have paid the proper fees to the originating states.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CHAMBERS OF
CHIEF JUDGE DAVID F. HAMILTON

BIRCH BAYH U.S. COURTHOUSE
ROOM 330
46 EAST OHIO STREET
INDIANAPOLIS, INDIANA 46204

March 24, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am writing to supplement my Senate Questionnaire with the following additional information relevant to Questions 11(a) and 14, which was inadvertently omitted from my earlier submission.

Question 11(a):

In addition to serving as a vice president and board member of the Indiana Civil Liberties Union in 1987 and 1988, I believe I also must have been a member of the organization from the mid-1980s until approximately the time I joined the staff of Governor Bayh in January 1989. I do not have records or specific recollection about the dates of that membership.

Question 14:

My wife Inge Van der Cruysse works full-time as an attorney for the City of Bloomington, Indiana. I would recuse in any case involving the City of Bloomington as a party. If she were to change jobs, I would comply with 28 U.S.C. § 455, and specifically with § 455(b)(4) and (b)(5), to recuse in any case in which she would be a party, an officer, director, or trustee of a party, or a lawyer in the proceeding, or in which she had an interest that could be substantially affected by the outcome of the proceeding or would be likely to be a material witness, or would have a financial interest in the subject matter.

Sincerely yours,



David F. Hamilton

DFH/jm

cc:

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator CARDIN. Secretary Perez, also, would you like to introduce your family, but if you would like to make an opening statement?

Mr. PEREZ. Thank you, Senator. First of all, I want to thank you, Senator Mikulski, and Senator Sarbanes for all of your wonderful leadership. We have the "Cardin requirement." That is what it is called at the University of Maryland School of Law. It is a public service requirement. I cannot think of a better person after whom to name that requirement. So thank you very much, Senator.

I did want to introduce my family. My wife, Anne Marie, is sitting with my 6-year-old son, Rafael, and he has a BlackBerry so that he can play Brick Breaker in the event that we need some distraction.

[Laughter.]

Mr. PEREZ. Next to her is my 10-year-old daughter with the freckles. That would be Susana. And next to her is my oldest daughter, Amalia. The last time she was here was in my going away party with Senator Kennedy when she was about a year and a half old. And we have a wonderful photo of her and her teddy bear and Senator Kennedy. So she was with two teddy bears in that particular context.

[Laughter.]

Mr. PEREZ. So thank you. Would you like me to deliver it now or—

Senator CARDIN. That would be fine.

Mr. PEREZ [continuing]. Either way? OK, great.

STATEMENT OF THOMAS E. PEREZ, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. PEREZ. Again, I am really grateful to this Committee. It is wonderful to be back home. I remember vividly sitting in this Committee and having the privilege of doing so, and I really want to thank the President and the Attorney General for giving me this opportunity, if confirmed, to serve as the Assistant Attorney General for Civil Rights.

I know my parents, who inspired me to a career in public service, are also here in spirit. My family story is the story of millions of immigrants who have come to America seeking a better life. My mother arrived in America in the 1930s from the Dominican Republic because my maternal grandfather was the Ambassador to the United States. A few years later, he was declared non grata after speaking out against a despicable regime that had been responsible for the murder of thousands of Haitians.

My father also had to flee the country, and he came to America seeking a better life as well. He developed an immediate sense of gratitude for the freedom that America had and gave, and while a legal immigrant, he served with distinction in the U.S. Army as a physician. Four of my uncles on my mother's side volunteered for the U.S. Army in World War II because they were so appreciative to this country for what this country gave them.

My father established a very strong bond with veterans, and when he retired, he moved from Atlanta, Georgia, where he was

stationed to Buffalo, New York, and served the rest of his career as a physician at the VA hospital.

My parents taught their five kids—I am the youngest of five, the caboose—to work hard, aim high, give back, and ensure that the ladder is always down for the less fortunate. They valued education. All of my siblings became doctors, and I was the black sheep in the family. I became the lawyer. And they have spent much time working with the underserved.

Regrettably, my father worked so hard that he worked himself to an early grave. He died when I was 12. And following his death, times certainly became tougher. Finances became tighter. But my mother was a rock, and we had a wonderful village in Buffalo that was helping to raise me. And thanks to Pell grants, work-study jobs, and other scholarships, I was able to follow that path to higher education that my parents set out for me.

My goal was always to become a civil rights lawyer because I truly do believe that civil rights is the unfinished business of America. And my particular goal was to become a civil rights lawyer at the U.S. Department of Justice because I always believed, and still believe, that it is the most important civil rights law enforcement agency in the United States.

I had the opportunity to serve the Department in a number of capacities. I started as a law clerk in 1986 under Attorney General Ed Meese. I entered the Department in 1989 and served under Attorneys General Thornburgh and Barr and later under Attorney General Reno. I had the privilege of serving on the hiring committee in 1992, 1993, and 1994, Republican and Democratic administrations, and it was truly an honor. I had the privilege of serving as a first-line supervisor in the Criminal Section.

I traveled the country. My first travel was to Mobile, Alabama, where we were treated with great dignity by then-U.S. Attorney and now Senator Jeff Sessions, the first trial that I participated in, and he was a wonderfully welcoming person, a wonderfully welcoming U.S. Attorney, and I am very grateful for that work.

I have profound respect for this Department, and I have profound respect for this Division. I take the mission statement very seriously: to ensure the fair and impartial administration of justice. And it is that love I have for the Division which was why I read with great concern the report from the Inspector General, because, quite frankly, the Civil Rights Division that was depicted in that report bore little resemblance to the Civil Rights Division where I served with distinction under Republican and Democratic administrations.

I very much applaud Attorney General Mukasey's efforts to address the situation, and he made considerable progress. And I have a deep, abiding optimism that we can restore the Civil Rights Division to its historic position. And if confirmed, one of my primary goals will be to ensure that decisionmaking is de-politicized.

I will work hard to restore trust between career attorneys and the political leadership. I have been both, and I respect the need to ensure that effective communication between both. I will ensure that hiring is guided plainly and simply by a search for the most qualified candidates.

Areas where we have made progress, where the Division has made progress, if confirmed, I will work to ensure that that progress continues, areas like human trafficking, areas like ensuring that people are protected in religious freedom, enforcing those critical laws. But we must enforce all the laws within the jurisdiction of the Division. The Division must play an active role and can play an active role in stemming the foreclosure crisis, ensuring that the sacred right to vote is protected, and aggressively prosecuting hate crimes.

Attorney General Holder told you during his confirmation hearing that he intends to make restoration of the Civil Rights Division and its mission a top priority. And if confirmed, I am prepared to lead that charge and to restore the reputation and effectiveness of a Division that I still believe will be the Nation's preeminent civil rights enforcement agency.

Thank you for your courtesy, and I look forward to your questions.

[The biographical information of Mr. Perez follows:]

Questionnaire for Non-Judicial Nominee

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

Thomas Edward Perez

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

Assistant Attorney General for Civil Rights, United States Department of Justice

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

Office:

Maryland Department of Labor, Licensing and Regulation, 500 North Calvert Street, 4th Floor, Baltimore, MD 21202

Home:

[REDACTED]

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

Buffalo, New York (10-07-61)

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

Harvard Law School, JD, Class of 1987 (attended 1983-1987)

John F. Kennedy School of Government, Masters of Public Policy, Class of 1987 (attended 1984-1987)

Brown University, Class of 1983 (Attended 1979-1983)

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

Employment for Which I Received Payment

2007- present: Secretary, Maryland Department of Labor, Licensing and Regulation, (cabinet Secretary) 500 North Calvert Street, Baltimore, MD 21202

2007- present: George Washington School of Public Health (part time professor) 2021 K Street, NW Suite 800, Washington, DC 20006

2002-2006: Montgomery County Council (elected member of nine member county council in Montgomery County, Maryland; Council President in 2005; did not seek re-election in 2006) 100 Monroe Street Rockville, MD 20850

2001-2007: University of Maryland School of Law (Assistant Professor of Law, and later promoted to Associate Professor of Law) 500 W. Baltimore Street, Baltimore, MD, 21201

2001-2007 - Health Care and Civil Rights Consultant - Projects included work on behalf of the National Academies of Sciences (500 5th St, NW, Washington, DC 20001); Association of American Medical Colleges (2450 N Street, NW Washington, DC 20037); The California Endowment (1000 N Alameda, Los Angeles, CA 90012); Robert Wood Johnson Foundation (PO Box 2316 Route 1 and College Road East, Princeton, NJ 08543); Kellogg Foundation (One Michigan Avenue East, Battle Creek, MI 49017); and the American Institutes for Research (1000 Thomas Jefferson St, NW Washington, DC 20007). I performed this work from my home office, or I traveled to one of the work sites listed above.

1999-2001: Director, Office for Civil Rights, United States Department of Health and Human Services, 200 Independence Ave., SW, Washington D.C., 20201 (Presidential Appointment)

1989-1999: U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC, 20530

1998-1999: Deputy Assistant Attorney General for Civil Rights (Presidential Appointment)

1995-1998: Special Counsel to Senator Edward Kennedy (detailed from DOJ to Senator Kennedy's office)

1994-1995: Deputy Chief, Criminal Section, Civil Rights Division

1989-1994: Trial Attorney, Criminal Section, Civil Rights Division

1987-1989: Judicial Law Clerk to the Honorable Zita L. Weinshienk, United States District Court for the District of Colorado, 1929 Stout Street, Denver, CO

Summer 1986: Fredrikson and Byron, 200 South Sixth St, Suite 4000, Minneapolis, MN (summer law clerk)

Summer 1986: U.S. Department of Justice, 950 Pennsylvania Ave., NW, Washington DC (summer law clerk, Housing Section, Civil Rights Division)

Summer 1985: Davis, Graham and Stubbs, 1550 17th Street, Suite 500, Denver, CO (summer law clerk)

Summer 1985: Schwalb, Donnenfeld, Bray and Silbert, 1025 Thomas Jefferson St. NW, Suite 300 East, Washington, DC 20007 Washington, DC (summer law clerk)(firm is no longer in existence)

Summer 1984: Damon and Morey, 298 Main Street, 1000 Cathedral Place, Buffalo, NY (summer law clerk)

Volunteer Service on Boards

2004-present - Center for American Progress Action Fund, 1333 H Street, NW
Washington, DC 20005 - Member of the Board

2007-present - Action Aid USA, 1420 K Street, NW, Washington, DC - Member of the Board

2007 - Advisory Committee - Robert Wood Johnson Foundation, Route 1 and College Road East, P.O. Box 2316, Princeton, NJ 08543 - Chaired advisory group that reviewed applications from coalitions across the country seeking grants that would enable them to build grassroots capacity to advocate for healthcare reform. The Committee made nonbinding recommendations to the Foundation about which grant applications to fund.

2005- 2008 Opportunity Agenda, 568 Broadway, New York, NY Founding Member of Advisory Board (non profit organization)

2005-2006 National Immigration Forum, 500 F. Street, NW Washington, DC Member of the Board

2004- 2007- Docs for Tots, 1000 Vermont Ave NW Suite 700, Washington, DC 20005, Member of the Board

2004-2006 - Sullivan Commission on Diversity in the Health Professions- Served on Commission funded by Kellogg Foundation that conducted field hearings and prepared a report that served as a blueprint for expanding health professions workforce diversity.

2004-2006- Constitution Project Sentencing Initiative, 1200 18th Street, NW, Suite 1000, Washington DC, 20036 - Served on a bipartisan commission co-chaired by former Attorney General Edwin Meese and former Deputy Attorney General Phillip Heymann to examine criminal sentencing policy.

2003-present - Kaiser Commission on Medicaid and the Uninsured - 1330 G Street, NW, Washington, DC, 20005 - Member of nonpartisan commission that does public education and information dissemination on issues surrounding Medicaid and the uninsured.

2003-2005- National Selection Committee- Leadership for a Changing World Program- 1629 K Street, NW, Suite 200, Washington, DC, 20006 - Served on a selection committee for the Ford Foundation to select participants in Ford funded leadership program that targeted grassroots leaders across the nation.

2002-2003 - American Bar Association Panel on Collateral Consequences of Criminal Convictions - 740 15th Street, NW, Washington, DC, 20005 - Served on ABA group that examined the collateral consequences of criminal convictions.

1995-2002 Casa de Maryland, 734 University Blvd, Silver Spring, MD Member of the Board (non profit organization)

7. **Military Service:** *Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.*

I have not served in the military.

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

Local Latino Leader Award (2009) (Sponsored by DC Latino Inaugural Gala Committee)

Aspen Rodel Fellowship 2005-2007 (fellowship awarded to bipartisan group of elected officials who demonstrate achievement in the political context and the potential to progress further in elective or appointive politics).

Maryland Conflict Resolution Fellow (2007) (fellowship of leaders across Maryland to come together and devise innovative strategies for solving public policy challenges).

Hispanic Democratic Club of Montgomery County - Latino Leadership Award 2007

Maryland Daily Record, Influential Marylanders - 2007

MALDEF Award for Excellence in Legal Service (2001) - Nationwide Award given out by MALDEF each year to an attorney for sustained excellence on behalf of underserved communities.

Department of Justice 1989-1996 – received at least five performance awards for sustained superior performance while serving as a career civil servant in the Civil Rights Division, including the Attorney General’s Distinguished Service Award, the second highest award in the Department that was given for my successful prosecution of a notorious hate crimes case in Lubbock, Texas (U.S. v. Munguia et al.).

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

American Bar Association (former member; not currently a member; allowed membership to lapse) (Approximately 1999 – 2002)

Hispanic National Bar Association (former member; not currently a member; allowed membership to lapse) (Approximately 1996 – 1999)

District of Columbia Bar Association (1999-present)

District of Columbia Hispanic Bar Association (1995-2000 approximately)

10. **Bar and Court Admissions:**

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

Maryland Bar (admitted in 2001)

District of Columbia Bar (admitted in 1998)

New York State Bar (admitted in 1988; inactive since 2008; went inactive because I do not intend to return to New York (my birth state) to practice law).

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

As a federal prosecutor at the United States Department of Justice from 1989 to 1999, I was allowed to practice in any federal court in the United States, and did not have to be specifically admitted to a particular court each time I entered a jurisdiction.

From 1999 to 2001, I did not appear in any courts in my capacity as Director of the Office for Civil Rights at the U.S. Department of Health and Human Services.

I was admitted to the Maryland bar in December 2001, and have been permitted to practice in all state courts in Maryland since then.

I was admitted to the District of Columbia bar in 1998, and have been permitted to practice there since then.

I was admitted to practice in New York state in 1988, and I allowed my bar membership to lapse in 2008 because I have no intention of returning to New York to practice.

11. Memberships:

- a. *List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.*

Club Membership

Prince George's Pool (neighborhood pool to which our family belongs in the summer) 2003-2007

St. Aloysius Church, Washington D.C., 1989 - present

WAMU Radio, Washington D.C., contributing member, approximately 2003 - present

- b. *Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.*

None of these organizations discriminates.

12. Published Writings and Public Statements:

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

1. *Health Professions Accreditation and Diversity: A Review of Current Standards and Processes* (May 2007)(Report Commissioned by the Kellogg Foundation).
2. *Enhancing Access to Health Care and Eliminating Racial and Ethnic Disparities in Health Status: A Compelling Case for Health Professions Schools To Implement Race-Conscious Policies*, *Journal of Health Care Law and Policy*, University of Maryland Law School (2006).
3. *The Civil Rights Dimension of Racial and Ethnic Disparities in Health Status*, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care* (2001)(paper commissioned for National Academies of Sciences Report on disparities).
4. *The Current Legal Status of Affirmative Action Programs in Higher Education*, *The Right Thing to Do, The Smart Thing To Do, Enhancing Diversity in Health Professions* (2001)(commissioned paper for symposium sponsored by National Academies of Sciences on health care workforce diversity).
5. *External Governmental Mechanisms of Police Accountability: Three Investigative Structures*, *Policing and Society* (2000)(paper written at conclusion of Ford Foundation funded international collaboration on policing).
6. "Common Sense Funding for our School Construction Needs," Tom Perez, The Gazette, Apr 23, 2003.
7. Letter to the Editor (Budget issues), Tom Perez, The Gazette, May 2, 2005.
8. Tom Perez "Punishing Patients." Published in Mother Jones, May 25, 2006.
9. *Slot Machines and the Racing Industry: A Review of Existing Data in Maryland and Neighboring States* (August 2007)
10. Thomas E. Perez "No More Regulation Roulette." Washington Post Op-Ed, May 25, 2008.
11. Rob Ritchie and Tom Perez. "Voting should be effortless, not chaotic." Op-Ed, Portsmouth Herald, Oct 29, 2006.
12. Thomas E. Perez "I am trying to save a buck or two on prescription drugs." Letter to the Editor. The Gazette, Oct 26, 2005.

13. Thomas E. Perez "Health care cuts are a cruel blow to immigrants." Letter to the Editor. The Sun. Apr 9, 2005.
14. Thomas E. Perez "Prevailing wage lifts workers, sets example for employers." Op-Ed, The Gazette Sep 19, 2008.
15. Thomas E. Perez "Decide on facts, not myths; slot machines in Maryland?" Op-Ed, Baltimore Sun. Nov 8, 2007.
16. Thomas E. Perez "A Practical Solution to Fiscal Woes." Op-Ed, Washington Post. Oct. 26, 2008.

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

1. *Assessing Medical School Admissions Policies: Implications of the United States Supreme Courts Affirmative Action Decisions* (2003)(Paper Commissioned by the Association of American Medical Colleges (AAMC) in the immediate aftermath of the landmark affirmative action rulings.).
2. *Missing Persons: Minorities in the Health Professions* (September 2004)(Report of the Sullivan Commission on Diversity in the Healthcare Workforce; I was a member of the Commission, although I did not actually write the Report. I reviewed the Report draft and offered comments).
3. *Legal and Regulatory Issues Governing the Use of Interpreters in Health Care*, Commissioned Paper for Project on Health Care Interpretation (Feb 27, 2003).
4. *Stepping Up to the Future: Findings and Recommendations from the 2005 Superintendent's Panel on Excellence in Adult Education* (December 2005) (I was a member of the panel.)
5. *Maryland Homeownership Preservation Task Force Report* (Nov 29, 2007) (I was a co-chair of the task force, created by Governor O'Malley to address the foreclosure crisis. The Report was actually written by staff; I reviewed and signed off on it).
6. *Workforce Creation and Adult Education Transition Council Report* (December 2008)(I co-chaired the council, which was created by legislation in 2008 to create a plan for the transfer of adult and correctional education programs to the Department of Labor, Licensing and Regulation. My staff wrote the Report, but the Report is from me and my co-chair to the Governor).
7. *Recommendations for Federal Sentencing In a Post Booker World, A Report of the Constitution Project's Sentencing Initiative* (July 2006)(I did not write the Report but was a member of the Commission that reviewed and endorsed the Report).

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

1. *New Commissioner of Labor and Industry Announced*, Maryland Department of Labor, Licensing and Regulation. Feb 21, 2007.
2. *New Director of Governor's Workforce Investment Board Named*, Department of Labor, Licensing and Regulation. April 20, 2007.
3. *Governor Names New Chair for Workforce Investment Board*, Department of Labor, Licensing and Regulation. May 14, 2007.
4. *Maryland Begins Home Inspector Licensing*, Department of Labor, Licensing and Regulation. May 22, 2007.
5. *Maryland Employment Report – April 2007*, Department of Labor, Licensing and Regulation. May 24, 2007.
6. *State of Maryland Employment Report – May 2007*, Department of Labor, Licensing and Regulation. June 28, 2007.
7. *New Commissioner of Financial Regulation Named*, Department of Labor, Licensing and Regulation. June 8, 2007.
8. *Division of Workforce Development Secures Federal Grant for BRAC Implementation*, Department of Labor, Licensing and Regulation. July 6, 2007.
9. *DLLR Grants \$100,000 to Anne Arundel Workforce Nonprofits*, Department of Labor, Licensing and Regulation. July 6, 2007.
10. *Deputy Secretary Appointed for Department of Labor, Licensing and Regulation*, Department of Labor, Licensing and Regulation. July 17, 2007.
11. *Maryland Unemployment Lowest for June since 2000*, Department of Labor, Licensing and Regulation. July 26, 2007.
12. *DLLR continues Crackdown on UI Fraud*, Department of Labor, Licensing and Regulation. August 3, 2007.
13. *DLLR Investigation Leads to Mortgage Scam Conviction*, Department of Labor, Licensing and Regulation. August 9, 2007.
14. *Number of Homeowners Facing Foreclosure Continues to Rise in Maryland*, Department of Labor, Licensing and Regulation. August 24, 2007.
15. *State of Maryland Employment Report – July 2007*, Department of Labor, Licensing and Regulation. Aug 29, 2007.
16. *DLLR Investigation Leads to Cease and Desist Order*, Department of Labor, Licensing and Regulation. Sept 14, 2007.
17. *State of Maryland Employment Report – August 2007*, Department of Labor, Licensing and Regulation. Sep 27, 2007.
18. *Maryland's Living Wage Law Goes into Effect October 1st*, Department of Labor, Licensing and Regulation. Sept 28, 2007.
19. *Increase in Unemployment Insurance Maximum Weekly Benefit Amount*, Department of Labor, Licensing and Regulation. Sept 28, 2007.
20. *Deadline Approaching for Home Inspector Licensing*, Department of Labor, Licensing and Regulation. Oct 3, 2007.
21. *DLLR's Division of Financial Regulation Investigates Improper Loan Originator Applications*, Department of Labor, Licensing and Regulation. Oct 9, 2007.
22. *Number of Homeowners Facing Foreclosure Skyrockets in Maryland*, Department of Labor, Licensing and Regulation. Oct 23, 2007.
23. *State of Maryland Employment Report – September 2007*, Department of Labor, Licensing and Regulation. Oct 25, 2007.

24. *Maryland Apprenticeship and Training Program Registers Record Number of Apprentices*, Department of Labor, Licensing and Regulation. Nov 13, 2007.
25. *State of Maryland Employment Report – October 2007*, Department of Labor, Licensing and Regulation. Nov 20, 2007.
26. *Harford County Company Recognized by DLLR*, Department of Labor, Licensing and Regulation. Nov 26, 2007.
27. *DLLR Orders Unlicensed Lenders to Cease and Desist*, Department of Labor, Licensing and Regulation. Dec 13, 2007.
28. *DLLR Reaches Out to Hispanic Community for Safety Training*, Department of Labor, Licensing and Regulation. Dec 17, 2007.
29. *Governor O'Malley's FY09 Budget Supports DLLR Programs*, Department of Labor, Licensing and Regulation. Jan 16, 2008.
30. *State of Maryland Employment Report – December 2007*, Department of Labor, Licensing and Regulation. Jan 24, 2008.
31. *Number of Maryland Homeowners Facing Foreclosure Continues Dramatic Rise in 4th Quarter*, Department of Labor, Licensing and Regulation. Feb 13, 2008.
32. *DLLR Immediately Suspends Eleven Maryland Mortgage Broker Licenses*, Department of Labor, Licensing and Regulation. Feb 15, 2008.
33. *DLLR Issues Warning to Consumers of Illegal Loans in Maryland*, Department of Labor, Licensing and Regulation. Feb 21, 2008.
34. *Loan Servicers Agree to Work with Sate to Find Solutions*, Department of Labor, Licensing and Regulation. Feb 26, 2008.
35. *Secretary Perez Advises Against High-Cost Stimulus Anticipation Loans*, Department of Labor, Licensing and Regulation. March 13, 2008.
36. *State of Maryland Employment Report – January 2008*, Department of Labor, Licensing and Regulation. March 13, 2008.
37. *State of Maryland Employment Report – February 2008*, Department of Labor, Licensing and Regulation. Apr 1, 2008.
38. *State of Maryland Employment Report – March 2008*, Department of Labor, Licensing and Regulation. Apr 23, 2008.
39. *Grand Opening of the Maryland Transition One Stop Career Center*, Department of Labor, Licensing and Regulation. Apr 25, 2008.
40. *Southern Maryland to Get Workforce Investment Board*, Department of Labor, Licensing and Regulation. Apr 28, 2008.
41. *DLLR Warns Internet Users About False or Misleading Unemployment Insurance Benefit Information*, Department of Labor, Licensing and Regulation. Apr 29, 2008.
42. *Governor O'Malley Signs Bill to Enhance Enforcement of Lending Laws*, Department of Labor, Licensing and Regulation. May 13, 2008.
43. *State of Maryland Employment Report – April 2008*, Department of Labor, Licensing and Regulation. May 16, 2008.
44. *Deputy Commissioner of Financial Regulation Named*, Department of Labor, Licensing and Regulation. May 20, 2008.
45. *Governor O'Malley Signs Bill to Support Military Families*, Department of Labor, Licensing and Regulation. May 22, 2008.
46. *Governor O'Malley Signs Innovative Workforce Creation Legislation*, Department of Labor, Licensing and Regulation. Apr 24, 2008.
47. *New Laws Go Into Effect June 1st*, Department of Labor, Licensing and Regulation. May 30, 2008.
48. *First Round of Workforce ONE Maryland BRAC Projects Announced*, Department of Labor, Licensing and Regulation. June 6, 2008.

49. *State of Maryland Employment Report – May 2008*, Department of Labor, Licensing and Regulation. June 20, 2008.
50. *State Agencies Partner to Development Employment Options*, Department of Labor, Licensing and Regulation. June 30, 2008.
51. *Home Improvement Commission Ramps Up Protection of Critical Area*, Department of Labor, Licensing and Regulation. Jul 1, 2008.
52. *DLLR Continues Crackdown on Unemployment Insurance Fraud*, Department of Labor, Licensing, and Regulation. Jul 8, 2008
53. *State of Maryland Employment Report – June 2008*, Department of Labor, Licensing and Regulation. Jul 18, 2008.
54. *Recommendations for State Regulations to Go Before MOSH Advisory Board*, Department of Labor, Licensing and Regulation. Jul 22, 2008.
55. *Amusement Ride Safety Season Here*, Department of Labor, Licensing and Regulation. Jul 21, 2008.
56. *First Class in the Nation to Conclude New Pre-Apprenticeship Program*, Department of Labor, Licensing and Regulation. Jul 24, 2008.
57. *Maryland Employment Situation – July 2008*, Department of Labor, Licensing and Regulation. Aug 15, 2008.
58. *Storm Warning: Scam Artists First to Follow Last Raindrop*, Department of Labor, Licensing and Regulation. Sept 5, 2008.
59. *Maryland Scores High Marks for Protecting Consumers from Abuse Lending Practices*, Department of Labor, Licensing and Regulation. Sept 9, 2008.
60. *Governor's Workforce Investment Board's Manufacturing Leaders Meet to Address Growing Workforce Issues*, Department of Labor, Licensing and Regulation. Sept 11, 2008.
61. *Lt. Governor Brown Announces Workforce One Maryland BRAC Project Awards*, Office of the Lt. Governor. Sept 16, 2008.
62. *Maryland Employment Report – August 2008*, Department of Labor, Licensing and Regulation. Aug 19, 2008.
63. *DLLR Lends a Helping Hand to Texas Residents in the Wake of Hurricane Ike*, Department of Labor, Licensing and Regulation. Sept 30, 2008.
64. *\$1.2 Million Collected for Maryland Workers Cheated out of Wages by Employers*, Department of Labor, Licensing and Regulation. Oct 16, 2008.
65. *Maryland Employment Report – September 2008*, Department of Labor, Licensing and Regulation. Oct 21, 2008.
66. *Maryland Reinforces Cooperative Efforts to Better Regulate the Mortgage Industry*, Department of Labor, Licensing and Regulation. Oct 30, 2008.
67. *Mobile One Stop Career Center Serves Upper Eastern Shore Employment and Training Needs*, Department of Labor, Licensing and Regulation. Nov 3, 2008.
68. *Maryland Employment Situation – October 2008*, Department of Labor, Licensing and Regulation. Nov 21, 2008.
69. *Unlicensed Home Improvement Contractor Ordered to Pay \$65,000 and Spend 30 Days in Jail*, Department of Labor, Licensing and Regulation. Nov 25, 2008. (English and Spanish)
70. *Maryland Unemployment Benefits to be Paid by Debit Card*, Department of Labor, Licensing and Regulation. Dec 1, 2008.
71. *DLLR Announces "Operation Repair,"* Department of Labor, Licensing and Regulation. Dec 4, 2008.
72. *Notice for Extension of Unemployment Insurance Benefits*, Department of Labor, Licensing and Regulation. Dec 12, 2008.

73. *Maryland Employment Situation – November 2008*, Department of Labor, Licensing and Regulation. Dec 19, 2008.
74. *DLLR Reminds Marylanders There is No Fee to File UI Claims*, Department of Labor, Licensing and Regulation. Dec 29, 2008. (English and Spanish)
75. *DISA Transitional One Stop Kickoff Event*, Department of Labor, Licensing and Regulation. Jan 14, 2009.
76. *Maryland Employment Situation – December 2008*, Department of Labor, Licensing and Regulation. Jan 27, 2009.
77. *Maryland Employment Situation – January 2009*, Department of Labor, Licensing and Regulation. Mar 11, 2009.
78. *DLLR Warns Against Hiring Unlicensed Contractors*, Department of Labor, Licensing and Regulation. Mar 19, 2009.
79. *Governor O'Malley Nominates Secretaries for Maryland Higher Education Commission*, DLLR, Office of Governor Martin O'Malley. Jan 23, 2007.
80. *Governor O'Malley Creates Homeownership Preservation Task Force*, Office of Governor Martin O'Malley. June 13, 2007.
81. *Governor O'Malley and Secretary Perez Announce Plans for Living Wage Implementation*, Office of Governor Martin O'Malley. Aug 31, 2007.
82. *Governor O'Malley Outlines Plan to Recapture Slots Revenue for Maryland*, Office of Governor Martin O'Malley. Sept 25, 2007.
83. *Governor O'Malley Announces Release of Homeownership Preservation Task Force Report*, Office of Governor Martin O'Malley. Nov 29, 2007.
84. *Governor O'Malley Announces Initiative to Protect Homeownership*, Office of Governor Martin O'Malley. Jan 14, 2008.
85. *Governor O'Malley Highlights Efforts to Improve Maryland's Work Force*, Office of Governor Martin O'Malley. Feb 6, 2008.
86. *Governor O'Malley Calls for Emergency Work-Session with Lenders on Mortgage and Foreclosure Crisis; Launches Examination into Loan Servicer*, Office of Governor Martin O'Malley. Feb 19, 2008.
87. *Governor O'Malley Meets with Mortgage Loan Servicers*, Office of Governor Martin O'Malley. Feb 26, 2008.
88. *Governor O'Malley Launches Ad Campaign to Combat Foreclosures*, Office of Governor Martin O'Malley. May 6, 2008.
89. *Governor O'Malley Announces Agreement with Mortgage Servicing Companies to Provide Foreclosure Relief*, Office of Governor Martin O'Malley. Nov 7, 2008.
90. *Governor O'Malley Establishes Maryland Council for New Americans*, Office of Governor Martin O'Malley. Dec 5, 2008.
91. *Governor O'Malley Swears In, Announces Members of the Maryland Council for New Americans*, Office of Governor Martin O'Malley. Jan 13, 2009.
92. *Governor O'Malley Visits Frostburg to Kick Off Town Hall Meetings on Education and the Economy*, Office of Governor Martin O'Malley. Feb 4, 2009.
93. *Testimony in support of House Bill 430 – Living Wage*, House Economic Matters Committee. Feb 20, 2007.
94. *Statement from DLLR Secretary Tom Perez on Homeownership Preservation*, Homeownership Press Conference. 2007.
95. *Testimony on Mortgage Lending Practices*, Senate Finance Committee. Aug 29, 2007.
96. *Briefing on Slot Machine and Racing Report*, House Ways and Means Committee. Oct 2, 2007.

97. *Briefing on report of the Homeownership Preservation Task Force*, Senate Judicial Proceedings Committee. Oct 23, 2007.
98. *Briefing on Slot Machines and Racing*, Senate Budget and Taxation Committee and House Ways and Means Committee. Nov 2, 2007.
99. *Briefing on Homeownership Preservation Task Force and Governor's Foreclosure Prevention Proposals*, House Economic Matters Committee. Jan 16, 2008.
100. *Testimony on Senate Bill 203 – Adult and Correctional Education transfer*, Senate Finance Committee. Feb 14, 2008.
101. *Testimony in support of House Bill 1510 – Premium Finance Companies*, House Economic Matters Committee. Mar 10, 2008.
102. *Testimony in support of House Bill 1590 – Worker Misclassification*, House Economic Matters Committee. March 20, 2008.
103. *Testimony in support of Bill 21-08 – Prevailing Wage*, Montgomery County Council. Jul 8, 2008.
104. *Testimony on Maryland's Efforts to Combat Mortgage Fraud*, U.S. Senate Special Committee on Aging – Hearing on Foreclosure Aftermath: Preying on Senior Homeowners. Feb 12, 2008.
105. *Testimony in support of House Bill 310 – UI for Part Time Workers*, House Economic Matters Committee. Feb 10, 2009.
106. *Testimony in support of Senate Bill 842 – Foreclosure Notification for Tenants*, Senate Judicial Proceedings Committee. Feb 25, 2009.
107. *Testimony in support of Senate Bill 762 – Adult Education*, Senate Finance Committee. Feb 26, 2009.
108. *Testimony about Maryland's foreclosure prevention efforts and lessons learned*, Congressional Oversight Panel on TARP, field hearing in Prince George's County. Feb 27, 2009.
109. *Testimony in support of House Bill 16 – Shift Breaks*, House Economic Matters Committee. Mar 3, 2009.
110. *Testimony in support of House Bill 819 – Workplace Fraud*, House Economic Matters Committee. Mar 3, 2009.
111. *Testimony in Support of HB 529 - Adult Literacy Business Tax Credits*, House Ways and Means Committee. Mar 3, 2005.
112. *Testimony in Opposition to HB 1152 – English as Official State Language*, House Health and Government Operations Committee. Mar 9, 2005.
113. *Statement by County Council Member Tom Perez Regarding Macy's Announcement to Open Store in Wheaton*, Montgomery County Council. Jan 16, 2003.
114. *Perez, Praisner and Leventhal Applaud Formation of New Purple Line Coalition*, Montgomery County Council. Jan 28, 2003.
115. *Support for Inner Purple Line between Bethesda and New Carrollton and Corridor Cities Transitway*, Montgomery County Council. Feb 4, 2003.
116. *Letter to Governor Ehrlich*, Stubin, Michael L., Feb 7, 2003.
117. *Perez Supports In-State Tuition for Immigrant College Students*, Montgomery County Council. Feb 19, 2003.
118. *Perez Urges Expanding MD Hate Crime Law*, Montgomery County Council. Feb 21, 2003.
119. *Statement by Councilmember Tom Perez on the Rejection of CareFirst Sale*, Montgomery County Council. Mar 6, 2003.
120. *County Looks to Expand Summer Meals Programs for Low-Income Children*, Montgomery County Council. Mar 11, 2003.

121. *Perez on the Impending War with Iraq*, Montgomery County Council. Mar 11, 2003.
122. *Statement on Transfer Taxes for Former Domestic Partners*, Montgomery County Council. Mar 11, 2003.
123. *Councilmember Tom Perez Hosts Silver Spring Dialogue*, Montgomery County Council, Mar 13, 2003.
124. *Statement of County Councilmember Tom Perez Regarding Governor Ehrlich's Announcements on the Inner Purple Line and the Corridor Cities Transitway*, Montgomery County Council. Mar 13, 2003.
125. *Statement by Tom Perez on Montgomery County's Dedicated Fund for Affordable Housing*, Montgomery County Council. Mar 25, 2003.
126. *Council Approves Dedicated Funding for Affordable Housing Programs*, Montgomery County Council. Mar 25, 2003.
127. District 5 Update, Tom Perez. Mar 31, 2003.
128. "Concejal Tom Perez Promueve Participacion Comunal," *El Pregoner*. April 3, 2003.
129. *Councilmembers Mike Subin, Marilyn Praisner, and Tom Perez Announce the Release of a Study Examining Adult English as a Second Language (ESL) Service Delivery in Montgomery County*, Montgomery County Council, Apr 15, 2003.
130. *Montgomery County's New 10 Year Transportation Plan*, Montgomery County Council. Apr 2003.
131. *Council Balances \$3 Billion Budget with Program Cuts, Revenue Increases, County Employee Pay Changes*, Montgomery County Council, May 15, 2003.
132. *Council Approves Smoking Ban for County Restaurants and Bars*, Montgomery County Council. Jul 1, 2003.
133. *Letter to Maryland Public Service Commission*, Montgomery County Council. Jul 11, 2003.
134. *Council to State: No to Busway on Jones Bridge Road*, Montgomery County Council. Jul 15, 2003.
135. *Recommendation to cease study of B-County Transitway*, Montgomery County Council. Jul 15, 2003.
136. *Councilmembers Leventhal and Perez, Duncan Highlight Available Health Care for Spanish Catholic Center Clients Affected by Gaithersburg Clinic Closure*, Montgomery County Council. Jul 17, 2003.
137. *News from your Montgomery County Council*, Summer 2003 Newsletter. Summer, 2003.
138. *Letter to William J. Sim*, Tom Perez and Howard Denis Sept 4, 2003.
139. *County Council Urges Changes in "USA Patriot Act"*, Montgomery County Council. Sept 30, 2003.
140. *Montgomery County Council Support for Protection of Civil Liberties*, Montgomery County Council. Sept 30, 2003.
141. *Council Approves Bill to Require Fire Sprinkler Systems in New Single-Family Homes*, Montgomery County Council. Oct 7, 2003.
142. *Statement of Council Vice President Tom Perez Regarding the Selection of the Alexander/Eakin-Youngtob Team for Forest Glen Seminary Redevelopment*, Montgomery County Council. Dec 17, 2003.
143. Kensington Community Dialogue, Flyer. (2003).
144. *District 5 Report from Tom Perez*, Montgomery County Council. Fall, 2003.
145. *Public Forum on County Purchase of Prescription Drugs from Canada Slated for February 23*, Montgomery County Council. Feb 9, 2004.

146. *Council Gives Go-Ahead for Strathmore Center; Private Sector to pay more Maintenance Costs*, Montgomery County Council. Feb 10, 2004.
147. *Statement of David H. Nexon*, Montgomery County Council. Feb 23, 2004.
148. *Public Forum on Prescription Drugs from Canada*, Montgomery County Council. Feb 23, 2004.
149. *Councilmember Perez Urges Change in County "Carry-in, Carry-out" Trash Policy in Parks*, Montgomery County Council. Mar 1, 2004.
150. *Councilmembers Leventhal, Perez Join Comcast Workers Fired for Union Organizing*, Montgomery County Council. Mar 15, 2004.
151. *Council Amends "Carry-in, Carry-out" Policy, Puts Trash Cans back into some County Parks*, Montgomery County Council. Mar 30, 2004.
152. *Task Force on Canadian Prescription Drugs Purchase to Release Report Monday*, Montgomery County Council. Apr 16, 2004.
153. *Report Urges Green Light on County Purchase of Prescription Drugs from Canada*, Montgomery County Council. Apr 19, 2004.
154. *Report of the Interagency Joint Labor/Management Committee on Prescription Drugs from Canada*. Apr, 2004.
155. *Montgomery County Resolution 15-384, Securing Lower-Price Prescription Drugs for Current and Retired Employees of County Agencies*. Nov 4, 2004.
156. *Revitalization is Great – Let's Make Sure No One is Left Out*, Tom Perez. Jun 8, 2004.
157. *Councilmember Perez calls for More Minority Recruitment within Fire and Rescue Services*, Montgomery County Council. June 29, 2004.
158. *Councilmembers Propose Establishing a Local Small Business "Reserve,"* Montgomery County Council. July 13, 2004.
159. *Perez, Praiser to Announce New Push on Affordable Prescription Drugs*, Montgomery County Council. July 22, 2004.
160. *Council Majority to Push Forward on Prescription Drug Discount Card for County Residents*, Montgomery County Council. July 23, 2004.
161. *Establishing a Countywide Prescription Drug Discount Card Program*, Montgomery County Council. Jul 27, 2004.
162. *Council Approves Consumer Protections for Cable Modem Customers*, Montgomery County Council. July 27, 2004.
163. *Statement of Peter Rost, MD*, Montgomery County Council. Sept 13, 2004.
164. *Regarding Canadian Drug Importation Resolution*, Montgomery County Council. Sept 13, 2004.
165. *Annapolis and Rockville Working Together*, Flyer, Montgomery County Council. Oct 6, 2004.
166. *Council Joined by Duncan in Pushing Forward on Drug Discount Card for County Residents*, Montgomery County Council. Sept 20, 2004.
167. *Council Approves Option for County Employees and Retirees to Buy Prescription Drugs from Canada*, Montgomery County Council. Sept 21, 2004.
168. *Council Expert Advisory Committee on Canadian Drugs Announced*, Montgomery County Council. Oct 19, 2004.
169. *Perez and Subin to Introduce Bill Focusing on Predatory Lending and Other Discriminatory Housing Practices*, Montgomery County Council. Oct 21, 2004.
170. *Councilmember Perez Looks Forward to Casting Maryland Electoral Vote*, Montgomery County Council. Oct 22, 2004.
171. *Perez and Subin Push to End Predatory Lending*, Montgomery County Council. Oct 25, 2004.

172. *Council Approves Restrictions on "Big Box" Stores in Montgomery County*, Montgomery County Council. Nov 9, 2004.
173. *Tom Perez Elected New Council President – Vows Focus on Consumer Issues, "Back to Basics" Maintenance of County Roads, Parks, Facilities*, Montgomery County Council. Dec 7, 2004.
174. *Remarks By Thomas E. Perez on Assuming the Presidency of the Montgomery County Council*, Montgomery County Council. Dec 7, 2004.
175. *Statement by Council President Tom Perez on Federal Report on Reimportation of Prescription Drugs from Canada*, Montgomery County Council. Dec 22, 2004.
176. *Council Accomplishments for 2004*, Montgomery County Council. 2004.
177. *Statement by Council President Tom Perez on Council Confirmation of Sandra Allen to WSSC Board*, Montgomery County Council. Jan 18, 2005.
178. *County Council Economic Development Initiatives and Project Funding*, Montgomery County Council. Jan 19, 2005.
179. *Councilmembers Perez and Denis add Website Link for County Residents on Canadian Drugs*, Montgomery County Council. Jan 31, 2005.
180. *Council Ratchets up Recycling Efforts by Banning Disposal of Recyclables as Trash at County Refuse Facilities*, Montgomery County Council. Feb 8, 2005.
181. *Council Schedules March Forum on County Grants to Non-Profit Organizations*, Montgomery County Council. Feb 8, 2005.
182. *Council Urges Long-Range Plan for Metro Funding, More Federal Dollars*, Montgomery County Council. Feb 8, 2005.
183. *Council to Hold Wednesday Forum on County Grants to Non-Profit Organizations*, Montgomery County Council. Feb 28, 2005.
184. *Council Considers ICC Environmental Impact, Urges State to Move Ahead on Needed Roadway*, Montgomery County Council. Mar 1, 2005.
185. *Letter to Neil J. Pedersen*, Tom Perez, Montgomery County Council. Mar 1, 2005.
186. *Council President Perez to Testify Tomorrow in Annapolis for Adult Education Tax Credits*, Montgomery County Council. Mar 2, 2005.
187. *Testimony of The Hon. Thomas E. Perez, Montgomery County Council Support for HB 529*. Mar 3, 2005.
188. *Council to Hold Forum on Backlogs in County Maintenance and Infrastructure*, Montgomery County Council. Mar 8, 2005.
189. *Councilmember Perez to Join Delegates Lee, Gutierrez in News Conference on Anti-Immigrant Bills in Annapolis*, Montgomery County Council. Mar 8, 2005.
190. *Testimony of The Hon. Thomas E. Perez, Montgomery County Council Opposition to HB 1152*. Mar 9, 2005.
191. *Statement by Council President Tom Perez on Release of Proposed Operating Budget*, Montgomery County Council. Mar 15, 2005.
192. *Statement by Council President Tom Perez on the Impact of Federal & State Budget Cuts on Montgomery County*, Montgomery County Council. Mar 22, 2005.
193. *Testimony In Support of House Bill 592 before the Maryland Senate Judicial Proceedings Committee*, Mar 29, 2005
194. *Statement by Council President Perez on County Budget Situation*, Montgomery County Council. Apr 12, 2005.
195. *Executive, Council Propose \$8.4 Million in Targeted Tax Cuts*, Montgomery County Council. May 2, 2005.

196. *"Real ID Act" Creates More Insecurity for All*, Montgomery County Council. May 6, 2005.
197. *"Real ID Act" Crea Mas Inseguridad Para Todos*, Montgomery County Council. May 6, 2005.
198. *Perez Applauds County Executive Action in Protecting the Living Wage*, Montgomery County Council. May 27, 2005.
199. *Perez Aplauda Accion del Ejecutivo en Proteger Un Salario Digno*, Montgomery County Council. May 27, 2005.
200. *Duncan, Action in Montgomery Announce Affordable Housing Project in Downtown Bethesda; Unveil Plan to Create more Affordable Units on County-Owned Property*, Montgomery County Council. June 24, 2005.
201. *Perez, Comcast Join Hands to Help Kennedy High Soph Rossana Espinoza to Attend Summer Program at Princeton U.*, Montgomery County Council. June 24, 2005.
202. *April 2005 Silver Spring Community Meeting*, Montgomery County Council. June 25, 2005.
203. *Council Majority Introduces Measure to Protect More Renters from Condo Conversions*, Montgomery County Council. Jul 18, 2005.
204. *Councilmembers Andrews, Perez to Support Retention of Affordable Housing at Risk in Gaithersburg Condo Conversion at Thursday AM News Conference*, Montgomery County Council. Jul 20, 2005.
205. *Councilmembers Andrews, Perez Support Retention of Affordable Housing at Risk in Gaithersburg Condo Conversion*, Montgomery County Council. Jul 21, 2005.
206. *Council Approves Expanded Protections for Renters Affected by Condo Conversions*, Montgomery County Council. Jul 26, 2005.
207. *Statement of Council President Tom Perez On Measures to Restore Public Confidence in the Planning Process Following Problems in the Clarksburg Town Center*, Montgomery County Council. Jul 26, 2005.
208. *Council Rejects "Broad Brush" Development Moratorium; Supports More Effective, Targeted Remedies*, Montgomery County Council. Jul 27, 2005.
209. *Letter to Mr. Thomas H. Graham*, Tom Perez, Montgomery County Council. Sept 1, 2005.
210. *Council Approves Measure to "Partner" with Gulf Community hit by Hurricane Katrina*, Montgomery County Council. Sept 6, 2005.
211. *Perez Chosen by Aspen Institute Program as Among 24 Young American Political Leaders*, Montgomery County Council. Sept 12, 2005.
212. *Duncan Calls for Price Gouging Inquiry, Necessary Measures to be Included in Legislative Priorities*, Montgomery County Council. Sept 12, 2005.
213. *Deadline Extended to October 31 to Apply for Expanded Property Tax Credit*, Montgomery County Council. Sept 20, 2005.
214. *Letter to Dr. Weast and President O'Neill*, Tom Perez, Montgomery County Council. Sept 27, 2005.
215. *Statement by Council President Tom Perez on New Credit Reporting Initiative and Partnership*, Montgomery County Council. Oct 12, 2005.
216. *Council Approves Height Restrictions that Address Mansionization in County Neighborhoods*, Montgomery County Council. Oct 18, 2005.
217. *Council Approves Bill to Require County Government to Move Forward Now on Offering Safe, Lower-Priced Drugs to Employees, Retirees*, Montgomery County Council. Nov 1, 2005.

218. *Council, Park and Planning Appoint Management Experts to Help Guide Planning Reforms*, Montgomery County Council. Nov 8, 2005.
219. *Remarks by Council President Tom Perez on the Release of the OLO Report on Clarksburg Town Center*, Montgomery County Council. Nov 8, 2005.
220. *County Council to Hold December 5 Town Hall Meeting in Long Branch*, Montgomery County Council. Nov 18, 2005.
221. *Council to Hold Public Hearing on County Planning and Development Approval Process*, Montgomery County Council. Nov 21, 2005.
222. *Council Approves Measure to Strengthen County Effort Against Predatory Lending*, Montgomery County Council. Nov 29, 2005.
223. *Council Bans Water and Sewer Hook-Ups to Protect County Agricultural Reserve from Development*, Montgomery County Council. Nov 29, 2005.
224. *Council Unveils Three New Tools to Boost Citizen Input, Information*, Montgomery County Council. Dec 5, 2005.
225. *George Leventhal Elected New Council President*, Montgomery County Council. Dec 6, 2005.
226. *2005 Council Accomplishments*, Montgomery County Council. Dec, 2005.
227. *News from your Montgomery County Council, From the President*, Montgomery County Council, Summer Fall, 2005.
228. *HHS Office for Civil Rights Reaches Agreement with District of Columbia Department of Health to Ensure Provision of Health Services to Hearing Impaired Medicaid Clients*. US Department of HHS. July 27, 1999.
229. *HHS Provides Written Guidance for Health and Human Services Providers To Ensure Language Assistance for Persons with Limited English Skills*. HHS Factsheet. Aug 30, 2000.
230. "Title VI of the Civil Rights Act of 1964; Policy Guidance on the Prohibition against National Origin Discrimination as it Affects Persons with Limited English Proficiency" Federal Register. Vol. 65, No 169. Aug 30, 2000. (I did not write this Guidance, but I reviewed and edited it, and was the signatory on the Guidance in my capacity as Director of the Office for Civil Rights at the US Department of Health and Human Services.)

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

1. Building Women's Diversity Advocacy Groups, NOW Conference, Jul 5, 1997. National Organization for Women, 1100 H Street NW, 3rd floor, Washington, D.C. 20005 (No Transcript Available)

2. Health and Civil Rights, 7th Biennial Symposium on Minorities, the Medically Underserved and Cancer, Apr 1, 2000.
3. Statement of Thomas E. Perez, Spokane Hate Crimes Conference, May 21, 1998.
4. Eliminating Health Disparities by 2010, The New England Regional Minority Health Conference, Apr 13, 1999.
5. Discrimination and Health Disparities, The Governor's Leadership Summit on Race and Ethnicity in Public Health, Jun 11, 1999.
6. DHHS Activities to Eliminate Health Disparities, Minority Health and Women's Health Partnership Summit, July 12, 1999.
7. Statement of Thomas E. Perez, League of United Latin American Citizens, July 15, 1999.
8. Overview of Civil Rights Policies, Latino Children's Health Insurance Initiative, National Council of La Raza July 26, 1999.
9. Opening Remarks, Region IX LEP Briefing, regarding the provision of services to individuals with limited English proficiency, Sep 22, 1999
10. The Emerging Power of Latinos: Opening Pathways for the Future, CWLA National Conference, "Children 2000: Faces of the Future," Mar 1, 2000.
11. Closing the Gaps in Health Care, Minority Health in Alabama, Tuskegee University, Mar 14, 2000.
12. The Importance of Access in Effectively Eliminating Health Disparities in the Latino Community, Latino Health Summit, Piscataway, NJ, Jun 2, 2000.
13. Racial Disparities in Health Care, Latino Summit 2000, Atlanta, GA, June 6, 2000.
14. Reducing Health Gaps through Civil Rights, Massachusetts Public Health Association, Sep 26, 2000.
15. Symposium: "Unequal Treatment, One Year Later." Focus was on racial disparities in health care. Washington D.C. Mar 19, 2003. Institute of Medicine of the National Academies, 500 Fifth Street NW, Washington DC 20001. (No Transcript Available).
16. Press Conference: Remarks to encourage use of Matricula Consular ID cards, May 28, 2003.
See related news article:
"Montgomery County pushes for Matricula Consular ID cards." [The Takoma Voice](#), Jun 2003. "Montgomery County pushes for Matricula Consular ID cards." [The Takoma Voice](#), Jun 2003.
17. Panel discussion: Maryland Arab American Committee, on "Protect our Civil Liberties and Constitutional Rights: The Patriot Act Examined." 11315 Falls Road, Potomac, MD 20854. Jan 8, 2004.
18. Panel discussion: "Life, Death and American Justice: Racial and Ethnic Disparities in Health and Medical Care." Washington D.C. May 27, 2004. New America Foundation 1899 L Street, N.W., Suite 400, Washington, DC 20036 (No Transcript Available).
19. Press Conference: Alliance for Health Reform and the Kaiser Commission on Medicaid and the Uninsured, on "The Olmstead Decision Five Years Later: How has it affected health services and the civil rights of individuals with disabilities?" Washington, D.C. June 21, 2004. Alliance for Health Reform, 1444 Eye Street, NW, Suite 910 Washington, DC 20005 (No Transcript Available)
20. Speech given when assuming the presidency of the Montgomery County Council, Rockville, MD, Dec 7, 2004.

21. Remarks about attorney general race. Columbia, MD. Feb 11, 2006. Columbia Democratic Club, P.O. Box 6361, Columbia, MD 21045 (No Transcript Available)
See related news article:
“Smoking opponents see Duncan as an ally.” The Sun. Feb 12, 2006.
22. Speech announcing candidacy for Attorney General of Maryland, Silver Spring, MD. May 23, 2006.
See related news articles:
“Perez enters race for attorney general.” The Sun. May 24, 2006.
“Perez announces attorney general bid.” The Gazette. May 24, 2006.
23. Strategies for Addressing Poverty and Inequality Conference – Keynote address, April 7, 2006. University of DC School of Law, 4200 Connecticut Ave. NW, Washington, DC 20008 (No Transcript Available)
24. Press Conference: The National Community Reinvestment Coalition, The Opportunity Agenda, and the Poverty and Race Research Action Council, on report: “Wealth Building Impeded: Continuing Lending Disparities for Minorities and Emerging Obstacles for Middle-Income and Female Borrowers of all Races.” Washington, D.C. Apr 20, 2006. National Community Reinvestment Coalition, 727 15th Street, Suite 900, Washington DC 20005. (No Transcript Available)
25. Campaign rally: announcing endorsement by labor unions. Baltimore, MD. Jul 12, 2006. (No Transcript Available – Remarks were not before a specific group)
See related news article:
“Perez accepts labor backing in AG race.” The Sun. Jul 13, 2006.
26. Panelist: Securing the Common Good. Oct 18, 2006. Center for American Progress, 1333 H Street NW, 10th Floor, Washington, D.C. 20005 (No Transcript Available)
27. Debate: Candidates for Maryland Attorney General. Baltimore, MD. Aug 21, 2006. Sponsored by the Maryland State Bar Association, 520 W. Fayette St, Baltimore, MD 21201 (No Transcript Available)
See related news articles:
“Candidates highlight their goals for office at debate.” Washington Post. Aug 22, 2006.
“Four face off at candidate debate; Attorney General hopefuls meet at UB.” The Sun. Aug 22, 2006.
28. Speech ending campaign for Attorney General and announcing support for candidate Stu Simms, Aug 29, 2006.
See related news articles:
“Perez tosses support to Simms in AG race.” The Gazette. Aug 30, 2006.
“Perez gives support, funds to Simms.” The Sun. Aug 30, 2006.
29. Press conference announcing nomination to Secretary of DLLR, with Governor Martin O’Malley. Annapolis, MD. Jan 24, 2007. (No Transcript Available – Remarks were not before a specific group)
See related news article:
“Perez nominated for O’Malley’s Cabinet.” The Gazette. Jan 26, 2006.
30. Press conference announcing that Maryland would not challenge a federal court decision determining that a state health care requirement on employers violated the Employee Retirement Income Security Act, with Attorney General Doug Gansler, Baltimore, MD. Apr 16, 2007. (No Transcript Available – Remarks were not before a specific group)
See related news article:

- “Maryland will drop Wal-mart law fight; move ends battle over health care.”
The Sun. Apr 17, 2007.
31. Press conference announcing resources for foreclosure prevention and the creation of the Homeownership Preservation Task Force, with Governor Martin O’Malley. Baltimore, MD. Jun 13, 2007. (No Transcript Available – Remarks were not before a specific group)
See related news article:
“Md. Moves to avoid foreclosures; O’Malley announces public-private plan for refinancing, counseling.” The Sun. Jun 14, 2007.
32. Remarks before Maryland’s BRAC Subcabinet about the need to find workers to fill BRAC jobs. Jul 13, 2007. (No Transcript Available)
See related news article:
“BRAC advisors: Military jobs will need people to fill them.” Baltimore Business Journal. July 13, 2007.
33. Press conference: Labor Day event celebrating Maryland’s new living wage law, with Governor Martin O’Malley. Annapolis, MD. Aug 30, 2007. (No Transcript Available – Remarks were not before a specific group)
34. Remarks about Maryland’s plans to open a one stop center in New Jersey to assist workers who will move to Maryland as a result of BRAC. Sep 6, 2007. Maryland Military Installation Council (Department of Business and Economic Development), 217 East Redwood St., Baltimore, MD 21202 (No Transcript Available)
See related news article:
“BRAC requires marketing Md.; officials try to persuade defense workers reluctant to move here.” The Sun. Sep 7, 2007.
35. Remarks about report on slot machines and racing in neighboring states. Baltimore, MD. Sep 18, 2007, Maryland Racing Commission, 300 E. Towsontowne Boulevard, Towson, Maryland 21286 (No Transcript Available)
See related news article:
“OTB in Solomons gets early look; state official also reports on value of racing industry and slots.” The Sun. Sep 19, 2007.
36. Remarks before Business Outlook Seminar. Remarks focused on foreclosures and workforce development. Sep 28, 2007. Frederick County Chamber of Commerce, 8420-B Gas House Pike, Frederick, MD 21701 (No Transcript Available)
37. Press Conference – celebrating opening of day labor center in Baltimore, with CASA de Maryland, 310 Tulip Avenue, Takoma Park, MD 20912, Dec 19, 2007 (No Transcript Available).
See related news article:
“Day-labor center opens; project designed to curb loitering, offer jobs, training.” The Sun. Dec 20, 2007.
38. Foreclosure forum – panelist, focusing on need for reform and highlighting Prince George’s County. Upper Marlboro, MD. Jan 3, 2008. (No Transcript Available – remarks were not given before a specific group).
See related news article:
“Loan crisis in Prince George’s; home mortgage foreclosures soar.” The Sun. Jan 4, 2008.
39. Remarks at foreclosure forum – focus on need for reform. Annapolis, MD. Jan 7, 2008. Baltimore Homeownership Preservation Coalition, (No Transcript Available – Group does not have an address)
See related news article:

- “Housing groups confer on crisis; solutions sought for foreclosures.” The Sun. Jan 8, 2008.
40. Press conference announcing mortgage and foreclosure reform proposals, with Governor Martin O’Malley. Landover, MD, Jan 14, 2008. (No Transcript Available – remarks were not before a specific group)
See related news article:
“O’Malley unveils home aid; plan is meant to halt surge in foreclosures.” The Sun. Jan 15, 2008.
41. Press conference announcing emergency regulations to require loan servicers to report modification data, and calling for negotiations with mortgage servicers, with Governor Martin O’Malley. Annapolis, MD, Feb 19, 2008. (No Transcript Available – remarks were not before a specific group)
See related news articles:
“O’Malley chastises mortgage industry; he decries low level of service for those facing foreclosure.” The Sun. Feb 20, 2008.
“New Md. Rules Aim to Aid Those Facing a Risk of Foreclosure.” Washington Post. Feb 20, 2008.
“O’Malley to loan servicers: Improve Customer Service.” The Daily Record (AP). Feb 19, 2008.
42. Remarks at Latino Policy Summit – workforce and education issues for immigrants. College Park, MD. Apr 19, 2008. Annie E. Casey Foundation, sponsor, 701 St. Paul Street, Baltimore, MD 21202 (No Transcript Available)
See related news article:
“Latino policy summit addresses educational disparities.” The Gazette. April 24, 2008.
43. Remarks at Foreclosure Workshop for residents, with Rep. Steny Hoyer and local officials. Waldorf, MD. May 16, 2008. (No Transcript Available – remarks were not before a specific group)
See related news article:
“Legislators, lenders offer help.” The Gazette. May 23, 2008.
44. Immigration and Health Care: What are the Policy Choices? Kaiser Family Foundation. Interview. Audio blog post. Mar 12, 2008.
45. Keynote: Maryland Coalition for Refugees and Immigrants Conference, Largo, MD. Focus was on challenges to integration into civic and economic life and workforce opportunities for immigrants. Jun 6, 2008. Maryland Coalition for Refugees and Immigrants (No Transcript Available – Group does not have an address)
46. Press Conference announcing eight indictments in Metropolitan Money Store loan scheme case, with U.S. Attorney Rod Rosenstein, Greenbelt, MD. Jun 13, 2008. (No Transcript Available – remarks were not before a specific group)
See related news articles:
“8 accused of loan scheme; preyed on people facing foreclosure, officials say.” The Sun. Jun 13, 2008.
“\$35 million mortgage fraud uncovered.” The Daily Record. Jun 12, 2008.
47. Health Care Forum: Discussion of Obama Health Care plan on behalf of the Obama Campaign, National Council of La Raza annual conference Jul 13, 2008, National Council of La Raza, 1126 16th Street, NW, Washington, DC 20036 (No Transcript Available)
48. Keynote: Leading Edge Awards Ceremony, honoring Southern Maryland business leaders. Focus was on workforce development. Waldorf, MD. Jun 18,

2008. Corporate Center at the College of Southern Maryland, 8730 Mitchell Road, La Plata, MD 20646-0910 (No Transcript Available)
49. Debate: Slot machines in Maryland, Chevy Chase, MD. Sep 10, 2008. Sponsored by the Woman's Suburban Democratic Club of Montgomery County, 9415 Seddon Road, Bethesda MD 20817 (No Transcript Available)
See related news article:
"Perez, Simmons square off in heated debate over slots." The Gazette. Sept 12, 2008.
50. Forum: How health disparities impact the cost and quality of health care. With other Maryland officials. Annapolis, MD. Oct 1, 2008. (No Transcript Available – remarks were not before a specific group)
51. Event: "Disconnected Youth and Working Adults: Meet the 21st Century's Newest College Grads." Closing remarks given focusing on need for expansion of postsecondary opportunities. Oct 17, 2008 Center for American Progress, 1333 H Street NW, 10th Floor, Washington, D.C. 20005 (No Transcript Available)
52. Forum: Slot machines in Maryland, with Glenn Ivey, State's Attorney for Prince George's County. University of Maryland, College Park, MD. Oct 22, 2008. Sponsored by the University of Maryland Alumni Association, Samuel Riggs IV Alumni Center, College Park, MD 20742 (No Transcript Available)
See related news article:
"Officials clash on impact of slots." The Diamondback. Oct 23, 2008.
53. Press Conference: CASA de Maryland announces groundbreaking for new multicultural center and headquarters in Langley Park, MD. Oct, 24, 2008. CASA de Maryland, 310 Tulip Avenue, Takoma Park, MD 20912 (No Transcript Available)
54. Creating an Inclusive Workforce, NCTI Innovators Conference Nov 20, 2008.
55. Uneven Progress: Employment Pathways of Skilled Immigrants in the United States. Panelist. Oct 22, 2008, Migration Policy Institute, 1400 16th St NW, Ste 300, Washington, DC 20036 (No Transcript Available)
See related news article:
"Maryland immigrant integration programs fight 'brain waste'." The Daily Record. Oct 24, 2008.
56. Press Conference – Announcing Maryland Council for New Americans, Takoma Park, MD. with CASA de Maryland, 310 Tulip Avenue, Takoma Park, MD 20912. Dec 10, 2008. (No Transcript Available)
See related news article:
"Maryland launches New Americans Council." The Gazette. Dec 17, 2008.
57. Enforcing Change: Strategies for the Obama Administration to Enforce Workers' Rights at the Department of Labor, panelist, Center for American Progress, 1333 H Street NW, 10th Floor, Washington, D.C. 20005, Dec 8, 2008 (No Transcript Available)
58. Panel Discussion: The Urban Institute Thursday's Child series. "Children and Foreclosures: The Economic Crisis Hits Home." The Urban Institute, 2100 M Street, NW, Washington, DC 20037 Mar 12, 2009. (No Transcript Available)

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

1. "Md. General Assembly looking at three versions of measures on independent contractors." The Daily Record. Mar 3, 2009.
2. "Working to classify workers right." Maryland Morning, WYPR Radio. Feb 24, 2009. *No Transcript Available*
3. "The ICEman Cometh: Montgomery County is no longer a haven for immigrants and their advocates." Washington City Paper. Feb. 19 - 25, 2009.
4. "Maryland's unemployment insurance fund sapped." Baltimore Business Journal. Feb 13, 2009.
5. "Labor Proposal Targets Builders." Washington Post. Feb 9, 2009.
6. "Maryland's jobless fund stays solvent thanks to tax on employers." The Daily Record. Feb 6, 2009.
7. "Middle Class Marylanders feel impact of the recession." WYPR Radio. Jan 16, 2009.
8. "Wider benefits sought; unemployment expansion, nonunion fee collection on agenda." The Sun. Jan 27, 2009.
9. "DLLR seeks stronger contractor guidelines." The Daily Record. Jan 11, 2009.
10. "After stumble, Perez on the rise; his connections to the Obama team, growing profile in Annapolis could lead to larger role." The Sun. Dec 8, 2008.
11. "Debit in, checks out; unemployment benefits to be disbursed on cards." The Sun. Dec 1, 2008.
12. "State rides to the rescue; mortgage servicers pledge more help." The Sun. Nov 7, 2008.
13. "Md., lenders make deal to assist homeowners." The Washington Post. Nov 7, 2008.
14. "Perez has hand in Obama Transition." The Gazette. Nov 7, 2008.
15. "Maryland raising tax to cover higher cost of unemployment." Baltimore Business Journal. Oct 24, 2008.
16. "Untapped talents of educated immigrants; 20% with degrees in unskilled jobs or jobless, study finds." The Washington Post. Oct 23, 2008.
17. "Around the region: state recovers wages owed to workers." The Sun. Oct 17, 2008.
18. "The Politics of Slots in Maryland." The Kojo Nnamdi Show, WAMU Radio. Oct 13, 2008. *No Transcript Available*
19. "Md. slots would have to fight for Md. dollars." The Washington Post. Oct 6, 2008.
20. "Of Service: How can a lawyer help those facing foreclosure?" The Daily Record. Aug 4, 2008.
21. "Oversight of adult education in state is moving to DLLR." The Daily Record. Jul 12, 2008.
22. "Struggling back to the good life; Md. Has a relatively low jobless rate, but that doesn't mean much to those who've lost ground." The Sun. Jul 20, 2008.
23. "Jobs may unravel; state labor regulators threaten sewing business with higher taxes on artisans." The Sun. Jun 25, 2008.
24. "Seamstress, gov't battle over payroll dispute." WBAL TV. May 8, 2008.
25. "Foreclosures Push States to Try a Mix of Solutions." New York Times. April 16, 2008.

26. "Signing of tax preparers bill urged; Franchot, others ask O'Malley to ok licensing measure." The Sun. Apr 12, 2008.
27. "Bill to require credit advice passes House." The Daily Record. Apr 4, 2008.
28. "Mortgage reforms pass, take effect immediately." WBAL TV. Apr 3, 2008.
29. "Swift Steps Help Avert Foreclosures in Baltimore." New York Times. March 26, 2008.
30. "Dual missions, twin concerns." The Sun. Feb 25, 2008.
31. "Home loan reforms planned; O'Malley seeks changes to address foreclosure threat." The Sun. Jan 13, 2008.
32. Inside E-Street, AARP TV. Foreclosure interview. Mar 20, 2008 *No Transcript Available* (Video can be viewed at http://www.aarp.org/aarp/broadcast/estreet_archives/E_street_foreclosure_archive/)
33. "Audit faults Md. oversight of mortgage sector." The Sun. Dec 28, 2007.
34. "Lending oversight overdue for reform." The Sun. Dec 7, 2007.
35. "Md. Foreclosures spike; new laws, aid advised." The Sun. Nov 30, 2007.
36. DC Politics Hour. Kojo Nnamdi Show, WAMU Radio. Nov 30, 2007.
37. "Ripple effect is feared from foreclosures; neighboring houses likely to lose billions." The Sun. Nov 14, 2007.
38. "Liberal leads the drive for slots in Maryland." The Washington Post. Nov 12, 2007.
39. "Q & A with Thomas E. Perez." The Daily Record. Nov 9, 2007.
40. "Aid group to move to Langley Park; CASA of Maryland office to open in spring 2009." The Washington Post. Nov 1, 2007.
41. "Foreclosures soar; Md. Homes facing auction triple from year ago." The Sun. Oct 12, 2007.
42. "New wave of Md. Laws; measures include 'living wage,' parole changes." The Sun. Sep 29, 2007.
43. "Simmons: Perez, Leggett caved on slots." The Gazette. Aug 31, 2007.
44. Appearance on Mark Steiner Show, WYPR Radio (discussing foreclosure and other issues, including living wage) Aug 28, 2007 *No Transcript Available*
45. "Home loan relief sought; O'Malley lines up \$111 million plan to aid refinancing in face of foreclosure." The Sun. Jun 13, 2007.
46. "Job growth slows in Md.; despite downturn, state's unemployment rate stays at low 3.6%." The Sun. May 19, 2007.
47. "Speculation about Future Looms Over this Year's Preakness." WYPR Radio. May 17, 2007.
48. "Maryland racing could be on last legs." The Sun. May 13, 2007.
49. "Living wage becomes Md. Law; apology for slavery, ground rent bills among 205 signed." The Sun. May 9, 2007.
50. "Subprime mess." The Sun. Apr 13, 2007.
51. "Perez: State to use existing laws on predatory lenders." The Gazette. April 4, 2007.
52. "Court reiterates Perez's ballot removal; attorney general candidate must be licensed and practice 10 years in state, says decision." The Sun. Mar 27, 2007.
53. "A conversation with Thomas E. Perez." The Gazette. Feb 22, 2007.
54. "Perez: DLLR must rebuild it's 'stripped' agencies." The Gazette. Feb 16, 2007.
55. "O'Malley to announce Perez as his secretary of labor pick; governor also expected to name secretary of higher education today." The Sun. Jan 23, 2007.
56. "Latinos' power in numbers; naturalized citizens are becoming a political factor in Maryland that demands to be recognized." The Sun. Oct 11, 2006.

57. "Most Blacks, Hispanics in area own homes." The Washington Post. Oct 3, 2006.
58. "Early voting canceled; high court also removes Perez's name from ballot; high court says no to early voting." The Sun. Aug 26, 2006.
59. "4-year absence comes to end; Glendening returns to political stage with Mfume endorsement." The Sun. Aug 25, 2006.
60. "Perez brings activist views; attorney general candidate focuses on health, diversity." The Sun. Aug 23, 2006.
61. "Perez says he'd make job a bully pulpit." The Washington Post. Aug 23, 2006.
62. Appearance on Direct Connection, Maryland Public Television. Candidate interview. Aug 14, 2006. *No Transcript Available*
63. "Perez cleared to run for attorney general – again." The Gazette. Aug 4, 2006.
64. "State digest: Republican to appeal ruling on Perez's run for attorney general." The Sun. Aug 3, 2006.
65. "Perez allowed to keep running; judge affirms his eligibility for attorney general." The Sun. Aug 1, 2006.
66. "Abrams sues over Perez's eligibility to enter race." The Gazette. July 19, 2006.
67. "Suit challenges Perez candidacy; contender for attorney general is not qualified, Republican asserts." The Sun. Jul 14, 2006.
68. "Perez wins AFL-CIO backing in attorney general's race." The Gazette. Jul 11, 2006.
69. "Perez OK'd in race for attorney general." The Sun. May 20, 2006.
70. "After long wait, Dems start slow." The Gazette. May 12, 2006.
71. "State digest: Tougher laws sought on predatory lending." The Sun. Apr 21, 2006.
72. "Party meets in W. Md. summit; Cardin, O'Malley get nods in informal Democratic polls." The Sun. Apr 9, 2006.
73. "Minutemen Take Campaign to Md. Centers." The Washington Post. Feb 26, 2006.
74. "Fair-housing law decried; some lenders pulling out over 'vague Montgomery ordinance.'" The Sun. Feb 23, 2006.
75. "Perez moves on attorney general bid." The Gazette. Jan 25, 2006.
76. "Perez's time as chief marked by controversial legislation." The Gazette. Dec 7, 2005.
77. "Absence noted at Montgomery County meeting; council questions rights director's failures to show up for vote on discrimination bill." The Sun. Dec 2, 2005.
78. "Dems speculate on Perez, Schmoke." The Gazette. Nov 11, 2005.
79. "Perez: Council working on drug importation plan." The Gazette. August 31, 2005.
80. "Local Government leaders seek their share of Maryland surplus." The Sun. Aug 20, 2005.
81. "Governor restores one health care cut; Ehrlich OKs \$1.5 million for pregnant immigrants." The Sun. Jul 21, 2005.
82. "Perez starts raising money for attorney general race." The Gazette. July 5, 2005.
83. "Council chief builds a base in the new Montgomery." The Washington Post. Apr 3, 2005.
84. "Montgomery councilman ready to spread his wings." The Gazette. Jan 28, 2005.
85. "Straddling the political line." The Gazette. Dec 22, 2004.
86. "Battle looms on drugs ban; Montgomery County Council could vote tonight to join spreading rebellion against FDA ban on cheaper imports." The Sun. Sep 21, 2004.

87. "U.S. Commission on Civil Rights." Kojo Namdi Show, WAMU Radio. Dec 13, 2004. *No Transcript Available*
88. "Democrats commit to activist agenda; Montgomery leaders turn to plan B." The Washington Post. Dec 12, 2004.
89. "Perez takes over as president of Montgomery County Council." The Gazette. Dec 10, 2004.
90. "Vt. Suit against FDA cheered in Md.; imports: Montgomery, state lawmakers oppose ban on Canadian drugs." The Sun. Aug 12, 2004.
91. "O'Malley, Duncan break early on 2006 campaign; Democrats: the mayor of Baltimore and the Montgomery County executive travel the state before their expected gubernatorial campaigns." The Sun. Jul 4, 2004.
92. "O'Malley rebuts 'English' remarks; as mayor criticizes Ehrlich, immigrants rally for apology from governor." The Sun. May 12, 2004.
93. "Canada's internet pharmacies thriving on business from U.S.; low costs of prescriptions attract seniors, criticism." The Sun. Dec 21, 2003.
94. "Consular ID cards for aliens draw fire." National Public Radio. Nov 25, 2003. *No Transcript Available*
95. "Affluent Montgomery's success breeds a 'dire' housing crunch; priced out of the county, workers like firefighters, teachers must commute." The Sun. Oct 13, 2003.
96. "Freedom ride rallies immigrants; effort backs amnesty, in-state tuition in city stop." The Sun. Oct 2, 2003.
97. "Perez's primary win doesn't surprise his supporters." The Gazette. Sept 18, 2003.
98. "Chief Moose, head of sniper case, quits after fight over book deal; Montgomery ethics panel ruled he couldn't do both." The Sun. Jun 19, 2003.
99. "Bill would allow immigrants to pay in-state tuition." The Gazette. Mar 20, 2003.
100. "Plan to extend Washington's Metro tees off golfers and users of trail; Purple Line would bisect Montgomery country club." The Sun. Dec 3, 2002.
101. Maryland Politics Hour, Kojo Nnamdi Show, WAMU Radio. Sep 12, 2002. *No Transcript Available*
102. "Elderly blacks' health care found worse than that of older whites; national study compared members of 2 groups with similar incomes, coverage." The Sun. Mar 13, 2002.
103. "Whistle-blower officer goes before grand jury." The Washington Post. Feb 27, 2002.
104. "Grand jury to review police cases; citizens will decide if use of deadly force is justified." The Sun. Nov 9, 2001.
105. "Ford Foundation awards \$130,000 community activist grant to director of CASA of Md." The Daily Record. Sep 24, 2001.
106. "Pr. George's officer wants suit moved; civil case also concerns dog attack." The Washington Post. Aug 18, 2001.
107. "Get-tough stand taken on hate cases Anne Arundel forms team to investigate, prosecute crimes; victims to be heard; county will send all cases to circuit court, recommend jail time." The Sun. Aug 18, 2001.
108. "HHS' Office of Civil Rights Focuses on Title VI Policy Provides Guidance for Ensuring Linguistic Access." Closing the Gap, Cultural Competency Part II. Feb/March 2001.
109. "HHS to States: How to Comply With Olmstead Decision." The Disability News Service. Feb 1, 2000.
110. "Many patients suffer language gap." Los Angeles Times. Jun 22, 1999.

13. Public Office, Political Activities and Affiliations:

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

2007 – Present – Secretary of the Maryland Department of Labor, Licensing and Regulation. Appointed by Governor Martin O'Malley.

2002-2006, Montgomery County Council; Elected in 2002 to represent 175,000 residents of Montgomery County on a nine member Council. Elected Council President for 2005 by Council colleagues. Did not seek re-election.

1999-2001, Director, Office for Civil Rights, United States Department of Health and Human Services, Washington, D.C. (Presidential appointment)

1998-1999, Deputy Assistant Attorney General for Civil Rights, United States Department of Justice, Washington, D.C. (Presidential appointment).

2006: Candidate for Attorney General of Maryland (unsuccessful).

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

Assisted in Campaign for Governor of Maryland, Martin O'Malley, 2006 (did not have a formal title).

Worked on Obama Campaign 2008. Served as surrogate in health care forum in San Diego, July 2008, during the annual conference of the National Council of La Raza.

Served on Obama Transition Team, 2008. Coordinated Agency Review activities of two clusters of agencies (Health and Human Services and Civil Rights) representing roughly a dozen agencies, boards, and commissions.

14. Legal Career**A. Legal Experience:**

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

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

1987-1989: Judicial Law Clerk to the Honorable Zita L. Weinsienk, United States District Court for the District of Colorado, 1929 Stout Street, Denver, CO

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

From 2001 until 2007, I was a clinical law professor at the University of Maryland School of Law, 500 W. Baltimore Street, Baltimore, Maryland. In this capacity, I taught various clinical courses (Criminal Defense, Criminal Justice, Civil Rights) in which I supervised students who were representing low income people in a variety of legal matters. While at Maryland, I also performed consulting work for health care foundations and nonprofit corporations on a variety of legal and policy matters relating to the intersection of health care and civil rights. These entities included The California Endowment, the Kellogg Foundation, the Robert Wood Johnson Foundation, the Institute of Medicine at the National Academies of Sciences, the Association of American Medical Colleges, and the American Institutes of Research.

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

Secretary, Maryland Department of Labor, Licensing and Regulation - January 2007- present

Head of 1700 employee agency whose jurisdiction includes enforcement of labor laws (e.g. wage and hour, prevailing wage, occupational health and safety), workforce development, administration of unemployment insurance program; regulation of state-chartered banks and other Maryland financial institutions, enforcement of a wide range of consumer protection laws, licensing of 23 occupations, and the Maryland Racing Commission. Annual budget is roughly \$170 million dollars.

Assistant Research Professor, George Washington School of Public Health - September 2007- present (part-time)

Assist other researchers in projects that focus on the intersection of civil rights and health care. Current work focuses on health care workforce diversity, health care accreditation, and racial and ethnic disparities in health status. This position does not include teaching responsibilities.

Assistant Professor of Law University of Maryland School of Law

April 2001- June 2005

Associate Professor of Law, July 2005-July 2007

Director of Clinical Law Programs- April 2001-July 2003

Taught clinics that focused on criminal justice and civil rights issues. From 2001-2003, directed nationally recognized clinical legal education program consisting of approximately 20 clinics addressing a wide range of criminal and civil areas, as well as other programs designed to give students an opportunity to represent low income clients on a range of legal issues. Resigned as clinic director to focus on teaching, research and other responsibilities.

Worked closely with the Law School's highly respected Law and Health program to bring heightened awareness to issues involving the intersection of health and civil rights, such as eliminating racial and ethnic disparities in health status. Classroom focus was on civil rights issues generally, as well as how to be a public interest advocate.

Health Care and Civil Rights Consultant – 2001-2007

Provided technical assistance and other guidance on a range of civil rights matters, primarily involving the intersection of health care and civil rights, such as expanding diversity in the health professions, eliminating racial and ethnic disparities in health status, expanding access to health care for vulnerable communities, and cultural and linguistic competency issues. Projects have included work on behalf of the National Academies of Sciences, Association of American Medical Colleges, the California Endowment, Robert Wood Johnson Foundation, Kellogg Foundation and the American Institutes for Research.

Director, Office for Civil Rights, U.S. Department of Health & Human Services - February 1999 - January 2001

Head of civil rights enforcement agency whose mission is to ensure that providers of health and human services comply with federal civil rights laws. Responsibilities included setting enforcement priorities, managing a 230 person staff and \$28 million budget, extensive outreach and advising HHS Secretary Donna Shalala on civil rights matters. Cases involved a variety of civil rights issues, including redlining and other racial discrimination in health care; discrimination in welfare to work programs based on race, disability, and national origin; access to health and human services for persons with limited English skills; immigration; unnecessary institutionalization of individuals with disabilities, and the enforcement of Title IX.

United States Department of Justice, Civil Rights Division, 1989-1999

Deputy Assistant Attorney General for Civil Rights, Jan. 98- Feb. 99

One of three Deputies under Bill Lann Lee, Assistant Attorney General for Civil Rights. Oversaw litigation activities of Criminal, Education and Employment Sections. Assisted in developing and implementing policy priorities of the Civil Rights Division; also responsible for developing and promoting legislative initiatives in the civil rights area.

Special Counsel to Senator Edward M. Kennedy 1995-1998

Detailed from Civil Rights Division to serve as principal civil rights advisor to Senator Kennedy. Also handled all crime issues, and certain immigration, environmental, constitutional and other miscellaneous issues. Heavily involved in juvenile justice issues.

Deputy Chief, Criminal Section, Civil Rights Division, 1994-1995

Supervised staff of 30 trial attorneys and paralegals involved in the prosecution of federal criminal civil rights violations, while maintaining active caseload. Instructor at Attorney General's Advocacy Institute for courses on Basic and Advanced Trial Advocacy and Criminal Civil Rights Prosecutions. Also trained federal and local police agencies on police integrity issues.

Trial Attorney, Criminal Section-Civil Rights Division, 1989-1994

Prosecuted federal civil rights violations nationwide involving police misconduct and racial violence. Substantial grand jury experience and jury trials in cases involving conspiracy, obstruction of justice, and substantive civil rights violations, including police brutality, racial profiling, and hate crimes.

- iv. *whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.*

I have never served as a mediator or arbitrator.

B. Evolution of Legal Career

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

Following a judicial clerkship, I went to work as a career prosecutor in the Civil Rights Division of the United States Department of Justice in 1989. From 1989 to 1994, I was a full time litigator, handled a steady of civil rights cases across the country, and had an active grand jury and trial practice. For the first five or six months of my tenure, I was detailed to the United States Attorneys Office in the

District of Columbia, where I prosecuted a steady stream of misdemeanor cases, and had approximately a dozen trials.

In 1994, I was promoted to Deputy Chief of the Criminal Section, where I supervised trial lawyers and also maintained my own docket of cases.

From 1995 to 1998, I was detailed to Senator Kennedy's staff on the Senate Judiciary Committee. I remained on the Department of Justice payroll.

Upon returning to the Department of Justice, I received another promotion and became Deputy Assistant Attorney General for Civil Rights. In this capacity, I oversaw the work of three litigating sections, and was involved in considerable interagency work. I no longer had a trial practice, although I reviewed briefs and other documents that were being submitted by others.

From 1999-2001, I was Director of the Office for Civil Rights at the U.S. Department of Health and Human Services. In this capacity, I was not in court, although I was enforcing a number of civil rights laws in the Health and Human Services setting. This position had management, legal, leadership, legislative and outreach components.

From 2001-2007, I was a Professor at the University of Maryland School of Law, where I taught in the clinical law program. I taught a Criminal Justice clinic, as well as a Civil Rights clinic. My responsibilities included assisting students who were representing indigent criminal defendants in state court; legislative advocacy in the state legislature; civil and administrative litigation; and policy work.

In my current capacity as Secretary of the Department of Labor, Licensing and Regulation, I oversee the work of a number of civil law enforcement units, including a component that enforces labor laws and occupational safety health laws, and consumer protection laws in a host of areas. I am not actually litigating cases myself, but I have overseen or been otherwise involved in a number of our more noteworthy administrative actions.

ii. Your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As a federal government lawyer with the Department of Justice, I represented the United States on civil rights cases. As the Director of the Office for Civil Rights at the U.S. Department of Health and Human Services, I oversaw the enforcement of federal civil rights laws in the health and human services context. From 2001 to 2007, I was a clinical law professor and supervised students who represented low income Maryland residents in the criminal defense context, employment context and civil rights cases. During this period, I also had a number of consulting clients, which were the health care foundations and nonprofit associations noted earlier. I provided legal and policy advice to these entities in the area of health care and civil rights. Since 2007, I have represented the state of Maryland as Secretary of the Department of Labor, Licensing and Regulation.

c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If

the frequency of your appearances in court varied, describe such variance, providing dates.

i. Indicate the percentage of your practice in:

- 1. federal courts;*
- 2. state courts of record;*
- 3. other courts;*
- 4. administrative agencies*

ii. Indicate the percentage of your practice in:

- 1. civil proceedings;*
- 2. criminal proceedings.*

From 1989 until 1995, my entire practice was criminal litigation in federal courts across the country. From May 1989 until November 1989, I appeared in court on a frequent basis because I was detailed to the Superior court division of the United States Attorney's office for the District of Columbia. From November 1989 through November 1995, I appeared in federal grand juries and federal courts across the country on a frequent basis. My entire practice was 100 % criminal.

From 1995 until 1998, I was detailed to the office of Senator Edward Kennedy, and worked on his Judiciary Committee staff.

From 1998 to 1999, I was Deputy Assistant Attorney General for Civil Rights, and I oversaw the litigation activities of three litigating divisions. Roughly 60 percent of my work involved oversight of litigation activities. I did not appear in court at all during this period, and my litigation oversight activities involved an equal mix of criminal and civil cases, all of which were federal.

From 1999 to 2001, I was the Director of the Office for Civil Rights at the U.S. Department of Health and Human Services. I oversaw a civil rights enforcement agency, and never appeared in court. I had a senior management position, and the bulk of our work (95 percent) was non-litigation. The remainder was administrative practice.

From 2001 to 2007, I was a clinical law professor, and 70 percent of my clinical practice was litigation. The bulk of that work (80 percent) was in state court in Maryland, while the remainder was a state administrative practice. Roughly 40 percent of the litigation during this period was criminal, while roughly 60 percent was civil. The non-litigation work was either legislative work in the State Capitol, or policy advocacy.

From 2007 through the present, I have been Secretary of the Department of Labor, Licensing and Regulation in Maryland. We have roughly 1700 employees, a number of whom are involved in administrative practice enforcing state labor laws and consumer protection laws. All of this work is civil. I do not have a litigation practice in this job, although approximately 10 percent of my time is spent in a supervisory capacity in civil matters that are in the state administrative setting. The bulk of my work is management,

outreach, vision development and implementation, staffing the Governor, and interaction with the members of the Maryland General Assembly.

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.*

I tried approximately 30 cases to verdict. Approximately 80 percent were jury trials, and I was lead counsel or sole counsel in 80 percent of these cases, and associate counsel in 20 percent .

- i. What percentage of these trials were:*

- 1. jury; (80 percent)*
- 2. non-jury. (20 percent)*

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

I have never appeared before the United States Supreme Court.

15. Litigation: *Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:*

- a. The date of representation;*
- 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. United States v. Martin, et.al. (Northern District of Texas)(1995)(Judge Sam Cummings)(5:95-CR-017) -

Prosecuted a group of white supremacists who went on a fatal, racially motivated crime in Lubbock, Texas. Their goal was to start a race war, and within a 20 minute interval on October 14, 1994, they approached African Americans at three separate locations, lured them to their car, and shot them at point blank range with a sawed off shotgun. Defendants were convicted following trial, and convictions were upheld on appeal in an unpublished opinion.

Counsel for the defendants were:

Philip Wischkaemper
915 Texas Ave

Lubbock, Texas 79401
806-763-9900

Michael Carper
1102 Main Street
Lubbock, Texas 79401
806-747-3016

Floyd Holder
3223 S. Loop 289, Suite 420
Lubbock, Texas 79423
806-798-2786

2. United States v. Reese et. al. (Northern District of California)(1991)(Judge Fern Smith)(2 F.3d 870(9th Cir. 1993))- Prosecuted members of an elite Drug Task Force, including the supervisor, who had been involved in repeated instances of brutality, theft of property, perjury, and falsification of evidence. Two defendants pleaded guilty before trial, and the remaining defendants were convicted following a jury trial. The convictions were upheld on appeal.

Counsel for the Defendants were:

Peter Robinson
50 Old Courthouse Square
PO Box 1844
Santa Rosa, CA 95402
707-575-0540

Guy Campisano
Cotsirilos and Campisano
205 Montgomery Street, Suite 1100
San Francisco, CA 94104
415-397-2373

J Frank McCabe
500 Sansome Street
Suite 212
San Francisco, CA 94111
415-397-1757

3. United States v. Backenhus, et.al. (Central District of Tennessee)(1994)(Judge Higgins)(94-00137)- Prosecuted the founder of the "Aryan Faction," a neo-nazi organization that recruited boys from a local high school and engaged in a series of racially motivated arsons. Defendants pleaded guilty.

Counsel for defendants were:

Michael Love

120 S. 2nd St. #202
Clarksville, Tennessee 37040
931-552-8877

Edward DeWerff
320 Franklin Street
Clarksville, Tennessee 37040
931-551-9400

4. United States v. David Toran and Chester Richardson (Southern District of Ohio)(1992-93)(Judge Weber)(1-92-140)
Prosecuted police chief and senior official of a small police department near Cincinnati for repeated violations of civil rights laws. Defendants pleaded guilty.

Counsel for defendant was:

Scott Croswell
Croswell and Adams
1208 Sycamore
Cincinnati, Ohio 45210
513-241-5670

5. United States v. Michael Elmer (District of Arizona) (1994) (Judge Bilby)(CR 93-391) Prosecuted Border Patrol agent for fatally shooting an immigrant near the Mexican border, and then hiding the body overnight. The indictment charged offenses stemming from multiple incidents of alleged misconduct. The court severed the counts prior to trial, and ordered separate trials. The first trial resulted in an acquittal. The defendant pleaded no contest to criminal charges arising out of the other incident.

Counsel for the defendant was:

Michael Piccarreta
145 S. Sixth Avenue
Tucson, AR 85701
520-622-6900

6. United States v. Gassel et al. (Eastern District of Missouri)(1993-94)(Judge Jackson)(92-CR00282)(92-CR00284)
Prosecuted defendants for civil rights violations stemming from a cross burning designed to intimidate an interracial family. Defendants pleaded guilty.

Counsel for defendants were:

Douglas Forsyth
10 S Broadway
Suite 825
St. Louis, Missouri 63102

314-367-5800

Lee Lawless
Federal Public Defender
1010 Market Street, Suite 200
St. Louis, Missouri 63102
314-241-1255

7. United States v. Couch and Kraft (Southern District of Ohio) (1993-94) (Judge Spiegel) (1-93-033)

Prosecuted two officers for civil rights violations and obstruction of justice stemming from unlawful beating of a compliant victim, followed by a coverup. Following a trial, one defendant was convicted and one was acquitted. The conviction was upheld on appeal in an unpublished opinion.

Attorneys for the defendants were:

Louis Sirkin
Sirkin, Pinales, Mezibov and Schwartz
920 4th and Race Tower
105 West Fourth Street
Cincinnati, Ohio 45202
513-721-4876

Kurt Philipps
2701 Turkeyfoot Road
Covington, Kentucky 41011
859-341-1881

8. United States v Dana Patrick Hansen (Southern District of California)(1992)(Judge Rafeedie)(91-601-ER)

Prosecuted Los Angeles police officer for near fatal beating of a victim. Case marked the first prosecution of a Los Angeles police officer on brutality charges in a decade and preceded the Rodney King investigation. Defendant was convicted following a trial, and did not appeal.

Counsel for the defendant was:

Carol Ann Rohr
Cotkin, Collins
300 South Grand, 24th Floor
Los Angeles, CA 90071
213-688-9350

9. In re: Investigations of Patterns and Practices of Police Misconduct in Northern Kentucky (Judge Bertelsman)(91-36 Eastern District of Kentucky); From 1991 to 1993, I led an investigation into allegations of widespread police misconduct involving a number of small departments in Northern Kentucky.

Six officers were successfully prosecuted in two cases stemming from this investigation. All but one defendant pleaded guilty. The one defendant who went to trial was convicted by a jury, and he did not appeal.

Counsel for defendants were

Harry Hellings
214 East Fourth Street
Covington, Kentucky 41011
606-431-7200

Scott Croswell
Croswell and Adams
1208 Sycamore
Cincinnati, Ohio 45210
513-241-5670

Kurt Philipps
2701 Turkeyfoot Road
Covington, Kentucky 41011
859-341-1881

10. United States v. Bryant and Ackison (Southern District of Ohio) (1991) (Judge Rubin) (966 F.2d 1454 (6th Cir. 1992))

Prosecuted police chief (Ackison) of a small town police department for obstruction of justice, and his son-in-law (Bryant), who was a police officer in the department, for numerous civil rights violations stemming from repeated instances of use of excessive force on restrained victims. Defendant Bryant engaged in a pattern of abuse of victims, and defendant Ackison enabled this misconduct by threatening to fire any officer who cooperated in the federal investigation. Defendants were convicted following a jury trial, and the convictions were upheld on appeal.

Counsel for defendant was
John Issenmann
700 Walnut Street, Suite 209
Cincinnati, Ohio 45202
513-421-3772

16. Legal Activities: *Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)*

- 1) Worker Exploitation Task Force- From 1998-1999, I chaired an interagency Worker Exploitation Task Force that was established by Attorney General Janet

Reno. The mission of the group was to increase the federal government's capacity to prosecute cases involving exploitation of workers in the workplace, human trafficking cases, and involuntary servitude cases. Working with the Department of Labor and Department of State, this working group was effective in facilitating interagency collaboration and state-local collaboration that resulted in more effective prosecutions of these cases, as well as policy reform.

- 2) Executive Order 13166- In my capacity as Director of the Office for Civil Rights at the U.S. Department of Health and Human Services, I was closely involved in the development and implementation of Executive Order 13166 in 2000. This EO directed agencies to develop guidance that would ensure that recipients of federal financial assistance have policies and practices that ensure that people with limited English proficiency can meaningfully access the service or program. HHS was the first office to develop such guidance.
- 3) Olmstead Working Group- In a landmark 1999 decision, the Supreme Court of the United States ruled that the unnecessary institutionalization of people with disabilities can be a form of discrimination under the Americans with Disabilities Act. I co-chaired a group within HHS charged with implementing this decision. Under my direction, a number of employees in my office spent considerable time working with states to develop comprehensive, effectively working plans to ensure that qualified people with disabilities could reside in community based settings.

17. Teaching: *What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.*

Criminal Defense Clinic, University of Maryland School of Law (2001)
 Criminal Justice Clinic, University of Maryland School of Law (2002)
 Civil Rights Clinic, University of Maryland School of Law (2003-2007)

18. Deferred Income/Future Benefits: *List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.*

I have no deferred income arrangements, stock, options, uncompleted contractors or other future benefits which I expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. I have the following 401k plans:

Thrift Savings Plan, federal government (dating back to my prior federal service)(approximate value is \$150,000)
 TIAA-CREF Plan from my service at University of Maryland Law School (approximate value is \$156,800)

State of Maryland Retirement Plan from my current service as Secretary of Labor in Maryland (approximate value is \$17,000)

I will not use these amounts until I retire.

19. Outside Commitments During Service: *Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.*

I would resign all board memberships if confirmed. I would step down from my position as a part-time faculty member at the George Washington School of Public Health. I have no plans, commitments or agreements to pursue any other outside employment.

20. Sources of Income: *List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).*

Please see my SF-278.

21. Statement of Net Worth: *Please complete the attached financial net worth statement in detail (add schedules as called for).*

Please see attached Net Worth Statement.

22. Potential Conflicts of Interests:

- a. *Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.*

I am unaware of any potential conflicts of interest at this time.

- b. *Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.*

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. Pro Bono Work: *An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities,*

listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

My volunteer board work as listed earlier has been with organizations that focus on issues of empowering vulnerable communities on the local, national and international level. At the University of Maryland Law School, my clinical work focused on assisting low income Marylanders. I have served on the boards of organizations that are committed to addressing the needs of vulnerable populations on a local, national and international level. (See question six).

Thomas Perez

FINANCIAL STATEMENT
NET WORTH

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

ASSETS			LIABILITIES				
Cash on hand and in banks	3	500	Notes payable to banks-secured				
U.S. Government securities-add schedule			Notes payable to banks-unsecured	5	000		
Listed securities-add schedule	215	400	Notes payable to relatives				
Unlisted securities--add schedule			Notes payable to others				
Accounts and notes receivable:			Accounts and bills due				
Due from relatives and friends			Unpaid income tax				
Due from others			Other unpaid income and interest				
College Savings Plan	70	000	Real estate mortgages payable-add schedule	211	000		
Real estate owned-add schedule	500	000	Chattel mortgages and other liens payable				
Realestate mortgages receivable			Other debts-itemize:				
Autos and other personal property	45	000	Home Equity Loan	31	000		
Cash value-life insurance	9	000	Credit Card debt	4	000		
Other assets itemize:			Auto loan balance	1	000		
Stock: Stephenson Bank	150	000					
Federal Thrift Savings Plan	150	000	Total liabilities	252	000		
			Net Worth	889	800		
Total Assets	1	142	900	Total liabilities and net worth	1	142	900
CONTINGENT LIABILITIES			GENERAL INFORMATION				
As endorser, comaker or guarantor	no		Are any assets pledged? (Add schedule)	no			
On leases or contracts	no		Are you defendant in any suits or legal actions?	no			
Legal Claims	none		Have you ever taken bankruptcy?	no			
Provision for Federal Income Tax							
Other special debt	no						

Schedule of Listed Securities

TIAA CREF Plan Listed Securities

<u>Security</u>	<u>Approximate Value</u>
<u>Group Retirement Annuities</u>	
TIAA Traditional	30,500
CREF Stock	10,500
CREF Money Market	12,800
CREF Social Choice	3,200
CREF Social Equities	10,000
<u>Group Supplemental Retirement Annuity</u>	
TIAA Traditional	24,100
TIAA Real Estate	25,000
CREF Stock	17,000
CREF Bond	23,700

Approximate Total Value= \$156,800 (TIAA CREF)

<u>Fidelity Mutual Funds</u>	<u>Approximate Value</u>
Fidelity US Bond Index	2,000
Fidelity Govt Index	2,000
Fidelity Municipal Money Market	1,100
American Fundamental Investors CL F1	1,500
Heartland Value Plus	1,600
Janus Fund	10,000
Janus Worldwide	9,000
Janus Mid Cap Value Investment	2,300
Janus Research Fund	8,500
Thornburg Intl Value CL A	4,100

Approximate Total Value= \$42,100

<u>IRAs</u>	<u>Approximate Value</u>
Invesco Aim Real Estate Fund	8,000
Accessor Growth Allocation Fund	5,500
Oppenheimer Quest Balanced Fund	3,000

Approximate Total Value= \$16,500

TOTAL APPROXIMATE VALUE OF LISTED SECURITIES: \$215,400

Real Estate Schedule

Property Owned (One Property, our home)

**7230 Minter Place
Takoma Park, MD 20912
Approximate Value of Home= \$500,000**

Mortgages

**Primary Mortgage
7230 Minter Place
Takoma Park, MD 20912
Remaining Balance= \$211,000
Lender= Chase Home Mortgage, New York, NY**

**Home Equity Loan
7230 Minter Place
Takoma Park, MD 20912
Remaining Balance= \$31,000
Lender= M & T Bank**

AFFIDAVIT

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

4/1/09
(DATE)

Thomas E. Perez
(NAME)

Natasha A. Herbert
(NOTARY)

Natasha A. Herbert

Notary Public, Anne Arundel County, Maryland
My Commission Expires 3/19/2013

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Senator Specter:

I am writing to update my Senate questionnaire with the following additional information, which was inadvertently omitted from my earlier submission.

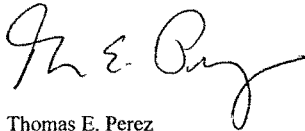
Related to question 12 (c):

Testimony before the Congressional Black Caucus at a hearing with the Asian-Pacific-American and Hispanic Caucuses on Health Disparities, Washington D.C., April 12, 2002. I had forgotten about this appearance but was able to find the testimony on Lexis. [attached]

Related to Question 6:

My questionnaire as submitted noted that I was on the board of CASA de Maryland from 1995 to 2002. From September 2001 to November 2002, I served as President of the board, as listed in my official State of Maryland biography in the Maryland Manual.

Sincerely,



Thomas E. Perez

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

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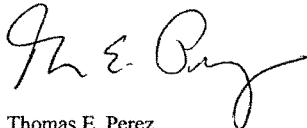
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Sincerely,



Thomas E. Perez

6 of 6 DOCUMENTS

FDCH Political Transcripts

April 12, 2002 Friday

**U.S. REPRESENTATIVE EDDIE BERNICE JOHNSON (D-TX) HOLDS
HEARING WITH ASIAN-PACIFIC-AMERICAN AND HISPANIC
CAUSUSES ON HEALTH DISPARITIES**

LENGTH: 66687 words

COMMITTEE: CONGRESSIONAL BLACK CAUCUS

SPEAKER:

U.S. REPRESENTATIVE EDDIE BERNICE JOHNSON (D-TX), CHAIRWOMAN

LOCATION: WASHINGTON, D.C.

WITNESSES:

DR. BRIAN SMEDLEY, DIRECTOR AND CO-EDITOR, "UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC, DISPARITIES IN HEALTH CARE" REPORT, INSTITUTE OF MEDICINE

DR. MARTHA N. HILL, CO-VICE CHAIR AND STUDY REVIEWER, INSTITUTE OF MEDICINE

DR. JOSEPH R. BETANCOURT, COMMITTEE MEMBER AND STUDY REVIEWER, INSTITUTE OF MEDICINE

DR. M. GREGG BLOCHE, COMMITTEE MEMBER, INSTITUTE OF MEDICINE

DR. THOMAS LAVIEST, COMMITTEE MEMBER AND COMMISSIONED PAPER, INSTITUTE OF MEDICINE

DR. THOMAS E. PEREZ, IMMEDIATE PAST DIRECTOR, OFFICE OF CIVIL RIGHTS, INSTITUTE OF MEDICINE

RUTH PEROT, EXECUTIVE DIRECTOR, SUMMIT HEALTH INSTITUTE FOR RESEARCH EDUCATION

DR. VICKI MAYS, CHAIR, SUBCOMMITTEE ON POPULATIONS, NATIONAL COMMITTEE ON VITAL AND HEALTH STATISTICS

DR. PATRICIA O'CAMPO, JOHNS HOPKINS SCHOOL OF PUBLIC HEALTH

DR. LUCILLE C. PEREZ, PRESIDENT, NATIONAL MEDICAL ASSOCIATION

RACHEL JOHNSON, IMMEDIATE PAST PRESIDENT, STUDENT NATIONAL MEDICAL ASSOCIATION

DR. ELENA RIOS, PRESIDENT, NATIONAL HISPANIC MEDICAL ASSOCIATION

BEVERLY RUSSELL, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF URBAN INDIAN HEALTH

ADOLPH P. FALCON, VICE PRESIDENT, CENTER FOR SCIENCE AND POLICY, NATIONAL ALLIANCE FOR HISPANIC HEALTH

DR. KAREN SCOTT-COLLINS, VICE PRESIDENT AND PROGRAM DIRECTOR, MINORITY HEALTH PROGRAM, COMMONWEALTH FUND

DR. DEBRA FRAZIER-HOWZE, CEO, NATIONAL BLACK LEADERSHIP COMMISSION ON AIDS, MEETING OF THE MILLENNIUM

GEM DAUS, COORDINATOR, LEGISLATIVE AND GOVERNMENTAL AFFAIRS, ASIAN AND PACIFIC ISLANDER AMERICAN HEALTH FORUM

DR. MARSHA LILLIE-BLANTON, VICE PRESIDENT, KAISER FAMILY FOUNDATION

LEIGH BROWN, LEGISLATIVE DIRECTOR, NATIONAL INDIAN HEALTH BOARD, MIGUELINA I. LEON, DIRECTOR, GOVERNMENT RELATIONA AND POLICY, NATIONAL MINORITY AIDS COUNCIL

DR. CAROLYN CLANCY, ACTING DIRECTOR, AGENCY HEALTHCARE QUALITY AND RESEARCH

ROBINSUE FROHBOESE, DEPUTY DIRECTOR, OFFICE OF CIVIL RIGHTS

U.S. REPRESENTATIVE EDDIE BERNICE JOHNSON (D-TX) HOLDS HEARING WITH
 ASIAN-PACIFIC-AMERICAN AND HISPANIC CAUCUSES ON HEALTH DISPARITIES FDCH Political
 Transcripts April 12, 2002 Friday

DR. NATHAN STINSON, DEPUTY ASSISTANT SECRETARY FOR MINORITY HEALTH, OFFICE OF MI-
 NORITY HEALTH
 DR. WALTER WILLIAMS, ASSOCIATION DIRECTOR MINORITY HEALTH, CENTERS FOR DISEASE CON-
 TROL AND PREVENTION
 ELAINE PERRY, ACTING DEPUTY DIRECTOR, CENTER FOR SUBSTANCE ABUSE PREVENTION, SUB-
 STANCE ABUSE AND MENTAL HEALTH SERVICES, ADMINISTRATION
 DR. DEBORAH PARHAM, ACTING ASSOCIATE ADMINISTRATOR, HEALTH RESOURCES AND SERVICES
 ADMINISTRATION
 DR. JOHN RUFFIN, DIRECTOR, NATIONAL CENTER ON MINORITY HEALTH AND HEALTH, DISPARITIES
 DR. RUBIN KING-SHAW, DEPUTY ADMINISTRATOR AND CHIEF OPERATING OFFICER, CENTERS FOR
 MEDICAID AND MEDICARE SERVICES

CONGRESSIONAL BLACK, ASIAN-PACIFIC-AMERICAN AND HISPANIC
 CAUCUSES HOLD HEARING ON HEALTH DISPARITIES

APRIL 12, 2002

SPEAKERS:

CONGRESSIONAL BLACK CAUCUS
 U.S. REPRESENTATIVE EDDIE BERNICE JOHNSON (D-TX)
 CHAIRWOMAN
 U.S. REPRESENTATIVE SANFORD BISHOP (D-GA)
 U.S. REPRESENTATIVE CORRINE BROWN (D-FL)
 U.S. REPRESENTATIVE JULIA CARSON (D-IN)
 U.S. DELEGATE DONNA CHRISTIAN-CHRISTENSEN (D-VI)
 U.S. REPRESENTATIVE WILLIAM CLAY (D-MO)
 U.S. REPRESENTATIVE EVA CLAYTON (D-NC)
 U.S. REPRESENTATIVE JAMES CLYBURN (D-SC)
 U.S. REPRESENTATIVE JOHN CONYERS (D-MI)
 U.S. REPRESENTATIVE ELIJAH CUMMINGS (D-MD)
 U.S. REPRESENTATIVE DANNY K. DAVIS (D-IL)
 U.S. REPRESENTATIVE JULIAN DIXON (D-CA)
 U.S. REPRESENTATIVE CHAKA FATTAH (D-PA)
 U.S. REPRESENTATIVE HAROLD FORD JR. (D-TN)
 U.S. REPRESENTATIVE ALCEE HASTINGS (D-FL)
 U.S. REPRESENTATIVE EARL HILLIARD (D-AL)
 U.S. REPRESENTATIVE JESSE JACKSON JR. (D-IL)
 U.S. REPRESENTATIVE SHEILA JACKSON-LEE (D-TX)
 U.S. REPRESENTATIVE STEPHANIE TUBBS JONES (D-OH)
 U.S. REPRESENTATIVE WILLIAM JEFFERSON (D-LA)
 U.S. REPRESENTATIVE CAROLYN KILPATRICK (D-MI)
 U.S. REPRESENTATIVE BARBARA LEE (D-CA)
 U.S. REPRESENTATIVE JOHN LEWIS (D-GA)
 U.S. REPRESENTATIVE CYNTHIA MCKINNEY (D-GA)
 U.S. REPRESENTATIVE CARRIE MEEK (D-FL)
 U.S. REPRESENTATIVE GREGORY MEEKS (D-NY)
 U.S. REPRESENTATIVE JUANITA MILLENDER-MCDONALD (D-CA)
 U.S. DELEGATE ELEANOR HOLMES NORTON (D-DC)
 U.S. REPRESENTATIVE MAJOR OWENS (D-NY)
 U.S. REPRESENTATIVE DONALD PAYNE (D-NJ)
 U.S. REPRESENTATIVE CHARLES RANGEL (D-NY)
 U.S. REPRESENTATIVE BOBBY RUSH (D-IL)
 U.S. REPRESENTATIVE ROBERT SCOTT (D-VA)

U.S. REPRESENTATIVE EDDIE BERNICE JOHNSON (D-TX) HOLDS HEARING WITH
 ASIAN-PACIFIC-AMERICAN AND HISPANIC CAUSUSES ON HEALTH DISPARITIES FDCH Political
 Transcripts April 12, 2002 Friday

U.S. REPRESENTATIVE BENNIE THOMPSON (D-MS)
 U.S. REPRESENTATIVE EDOLPHUS TOWNS (D-NY)
 U.S. REPRESENTATIVE MAXINE WATERS (D-CA)
 U.S. REPRESENTATIVE MELVIN WATT (D-NC)
 U.S. REPRESENTATIVE ALBERT R. WYNN (D-MD)

CONGRESSIONAL ASIAN-PACIFIC AMERICAN CAUCUS
 U.S. REPRESENTATIVE DAVID WU (D-OR)
 CHAIRMAN
 U.S. REPRESENTATIVE MICHAEL HONDA (D-CA)
 U.S. SENATOR DANIEL INOUE (D-HI)
 U.S. REPRESENTATIVE NEIL ABERCROMBIE (D-HI)
 U.S. SENATOR DANIEL AKAKA (D-HI)
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 U.S. DELEGATE ANIBAL ACEVEDO-VILA (D-PR)
 U.S. REPRESENTATIVE HILDA SOLIS (D-CA)

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CHRISTENSEN: Good morning.

Good morning. I am Congresswoman Donna Christensen representing the Virgin Islands and chair of the Congressional Black Caucus Health Brain Trust.

Joining me here this morning, and we will be joined by other members, are our vice president, Elijah Cummings of Maryland and Congresswoman Diane Watson of California.

This hearing today is a most important hearing, probably the most important hearing that's taking place on the Hill this year. And it's certainly the most important health care hearing. It's not just about people of color, either. It's about raising the level of health for our entire nation. It should not be that the richest country in the world should be rated 37th overall among the 191 nations that the World Health Organization rates. We should not be rated 37th overall in health care and lower than that in some parameters.

We have the resources to insure that every citizen, every resident of this country has access to wellness.

We know that there are pressing budgetary demands on us for defense and homeland security. But there cannot be, as Congressman Conyers said last night, adequate defense of our country or security for our homeland if each and every one of our citizens are not fit and healthy.

For us as people of color, we are just not going to be sick and tired anymore. The Department of Health and Human Services is charged with the health and well being of all of us. They and we have made some progress over the years.

What we are here to do today is to just find out what the department is doing, how they're continuing this process and the efforts of eliminating disparities in health care for people of color, how much funding, how many resources, how much focus is being applied and what strategies are being used to do that.

We're first going to have our opening this morning by our Deputy Assistant Secretary, Claude Allen. We'll then have an overview of the problem, the whole landscape of health care, for people of color in this country by representatives of the Institute of Medicine, who I'll introduce to you later, Shyer (ph) and commonwealth.

We'll hear some particular issues raised by some of our responding panel, some of our community, national and regional community organizations. And then we're going to hear from the agencies on just what they're doing, what is the status and what is the progress. What are the plans of the Department of Health and Human Services to eliminate racial and ethnic disparity?

I'd like to first turn to our vice chair of our caucus, Congressman Elijah Cummings, to make some opening remarks.

CUMMINGS: Thank you very much. It is certainly a pleasure to be here this morning, and good morning to all of you. And I want to thank all of you for being here this morning.

We also want to thank Dr. Donna Christian-Christensen for her leadership. She has taken over this brain trust and done a magnificent job. And we thank you, Donna, for your tireless efforts in making sure that America is aware of what is going on with regard to the African-American community and those communities that are so often left out and forgotten.

Would you give her a hand, please?

I'm also very pleased that we have Congresswoman Diane Watson from California, who is also a leader in this area, trying to make sure that these disparities that we will talk about this morning and this afternoon are eliminated. And I'm so glad that she has joined us. And as Donna Christian-Christensen said, other members of our caucus will be joining us throughout the day.

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Eddie Bernice Johnson, who I don't know whether she'll be here or not -- it's my understanding that she will -- is our chairwoman. And one of her priorities for this Congress was in the area of health care and eliminating the disparities. And so we are very, very pleased to be a part of making sure that her goals are lifted up and that we do everything in our power to address them.

Let me also express my personal gratitude to two important witnesses here today from my district, the 7th Congressional District of Maryland, Dr. Martha N. Hill, the dean of Johns Hopkins School of Nursing and Professor Thomas E. Perez of the University of Maryland School of Law, who also is in immediate past (ph) director of the Office on Civil Rights in the Department of Health and Human Services.

Encouraged by the CBC in 1998, President Clinton committed this nation to eliminating racially based health disparities by year 2010 in six crucial areas: infant mortality, cancer, cardiovascular disease, diabetes, HIV infection-AIDS and immunizations.

To their credit, HHS Secretary Thompson and the Bush administration reaffirmed this important national objective.

To actually eliminate minority health disparities, however, we all realize that we must gain a far better understanding of both the causes and the cures. That is why I was proud to join Congressman Bennie Thompson of Mississippi and other men and women of conscience in cosponsoring the initiative that created a new national center on minority health and health disparities at the National Institutes of Health.

I'm very pleased that Dr. John Ruffin, the center's able director, will be addressing us this afternoon.

I would also like to thank our colleague, Congressman Jesse Jackson, Jr., and all the other members who worked so diligently in the appropriations process to fund the center's support of the Institute of Medicine's study on minority health disparities that we will discuss today.

The national health statistics continue to be appalling. But to those of us who are Americans of color, discrimination in health care is a very personal challenge.

I will never forget the painful lesson my father once taught me about my grandfather's death. When my father was a child, his father was taken back to their South Carolina home after collapsing in a church on a Sunday morning.

Granddad laid close to death as two white doctors arrived to examine him. Later on that moonless night, as they emerged from the house on to the front porch, my father, who was a seven-year-old, heard one of the doctors say, "We have to get him to a hospital as soon as possible or he will die."

And my father, again, seven years old sitting there, heard the other doctor say, "Don't worry about him. He's only a nigger." And so my grandfather died later that night.

Unable to depend upon the large society to value our humanity, Americans of color have learned that we must create our own doctors and nurses. The underrepresentation of minority Americans in the health care professions remains a serious problem today. And despite all of our healer skills, the resources available to them have seldom been sufficient.

Today, as in the past, being black in America is a medically dangerous condition. Being black and poor can be deadly. We must create a national system of health care in which being a minority is not a mortality factor.

CUMMINGS: And so I look forward to hearing from our witnesses today. Again, I remind you, and I say it all the time, that we have one life to live. This is no dress rehearsal. And this just so happens to be that life.

And so what we have to do as a caucus, and we will continue to do, is try to make sure that every American, and African-Americans included, have equal treatment and that they be allowed to live the very best lives that they can.

And again to all of you, every single person who is here, we thank you for taking time out of your busy schedules to join us today. In the words of Sam and Dave (ph), you didn't have to do it, but you did. And we thank you.

CHRISTENSEN: Thank you.

And now Congresswoman Diane Watson, who joined us yesterday, for those of you who were with us at the reception, our newest member.

WATSON: Good morning, ladies, gentlemen, CBC members, colleagues and most of all, our honored guests, all of you out there in the audience.

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As a former 17-year chair of the California Senate Health and Human Services Committee, let me tell you how pleased I am at the overwhelming response that was generated by this issue. We have worked with this over the decades.

The Department of Health and Human Services initiative to eliminate racial and ethnic disparities is an issue whose time is long overdue.

And I want to commend the CBC Brain Trust chair, Representative Donna Christian-Christensen, for staying vigilant and overseeing what's going on with HHS as it relates to this issue.

As an elected official here on the federal level, a CBC member and as an African-American woman, I join you in the struggle to erase the word disparity in America health care.

The initiative has been created, but we all know that without oversight from people that resemble those described in the initiative, the eraser will only find the end of the word, leaving just despair.

Not many would disagree that for most of our nation's history, race is a major factor in determining if and where medical care was obtained.

However, its influence today has become more subtle. Racial disparities in the use of health services that persist are generally attributed to differences in health insurance and health-seeking behavior and other social and economic factors, such as patients' preferences or income.

And there are four areas that I think we have to be concerned about and I hope we can hear from you during the day: access, identification of the condition and then the relative number of services that are provided for the condition, the quality of that care, and the instances of the numbers of people in the African- American community that are being plagued by certain conditions.

And I hope you will respond today.

And I would like to point out two areas that fall into subtle influence: one, the affirmative action decision, in my state, California, on our medical schools; and two, Medicare's effort to limit vitamin D therapy.

In California, many of you know that affirmative action was banned in our University of California campuses. And in doing that, eliminating and banning affirmative action in the '90s, this meant that fewer students would be allowed into the medical schools.

In fact, the campus of the University of California that is next door to the capital, University of California, Davis, significant for the issue being taken to court on affirmative action, did not admit (ph) one African-American student after the ban passed.

So we saw a decline in all the professional schools throughout our great university because of affirmative action. The question comes, will we have the students in school that will come out and go back and serve their communities?

And I carried legislation to require, if you got any financial help in the state of California, then you had to return to your own neighborhood, your own community and provide services for at least two years. We want to be sure that the traditional providers are there to provide the health care.

And second, as you probably know, the Institute of Medicine report rates serious concerns about how African-Americans are treated for kidney disease.

It found that black Americans are less likely than white Americans to receive kidney dialysis or kidney transplants when necessary.

The report also found differences in the care of cardiac disease or diabetes, which are both leading causes of kidney disease.

It is appropriate for Medicare to make a policy decision to limit reimbursement for vitamin D therapy that has potential to affect kidney patients, especially since we know that African-Americans are disproportionately affected by kidney disease.

So during the balance of this hearing, you're going to hear from a group of outstanding experts and speakers. And the range of topics and the groups that are represented will paint the large picture on the status and the progress we have made so far.

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It's important to acknowledge the progress that we have made and, again, thank you to our chair, as well as galvanize in our resolve to correct and to address our concerns.

And as an educator, I encourage you to take both the positive and the negative away from this hearing and give that information to those back in your communities.

And we must take advantage of the positive. And you must raise your voices to support all of us here in policy-making positions in changing the negatives.

Again, welcome, good morning. I look forward to the deliberations today.

Thank you, Madam Chair, and thank you.

CHRISTENSEN: Well, thank you.

And I just want to point out that I could not be getting all of the accolades that I have gotten last night and this morning without some hard work and the support of my colleagues, and of course, my staff.

I want to once again ask responding (ph) panel three, Dr. Perez of the National Medical Association, Miss Rachel Johnson, if she's here, to join us, either here or in the front, Dr. Elena Rios of the National Hispanic Medical Association, Miss Beverly Russell of Council on Urban Indian Health, Mr. Adolph Falcon, Dr. Debra Frazier-Howze, Mr. Gem Daus, Dr. Marsha Lillie-Blanton, Miss Leigh Brown, Miguclina Leon, to join us on the upper or lower dais.

Our first speaker this morning -- and we're very, very pleased to have him with us -- is Dr. Claude Allen. Claude Allen was confirmed by the Senate as a deputy secretary for the Department of Health and Human Services on May 26, 2001.

HHS is the federal government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves.

As deputy secretary, Dr. Allen works closely with HHS Secretary Tommy G. Thompson on all major policy and management issues and serves as the department's chief operating officer.

Prior to joining HHS, Claude Allen was secretary of Health and Human Resources for the Commonwealth of Virginia, leading 13 agencies and 15,000 employees.

He led Governor Gilmore's initiative for Virginia's new Patients Bill of Rights which was passed in 1999, allowing patient appeals for adverse coverage decisions made by health plans and allowing for direct access to physician specialists.

He also provided leadership in overhauling the state's mental health institutions and community services.

Additionally, Dr. Allen was responsible for implementing the governor's private health insurance program for children and families, offering lower-cost coverage options to thousands of uninsured Virginians.

Before joining the Gilmore administration, Allen was counsel to the attorney general and later, deputy attorney general for civil litigation division in the Office of the Attorney General in Virginia.

And before that, Allen practiced law in Washington, D.C., specializing in government contracts litigation and legislative affairs.

He holds both his juris doctorate and a master's of law in international and comparative law from Duke University Law School.

He completed his undergraduate education at the University of North Carolina at Chapel Hill, earning degrees in political science and linguistics.

Dr. Allen is married to the former Jannese Mitchell and is the father of Claude Alexander III, Lila-Cjoan and Christian Isaiah.

We'd like to welcome you, Dr. Allen. Thank you for joining us this morning.

ALLEN: Thank you, chairman, members of the committee. It is indeed a privilege and an honor to be here with you.

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I also want to reiterate something that has been said here a number of times, and that is that the tremendous leadership that you have provided to this issue and that since I've been in Washington serving as the deputy secretary, we've had a number of conversations and you have certainly been a watchdog, watching what we do at the department, and to commend you for that, but also welcome that.

We believe it's very important that we be responsive to the needs of and the issues that we're talking about here today. And we appreciate the vigilance that you have provided. And I do also applaud you for your leadership.

I also want to take this opportunity to thank the respective chairpersons of the members of the **Congressional Black Caucus** as well as the Congressional Hispanic Caucus and the Congressional Asian- Pacific American Caucus for the invitation to speak here to you today on something that is very important and very near and dear to my own heart.

And that is our department's activities aimed at eliminating racial and ethnic disparities in health care in our country.

There's no dispute that health disparities exist in our nation, as our Healthy People 2010 Initiative -- or as Healthy People 2000 Initiative indicated.

It set disease prevention and health promotion goals for the nation to be completed and accomplished by 2000. It has shown us, however, that there have been improvements in many health indicators throughout the 1990s.

However, too many health disparities based on racial and ethnic health issues still persist.

Last summer Secretary Tommy Thompson made the elimination of health disparities one of his highest priorities and charged me with the responsibility of leading a department-wide effort to address specifically racial and ethnic disparities.

There are a number of activities underway and planned across the department that we are pursuing and seeking progress toward eliminating racial and ethnic disparities.

We are focusing on the six areas already articulated. That is infant mortality, cardiovascular disease, cancer screening and management, HIV-AIDS, child and adult immunizations, and diabetes, as well as other factors, such as access to health care and quality of health care, issues that you have already identified.

Earlier this week, in fact, I held a round table discussion with every division of the department to discuss our ideas for eliminating disparities.

And we're continuing to refine our program, evaluate what is working and what is not working and beginning to address issues that will bring us closer to eliminate disparities.

However, we of government cannot do it alone. Community involvement is essential to create a bridge to underserved communities.

One well-known effort is the Center for Disease Controls and Prevention's Racial and Ethnic Approaches to Community Health, or its REACH program.

This CDC grant program is targeted to minority communities to address issues, such as diabetes, HIV-AIDS, heart disease and immunizations to advance community-driven strategies to eliminate racial and ethnic health disparities.

Not only do we have to educate individuals and communities, though, we also have to make sure that physicians have the very best information available to them in the dispensing of services to members of our community.

You may have two patients with the exact same condition and yet, they receive completely different treatment regimens from their doctors.

By establishing best practices in medicine and getting the information to physicians that can assist them in this and helping them to channel their decision making, we can change treatment outcomes.

ALLEN: Collaboratives (ph) from the Health Resources and Services Administration, or HRSA, are using practiced guidelines for physician education about the latest medical treatments.

And outcomes show that disparities are eliminated when these best practices guidelines are used in treating diabetes and cardiovascular disease.

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Both President Bush and Secretary Thompson are enthusiastic about letting the public know that making changes to one behavior has a direct impact on one's health status.

We at HHS believe wholeheartedly in the saying that an ounce of prevention is worth a pound of cure.

When you look at the causes of cardiovascular disease, the causes of cancer, HIV-AIDS, hypertension and stroke and diabetes, these are all preventable diseases and we can do a lot about them.

For instance, the staggering obesity epidemic and decreased physical activity in the United States are significant risk factors to the onset of cardiovascular disease and diabetes.

From around 1980 to 1990, there was almost a 40 percent increase in obesity among adults age 20 and older. Among all children ages 6 to 16, the prevalence of overweight increased almost 30 percent during that decade.

And a recent report found that 7 in 10 American adults are not active regularly during their leisure time, including 4 of the 10 who have no activity at all.

With just a reasonable amount of exercise, dietary changes and weight loss, at-risk individuals reduce the onset of developing Type II diabetes by 58 percent.

The department partnered with the American Diabetes Association recently to kick off a new campaign -- a diabetes prevention campaign -- and coined a new term: pre-diabetes -- those people who are at risk of developing diabetes.

People at risk for Type II diabetes are overweight, have a family history of diabetes, have experienced gestational diabetes or gave birth to a baby weighing at least nine pounds.

They've had high blood pressure, have abnormal cholesterol levels, or have family backgrounds from African-American, American Indian, Asian-Pacific Islander, or Hispanic-Latino racial and ethnic populations.

I dare say we can look around this room and probably most of us, if not all of us, will qualify as prediabetic because of some of these conditions.

This term, prediabetic, lets us and lets the individual and the health care provider know, not only know that we have a risk, but triggers prevention action, such as appropriate physical activity, dietary changes and weight loss.

HHS's Indian Health Service, for example, is partnering with the Robert Wood Johnson Foundation in UNITY, which stands for United Native Indian and Tribal Youth, to increase physical activity and sound nutritional choices among Native American youth.

IHS, Indian Health Service, is also working with the National Institutes of Health to look at best practice treatments options for Native Americans and diabetes, as well as cardiovascular disease.

We will be willing and working to work with you aggressively with our partnership, like this, to spread the awareness of the low-cost prevention behavior changes an individual can make to improve his or her health.

One of the most effective ways to reduce and eliminate disparities is through simple communication. People need to have access to quality health information to make informed decisions about their own health care.

HHS is helping to provide this information in some very innovative ways. Last fall we introduced Healthfinder Espanol, the Spanish version of our popular public health information web site.

I unveiled the site at a local community health center here in Washington D.C. that piloted the project for us.

One of the reasons we wanted to pilot the project there was to give both the service provider and the patient an opportunity to tell us what works and what we need to be improving.

It was also rewarding to hear actual patients tell me how much this program, this access of information meant to them. Indeed, I recall one woman who told me the story about how she now was able to discuss with her daughter health decision issues.

She could search them out on the web site in Spanish, and her daughter, who preferred to read English, could then discuss these issues.

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And she talked about issues dealing with HIV-AIDS, dealing with diabetes, dealing with cardiovascular disease, dealing with women's health issues that she could communicate effectively with her daughter because of tools such as Healthfinders Espanol.

We've also worked with parents and found parents who were pleased that they could find information on their children's health in Spanish and print it out in English and give it to their children.

The department has also worked with the California Department of Health to help launch the first statewide Asian language breast cancer hotline developed in the nation.

This hotline was already in English, Spanish, now is in Chinese, Korean and Vietnamese. And the state's 2000 public awareness campaign called "Every Woman Counts Every Year" included radio and print ads in Mandarin, Cantonese, Korean and Vietnamese to let these women know about the hotline.

Because of the campaign, in two months, calls to the hotline increased from 24 per month to over 500 per month. Once again, we have to provide information to the public so that the citizens can make informed decisions about their own health care choices.

Other areas that we're working in, the President's Council on Physical Fitness and Sports is helping stimulate community awareness and participation in exercise. As I've suggested already, simple exercise and physical activity is one of the best prevention methods.

Secretary Thompson does not just pay lip service to physical fitness and exercise promotion. Just last Saturday he returned from a weeklong trip to Africa where he was visiting four countries in six days only to arrive here late Saturday afternoon to get up Sunday morning early for the Cherry Blossom 10-mile run. I repeat, that is a 10-mile run, not a 10K run.

And sadly to say, or actually applauding the secretary, he finished with a better time than two members of my own staff who were half his age.

This past November, Secretary Thompson announced that the Department of Health and Human Services is partnering with the ABC radio network to launch an education campaign to end the health disparities gap in the African-American community.

ABC radio has 240 urban advantage network affiliates, which can be heard by 93 percent of all African-Americans every week.

By partnering with organizations like ABC radio, we can get the message out to the African-American communities in creative ways that they are familiar with and that they trust.

In the coming weeks and months, we will be having a series of events with high profile African-Americans talking about the importance of health care and prevention strategies.

One important area we will stress in this campaign is the importance, again, of a regular medical checkup. I know personally that in communities of color, there is a basic distrust of the health care industry. And this has led to delayed visits to the doctor's office even when an individual has symptoms of a serious disease.

Indeed, in many cases we know that if we can attack these issues early on by a checkup that it opens and broadens options that you may have for treatment.

But far too often, communities of colors, individuals from those communities of color will delay seeking the initial advice, thereby limiting the choices that can be made and therefore oftentimes having to have more drastic treatments that often lead to mortality.

I remember personally, as a senior in college, taking my own mother to the doctor after she had been under the weather for a long period of time. And she was diagnosed with esophageal cancer and passed away just six months thereafter.

Had my mother caught it sooner, she could have been very well here to be with me today as we talk about these very vital issues.

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I know we can go around the room here today, again, and each of us could relate stories such as Congressman Cummings with his grandfather and other loved ones just like I had who did not get care, oftentimes did not have care made available to them to address our health care needs.

That is why it's so vitally important for us to encourage our loved ones to visit and seek out medical advice early on. That is why a part of the HHS-ABC radio campaign will have a special one-day event to encourage people to visit a health professional or make an appointment with one in the near future.

This event will involve national, state, local and community organizations to facilitate access to health care for those most in need.

Magic Johnson, chairman and CEO of Magic Johnson Theaters and Johnson Development Corporation and ABC radio personality Tom Joyner have agreed to serve as honorary (ph) co-chair for this event.

I want to urge each of you to help participate in this and make sure that your communities are involved in this effort by contacting your local ABC affiliates and participating with them.

Let me move on and talk about another area that's very personal as well. Generational learning has always been an important part of my life.

As I understand it, Congressman Cummings, your comments really struck a cord with me as well. Growing up, my grandparents were a very important part of my life. Indeed, the lessons they taught me are what still guide me today.

My grandparents lived to be in their 90s. My grandmother was 96 when she passed. I had a grandmother, again, who was 104 when she passed. My grandfather lived to be 114 when he passed away.

All of my grandparents took very good care of themselves. And they exercised and had balanced diets. And they stayed away from risky behavior, such as alcohol and tobacco.

When I look at my family and look at the generations that have lived since then, I look progressively at each generation, the increased morbidity in terms of obesity, in terms of diabetes, in terms of hypertension, in terms of cardiovascular disease.

I've seen generation after generation wither (ph) away because of these diseases, because of the disparities that we talk about.

I want my children and my grandchildren to have the very same respect and appreciation of their heritage and family as I have. I want to make sure that my wife and I have an opportunity to see our children and our grandchildren live healthy and productive lives.

Sadly, communities of color across this country are losing their chance for a lasting legacy due to health care disparities.

Though the overall rates of infant mortality have plummeted over the past century, African-American infants are more than twice as likely to die as white infants.

Between 1980 and 1993, cancer death rates for Asian-Americans and Pacific Islanders more than doubled, 290 percent for males and 240 percent for females. This represents the highest percentage increase for any of our racial and ethnic groups.

In the Native American community, diabetes is rampant, where it was almost non-existent 50 years ago. And it is clear that diet and exercise are key to prevention.

For example, more than 50 percent of the Pima tribe is diabetic, while related populations across the border of the same tribe in Mexico, have maintained a more traditional diet and have very low rates.

Cardiovascular disease is a leading cause of death within the U.S. overall. Hispanics are experiencing high (inaudible) and the prevalence of risk factors for coronary heart disease, including hypertension.

Moreover, Hispanic children born outside of the U.S. show less of these (inaudible) than those born to U.S. parents.

This should not be the case. And each of us needs to work in our own communities to come up with solutions, real solutions, to eliminate health disparities in our lifetime.

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And it starts in our homes. It starts with our own families. And it starts with our communities with a renewed sense of personal responsibility.

We at the Department of Health and Human Services will do our part to provide individuals, families, and communities with the resources they need to eliminate health care disparities.

Let me assure you that the president and the secretary are committed to this effort and the undertaking of the actions necessary to reach our goal.

I want to thank each of you for allowing me this opportunity to be with you this morning. And I know that many of our agency heads and operations divisions will be here with you throughout the day.

And I appreciate the opportunity personally to talk about this and share personal stories of my personal commitment to resolving and seeing the elimination of health disparities in our lifetime.

Thank you. I look forward to the conclusion of the session today.

CHRISTENSEN: Thank you very much, Deputy Secretary Allen.

Did you have a question, Congresswoman Watson?

WATSON: Just a comment.

As you were speaking in particularly about the increasing number in various ethnic groups of diabetes, what I'd like to see is more studies being done on the genetic structure.

Early on, as I was chairing the black caucus in California, I called in the people from the census bureau and suggested that we give a homeland to colored people.

You know, we had on the census form, "black," or whatever. And I said, you know, if you're Chinese, everyone knows that your gene pool is in China. If you're Mexican, your gene pool is in Mexico. But being colored and being black, that's not connective to a gene pool.

And I think it's very important that we do more research on the genetic structure from people who will come off the continent of Africa so that we can start educating more specifically about health practices, health risk, nutrition.

And we are eating the wrong things as African-Americans and we don't even understand it.

So I would like to just make that comment. And I think that HHS might want to do more studies -- maybe you have. And maybe that should come out. We should publicize it, Madam Chair.

WATSON: I think we do -- we do need to do more in the areas of proper nutrition for proper genetic structure.

ALLEN: Your point well taken, Congresswoman.

Indeed, I think you're going to hear a little later from Dr. Ruffin as he talks about the National Institutes of Minority Health and what they're going to be focusing on.

But it's very clear that while we are 99 point -- you pick it -- 8, 9 percent the same, it's that very small percentage that may account for the differences that we find.

But not withstanding, even if we do the studies, we know right now some very basic information that cuts across our ethnic differences. And that is simply that exercise, proper diet and seeking out medical help early on will help cut that, even now.

And if we will focus on that, but do do the studies that give us even more detailed information about us that makes us different, we can really target our strategies as we go forward in trying to eliminate health disparities.

WATSON: May I just say this? When you say "proper diet," there's your key. The diet has to be different for various ethnic groups because of the biological...

ALLEN: That's correct.

WATSON: ...structure of the body.

So this is the information that we do not receive in schools. In fact, I carried legislation to be sure doctors have a course in nutrition.

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And I think we really need to start zeroing in on the differences between the various ethnic groups and what is proper diet.

Thank you.

CUMMINGS: Yes, Dr. Allen, just one question.

When I read the report on equal treatment, looked at the recommendations and then I listened to you, you know, when you mentioned those guidelines, that struck a cord. I think that's guidelines for doctors more (ph) as protocol. Is that it?

ALLEN: That's correct. There will be treatment protocol.

CUMMINGS: How do you get that word out, because that seems to be one way of -- you know, when I read the report, I couldn't figure out whether some of this was intentional, some of it was just being insensitive.

And I guess guidelines, if used, would at least put some kind of structure in the process so that folks would say, "OK, did I do a, b, c, d, e, f," and go down that list.

But I'm wondering, you know, how do you get that out? How do you encourage doctors to use that?

ALLEN: It's an exciting process. I spent some time -- and you may or may not be familiar -- but the Department of Health and Human Services funded a unique partnership.

We provided a \$1.5 million grant to Tuskegee University Meharry Medical College to work in partnership with Vanderbilt University. Vanderbilt is doing a lot of work in the area of (inaudible).

And we know that if you can help channel the decision making of a physician using technology that, in many cases, you'll have better health outcomes.

And this partnership between Tuskegee and Vanderbilt University is going to be focusing on minority health disparities, looking at that technology and how we can begin to apply that in very simple things, simple ways of providing opportunities for physicians to help have the decision making channeled.

It doesn't override a physician's decision making. It simply says, for example, if you are an African-American, we know that if you have cardiovascular disease, you've suffered a heart attack. In many cases, beta blockers would be the prescribed treatment for 85 percent of the population.

Of that 15 percent of the population that it's not prescribed for, African-Americans constitute about 90 percent of that. Beta blockers would not be an effective means.

Therefore, when you go in to your physician, your physician is going through the regimen that you've had after having a heart attack, having some technology or having the ability to channel decision making, figuring out that my patient's African-American, had a heart attack, do I prescribe beta blockers? The answer should most likely be no.

That is what we're talking about using. And we are working within the department not only in helping create partnerships with universities to do that, but we have the ability within the department because of the programs we fund, through Medicaid, through the Health Resources Services Administration, our community health centers, where the president's called for an expansion of community health centers over the course of the next three years.

This is how we're going to be able to do that, bringing the latest and greatest technology to there, right there, not necessarily always in the big major city hospitals, but in the rural community where many people are getting their service and treatment, or in the public health clinics.

And there's a way that we can work to do that.

CUMMINGS: I must tell you that everything you've just said shows why it is so important that we have people who are sensitive in the policy-making process and in the doctors' offices and our hospitals and medical centers.

And that's a compliment to you for your sensitivity. And we just have to try to make sure we address the issues that Congresswoman Watson raised earlier with regard to the California schools and making sure that African-Americans and people of color have an opportunity to rise to the heights of being medical doctors and health care professionals.

ALLEN: Absolutely. Thank you.

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CHRISTENSEN: I have just a couple of questions. I think they're kind of brief.

The REACH program that you mentioned is one that we're very fond of in the caucus and the health brain trust, the racial and ethnic approaches to community health.

But it's been level funded, basically, over the last couple of years. Can we anticipate an increase in funding for such a good and basically, so far, successful program.

ALLEN: Of course, the conditions of the 2003 budget, we know that it is level funded. Level funding doesn't mean we're cutting back on the program, nor is it significant to the priority of the importance of the program.

Recognizing what we've come through this past year, the highest priorities have been placed at the administration in combating terrorism, both abroad and domestically.

We believe, however, that within the department we can work very aggressively using the existing funding and making sure that we're channeling it well to target it to the specific programs that need to be supported, and hope that we will go back and continue to fight for and work for and to find additional funding to try to match the demand out there to address it.

CHRISTENSEN: Might there not be within, even the homeland security and bioterrorism funding, some way to enhance these kind of programs that work well to...

ALLEN: I think one of the ways that we can help to...

CHRISTENSEN: ...help strengthen community infrastructure.

ALLEN: I think you hit on a very important point. And I would say yes to a certain degree.

When we talk about our response at the department to bioterrorism threat, what we're talking -- at HHS -- is not simply buy more vaccine stockpiles for smallpox or anthrax or anything else like that.

For HHS, when we talk about bioterrorism preparedness, we're talking of building public health infrastructure. We're talking about making sure that rural America, that tribal government, that rural communities are prepared to address any type of issue that might arise.

And what that means we must be investing in is in the basic infrastructure of public health. And so we believe that we will have opportunities, by strengthening the public health system, to help identify and help to channel resources that will accrue to the benefit of communities of color simply because if our rural communities are our weakest link, that is where we would be attacked.

Therefore, we need to make sure that they're the strongest link of our system.

CHRISTENSEN: Another quick question, a lot of focus is placed on the behavior of individuals. But there's also, as we have recently seen and we're going to hear about more in a few minutes, institutional behavior.

How much focus is the department placing and what are you doing about changing institutional behavior? And I want to particularly ask a question about the Office of Minority Health and within your agencies which have never really been funded.

And I think that would go a long way to changing that within the department.

ALLEN: A couple comments about that.

First of all, as far as institutional behavior, yes, that's an issue that we'll always be dealing with. And the way we try to address it at the department is one, through education, vigilance and education, making sure that when we fund graduate education that we are training and teaching not just cultural competency, but that they have cultural literacy.

It's not sufficient just to be competent about a culture. You need to be literate about that culture. That's one way to dealing with it.

Secondly, making sure that communities of color are represented in the professional ranks. I know, for example, in the Native American community, the tribal colleges are very significant to insuring that you have representatives from those tribes in the health care industry. So those are ways that we're going to deal with it.

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With specific regards to our Offices of Minority Health, we're working across the department to strengthen them. I meet with them regularly to talk. And I think Dr. Stinson will be testifying a little later on about issues as it affects their department and their budget.

But we will work very aggressively to insure that the department and the Office of Minority Health has the resources and tools to be effective in addressing the issues of eliminating health disparities.

If we aren't equipping them with the tools and resources that they need, the reality of eliminating minority and racial ethnic disparities is not going to be accomplished. And therefore, it's essential that we do that.

I can't give you here today how much we're going to do that by, when we're going to do that by. But I can give you a commitment that we recognize the importance of making sure that the resources are available so that the work and the mission can be accomplished.

CHRISTENSEN: One last question.

Health care, our wellness or lack of it, doesn't exist in a vacuum. To what extent, at a cabinet level, are we trying to address this in a more holistic fashion dealing with housing and all of the other issues that prevent us from being healthy?

ALLEN: Outstanding. I appreciate the question because I believe that it has to be coordinated across government. Too often government operates in silos where education's doing its thing, mental health's doing its thing, HHS, however.

We are working aggressively across cabinet levels to address these issues, for example, homelessness. We have a commitment working with the Department of Housing and Urban Development and with the Veterans Administration to end chronic homelessness within 10 years.

This is an effort that has taken collaborative work to deal with that. We will work very aggressively with the Department of Education, the Department of Labor, the Department of Commerce, across government to address issues that, for example, in welfare reform.

There has to be no longer government or business as usual. We have to commit to these issues by setting aside our parochial differences and working together at a common goal. And I believe that you will see in this administration that effort being achieved. I meet regularly with my counterparts, who are all the chief operating officers of their department. And we address these issues.

And Secretary Thompson, as you know, is passionate about insuring that we are eliminating health disparities. And therefore, he brings it up regularly with his counterparts at the secretarial level.

So I know this administration will be making a commitment and will follow through on that commitment to insure that we're doing that. And we ask you not to test our rhetoric, but actually see the outcomes as we move down with the years.

That's what we're here to do, to be accountable to you and to the public that we're trying to serve.

CHRISTENSEN: Thank you.

WATSON: I just raise one more question. You said that you're addressing chronic homelessness.

In my county, 33 percent of the homeless are in need of mental health. And I was just wondering if you'll comment on what you're doing in terms of mental health?

ALLEN: Even just yesterday I met with an organization from California that is focusing on eliminating chronic homelessness, and we're working on that.

It is a high priority. I also am responsible for overseeing an interagency task force that is focusing on eliminating chronic homelessness in 10 years.

The issue of the co-occurrence of mental illness with homelessness is vital. I grew up in this city here. And I remember as a young boy when we had the de-institutionalization of our institutions.

And I remember very vividly the mental health hospitals turning out people. And they became the homeless.

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We know today that we can give supportive services, if we provide supportive services and housing to those individuals, who many of them are homeless in our street, much of that service will be mental health services.

We have had dramatic advancements in the pharmacopoeia, in the pharmaceutical industry in how we can serve individuals with mental illness that they could be productive citizens and continue.

It has to be a combination. It has to be a working across, again, government lines, working with HUD, working with HHS, and within HHS, having our agency for substance abuse, mental health to work together to provide options for individuals to do that.

We're encouraging states right now. Yesterday we had a national policy academy. We had a number of states come together. And we're encouraging them to come up with creative plans for addressing this issue of providing services to the chronically mentally ill who are also homeless and many of whom are women and many of whom are veterans.

And so we are addressing that at the department. And you will find we will be moving, again, within the next 10 years to try to eliminate chronic homelessness.

We know it can be done. We're developing plans to do that. It will be a partnership with the state, local and private sector.

WATSON: Thank you.

CHRISTENSEN: Thank you very much.

And I'm going to call our next panel from the Institute of Medicine to join us at the table. If there's anyone else out there whose name is listed on the responding panel, we'd like you to join us up here.

And as the Institute of Medicine panel is coming up, I'm going to give brief introductions of the panel all at once. And then they'll just go ahead from there.

CHRISTENSEN: Dr. Brian Smedley is the senior program officer of the Institute of Medicine National Academy of Sciences, Division of Health Policy. He currently serves as study director for the IOM study, "Understanding and Eliminating Racial and Ethnic Disparities in Health Care," a congressionally mandated report that was released last month.

Dr. Smedley previously served as study director of IOM's study, "Capitalizing on Social Science and Behavioral Research to Improve the Public Health," also, "Enhancing Racial and Ethnic Diversity in the Health Professions," and a third one, "Cancer research Among Minorities and the Medically Underserved."

He received our previously (inaudible) for HS (ph) health care hero award last night.

Dr. Martha N. Hill is interim dean of the Johns Hopkins University School of Nursing and professor and director of the Center for Nursing Resource at the school. She holds joint appointments in the Bloomberg School of Public Health and School of Science. From 1997 through 1998 she was the president of the American Heart Association and is a fellow in the American Academy of Nursing and a member of the Institute of Medicine of the National Academy of Sciences.

She's currently serving as the co-vice chair of the IOM committee on understanding and eliminating ethnic and racial disparities in health care.

She's internationally known for her work and research in preventing and treating hypertension and its complications, particularly among young urban African-American men.

Dr. Betancourt, Joseph R. Betancourt, is currently a principal investigator on grants from the Center for Medicare and Medicaid Services and the Commonwealth Fund, in addition to being co- investigator on a project funded by The National Cancer Institute.

Dr. Betancourt served on the New York Academy of Medicine's Racial and Ethnic Disparities Working Group and the greater New York Hospital Association's steering committee on racial and ethnic disparities.

He is on the CDC National Expert Council for the Diabetes Today program and is a reviewer for the American Medical Association's Journal Consortium and Annals of Internal Medicine.

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He was recently named to an IOM committee on developing a national health care disparities report and is the author of several publications on issues in minority health.

He teaches cross-cultural medicine to medical students and residents at Harvard Medical School.

Dr. Gregg Bloche is a professor of law and co-director of Georgetown and Johns Hopkins Joint Program in Law and Public Health and an adjunct professor at the Department of Health Policy and Management at Johns Hopkins University. He teaches and writes on U.S. and international health law and policy.

Dr. Bloche received a Robert Wood Johnson Foundation investigator award in health policy research for 1997 to 2000 to support his research and writing on the legal and regulatory governance of managed care organizations and is the editor of a forthcoming volume on this subject, "The Privatization of Health Care Reform."

He is a member of the Institute of Medicine's committee on understanding and eliminating racial and ethnic disparities in health care, (inaudible) and scientific freedom and responsibility of the American Association for the Advancement of Science and has served on the board of Physicians for Human Rights.

And please realize that I'm really abbreviating these bios.

Dr. Thomas A. Laviest is associate professor of health, policy and management in the Johns Hopkins University Bloomberg School of Public Health.

He also is an associate professor in the Department of Sociology and a faculty associate in the Johns Hopkins Population Center and the Hopkins Center for Comparative American Cultures.

His research and writings have focused on access to and utilization of health services and the impact of health and social policy on the health and quality of life of African-Americans.

His current projects include an NIH-funded study of race differences in access to cardiovascular surgical procedures and a CDC-funded study of surgery outcomes among prostate cancer patients.

He's contributed to previous IOM reports and will be presenting on those reports today.

Dr. Thomas Perez is a former federal prosecutor and was a high-ranking official in the Clinton administration who has spent his entire career as a civil rights lawyer.

He was appointed assistant director and director of clinical law programs at the University of Maryland Law School. He teaches law courses, oversees the law school's nationally recognized clinical law program and is heavily involved in civil rights health care and criminal justice issues within Maryland, District of Columbia, and nationally.

He also works closely with the law school's nationally recognized law and health program. In addition, Mr. Perez is a consultant on a variety of civil rights issues, primarily focused on police reform and the intersection of civil rights and health care.

He will be presenting on the IOM report recommendations for the Office of Civil Rights.

Did I introduce everyone?

Are we starting with you, Dr. Smedley?

SMEDLEY: Thank you, Madam Chair. I appreciate that.

On behalf of the Institute of Medicine's study committee on understanding and eliminating racial and ethnic disparities in health care, I want to send our very deep thanks and appreciation to you, Madam Chair, and the CBC for having us here today to talk about our report on equal treatment which we released on March 20.

I'm joined by three members of the study committee, Dr. Martha Hill, who served as the co-vice chair, Dr. Joseph Betancourt, and Dr. Gregg Bloche.

But I also want to acknowledge the important contributions of the other two panelists here. Tom Perez contributed a paper that appears with our volume with the report. And Dr. Tom Laviest contributed by providing information about his ongoing research. I want to thank both of them.

At the outset, let me also please thank the sponsors of the study, the Office of Minority Health of the U.S. Department of Health and Human Services headed by Dr. Nathan Stinson.

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And we also received support from the Commonwealth Fund and the Kaiser Family Foundation. So we want to acknowledge with gratitude that sponsorship.

In 1999, Congress requested that the Institute of Medicine conduct a study to assess the extent of racial and ethnic disparities in health care.

Importantly, Congress asked that the Institute of Medicine assess these disparities while controlling for access-related factors. That is, Congress asked us to assume that issues of access to care, such as insurance status or ability to pay for care would be held constant across racial and ethnic groups.

Secondly, Congress asked us to identify sources of these disparities and to provide recommendations to eliminate these disparities.

We appointed a 15-member study committee. Three of those committee members are here with us today.

But importantly, the report that we produced was also reviewed by an independent panel of reviewers who thoroughly reviewed the document and provided many important comments that are reflected in the final report that we ultimately released.

The full report is available on our web site at <http://www.nat.edu> (ph). And I want to refer folks to that web site for the full report.

There are several major findings in this report. Importantly and perhaps foremost, we found that the health care playing field is not level. It is not level for minorities, many populations of color who, on average, receive a lower quality and intensity of health care. These disparities are found with consistency across disease areas, clinical services and settings.

They're found even when one controls for access-related factors, such as insurance status or the ability to pay for care. They are found even when one controls for co-morbid conditions, the disease severity or stage of presentation and many other potential confounding factors.

Importantly, these disparities are associated with higher mortality among racial and ethnic minorities. Many sources may contribute to these disparities. And our committee members will talk about some of these sources. Health care systems, through the ways in which these systems are structured and financed and the degree to which they address cultural and linguistic barriers to care, the legal policy and regulatory climate in which these health care systems operate, patients through health care behaviors and attitudes and health care providers may all contribute to these sources of disparities.

Let me just briefly comment on the question of patients' contributions to these disparities. Secretary Allen mentioned that there is a deep problem with delay of care seeking and mistrust among many minority populations.

However, let me point out that the Institute of Medicine's study committee found that patient preferences play only a small role in contributing to these health care disparities.

Indeed, until we better understand potential sources of these differences and preferences, we need to attend closely to factors related to the clinical encounter itself. For example, these sources may be due to mistrust or they may be due to negative encounters in health care settings.

Consistent with the study charge, our committee focused on the question of bias, stereotyping and clinical uncertainty among health care providers as potential sources of these disparities.

We found evidence that these processes may contribute to disparities in care. These are very subtle but powerful processes.

We defined stereotyping as the process by which people use social categories such as race or gender in acquiring, processing and recalling information about others.

Importantly, stereotypes may serve important functions in that they help us to organize and simplify complex information and give us greater confidence in our ability to understand, predict and potentially to control situations.

However, in the clinical setting there are many risks involved with stereotyping. One, they exert powerful effects on our thinking and actions even at implicit, unconscious levels even, importantly, among well-meaning, well-educated persons who are not overtly biased.

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Secondly, stereotypes can influence how information is processed and recalled. And they also exert self-fulfilling effects as patients' behavior may be affected by providers' overt or subtle attitudes and behaviors.

Significantly, this study committee found evidence that stereotypes are more likely to occur in situations that are characterized by time pressure, resource constraints and high cognitive demand, exactly the kind of characteristics that are present in many of today's health care settings.

With your indulgence, Madam Chair, I'll turn to some of our committee members to describe more thoroughly some of the potential sources of these disparities as well as intervention recommendations.

And I'll begin by turning to our co-vice chair, Dr. Martha Hill.

HILL: Thank you very much. And thank you for inviting us to come and be with you today. And I'd distinctly like to acknowledge Congressman Cummings, who has been enormously helpful in my own work in East Baltimore looking at hypertension control in young black men.

And he agreed to testify and give us statements for our recruitment about the importance of this, and also acknowledge that his sister was a community health worker who worked with us and how much we learned by having multidisciplinary teams that are ethnically and racially diverse as we do our community base research.

My comments are going to talk about the area of data collection and monitoring to follow up on the fact that as we talk about these definitions and the extent and the scope of the problem, we must have good data.

And one of our areas of recommendations addresses this need. Data is critical. And it is critical that it be standardized because, while the individual stories that we all can tell are very important and make this issue very salient for each of us, it is important to look across the individual experience and look at groups and look at differences that occur within groups across settings, across ages, across genders, across all types of variation and diversity that we have.

In order to understand and take effective action, we first of all need to define a baseline. And we need to understand patient and provider race and ethnicity. And increasingly in this country, it is important to know what is the primary language.

We need very good data for a variety of reasons. First of all, the issues that we're talking about are very complex. And if we're going to disentangle them and be able to sort out what is contributing and when we can, quote, "control," or "hold for," evenness or quality across something, such as access or insurance or socioeconomic status, we still see these differences.

And to tease this apart so that we can first understand and then intervene effectively, good data is essential.

It will also be essential so that health care plans can monitor their own performance. The question was asked earlier, are best practices being implemented? Are guidelines being implemented? And how do we improve the standardization of health care as a general approach with individualization for each patient to then follow?

We need to have data about what is the extent to which these guidelines are being appropriately implemented.

Another issue is we need data to account for the accountability of enrollment for diversity within health plans. And we need to be able to evaluate the effects of intervention.

Finally, we need data to help identify discriminatory practices or differences. And groups such as this will need data in order to be able to provide oversight.

Unfortunately, however, standardized data on ethnic and racial differences in health care are generally unavailable. And this is for a variety of reasons.

First of all, much of this data is not collected and not recorded. Secondly, data collection and data systems are fragmented. They're not standardized. And they're inconsistent.

So how data may be collected in one sight could be quite different from how those variables are measured in another site. Congresswoman gave us details from the census. This notion of standardizing how the variables are measured and the data steps are then merged is an important challenge that we have.

But right now, many health plans are not collecting data on ethnicity, race or primary language, nor on socioeconomic status.

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HILL: Now this need is increasingly being recognized. And I was delighted to see on the table outside this morning some recent reports that point to the need and the importance of standardized data and steps that must be taken, not only by HHS, but as mentioned by Dr. Allen, the importance of looking at labor.

Employment, in our own work, is being shown as a predictor of blood pressure care and control. So getting someone a job may be a very important intervention in young black men, and probably in everybody else, to increase their ability to self care and to improve their own health status.

Secondly, we need to be aware that if we're going to do this, if we're going to improve our capacity and our ability to have valid and reliable data, there will be important challenges.

These include ethical issues, the potential that these data could be used not in a positive way, but perhaps in a negative way. We need to be aware of the logistical concerns. And we need to look at some of the fiscal aspects.

We need to be aware of people's privacy, their right for privacy and the need for privacy. At the same time, we have a societal need for valid and reliable data.

There is cost associated with creating these systems and collecting these data. And I would like to point out that there also is a concern around the topic of reliable and appropriate analyses of these data.

In other words, who has access to the data and how do they use it? And are the appropriate kinds of statistical approaches being used?

But without valid data that is reliably measured, we will not know where we are. And in the future, we will not know what progress we have made.

And so our recommendations are that, first of all, we collect and report data on health care access and utilization by patients' race, ethnicity, socioeconomic status and where possible, the primary language.

We also recommend that these measures include (inaudible) in the report the performance measurement, getting back congressman, to your question about to what extent are guidelines being met. Are the appropriate evidence-based interventions being applied?

And if you can't then have ethnic and racial data tied to those performance evaluations, we're not going to be able to know the extent to which there are differences and the care that is provided.

We also recommend that we monitor progress toward the elimination of these health disparities.

And finally, that data be reported, both ethnic and racial data, by OMB categories. But we're using subpopulations in order to tease these apart. Not all Asian-Pacific Islanders are from the same cultures or the same genetic pool.

I'd like to applaud the efforts from California of the Asia-Pacific Islander American Health Forum. This handout that was on the table outside is exactly what we hope will happen when we say we need to increase awareness and we need to increase understanding of the population in general and then of health care providers and policy makers in particular.

And this is a sheet to educate people that say that data on race helps us measure how far we've come in eliminating racial differences. One side tells campaigns do not work in California. They don't work other places as well.

Data collection on race should be improved, not eliminated. And race is nothing to be ashamed of or to be kept private. I think the same comment could be made about ethnicity and many of the other important contributing data factors.

Thank you.

BETANCOURT: Thank you, Madam Chair, for holding this hearing. I'm going to talk about health care institutions. And in America in the year 2002, that means managed care.

Managed care has great potential to reduce racial disparity in American health care. But unfortunately, this potential is not being fulfilled.

We have reason to believe that some current managed care practices are making health care disparities worse. And here's why.

Let me start with the core of our committee's explanation for racial disparities in health care.

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Physicians' diagnostic and treatment decisions are often not clear-cut. They're often based on incomplete information about patients. And they're often not based on hard science.

Different doctors make different clinical decisions about patients who have the same signs and symptoms. Medical decision making is highly subjective. Doctors have lots of discretions.

Mental short cuts, including stereotypes and prejudice and selective empathy influence how doctors make clinical decisions. The same cognitive short cuts that all people use are used by doctors.

The more tired and pressed for time doctors are, the more likely they are to fall back on their worst biases and stereotypes. And the more financial pressure they face to limit their overall clinical spending, the more likely they are to ration care in a way that's consistent with their biases and stereotypes.

Two years ago in a case known as Pegram versus Herdrich, a unanimous U.S. Supreme Court said that HMOs control costs by rationing care. And Justice Souter, at the time, was widely applauded for his honesty about rationing.

Some of the methods that HMOs use to ration care magnify the influence of doctors' stereotypes and biases. Financial incentives for withholding care, irrespective of that care's benefits give doctors broad discretion to decide who will get which treatments. And this allows stereotypes and biases to play a larger role.

By contrast, as Secretary Allen and others have pointed out, rule-based cost control built on scientific evidence, where that's possible, limits the opportunity for individual physicians' stereotypes and biases to play out.

So the Institute of Medicine committee urges that cost control be rule based and evidence based, where the evidence exists. Physician payment should reward achievement of objective benchmarks for efficient practice.

A couple of examples, appropriate screening tests for colon cancer and a myriad other of illnesses, control of hypertension and asthma, those things are measurable and can be rewarded with incentives.

Physician payments should also reward sustained physician- patient relations so that doctors and patients can get to know each other. And then doctors would rely less on their stereotypes and their prejudices. And patients could feel increased trust.

Physician payments should also reward and can reward patient satisfaction with physician. And we're emphasizing we are not coming down hard on managed care, nor are we objecting to the need for frugality and efficiency. What we are saying is that an overall incentive system can be developed to incorporate these values that we're concerned about, that we're talking about today.

Beyond this, the committee is troubled by the increasing segmentation of the managed health care marketplace. Medicaid-only managed care plans, unable to appeal to private subscribers with little to no market pressure as a result to maintain their quality, pose a health threat disproportionately to minority Americans.

Multiple tiers in the private managed care marketplace also present problems. These different tiers mean different per person resource limits and therefore, different levels of care so that access formally can be the same. But the reality is different folks in different tiers of coverage are going to get a different quality and intensity of care and perhaps a different quality of health care provider.

Different levels of patient choice and patient protection, as well, are an issue, both in health plan contracts and in the law. What can we do about this fragmentation?

Well, for one thing, there ought not to be Medicaid-only HMOs. To qualify for Medicaid participation, HMOs should enroll minimum percentages of private patients.

And Medicaid ought to pay plans enough so that they can provide private sector levels of care and so that they can compete for private patients. Medicaid patients ought to enjoy the same legal rights in managed care as do private patients. And in the private sector, regulations should not (inaudible) the ability of health plans to include all providers in all of their networks.

Law and regulation should not accept different standards of medical needs for payments and liability purposes.

We also need -- and Tom Percz, is going to talk, I take it, more about this -- we need more robust monitoring and enforcement by the Department of Health and Human Services of Title VI civil rights requirements in the health sphere

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(ph). And this is especially important after the Sandoval (ph) decision, which eliminated a private right of action in cases of disparate (ph) racial impact.

And last and certainly not least, we need more robust efforts to recruit and retain members of racial and ethnic minority groups as health professionals.

Thank you very much, Madam Chair.

BLOCHE: Thank you, Madam Chair, for having us, and to the distinguished members of Congress here, panel members and guests.

This is a very important event. And it's a real privilege to testify in front of you.

I'm going to take a few minutes to talk a little bit about two particular recommendations that we've touched on quite a bit here already: diversity in the health care professions and cultural competence, or cross-cultural education, training of health care professionals.

First, as it relates to diversity, despite underrepresented minorities composing close to 30 percent of our population, it should be noted that they compose only 7 percent of all physicians, 3 percent of medical school faculty, 3 percent of nurses.

Aside from issues of equity and issues of representation, why does this matter? Why does this matter from the standpoint of health care delivery?

Our committee looked at this very carefully and found various streams of evidence that give us, in fact, proof as to why this matters and move it from the area of social justice at which it's been seated and should be given great attention to the issue of evidence-based and targeted approach to why diversity is important in health care.

Evidence has shown that underrepresented minority physicians, for example, tend to provide care to underrepresented minorities and underserved communities in disproportionate amounts as related to their majority counterparts.

Various surveys have shown that preferences on the part of minority patients for minority physicians for a variety of different reasons, whether it be cultural understanding or language concordance between provider and patient.

Research has highlighted improved communication as identified by patients with physicians who are like them. Studies that looked at African-American patients and African-American physicians where African-American patients said their encounter was more participatory. They were able to get more involved in the discussion with their health care provider.

And similarly, among Hispanic patients when their physician spoke Spanish.

These issues have significant implications as we look toward the future. As I mentioned, medical school faculty, only 3 percent are underrepresented minorities. If we subtract the historically black colleges and universities and we subtract the schools in Puerto Rico, those percentages drop to somewhere around one and a half percent.

We look at the upcoming nursing shortage that's occurring now and is predicted for the future, again, significant implications for the future.

There are other benefits of diversity that we've included in our report that add to the factors that we've presented here as it relates to just better communication, better representation.

And these are issues of leadership. How do we get diverse leadership among our health care system, to understand the issues that our communities face and help make our systems adapt and adjust to providing quality of care to anybody who enters our door?

Diversity and leadership also allows for information sharing, for breaking down of some of the stereotypes we've talked of right here. People in diverse groups working toward a common goal and succeeding clearly allows better communication and allows the breakdown of stereotypes.

We are not seeking a doctor-patient match based on race and ethnicity. And we want to stress that. We understand that there's no way, given recent trends, in the mid-1990s, for example, with anti-affirmative action legislation in California and Texas, we saw significant drop-offs in both applications, acceptances and graduation rates in medical schools and other health profession schools among underrepresented minorities.

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These contributed to the failure of the Association of American Medical College's 3,000 by 2000 initiative, where-by we hoped to have 3,000 medical students in our system by the year 2000 and fell short.

But we understand that we'll never be able to have a match; nor do we advocate for it. But we do advocate for the importance of diversity and the importance of minority health care professionals in designing our systems and in providing care to our communities.

There are various efforts underway, including a very important meeting occurring right now at the National Press Club, where a variety of foundations and others have gathered to discuss how to increase diversity in the health care professions.

Foundations, academic health centers and others have been active in this area.

But I will say to you as a person who's involved in minority recruitment into the health professions, much of our work is unfunded. Much of our work is done after hours. And much of our work is done by just a small few.

Ultimately, (inaudible) committee concluded that increasing the proportion of underrepresented minorities among health professionals can contribute to the elimination of racial and ethnic disparities in health care.

Now I'd like to briefly shift to education. Medical education and my medical education focuses on what we call the prescriptive theory of decision making.

And that prescriptive theory, to simplify, just states that the main variables (inaudible) that we should take into account include the patient's presentation of symptoms and the probability that that patient might have a disease, quite simply, espousing the idea that medicine should be blind to the issues of race and ethnicity, culture and class.

And as such, very little is taught about non-medical factors that impact clinical decision making.

BLOCHE: Very little is taught about the impact of social and cultural variations in health beliefs, behaviors and values, the way different people might present their symptoms differently, the fact that we learned in all our books that chest pain presents in a certain way, and everybody who presents differently perhaps is labeled an atypical presentation. Very little is taught about how to communicate effectively across cultures, what questions to ask to understand that there may be mistrust, that history plays a role in the medical encounter, and that we need to address that, whether we feel we've contributed to that mistrust or not.

In fact, many of these issues are marginalized in medical education and nursing education and health professions education and have not been funded and have not been valued. We understand that this is of special importance, given the fact that we see that stereotyping plays a role, that we understand that communication is critical to quality health care.

So, ultimately, our committee concluded that education of health care providers can contribute to the elimination of racial and ethnic disparities in health care, if we focus on three areas: number one, if we promote education around the fact that disparities exist among both the public and among health care professionals; if we teach health care professionals how they may be susceptible to stereotyping, how they make decisions, and we're never taught that in our education, how we may be susceptible to these things despite being well intentioned; and if we also teach tools and skills to effectively communicate with anybody who enters our door, regardless of their race, ethnicity, culture, class, or language proficiency.

Finally, we think that patients need to be educated as well, and we need to work in partnership with patients. We need to empower patients to understand what questions they should be asking of their health care system and of their health care providers and what ways they should engage in explaining their information to providers, what types of things they could -- information and pieces of their symptom presentation could help their provider make that diagnosis. So we want to foster partnership.

We do want to stress that none of this educational component and none of these issues of diversity can be done without systemic changes, as mentioned previously. Medical encounters that are eight minutes long, 10 minutes long, no matter how much education around cross-cultural competence, no matter how diverse the work force, will never allow us to really get to know and care for our patients. And we think that physicians and patients really want the best thing, which is the best health outcome for them.

Finally, I would just like to advocate for interdisciplinary teams as well, and looking at diversity and thinking about team-based care, and also the implementation of evidence-based dialogues again, so that we're providing the highest

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science of care and using the greatest art of science and art of medicine for all patients. We think that these issues will eliminate disparity as well.

Thank you very much.

CHAIRWOMAN: Thank you.

(UNKNOWN): Madam Chairwoman, distinguished members of Congress, and panelists, I thank you for your invitation to participate in this important hearing.

The recently released report of the Institute of Medicine on racial disparities in health care summarizes decades of research that has not always received the attention that it deserves. Health disparities are a manifestation of the remaining vestiges of the underlying differences in the quality of life and opportunities of American racial minorities.

I have devoted my career to furthering understanding of the causes of racial disparities in health, and I appreciate this opportunity to participate in your efforts to find solutions. While the IOM report is important, it is not the first report published on this topic. It is not even the first such report written by the IOM.

So why am I hopeful that this time the issue will not again lose momentum and exit the national agenda? The reason for my optimism is that I believe that there is potential for the establishment of a national infrastructure to address racial disparities in health.

Creation of the National Center for Minority Health and Health Disparities is among the most important improvements to our nation's health care infrastructure in decades. As one who has been conducting research on minority health and health disparities for many years, I wanted to take this opportunity to thank the **Congressional Black Caucus**, members of Congress in general, and my representative, Congressman Cummings, in particular, for your leadership in creating the center.

This new entity will play an essential role in ensuring that the issue of minority health and ill health remains on the national agenda. But we must not stop there.

American public health and medical researchers have sustained a steady march toward the furtherance of our knowledge of the causes of premature death, ill health, and preventable disability. But while we have been leaders in furthering knowledge and health status and curing disease, we have been less attentive, and some might even say accepting of pervasive disparities in health.

Why is it that African Americans and other racial minorities live sicker and die younger than white Americans? Certainly, the answer is complex and illusive. But there are a few things that we do know. The weight of the evidence, I believe, indicates that the causes of persistent and pervasive race disparities lie in the actions and inactions of individuals and the inequitable outcomes that result from organizations and health systems.

Health care lags behind other government regulated industries, in that health care has not addressed racial discrimination since the desegregation of hospitals. Housing, labor, education, criminal justice -- these areas all have ongoing systems in place to measure and monitor and document discrimination. In contrast, there are many hospitals and health systems that do not even collect data on patients' rights.

My contribution to the IOM report was to outline the basic parameters for the development of such a program in health care. Monitoring systems are not unprecedented in health care. There are existing monitoring programs in health care quality, patient satisfaction, and report cards on health systems.

A health care discrimination monitoring and enforcement system, similar to efforts in housing, will not likely be the solution to the disparities in health status, nor will it solve health care access to problems. However, such a system will help us to move toward equality in health care quality and likely reduce disparities in health care outcomes and health status.

Thank you.

CHAIRWOMAN: Thank you very much.

I thank this panel. There really has been a lot of information that we intend to use as we go through the questioning of our departments.

We are a little bit -- oh, I'm sorry. We have one more person.

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PEREZ: Good morning. I appreciate the notion that the mind can only absorb as much as the seat of the pants can endure, so I will be as brief as possible.

(LAUGHTER)

CHAIRWOMAN: All of you have important pieces to contribute to this overall report, and some of the reports have preceded this one. So, please.

PEREZ: Good morning. My name is Tom Perez, and I had the privilege of serving as the director of the Office for Civil Rights from 1999 to 2001. It's a pleasure to be here today and a pleasure to be here in front of Congressman Cummings, who has been such a friend of the University of Maryland Law School, in particular, and Karen Rothinberg (ph) says hello to you.

I've been a civil rights lawyer my entire career. I was heavily involved in civil rights issues in other contexts prior to 1999. And when I got to the HHS Office for Civil Rights, I devoted a substantial amount of time and energy to the issue of eliminating racial and ethnic disparities in health.

What I learned and concluded was that eliminating racial and ethnic disparities in health is both a civil rights and a public health challenge. And if we ignore the former and simply focus on the latter, we will not get the job done.

I have worked in other contexts, and as a civil rights lawyer, it was regrettably intuitive to me that discrimination affects courtrooms, it affects police precinct rooms, it affects classrooms, and what we have seen in the health care setting is that it can affect the operating room. I didn't think that was a particularly radical proposition, as someone who had been in the civil rights area for a while, but I have discovered that it's a proposition that is challenged by some.

Regrettably, the evidence is to the contrary, and it's very important for us, as we devise a broad-based strategy for eliminating disparities, not to ignore the civil rights dimension of the problem. That's not to say that the civil rights dimension of the problem is the only aspect of the problem, but that's simply to say that we can no longer ignore the fact that discrimination plays a role in explaining the existence of disparities.

Discrimination is more than the acts of individual physicians or other health professionals. It also involves systemic issues, areas where you may have a facially neutral policy in place, but that facially neutral policy can have a discriminatory impact.

A very quick example -- Fulton County, Georgia, which included Atlanta, had a policy in place. If you were applying for Medicaid or CHIP (ph), you had to certify, under penalty of perjury, that everybody in your household was documented, an utterly irrelevant question. And what effect did that have on immigrant populations seeking to apply for CHIP (ph) and Medicaid and other critical health benefits? They left, because they didn't want to apply, because there were people in their households who may not have been documented.

The people themselves who were applying were entirely entitled to receive the benefit. But you had a systems issue there of discrimination.

So we need to attack the issue of physician bias, federal bias, whatever we want to call it, in ways in which Dr. Bectancourt and others have described. But we also need to attack the issue of disparate impact, other forms of systemic discrimination.

I spent a lot of time as a staffer to Senator Kennedy, sitting behind the members, and I would often think to myself, "OK, I'm very interested in what's being said, but what can we do? What'll happen after today so this is not just another conversation about an important issue?"

That's what I'd like to turn to, some very concrete suggestions about the civil rights aspect of racial and ethnic disparities and what I believe you can do and other members of Congress. I believe it's very important to strengthen the health care related civil rights infrastructure.

It's a real orphan issue in the civil rights community. There are very few private organizations that actually do health care related civil rights work. I can count on one hand the number of national organizations that have a steady diet of this work, regrettably, and we need to change that.

The Office for Civil Rights, which I had the privilege of working at, is an organization that has been, frankly, grossly underfunded for a number of years. The first year of OCR-HHS's existence was 1980. That year, the budget

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was \$22 million. The first year of Clinton-Gore in 1993, the budget was \$22 million. In the year 2000, the budget was \$22 million. It went from 550 employees to 225, and yet the challenges just increased exponentially.

Fortunately, under Secretary Shalala's leadership, there was a significant budget increase in the last year to something like \$28 million or \$29 million. But that's grossly less than what needs to take place, what needs to be in place.

So I encourage you to continue your efforts to support the Office for Civil Rights. And it's important to move beyond simply the numbers, and as Deputy Secretary Allen said, don't look at the rhetoric, look at the outcome. And I hope that we hold them accountable for that, because there's a mission group going on there as well. They enforce the privacy regulations.

So as you look at increased numbers, it's important to look behind the numbers and say, "OK, what percentage of this is going to go into the disparities work," because that is where we need to be vigilant in our efforts. All of the work is critically important, but we cannot ignore the disparities related work.

Dr. Bloche referred to fixing the *Standoval* (ph) case. Regrettably, about a year ago, the Supreme Court came down with a ruling that said that private plaintiffs cannot sue under the Title 6 regulations to attack disparate impact.

So, say, you have a policy in place involving kidney transplants -- and we all know that racial disparities in access to kidney transplants are rampant. And it may not be the result of overt discrimination, but there may be systems issues in place that have a discriminatory impact.

Private plaintiffs can't sue under the Title 6 regulations anymore to address that issue. Congress needs to fix that, and I know a coalition of civil rights groups have been working on such a fix, and I encourage active involvement and participation by Congress in this effort, because right now, private plaintiffs are fighting the battle against discrimination in health care with one hand tied behind their back as a result of *Standoval* (ph).

A language access agenda is a critically important intervention that Congress can very much support. Language access is the low-hanging fruit of racial and ethnic disparities. If you can't communicate with your doctor, you can't get access to the proper quality health care.

As we know, under Title 6, recipients of federal funds have the obligation. It's not the obligation of the patients to bring a sibling or a mother or a brother to translate. It's the obligation of the provider to ensure meaningful access.

PEREZ: President Clinton issued an executive order on this issue in 2000. Following that, 10 agencies issued policy guidance which gave guidance to providers of health care and other providers in the labor context and elsewhere on how they can ensure compliance in a flexible manner that doesn't break the bank with the requirements.

Regrettably, the American Medical Association has led an assault on the HHS guidance and is seeking to scuttle it, and that, regrettably, is still ongoing. So I encourage Congress to be involved in that, because, again, language access is the low-hanging fruit of racial and ethnic disparities. If we can't communicate, we can't deliver appropriate health care.

Finally, in the managed care context, I've done a significant amount of work with the National Medical Association on the issue of discrimination in managed care and have heard from countless numbers of doctors about the issue of dis-enrollment of African American physicians from managed care networks. And what we hear about it from the providers, from the networks, is that it's all about economics.

But the problem here is that African American and other physicians of color tend to treat large numbers of patients of color. And what's happening is that there is a perception, or misperception, as it might be, that this is a costly book of business to undertake, and so they're getting kicked out of these networks.

I believe that that may implicate civil rights laws and have been working with the National Medical Association. I urge you to give attention to this issue, because it is a critically important issue of access to health care in the managed care context.

And as it relates to data, the important findings that were articulated before -- in California, as some know, there is a racial privacy initiative that may make the ballots this fall that would prohibit the collection of data. And I wanted to bring that to your attention, because it is a real threat to efforts to deliver effective health care through the collection of appropriate data relating to race and ethnicity.

Thank you very much for your time.

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CHAIRWOMAN: Thank you. As I started to say earlier, this helps us to lay the foundation for what is going to continue and the kinds of questions that we're going to be asking of the agencies when they come forward.

We are a little delayed in time, and I'd like to move on to the next panel unless there is a burning and brief question.

UNKNOWN: I just want to say thank you for coming.

CHAIRWOMAN: And thank you for all of the work that you have done. We recognize that this is not the first Institute of Medicine report, and there are many very significant reports that came before, and put all together, they really do give us a great blueprint for what we have to do.

Thank you very much. And I hope you'll be able to stay and participate later on in the rest of the panels.

I forgot to make an announcement about cell phones. If they could either be turned off or placed on buzz, because we are recording this, and it interferes with the recording.

I want to acknowledge the fact that the Kaiser Network.org and Urban Health Task.com are here and doing the taping for web cast today with us.

We do have refreshments in the back. We'll continue to have refreshments throughout the hearing, because we'd like everyone to stay and participate throughout the entire session.

Some of our members are going to be leaving. Others will be coming. Some will be going out and coming back. So we thank you, both of our members, Diane Watson and Congressman Cummings, for being here with us this morning. They will be back.

Again, as the next panel prepares to join us at the table, Panel Two -- Summit Health Institute for Research Education, Inc., and the National Committee on Vital and Health Statistics. That's Ms. Ruth Perot, Dr. Vicki Mays, Dr. Patricia O'Campo -- I would ask that anyone who is on the responding Panel Three, please look at your agenda, please join us up here. This panel will be joining us up here once you've given your testimony this morning.

Let me read some brief bios. Ms. Perot is co-founder and executive director of Summit Health Institute for Research Education which serves as a resource for the achievement of health parity and optimal health for all Americans.

Ms. Perot is the principal author of a study, the results of which were published in September of last year by the Commonwealth Fund entitled "Racial, Ethnic, and Primary Language Data Collection in the Health Care System: An Assessment of Federal Policies and Practices."

Dr. Vicki Mays is the chair of the Subcommittee on Population of the National Committee on Vital and Health Statistics and a professor of psychology at the University of California at Los Angeles. She was a fellow in the Rand Corporation Health Policy Program, and in addition to her Ph.D. in clinical psychology, she has an Ms.Ph. in health services from UCLA's School of Public Health.

She has served continuously as a principal or co-principal investigator since the early '80s on a number of NIH grants. She has published a number of articles on disparities in general health and mental health among racial and ethnic groups.

Dr. Patricia O'Campo is a social epidemiologist and an associate professor in the Department of Population and Family and Sciences and the Department of Epidemiology at the Johns Hopkins University Bloomberg School of Public Health. She has been applying methods of social epidemiology to issues of women, infants, and children's health for over 10 years, and her research has focused on the area of social and racial inequities in women and children's health.

We heard a lot from the previous panel about the need for data, and this panel is going to help us begin to respond to those urgent calls for improvement in data collection. We're going to begin with Ms. Ruth Perot.

PEROT: Thank you, Madam Chair, and I do want to thank you for your inspirational and tireless leadership for the elimination of health disparities and the attainment of optimal health. Those are the goals that our organization, Summit Health Institute for Research and Education, enthusiastically shares.

The Institute of Medicine has produced an extraordinary report, and I believe that "Unequal Treatment" has the potential to accomplish what few studies have ever achieved, that is, to be a catalyst for real social change. And I wanted to thank the authors of that report, because those of us who are working in the vineyards have some new tools with which to work. We are profoundly grateful.

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CHAIRWOMAN: Excuse me for a minute. Any conversations -- could we please take them outside? We are recording, and it's important that we have quiet in the background. Thank you.

PEROT: There are many critically important recommendations in the report, but I would suggest that the recommendations on data probably belong in a class of themselves, for it is truly acclimatic (ph) that minority health data constitutes the engine that powers our campaign to eliminate health disparities. Without these data, how can we ever possibly know what disparities exist, what disparities are being reduced, and for whom?

So I concur totally with Dr. Hill's comments on data, and I urge you, the members of Congress, to review the IOM recommendations, which, by the way, parallel very closely the recommendations in our report. For those who do not have a copy of it, I am going to be very briefly discussing the report entitled "Racial, Ethnic, and Primary Language Data Collection in the Health Care System: An Assessment of Federal Policies and Practices."

The co-author of the report is Maura Utelman (ph) from the National Health Law Program, and it was published by the Commonwealth Fund. It's available at its web site at <http://www.cmf.org>.

When my organization, SHIRE, approached the Commonwealth Fund for assistance to look at federal policies in this area, the policy picture was rather cloudy. We had heard from the field that there were some health plans -- and even from federal employees -- who seemed to understand that collecting data by race, ethnicity, and primary language was actually illegal.

Dr. Collins and her colleagues had heard similar reports, and they agreed that the time was truly right for setting that myth aside. Therefore, SHIRE and our study partner were charged to accomplish three specific goals, first, to ascertain whether data collection and reporting by race, ethnicity, and primary language are legal; two, to identify, analyze, and describe current federal policies and practices with respect to the collection of these data; and, three, to assess the context and the rationale and implications for the data.

Our two organizations conducted the investigation over 14 months, and we interviewed 60 federal employees. We looked at 100 different policies, and we also reviewed 100 data collection vehicles. We were able to conclude as a result of this assessment the following:

? First, collection and reporting of data on race, ethnicity, and primary language are legal and authorized under Title 6 of the Civil Rights Act of 1964.

? Second, an increasing number of federal policies emphasize the need for obtaining racial and ethnic data, and there's a high level of agreement, in fact, that primary language data should also be collected.

? Three, there's general agreement that racial, ethnic, and primary language data are critical to promote health and quality health care for all Americans, and that agreement is reflected not only in our interviews, but in our review of existing policies.

? Finally, despite its importance as a tool for assessing progress toward stated goals, federal data collection is not uniform. Data requirements and methods for collecting data vary greatly across federal agencies. They do not reflect the consensus that's available by way of the policies and the interviews.

Now, with respect to the issue of legality, few people seem to know that data collection by race is a very old practice in our country. The first U.S. census in 1790 collected data on race, identifying whites and blacks as part of the census process.

But it might also be useful to review the language of the Civil Rights Act in Title 6: No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Now, this language provides a legal foundation for the collection of racial and ethnic data, even when a specific statutory requirement does not exist.

Our second finding spoke to the increasing number of federal policies that emphasize the need for obtaining data. Those policies, we found, were five statutes and five sets of regulations that specifically require the collection of data by race, ethnicity, and primary language.

Over the years, a number of HHS policies and initiatives have also been launched which focus on this. You may recall the Heckler (ph) Report in the Reagan administration issued in 1985, one of the earlier statements of policy that talked about the need for such data; the HHS Inclusion Policy of '97, President Clinton's initiative to eliminate racial and

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ethnic disparities in health in '98; of course, Healthy People 2010, the RMH (ph) release of culturally and linguistically appropriate standards; and, of course, the work of the National Committee on Vital and Health Statistics, whose representatives will be speaking shortly.

There's a clear take-home message from our review of the policies and the laws, and that is this: At the federal level, data collection by race, ethnicity, and primary language is always legal, sometimes required, frequently encouraged, and never prohibited.

Now, with respect to our other finding, the predominant reason given for why we need this data by the federal employees and respondents we talked to and looking at all the policies was this -- and that is to identify and eliminate health disparities. That's the compelling reason for doing so in all the policies we reviewed, or many of the policies we reviewed.

There are other reasons, to assure fair and nondiscriminatory treatment, as required under Title 6; to promote higher quality care; to target prevention, health education, and treatment efforts; and to monitor trends and advance public health. And, in fact, there's a good deal of discussion now about improving the competitive advantage of health plans, so-called best business case, by having such data available.

And then, finally, with regard to our last finding, we did uncover an apparent dichotomy. There are policies that say we should collect these data, but on the other hand, as Dr. Hill described so effectively, there are many anomalies with regard to incomplete data, inconsistent data, and inadequate quality of data. At the same time, the experts we talked to agreed that no matter how the challenges might appear, they are not insurmountable, and with the right investment of leadership and resources, they could certainly be overcome.

PEROT: I have three sets of recommendations, Madam Chair. First, to the members of Congress, there should be resources provided that will allow HHS leadership to continue and expand its leadership role in collecting and reporting minority health data and enforcing existing data requirements.

Secondly, although clearly we do not need new laws to collect these data, it seems to be very helpful when Congress sends a signal that these data are going to be required. It provides a very clear administrative framework for HHS and other agencies when Congress speaks clearly on this issue.

And, finally, with regard to Congress, we would certainly agree that all of the recommendations in the IOM report and ours should be reviewed for their legislative implications.

A very quick recommendation to HHS is the following. The Department of HHS should recommit to the national goal of eliminating racial and ethnic disparities. We heard that there was such a recommitment today, but at the same time, there would be need for a commitment to collect the data on a systematic basis so that that commitment can be, in fact, realized.

A third and final set of recommendations to the members of the Braintrust -- Tom Perez spoke briefly about the Ward Connelly (ph) racial privacy initiative in California. It would prohibit state and local governments from collecting or using information about race, ethnicity, color, or national origin. There's a flyer on the table that describes it.

You may recall that Ward Connelly (ph) was the author and architect of Proposition 209, which was the beginning of the end as far as affirmative action is concerned. If this initiative is successful in November, I believe very strongly that we are going to be in for a very difficult time in being able to maintain our focus on eliminating health disparities. Anyone in California or who has contacts in California should be very much engaged in this issue. I understand the African American community has not been engaged in the issue as of yet.

I believe those are my key recommendations. Thank you.

CHAIRWOMAN: Thank you very much.

Dr. Vicki Mays?

MAYS: Thank you. I'm here today in my capacity as a member of the National Committee on Vital and Health Statistics, where I chair the Subcommittee on Population.

The National Committee on Vital and Health Statistics is one of the oldest formal advisory groups serving the Department of Health and Human Services. Its recommendations have helped to shape the nation's health information policy for over 50 years. As a matter of fact, I will recommend to you that you actually get a copy of our publication.

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The committee is charged with advising the secretary of HHS, for example, on issues involving health statistics. The NCVHS also provides a bridge between the government, the health industry, and research in public health communities, as well as connections to those who are working on health policy in our country.

The committee is composed of experts from local government, the private sector, academia, and others who specialize in such areas as health statistics, epidemiology, health care research, state health data systems, health insurance, survey research, medical records privacy, and medical informatics. Congress actually appoints two of the members to this committee, and the others are appointed by the HHS secretary.

The committee's attention to issues pertaining to data collection and minority health can be tracked as far back as 1964. It was at that time we had discussions and also presented to HHS recommendations of the inadequacy of health information non-white, racial, and ethnic groups.

Since 1964, the committee has addressed issues involving racial and ethnic health disparities in a number of ways in its endeavor to help assist HHS. Generally, a lot of this work is done under the auspices of the Subcommittee on Population.

The subcommittee has a variety of mechanisms that it uses to do this work, which includes meetings with panels of experts, hearing where public testimony is collected, commissioning papers, and we also, again, make recommendations to the HHS secretary. The meetings and hearings, of course, are open to the public, and we try to hear about issues from all sides.

The subcommittee specifically focuses on population based data and data about specific vulnerable groups that are disadvantaged by virtue of their special needs, which include economic status, race ethnicity, disability, age, and even area of residence. The subcommittee identifies health and health care related concerns for different populations and recommends priorities, strategies, and opportunities for identifying and gathering improved data to address these issues.

Now, why collect racial and ethnic data? I think we've had some clear messages about this this morning, but let me also add some additional features.

Racial and ethnic data can help health care providers focus on prevention, health education, and treatment efforts for a specific demographic group on health conditions which are prevalent in those groups. Analysis of data based on race and ethnicity of patients can also help health care providers to identify and track similarities and differences in quality of care among various geographic, cultural, and ethnic groups, and also to evaluate programs and health plan performances.

Data based on race, ethnicity, and national origin can also facilitate culturally and linguistically appropriate health care, which, as we have heard this morning, is very important. Finally, when HHS conducts a compliance review or a complaint investigation, the HHS Office for Civil Rights often requires recipients of federal financial assistance to provide racial and ethnic data to analyze whether their programs comply with Title 6. Collecting such data may alert organizations to the potential Title 6 issues before they arise.

The committee is currently involved in a number of activities, and I'd like to give some examples of those, which are focusing right now on the issue of data collection in the area of racial and ethnic disparities. The committee is an active player in the federal statistic arena.

For example, the subcommittee weighed in on comments to the Office of Management and Budget during the revision of the federal standards for the collection and reporting of racial and ethnic data. In addition to discussing various aspects of that OMB guide, the committee noted the need for greater direction and leadership on the implications of the use of a tabulation and bridge method.

The guidelines now allow persons of mixed race to report more than one race on federal forms and in surveys. The subcommittee is still following this issue regarding the implementation of these guidelines.

The subcommittee also encourages HHS to continue to gather racial and ethnic data to make improvements as opportunities arise. Recently, in response to a Medicaid managed care notice of proposed rule making, the subcommittee, through the entire NCVHS full committee, sent a letter to the centers for Medicare and Medicaid services commenting on a need to maintain collection of data on race and ethnicity for Medicaid managed care services. Accompanying the comments was a copy of a 2000 report which focused on data gathering and reporting under Medicaid managed care.

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Later, we also commented on the administration for supporting the continuation of collection of data on race and ethnicity in the states' Children's Health Insurance Program. But we also emphasized the value of the collection of data on the language of SCHIP participants.

The subcommittee noted that the language of participants may be related to efforts to ensure better health outcomes, and that language is central to the evaluation of health education, patient satisfaction, receipt of access to services, and a number of other critical areas in health care interaction. In 1999, we produced a report on the health data needs of the Pacific insular areas, Puerto Rico and the U.S. Virgin Islands. And, again, we identified special infrastructure and data collection needs of the special populations, and it contained recommendations to address challenges involving training, information infrastructure needs, culture, and the use of better information and statistics to improve public health.

The hearings conducted with representatives from the islands in the subsequent reports have contributed to increased activities in these areas by CDC, HERSA (ph), SANFRA (ph), and an increase in collaboration between the Department of Interior and the Indian Health Services in the area of patient care information systems.

Again, the National Committee on Vital and Health Statistics, particularly the Subcommittee on Population, tries to serve in a leadership role in advising the department. We comment on initiatives, we organize panels of experts, and advise in the areas of race, ethnicity, and health statistics. The full committee and the subcommittee coordinate activities with the HHS Data Council and other federal statistics groups.

Looking at our current activities, we just recently opened a series of hearings, during which we plan to examine major sources of data which might be useful in their present form or with modifications to help us get a better understanding of disparities in health. While current data on mortality of population subgroups, differences in treatment protocol, and differences in outcome and health status have clearly indicated that disparities do exist, the exact nature of these disparities, their occurrence, their distribution within populations, and their causes are what still remains less understood.

A growing body of literature indicates that disparities exist, and even when such factors as income, age, and health insurance are taken into consideration, we know that that's the case. The subcommittee feels that in order for HHS to fulfill its role as a leader in the effort to eliminate health disparities, the current knowledge base needs to be expanded beyond just race and ethnicity in order to understand the occurrence and full impact of circumstances that lead to disparities across the entire population spectrum.

The first hearing that we conducted on this topic consisted of several panels from HHS agencies that conduct health surveys. And we also brought in researchers who use the data from those surveys in order to address the issue of disparity.

The meeting was well attended, and I think it spoke to the need. We consider it to have been successful. We will publish the findings as a part of a report covering the subcommittee's recommendations to the HHS secretary on improving the department's ability to understand, to monitor, and to take preventative actions against racial and ethnic health disparities.

A second hearing is being scheduled for later in the spring. At this hearing, we will hear from representatives from state governments that either collect survey data on topics related to disparities in racial and ethnic groups or that use administrative data to study the topic.

We will also have a third hearing at which we hope to hear about related activities from some of the larger private sector organizations which also collect health data, particularly corporations who self insure.

It is generally understood that racial and ethnic data serve as surrogate markers for data that are harder to obtain. But more important than simple biologic data, these and other data include information on cultural, social, economic, and environmental and other contextual factors. This additional information includes such variables as language, length of time residing in the U.S.A. -- in other words, the problems involved in disparities in health are likely to involve far many other factors than simply skin color.

While developing the research methodology necessary to gather these data would be massive and also a resource intensive effort, nonetheless, the subcommittee hopes to be able to learn about advances in this area and to encourage this type of work within HHS. Additionally, we hope to be able to make contributions to furthering the research needed to develop a standard set of indicators which would be used to monitor progress in eliminating disparities in health.

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Without such indicators, meaningful monitoring could not be conducted, and it also would be difficult, if not impossible, to measure progress.

The administrative simplification provisions of HIPAA of 1996 have contributed to remarkable ongoing improvements in the standardization, collection, and privacy of medical records and payment data. This process by which HHS identified and published its recommended standards for enrollment in health plans and certain aspects of encounters is remarkable and is an illustration of a highly successful collaboration between the department and the private sector.

Yet, because most of the implementation of the HIPAA provisions for data has been driven by business need, it has been difficult to make the case for requiring racial and ethnic data to be standard data items collected under HIPAA transactions. The subcommittee will continue to exert its influence to persuade the private sector to develop standards in organizations working with the department to make the collection of racial and ethnic data part of the formal data collected as part of the implementation of HIPAA.

By virtue of its ability to call hearings and to promote consensus, the National Committee on Vital and Health Statistics is an excellent vehicle through which to further the collaborative process that's necessary in order to try and develop this consensus.

There are situations when an agency collector has collected data that would inform the department's efforts to better understand and prevent racial and ethnic disparities in health. But this data has not been published for various reasons, including, for example, the under statistical sample size requirement for publication, or sometimes lack of analytic resources. The subcommittee, again, will continue to encourage the use of innovative analyst practices, the provision of public use data tapes to extend the analytic potential of data sets, and also, importantly, the involvement of racial and ethnic minority researchers.

A continuing concern of this subcommittee will be the challenges and opportunities around the complexity implications of the potential interpretation of multiple race data as collected under the revised OMB guidelines. The process of collecting, analyzing, and tabulating data on multiple race populations is one for which the committee recommends further research and evaluation.

MAYS: The committee will maintain its focus on standards for federal data on race and ethnicity with ongoing activities, panel presentations, and even further hearings.

In concluding, the National Committee on Vital and Health Statistics will continue to deliberate how its expertise and recommendations can be best used to educate policy makers, including members of Congress, about information's essential role in relation to health. Ultimately, the major thrust of all these efforts is to improve the health status of all Americans, which includes addressing racial and ethnic disparity in health care, which will bear the full attention of the Subcommittee on Population.

While additional resources need to be brought to bear on the improved collection of data related to race and ethnicity, this is a time ripe with excellent opportunities for improving the collection of racial and ethnic data and understanding disparities in health. The HIPAA consensus project between the federal government and the private sector is a model of achieving results in national data policy which will benefit all Americans.

The tragic events surrounding September 11th have also focused a new energy and attention on improved public health data systems, which, if developed with care and forethought, can help further our understanding and prevention of health disparities. The committee has recently forwarded its report on improving the national health information infrastructure to the secretary. This report contains a series of recommendations.

That concludes my remarks. I will be happy to answer any questions later.

O'CAMPO: Thank you for inviting me to speak about the importance of having adequate data. As a social epidemiologist, much of my research concerns the need to have adequate data to characterize social determinants of health.

What I'd like to talk about today is the need to have better data on socioeconomic standing if we are to understand the ways in which racial inequalities in health occur. By socioeconomic standing, what I really am talking about is the stratification of society into classes or groups that have differential access to economic, political, health, housing, social, and other resources.

The measures that we use should help us to understand whether and why some people have more material resources or power or prestige than others, whether and how socioeconomic standing has an impact on health, how socioeconomic

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standing varies by race and ethnicity, and how socioeconomic standing can help to explain the racial inequalities in health that we have heard about so much in the past couple of days.

Our current data that we have, especially in the national data sets that we collect, are really inadequate for describing socioeconomic positions and how they're related to racial inequalities in health. Social position and socioeconomic standing is a very complex phenomenon, and we really need multiple indicators in order to describe it.

For other complex phenomena, we always have multiple indicators to characterize them. Take the obvious example of health. For health, we have indicators of morbidity, of disability, of various diseases.

Usually, we use more than one indicator, and even for a particular condition, such as mental health, we usually have dozens, if not hundreds, of indicators to describe various states of mental health. For example, we use depression, we use anxiety, we can use dependence on substances, dependence on alcohol, post traumatic stress disorder, et cetera.

So for socioeconomic standing, we also need a complexity of indicators in order to understand what's going on there. And typical indicators that we tend to use, for example, education and sometimes, but less often, income, are really not adequate for us to understand the complexity of socioeconomic standing.

We can see from some data that Oliver and Shapiro (ph) have published, looking at wealth differences across the U.S. population, how education may not be adequate to help us understand what's going on and to characterize socioeconomic standing. What Oliver and Shapiro (ph) did is they stratified a national sample by levels of education, and they illustrated the heterogeneity that existed by racial groups within given levels of education.

So, for example, if we take all of those people who have a high school education, and we look at the differences by race in income, we can see that whites with a high school education had an average income of about \$17,000, whereas blacks had an average income of about \$11,000. If we take those who have a greater than college education, the differences are greater. So everybody who had a greater than college education -- for whites, the average income level was about \$40,000, whereas for blacks, it was about \$9,000 less.

So if we only use education to characterize socioeconomic standing, we really are missing a gap that exists, at least between whites and blacks. Although we use income often in addition to education, that's probably not enough. And, again, if we take the data from Oliver and Shapiro (ph), they show that net worth is probably a more important indicator that describes and characterizes the economic resources that are available to an individual or to a family.

So, again, if we take the group that had just the high school education, we can see that there is a very big difference in the net worth of blacks and whites. So among those who had a high school education, whites had an average net worth of \$32,000, while blacks had an average net worth of \$1,100.

If we take the group who had a greater than college education, the gap is even greater. Whites, on average, had a net worth of almost \$80,000, while blacks had a net worth of about \$17,000.

So, again, if we just use a single indicator of education, or even if we add income to that, we're not capturing what's really going on when it comes to socioeconomic standing. A couple of comments related to that is that, oftentimes, in national surveys, we just look at the current socioeconomic standing of an individual, and we don't look across the whole life course.

We do know that there may be some critical periods of exposure that may matter later on in life. So, for example, childhood poverty, especially longstanding childhood poverty, may affect the health trajectory in later life, and that's important to measure as well.

I also would like to add that just focusing on individual level indicators may be inadequate. There are data to show that, in fact, looking at the characteristics of residential neighborhood may also be important.

So a study that we did in Baltimore where we were looking at the risk of violence showed that including measures of residential neighborhood, especially in relation to characterizing it with respect to income, was very important in understanding the risk of violence up and over the individual level measures of income and education that we had included. And, in fact, the magnitude of effect of the neighborhood indicators were much greater.

So, for example, the risk of violence level differed by a factor of about twofold for individual level of education, but when we also included information on the neighborhood average level of income, those who were residing in the poorest neighborhoods in Baltimore had four times the risk of violence compared to those who were not living in the very lowest income neighborhoods. So the magnitude of effect there was also important to consider.

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In addition to identifying neighborhood as an important contributor to health, we also found that once we did consider the characteristics of the incomes of the neighborhood, we also found that there were racial differences in terms of the risk of violence that were not there when we did not consider the neighborhood information. So once we considered the neighborhood information, we found that, in fact, white women had a much higher risk of violence compared to African American women in our sample.

So it would be important, then, to consider area level measures, because they may help to capture the complexities of socioeconomic standing that usually aren't available to us when we don't consider that.

So I think to summarize, then, I would just like to say that it's important that we think about including a complex set of indicators to capture socioeconomic standing, especially in the national data sets that we use to understand racial inequalities in health, and that we include numerous individual, as well as the ability to access area level measures when we're measuring socioeconomic standing. And although it may seem like a tall order to include measures of wealth, measures of income, as well as measures of area characteristics, the solution is quite easy, because the scales already exist. They've already been validated in many studies, and it's relatively easy to do.

So, really, what I would do is I would urge us to have a high level of commitment to change the current data collection effort to include the collection of multiple indicators of socioeconomic standing so that we can not only help to better understand the major contributors to adverse health for all, but the sources of racial inequalities in health, in particular.

Thank you.

CHAIRWOMAN: I really want to thank this panel. Each of you has contributed a different piece of the data information for us.

We're not going to ask any questions at this point. Again, your testimony is to help inform us for the questions that we're going to be asking of our departments. We thank you for some very concrete recommendations that you have left with us to follow up on.

Why doesn't everybody just stretch a bit? We're going to go into the next panel right away. We're a little behind schedule, and I know that some of our agencies are waiting anxiously to get to this table and testify and be questioned by all of us.

OK. That was supposed to be a brief stretch, everyone.

CHAIRWOMAN: OK. That was supposed to be a brief stretch, everyone. Would everyone take their seats? The refreshments will be there throughout the day.

We're going to go a little bit out of order. The Kaiser Family Foundation is having an event today at the National Press Club, and so we're going to ask Dr. Marsha Lillie-Blanton, the vice president, to be the first respondent. Well, she's not back yet.

Well, let's start in order, and we'll have her speak when she comes back in. She's probably just out making a call.

This panel is going to just bring you a few minutes on some of the issues that are important to their organizations and the people that they represent with respect to disparities in health care, again, helping us to lay out the landscape as we prepare to receive testimony and ask questions of the department.

So we'll begin with Dr. Lucille Perez, who is the president of the National Medical Association, which represents the approximately 22,000 African American physicians in this country.

PEREZ: We claim 25,000.

CHAIRWOMAN: Twenty-five thousand, still too little, but 25,000. Thank you. Go ahead.

PEREZ: I thank you, Congresswoman, and I always give thanks and praise to my Lord for making it possible for me to be here and to commend the **Congressional Black Caucus** for convening such a panel and for having this particular hearing.

All of the testimony that went before points to how vitally important it is that an association like the National Medical Association in collaboration with the **Congressional Black Caucus** must move forward. We have heard over and over and over again that the release of "Unequal Treatment" by the IOM, which was commissioned by the **Congres-**

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sional Black Caucus with the leadership of you, Congresswoman, and the Honorable Jesse Jackson, Jr. -- but this just represents another report. We have gone through at least two reconstruction periods as it relates to black health, and yet I sit here as a black woman, a second generation African American physician, and when I walk into the emergency room, I get the poorest type of care possible, and this has got to stop.

I had the opportunity to speak to a reporter -- and this speaks to just cultural competency -- when I had to tell her that if her six-year-old boy was playing with another six-year-old, and they were playing soccer, and both of them were injured, this woman's son -- let's call him Joey, and the other boy, we'll call him Ted, and Ted was white and Joey was black -- if they both were rushed into the emergency room, and her son was treated -- they both had a fracture -- her son versus the other child, the white child might receive a little Demerol for pain prior to having his leg set, and her son might get a Tylenol. That decision by the same physician would be made on the basis of their color, being very afraid that substance abuse -- you know how black people are -- would be at risk for an addictive disease if they were to begin to think about using Demerol.

So I think that it is important that we take not only the facts that we've heard here, but we have got to relay these facts in a culturally competent manner so that people understand this. So it is important for the National Medical Association to say that this is an important first step.

But there are communities out there that need to hear over and over and over and over again that the federal government, all three branches of the federal government, are committed to addressing unequal treatment. This has been going on for centuries, and we are sick and tired of being sick and tired.

When I sat here and I heard the numbers, and I said because of the color of my skin and the neighborhood in which I may live in, the probability that I will have the opportunity to dance at my granddaughter's wedding is reduced. The fact that regardless of how hard I study, no matter how much I am committed, that the money that I will ever make to realize my dreams is going to be so significantly reduced -- we've got to do something about it. We have got to do something about it.

This cannot remain the way it is. Only in the words of Howell Freedman (ph), another member of the National Medical Association -- if we just put into place those things that are already on the books. When we look at Title 6, and we take Title 6 and we apply it just to the hospitals -- if we look in New York City, how many hospitals in Chocolate City, New York City, where I come from -- how many of the executive directors of hospitals look like me or anybody else up here on this board. They don't. They don't.

So how can we begin to see a change if we don't make those kinds of changes? And those are changes -- we are talking about equal employment. Why isn't there a difference there? We've got to begin to address this. And I know that we will have the opportunity to address many of these issues when we speak to our federal partners on this issue.

But as we move forward, we have got to use the IOM report as a backdrop, and as we use it as a backdrop and just follow the recommendations -- it was commissioned by Congress, with the support of the NMA, and I think Dr. Gary Dennis (ph) is here, who was president of the NMA at that time, which pushed to make sure that there was adequate funding for that report to go on. We need to take those recommendations and we need to apply them.

We need to make sure that within the Department of Health and Human Services, there is an infrastructure, an infrastructure with which to carry out the recommendations that we've been hearing about this morning. We need -- we know -- and my time is up -- we know -- and I know that I will have -- I have so much to say.

The last thing that I have got to point out is we and you can make a difference as it relates to Alcee and me. We are not represented on any of these regulatory boards. So how can we expect to ever see a change?

So I have so much more to say, and I...

CHAIRWOMAN: Are you going to be with us for the rest of the afternoon?

PEREZ: Yes, I will. It will take a brief period to make sure that our representation and diversity of health care providers is there. But I, again, thank you for the opportunity to be a part of this panel, and our report on racism and medicine is also available to you.

CHAIRWOMAN: Thank you.

We'll now hear from Dr. Marsha Lillie-Blanton, the vice president of the Kaiser Family Foundation.

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LILLIE-BLANTON: Thank you so much. I appreciate you allowing me to go forward sooner. We have another panel or forum at the National Press Club on diversity in the work force.

First, I'd like to thank Madam Chairwoman for this opportunity and, in particular, thank all of the caucuses for convening today's hearing on the department's efforts to eliminate racial and ethnic disparities in health. The recently released IOM report on "Unequal Treatment" has helped to refocus the nation's attention on racial and ethnic disparities in medical care.

The IOM report provides compelling evidence that racial and ethnic disparities persist today. And while they give many different reasons and factors for why these disparities persist -- some patient level, some provider level, some system level -- it is our hope, our expectation, that this report will help to make it very clear that the problems are real, and that research from hence forth should focus on better understanding the underlying causes and the interventions. While, certainly, research to document the problem is important, we are at the point where we need to know more about the whys and the hows to address the problem.

I want to say a few brief words about two issues, one, why this issue is so challenging, and, secondly, what I see as some of the recommendations that are needed to strengthen the federal response.

The problem is challenging for many reasons, some of which we've already heard about today, the history of race relations in this country, in particular. But we have an extra level of complexity in our health care system, and that has to do with perceptions and misperceptions of the problem.

The battle we are waging in this country is with perceptions as well as with the reality of life in America. There are two issues in particular I want to mention.

One is that the public has a marginal, at best, awareness of disparities in our health care system. In a national survey that we conducted, we found that most Americans don't recognize the differences in just basic indicators, such as infant mortality or insurance coverage.

We also found that, by and large, a significant majority of the public does not recognize that minority Americans don't get the same quality of care that the rest of the public gets. And, of course, there are differences in terms of what minority populations perceive. But these views make it very clear to us that the challenge we face is one of perception.

Secondly, there is a common misperception that the problem is all about patient characteristics -- and we've heard that this morning from the department's response -- characteristics of the patients in terms of when we present for health care, characteristics in terms of our preferences for care. And yet these perceptions persist despite an abundance of studies that control the patient level factors, whether measured by income, severity of health condition.

So the perceptions are a problem, and perceptions influence the actions that are taken or not taken to change policy and practices. If the public is unaware of a problem, it would be very difficult to mount effective efforts to address that problem. Societal change requires a public understanding and a willingness, as well as resources, to address the problem.

Now, in terms of strengthening the response, I want to keep that, the perceptions, as a backdrop. But there are at least three particular areas I want to mention in terms of strengthening the response.

LILLIE-BLANTON: First, I think it's important for us to note that while the department has made great gains -- in particular, announcing the national initiative to eliminate health disparities in six areas by 2010 was a bold, a very bold step forward. Unfortunately, though, at this present time, the department lacks visible senior leadership to direct and garner support for the efforts under way in the various agencies.

That senior leadership is critically important when you're addressing such a controversial issue, an issue that has such a long history in this nation. To strengthen the federal response, I want to suggest three things, in addition to the issue of strengthening leadership.

First, I think we need to strategically link the work on disparity to existing department efforts around improving the quality of medical care and patient safety. Initiatives on quality and patient safety have new dollars and the attention of clinicians and policy makers. It would be a missed opportunity if the medical care needs and concerns of people of color are not well integrated into the plans for research and new interventions in these areas.

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Efforts regarding disparity appear to be competing for scarce resources. In fact, they are. The view that focused efforts need new resources rather than integration and allocation or reallocation of some of the existing resources will hamper the short-term progress that can be achieved.

This shift in direction is no small feat, in large part because the efforts on racial disparities are moving along on one track, and the efforts on quality are moving along on a different track. Bringing those pieces together will be important for change.

Second, as we have heard today, we must move forward to improve our information system and the data used to answer questions about health and medical conditions of people of color. I won't spend much time on that, because we've heard from Dr. Hill, we've heard from Ruth Perot, and I think it's very clear that one of the problems we face in this country is that we don't have the data.

One reason we know so little about the health of Latinos, of Asians, of native Americans is that we simply have not collected the data. We have an additional problem with managed care plans, with insurers in general, but managed care plans in particular, because of concerns about the legality of collecting the data. It is an issue that government can help to address, and I think the report that was just recently issued will help enormously in correcting some of the misperceptions.

Third, to relate to my first issue, the department must continue its efforts to improve the public awareness that this nation continues to be challenged in ensuring that every American has timely access to high quality medical care. If it is not on the public radar screen, it will be very difficult for this issue to be a part of the policy or the public policy agenda.

These efforts are extremely important. The foundation is now working with the medical community, engaged in an effort to begin to work with physicians, to engage physicians in national dialog in the understanding of this issue. That is only a small part of what has to be done.

Government can take a lead, as it already has, in doing more to make sure that there is some public recognition that we, as a nation, have a problem in health care, as we do in housing, as we do in education, as we do in the criminal justice system. It is not just in the other sectors of our society. We have a problem in health care, and there is a denial that that problem exists.

In closing, let me just say race clearly matters in our health care system, but so do many other factors, especially insurance coverage. Attention has to continue to be given to assuring that current sources of coverage are not undermined.

Medicaid, in particular, is an essential source of coverage for about one out of five non-elderly African Americans, Latinos, and native Americans. In addition, people of color are disproportionately uninsured, and so priority attention should be given to efforts to eliminate the insurance gap.

It's also important to remember that racial disparities among persons who are insured are what has, in fact, brought greater attention to the issue as we now look at it. Expansions in coverage are clearly part of the solution, but they're not sufficient.

The IOM report provides a blueprint for us to begin to move toward comprehensive reform, looking at those who currently are covered, looking at those who are uninsured, and beginning to say how do we close the racial ethnic divide in the health care system. I urge the caucuses and the Congress to pay very close attention to the IOM recommendations, because I think that blueprint will help us in this goal.

Thank you. I regret, unfortunately, that I am going to have to leave, but I will stay in touch.

CHAIRWOMAN: Thank you very much, and the foundation has been a great resource for us as we continue our efforts.

Next, we'd like to invite Ms. Rachel Johnson, the immediate past president of the Student National Medical Association, to give her remarks.

JOHNSON: Madam Chair, thank you very much for this opportunity, and thank you to the **Congressional Black Caucus** and the other caucuses that are supporting this hearing. My name is Rachel Johnson, and I'm the immediate past national president of the Student National Medical Association, and I am honored to be with you today.

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Established in 1964 by medical students at Howard University and Maharry (ph) Medical College, the Student National Medical Association is the nation's oldest and largest organization representing concerns of minority medical and pre-health students. The strength of the SNMA lies in the dedication and work of the more than 200 chapters nationwide and over 5,000 student members.

Our membership primarily represents medical and pre-health students from the nation's historically under-represented groups, African Americans, Latinos, and native Americans. The membership also includes people of Asian, Caribbean, African, Middle Eastern, and European descent.

I will focus my comments on three critical insights taken from the IOM report and their real life implications for minority students' educational experiences, medical school training, and career aspirations.

First, finding 2-1 from the IOM report states that racial and ethnic disparities in health care occur in the context of broader historic and contemporary social and economic inequalities and evidence of persistent racial and ethnic discrimination in many sectors of American life. Under-represented minority students enrolled in medical school face an uphill battle on the road to graduation and into residency and faculty positions.

African American, Latino, and native American students remain under-represented among medical school enrollees despite significant evidence that these students are more likely to dedicate their careers to underserved communities. Furthermore, under-represented minority medical students also face the unique challenge of working with medical professionals during their clinical and pre-clinical years that may have little appreciation for their cultural backgrounds. Thus, under-represented minority students often face the added pressures and challenges associated with learning in a prejudiced and even sometimes hostile environment.

I offer one example of energetic student leaders of a local SNMA chapter in the Midwest. They initiated an aggressive campaign in their medical school to strengthen their chapter's presence on campus and increase minority recruitment efforts at their school.

One day, the chapter president found an anonymous note in her locker, using the initials, SNMA, of the Student National Medical Association to spell out Student Nigger Monkey Association. Thus, it is clear that discrimination and prejudice can invade the learning environment at U.S. medical schools and bring under-represented minority students into confrontation with widespread stereotypes and misconceptions about their place among medical students and trainees.

Furthermore, the Journal of the American Medical Association has published several articles in recent years documenting the effects of such institutional prejudice, be it conscious or unconscious, on the professional advancement of minorities in academic medicine in particular. Such studies have confirmed the fact that equally qualified under-represented minorities are treated unequally and are less likely to receive tenure, even in instances where they are equally qualified and deserving of promotion.

Second, I focus on Recommendation 5-3 from the IOM report, which says that we need to increase the proportion of under-represented U.S. racial and ethnic minorities among the health professionals, and, to the extent legally permissible, affirmative action and other efforts are needed to increase the proportion of under-represented U.S. racial and ethnic minorities among health professionals.

JOHNSON: In a time when attempts are being made to dismantle affirmative action, we must continue to address the composition of the physician work force so that the most vulnerable people in our society have access to culturally competent health care in the new millennium. Currently in the U.S., racial and ethnic...

(AUDIO GAP)

RIOS: ... health career opportunity programs and the centers of excellence have proven track records of graduating and educating more minority students at their medical schools and other health professional schools than others in this country, and they care for communities in a culturally competent manner.

HERSA (ph) has been shown that these programs have a proven track record of success. In fact, they retain and graduate two to three times more disadvantaged minority students than any other institutions in the United States. And for three decades, these programs have been funded by the federal government.

Apparently, today, though, there is a major disconnect, because in order to build clinics and the National Health Service Corps Program, a major national recruitment effort of disadvantaged students, especially Hispanic and African

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Americans, starting at the grade school level, is required, because they're the doctors of the future for the clinics of the National Health Service Corps Program.

We propose a new strategy that these programs, the HCOPs (ph) and the centers of excellence, be expanded by funding levels and budget periods up to five years into public-private partnership models led by HERSA (ph). Why shouldn't the new recruitment programs, for example, be linked to academic enrichment in middle schools and colleges through a scholarship incentive program for minority students linked to their annual academic performance?

Scholarships could be linked to the students who would be linked to programs developed at certain schools in regional consortia. And why shouldn't businesses, especially HMOs, hospitals, pharmaceutical companies, medical suppliers, and medical groups, that are the employers and business partners who directly benefit from the linkage of those physicians -- why shouldn't they be fiscal partners in the education process of the future physicians of the country?

In addition, minority physicians should be encouraged to sign up for the National Health Service Corps and President Bush's new Medical Reserve Corps, not only to focus on bioterrorism preparedness, but also to assist in the recruitment of minority students to medicine. And, lastly, in this area, I think that NHMA should partner with all the other minority medical associations, the NMA, the AAIP (ph), HHSPS (ph), and AMP (ph), as well as mainstream medical associations, to advocate for the development of these programs.

In terms of cross cultural education, the NHMA has launched its cultural competence guidelines project for physicians to better provide care for Hispanic patients, and we plan to provide that information on our web site this year. We recognize there's a critical need to improve patient care by training physicians and medical students on how to respect and communicate with Hispanic patients, because there will never be enough Hispanic physicians to care for the growing Hispanic population.

Another major issue in the cultural competence area that report brought out was language. Seventy percent of Hispanics speak Spanish, and, in fact, more speak Spanish in the health care arena.

It is well known that the use of Spanish language is passed on generation to generation, especially in more marginalized families and neighborhoods that are isolated, more stressed, more dysfunctional, and less healthy. So the problem is exacerbated for the health system, and we applaud the HHS LEP guidance and the class standard for the Office of Minority Health that has prompted major attention from the medical community, and it's about time.

Systematic strategies -- I think the only thing I could say here is that the IOM missed the boat in terms of leadership development, and we feel very strongly about the importance of minority physicians and other leaders being a part of the solutions. The disparity issue must be on the national agenda, and the most impact can occur from those minorities who understand and can articulate the challenges and, more importantly, the solutions for the future.

One last item I wanted to talk about was the future data collection and research, and I think that the Agency for Health Care Research and Quality, the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, and the National Institutes of Health Center on Minority Health and Health Disparities should collaborate on their data collection and disparities research programs to build strategic requirements of grantees and to build major minority health research centers. Congress should expand this area of critical research, which is a cross-cutting activity that has limited support compared to biomedical research.

Without new knowledge with community based research, we will never advance beyond the disparities that now exist in the health care system. In addition, states and health surveys and health facilities should be mandated to collect data by race and ethnicity and language use and conduct interviews and have materials in Spanish in order to really develop a quality health care system.

The HHSPS (ph) has a CDC cooperative agreement, and we're developing a research database of faculty interested in Hispanic research. The goal is to develop health prevention research focused at Hispanics in multi-site institutions within our membership.

The NHMA is establishing a National Hispanic Health Foundation, which will be a 501(c)(3) organization to develop health services research to focus on such issues as disparities in health care and other issues mentioned here. We are negotiating foundation space with the Wagner (ph) Graduate School of Public Service, New York University, with Dr. Joe Ivey Buford (ph), and the purpose of this foundation is really to become a think tank, to have a journal, and to develop training of our own scholars that are out there that nobody seems to know that are interested in Hispanic re-

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search but haven't been brought together. We are very interested in working with Congresswoman Donna Christensen and others to advance the call to action in this report.

Thank you.

CHAIRWOMAN: Thank you, Elena.

Joining us is Congressman Bob Underwood of Guam, who is the former chair of the Asian-Pacific Caucus and chair of their health care task force. We're going to continue with our panel, and he'll have a few remarks at the end of this panel.

So our next speaker will be Ms. Beverly Russell, who is the executive director of the National Council on Urban Indian Health.

RUSSELL: Good morning, Madam Chair and other members of Congress and other guests. On behalf of the National Council on Urban Indian Health, I would like to thank you and all the caucuses for this opportunity to talk about health disparities and the urban Indian population.

The native American population is often one of the most invisible and ignored populations in this country. We are especially thankful for being included in this most important forum because of that.

Having said that, I cannot discuss disparities in the urban Indian population without sharing a brief history of the status of our population. There are 2.4 million American Indians in the United States. Of this number, 1.4 million, or 57 percent, live in urban areas.

The large urban Indian population is a creation of many forces, most of which have been negative. In its early years, the federal government waged war on Indian tribes, disseminating Indian populations, uprooting Indian communities, and destroying Indian economies that were based on a close relationship with the natural world.

The federal government replaced what it took with treaties that were largely broken and with various plans, including dissolving tribal governments, forcibly placing Indian children in boarding schools far from their homes, and, in the 1950s and '60s, a major program by the Bureau of Indian Affairs to solve Indian economic problems by relocating Indians to urban areas. Under this last program between 1953 and 1961, over 150,000 Indians were relocated to cities where they quickly joined the ranks of the urban poor. These federal policies have had a devastating effect on Indian health which continues to this day.

American Indians have had a lot of experience with federal health care initiatives. As a result of the federal government's treaties and other obligations to tribes, the principal provider of health care to Indian communities is the Indian Health Service, a federal agency.

In 1976, Congress passed the Indian Health Care Improvement Act. The purpose of this act, as set forth in a contemporaneous report, was to raise the status of health care for American Indians and Alaska natives over a seven-year period to a level equal to that enjoyed by other American citizens.

It has been 26 years since Congress committed to raising the status of Indian health care and 19 years since the deadline has passed for achieving the goal of equality with other Americans. And yet Indians, whether reservation or urban, continue to occupy the lowest rung of the American health care ladder.

For example, American Indians and Alaska natives have the highest prevalence of Type II diabetes in the world, three times higher than the non-native population. American Indian infants are born with disabling conditions at three times the rate of all other babies in the United States. American Indians are four times more likely to die of alcoholism and twice as likely to die from diabetes.

Nearly one-third of American Indians live in poverty. Urban Indians not only share the same health problems as our reservation brothers and sisters, but their health problems are exacerbated because of their isolation from the support that can only be provided by extended families within the tribe's traditional cultural environment. I must note that urban Indian health care programs receive only 1 percent of Indian Health Service funds, although urban Indians make up 57 percent of the Indian population.

The National Council of Urban Indian Health has lots of anecdotal stories but very little hard data on the health status of urban Indians. Neither the Indian Health Service nor any other agency of the Department of Health and Hu-

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man Services currently collect and report such data in a timely, reliable fashion. In the absence of such information, it is extremely difficult for policy makers to be informed about health care issues confronting urban Indians.

We look forward to working with you and other members of Congress concerned about the health status of minorities. Thank you again for this opportunity to provide a statement on behalf of the National Council of Urban Indian health.

CHAIRWOMAN: Thank you.

Next, we're going to hear from Mr. Adolph Falcon of the National Alliance for Hispanic Health, vice president of the Center For Science And Policy.

FALCON: Congresswoman Christensen, Congressman Underwood, thank you and the joint caucuses for convening this session today. I have my watch out, so I'll try to keep to your two-minute mandate.

In the interest of time, I'll just really concentrate on three recommendations. Those have to do with the areas of, number one, research; number two, appropriation; and, number three, LEP policy.

Number one, with regard to research, the National Alliance for Hispanic Health recently completed a survey of Healthy People 2010 objectives and found that fully 40 percent of the objectives still do not have baseline data for Hispanic populations. If the goal is to eliminate disparity, and we don't know what the disparity is, how do we know we're eliminating it?

In 1995 (sic), the department has an opportunity to take a midcourse review of Healthy People 2010, and that would be the ideal opportunity to issue a report on where we stand with regard to data collection for Hispanic populations and what will be done by 2010 to make sure we know for each of the objectives under Healthy People 2010 where we stand with regard to data for Hispanic populations.

Secondly, with regard to Hispanic research, I would point out that currently, less than 2 percent of principal investigators at the National Institutes of Health are Hispanic. That certainly seems like an area of urgent concern and one that the NIH should be reporting currently to the caucuses about.

With regard to funding, it all takes funding, and I congratulate the joint caucuses for their continued focus on the appropriations process, because that is where the rubber hits the road. And certainly, our Offices of Minority Health deserve a continued increase in funding, and the newly established Center for Minority Health and Health Disparities deserves increased funding.

In particular, the Center for Minority Health and Health Disparities in NIH -- there is no reason why the center should not be a part of the NIH doubling benefit. That would require a 26-percent annual increase in the center's budget over the next three fiscal years. If we're serious about eliminating health disparities, that's an increase that should happen, and it's consistent with the policy of NIH doubling for research.

The third area I would mention is limited English proficiency, an area that, for the alliance, is very disheartening. We're an organization that's been around. We're getting ready to celebrate our 30th anniversary.

For all those years, we've been involved with limited English proficiency and cultural proficiency research and policy and services. And many of the organizations, many of the national medical societies and dental societies that wrote Secretary Thompson asking him to place a moratorium on over 30 years of civil rights enforcement action mandating access to services for limited English proficient people were closely worked with over many years.

FALCON: I will point out the Office of Management and Budget has now reported to Congress that the cost of providing, annually, services to limited English proficient persons in health care is around \$240 million. That's million with an M. When you're talking about health care budgets, you're talking about billions with a B, and that figure of \$240 million needs to be compared to the \$29 billion, billion with a B, that the Institute of Medicine found comes from medical errors every year, a lot of those communication errors.

It makes legal sense. It makes fiscal sense. We have new technologies and new ways to implement LEP policy, and from a quality standpoint, communications taught in every medical school in this country is a policy that makes sense.

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Here in this hearing, though, I think it's appropriate to also discuss that if it makes sense on all those realms, why is it an issue for discussion? And I think the lawsuit filed recently against the policy and against the department by the organization Pro-English really points this out.

There is an element of hatred, hatred of people who have language differences. Particularly, in this time, it's really important to look at that, and our challenge really is to bring understanding to that hatred.

Thank you.

CHRISTENSEN: Thank you.

Our next responder is going to be Dr. Karen Scott-Collins, vice president and program director for the Minority Health Program of the Commonwealth Fund. She, like Ms. Perot and Dr. Smedley, was a recipient of our Hero Award (OFF-MIKE).

SCOTT-COLLINS: Thank you, Madam Chairwoman. It's a pleasure to be here. I appreciate the opportunity to be part of this hearing and talking about some of our work to eliminate racial and ethnic disparity and what needs to be done next.

This is, indeed, a timely hearing. In addition to the Institute of Medicine report, which was released a couple of weeks ago, the Commonwealth Fund also released a report last month on patient experiences with care and documented many differences in the care experience across different racial and ethnic groups.

It revealed disparities on a wide range of health care quality measures, where minority Americans, African Americans, Hispanic and Asian Americans all do not fare as well as white Americans. I'll just offer a couple of examples and refer you to our report, "Diverse Communities' Common Concerns."

Among those with a health care visit in the past two years, Hispanics, African Americans, and Asian Americans were significantly more likely to report problems communicating with their physicians. Hispanics were most likely to report this problem. One-third of Hispanics reported a problem communicating with their physicians.

These problems included not understanding what the doctor said to them, not feeling that the doctor fully listened to them, or leaving the office visit having questions but not feeling comfortable asking them. Indeed, among Hispanics who do not speak English, the rates were even higher. Nearly half of Hispanics who did not speak English had one or more problems communicating with their physician.

This high level of communication problems among those with limited English is further illustrated in the survey by our finding that only half of those who said they needed an interpreter during a recent visit were able to get one. In nearly all cases, even when they got an interpreter, this person was a family member or a health care worker, not someone who was trained as a medical interpreter.

We also found that Hispanics and African Americans were significantly more likely to feel they had been treated with disrespect during a recent health care visit. Nearly one of five African Americans and Hispanics felt they were treated with disrespect, again, either due to communication issues or issues surrounding insurance and payment.

We found an overall poor connection with the health care system among minority Americans as compared with white populations. A major factor in this problem is the disparity in health insurance coverage.

Hispanic and African American adults age 18 to 64 have the highest rates of living without health insurance. Nearly one-half of Hispanics and one-third of African Americans were uninsured for all or part of the past year. Minority populations are less likely to have a regular doctor, less likely to say they have any choice in where they can go for their health care, and more likely to rely on emergency departments for their routine care.

The Commonwealth Fund is committed to working on issues of disparity in health and health care, and we have established a program called Quality of Care for Underserved Populations, which is doing work to identify where the disparities in health care quality are and support innovations to improve the health care system's ability to meet the needs of an increasingly diverse population.

Strong policy actions and federal leadership are also needed, particularly in the areas of insurance coverage and in incorporating a focus on elimination of disparities in care into all health care quality improvement activities. Legislative action as well as Department of Health and Human Services efforts must include a continued focus on the expansion of public coverage where needed as well as assuring that everyone who is eligible for public coverage is, indeed, on those

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programs. In addition, actions must continue to encourage employers to include the coverage of their full and part-time workers.

With respect to quality improvement, all quality improvement programs supported through the Department of Health and Human Services should address disparities, including incorporation of cultural and linguistic competencies. A couple of examples here -- the Medicare- Plus Choice program has slated projects in disparities in care for 2003. These, I hope, will lay the groundwork for an ongoing incorporation of quality improvement and reduction in disparities within the Medicare program, rather than one-year special projects. We need stronger quality improvement strategies for our beneficiaries in Medicare.

Studies are finding disparities between the quality of care provided to commercial and Medicaid managed care enrollees, even within the same plans. Quality improvement goals for improving minority health outcomes should be clearly defined by CMS (ph) and should reflect the Office of Minority Health's cultural and linguistically appropriate standards as well as clinical standards of care.

Community health center collaboratives to improve quality of care are showing some very promising results in serving minority and low income populations. These efforts, again, need the full support of HHS to sustain the positive results they're seeing and to develop the capacity to share best practices.

Finally, through the Agency for Health Care Research and Quality, some very promising research was begun about two years ago through a series of grants called Exceed. These are starting innovative work around the country, but will need to continue to receive adequate funding if we are going to reap the benefits of these efforts.

In closing, Madam Chair, the Commonwealth Fund has a history of supporting projects to improve the health of minority Americans that spans almost its entire 84-year history. We stand ready to partner with you, the caucuses, and federal agencies, as well as others to continue the work to eliminate health disparities.

Thank you.

CHRISTENSEN: Thank you.

Our next responder is Dr. Debra Frazier-Howze, who is the president and CEO of the National Black Leadership Commission on Aids, Inc., and she's also the former chair of the President's Advisory Council on HIV/AIDS, Subcommittee on Ethnic and Racial Populations, under the Clinton administration.

FRAZIER-HOWZE: Thank you, Congresswoman Christensen, and I want to thank you and let you know and the other members know how honored I am and how much I appreciate being allowed to sit here and participate at this level with you at this hearing.

In both of my capacities at the National Black Leadership Commission on Aids and as the chair of the Subcommittee on Racial and Ethnic Populations in the President's Advisory Council on AIDS under the Clinton administration, I have been able to firsthand see and see the magnified view of the horror that is the state of emergency, particularly in African Americans, in health as it exists in this nation.

We have the highest rates of deaths from chronic illnesses, higher than all other minorities combined, and the highest rates of new HIV infection. One in every 50 black males is HIV positive in America, and one in every 150 women, and we have 58 percent of all new infections in America. We are 12 percent of the nation's population, and we've not grown.

One of the studies on racial gaps, in fact, shows that a black man in Harlem had less of a chance than a man in Bangladesh to reach the age of 65. This study was conducted from data that preceded the AIDS epidemic by more than a decade.

I congratulate OMH for having the courage to support this report and IOM for having the courage to release it. It is very, very important that we say that.

I have been able to look at the Title 6 provisions in the Civil Rights Act in my capacities, and I've looked at many of the 100 studies that were reviewed in this report. And I think it's also important -- I think that Dr. Perez was hinting at it earlier -- that we really discuss what the report says. So I'm looking forward to having some opportunities to ask questions to the heads of the departments.

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But there's one thing that I think is very, very important, and that is that the report clearly outlines as its basis that even with people who access similar levels of education and income, there is race-based bias in the health care system that causes physicians to make decisions that contribute to the higher death rates among minorities from cancer, heart disease, diabetes, and HIV infection. Given the rates that I discussed with you in my opening, African Americans need no more help in dying.

I submit to you one thing that was clear to me from looking at all the reports. There's a little more than moral outrage when my heart valves are clogged and damaged, and I, as an African American, go to my cardiologist to get care, and he or she, in that decision making and examining process, decides not to use a standard procedure to save my life because of the color of my skin. That's what it says.

I think that's a little more than outrage. I think that's basically pure and simple murder. And I think that we need to begin to address it like that.

So, Congresswoman, I have some recommendations that I would like to make, and I'm going to do that because (OFF-MIKE) and my other colleagues. And I want to talk a little bit -- because you asked me to talk about what BLCA has done and what we're doing.

I know that we have talked a lot today, and I've heard very little in all of the hours that I've been here about the one focus in all of this that I think deserves a lot more discussion, and that's the target population that we're talking about itself. Where are the African Americans, or the plans for the African Americans, Latinos, native Americans, and Asian Pacific islanders to save their own lives, to take some community control for themselves? And within all of the research that we're hearing about, the reality is that change only comes when the research hits communities and there is action.

So let me just say a little bit about that. You know that the National Black Leadership Commission on AIDS is continuing an ongoing national replication in 18 cities across America where African Americans are disproportionately infected with HIV and have the highest rates of death from chronic illnesses.

We are no longer an AIDS organization. We have had to expand far beyond that. When we organized in Cleveland, they asked us to include the death of black American males due to prostate cancer in their community mobilization efforts.

In Baltimore, with one of the highest (OFF-MIKE) inception rates in the nation, they asked us to include STDs and drug abuse there. In Atlanta, they asked us to include advocacy on death rates from diabetes, hypertension, breast cancer. Everywhere African Americans are in this nation, we are dying from chronic illnesses and premature deaths, and, as we said before, it has to stop.

We also know that there are seven very distinct provisions in American public health that talk about crisis community intervention. They are, first and foremost, to build a base of community ownership; use local expertise for seeking solutions and decision making; understand the history, systems, and operational techniques of the target population; know what has worked and what has not; establish an organization of advocacy structure that allows flexibility for multiple cohesive programs; develop planning based on sound theory and epidemiological data, which we've heard a lot about today; and to ensure necessary resources for the development and maintenance of these initiatives ongoing.

FRAZIER-HOWZE: On June 7th and 8th, we held a meeting in conjunction with the Congressional Black Caucus, the National Medical Association, the Ford Foundation, and GlaxoSmithKline Pharmaceuticals, bringing together 115 African American leaders in civil rights, including Coretta Scott King, Dorothy Hite (ph), in medicine, including both heads of the NMA, Dr. Louis Sullivan (ph), and religion and business and media and in entertainment, marking the 20th anniversary of AIDS.

We asked them to develop a plan of action to respond to this emergency. They did develop that plan. I hope that somewhere along, as we move to make some difference, that that plan will be allowed to be investigated, and we can move forward.

Just one second with the recommendations -- one, I think, given the severity of the problem, we need to find ways to allocate resources that use specific guidelines for crisis community health intervention. These things weren't made up. They're in the public health books and have been there since 1920.

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Second, we need to establish and appoint a new body to serve the minority caucuses of Congress and have it commissioned to advise, report, and recommend actions that can change the way public health is delivered to our communities and the way we respond back to public health.

And, lastly, I want to close by saying it is my hope that as we prioritize whatever else we hear today that we take into account the community that we're talking about first, that they are in a state of emergency, and that that be a number one priority, because if we expand the number of minority doctors tomorrow, that's not going to phase the individual who's walking into a doctor's office tomorrow and being told that they cannot get a specific heart procedure to save their lives in 24 hours.

I hope that we will look at all of the provisions that we need, including the expansion of minority physicians. But I want us to prioritize that that is not the only priority, and that one of the priorities has to be for us to give these communities the tools they need -- their leadership and constituency the tools they need to help them save themselves.

Thank you very much.

CHRISTENSEN: There's a couple of more speakers on the respondents' panel. Next, Mr. Gem Daus, legislative and governmental affairs coordinator for the Asian and Pacific Islander American Health Forum.

DAUS: Thank you, Congresswoman Christensen and Congressman Underwood, for being here today and for convening this hearing.

I represent the Asian and Pacific Islander American Health Forum, and we represent a wide variety of people, from Indians in the Central Valley in California to Cambodians who are now living in Connecticut, the Filipinos in Hmong who fought for the U.S. in U.S. wars but are not treated like veterans, and the Pacific islanders who, because they live on land that was taken over by the federal government, share a history with other native Americans. I'm here today on behalf of those people to lend our voices to the issues of data, of language, of health professions, and this whole issue of health disparities.

On the issue of data, because a lot has been said on that already, let me just say that it is important to collect data and continue to do research, not because we don't know what's going on, but because it is important for us to know exactly what is going on so that we can be appropriate in our response. What that also further compels us to do is to look beyond the five racial categories that we work with now.

It's important to look beyond Asian and to look at Vietnamese, for example, or to look at what's happening in the Hmong population or what's happening in the African population. Otherwise, we fall into the trap of not really knowing and doing the wrong thing.

On the issue of language, I often ask different agencies what it is they do in terms of providing language appropriate services. They often tell me that they provide Spanish interpretation. And with all due respect to the need for more Spanish interpretation, that obviously will not meet the needs of Asian Americans and Pacific islanders.

Many of us do speak English, however, many of us do not. And I think it is a pure matter of communication, a pure and simple matter of communication, in order to really know what's going on and start to help the communities. Therefore, we need to provide the language assistance.

On the issue of health professions -- and this relates to the issue of data again -- it seems as if, on first glance, that Asian Americans and Pacific islanders are over-represented in the health professions. But if you look deeper, if you look underneath that, what you would find is that Southeast Asians and Pacific islanders are not as well represented. In fact, they are under-represented. HHS and HERSA (ph), in particular, has an opportunity to address that when they look at their definition of under-represented minorities later on this year.

I want to end on a different frame, and that is we're here talking about health disparities, but I want to lift up something that Dr. Ruth Perot mentioned in her introduction, and that is the issue of health parity. That is that what we're fighting for is to get the best health for all people. And what we're racing toward is not the bottom, but we're racing toward the top, and I think that helps us look forward and really address how it is we're going to move forward and, in particular, move forward together.

The health forum exists as a force for social change. We're not just interested in health, but we're interested in making sure that Asian Americans and Pacific islanders are able to participate in what all America has to offer, whether

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it's politics, the social life, or especially the economic life. So we see ourselves as part of a larger social justice movement, and we invite all to help us in that movement.

Thank you.

CHRISTENSEN: Thank you.

Ms. Leigh Brown is the legislative director for the National Indian Health Board. She's our next respondent.

BROWN: Thank you, Madam Chair and committee members who here maybe not next to me but perhaps working in the back with other members of Congress and all of you who are here today.

I represent the National Indian Health Board. We're the largest health organization in the country representing tribes and tribal issues.

We have unique problems. Beverly Russell talked to you about urban Indian problems, and we have some issues in common.

For example, most Indians who are urban Indians came from tribes, and they will often go back and forth between the tribal and the urban systems, which makes our systems less predictable. But we have serious health issues, very serious disparities.

I want to just talk about a couple of statistics that Beverly didn't mention. And I'd like to mention just for -- because I forgot there would be a camera. I have a swollen right eye, and I wanted to let everybody know that I have not been hit, and I did not have plastic surgery. I got a spider bite over the weekend while I was out in my garden.

So, anyway, I would like to give just a couple of other pieces of data that are especially significant. American Indian children, or infants, really, are more than twice as likely as white children to die from SIDS. And there's no real way that we can understand exactly why that happens.

We know that there are positional things like how you sit a baby down, those kinds of things. So some of this may be that Indian parents are not aware of things that they can do to prevent SIDS deaths.

But, just looking at the data, I doubt that that's the only issue for SIDS babies. I think that some of it is due to the health disparities between American Indians and, particularly, the white population.

When we talk about things like alcoholism deaths, the Indian Health Service data indicates that deaths from alcoholism occur six times more often in the Indian community than in all racial groups put together. That's a lot of alcoholism.

When I was young and stupid, I used to think, you know, well, why don't they just stop drinking. And then my husband told me that I looked a lot like my mom, and I realized that we -- I'm very close to my mother. I love her very much, but I don't want to be like her. So after a couple of years of counseling, I'm fine.

(LAUGHTER)

But that helped me realize that it's easy to say, oh, they just need to change. Why don't they just stop drinking? That's much more difficult, as most of you know, when you come from a poor background, when you have cultural factors.

For Indians, many of them live on reservations, and when there are drinking problems, they are surrounded by other people with drinking problems. There are many things that SAMSA (ph) and the tribes and Indian Health Services are doing to help with the problem of substance abuse.

One of those factors -- Beverly mentioned the fact that we can't get good data, and we really can't. We give out the best data we have. But like most groups, our tribes are not able to talk one to another by computer, sharing data through the same statistical bases. Not all of them know how to keep good data, so there is probably not comparable data.

But one factor that is often overlooked is the number of Indians who are born Indian and die white. This is usually due to the fact that the mother reports the child as being Indian when it's born, but often the person completing the death certificate might look at a person and say, oh, they're white. Or they may hear a last name like Jones and think, oh, they're white. And so the person, not knowing the family, marks them as white at the time of death.

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Sometimes relatives can consider that the decedent's race as different from what the decedent considered it to be. And then the decedent may report his or her race differently for a lot of cultural reasons. That simply happens. The most common reason, though, is probably that the death certificates are not filled out properly because the person filling them out just doesn't know.

This skews the data, and the data is bad as it is. It probably would not be as bad as it is if we were able to actually, on a consistent basis, have data that was adjusted for these types of death certificate errors. Also, allocations are often decreased because people are dying white, and no one knows that they're Indian. They're not being counted as Indians for purposes of appropriations and other allocations from agencies or grant funds.

Recommendations -- I'll touch on the IOM report last, but I would really urge Congress this year to work with the reauthorization bill, the reauthorization of the Indian Health Care Improvement Act. There is still some uncertainty about Title 4 of that act, which deals with the Indian system and Medicaid and how the Medicaid system should work for the Indian population.

The budget -- the level of need is \$4.4 billion more than the president's budget. The Senate markup was \$1 billion -- increased the president's budget by \$1 billion, and we're very thankful for that. We hope that that will carry through to the House, and that we'll be able to -- conference committee to get a bill in which we have at least some rise in the amount that's been suggested by the administration.

BROWN: I want to say that it's very kind of the Black Caucus to include all of us today from various groups. And it was very kind of the Institute of Medicine to invite so many of us from different racial groups to the workshops that were held recently.

But there was very little information in the report about Indian populations and about Indian issues. And in the workshops that I attended, there were times when Indian issues were brought up -- well, for example, in one workshop, only once, and then as an afterthought. So we would ask that more attention be paid to Indian issues in this report as well as in other areas.

And, finally, every ethnic group that suffers from disparity has unique problems or unique factors that have affected why their health care or their health status is disparate from that of the population at large. But it's important that Congress, the administration, the agencies, and the director of the Department of Health and Human Services remember that, in some ways, Indians are unique.

Many Indians live on reservations, self-contained areas, where all of the health care, except for highly specialized care, is delivered on the reservation. Also, due to (OFF-MIKE) responsibilities of the federal government, Indian tribes are sovereign governments, and we would like to be able to have perhaps a significantly more solid government relationship with the federal government.

Again, I'd like to thank you for the opportunity to be here today. I'm sorry I talked over my time.

CHRISTENSEN: You weren't alone in that.

BROWN: I didn't think so.

CHRISTENSEN: Our last respondent -- and I would ask that the next panel start taking their seats at the green table. But our last respondent this afternoon is Miguelina Leon. She is the director of Government Relations and Policy for the National Minority AIDS Council.

LEON: Good afternoon, Congresswoman Christensen, Congressman Underwood. Thank you for the privilege of addressing this panel.

I'm the director of Government Relations and Public Policy for the National Minority AIDS Council and have had the privilege of working with the **Congressional Black Caucus** and, specifically, the Health Braintrust, the Congressional Hispanic Caucus health task force, and also Congressman Underwood on the minority HIV-AIDS initiative, which was started in 1998 under the leadership of the **Congressional Black Caucus** to address disparities in health outcomes for ethnic and racial minorities and particularly the African American community in HIV-AIDS care, morbidity, and mortality.

I think that it's clear that we have had many studies about ethnic and racial health disparities for many, many years, and we have had many commissions, and we have had many programs that have been developed. And I commend the Institute of Medicine and the Office of Minority Health for producing this timely report.

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One of the things that's clear to me from all that has been presented today is that many of these recommendations are not new. Some of them are packaged differently.

In the area of HIV-AIDS, where now close to three-quarters of the new HIV infections in this country are among ethnic and racial minorities, with African Americans accounting for almost two-thirds of those new infections, this is a time to move and to act on implementing these recommendations. But in order to do that, we have to have a few factors in place.

We have had congressional leadership. We have had leadership in many communities and in the medical community and in the provider community and in minority-based community organizations. However, what I've seen over the course of the years is that while we have made many recommendations, the implementation of the recommendations fall short of the promise of the recommendations. And I think it's incumbent on all of us here and all of our constituencies to ensure that the recommendations of the Institute of Medicine are implemented and that they're implemented within specific timeframes.

We have a variety of recommendations, including all of the objectives for Healthy People 2010, addressing disparities in health outcomes. What I think is important, also, in terms of the Institute of Medicine recommendations, is that the issues of racial stereotyping and bias -- those recommendations need to be looked at within the context of HIV and AIDS.

In this country, we need to address homophobia and addictaphobia (ph), as well as races and discrimination, because, quite frankly, the largest population impacted by HIV and AIDS among ethnic and racial minorities are gay men, men who have sex with men, and bisexual men. And there is a significant stigma attached to sexual orientation in this country. There is also a significant stigma attached to being a stranger, a foreigner.

So when we talk about the need to implement the limited English proficiency guidelines of HHS, I think that it's critical that we look at all the populations that are impacted in this country, because xenophobia is alive and well in this country. And the reluctance to implement recommendations like the limited English proficiency guidelines that are critical to addressing and bridging the disparities in health care and access to health care in this country need to be addressed.

We're in a different political environment at this point, and we have to recognize that. I think one of the things that's critical to me -- and I hope that the HHS panel will address it -- is that the programs that are most important to us in addressing health disparities, including a program that's of particular importance to the National Minority AIDS Council, the Minority AIDS Initiative, has been flat funded for two consecutive years in the president's budget.

We were quite fortunate in working with congressional members and the members of the different caucuses last year to increase the funding for the Minority AIDS Initiative. But once again, in the FY 2003 budget proposal of the president, the Minority AIDS Initiative is flat funded.

There are many other programs that relate to minority health that are flat funded. So we really need to address both funding, and we need to address implementation of existing programs, and we need to hold the Department of Health and Human Services accountable for what Deputy Secretary Allen said. We want action and not rhetoric. And I hope this is a good segue into the next panel.

CHRISTENSEN: Thank you, Miguelina.

Before we hear from our next panel, we have been joined, as I said earlier, by Congressman Bob Underwood of Guam, who is one of the senior members of the Resources Committee, and he's also on the Armed Forces Committee, past chair of the Asian-Pacific Caucus, and is the chair of the health task force.

UNDERWOOD: Thank you, Congresswoman Christensen. First, I want to congratulate you for your leadership and express my admiration for your leadership and your tenacity and your persistence on these and other issues.

Access to health care and the health conditions of minority communities around the country, of course, commands our attention today, as it should every day. I am certainly grateful for all of the stirring statements that have just been made that have outlined a variety of concerns, and certainly I look forward to hearing other statements that will be made later on today.

Basically, you know, there's an old saying in the Resources Committee, which used to be chaired by Mo Udall (ph), which is a statement attributed to Mo Udall (ph), which goes something like this. "Everything that can be said has been

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said, but not everybody has had a chance to say it." So now is my chance to say and repeat everything that has been said already.

But I'll skip those elements of it, because I know and I'm very familiar with all these faces up here, because we've been through a variety of forums and hearings and testimonies and conversations and receptions and every other thing imaginable in order to focus the energy on this topic. It seems to me that there is a failure somewhere along the line, and that failure can be attributed to Congress, it could be attributed to the executive branch, it could be attributed even to advocacy groups, because we continue to make very strong statements, and we continue to not receive the level of funding that health care deserves.

We're not getting the kind of community advocacy that the communities deserve. We're not getting the kinds of services that the communities deserve, and we're certainly not resolving the health problems that the communities represented here today deserve.

So the analysis given to that can be multifaceted, and there's lots of blame, there's lots of analysis that can be given to that, and all of us share responsibility for that. But at the end of the day, where the rubber hits the road, between advocacy, between communities, and between the federal government, it is about resources, and it is about policy. When we're able to increase resources, and we're able to modify or steer policy in the right direction, then we feel that we can go home and sleep a little bit better.

But there are a number of items that I think continue to be expressed over and over, and one of the most fundamental parts of this is that even though diseases are patient specific and patient experienced, patients themselves are part of community constructs. And when we understand that, then we understand that the fact of disparities is not related to individuals, but it is related to communities. And whatever the solutions are, the communities and the support that we're able to give individual communities is a big part of that solution.

We have to continue to remind ourselves of that, and we have to continue to stress that, even to distraction. And, of course, that involves a number of things. It involves training the right health care professionals. It involves cultural competencies. It involves language proficiency. It involves a good dose of education, health education, and all of us share in that responsibility.

I'll share one specific example from my own home island of Guam. The Chamorro people, of which I am a member, experience diabetes at five times the national average. And when you go politically canvassing around, even for political purposes, I would say every fourth or fifth home I come to has been touched directly by diabetes in some way.

I ran into the home of a single mother with six children, and she has recently gone blind. And there's a lot of elements that cause that. But regardless of all the conditions that we find in that, we have a responsibility to help those people. In that case -- just speaking from this, one of the most amazing things that has happened in the population of Chamorros is that the rate of death among the current generation of Chamorros is higher than the rate of death from their parents' generation.

And that is a very public occurrence in Guam in which, you know, you run advertisements. You tell people who died. You tell people who all their relatives are, who all their brothers and sisters are, who their parents are, and you have a picture of them so that people have a good sense of this death.

UNDERWOOD: Invariably, in reading these advertisements, which are sponsored by families, one is struck by the number of people who are dying in their 40s and 50s and leaving behind parents who are in their 70s and 80s. Something has gone fundamentally amiss in this process.

All of us share in the responsibility, whether it is our lifestyle, whether it is our lack of education, or whether it is our access to public health care. But it is a community experience problem. It is not an individual problem, and to that extent, that's what makes a forum of this nature, which is rooted in the ethnic caucuses of the Congress and which calls to arms those people who are involved in advocacy at the community level, so entirely appropriate.

To that extent, I certainly want to congratulate again Congresswoman Christensen for her fine work in this and all of you for investing the thought and the energy and the spirit necessary to get us where we need to go.

Thank you very much.

CHRISTENSEN: Thank you very much.

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I want to, on one hand, apologize to our agency heads -- and this is a sincere apology -- that we've kept you waiting beyond the time you should have started. But on the other hand, I'm sure that you have benefited by what you have heard in the time that you've had to wait.

Our first panel includes Dr. Nathan Stinson, who became the deputy assistant secretary for minority health and the director of the Office of Minority Health in 1999. Under Dr. Stinson's leadership, the Office of Minority Health develops and coordinates federal health policy that addresses minority health concerns and ensures that federal, state, and local health programs take into account the needs of the disadvantaged, racial, and ethnic populations.

Seated next to Dr. Stinson is Robinsue Frohboese. She is the principal deputy and acting director of the Office of Civil Rights at the United States Department of Health and Human Services and is responsible for advising the secretary on civil rights policy issues to ensure equal access to health care services for the beneficiaries of federally financed assistance provided by HHS.

Prior to this, she was the deputy chief of special litigation in the civil rights division of the U.S. Department of Justice. She has a Ph.D. in psychology and a law degree and has worked with a number of national associations and task forces involved with civil rights issues.

The third person on our panel is Dr. Carolyn Clancy, who is a practicing internist and health services researcher who directs the Center for Outcomes and Effectiveness Research at the Agency for Health Care Research and Quality. Her major research interests include women's health, primary care, access to care, and the impact of financial incentives on physicians' decisions.

You know that, again, I have really summarized some outstanding bios, but we welcome you and invite you to begin. We are going to begin out of order with Dr. Nathan Stinson, who, as you heard -- whose agency was charged with funding this research.

And I wanted to acknowledge someone who could not be here with us today, Congressman Jesse Jackson, Jr., who is the individual who was instrumental in inserting the language and the funding to have the Institute of Medicine report take place.

Go ahead, Dr. Stinson.

STINSON: Thank you, Madam Chair. It's certainly a pleasure to have the opportunity to talk to the panel and to provide written and oral testimony around some of the work that is occurring in the Department of Health and Human Services and in health disparities.

Listening to the other presentations that occurred before me, it's very, very clear that health disparities are not new. They've existed before.

We've known about the presence of the health disparities, and they are as unacceptable now as they have been in the past. Yet we've made very little progress in really addressing what needs to be done to eliminate health disparities.

The real challenge before our department and also the public at large is not debating whether health disparities exist, but really in developing and implementing strategies which eliminate them. It's as simple as that, yet that's a very, very difficult task, as you've heard from many of the people before me.

This hearing could not be more timely. As Deputy Secretary Allen stated, there are multiple activities that are going on in the department that are addressing health disparities. And it certainly presents the opportunity to influence not only the direction, the scope, but also the rapidity at which our department addresses the things that need to be done to eliminate health disparities.

By the nature of its location within the department in the Office of Public Health and Science in the office of the secretary, the Office of Minority Health has a leadership role in the department in coordinating efforts that relate to disease prevention, health promotion, and improving access to quality health care for racial and ethnic minorities in this nation. With that responsibility also comes a burden, and it's a burden that we in the Office of Minority Health accept very readily.

That burden is not only to try to do the things that are right, but also to try to encourage others to do the things that are right. And, most importantly, it's to never forget why we do our work. We do our work because there are individuals living in communities, there are individuals who rely on us to provide them with the knowledge and the guidance on how to live a long and healthy life, and there are individuals in communities that, if we don't do our job as well as we

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can, will not live, as was mentioned before, to see their children, to see their grandchildren have a long and productive life.

So it is clearly a responsibility, and we must do our best work, and we must put forth whatever time and effort is necessary. We must also call upon all our colleagues, all our friends, all our collective constellation of intellectual power in this nation to find real solutions to the problem of health disparities in this country.

Many of you know -- and I'm not going to really talk about the whole list of health disparities that exist. We know those things. Some of that was presented here today.

OMH's mission is very simple. It's to improve the health status of racial and ethnic groups in this nation, period. It is that simple. But as I mentioned before, it is a very, very hard job for so many different reasons.

When we look at the strategy for us to do our work, it falls into five categories, and I'm going to just mention them, and then I'm going to talk individually about them. And, Congresswoman, I assure you I will not belabor any particular point. But I want to give you and the respondents and the other members of the hearing just a glimpse of the broad nature of the responsibilities that the Office of Minority Health has.

One is communication and information dissemination. Second is policy coordination and development. Third is coalition and partnership building. Fourth is demonstration programs and program evaluations. And fifth is strengthening the science through data collection and analysis. Let me just talk very, very briefly about each one of those areas.

I didn't list those in any particular order, but I do want to talk about communication and information dissemination first. And the reason why I want to talk about that topic is that one of the things that we have heard time and time again is that institutions, federal government, state entities come into communities, extract information, and we never hear anything else again.

The real tragedy in that type of process is that I am convinced that some of that work, some of those research projects, some of the results of the dialog with people of the community has really created programs (ph), programs (ph) of action that are not only applicable to that given community, but may, indeed, be applicable to other communities around this nation. So it is not acceptable for us to find out things work in a given community and not share that information back in the community and have them implement it so it has the positive effect that we're interested in.

So that area of communication and information dissemination, I think is a vital link in all the things we've done, because it must create that feedback loop, where we take what we learn, we take what we know, we take the models that work, and see what we can do to replicate them and have a positive influence on health in other areas around the nation.

The Office of Minority Health has had for over 15 years a particular mechanism for communication and dissemination of information, and that's the Office of Minority Health Resource Center. We believe the Office of Minority Health Resource Center remains today an untapped reserve of potential. Over the years, it certainly has expanded in what it has done and its involvement in health care programs at the federal and also at the state and community level.

We also believe that as we look at development of that resource center really into a minority health portal, it will become an even greater asset to individuals in the communities, in that by coming through that particular portal, we may be able to provide 80 or 90- plus percent of the work already done for those individuals, whether they may be someone who works in a community-based organization, someone who works in the federal or state government, or whether it's a patient who wants additional information about a particular health related condition.

In addition, one of the things with the help of the minority HIV- AIDS money -- we have actually developed a capacity in the resource center to go out directly and talk with communities around what type of needs they may have around HIV-AIDS. Now, one of the things that you clearly will hear in the presentations is that a lot of the federal agencies are doing work around technical assistance and capacity development. And, clearly, that is one area where our office continues to be more and more involved in really looking at ways the department, across the different agency organizational lines, can do a better job in coordination and maximizing the effectiveness of all the efforts we have around technical assistance, capacity development, not only in HIV-AIDS, but also in other areas.

The resource center -- two other points I just want to mention have to do with increasing the utilization of technology. We already know that some communities -- we have a digital divide in some communities. We also know that there are some rural communities that aren't going to have access to come to meetings or technical assistance, and we

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have to figure out which ways we can do it through telemedicine, through web casting, whatever means that may be possible.

STINSON: The next area I want to talk about is policy coordination and development. I think the previous speakers have said it quite well. If you have the wrong policies, you're going to have the wrong results.

So it is very, very clear that as we think through in the department what type of policies we are developing and implementing, we have to make sure we look at those activities through a lens of what is going to be the real effect on the population that we are ultimately responsible to. And that's a very critical and crucial piece on how our work needs to be done.

Our partnerships -- Secretary Allen said it quite well. We can't do it alone, and we can't do it alone for several reasons.

Number one, even with the budgetary resources that are available, there needs to be more. But more importantly than just a dollar and cents issue is also an issue around the intellectual capacity of trying to think through the problem.

It would be foolish for us to believe that the solutions to these problems can all be developed within the beltway of this nation. It's not going to happen. There are clearly people who have ideas, there are clearly people who have a contribution to make, there are clearly people who can be leaders with us in this effort that are located in states and in communities around the nation.

Two last points I want to make have to do with demonstration programs and program evaluation. The Office of Minority Health is fortunate that it also receives a direct line item budget from Congress. We utilize those funds to really try to leverage efforts and resources from other agencies within the department to partner with us for particular activities.

In addition, we also, in a list of the different programs that we have that you can certainly find in our written testimony -- we try to look at it in supporting some of the innovative -- supporting some of the things that may not fit squarely within the direct categories of programs of other parts of the department.

And the last point I want to make has to do with strengthening the science of data collection and analysis. Clearly, I cannot emphasize that point strong enough. As was previously said, the importance of knowing that type of information -- that's the only way we really know we're going in the right direction.

My final point, in summary -- I'm always reminded, almost on a daily basis, of something one of my staff members said to me -- Valerie Welsh (ph). We were talking about *The Beautiful Mind*, the John Nash (ph) movie that came out recently. Dealing with health disparities is not a (OFF-MIKE) game. Addressing health disparities does not mean somebody else in this nation is going to lose.

There are clearly what he calls equilibrium points. There are points where if we do the right things for each group, it actually improves the health of the nation as a whole.

Thank you very much.

CHRISTENSEN: Thank you.

Dr. Frohboese?

FROHBOESE: Thank you, Chairperson Christensen, and good afternoon. I am the principal deputy and the acting director of our Office for Civil Rights at HHS, and at the outset, I would like to join my colleagues in thanking the **Congressional Black Caucus**, the Congressional Hispanic Caucus, and the Congressional Asian Pacific American Caucus for holding this important -- and I agree with Dr. Stinson -- very timely hearing and devoting a full day to examining health disparities and the Department of Health and Human Services' role to eliminate them.

As we all know, health disparities are really life and death issues that are critical to this nation, critical to HHS, and also critical to the Office for Civil Rights, OCR. And I think we also all agree that the question of whether health disparities exist has long since been answered, and that the question now and certainly the purpose of this hearing is to answer how we are going to eliminate them.

As the department's primary defender and promoter of the public's right to nondiscriminatory access to and receipt of services, OCR is committed to playing a very central and critical role in eliminating these disparities which affect the health, wellbeing, and very future of our nation. So we're very pleased to be part of this hearing, and I think you'll hear

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from me the same themes that have gone throughout the testimony this morning and that you will hear coming from the agency testifiers, but from a slightly different perspective, because what I would like to do is talk about the civil rights aspects and the role of the Office for Civil Rights in our departmental initiatives to eliminate racial and ethnic disparities and to highlight some of our recent activities as well as our planned activities.

The mission of our Office for Civil Rights is to promote and make sure that people have equal access to and the opportunity to participate in and receive services in all HHS services without facing unlawful discrimination. Our office historically has played a very significant role in a variety of civil rights initiatives in health care services, beginning with the desegregation of hospitals following the advent of the Medicare program in the 1960s.

As we carry out our mission today, our compliance work is integrated into the department's overall initiative to eliminate ethnic and racial health disparities in a variety of ways. First, in keeping with Secretary Thompson's emphasis on prevention, many of our activities focus on public education, outreach, and technical assistance.

With currently 243 staff in our headquarters office, 10 regional offices, and two field offices throughout the United States, OCR is in a unique position to contribute to the departmental effort to eliminate disparities on both a national as well as regional and local basis. We do this by disseminating information and materials on health disparities to all of the organizations that we serve as part of our effort to prevent discrimination in the first instance or potentially discriminatory practices by health care providers and to also educate consumers and to provide technical assistance.

We brought with us today a variety of the fact sheets that our office does distribute -- Know Your Civil Rights, How to File a Discrimination Complaint with the Office for Civil Rights, and Your Rights Under Title 6 of the Civil Rights Act of 1964. And those who picked up copies of the fact sheets can see that we also translate them into a variety of languages, and I think we brought copies of fact sheets that have been translated into Vietnamese, Chinese, Korean, and Spanish.

We have focused also on another theme that we've heard about and that Dr. Stinson talked about on collaborative relationships, not only with our partners within HHS, but also with other federal, state, and local agencies, stakeholders, community and faith organizations, professional health associations, academic institutions, as well as providers. Since 1964, we also have been conducting compliance reviews and investigating complaints that raise issues of discrimination against members of racial, ethnic, and national origin groups in health care settings as part of our responsibilities under Title 6 of the Civil Rights Act.

As noted in the IOM report and in the testimony of others who have testified before me, our now nearly 40-year history of investigating Title 6 complaints has taken on a particularly heightened importance after the Supreme Court's decision in *Alexander v. Stouffville* (ph), because the Office for Civil Rights is now the sole protector of the public against health care practices that have a discriminatory disparate impact.

As we heard this morning, many of the studies that document health disparities conclude that racial and ethnic disparities may remain even after controlling for socioeconomic status and other factors. And I think the IOM is really to be commended for taking a very important step in looking at the role of bias, stereotyping, and clinical uncertainty and how these factors may contribute to racial and ethnic health disparities and also for its recognition of the important compliance and enforcement role that our office, the Office for Civil Rights, has to play in eliminating racial and ethnic health disparities.

Bias or discriminatory policies and practices are factors that we have been addressing in our Title 6 complaints for years, beginning with the elimination of the stark vestiges of (OFF-MIKE) segregation during the 1960s and continuing to the present, where discrimination and disparities in access to and quality of health care may result unintentionally from facially neutral policies and practices, as Mr. Perez discussed this morning.

Our work with health care providers has shown -- and I think the IOM report agreed -- that we have a health care system in which practitioners are committed to providing nondiscriminatory services. When we have identified problems, we have been able to work successfully with providers to resolve them.

Our experience confirms our belief that medical practitioners want to do what's right for all patients. And we, therefore, hope that the IOM report will provide the basis for additional commitment within the profession to explore fully how the provider's role in the clinical encounter with people of color may unintentionally result in disparities.

The elimination of health disparities in HHS funded programs continues to be a major priority for our office. In fiscal year 2002, we estimate that OCR will spend approximately 15 to 20 percent of our now \$32 million annual budget

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on health disparities. And in some of our regional offices, as much as 30 percent of staff time has been dedicated to specific disparities initiatives.

Our efforts cut across and intersect with many of the department's overarching priorities and themes, including prevention, collaboration, access to quality health care, HIV-AIDS, organ donation, and the new freedom initiative. And our efforts also reach out to all communities of color affected by health disparities.

As I mentioned earlier, a major purpose is public education, and in my summary, I testify about a lot of, I think, the very exciting efforts that our regional offices have been involved in that really have served as models for bringing together diverse stakeholders to address racial and ethnic disparities. In addition, our office has been very successful in remedying individual and systemic health disparities through our complaint investigations and compliance reviews of health care providers.

One topic that has been mentioned a lot this morning has been effective communication between providers and patients. And it is our office that issued our LEP guidance on serving persons with limited English proficiency in August of 2000.

FROHBOESE: We republished this guidance at a directive from the Department of Justice in February of this year and reopened the guidance for comments to determine whether any modifications are needed to ensure unimpeded access to quality health care. We will be examining these issues in the context of the comments we receive.

Our efforts also extend extensively to native Americans. We also share in the commitment to data activities. And in our fiscal year 2003 budget request, we have some very specific items of expansion of activities.

Two areas that I would like to mention are in response to two surgeon generals' reports that were just recently released, one this past summer on discrimination in mental health services, and one issues just this past January on discrimination in services for persons with mental retardation. And these are two areas that our office will be focusing on during the coming year.

In closing, our office is fully committed to fulfilling our critical legal responsibilities to monitor compliance and enforce the law. But we also are committed to prevention and believe that through collaboration and partnerships with our other federal partners, with state and local government, stakeholders, and community partners, we can work together to eliminate health disparities and continue to make progress to ensure that all people, regardless of race, color, or national origin, have access to quality health care for themselves and their families.

Thank you.

CHRISTENSEN: Dr. Clancy?

CLANCY: Good afternoon, Madam Chair, members of the panel, and members of the audience. I'm Carolyn Clancy, and I'm currently the acting director of the Agency for Health Care Research and Quality, and I'm really delighted to be here this afternoon to be able to tell you about the agency's responses to the Minority Health and Health Disparities Research and Training Act of 2000.

I have a lot to tell you, and I can tell you we have a lot of exciting work in progress. I'm going to follow the over-headers, but I may be a bit selective in terms of being efficient.

There are four areas I want to cover briefly. One is where does AHRQ (ph) fit and our work fit within the broader scope of work on disparities in health. I then want to speak briefly about disparities in health care and where that contributes to overall observed disparities in health, and then speak very specifically about the agency's responses to the bill, and end with a few comments about future direction.

As you might guess from the name, Agency for Health Care Research and Quality, we support and conduct research that is intended to improve the delivery of health care. In contrast to biomedical research or public health or population focused research, this is patient centered research, not disease specific. It focuses both on the services as well as the organizations in which those services are provided.

We focus on both effectiveness and cost effectiveness of care. Essentially, we're conducting research in the real world, not under controlled situations.

So if you think about the example of diabetes, research funded by the NIH might develop and test interventions to examine how to cure or prevent the disease. CDC would be focusing on evaluating health behaviors in broad population

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campaigns. We would be developing evidence to help clinicians and patients make the best decisions. For example, the decisions one might make for a patient with diabetes only might be quite different than for another patient who has diabetes and two or more other chronic conditions.

Turning to disparities in health care, we know that health care is only one input to overall health and quality of life. It does not necessarily overcome issues related to personal behavior, education, genetics, public health, and economics. On the other hand, we invest considerable and truly substantial resources in health care, so we do believe that this is an important opportunity.

Researchers have known for a long time that there are what we call non-clinical determinants of health outcomes, that is to say, not related to the disease or biology. These would include patient and practitioner characteristics, characteristics of the hospital or setting where an individual receives care, patient preferences, and, of course, very importantly, how clinicians are paid.

Now, you'll see on an overhead there an example of a study that we published -- supported and was published in the New England Journal two years ago. And the first author is actually one of our very promising young minority investigators who's been so productive he's created a little internal confusion at the agency at times as we try to keep his press releases straight.

In this particular study, he examines the rate of the use of reperfusion (ph) therapy, what's sometimes known as clot-busting, for Medicare beneficiaries who have had a heart attack. This is evidence-based, life-saving treatment.

What he found was that 59 percent of white men who were eligible for the treatment got it, 56 percent of white women, 50 percent of black men, and 44 percent of black women. Now, I want to reinforce the points made by Marsha Lillie-Blanton earlier. There are two take-home messages from this study.

The first is that, yet again, consistent with many, many studies reviewed for the IOM report and elsewhere, African American patients were significantly less likely to receive evidence-based, life-saving treatment. That's the first message.

The second message is that 59 percent, which is the best we did for any one group, ain't so great. It's hard to believe that 59 percent of eligible patients receiving this treatment is the Everest of our ambitions. We need to improve quality overall and, in particular, for racial and ethnic subpopulations.

We also know from other data that income is very important. When we looked at preventable hospitalizations for pneumonia that could be prevented by vaccines, we found an amazing correlation with the average income of the zip code from where the patient resides, and, of course, the Kevin Shellman (ph) Study, which many people have referred to this morning, where older African American women were significantly less likely to have evidence-based treatment recommended in terms of diagnosis and management of cardiac disease.

Now, an inadvertent barrier is that sometimes in our passion to try to figure out what's going on in health care, we argue with each other about what the problem is. It's insurance. No, it's the kind of insurance. No, it's primary care. No, it's the specialist -- and so forth. And we've tried to put this in context by thinking about this in terms of electricity.

If you think about electricity coming from the transformer to the outlet on your wall, there's a lot of places for you to lose voltage. So some of those voltage drops, in terms of all people getting quality of care, include first whether insurance is available.

We know that in the past decade, the proportion of people who are uninsured, who are either working full time or are the dependents of someone who is working full time, has increased. If insurance is available, are you enrolled? That is, can you afford it? As health care costs are going up a lot quite recently, we know that the uptake rate is actually going down, because many individuals simply can't afford it, especially if they work for small employers.

The third voltage drop is if you have insurance, are the providers and services you need covered, or is your policy something like a hospital gown, where, from one angle, it looks like you've got everything you need, but where it really counts, you may not have the coverage you'd like. If you have the services that you need, is informed choice available?

The fifth is are primary services accessible, and if you have good primary care, do you get the referrals to specialists that you need. All of this contributes to quality of care.

What we don't know and where our research efforts are focusing squarely are, first, why and how disparities occur and at what point in the process of care. An overarching question here is what proportion of observed disparities in

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health can be improved by improving health care. That's an open question and one that I think should be brought to bear in the best science possible.

What local or community characteristics either ameliorate or increase disparities? How do we collect the data that everyone's been talking about this morning respectfully, and at what point in the process of care? And how do we link evidence of the problem -- we've sure been hearing about that this morning -- to possible solutions? That is really a big challenge.

Now, in terms of the agency's specific responses to the bill, we were given four very important areas of responsibility. The first is to begin producing in 2003 an annual report on health care disparities.

The second is to produce a report to the Congress on the state-of-the-art for quality measurement in minority and disparities populations. The third is to focus on research that clarifies why disparities in health occur and how those can be addressed.

And then the fourth is to focus on what we call community-based participatory research. That is the involvement of communities in all phases of the research cycle, from planning and conducting the research to disseminating and translating it, in other words, nothing about us without us.

I'm going to focus mostly on the disparities report and on the research. I can tell you that the report to Congress is in progress, and we look forward to sharing that with you. And we've also begun very actively to identify where in our research solicitations we can specifically encourage and in some cases require a focus on community-based participatory research.

The national disparities report -- the specific legislative language says beginning in fiscal year 2003, the agency shall produce a report regarding prevailing disparities in health care delivery as it relates to racial factors and socioeconomic factors in priority populations. It then goes on to specify that priority populations include those living in rural areas, inner city areas, low income groups, members of racial or ethnic minority populations, women, children, the elderly, and individuals with special health care needs. It's a very tall order but one we're incredibly excited about.

Now, when the agency was reauthorized, we were also given the opportunity in the same timeframe to produce an annual report on quality of care, and these two reports we see as integrally linked. The national quality report will include measures of consumer and patient assessments of health care quality, specific measures for priority conditions, and each of these will be stratified to the extent possible by race, ethnicity, and socioeconomic positions, because we believe that equity is a very important dimension of quality.

We know that we're going to have some difficulty getting nationally representative data because of limitations in current data sets, but we are working very actively on that. The planning for these two reports has been very tightly linked, as has the marketing efforts. In other words, how is it that we can present the information in a way that people can understand it and respond to it and in a way that will drive action and improvement.

For both reports, we've relied on the Institute of Medicine for advice regarding the content and framework of the reports. We're also soliciting broad input from the public and active engagement of public and private sector stakeholders, as well as drawing upon technical expertise and data from across the Department of Health and Human Services and beyond.

Now, some of the challenges in data collection I wanted to just call your attention to. We have a lot of data, not just in surveys, but also collected in the course of health care delivery.

We have noticed, though, that even when data on race and ethnicity are collected, the collection may be incomplete or inaccurate, as an earlier speaker noted. The data on race and ethnicity often are not easily linkable to other information that may affect disparities, such as insurance, employment, income, and education.

And, very, very importantly, data tells us there are disparities. It really doesn't tell us how to address them, and we think it's incredibly important to keep our eye on that goal.

Karen Scott-Collins mentioned our Exceed program very briefly. This is a \$45 million five-year program. We support nine centers of excellence, and the focus is on advancing beyond simply documentation of disparities.

The researchers have been virtually forbidden to do any more descriptive work. Their mission is to get to why and to test some prototype interventions and to develop the capacity and infrastructure for minority health services research.

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In addition, they are to support training efforts of minority health services researchers and to develop sustainable relationships between researchers and communities.

I wanted to just close by talking about some important opportunities, some of which have been mentioned already. First, we think the disparities report is going to be very, very important in helping us as a nation evaluate and track our progress in reducing disparities in health care.

Second, I think there's an incredible opportunity -- and this has been alluded to earlier -- in bringing together the worlds of people who are demanding improvements in quality of care with those who are very focused on eliminating disparities in care. To think of them as separate problems -- I don't see how productive that can be for us.

We think it's incredibly important to identify which features of health care organizations -- since more and more Americans are enrolled in some kind of managed care arrangement -- which of those features lead to decreases and elimination of disparities, and, most importantly, how do we get to sustainable improvements in care.

I want to just close by making two points. If I haven't made it clear enough, we do think that disparities in health care is a critical quality improvement opportunity.

You've heard a sense of urgency this morning in all of the discussions and presentations and also a little bit of concern that maybe we won't move fast enough, or maybe we'll lose our momentum. And I have been specifically asked what's the cost of inaction, and I want to make three points.

One is that if we don't consider disparities in health care and quality improvement as integrally linked, we're going to undermine all our efforts in quality measurements. We're going to deprive ourselves, all of us, of scientific knowledge. And, finally, we're going to not allocate the resources that we have for quality improvement wisely.

Thank you very much.

CHRISTENSEN: Thank you. I know we are probably further behind time. I'm going to allow requests, and maybe if I say brief -- I mean, I have a page full, but is there someone on the panel who would like to ask questions?

OK. The National Minority...

(AUDIO GAP)

(UNKNOWN): My question is for Dr. Stinson. Given the recommendations that came out of the island (ph) report, what do you think of the role of the Office of Minority Health communities (ph) now in working towards implementation of some of the recommendations in coordination with the other agencies within the Department of Health and Human Service and what can be done to strengthen the Office of Minority Health in order to do that?

(UNKNOWN): That's essentially one of my questions also. I mean how much influence do you have over what the department does with the agency to setting of the policies for the department.

STINSON: Looking at the recommendations that were in the (inaudible) report we actually see our involvement in essentially all those recommendations in one way shape or form. You know, whether it's within the department or also whether it's outside of the department with state and local government and also just other organizations out of there.

As far as the role that we have over the authority that our office had (ph) or the influence that we have with the other agencies in the department. As you all know, as the type of staff office we are, we're not in the direct line management of being in the agency, meaning we don't report through ultimately (ph) minority health. However, the office can have an incredible amount of influence as far as what occurs in the department as long as the department supports the statutory mission of the Office of Minority Health.

(UNKNOWN): Well we don't want it to be depending on whether whose in charge (inaudible). We want to know how we can improve on the Office of Minority Health abilities to state the policy (ph) in the direction of the department, especially when we're talking about eliminating disparities in health care being the major issue before this country right now and as we look at the panel, neither of the two people speaking to us are minorities that I know of, as far as I can see and how do you make it work better?

I don't want to (inaudible) I mean to leave it you (ph) who (inaudible) secretary and whether that secretary wants to be able to allowing (ph) your office to (inaudible) putting you on the spot.

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STINSON: Well, it's just a very difficult question to answer because clearly our department, like any other large organization has as an organizational structure with direct lines of authority and also lines of what I call lines of, lines of (inaudible). The basic position of the leadership so far in this department has been to really look towards the Office of Minority Health as a responsible party in the coordination of what occurs in the other parts of the department, the other organizational agencies. So as long as they are willing to support our ability to talk directly with the leadership of the other agencies, to have involvement and a role in the development and program implementation of their programs that, of their type of program activities then I think that would be very, that's very important.

I also have to mention one other thing is that the W (ph) secretary has really (inaudible) to lead the coordination of the HHS wide effort in elimination of health disparity.

(UNKNOWN): Dr. Rios.

RIOS: Yes, for Dr. Clancy for (inaudible) I think it is critical to have this committee based research. My question is about how you're going about seeing the need for minority research and how the minority have, minority populations that are out there been receptive to research training and career development. I know that you've been involved with it for a long time and how you can enhance that.

CLANCY: Sure, just let me briefly respond. We have several different initiatives. One is that like the NIH, we have supplements to grants that can be made and for the past several years we have (inaudible) regularly way outspent our internal allocation (inaudible) minority supplements which is great and many of these people have gone on to have productive careers. That's essentially where a promising investigator gets to serve as an apprentice and add a dimension to an existing study.

Our training programs have been actively seeking members of racial and ethnic minorities (inaudible) to get training and this past year we also started a new program called (inaudible) for the minority research infrastructure and support program. These are new institutional awards focused specifically on institutions that serve and exclusively are a disproportionate number of under served individuals. We have some very exciting institutions that have just started their work and we also have a variety of partnership opportunities with the existing minority institutions. So and Dr. Francis (inaudible) our training programs is constantly looking for new opportunities. So we're encouraged by the (inaudible)

(UNKNOWN): One more question. And can we also -- Dr. Clancy, you mentioned four different specific tasks required in your charge (ph) on eliminating disparities. I just wondered if you would comment on your (inaudible) going to be able to complete all those tasks within the resources that you anticipate to have (inaudible)

(UNKNOWN): I just would piggyback on that question rather than answer (inaudible) question. If your budget was cut in the area of translating research into practice for example, and you talked about being, helping professionals in the health care setting and providing research opportunities for them, how do you do it? I mean how do any, how do any of you (inaudible) begin to address the issues before your offices and the work that you have to do given your budget?

CLANCY: 2003 proposed budget for AHRQ will support completion of the disparities report as well as pro (ph) funding for translating research into practice and about half of our efforts in translating research into practice have been focused squarely on eliminating disparities or improving quality of care for minority populations.

In some other areas, we will be need to make cuts in the research on disparity.

(UNKNOWN): (inaudible)

(UNKNOWN): (inaudible) because what we would like to do is, as always happens, we may have other questions that we will submit in writing and we would ask your cooperation in answering for us. I'll allow (inaudible)

(UNKNOWN): (inaudible) I'm Leigh Brown from the National Indian Health Board. One of the comments that I had and I have heard other people say that some of the other ethnic or racial groups that some groups were not in the Institute for Medicine report were not given much focus and major groups which were (inaudible) now I don't think that's anything deliberate and (inaudible) because I think what you're going to be, what's been done here and by the Institute and by (inaudible) I can never remember the new name of it, health quality and research and -- there's just a great deal that's being done and we appreciate it very much. But there are such big areas that (inaudible) coordination of data for example (inaudible) position to help.

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We talk amongst ourselves about what can we do to become (inaudible) besides becoming more obnoxious and (inaudible) decided that, well, some of us do that, but most of us just decided that's not a good strategy. But what do you see (inaudible) groups that feel under represented could do to make themselves more difficult (ph)?

(UNKNOWN): Any of you.

(UNKNOWN): Let me try a crack at that. One of the points that was made I think very compelling by the advisory council of the Office of Minority Health when I met with them about a year ago, is going to concern how we present the information and the report on disparities in health care, that is to say, one of, a couple of the members of the council made the point that it was very, very helpful to them to have tables in the report that would be empty because it would make the case very, very clearly for where there are data needs. I think the other area where we may need to think about how to present it is in particular for Hispanics and other populations with substantial proportions of non English speakers because it's very hard to keep that out of existing data collection.

What I heard earlier this week in the department really a tribute to Dr. Stinson's leadership, was a very clear commitment at the top or perhaps recommitment to the issue of eliminating disparities in health and health care and I was quite gratified by that, thought it would be OK to thank him publicly.

(UNKNOWN): Just one quick question to Dr. Frohboese. I've heard a lot about the Sandoval (ph) case and I know that for example the office of advocacy and small business (inaudible) was there any involvement in the office of civil rights in that case? Can you, I mean is there anything that precludes you, do you have the independence to be able to do that?

FROHBOESE: It actually predated the times that I arrived at HHS. I was at the Department of Justice at the time. I know that the Justice Department was involved in it, but I do know that there are opportunities and while I was at Justice worked with the office for civil rights where I now am to do some joint briefs and I think that there are possibilities in the future for exploring that.

(UNKNOWN): Because after it's done, I mean we're going to have to change it but we would like to see the office of civil rights more actively involved as cases are brought to the court to affect the outcome.

FROHBOESE: Absolutely.

(UNKNOWN): I'd like to thank this panel. We will be submitting questions in writing. We had a time problem. I don't know if it's been resolved. Has the time problem been resolved (inaudible)? It has been? So our next panel would be Dr. Ruffin. This could be a stretch break but it'll take, it could only be one minute. So our next panel then will be the National Center on Minority Health and Health Disparities and its director, Dr. John Ruffin and the Health Resources and Services Administration and representing them will be Dr. Deborah Parham, acting associate administrator. Unfortunately, we have another event going on at the same time that we didn't plan for and some people have had to be moving back and forth and we have gone on a bit long as is our habit. So we apologize for the time crunch. (inaudible)

Dr. Ruffin has been the director of the National Center for (inaudible). Prior to that, he was the director of the Office of Minority Health Research and he has developed over 100 collaborative research studies and 30 research training programs. His budget as I understand it, is a \$158 million. Dr. Ruffin.

RUFFIN: Thank you and I'm honored to join you today as the first director of the National Center on Minority Health and Health Disparities for this special hearing. And first I'd like to thank the Honorable Donna Christian-Christensen and the Congressional Black Caucus as well as the leadership of the Congressional Hispanic Caucus and the Congressional Asian-Pacific American Caucus for inviting me to be a part of this hearing.

Thank you for realizing the need for listening to the American people and helping to enact legislation to create the center. As members of the minority groups I'm sure you understand the (inaudible) and your families experience the realities of health disparity. And to those who represent community organizations and health care institutions, I'd also like to thank you for your commitment to serve the minority and health disparity communities through your public education outreach, empowerment and health delivery efforts.

Being on the front line, you truly understand the depth of the health disparity crisis and we commend you for your perseverance and compassion. It's quite timely for me to be presenting to you today having just participated in the House and Senate hearings and having met with several congressional staffers to update them on the center's progress.

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On January 16th, 2001, the official launching of the National Center on Minority Health and Health Disparity took effect. At that time, you asked us to do several things. Now a little over one year I have much to share with you. For all of 10 years, we conducted business the way you asked us to, by collaborating with the other NIH institutes and centers, other Federal agencies and organizations. And while you commended us for the good job we were doing, you also felt you needed to do more. And so you asked us to develop some structure to what we were doing.

I'm pleased to inform you that we have developed a structure to reduce and ultimately eliminate health disparities and that is the (inaudible) NIH comprehensive strategic plan and budget. Essentially, what you asked us to do is that you asked us to do four things. You asked that we continue to work collaboratively with the other NIH institutes and centers at NIH to make sure that gaps were identified and that we continued to formulate programs that would help us to do the things that we were not doing at the National Institutes of Health.

And I want to start there because a number of the calls that we receive from individuals around the country generally are asking us to great extent, what about those other programs? What about the programs that were formed over the last 10 years? We're not going to get rid of those programs are we now that we have a center and the answer to that is no. We understand the value of the Jackson Hart (ph) study and we understand the value of the bridging (ph) to the future programs and all of these programs that were formed before the center was actually put in place.

They're good programs. They're working and we plan to continue to support those programs. You should know that before the center was formed, and every single institute and center at the National Institutes of Health, we had programs, new programs that had been formed over that 10 year period and we plan to continue to support those programs.

But as we understand the law, you were asking us to do more and to organize and to structure it in such a way that you too could follow what we were doing at the NIH in a systematic way and so you asked us to put together one year after the legislation, a comprehensive strategic plan. We've done that. That strategic plan is now in place. You asked us to do it in a certain way. The law is unambiguous about how you wanted that strategic plan to be formulated. You said, a new center should develop the plan in collaboration with the acting director of NIH and the directors of the other NIH Ics (ph). So we would put the strategic plan together. No one is to be left off the hook.

You also said to us that the center, the center now has submitted this plan, do it in a timely way and submitted it to the acting director of the National Institutes of Health. I was tempted to bring a copy of it down here to show you as proof that it's been done. It's a very big document. It's heavy and I wouldn't want to carry it down on the metro and I wanted you to know that I couldn't give you a copy of it anyway, because what you asked us to do is to send it to the acting director of NIH. The acting director of NIH as you know is (inaudible) to the department and (inaudible) department is to send it down to you in Congress. And it's only after you have blessed it, blessed this strategic plan, that we then proceed with the united strategic plan.

The significance of the plan to NIH is this, that for the first time in the history of the National Institutes of Health it will have a comprehensive strategic plan and budget that would be guiding the mechanisms for the conduct and support of all NIH and minority health disparity research and other health disparity research activities.

The plan was developed with substantial input from the various stakeholders, including the public, academia, and health professionals representing those populations who disproportionately experience disparities in health. So that plan is now together and I think that the public now has a document that it can follow in every single institute and center at NIH. You could look at the plan. You could see what's there.

If you didn't get a chance to have input into the plan, you shouldn't be dismayed by this because the law was unambiguous again. It said that this plan is to be updated every year and so what you will be doing essentially is looking at that plan on our web site. Every year we will update that plan. New ideas, new concepts come to us and we'll be working with all of the ICs (ph) at the NIH to make sure that that plan is updated and working the way we think it should.

One of the new capabilities that you afforded (ph) the center is the authorization to award grants. With the authorization and you also asked us to make minority health disparity research our priority. I'm pleased to let you know that we have launched the three great (inaudible) programs that you asked us to implement which also underscores our emphasis on minority health disparity research.

If you ask, we function a certain way as an office and how will that really differs in terms of how you function as a center. Two very important things came out of the formulation of the center. (inaudible) just mention and that is that the center can now make awards, they're making grants. Most of you who (inaudible) you knew that the only way that we could function, would be to send dollars to the categorical institutes and through them the award would be made.

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Now grant making authority does in fact reside within the center and we can do that. But the other thing you asked us to do is show the compassion of all of you who had something to do with the formulation of the center and that is that truly no one should be left behind. And so not only are we talking about ethnic minorities but you had reached out to other populations that suffer disproportionately or suffer a disproportionate burden (inaudible) and they should be brought along as well.

And so we are now working to a great extent in rural communities with some of these programs that you'd asked us about to make sure that no one is in fact left behind. So you asked us, in addition to continuing to do what you're doing, put the other programs together. We'll (inaudible) around the payment program together. And not everyone understands to a great extent the significance of that (inaudible) program to the whole health disparity issue. That is a very, very important program.

Just think for a minute of how we approached the AIDS crisis. Some years ago we put together a inter mural (ph) (inaudible) payment program together at NIH to deal with the AIDS crisis. No one wanted to work in the field because of all of the misperceptions surrounding it. But let me tell you, when we were looking for clinical researchers to get involved in AIDS research, when we said to docs that we were prepared to pay back all your loans if you were to make AIDS research a priority. Let me tell you, it's one of the most popular programs now at the NIH.

We plan to do the same thing with health disparity. We're saying to individuals that if you come and you work in the area of health disparity, (inaudible) area that disproportionately (inaudible) we're willing to pay those loans off. But not just to (inaudible). We have broadened that base. This is to Ph.D's, to dentals, the nursing, to all of those doctoral level areas we're saying to you that if you get involved in health disparity research, your loan's going to be paid off, up to \$35,000 a year (inaudible) is written in the law, principal and interest, to take care of that if you're involved with us.

RUFFIN: We have two (inaudible) payment programs (inaudible) have been initiated. The extra mural clinical loan repayment program as well as the health disparity program. Last year, eight months after (inaudible) put in place, 25 health professionals received awards eight months after the center was in place. Twenty eight of those awards went to the health disparity research loan repayment program and 17 awards went to the clinical, the extra mural clinical research loan repayment program.

I can tell you just from the reaction of individuals in the community, the loan repayment program will go far in terms of extract, getting the work for us together that we can use to attack the issue of health disparity.

You also asked us about the endowment program and you asked us to put an endowment program together. We've done that. Many of your institutions that qualify (inaudible) institutions have received endowments. We have funded five. We hope to fund seven. Actually to a peer review process, seven institutions were recommended, but we could only fund five. We're trying to use now some of our (inaudible) allocation to fund those other two institutions.

The last thing you asked us to do was to put together center direction (inaudible) around the country to address health disparities. We're now in the process of doing that. We just finished technical assistance workshops around the country so that people know how to participate. (inaudible) good things about the (inaudible) centers of excellence is that we have put together quickly a program that would allow the maximum participation. There are institutions out there who are not yet ready to put centers in place but what we have developed a planning grants mechanism at NIH (inaudible) technical terms for these. These are all (inaudible) and what that would allow is for institutions who are not quite ready for a program yet but who wish to plan for centers of excellence, those (ph) institutions can apply. (inaudible) up to \$350,000 over a three-year period to plan for that grant. There are other institutions that are a little bit higher than that. They're ready to some extent to put a plan in place but (inaudible) will have to work collaboratively with NIH in order to get these plans in place.

These are what we call our (inaudible) application and a cooperative agreement. Institutions can apply under that rubric (ph) as well and then we have institutions that are ready to go, the (inaudible) and they are ready to put centers of excellence in place and so we have developed (inaudible) on our web site (inaudible) for our centers of excellence. So invite you in to visit the web site and you will see all the programs that I've just described.

One of the great things about the centers of excellence program, if you go and read the (inaudible) again, Congress in its wisdom have allowed us to do something else that is very different for NIH and that is you've said to us that once these centers of excellence are in place, a portion of the five-year grant, can be used to establish endowments at those centers of excellence as well.

So I'll stop there but I invite you to visit our web site, [http://www.\(inaudible\).nih.gov](http://www.(inaudible).nih.gov).

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JOHNSON: Thank you. And just a brief introduction of the next speaker. Dr. Deborah Parham is the acting associate administrator of the HIV and AIDS bureau of the Health Resources and Services Administration. She is responsible for directing the national (inaudible) conference of AIDS resources, emergency care act program which provides medical care and treatment and social services and pharmaceuticals to people living with HIV and AIDS throughout the United States, the District of Columbia, Puerto Rico and the U.S. territories. Thank you for your patience Dr. Parham (inaudible).

PARHAM: Good afternoon Madame Chairman. And thank you for the opportunity to sit before you today to participate in this most important discussion of health disparity. I'm here today representing the HRSA, the Health Resources and Services Administration. The HIV- AIDS bureau is a part of that organization.

The recent Institute of Medicine study documents the consistence and persistent existence of health disparity and makes recommendations for improvements at several levels including policy, health systems, patient education, provider education, monitoring and research. The study also recognizes that the context of these health disparities is within a broader web of discrimination and poverty. Thus, the health system attempts to reduce health disparities, but it is not likely to achieve complete success until there is a change in our social and economic environment.

Until such sweeping changes in our society occur however, the Health Resources and Services Administration works to fill the gap in health care that exists as a result of discrimination and poverty. We at HRSA are dedicated to searching for better ways to deliver quality health care services to all Americans, to get the job done for millions of Americans who count on us for vital health care services.

Our mission at HRSA is to improve the nation's health by assuring equal access to comprehensive, culturally competent, quality health care for all. Our work is focused on fulfillment of this mission and how it fits into the comprehensive strategy within the Department of Health and Human Services to improve the delivery of health care to America's uninsured and under insured individuals and families.

At HRSA, we know that access to quality, affordable health care is directly linked to the availability of a well trained and diverse work force able to provide appropriate services where it's needed most. We know that minority health care providers are more likely to serve the under served as we've heard many of the speakers mention already.

African-American physicians are five times more likely than other physicians to treat African-American patients. Hispanic physicians are 2.5 times more likely to treat Hispanic patients. The bottom line therefore is clear. If we improve the diversity of our health work force, we will improve access to health care for the under served groups that these professionals are a part of.

This administration is convinced that the best way to improve access to health care and eliminate health disparities is to get more direct health care to the people who need it most. HRSA plays a central role in that strategy. The president and Secretary Thompson decided to focus on HRSA taking (ph) that program that we know worked well and used them to gradually and persistently expand access to care.

Community health centers and the National Health Service Corps are at the heart of President Bush's multi-year plan to expand health care services to America's neediest citizens. Locally controlled and culturally competent, the health centers are driven by a need to demonstrate high quality primary care for the under served and the results show that. The collaborative approach to disease management has produced quality results and the 54 percent minority population base of the health centers has benefited dramatically given the starting point disparity.

Health centers serve low income and minority populations that experience much higher rates of many diseases including diabetes, cardiovascular disease, asthma, cancer, HIV and AIDS than the national average. Yet, every day health centers work to reduce health disparities by reducing disease and morbidity and mortality in targeted clinical areas, increasing health care utilization for under served populations, adapting services to meet population needs, building and maintaining a diversified health care work force, increasing the cultural competence of their health care work force, enhancing and establishing new partnerships, translating clinical knowledge into clinical practice, improving the patient visit and enhancing clinical data collection on health outcomes.

In short, health centers equals a rising level of quality care and a decreasing level of health disparity. The goal of expanding the pool of minority health professionals is a major recommendation of the Institute of Medicine study. HRSA plays a key role in the education and training of minority health professions, minority health professionals through the Bureau of Health Professions.

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The program works to ensure that an adequate, competent health care work force is available to meet the health care needs of all Americans regardless of where they live or how much they make. Assuring an adequate health care work force requires three things. One, work force planning and analysis to make sure that we're training the right people. Two, high quality educational programs to ensure that health professionals have the right skills. And three, equity distribution efforts to make sure that professionals are serving in the right places.

PARHAM: One looming problem is apparent and that's the shortage of registered nurses that all of you have heard about. Demand for their services is expected to grow 22 percent between 1998 and 2008, yet the RN work force is characterized by declining entrants and an aging population.

To highlight the critical need for more nurses, Secretary Thompson and Education Secretary Rod Paige recently visited a junior high school in Washington, D.C. to launch a national campaign to encourage school children to consider careers in nursing and other health professions. At that time, we released a kids in health careers tool kit which has information on more than 270 health careers including nurses, physical therapists, X-ray technicians and so forth.

We're very excited about this innovative program and expect tremendous results in minority outreach as we go forward. We are also confronting a national pharmacists shortage. In recent years, the growth in number of prescriptions has been four times (inaudible) the growth in the number of pharmacists. In the last two years, the number of vacancies for pharmacists has doubled. There are several reasons for this shortage but in the interest of time I won't go into them now, but you can read them in my statement.

The distribution of the health care work force is a problem. Over 50 million people live in more than 2,900 health profession shortage areas. 29 million people are under served, most of them in our rural counties. To fill and alleviate these gaps in access to (inaudible) health care we would need more than 13,000 primary care physicians willing to serve in these areas. These are people that we do not have.

Diversity as you know, is another important factor in a nation whose minority populations are expected to reach almost 50 percent of the total population by 2050. Especially large increases are expected among Hispanics and Asians. Still, in the ranks of physicians, dentists and registered nurses, the percentage of minorities and especially of African Americans and Hispanics, continues to lag behind their percentage in the overall labor force.

HRSA responds to the diversity gap by using targeted funding mechanisms to ensure that our funds support programs that are successful in graduating a greater than average proportion of minority students.

For example, in calendar year 2000, the nursing work force diversity program at East Tennessee State University graduated 53 students, all of whom were minorities. Another example, the University of Michigan's predoctoral program in family medicine graduated 374 students, half of whom were minorities.

HRSA support a training program in the health care professions graduates two to five times more minority and disadvantaged students than training programs that receive no HRSA funds. And we know that these minority health care providers are more likely to practice in under served areas. A diverse health professions work force ensures that our most vulnerable citizens get the health care services they need in the communities where they live.

Professionals we know and understand the culture, the language and the habits of people they serve produce better health outcomes and more satisfied patients. Let me skip over (inaudible).

We also have a center of quality that has the lead responsibility within the agency for coordinating health care quality related activities and promoting broader use of evidence based medicine that is patient centered and hopefully (ph) appropriate. Our tele health program is also a vital and growing part of HRSA's outreach efforts. HRSA intends to ensure the tele health complication and distance learning are not just innovative grant programs in their own right. This will continue of course (ph) but that they rapidly become a vital part of all HRSA services so that we can extend the reach into those areas where there are critical gaps.

The health disparities in HIV AIDS are among the most drastic and most publicly recognized. Of the new cases of AIDS reported in the year 2000, 67 percent were among African-American and Hispanic persons, despite the fact that those populations comprise only 25 percent of the U.S. population. Moreover, disparities have been observed in who gets care and treatment services, who gets life prolonging anti-HIV drugs and who benefits the most from biomedical advances in HIV AIDS.

The (inaudible) was not getting these services or advantages are consistently those who have no or little health insurance, less education, live in poverty and are racial minorities in the United States. It is also been documented that

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racial differences in access to and benefits from HIV AIDS care and treatment services can be eliminated with the provision of high quality services that are delivered in a hopefully (ph) appropriate manner without regard to the level of health insurance. That is what HRSA strives to achieve through the Ryan White Care Act, which is the largest parent treatment program for HIV and AIDS in the world.

The minority AIDS initiative which certain of you have been instrumental in helping to bring into being and to fund, has stimulated the initiation of several programs to strengthen the ability of indigenous community-based organizations to respond locally to the HIV AIDS epidemic such as the new infrastructure and capacity building grant programs and the expansion of the planning grants programs.

While the challenges ahead in directing health disparities are substantial, I want to emphasize that HRSA is ready to meet them. We have identified priority areas for our agency activities. For example, in infant mortality versus (ph) low growth weight, (ph) that's practices (ph) pilot project utilizes (inaudible) and patient satisfaction to reduce low birth weight for infants of color.

To address cancer disparities, HRSA is funding a study designed to develop and test the effectiveness of a community based model that will increase the number of first time cancer screening and follow up visits among African-American residents in five (inaudible) areas in Baltimore for prostate, colon and breast cancer.

To address diabetes disparities, HRSA will continue to support the demonstration project, innovative approaches to promoting positive health behaviors for women. To address HIV AIDS disparities, HRSA continues to implement the minority AIDS initiative and funds models that promote access to high quality HIV medical care for (inaudible) disenfranchised populations.

As I've outlined, HRSA plays a key role in a variety of health delivery and professional education programs that all contribute to the elimination of health disparities. We are taking very seriously the findings and recommendations of the IOM study. The study comes at a crucial moment in our country as the number of those living in poverty continues to grow, particularly among racial and ethnic minorities and the income disparity in the United States continues to improve. Both of these factors serve to increase health disparity. Yes ma'am. The study also makes clear that providing access to health care facilities is not the entire story. The quality of health services provided and the interaction between provider and the patient are also crucial variables in this picture of health disparities.

Our commitment is to continue to direct our significant trainee and technical assistance resources towards continuous quality improvement and professional education. Thank you for the opportunity to participate in this hearing today and thank you for your leadership in reduction and eventual elimination of health disparities. Thank you.

JOHNSON: Thank you and I know we're running into a whole lot of time constraints, but I would like -- I do have some questions but I'm going to ask (inaudible) to have the first question followed by (inaudible)

(UNKNOWN): Thank you. This question is for Dr. Ruffin. I'm very glad that you always talk about what you can do and what you have done, especially in terms of the legislation and I'm happy for your responsiveness to that. I'm wondering, in addition to working with universities, what plans you have towards directing those communities and community based organizations.

RUFFIN: As a matter of fact, that's one of the parts of the legislation as well. In fact, you may know that when the center was being formulated, one of the I guess key part of a lot of the discussion was the involvement of community-based organizations and the things that we do. And one of the things that we've actually done in terms of the organizational structure of the center -- if I had more time, I'd go into the whole plan, but we've developed an office within the center that deals exclusively with the involvement of community, community-based organizations.

It's going to take some time. It's going to take a little more than a year to put this in place because as you know, previous the way NIH pretty much operated as a community-based organization is kind of tag ons. It's kind, it reminds me to a great extent of our involvement say a few years ago with community, with two-year institutions.

Many of those institutions, it took us a while to be able to get to the point where they become principals in the funding and process, the whole activity. What we're trying to do now is to develop a way of not just simply as a tag on to academia, but how we can become more involved in terms of community-based organizations taking the lead. And we funded a few but working collaboratively with ONH (ph). You may be familiar with some of those programs, (inaudible) and some of the others around the country that we're supporting in that regard. But still, we have a long way to

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go in developing that, but I think this office is going to take the lead in terms of trying to develop programs, specifically with the community-based organizations.

(UNKNOWN): Dr. Ruffin, can you give us an idea of how your office budget, your center budget, compares to the individual institutes that comprise NIH?

RUFFIN: Well, I think that it goes both ways. There are some institutes and centers, whose budget is far less than ours. And of course there are others, disease-based institutes whose budget are quite larger than ours. I think the challenge for the new center as it relates to budget as you know, we have been given a number of authorizations and I think one of the things that the center has learned quickly is that there is a major difference between authorization and appropriation, because we have a number of assignments and a number of things that we have to do.

But I think that there is a difference and so what you will find is that one of the ways that we're trying to deal with that issue now is to use our direct appropriations to do some things. But also now to fund through collaborations with the other (inaudible) Remember when we were an office, the fluid dollars went one way. We would transfer our dollars to the other ICs and they in turn would fund (ph). Well now that we have grant making authority, that track can go both ways now. ICs can share some of their funding with us so that we can do more with less.

(UNKNOWN): Could I just piggyback (inaudible) I'm going to have to ask this question. How much of NIH funding is spent on minority and disparity research?

RUFFIN: That's a very difficult question.

(UNKNOWN): Is it all -- do you have some oversight over all of those dollars?

RUFFIN: Clearly the legislation indicate that that should in fact be the case and the legislation as you know, has indicated to us that in two years, that is next year, we're to report to you on (inaudible) funding at the NIH as it relates to health disparity and that that report should come directly from the new center. We are now aware of the kind of discrepancies in discussions that we've had about the total budget that is being spent on health disparity. But we accept the responsibility of reporting to the Congress in two years. One of those years has already elapsed on the amount of money that is being spent at NIH on health disparity. And that is our responsibility and we're still working on that.

(UNKNOWN): OK. Because we want to make sure that for all of the funding that is there for minority and disparity research, that the center has the responsibility for this as oversight.

RUFFIN: Yes. We understand that clearly.

(UNKNOWN): Quick question, very quick question, very quick question.

(UNKNOWN): My question is for Dr. Parham. Regarding the presentation on the minority AIDS initiative, HRSA has a substantial percentage of the funds that were allocated under the minority AIDS initiative and I'd like to know if you could tell me what percentage of the organizations and providers that were funded under the minority AIDS initiative are actually minority providers or minority community-based organizations?

PARHAM: My predecessor Dr. Joe O'Neil (ph) has been detailed to the office of HIV AIDS policy who conducts some audits. And one of the audits that he's looking at is of the minority AIDS initiative funding because that's one of the questions he wants to be able to, the department wants to be able to answer for all the programs. So that audit is currently being conducted right now so I cannot give you the answer but the answer will be available shortly.

(UNKNOWN): Does that audit look at other things? We have some concerns at the caucus about the audits and we hope that they're used in a positive way and that's as a way to discredit some of our agencies that have been getting some of the funding. As you know, our minority AIDS initiative is there to help build capacity in our community-based organizations so we're starting with the organizations that have not had the experience or the expertise and we don't want them to -- we have concerns about the audits.

PARHAM: I hear a couple of questions there, well a couple of questions and one concern. The audits have raised a lot of anxiety (inaudible) to acknowledge that but we are looking at them as a, because we feel that we have a positive story to tell. We just haven't been able to tell it with data. And so that's what we're trying to do instead of do it by anecdote. We want to actually have the data that who we're funding, which organizations we're funding and who's providing services. The other concern that I hear is that, what was the second part of your question?

(UNKNOWN): Well, I was just saying that I hope that we realize that our community-based organizations...

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PARHAM: Oh, about building (inaudible) right, right. We do understand that many of the organizations that we are trying to fund or that we have funded under the minority AIDS initiative, we don't have the track record of some of the organizations that have been around for 10, 15, 30 years. And our commitment is to build the capacity in those organizations so that they are better able to compete for more resources, to provide the car and so forth. That is our commitment.

(UNKNOWN): (inaudible)

(UNKNOWN): Yes, just one -- it was very good to hear you talk about the importance of the diversity in health professions but there's been some concern with announcements made at our NHMA (ph) conference two weeks ago and then just yesterday in New Mexico from the department and it was that the secretary was not real interested in seeing that there is a minority physician shortage and that the HRSA programs are being practically wiped out and the (inaudible) huge cuts, 70 percent last year, I know 50 percent. We're very concerned about that but of more concern for both of you, it's a combined question. The answer has been now even twice that NIH's minority center will be taking up the mantle of health professions recruitment and I know this Title VII programs are up for reauthorization next year and I'm just wondering if this is part of a plan. And I know we need research, but I have concerns about the focus on research which seems to be at the expense of providing services which will only serve to create greater gaps. So I'm wondering why that is the (inaudible) of the department.

RUFFIN: Well, I'm not sure that I can answer that but what I will try to do is just to say to you that one of the things about the new legislation that created the center is that in addition to asking that there be collaboration at the NIH as it relates to the various ICs, but the legislation also encourage collaboration between agencies, that is HRSA and (inaudible) and CDC and all of the other agencies in terms of our various mission.

If you look at the endowment program for example, it requires that HRSA and NIH work together to make the 736 endowment program work. And I can tell you that I'm very encouraged here. I know that we're just a year into that process but I can tell you that that program would have never gotten off the ground if that collaboration had not been there.

And so there are other areas where our mission will require that we work together and we would have to work our way through these exercises.

(UNKNOWN): And just in response to your first question, what I would say is that this administration looked at a whole host of health professions education programs and have had to make some tough decisions and one of the things they did decide to do is to extend those programs and I mentioned some of it that are targeted that, to yield the greatest number of minority clinicians and for example, the National Health Service Corps will be expanded and has received an increase in the 2003 budget as well as for, to address the nursing shortage.

(UNKNOWN): What about (inaudible) what about (inaudible) cuts that reaches back into our high schools and to get kids prepared to get in.

(UNKNOWN): I did not bring the HRSA budget so I will have to provide that question, that answer for the record (inaudible) don't know.

(UNKNOWN): You can take back the message for us that we don't really see a strong commitment to increasing minority health care providers (inaudible) Thank you. Thank you. We will also -- please anticipate that you'll get some written questions for us.

Our final panel, we're going to take the next three persons representing agencies at the department and one, the final panel. That will be Dr. Walter Williams, associate director of minority health at the Centers for Disease Control and Prevention, Ms. Elaine Perry, the acting deputy director of the Center for Substance Abuse Prevention representing SAMSA (ph) and Dr. Rubin King-Shaw, deputy administrator and chief operating officer of the Centers for Medicaid and Medicare Services.

Let me just get my bios together. (OFF-MIKE) We'll start with (inaudible) Dr. Williams is the associate director as I said for minority health at the office of, in the office of the director for the Centers, at the Centers for Disease Control and Prevention. He has held a number of leadership positions during his 20 years at CDC including chief of (inaudible) activity, hospital infections program, editor pro temp of the "Morbidity and Mortality Weekly Report," chief of child and adult immunization and many others. In his current position as associate director, he serves as the principal

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adviser to the director of the center or your panel of four directors, interim directors. And (inaudible) why don't you go ahead Dr. Williams, while I locate my bios here.

WILLIAMS: Thank you very much. Thanks to you Chairwoman and all of the other members of the distinguished panel. CDC is very concerned about the continued existence of health disparities among racial and ethnic groups and is implementing a number of programs designed to advance the initiative to eliminate these disparities. Our programs encompassed an array of activities including research and demonstration programs which will be the focus, the demonstration programs will be the focus of my comments this afternoon. But also program evaluation, training, fellowships and intergovernmental personnel action, support for public health conferences and the development of capacity and infrastructure for public and private organizations.

Today I'll focus on the six focus areas in the HHS initiative and again target some highlights, some highlights of demonstration activities and interventions primarily. Our activities are designed to focus on the six priority areas that have been referenced before, cardiovascular disease, immunizations, breast and cervical cancer screening and management of diabetes, HIV infection and AIDS and also infant mortality.

Reach 2010 is the cornerstone of these activities. It's an outstanding example of community participatory projects that currently support 37 demonstrations in communities, two of which are funded in partnership with the California endowment through the CDC foundation, five of which are funded through an interagency agreement with the National Institutes of Health, four with the administration on aging.

About 90 percent of our Reach projects serve African-Americans or Latinos. The remainder serve Asian Americans, Pacific Islanders and American Indians. The intent of Reach 2010 is to support community-driven demonstration projects that yield replicable (ph) models to eliminate health disparities in all communities of color. A new component of Reach 2010 is funding American Indian and Alaska natives. There are five projects under that rubric funded for three year periods starting in 2001 and these grants target capacity building of tribes and tribal organizations.

Systems change is one of the areas targeted through Reach and its specific emphasis and evaluation model of Reach in an area that most of the grant teams are pursuing programmatically challenge us to support their strategies and recommendations and to seek broader levels of system change to support local activities.

One of the interests of CDC is to expand the scope of Reach to additional health priority areas that relate to some of the other sister agencies, including alcohol and substance abuse. Violence is another programmatic challenge and also elimination of syphilis.

These are areas that are identified by statistics and by communities of color as persistent health challenges impacting their communities. A particular focus area again is diabetes. This is a disease for which African-Americans and Latinos have some of the highest rates of all population groups in the United States.

The prevalence of diabetes among African-Americans is approximately 70 percent higher than whites and the prevalence in Mexican Americans is nearly double that of whites. To address these disparities, CDC is implementing activities that focus on preventing complications of diabetes in minority populations. Prominent among these programs is a program entitled project direct. This is a multi-year diabetes community demonstration project focused in Raleigh, North Carolina and during its first year, the project boosted the percentage of patients receiving foot care counseling from 20 to 50 percent. And patients are now taking better care of themselves and are more likely to be referred for other needed examinations including eye exams and vascular exams.

Another initiative supported by CDC is in collaboration with the University of North Carolina at Chapel Hill's School of Public Health and this focused on participatory prevention research in African-American churches in North Carolina to expand and refine an intervention to deliver a community-based diabetes self management programs that build on physician-directed diabetes care.

Similarly, the national diabetes education program -- it's a joint program sponsored by CDC and the National Institutes of Health, has reached about 3.6 million Latinos to date with public service announcements, media broadcasts, print media, including Hispanic Latino campaigns entitled Mas que comida et vida (ph). It's more than food; it's life. And it focuses on Hispanics who have diabetes or who have high risk to develop the disease.

In addition, six national minority organizations are funded by the national diabetes education program to deliver culturally and linguistically appropriate community-based diabetes prevention and control messages to African-Americans, Hispanics, American Indian and Asian American Pacific Islander populations.

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These diabetes prevention and control activities that target the Hispanic population also focus on the U.S. Mexico border where CDC is working with the four southwestern U.S. border states, the six border states in Mexico, the Pan American health organization and Mexico's secretariat of health to actually assess the burden of diabetes care and barriers to good diabetes self management.

In the next three to five years, the diabetes program plans to enhance current activities and expand its capacity to respond to the emerging public health diabetes issue such as primary prevention, childhood diabetes, diabetes and women's health and the recognition of a pre-diabetes condition, impaired glucose tolerance.

In addition, increasing the number of comprehensive state-based diabetes control programs beyond the current 16, CDC also faces a number of challenges to strength surveillance efforts, focused on high risk populations, expanding the national diabetes education programs activities and partnerships and also expanding applied research activities to improve early detection, quality of care and preventive care practices.

A word about cardiovascular disease. Heart disease as you know remains the number one cause of death for all Americans. Heart disease deaths are more than 25 percent higher for African-Americans than for whites and African-American men and women who had the highest death rates from diseases of the heart during the past decade have experienced fewer declines than the overall U.S. population. In addition, African-American women have experienced a much lower decline than either white women or African-American men.

CDC is addressing these disparities in cardiovascular health by assisting states in developing, implementing and evaluating health promotion, disease prevention and control activities. Most notably, cardiovascular health research activities include a two-year project with Moorehouse (ph) School of Medicine, entitled multiple cardiovascular disease risk reduction in adult African-Americans. This is a pilot study. The project employs a randomized control intervention trial to determine the effectiveness of cardiovascular disease, multiple risk strategies, risk reduction strategies in African-Americans who experience disproportionately high cardiovascular disease mortality and morbidity.

WILLIAMS: In an effort to increase physical activity, thereby helping to curb cardiovascular disease, St. Louis University administers a CDC funded extramural prevention research program designed to promote the use of walking trails in six rural African-American communities in southeast Missouri. These new cardiovascular disease efforts will help address also Asian Pacific Islanders, one of the fastest growing racial and ethnic populations in the U.S.

CDC has just completed data collection through a prevention research center at the University of California at Berkeley on cardiovascular health and social context among ethnic subgroups and ethnic enclaves focusing on Asian populations. Compared to what is known on cardiovascular disease disparities in African-Americans relatively little is known about disparity in American Indians, among Alaska natives, Latinos, Asian cultures and this represents a particular problem.

Disparities in cardiovascular disease, especially the social and the environmental determinants and the best strategies for their elimination, are inadequately studied. Our challenges to support research projects designed to assess the social environmental determinants of these widening gaps as well as to provide support for state-based programs designed to address priority populations where the disparities are manifest. In addition, a particular challenge is assuring a culturally competent and diverse public health work force, sustaining strategic partnerships with national minority organizations that facilitate effective collaboration with targeted populations.

Shift quickly to breast and cervical cancer screening and management. During the last decade, the age adjusted female breast cancer death rate for whites declined about 20 percent. The rate for Latinos declined 21 percent and despite efforts targeting breast cancer rates among black females, the rate for blacks declined only 6 percent. The rate for Asian Pacific Islanders was nearly unchanged.

While African-American women developed breast cancer less often than do white women, mortality rates from invasive breast cancer are greater, notwithstanding higher mammography rates. And studies have shown that African-American women are more likely to be diagnosed with breast cancer at late stage in the disease and subsequently have shorter survival time than white women.

Such disparities may result from multiple factors such as barriers to health care access, effects of lower socio-economic status, health behaviors and other risk factors. But obviously more research is needed to understand the differences in these cancer death rates among racial and ethnic populations as well as better target prevention efforts to reach the under served and those at highest risk.

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CDC's national breast and cervical cancer early detection program is currently in its 12th year. It funds all 50 state health agencies, the District of Columbia, 14 tribal organizations in six territories also conduct breast and cervical cancer early detection programs. More than 3 million screenings have been performed, nearly 50 percent of those provided to minority women.

The program is dedicated to ensuring that eligible women in the United States receive screening services, prompt follow up if necessary as well as assurance that the tests are performed in accordance with current guidelines.

A quick word about childhood and adult immunization. Disparities in immunization coverage for preschool age children have been greatly reduced among all racial and ethnic groups. The problem now, despite the success in childhood vaccination, is that significant disparities continue to persist in coverage levels for adults in different racial and ethnic backgrounds.

In the year 2000 for example, 67 percent of whites, 56 percent of Latinos and 48 percent of African-Americans 65 years of age and over received influenza immunization. Similar rates exist for pneumococcal (ph) vaccination. What CDC is currently trying to do to address these disparities in adult immunization coverage include strategic partnerships with national minority organizations such as the National Medical Association, the Congress of National Black Churches involving targeted interventions working to actually improve use of clinical preventive services among African-Americans as well as African-American women on Medicare.

A quick word on infant mortality. CDC is implementing pre-term delivery activities designed to increase the understanding of factors that contribute to two of the major causes of infant mortality, that is pre-term delivery issues as well as sudden infant death syndrome and these problems affect disproportionately African-Americans and American Indians. There are a number of interventions that CDC is involved with including research into strategies that look at pre-term delivery disparity as well as working with the center for women policy studies in the development of instruments to better understand knowledge about pregnancy outcomes and to better inform the development of state policy.

A quick word on HIV AIDS. A lot could be said about HIV AIDS. There are a number of activities going on in CDC. This may be in the area where there may be questions but since 1999, CDC has received funding through the minority AIDS initiative to enhance efforts to prevent HIV infection and transmission in communities of color.

These funds awarded to, have been awarded to states, non- governmental organizations and other partners to address the prevention needs. There are a number of programs I could highlight but in respect for the shortness of time, I'll truncate my oral presentation and again all of the testimony that I had intended to provide you is available in our written statement. Thank you.

JOHNSON: Thank you. Thank you. I did not a bio in my folder for Dr. Perry. She's had a long career in the Federal government, serving in senior management at the Center for Substance Abuse Prevention for over five years. She's been at the center for substance -- for over five years. She presently serves as the center's acting deputy and is managing the center's cohort on HIV as well as other preventions at the center. Welcome Dr. Perry.

PERRY: Thank you Madame Chairman. I'm pleased to be here today to present testimony for the Substance Abuse and Mental Health Services Administration. Please let me first, let's take this opportunity to thank the **Congressional Black Caucus**, Congressional Hispanic Caucus and the Congressional Asian-Pacific American Caucus for your unwavering leadership in focusing our country's attention on the continuing health disparity that impact on minority and economically disadvantaged populations, accessing and using effective preventive health and health treatment services.

We are also grateful for your sustaining support of SAMHSA's activities to eliminate health disparity. SAMHSA is the lead Federal agency charged with improving access to and quality of substance abuse prevention, addiction treatment and mental health services for all Americans. SAMHSA's program efforts are guided by three strategic goals: capacity, effectiveness and accountability.

SAMHSA works with communities to build capacity and infrastructure they need so that they in turn can reach out and extend services to those in need. SAMHSA makes it possible for communities to implement effective prevention and treatment programs and services that are culturally, developmentally and linguistically appropriate and are accessible to all persons within those communities.

Lastly SAMHSA evaluates to show accountability, how we've made a difference, how we've learned and what we can build on to increase the knowledge base so that we can continue to improve services and improve outcomes.

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SAMHSA's role then is to enable communities through capacity building to (inaudible) point of service delivery to populations in need and to provide them the best knowledge that we have on culturally relevant effective practices.

By establishing best practices and getting them into practice at the community level, we hope to ultimately improve health outcomes. SAMHSA's minority HIV program is a good example of how SAMHSA is working through these strategic goals to eliminate existing health disparities.

SAMHSA's minority HIV initiative is a comprehensive initiative across all three centers within SAMHSA. It's designed to improve the capacity of our community to address the substance abuse-related HIV infections among minority populations as well as the mental health needs of persons living with or at risk for HIV and AIDS.

The data from CDC clearly shows the relationship of substance abuse and HIV and AIDS. Intravenous drug use is the mode of transmission for 37 percent of the adult and adolescent African-American males with AIDS and 41 percent of the African-American women.

For Hispanic males, HIV drug transmission accounts for 35 percent of reported HIV AIDS cases. For Hispanic women, this increases to 40 percent. Epidemiological data clearly shows that transmission of the virus through drug use is approximately times greater in these two groups than in the white population. The role that substance abuse prevention and treatment plays in preventing HIV is critical in combating HIV AIDS in African-American and Hispanic communities. And it is the communities that play a major role in addressing these substance abuse problems to reduce the incidence of HIV AIDS.

Through out initiative, SAMHSA is building the capacity of communities to plan, expand and integrate substance abuse and mental health services and HIV AIDS prevention and treatment for racial and ethnic minority populations, including African-Americans, Hispanics and native African-Americans and others such as women and children who are disproportionately impacted by the HIV AIDS epidemic.

We're working to build capacity of communities through developmental or one-year planning grants to communities with high need to help them build basic capacity and infrastructure so that a new community organization can sustain itself and ultimately provide the critically needed services in their communities.

We're doing it through service grants to community-based organizations that are already providing either HIV prevention or drug treatment services to minority populations and the purpose is now to provide integrated substance abuse prevention and treatment in HIV prevention services.

Efforts here are intended to have the community-based organization provide more comprehensive services as well as extend their reach deeper into their own community or into additional communities.

One specific example of building capacity in a community is the San Fernando Valley partnership which primarily services Hispanic, Latino youth in suburban areas of Los Angeles County. This partnership program first received funding from SAMHSA in 1990 and has since then provided substance abuse prevention services to youth. Last year this partnership received an HIV (ph) grant to focus on high risk Latino youth. With SAMHSA provided technical assistance the program has now developed more comprehensive strategies for community mobilization and using the prevention expertise to help address HIV and AIDS.

Capacity efforts alone are not enough. We need to provide the content knowledge on best practices and other tools that communities need so that they can be implementing best practices. We also know that culturally tailored practices are the most effective. We have looked to the work of CDC to identify effective HIV prevention practices and the work of NIDAAA, CDC, CSAP (ph) and others to identify effective substance abuse prevention and treatment practices. And SAMHSA utilizes its various delivery mechanisms such as its addictions technology transfer center in CSAP (ph) and the centers for the application of prevention technologies in CSAP (ph) and other mechanisms to disseminate all of this to communities.

Then we need, after we get the capacity in place and the content knowledge to the communities, we also need to evaluate what we're learning. What are the best practices? What are we learning from what we're doing and we have and next week the center for substance abuse prevention is having a meeting of its first cohort of HIV grantees and here we're going to be sharing information from what these grantees have been able to learn from the interventions that they have designed or implemented. What has worked, what hasn't work, what type of information are we learning about being able to build community infrastructure and all of these learnings then will help the next cohort of grants that are in

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place so that we can continuously improve the quality of services that we're providing and therefore improve outcomes in the future.

SAMHSA has historically targeted its programs to addressing groups at greatest risk for substance use and mental health services. And we know that our efforts are making a difference. The 2000 national household survey on drug abuse shows the decline from 1999 and past month's use among all minority populations except American Indians. Decreases were also seen in past year and lifetime use of any illicit drugs. So it's through SAMHSA's strategic planning efforts we can continue to decrease substance use in minority populations. We can also decrease the number of HIV drug users and decrease the number of individuals who engage in risky behavior.

PERRY: We will also ultimately have an impact on HIV transmission. That is why substance abuse prevention and treatment play a critical role not only in preventing HIV but in working to eliminate health disparities for all Americans and as we heard (inaudible) this morning, he indicated that changing behaviors has a direct relationship to improving health status.

Finally, I could not leave here today without mentioning the surgeon general's report released last year entitled "Mental Health: Culture, Race and Ethnicity." The report emphasized that mental health is fundamental to overall health and productivity. It is the basis for successful participation in family, community and society.

Once again, the surgeon general stated that it's all too easy to dismiss the value of mental health until problems appear. These problems are real and if left untreated, mental illness can result in disability and despair for families, schools, communities and the workplace. Unfortunately, minorities have less access and availability of mental health services are less likely to receive needed mental health services and receive a poorer quality of services when they do receive them.

In many cases, it is not the mental health problems that cause the disability, but the lack of available quality care which results in minorities becoming more disabled with mental illness and might otherwise be treated and the individual able to participate in life, community and society.

As a direct result of the report, SAMHSA published an announcement as part of our building mentally healthy communities initiative to provide funding for communities, for programs targeting reductions in racial, ethnic disparities in mental health or access to mental health services. Programs like those in Multnomah County Oregon are focusing on reducing ethnic and racial disparities in the provision of mental health services for Latinos.

The Asian access project in Connecticut is reducing the ethnic and racial disparities among Asian Americans in Hartford. Reaching out to the elderly in public housing as the program in New York City, reducing ethnic and racial disparity among primarily African-American elderly individuals living in public housing.

Let me conclude my comments by discussing what SAMHSA believes needs to be done next. SAMHSA will continue to provide extensive training and technical assistance through its addiction transfers technology center and the centers for the application of prevention technologies. We will continue to use our grants as pure mentors for other grants. We will provide targeted technical assistance to rural and under served and other under served and unserved communities.

We will continue to build the capacity of community-based organizations to effectively compete for needed funding. This summer SAMHSA is holding 20 regional technical assistance and training workshops to assist state-based organizations and minority universities and colleges to gain the skills needed to better compete for SAMSHA and other Federal funds.

We need to continue to expand our knowledge base of best practices for integrating substance abuse prevention and treatment and HIV prevention and mental health and HIV and ensure that this knowledge is put into practice in order to improve outcomes. We need to continue to work to ensure that every community has effective substance abuse prevention, addiction treatment and mental health services in place. We must ensure that these services are culturally, linguistically and developmentally appropriate so we are clearly addressing the changing face of America both in age and race and in ethnicity.

We plan to build stronger partnerships and collaborative relationships with minority-based organizations and we need to bring stronger collaborations among Federal agencies in order to maximize our research (PH) and leverage our resources. The CDC's contributions to and support over the past four years to the work of SAMHSA has made a dif-

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ference, but we still have much to do. So I thank you today for the opportunity to share some of SAMHSA's efforts and will answer any questions. Thank you.

JOHNSON: Thank you. And before I introduce Mr. King-Shaw, let me just acknowledge that the national black child development institute members representing all 50 states that have joined us during the last couple of presentations and we thank them for their interest and for being here with us today.

Rubin Jose King-Shaw Jr. is the deputy administrator and chief operating officer for the Centers for Medicare and Medicaid Services, CMS (ph), formerly known as HCFA is a Federal agency within the U.S. Department of Health and Human Services. CMS runs Medicare and Medicaid programs, the two national health care programs that benefit about 75 million Americans. As deputy administrator and chief operating officer, Mr. King-Shaw manages the CMS budget which spends over \$400 billion a year buying health care services to beneficiaries of Medicare, Medicaid and the children's health insurance program. Prior to assuming responsibility as the deputy administrator and COO, Mr. King-Shaw was the secretary of the Florida Agency, Florida health care financing administration. Welcome.

KING-SHAW: Thank you Madame Chairwoman and to all the caucus and committee members. It's a pleasure to be here on behalf of the Centers for Medicaid and Medicare Services, formerly HCFA, to share with you what we are doing at CMS for this very important topic.

We are good partners with our fellow or sister operating divisions and staff divisions at HHS and so whereas my comments will be focused on what we are doing at CMS, we clearly are a part of a larger mission under the direction of Secretary Tony Thompson to address this very important issue.

Just a quick couple of words about CMS itself. You heard about the number of people that we serve. That's (inaudible) into about one in every four Americans that we serve through our program and about one in every \$3 spent in health care in America. So we take our responsibilities, all of them, quite seriously and this issue of disparities and eliminating, addressing and eliminating disparities is a core part of our mission. Since you've already been briefed on the IOM report, there's no need to do that. But I think it does make sense to translate the release, connect a couple of dots.

Some of the items that were featured in that report as issues, as implications, are through our belief (ph) in health care in general, they are specifically true in the Medicare program. For example, a consistent relationship between a beneficiary and a primary care provider is a true determinant of outcome and when individuals of ethnic population, of African-Americans, Hispanic and Asian American Pacific Islander, suffer from not having both consistent, constant, stable provider patient relationships and (inaudible) contributor to the items of disparity.

And whereas the (inaudible) of ethnicity between patient and provider doesn't automatically translate into better outcome, it does have an impact on trust and participation and compliance and cooperation in the delivery of health care and the maintenance of wealth (ph) and so we clearly understand in the Medicaid and Medicare populations, there is an important part of this equation which is having not just an adequate number and specialty of physicians and caregivers, but how then of the same rich demographic diversity as our beneficiary population is. And so we do focus on that as best we can and always looking for ways to monitor our progress on that issue.

There are long-standing issues of mistrust in the health care system in general on the part of some ethnic populations. We try very hard to do our provider education and outreach to address those issues head on, but they are nonetheless items of concern as is patient education and provider education. And some of what you will hear me refer to, though I'm not explaining in great detail for lack of time, is a quite ambitious program that we have to educate providers on these programs, Medicare, Medicaid and (inaudible) and some very meaningful ways that both providers and beneficiaries, patients, can give part of a success strategy in identifying and improving these disparities that we find across the health care continuum.

Other things that I think bear, are worth noting and that this is very much a data driven discussion. We now have data that clearly indicates that certain ethnic populations are at greater risk for certain conditions, hypertension, certain cancers, diabetes and are disproportionately not likely to be treated as effectively but disproportionately more likely to die or suffer, then it does compel a commitment to address these issues head on.

And so we do have a great deal of effort to bring toward research, data collection and other activities to be sure we continue to understand where these discrepancies are, where the disparities are, so that we can have effective intervention on how to address them. One of the ways we do that is through a very aggressive research program that we have, both with our own data capability, our own data mining if you will, but through a series of partnerships with research institutions and two or three black community colleges, tribal serving organizations, other tribal, I'm sorry, Spanish (ph)

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serving organizations and tribal colleges and universities and think tanks of various types so that we can continue to grow very robust data, data banks.

KING-SHAW: Among the things that we find to be quite important in addressing each of the disparities is our own organization. That means having the right people with the skills sets and the perspective in policy making, in research and decision making positions who remain at the forefront of our agenda and so among other things, we have made this an important part of our recruiting and retention strategy to attract to CMS which has been a struggle in the past. People of various ethnic backgrounds so that they can be a part of our mission and bring perspective and resources and research to bear.

Another thing we've done organizationally is we absolutely have now a program executive for racial and ethnic health, I want to get his title right. The gentleman's name is Kevin Nash (ph). He's here with me in the room should you have more questions about what we're doing that I can answer in the short time I have today. Kevin and anybody at the office could be available to you. But that office reports directly to me within the office of administration and is a part of our effort to connect the dots across all of CMS and outside of CMS, institutions, states, et cetera, so we can have an integrated and more effective strategy for adjusting all of these.

We've reconsider the quality forum at CMS. This is a group of people who are looking at CMS policy operations, activities, who make quality perspectives and we have (inaudible) addressing these disparities as a quality issue. And so in that forum, we have quite a lot of discussion about the impact of any particular proposal or reg or activity on the issues of ethnic health and (inaudible) eliminating the disparity between or among ethnic populations and so we've got quite a deal of an organizational commitment to this (inaudible) it's worth noting.

But that coordination and that clearly goes beyond the central office. We have 10 regional offices as you know in most of our large major cities around the country. And each one of those offices have outreach and research and various community partnerships, an organizational effort to try to address these issues and they can clearly give you a more detailed accounting of those at some point if you are interested.

They generally fall into the following category: outreach and education, quality improvement projects, research and the activity that support the four executive orders issued by the president that truly do guide our thinking and our commitment to the areas around African-Americans, Hispanic-Americans, Asian-Americans and Pacific Islanders and American Indians.

Our outreach in cooperation with all the academic (inaudible) are a part of that commitment but it is not the sum total of our commitment. We have a number of activities that we focus on that are worth mentioning here as well. I will testify next week about where CMS (inaudible) disease management strategy. Suffice it to say that there is quite a significant potential for disease management methodology to be brought to bear on the issue of disparity and a significant part of what disease management does is it truly organizes resources around the needs of a population or a patient, CMS understands the population and the patient. And significant numbers of our disparities issues do revolve around and (inaudible) around ethnicities for example.

End stage regional (ph) dialysis is a very significant problem. Forty percent of the cases of ESRD are African-Americans. African-Americans are about 12 percent of the population, disproportionately (inaudible) patients are low income and of African-American descent. And so when we talk about a disease management program around these dialysis patients, clearly are cultural implications that must be brought to bear here.

There are other types of interventions in hypertension and diabetes that are of this nature and so we will be exploring those and developing those and consider that information with you at your discretion. We clearly are doing such things as provider packaging. There are a number of academic and medical institutions that have expertise, historical expertise in understanding the treating of populations. We want to make sure that we are reaching out to those institutions, be in provider or academic in ways that can make them a part of our distribution of our programs, their rendering of care, not just in research or procurement though those are important items.

A number of the work that we are doing in the area of prescription drugs, prescription drug therapy, prescription drug benefit management does include important aspects of disparities, particularly when health care literacy and compliance with prescription drug regimen (ph) is a key component of health and wellness and there are at times very sharp divisions and distributions of compliance, understanding of prescription drugs regimen.

I will cease the opening part of my comments with the following I guess philosophical commitment. It is true that we are the nation's largest health insurance, financial services company. If you just look at the dollars that we work

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every day. But I think in part, in part, the success strategy here is to go beyond the dollars and beyond the numbers with a clear understanding and that is that the division of quality, affordable, effective, accessible health care services must be delivered, must be delivered with respect to the needs of the body, the condition of the mind and respect for the soul.

And if that last piece, respect for the soul, but I think we as a people, as a nation, as a government, ought to be able to understand with more clarity and it is in that piece that we understand that there are cultural values and traditions and behaviors and expectations that drive ones utilization of health care services and in fact (inaudible) their health status. And as we begin to better understand the patient that we all serve, (inaudible) making sure that everyone is getting single, standard, high standard of quality care.

With that I thank you for the opportunity to share in this very cursory review of what we are doing and would be happy to engage whatever questions that your discussion you may want to have.

JOHNSON: Thank you. Thank you as our final panel. We really think that everyone who was able to join us and we're going to ask some questions of the panel at this time (inaudible) had a question I believe (inaudible)

(UNKNOWN): Yes, I have a question for Dr. Perry and Dr. Walters. In your presentations you talked about (inaudible) HIV AIDS initiative and the work that you're doing in your respective agencies to build capacity and infrastructure within communities. The minority HIV AIDS initiative's intent was to build capacity infrastructure within minority community-based organizations and minority providers. What I'd like to know, of the resources that each of your respective agencies receive on the minority HIV AIDS initiative which was about a third each of the total allocation, what percentage of the resources went to fund minority community-based providers and minority community-based organizations to carry out the functions that you all described in your activity report.

PERRY: Well, (inaudible) what has been discussed on the previous panel, there's an audit now being done by the department to determine how much has actually gone to minority organizations. I do know that all the funds (ph) itself are being targeted to 100 percent to minority populations.

(UNKNOWN): (inaudible) I think our minority initiatives go to funding to minority community-based organizations and this is a real issue that we're having with the department. So first of all, do you have any idea before the audit of where, whether your funding went to minority community-based organizations and what percentage of it did go?

PERRY: I do not know.

(UNKNOWN): And secondly (inaudible) do you, given the fact that the department has made a determination that to target funding to community, minority community-based organizations is illegal and given the intent of the caucus in providing this very small amount of funding, comparatively small amount, how do you intend to try within the language to really meet the intent of the Congress when we provided that (inaudible) to begin with? Building capacity within community-based organizations of color.

PERRY: I think as you pointed out, we do not, the department does not allow us at this point to target, to provide funds specifically to the minority-based organizations. What we are doing though is we're doing a lot of technical assistance. As I said, we're doing a lot of outreach to minority-based organizations, to minority educational institutions, to provide, to build their skills for applying for Federal funds. We have the grants program, the planning grant program through our HIV program which is intended to help build capacity of a community just to get them ready to be able to apply for funding and provide services. All of these are I believe intended to meet the intent of what the CDC wanted by trying to provide some targeted technical assistance to under served communities.

(UNKNOWN): (inaudible) piggyback on that question.

(UNKNOWN): (inaudible) answer the question. Let me ask...

WALTERS: What I would say in response to the question is to give a description of CDCs total funding for HIV AIDS in the most recent fiscal year. It was a total of \$849 million and of that \$849 million, \$394 million went directly to state and local health departments and that's been the major thrust of our screening, counseling and referral service program, \$166 million, the second largest component of the funding, went to directly funded organizations and the greater proportion of these directly funded organizations are community organizations. CDC is - our community based organizations. (inaudible) the category called directly funded organizations.

(UNKNOWN): Of color? Of color?

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WALTERS: I cannot be more specific than that with this break out. CDC is aware that the department is looking specifically at the eligibility requirement through which previous grants were let to directly funded organizations. That changes the way in which we might be able to work with those organizations or the constitution of the community boards and things like that that may govern the use of the funds of organizations at this time.

(UNKNOWN): (inaudible) of the national black leadership commission on AIDS, just a little, (inaudible) a little more discussion about this, the intent of the Congressional Black Caucus and how they intended to interpret and what the actions were that followed. So the intent was two fold. The intent was both to build the capacity of community-based organizations of color to apply for grants and the intent was equally to build the internal capacity of community-based organizations of color to provide. So somewhere within the interpretation and the tyranny of the task (ph) of the legislation, in went out with one intent. The department has taken it and intended it to be something else and therefore allowed for a (inaudible) in the middle of a real serious national crisis.

We're sitting here now talking about racial disparities in health and how outrageous it is and we're having a different interpretation about something that was clearly laid out. It said indigenous leaders. It laid out how the boards had to be - it laid it all out, because a part of the intent has to be some institutional development within these communities for seeing widespread wholesale deaths (ph) and that HIV and AIDS is one of many catalysts.

I want to ask you within this deliberation that went on to make that decision, and in your discussion of, we use the money to serve 100 percent communities of color. A valid point and I wouldn't argue with you. I wouldn't argue with many of the organizations in the first wave of the epidemic to use that as they do in New York. But you know, if there are 140,000 people with full blown AIDS in New York and 13 agencies who in the first wave of this epidemic have been getting 90 percent of the money for 13 years and the 140,000 almost all of them are black and Latino, then everybody serves the black and Latino. But the question is, you can only serve 20,000 of the 140,000, who's serving the other. Who's serving the rest of the 130,000? I think that that's a language issue that's now working and it's not meeting the intent of the legislation.

So I don't know how to go back to unreinterpret...

(UNKNOWN): That's something that we're going to do. We've already started (inaudible) it was the deputy secretary but it's got to be a main focus for us this year. And please remember that we are 20 years into an epidemic and what we're talking about is the funding now continuing to go to the organizations who have been trying to help us over the last 20 years and have been totally ineffective and which, if we keep doing things the same way, we're going to get the same results and we're trying to create change. We want to live.

WALTERS: Just a comment. I think the department is committed to the intent of Congress and building capacity in minorities...

(UNKNOWN): I want to give you an A (inaudible) an A for effort. I appreciate what you're trying to do.
(OFF-MIKE)

WALTERS: That was the thrust of the answer. The department is committed to the intent of Congress in building capacity in minority communities and it is the sense of many that it was the judicial system who opined that using race as a condition for eligibility actually violated the law. So trying to stay within the narrow confines of those opinions, the department is trying to find the best ways to work to fulfill the intent of Congress.

(UNKNOWN): (inaudible) Go ahead.

(UNKNOWN): Well I guess one of the areas and new strategies that were looked at and I think raised a certain expectation that was not meant and this would be a two-fold question was to, especially for communities of color, what was delineated not only out of the IOM report but also eloquently Dr. King-Shaw in bringing in the component of the soul with the spirit and the totality or holistic approach that is often or is integral to the care and treatment of communities of color. Yet, (inaudible) a feeling for the phrase like a raisin in the sun as it relates to a faith-based initiative and in actuality what has been done, not only to raise expectations but actual funding to faith-based institute (ph) as it relates to addressing health disparity.

KING-SHAW: I can share some of that. We do have quite a well established office of faith and community-based initiatives at the department and so that is a department level commitment that all of the (inaudible) connect with. Now for us, for CMS, we have a resource. We don't do a lot of granting though there is a departmental process that this office would be a part of, looking at grant requests and making sure that no one is screened out of the process and that in many

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cases being a faith or community-based organization has great value and so that (inaudible) to make sure that we can drive money and programs into those organizations that are doing effective jobs.

CMS doesn't do a lot of that. However, because we do approve Medicaid waivers and state plan amendments that often more established community-based partnerships (inaudible) or HIV AIDS or mental illness and those kinds of things, we are very much cognizant of our ability to direct or allow the direction of Medicaid funds to community-based programs. We are looking at some of the direct to provider and community-based (inaudible) for our disease management initiatives that will establish financial and programmatically just between CMS, community-based organizations and health care systems that serve that community. And so we do have things around HIV AIDS and hypertension and diabetes that are specifically designed to embrace the power of community-based and faith-based organizations to change behavior and to be a delivery system as well.

(UNKNOWN): What about the indigenous (inaudible) practices in communities of color, physician-based practices and navigating through the paper burden and the reporting burden and the disparity, specifically of physicians of color who tend to have more patients of color that tend to require or be part of your system or part of your insurance.

(UNKNOWN): Could I just piggyback on that (inaudible) We have a bill that that the NMA worked with us in creating (inaudible) It requires that managed care and group insurance companies that provide services to Medicare and Medicare clients, serve medically under served areas, develop provider pools that reflect the community that are of the community. It would provide for a grant, for grants to physicians, to help to do whatever administrative or educational changes needed to take place would be within those pools and also provide grants to community-based organizations to help people understand the system and to move (ph) into the system. So I think it's part of the question but we actually have a bill.

Now are you already doing that or do I have to..

KING-SHAW: We are doing it.

(UNKNOWN): (inaudible) for three years. If you're already doing it.

KING-SHAW: We're doing much of that.

(UNKNOWN): (inaudible) something else.

KING-SHAW: No, no. We're doing much of that and so I can share with you what we are doing. On the (inaudible) Medicare, the Medicare, Medicare program, we have quality initiatives every year. For the incoming year, the upcoming year, we have given the contractors a choice. They can either focus a quality project on what's called a culturally and linguistically appropriate service class and so they must develop a plan and demonstrate to us how they will improve their ability to deliver culturally and linguistically appropriate services and type and set in (ph) communication et ceteras.

Or they use a clinical disparity measure where they can focus on some outcomes, some clinical outcomes for an ethnic population and demonstrate a game plan on how they will address that need and then do some actual year to year measurements to demonstrate their improvement on the clinical outcome. And all (inaudible) Medicare contractors must choose one of those as a part of their quality initiative for the incoming year. So we are beginning to address that piece.

Now we also service by usually through state governments and their certification requirements networks for licensure and every state has its apparatus for certifying that a (inaudible) program or managed care program meet its state requirements. Some states and state agencies are more diligent about checking to make sure there's participation among the appropriate ethnic provider-based to meet the needs. States are not all as they're vigilant on that issue. But we have begun to do some look behinds and they're going to have discussions with state agencies and plans and networks to test their ability to serve the entire population appropriately where they live and who they are in ways they can understand.

(UNKNOWN): (OFF-MIKE) go to the next question. (OFF-MIKE)

(UNKNOWN): Two questions.

(UNKNOWN): Go ahead. (inaudible)

(UNKNOWN): Two questions probably yes or no. Dr. Williams, I didn't hear you talk about what the National Center for Health Statistics was doing. I wondered if you knew anything about that and then Dr. King-Shaw, I was

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wondering, given the impact that your organizations has, if you are working with the Office of Civil Rights to help them, help providers (inaudible) the guidelines (inaudible)

WILLIAMS: Since you asked me first.

(UNKNOWN): One of the critical activities that will be necessary for eliminating health disparities that has been referenced by a number of speakers relates to data. CDC's National Center for Health Statistics obviously plays a key role in data in that it is responsible for conducting most of the national collections of data on health status, nutrition, examination, to some extent health behaviors, access to care, limitations, those kinds of things.

The agency has consistently tried to collect data on some of the larger populations through over-sampling, routinely over sample the minority populations in some of the surveys and conduct analyses of differentials in those populations and tries to develop plans for improving the data systems. An example of a very specific activity, the National Center for Health Statistics and CDC is undertaking is at its upcoming data users conference this July.

We'll actually convene a forum to discuss data needs for Asian Americans, Native Hawaiians and other Pacific Islanders which would assist others in developing activities to actually enhance health statistics in minority populations through activities such as expanding the capacity of existing surveys, developing new tools, improving our analytic approaches and working with states.

Another important area is meeting the data needs of our users who are interested in more detailed data on smaller populations and obviously collecting data on population subgroups can be very costly and it's a major challenge. So we will have to appeal to those who are very interested in supporting these activities and expansion of these activities at CDC to continue to work with us and assist us in expanding those activities to do (inaudible) data collection.

(UNKNOWN): I can add the following things. One of the work groups that I mentioned earlier, the Asian-American Pacific Islander work group, is heavily engaged in a number of outreach and training issues designed toward helping delivery linguistically again appropriate information about Medicare and that's both to providers as it is to the patient.

Now the actual enforcement authorities for the (inaudible) does go to the Office of Civil Rights and so we are not involved in the enforcement areas. Now I can assure you that they are a number of Medicare participating physicians and some Medicaid that find it very difficult to go up to translation expenses in an environment where reimbursement is not meeting the costs. So there's a great deal of concern that we have asked them to incur a cost to provide translation services that is another one of the costs that are not met in Medicare reimbursement. I suspect that discussion, that tension will continue for a while.

But we also partner with again, community-based organizations to handle the communications and in some cases translation services in given markets. Recently we began an effort in the San Francisco Bay area with a group of Asian American Pacific Islander and Hispanic physicians about ways that they can be a part of the communication gap between Medicare and potentially Medicaid and the population. But the actual LEP (ph) itself is quite a source of discussion right now with the medical community.

(UNKNOWN): If I could just jump in. I mean you are reducing physicians (inaudible) by 5.4 percent.

(UNKNOWN): No. The formula that Congress passed reduces reimbursement to physicians that we are hearing...

(UNKNOWN): Well, my understanding is that some of the replies (inaudible) some of the debates on some faulty calculations that have been done over a period of two years and that all of these, what we're seeing now is a set of compounded errors. And what I - let me just finish and then you can go ahead and answer me, but given the fact - I mean you are cutting provider. Provider fees are being cut and within the cuts which are, which is the fourth (ph) cut in 11 years, I understand maybe three other cuts to come down over the next 10 years or so and within those cuts you're asking the providers to pay for the cost of the interpreter. We think this (inaudible) and pay for the interpreter outside of the physicians, outside of the physician payment. And that would resolve the problem. We need to have interpreters but we can't pay for them. You're not paying us enough.

(UNKNOWN): I can respond to that, Dr. (inaudible) that the actual formula that drives the physician was called the sustainable growth rate, is truly a congressionally mandated formula and so any hope that we have, any possibility that we would have to change the results of that formula would be a change in the formula itself. Congress will have to do it. It is not within our purview. Now there is some data that was not included in the prior calculations that we must include in current and going forward calculations unless you tell us otherwise. But there is a limit to how much we can incorpo-

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rate in one year. But that formula did, this past year, deliver A, what's called a negative update and that is a fact. That's true.

Now if we were to pay more than that, that would require an act of Congress. Similarly if we were to add to the fee schedule or the authority to pay for this service, then that's also something that is our understanding. We don't have to go ahead and do it right now. It's not a procedure code. It's not a medical treatment or CPT code or anything like that so under what authority we would have to pay for the services is not clear. But it would be a significant expense. That would have (inaudible) on the baseline and the budget and everything else. So I clearly understand that one solution would be to pay for it and pay more for it. Those are decisions that, with all due respect, Congress makes and we don't.

(UNKNOWN): And we are looking at it. I'm sure you know that one of my committees, the small business committee, we are looking at how we can, what we can do to change this.

(UNKNOWN): Thank you. (OFF-MIKE) Dr. King-Shaw.

(UNKNOWN): Actually (inaudible) I wish I were a doctor, but I'm really not that smart. I wish I had the calling, but (inaudible)

(UNKNOWN): I also had a question about CMS's role in improving the overall quality of care delivered through Medicare and Medicaid managed care programs. And there's two recent reports that come to mine and the JAMA article last month analyzing Medicare data. There was obviously the big findings on the significant disparities on specific quality measures. But they also found that overall, African-American beneficiaries were more likely to be in plans that performed more poorly in general on quality of care measures.

We've also been supporting some work to analyze data on - from states on Medicaid managed care plan performance and again we see there a very large disparity in most cases between the commercial and Medicaid managed care performance measures, even within the same overall health plan.

You mentioned the quality forum. There are a lot of exciting work going on there. I was wondering if you could expand a little bit more on your thoughts on how CMS could play a strong role in raising that bar.

KING-SHAW: Well, I can. I would first say that we know about these disparities because I think we very appropriately and courageously understood the power of (inaudible) and outcome data. And so when people wanted to not look at that or you don't want to collect data, you don't want to ask for data, it is because we collect this information and require folks to do so that we can identify this problem and deal with it.

KING-SHAW: Now I would temper that though with the fact that there's no reason to believe that these standard disparities do not exist in the (inaudible) of this population. There's been a tendency to want to look at what's going on in (inaudible) or managed care world, but that is right now approximately 14 percent of Medicare beneficiaries. The vast majority, 84 percent, are in the fee for service world where we don't have quite as concrete data, but there's every reason to believe that the same disparities occur in the fee for service population and there are many, including myself that would venture to say that it's probably about the same in commercial populations and Medicare as well. I think that the disparities that this article spoke of are long known disparities that pervade the health care system in general among African-Americans, Hispanics, Pacific Islanders and tribal communities as well.

So we are looking at ways both through the quality council and data collection and interventions and more aggressive quality reporting and being courageous enough to begin to ask for ethnic-specific data in a non-intrusive way, because there's a considerable issue here about how much you're going to create a burden on providers to submit information, particularly when reimbursement is an issue. But to the extent that we can collect ethnic and racial specific data, then we can monitor our progress on this issue.

But I think the big picture here is that we have this problem across, I would submit, many areas of American society and the American experience. We have it in broad sections of health care. We have it in (inaudible) We have it in Medicaid. We have it in fee for service. It's more usually identified in the (inaudible) world because we have structure and networks and data and (inaudible) employee systems to guide our thinking. But it's a full, I think a full effort across the board to really get any progress on those issues.

(UNKNOWN): Just a note. There was a study published in I think around 1996 or there, somewhere between '94 and '96 in the "New England Journal of Medicine" using Medicare data. I think it was from Medpar (ph) if that's the correct name, that included beneficiaries other than those in managed care. It was somewhat of a ecologic (ph) study but it did show gross disparities compared blacks to other racial ethnic groups with regards to receipt of certain, I would

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call physician referral or physician intensive services like cardiovascular procedures like CABGs, also outcomes for things that you would recognize as complications of diabetes. Above the knee amputations were more likely to occur among the poor, but among the poor, (inaudible) poor, they were more likely to occur among African- Americans compared to whites and other racial ethnic groups.

The first author, I think her name's Gornick (ph), Miriam (ph) Gornick et al and it would provide evidence of what's been stated here that the fee for service side does show the same types of disparities prevalent in the general populations of physicians who take Medicare assignment.

(UNKNOWN): Just one brief counterpoint. The other thing we can do with Medicare is people age into Medicare for the most part after 65 years of living and if there were disparities in the access or outcomes in the 65 years prior to getting some Medicare and (inaudible) first or second year of Medicare participation you're picking up disparities that had nothing to do with Medicare. They brought it with them. So it's very hard to look at that as a Medicare problem if you're not addressing those issues clinically and culturally and economically prior to them becoming Medicare eligible.

(UNKNOWN): And I have (inaudible) we just unfortunately, the membership of the National Medical Association disproportionately cares for those patients that you're talking about and I guess I encourage the quality council. However, we need more than that, because what's happening is we are pushing the people who want to provide the services out of the system, because they can't afford - there is no way that they can afford to care for the patients that they want to care for and from the IOM study to care for the patients that we know they care for best. So we've got to come to some kind of meeting of the minds here.

I offered the National Medical Association and the expertise of our membership to assist you in doing what I feel you truly want to do. We can partner with you to get the information out around the (inaudible) to provide some technical assistance to our providers, to decrease the burden that we have as it relates to pay for claims (ph). So whatever we can do to work with you, we want to do that.

And you also mentioned one other, one other issue which the IOM report pointed to that is critical to everything that we've been talking about here today and that's leadership. You may be committed but are you institutionalized in the center? Is there an infrastructure within your agency because you personally are committed, but given you are a black man, am I correct?

KING-SHAW: That is correct.

(UNKNOWN): And what we (inaudible) today your life expectancy as a probability, you have a 80 percent probability, higher than your white counterpart of having diabetes or cancer or cardiovascular disease. So I'm saying what is your agency doing to institutionalize what is your personal commitment to assure that we move forward in the elimination of racial and ethnic...

KING-SHAW: Can I answer that, ma'am.

(UNKNOWN): (inaudible) so you can answer...

(UNKNOWN): I might be able to help you with the answer.

KING-SHAW: OK, in that case you go first.

(UNKNOWN): Clearly, you the final panel, the three of you, CDC, SAMHSA and CMS have a big pocket (ph) responsibility in this country for people of color and we're here because of racial disparities and we know that (inaudible). I think that it is incumbent upon us at this point to ask you what it is that you may need to get to the question that Dr. Perez is asking. Internally, if you had a wish list right now that you knew would make some difference and I'm going to ask you to (inaudible) the three of you in understanding that throughout the day, distrust in the system has been pervasive, as pervasive as (inaudible). We know what happened with 9/11 and in the same Federal government with the same Federal system we had a group of Federal employees who were on the Hill that got medicine immediately and a group of Federal employees that were postal workers who got no medicine for a week. Nine of them were infected. Two of them died. We've sent a very ugly message to the black community if that and that is the message whether we intended to send it or not. You see more patients on a daily basis than anybody else in the country. Is there in effect, are you trying to determine if there's an effect (ph) on their distrust for your system and knowing that there should be, because clearly there's evidence that there's a problem with the system when it comes to making decisions about this. If you can change something or fix something or if you can (inaudible) something to get to (inaudible) point, what would it be? (UNKNOWN): I can give you three quickly. One, we need to solve the economics of health care. I mean it is in

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many ways a hemorrhage that will kill the patient. Our health care system in general is in a rather troubling state and so it will take a very concerted effort on behalf of Congress to walk through all the issues and they are all difficult. I do not need to offer it as a simple solution but there are areas, there are areas of a system that are actuarially unsound.

(UNKNOWN): (inaudible)

(UNKNOWN): And economically unfeasible in the long run and so Congress needs to figure out what it can do given all the other priorities that Congress has before it would end the broad outline of where we with the budget and the president's vision and secretary's commitment to fix that. That's one. A, I would say to institutionalize me, you got to look at these personnel rules that I live by that are a real barrier in many cases to bringing in and retaining folks who need to be there. As a political appointee, my time is limited. I know that. For me to institutionalize (inaudible) to make, I have to leave people behind me and policies that will be there day in and day out to keep it real and make it happen.

And if it's difficult for me to retain and promote and attract folks who share the same vision that we have and it's very hard for that patient to live beyond any individual as good as he or she may be. And so it would encourage you to look at that at some point (inaudible) in your priorities.

And the third I guess would be in a very general way to make this a national commitment. I hate the term minority for many reasons but one because it limits the issue to a very few people. When we talk about the disparities and people dying needlessly and anybody who does not have equal access and a fair and credible way with clinical integrity and it is a challenge (inaudible) so when you call it a minority health initiative, you already lose the audience and you say that these people or the number or the impact is minor and I reject that. I would encourage you and Americans to do the same and I'm sorry if I carried on beyond (inaudible) but I'm quite passionate about this.

(UNKNOWN): You've done exactly what we asked and thank you very much.

(UNKNOWN): Thank you.

(UNKNOWN): Are there...

(UNKNOWN): Part of the reason why things get labeled minority or national or whatever is because of a prior exclusion so I mean we're trying to address, we wouldn't have had to be calling our minority initiative, AIDS initiative, minority AIDS initiative if the funding and the focus had gone to where (inaudible) going so I appreciate what you're saying. But I just wanted to (inaudible) We're going to finish up or we may want to answer the question.

WILLIAMS: During the past two years, my office led a very intensive, deliberative process at CDC to develop a strategic vision for improving minority health. It culminated - this involved the senior managers at the agency, the directors of all our centers, the senior, the associate directors as well as the directors of agencies. It culminated this past December with adoption of two important documents, one called principal strategies and priorities for improving minority health and abridged version of some of the major content from that larger document entitled "Action Items for Improving Minority Health." And so the first time since I know CDC actually had...

(UNKNOWN): (inaudible)

WILLIAMS: on paper a strategic vision regarding what it will do internally and with this large external partners and stakeholders to improve minority health. And the way that we approached this was by developing what we labeled guiding principles and operating principles for the major functions and operations of the agency, developing policy, developing budget, resource allocation, program implementation, research, surveillance, communication, training, increase in access to care and evaluation. So right now on paper, as of a few months ago, there are some marching orders that the agency is right now deliberating across of all its components on how are we going to make this a part of our quote, daily operations with benchmarks as well as a tracking mechanism. And hopefully this will have something in place that whether my office is there or anything else, the agency will operate in a way that's conscious of the need to look at the importance of health disparities and do things in a certain way that tries to address it.

(UNKNOWN): Dr. Perry.

PERRY: SAMHSA also has gone through strategic planning process as well and has developed the three strategic goals.

PERRY: But it (inaudible) with very important and working with communities to make a change and to decrease health disparities. That is a high priority of the administrator. So the resources and staffing as we've just said, having the people there with a commitment to do that and being able to retain them is very important and I think also looking at

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the health care system and ensuring there's adequate coverage or just coverage at all for the types of services that we provide in our agency is very important.

(UNKNOWN): Our last question, thank you (inaudible) keep you a bit longer.

(UNKNOWN): I'm going to make it simple. I think that this is really to Rubin and I want really to say that I think that there's a lot to be said (inaudible) and you talked about spirit and soul and I think that when there's a very large pot of money put into a certain program, there's got to be vision behind it. I'll just say that that's what I'm trying to get at. I want to know what the vision was, what the vision is and perhaps it's also about leadership, leadership for the people that are making that vision and where they come from and where, that they understand why they're doing what they're doing.

And it's about tax credits. We have a very, very large problem with the insurance system in this country and I know that the IOM report only looked at the patients that had access. But I just think for the quality of care in this country and for minorities and for Hispanics and everybody else here, tax credits for individuals is one thing. Tax credits for employers is another thing and I'm wondering what's the vision for the future with the president's idea of having tax credits and could it be looked at in terms of demonstration projects or state projects to look at minority communities and how it would happen in minority communities.

And then the second part of this question is about the leadership. Where is the minority leadership and I don't mean - I mean the minority people that like yourself, that come from these communities that understand what it's going to take to get people insurance or get people quality care. And are small employer - I'll just say that I was out of town yesterday, small employers need help. We have an employer-based system and if we could figure out a way to help the small employers that would go a long way.

KING-SHAW: The president's proposal for the tax credit seeks to address what is clearly (inaudible) in every study the number one reason given by folks who do not have insurance as to why they don't have insurance and that's the cost, the expense. And so the strategy there that if you create a financial incentive and a financial benefit for people to buy coverage, family coverage, then you are doing a significant effort, making significant progress that would bring folks who do not have insurance into the health care finance care system.

Now I'll also say that the other part of our strategy there is something called (inaudible) the (inaudible) waiver, the health improvement accessibility account, I think they're called are three (ph) designed to allow states to redesign, repackage their SCHIP and their Medicaid programs in a way that would enable them to expand coverage to the uninsured and with SCHIP you know that's a fee subsidized sliding scale program that if we allow states in decision making on a local level to repackage their benefits and their financial structure within the state program, with Federal dollars being added to it, and they can actually do some things that would make insurance more affordable, more available to a population that does not have it today.

Now understand that the uninsured bring with them two other sets of issues and they do not have insurance, (inaudible) do not have a long-term connection with the health care system which means that your connection, when it happens comes at a higher acuity or it's the emergency rooms which is the least cost effective way for primary care. And so you have a continuity of care screening, education, case management issue that all goes out the window if you have no relationship connected (ph) to the health care system (inaudible) initiatives, the tax credit and the (inaudible) waivers hope to bring folks who are not in the system today in the system.

The president has also proposed significant funding for the community-based clinic and (inaudible) health clinic system where again, you're not talking about an insurance model, but financing health care, accessible health care to institutions, community groups that provide that care in urban and rural areas, again bringing folks into the health care system.

Then I would say to the extent that we have people who are uninsured or unfinanced in health care in many ways they represent a uncomplicated care on the part of the providers. And you have created another financial burden on the provider system because you expect them to care for folks that do not have financing with them. So many of them do their duty. They took their role (ph) to provide this care but at uncompensated level. Of course this disproportionate share and other things in UPL (ph) that can put that money back. But I mean that's the overall strategy. That's the vision and hopefully you know, Congress is going (inaudible) to achieve that vision.

I will just briefly - where are the people? They're all around us. I mean we have them at CMS and so we're looking to retain them and hire them. We have them at various levels. (inaudible) going to have enough at the highest le-

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vels so you can help me recruit people, please do. You have (inaudible) names. (inaudible) look out there. But it's also partnering with organizations like the NMA and others, the other ethnic organizations to bring us value, give us advice.

You don't have to work at CMS to opine on policy, help us formulate policy so when we send out notice of proposed rule making to get opinions on what the impact is on your practice, your community, your people, send it back with comments. We read them. We respond and I would venture to say that we don't get enough of that participation from ethnic populations around or organizations to make for better policy. So in addition to the hiring and the recruiting, working with us from where you are as many other people do is an important part of our success strategy.

(UNKNOWN): (inaudible) so we, as in all of the panels have many, many more questions that we would like to ask you. But the time is late and we're going to - (inaudible) move out of here very shortly. I want to thank you for being here, for staying here this long. Dr. (inaudible) this morning. Thank you very much. Expect our follow up questions and this is really the beginning of a process. We still have a lot of work to do.

For those in the audience who might want to make a comment, our panel is free to go. I know some of you have other commitments and I think you're late for yours. (inaudible) But if there's someone in this audience who would like to make a comment before we actually move out of here, we would welcome you to do so. Thank all of our panelists who are still here remaining with us. Give them a round of applause.

(APPLAUSE)

(UNKNOWN): Please identify yourself please.

EVELYN MOORE (ph): I'm Evelyn Moore (ph) and I'm president of the National Black Child Development Institute. The institute, they're deeply concerned about the health disparities and I wanted to especially thank you for the leadership that you are providing in terms of addressing this most serious challenge. We have our affiliate presidents here from all over the country. We spent the morning at NIH and we just want you to know that we're grateful for the leadership that you're providing, the National Medical Association is providing and other colleagues. And thank you for holding this hearing.

(UNKNOWN): Thank you and please stay in contact with us, because we'll be - we have a lot of work to do and we need every...

MOORE: When we're working with NIH on sudden, (inaudible) on sudden infant death syndrome, the recent September 11th and addressing the fears of our children. So we look forward to working with you on these and other issues.

(UNKNOWN): Thank you. Is there anyone else who wanted to make a comment before we close up?

KEN RIVLIN (ph): Hi, my name is Ken Rivlin (ph) and I'm a physician that works in the inner city. I actually am coming to ask for help. I hope I don't practice (inaudible) particularly when it comes to language I do. Practicing in the inner city requires a lot of connections. I would like to see the community to be the quality assurance for care, to be educated, to know what is accessible care, that the need to know the (inaudible) We can provide as a (inaudible) service, we can provide that information. What we can't do and what we don't have time to do is make the connection to organizations.

I listened to the process of needing more nurses, needing more people. We have a wonderful hospital. We have volunteers that would go out to the schools. It's making those connections that are difficult. And the third thing, help I need is the concept of providing comprehensive care. We need case managers. We need the reimbursement for that case management. We can decrease the cost of care by providing this comprehensive care but we cannot do is afford those case managers from the reimbursement we get. So those were my comments. I appreciate it.

(UNKNOWN): Thank you. Thank you. (OFF-MIKE).

REGINA EVANS: Good afternoon.

(UNKNOWN): Good afternoon.

EVANS: I too want to commend you for your efforts today. My name is Regina Evans. I'm the executive vice president and chief operating officer of Neighborhood House Association. Neighborhood House Association is probably one of the largest and oldest not for profit organizations in the country. We're an old settlement house. We've been doing business for over 100 years.

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In San Diego for the past nine years, we have been providing HIV AIDS services in the city of county of San Diego. Two years ago, we became the recipient of the minority AIDS initiative monies in San Diego. And I've heard all day today about all the resources that are available for community-based organizations that are trying to meet the need but the reality is that at the local level, there's a very different story. And I'm hoping as we talk about all of the resource, we talk about all the capacity building, as if you kind of take this show on the road. There are community-based organizations all across this country, but if they had the resources to be here, they'd be here today telling you a very different story.

And when it comes to Latinos and African-Americans, we know the statistics. It's alarming. Our communities are dying and we must do something about it and it's not a matter of Federal agencies, local agencies, state agencies, sitting here telling you they're putting RPs (ph) on the street. We're not able to find organizations who can provide the services or those capacity-building challenges. Yes, I'll be the first to admit even with my organization, there's capacity building challenges. But there's the whole issue of distrust that was just mentioned about 30 minutes ago.

When it comes to distrust, it's an old story for the African- American community and the Latino community as it relates to government entities. And we might need to rethink how we get those dollars to local communities. It may not be the local government entities that should be the local infrastructure to get those dollars in the community. Neighborhood House Association is experiencing unbelievable political challenges with the county of San Diego. And we know it has very little to do with the services and our capacity to deliver those services in San Diego.

There's some other variables going on. And the reality is as we talk to folks, we say it's HRSA money allocated to the local level. Local level makes decisions. If those decisions are without merit or unfounded, there's nothing we can do about it. You know what, our communities are dying and we must do something about it. I appeal to you to engage in further discussion with Neighborhood House Association and other organizations across this country, because we know that the deliverable and what the desired outcome is.

The numbers aren't changing. You got (ph) resources on the street for close to three years now, not to venture (ph). There's been (inaudible) monies out there and we received our little \$50,000 to try to provide services in the city and county of San Diego. But we must begin to think strategically. As was stated earlier, we can't continue to do the same things the same way and think we're going to get different results. We've been engaging in self sufficiency strategies for a long time. Nothing has changed, even with our welfare to work reform. We still have some of the same challenges we though we were going to solve.

Another variable that I want mention, when the gay and lesbian community initially lodged their efforts, they faced the same challenges that the Latino-based and the African-American based CBOs (ph) are experiencing today. We know what we did when that was going on. We rolled up our sleeves. We made the necessary investment and we see the fruits of the labor of the gay and lesbian community as it relates to HIV AIDS. The incident rate is down. Prevention strategies are off the charts. It's time to roll up our sleeves for CBOs that (inaudible) to provide services for Latinos and African-Americans. And yes, a strategy like this, a form like this is great but when are we going to bring all the stakeholders together and decide we have some outcomes. What strategies are necessary to make those outcomes a reality? The numbers aren't changing. We can't continue just to have (inaudible).

Again I appeal to you to take a very close look at what's happening at the local level and I'm personally committed to assisting in that process and I commend the **Congressional Black Caucus**, the Hispanic Caucus, the Asian and Pacific Islander Caucus and all representatives in this esteemed body for your efforts on behalf of the citizens of this great country.

(UNKNOWN): Thank you (inaudible) Well, just one statement. And thank you very much. And your perceptions are all on point. I think that we are here though and in owing a great debt of gratitude to the **Congressional Black Caucus** because it's the minority AIDS initiative even being created that got us here in the first place and I just want to we spent the whole day looking at racial disparity. We spent the whole day talking about a report that looked at 100 studies that concluded without a shadow of a doubt that racism is so pervasive in public health that even though we have the same insurance, the same education, the same everything, we still die.

So something may be happening and we need to think that through. That's really out of our hands. I don't think we're doing this to ourselves at this point. And I think also that an examination of those in the first wave of the epidemic that you discussed, the rolling up of the sleeves and the moving forward. Was the rolling up of the sleeves and the moving forward of the entire country and I think the question that we need to ask now is where is America when we're dy-

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ing? And I think if we articulate it like that, people will be clearer in understanding that it's not us doing it to us. It's something else.

(UNKNOWN): (inaudible) we shared that and we heard that. We could not target dollars to communities of color because it was illegal.

(UNKNOWN): Right.

(UNKNOWN): When does racism become illegal? When does racism become illegal? Because the IOM report clearly stated that the health status of African-Americans, of Hispanics and Latinos, of Asian and Pacific Islanders and of native American or American Indians is directly related to racism. Yet when we try and use dollars from the Federal government to target those communities, we get a judicial response that says that it's illegal. When does racism become illegal?

(UNKNOWN): (inaudible)

(UNKNOWN): Identify yourself (inaudible) and

PAUL SIMS (ph): Good afternoon.

(UNKNOWN): I take it that these are two left (inaudible) Have seat. We'll close out with these three. Go right ahead.

SIMS: Good afternoon Madame Chairwoman. My name is Paul Sims (ph). I'm currently president and CEO of the NMA conference of health centers in San Diego. I also served at one time as deputy health director for San Diego from 1980 to '96 and I was president of the Black Caucus of Health Workers from 1992 to '94.

In 1977, the San Diego chapter of the National Medical Association created a separate, independent 503(c)(3) corporation to assume the management responsibility of a new health center that was being developed by the county of San Diego under a model cities initiative. Here we are some 24 years later. Our corporation continues at a partnership with the county of San Diego and operates a network of four health centers that provide over 50,000 patient visits annually.

We manage a comprehensive program of HIV services, including testing, treatment, clinical trial, advocacy, medication management. We operate three facilities that provide general medicine, pediatrics, dentistry, a woman's clinic, a teen clinic and more. We sponsored a day treatment program for African-American substance abusing women who were either pregnant or parenting and we attempt to create partnerships. One of those partnerships is with my colleague, Regina Evans, who is chief operating officer of the Neighborhood House Association who just spoke.

SIMS: We provide laboratory service, X-ray and pharmacy and I'm pleased to announce that last month, the comprehensive health center in San Diego was selected as one of the 27 new grant (inaudible) from the bureau of primary health care. I have three thoughts I would like to share this afternoon. The first is that it is very important it seems to me in developing strategies to address the elimination of disparity, that advanced communications technology play role in facilitating access.

There are two African-American physicians who I would like to call to your attention, Dr. Charles Flowers (ph) and Dr. Richard Baker (ph). They're ophthalmologists. They're in Los Angeles County in south century. They serve a black and Hispanic population of over a million patients. They developed a wonderful project that uses tele medicine in an urban care context. Yes, I realize that most of the tele medicine projects were rural, that they provided access towards transportation issues.

(UNKNOWN): (inaudible) being cut too.

SIMS: Say again.

(UNKNOWN): Funding.

SIMS: And this is one of the reasons why I presented to the Congressional Black Caucus today. You see, we can't recruit specialists in the urban clinics in America. So when you have a strategy or a technique that will provide access, that is tele- medically, we can accomplish some objectives of getting early care. Today in Los Angeles, for the ophthalmology clinic at Martin Luther King hospital, it's a seven month wait. What they did is they went to the Carmalitos (ph) housing project in Long Beach, put in a very small clinic, took two welfare beneficiaries, converted them to tele medicine technicians and they are the ones who help position a patient. You have, the eyes are dilated, help them get back to their apartments.

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They have 16 percent positive pathology undiagnosed for glaucoma and diabetes. That's prevention of blindness. That's prevention of loss of limbs. This is the active prevention that can be brought to our communities if tele medicine were appropriately introduced as a technique.

I cannot explain to you how important these brothers have taken this initiative and (inaudible) moving in cardiology. They're moving in dermatology and a network of clinics serving black and Hispanic patients in south central Los Angeles and so my first recommendation is that the **Congressional Black Caucus** use the work that's being done at Charles Drew (ph) University of Medicine and Science as an illustration for how and why the tele medicine initiative can be linked to the elimination of health disparities initiative.

My second recommendation emerges from the 24 years that we have spent providing access to care. And if you stop and think about this, what does access to care mean? Examining (inaudible) 20 minutes and you get sometimes 15 minutes. I mean managed care, you're taking us to 10 minutes. And on the average there are only four a year. So let's just say 20 minutes times four. That's 80 a year. Access to care means 80 minutes a year.

Now people are awake 16 hours a day, 365,000 (sic) days a year. That's 350,400 minutes a year. Speaking on behalf of our health center, we've decided to kind of reengineer ourselves and use those 20 minute segments to create partnerships with patients, particularly those ones at risk. We are now in the business of connecting with foundations who are interested and help us change behavior.

The surgeon general issued a wonderful report on mental health on August 26th. In that report, (inaudible) said that one of the things, one of the capacities in the mental health community that is not brought to black patients, not brought to Hispanic patients, are those cognizant behavior therapies. That is to say causing people to be more conscious about what it is that they do.

I'll give you a perfect example. We are about to produce a billboard on the corner of 47th Street and Market in San Diego. It's going to say, diabetes. You can either deal with it now or deal with it later. And the deal with it now side, you got two people with two legs. And the deal with it later, you got two people, each with one leg.

Now that the fact that African-American women are 40 percent more likely to get amputated in San Diego, suggests that we've got to figure out how to do the early diagnosis for diabetes in order to prevent that and part of that is making diabetes and its progression higher in the consciousness. One more thought and then I'll close.

Surgeon General (inaudible) Evans just came to San Diego. He's working on the oral health and the oral surgeon report and developing the action strategy and we laid this thought out. We said imagine a billboard in the middle of the black and brown communities, Spanish and English, which says you don't have to brush all of your teeth, only the ones you plan to keep. Do you see what I'm saying? People are going to have to be challenged to take greater responsibility because managed care, this embrace of managed care. Where is that? I just don't know. Now get me started.

My third thought is this. Academic health science centers have had control over the research agenda for the last six decades. If the IOM report says anything, it says that community-based organizations need to collaborate around getting the control of the research agenda, so that we can frame our own questions in our own context. I am very interested in sending an action team of people to the chiefs of staff of the 25 big hospitals in California and ask them if they've read the IOM report and whether or not their institution was implicated in any way and prove it.

(UNKNOWN): Let us know the answers you get.

SIMS: So in conclusion let me say that this business of framing our problems in our own terms, we are challenged to be able to frame those questions and pursue them. I think it's important for a community health center to engage in research because it's a secondary line of business. The health affairs issue that just came out in January said half the clinics in America are facing financial ruin, in part because they signed Medicaid managed care contracts that they shouldn't have signed, because the capitation rates don't cover the costs. But they didn't know it because they didn't have the data systems.

So part of what I'm after today is just the notion, three thoughts in conclusion, that tele medicine be used to help facilitate access to care, that the **Congressional Black Caucus** partner with funding agencies to create cognitive awareness messages. The tobacco initiative in California if it has proven anything, it is that you can change peoples' attitudes around smoking. Well let's change peoples' attitudes around obesity. When McDonalds say super size, we should say under size. And then the third is that somehow the efforts that Dr. Ruffin has under way at NIH, because they linked and

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collaborated with community agencies such that we can reframe the research agenda in our own image. Thank you very much.

(UNKNOWN): Did you want to go next (inaudible) those name tags down because the tape is still rolling and we don't want to confuse anyone. Your name and (inaudible)

DR. RUTH GREEN THOMAS (ph): My name is Dr. Ruth (ph) Green (ph) Thomas (ph). I'm director for alumni affairs for the University of Illinois at Chicago. And I am a staff person with the urban health program which is a program to increase the enrollment of under represented and disadvantaged students in the health professions.

I want to say clearly that our program is one of its kind in the nation that produces a large number of under represented health care professionals across the board. But today's experience has been wonderful. I wanted just to sit here and to commend the **Congressional Black Caucus**, health trust and its leaders, Congresswoman Christiansen and your distinguished panelists that you have here today in terms of the dialogue as well as the recommendations that have come forth.

I'm not fully sure whether or not we touched up on the importance of education as we should have. It was mentioned, interspersed in intermittent comments today. But I would just like to say that we have to pay more attention to what we are doing in the way of (inaudible) working and/or formatting the training of under represented health care professions. And we have alluded to what a significant difference it could make but we need to be more action oriented in terms of how we're going to ensure that his actually happens in this country.

There are best practices. My program is one of the ones that could be used to replicate. But we have to work hand in hand with our academic medical centers across the country to ensure that there are willing to collaborate with us and to make a difference in terms of how they recruit, retain and graduate the students that enter into their academy who wish to become a health care professional in their field of choice.

So with that I just wanted to again say that education is very important. It's a key to many of the health disparities that we talked about. We have learned from research that those students who are committed to medically underserved populations, especially in the urban areas as well, some rural areas as well. Although they're not signing pledge papers or making a forthright commitment from the beginning with the exposure experiences with mentorships, they are going to be those people who are going to go out there and take care of the underserved populations in the manner that we envision here today. I think we're all visionaries in this room in terms of where do you want to go from here and I think that some of the information that has been shared with us today, that when we look, three to five-year period in terms of what progress have we made by having such a wonderful dialogue here in this room, that we will have some kind of significant measures to report to those who have come aboard with us and who are willing to go back to their institutions and really put into action some of the discussions here today.

And again I thank you and as an educator I feel confident that with this recommendation to work collaboratively with our academic medical centers in terms of the training of minority and under or under represented and disadvantaged students. And the health care professions will do a lot better in our communities. Thank you again.

(UNKNOWN): Thank you. Gilbert Parks (ph) you let her go just so you could have the closing word. I know you Gilbert.

GILBERT PARKS (ph): You know me real well. Thank you. I'm glad we've known each other long enough that you got to know me. Gilbert Parks is my name. I'm a psychiatrist, private practitioner from Topeka, Kansas. And I've come here really to sing a song that has already been sang and I think that my singing a harmonious (ph) song (inaudible) begins to have a lasting impact not only the sales but also to all of those that hears the music. And I think that we have not been able to put the music in the ears of the right people here and I think that we need to reemphasize some things that have been said and actually a couple of things make them (inaudible) to that.

I too want to commend our leadership in the form of the (inaudible) and tremendous leadership that you provided and the atmosphere for the caucus itself. I was at John Connolly's (ph) in Detroit just two days ago and with the black psychiatrists of America and he also sang your praises and meaningfully in terms of telling people the tremendous leadership and direction that you've provided for all of the black caucus and the understanding of health issues and I commend you.

And all the rest of you including Dr. Perez, (inaudible) National Medical Association. We appreciate your being here and all the other members on the panel that I've worked with also. Thank you all for your leadership. I just want

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to add to the point and a few of the points is this. That this is us and it belongs to us and any process that goes on to which we think other people are going to take the lead and make a difference on our behalf, don't understand the human race.

A lot of us believe it's the educator of the people and (inaudible) of the people and encourage the young, they will stop doing things to us (inaudible) and there's no truth to that. (inaudible) little bit of people, you have to face up to the fact that different groups of people look out for their own behalf and for themselves. And if you look at what has happened over the last 30 years, particularly in the last 30 years, more and more African- American patients and I'm going to speak about African-American specifically here. Hispanic patients and all are included. But using African-American as an example, more and more African-American patients are cared for by (inaudible) African-American physicians and more so with the development of the new systems called managed care and et ceteras, more and more African-American patients are cared for by races (inaudible) African-American physicians.

A new study that you'll see is demonstrating that and the outcome is obvious. The obvious outcome is they (inaudible) was driven worse and worse. As was said a minute ago here, a number of us, African- Americans who actually participate in the health system have decreased on a percentage basis. The number of African-American physicians have not increased in the last 30 years. And that's crucial. That is vital because if we don't take care of ourselves, no one else will. No one else can take care of ourselves.

So all of the discussion that we are having leads back is to who provides the care. And for the government to promote now managed care and whole lot of other things that we're promoting, so just and that this is a contributing factor to use improving our status. If you look at the statistics, you'll find out it's just the (inaudible). Because under all the managed care systems (inaudible) is designed to save money and not improve and save lives, because that's the concept which managed care originally originated on and if you look at managed care, you'll also find out that more and more African-American physicians are being forced out of practice and what's worse is, for those who stay in practice, very few of them now only practices.

GILBERT PARKS (ph): I was just in Philadelphia and some of the people that I grew up under in medical school who revered all (inaudible) sold my practice. I no longer own my practice. I work in my office, but I don't own it. I sold it to the University of Pennsylvania. I sold it to Jefferson and all of these wonderful black doctors now, none of them can make any decisions in the offices about really what happens to their patients. They can't even refer their patients to their own fellow colleagues. So now if they need to refer a patient, even if they come in there (inaudible) they have been referred to a doctor they don't even know and that their patients don't even know, that they don't even have any trust in. So we've developed a system where no longer do we even have (inaudible) God bless the child who owns his own. Because we don't own our own system and therefore, it is becoming increasingly worse and it goes back to what all the country boys know, that milk from any cow is white.

We used to tell city kids, look, if you want some chocolate milk, go get milk from those black cow and people believed that. But the truth of it is, the way you make chocolate milk is by putting some milk in chocolate, not putting chocolate in milk. Think about it. For all them people who think that a few black people, one or two of them, scatter around among a white system, they then become white and therefore the outcome is the same. Unless we develop a health system that is truly controlled by us, by us, for us, our condition will continue to get worse and I know (inaudible) America because we are not patriotic when we're all great America, great America. That's not the case.

People say oh, we (inaudible) money after. Yes, we need to throw money at it and when I happened we threw money at it. We (inaudible) we can't throw enough money at black America to make a difference. Yes we can and I say we must do it. We wanted to change the status of Japan. We gave them foreign aid to a maximum degree. We give (inaudible) and \$40 billion in 50 years. Why can't we not do the same thing for African-Americans and make a difference and I say that we must do it.

We must throw money at it. We must build a system that involves a continuation of African-Americans or Hispanic and others in charge of their own health system within the system of health in America. Otherwise, it's not going to work for us. And even us who don't look at it like that will not understand it.

I will finalize in my comments in saying this. (inaudible) it was most discouraging to see a brother from CMS here today. The biggest health expenditure in the country. Somebody comes to us that can't make any decisions. Now we're concerned about that and I'm going to express it because I'm a policy maker. I go out to what was formerly HCFA and most of the people out there. People have got to be able to make decisions that change the governmental process that was money spent (inaudible) on less bureaus (ph) to African-Americans. And we need to be dealing with

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the policy makers who make a difference and spending considerable more money from the Federal government, the taxpayers in shaping the health system on which we are the major players in our own communities. Because just like in the AIDS community which everybody (inaudible) know about, when you spent \$10 billion a year to spend on AIDS and such a small percentage of it is spent by African-Americans or by Hispanic population, we're not going to go anywhere.

This is the problem. We're creating a health system where increases number of racist white people are in control of the health care system at the lowest level where all the money's controlled there. And we're destroying leadership of every African-American institution and Hispanic institution at the lower level and that's where it really counts. We have got to build a health system from empowering local leadership and empowerment with substantial money to make jobs and gives jobs. If we don't do that, we are not singing a song that will make us have a harmonious outcome.

I know that the dedicated few here will take this as the panel have and will be able to move forward. Thank you.

(UNKNOWN): Thank you very much. I want to thank all of the panelists who have been here today, all of my responders and all of you who stayed with me to the very end. I know we had a lot of competing things going on today. I want to thank the audience and those who made comments and those who did not for being here. I know that it's been a long day and we really probably just scratched the surface of what we need to be doing.

I think a lot of the focus was on what are the disparities and we really haven't spent enough time on what we're going to do about that and so view this as a very early start to this year but a very important early start to this year.

I want to recognize for those who may not know that even though some of our members were not here, they did send representatives (inaudible) Congress. Maxine Waters has a representative who was here just about all day. Congressman Conyers has a representative here and so did our chair, our chairwoman, Eddie Bernice Johnson as did Senator Frist and Senator Edwards and Kennedy.

Let me just tell you what we are, what we are going to do from here. We're going to have our L.A. get together and meet and summarize what has come out of this meeting because there are a lot of good recommendations made. There are some that we will have tweaked out from some of the comments that were made, even though they were not specific recommendations.

Next weekend all of our caucuses are getting together to have some discussions on some very important issues for us and to strategize health is a very big part of that. So we're going to take what we've discussed here to our black, Hispanic, Asian Pacific caucus meeting which is a retreat next weekend. The health care, we're going to move from there to the health care task force which we've agreed to have another meeting on some of our issues.

And what we're working towards is a formal committee meeting. Congressmen Cummings probably didn't speak to that but he's working and I'm working. Several of us in the caucus who are on relevant committees are trying to get a formal committee hearing on some of these issues. Our aim is to take what we've heard today, what we all know, the discussions that have taken place across all our brain trust and use them through the budget process that we're in right now. That's why we wanted to do this in April. We wanted to be able to take what we get from our, all of our speakers from our audience and begin to apply them as we go through this budget process and of course through the legislative process for as long as we need to do it until we can get the justice that is due to us and that has alluded us for too long.

I want to thank you again for coming. I want to thank urban health task for being here throughout the entire session. I can't anticipate what usually happens within two weeks, it will be on <http://www.urban.dot> and it will also be on our web site. (OFF-MIKE) Congressman Waxman was here earlier with us and those who (inaudible) and I'll let you have the final word.

(UNKNOWN): Well, I just want to say in closing that again, I want to thank our chair whose done a masterful job in putting this brain trust together and all of you who came and spent the day. I feel this is just scratching the surface and I just left a meeting with my staff, talking about how we authorize (inaudible), that's temporary aid to needy families and that's our new social service welfare reform.

And so much of it has to do with health and we're dealing with the same kind of issues in reforming welfare as we do with trying to look at health and both of them are tied together. And so I hope that your committee that will meet subsequently to this day's meeting will try to look at the two and bring them together and as we consider health, I hope we will consider the conditions in which people at the lower end of the spectrum live, those who live in poverty and how that affects their health, how the social condition also tied into the health condition as well.

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And as we go about coming up with reports that we can put into policy, that we link the two together. So again, thank you so much for coming and thank you Madame Chair. I appreciate being included.

(UNKNOWN): Thank you. And let me just assure you that we have not lost sight of the comment that we need to be going out to our communities. We've done some in the northeast. We're doing some in the south, but we really need to focus on that and the foundation, the key (ph) foundation is very much interested and as you said, taking this on the road.

Thank you again.

END

LOAD-DATE: April 18, 2002

LANGUAGE: ENGLISH

TYPE: COMMITTEE HEARING

NOTES:

[????] - Indicates Speaker Unknown

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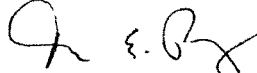
The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The purpose of this letter is to update my response to Question 12.d. of the Senate Judiciary Questionnaire with regard to my nomination to be the Assistant Attorney General for the Civil Rights Division at the Department of Justice. On April 28, 2009, in my capacity as Maryland's Secretary of Labor, Licensing and Regulation, I represented Maryland Governor Martin O'Malley at an event in Cumberland, Maryland, marking Workers Memorial Day. This is an annual event in which jurisdictions across the country pay tribute to workers who have died in workplace accidents or as a consequence of occupational diseases. I did not have prepared remarks as I was asked to speak briefly; however, the notes from which I spoke are attached.

Please do not hesitate to contact me if you need anything further in regard to my nomination.

Sincerely,



Thomas E. Perez

Enclosure

Workers Memorial Day Remarks
Cumberland, Maryland
April 28, 2009

- The O'Malley administration takes workplace safety very seriously, and we have made great progress in making Maryland's workplaces safer.
- There were 82 workplace deaths in Maryland in 2007, compared with 106 in 2006.
- There are now 58 inspectors in my office who investigate occupational safety and health matters across the state of Maryland, compared with 43 in FY 2006.
- Our occupational safety and health investigators uncovered 7029 violations in FY 2008, compared with 5446 violations during the preceding year.
- Our investigators continue to work in partnership with employers to provide safety training on the worksites so that we can prevent injuries from occurring in the first place.
- The Department of Labor, Licensing and Regulation recently enacted new crane safety regulations in response to the uptick in crane related accidents across America.
- The Governor also supported a bill that passed during the most recent session of the Maryland General Assembly that requires certain crane operators to be certified with the state.
- The General Assembly also passed a bill to ensure that workers who are actually employees are properly classified as employees. Ensuring proper classification of workers will ensure that they are entitled to protections of the occupational safety and health laws.
- Governor O'Malley believes that one workplace death is one too many, and we will continue to use the tools of enforcement, education, technical assistance and prevention to ensure that the workplace in Maryland.

Senator CARDIN. Let me again thank all three of you for being here. We are going to use 10-minute rounds because of the importance of the positions that we are considering today. I promise that I will be briefer than 10 minutes in my first round so that Senator Coburn will have the full time available for the other commitment that he has.

Mr. Perez, let me start with you. This is an appropriate day for this hearing. Earlier today, I joined some of our colleagues before the Supreme Court in oral argument on the Voting Rights Act and its constitutional challenge. There was a really interesting exchange between the attorneys and the Justices as to the relevance of the Voting Rights Act today in those covered States.

And then earlier today, the Judiciary Committee Subcommittee on Crime held a hearing on the crack cocaine issue, which there is, as I am sure you are aware, a hundred times more serious penalty for using crack rather than powder cocaine. And the racial composition of those that are convicted on crack is much higher among minorities, and they are serving much longer time. And there is no evidence that we know of a difference between the substances.

I mention that because I think America is looking to the Justice Department to root out those types of invidious discrimination that still remains in our society. Some of it was not intentional when it was developed, but it has caused results that diminish the credibility of our Government in the eyes of too many of our people.

I just would like to get a little further explanation from you as to how you see things like the discrepancies between crack and powder cocaine, or when you look at the statistics on the number of minorities that are prosecuted in certain areas and how you would intend dealing with those types of issue.

Mr. PEREZ. Thank you, Senator, for that question, and thank you for your leadership on these issues. I know these have been issues that you have thought about for a long time.

Assistant Attorney General Breuer was in front of the Committee this morning talking about the crack and powder discrepancy, and that is a critical—

Senator CARDIN. Our Chairman just came in from that Subcommittee—Senator Durbin.

Mr. PEREZ. Good afternoon, Senator. And that is a critically important issue. And as a prosecutor, I always felt that it was critical to be smart on crime and to strive for justice, and to strive for justice in a way that commands the respect of the community.

In a bipartisan fashion, I have observed that there is a recognition that we need to have a serious conversation about the crack-powder discrepancy, and if confirmed, I look forward to working with this Committee, working with Assistant Attorney General Breuer and Attorney General Holder to address that issue because, again, we should strive not only to do justice but ensure that the work that is done is respected in the communities. And that is what the discrepancy is really calling to task.

Senator CARDIN. Well, voting rights, of course, are fundamental. The Court was considering how they will rule on the Voting Rights Act. I want to review with you some disturbing trends in recent

elections here in the United States, including the 2006 election in Maryland that I am vividly familiar with.

I am not sure we need new laws. I think the laws might be adequate. I joined then-Senator Obama in introducing a bill that was passed by this Committee—it did not get beyond our Committee; it did pass the House of Representatives—to strengthen the laws against fraudulent type of efforts to diminish minority voting. We have seen efforts to get the wrong election day information to people in an effort to reduce minority participation. We have seen efforts made to intimidate voters not to show up at the polls. And we look to the Federal Government, the Justice Department, as providing the strength to fight those issues. Local governments are not able or capable in many cases to deal with it.

Can you just share with this Committee your priority in looking at these matters, seeing whether you have adequate tools, working with this Committee and Congress if you need additional tools or resources so that we protect the most valuable part of our democracy in that every person has the right and ability to participate fully in electing their Government?

Mr. PEREZ. Senator, I completely agree with you that voting is our most fundamental right. And when you look at the reauthorization of the Voting Rights Act in this Congress, that is one of the first findings that is made in that area.

If confirmed, I would spend a considerable amount of time ensuring that we are adequately—that the Division is adequately enforcing laws that are on the books. If confirmed, I would work hard in the Section 2 context. Section 2 of the Voting Rights Act is the bread and butter of the Voting Rights Act. It prohibits discrimination in the voting process, and it is a very powerful tool that can be used to ensure that people have access to the ballot free from discrimination.

Section 5, as you heard earlier this morning, is an equally important tool, and it is critical, as the next census approaches, to ensure that there is both the human capital infrastructure, the IT, and a plan in place when the next census is in place.

Similarly, there are other laws on the books, Section 7 of the Voting Rights Act which provides opportunities and requires that States register people in the motor-voter context and in social service agencies, another critically important tool to enhance access to voting.

And so there are, as you correctly point out, a lot of laws on the books that can be used to ensure the right to vote, and I look forward, if confirmed, to enforcing those laws and also to continuing the dialog with you on the issue of whether those laws are enough.

Senator CARDIN. I heard your statements on the politicization of the Department, the Inspector General's report, and you said what I had hoped you would have said about how you will operate the Division if you are confirmed. But I want to just emphasize the point.

What is your attitude about philosophy or partisan politics as it relates to the hiring and promotion of career attorneys or interns or in any other way other than the political appointments in the office? Obviously, there is a political consideration. But beyond the

political appointments in the office, what role will partisan politics play if you are confirmed to head up the Civil Rights Division?

Mr. PEREZ. None, Senator. The search for career hires will be governed by a search for the most qualified candidates, plain and simple.

Senator CARDIN. Thank you.

I do have other questions, but I am going to wait until the second round, and I will call on Senator Coburn.

Senator COBURN. Thank you.

Judge Hamilton, thank you for coming back. I am sorry we have not been able to meet or discuss in person. I hope to get that accomplished. I am going to jump around a little bit, and then I have a series of about 20 questions for each of you that I will be submitting for the record.

Mr. Perez, you have written a lot about health care, and you have connected it to a civil right. Is there a statute that you can call on? Or in your role in the Civil Rights Division, how will that play and how will you use that, what you have said in the past, and also statutes that will guide you in terms of health care and civil rights?

Mr. PEREZ. Senator, I come from a medical family, and so I have great respect for doctors. The law that is currently on the books that implicates the medical profession is Title VI of the Civil Rights Act of 1964, which says that anyone receiving Federal financial assistance cannot discriminate on the basis of race, color, or national origin.

And so in the context of the Civil Rights Division, that is the principal statutory tool that would be used. Most hospitals are receiving Federal financial assistance, so they have the antidiscrimination obligation.

Senator COBURN. Do you have background or statistics that would say we have a significant problem? Our big problem is access. It is not denial of access. It is the economic access that is—can you bring to light areas where you think we have seen discrimination in health care?

Mr. PEREZ. Well, when I had the privilege, Senator, of serving at the Director of the Office for Civil Rights at the Department of Health and Human Services, we had a number of cases involving discrimination. There was a hospital that was segregating their maternity ward by race. There was another case involving providers who were along the Mexican border with the United States that had their security personnel dressing up in uniforms that closely resembled the Border Patrol so that they would discourage immigrants from using the facilities.

And so while I think we have made a lot of progress in combating discrimination, we had all too many case examples that demonstrated that there are pockets where discrimination persists.

Senator COBURN. Judge Davis, I tend to agree with President Obama's statement about empathy being required at the court, but I also know there is a second goal, and that is, both *stare decisis* as well as the law. What role do you believe empathy should play in a judge's consideration of a case?

Judge DAVIS. Senator, I believe that empathy is one of those qualities that a life fully lived in the law and out of the law will

come to be a part of a good and wise judge. I think it is a quality that permits a judge not to decide a case on the basis of the identity of the party before him or her. That would not be appropriate. But an empathetic judge, I think, Senator, is one who appreciates the burdens, the challenges that the litigants before him or her has met and to appreciate the importance of a fair hearing and a fair and impartial judgment in every case.

Senator COBURN. You had by your record several reversals by the Fourth Circuit on evidentiary matters in criminal cases. Taken together, what is your response to that? And what have you learned?

Judge DAVIS. Senator, in my nearly-14-year career as a Federal trial judge, on a few occasions I have, applying the law as announced by the Supreme Court and the Fourth Circuit, ruled in a way that suppressed evidence at the request of a criminal defendant. In the vast majority of those instances where I have granted a motion to suppress, the Government did not appeal. However, as you point out, there have been a few instances in which the Government did appeal and in which the Fourth Circuit reversed my judgment.

I have in every instance taken the law as it exists, done my best to apply the law to the facts that I found before me, and render a decision that, in my judgment, was fair and impartial.

The Fourth Circuit has reversed those decisions on occasion and has done so in several instances and published opinions which would indicate, as I believe to be the case, that a number of those cases presented novel or issues of first impression, and the Fourth Circuit published the opinion so as to give guidance to judges, trial judges, going forward. But my judgment, Senator, is that my thinking on criminal law issues of procedure and substantive law very much are in the mainstream of thinking among Federal judges.

Senator COBURN. Did they get it wrong, any of them, in your opinion?

Judge DAVIS. Well, there was one case—not in the criminal context—in which the Fourth Circuit reversed me, and the Supreme Court reversed the Fourth Circuit.

Senator COBURN. That is pretty good evidence, isn't it?

[Laughter.]

Judge DAVIS. Well, as the great Justice said, you know, the Supreme Court is not final because they are infallible. They are infallible because they are final.

Senator COBURN. Right.

[Laughter.]

Judge DAVIS. Reasonable judges can disagree about some of these issues, as you well know, Senator. Just last week, indeed, the Supreme Court in a 5–4 decision in the Fourth Amendment context greatly narrowed, if it did not overrule, a longstanding 1981 precedent relating to automobile searches. So these issues continue to evolve.

Senator COBURN. In your opinion, is there any role for international law in the interpretation and judging of the U.S. Constitution and our statutes?

Judge DAVIS. I have not seen any evidence at the circuit court level, Senator, that any court has seen fit or found it desirable to do so. Of course, the Supreme Court Justices themselves have some

disagreement about the proper role. It seems to me in those few cases in which the Supreme Court has alluded to international decisions, it has been done in a very restrained way that simply pointed out that others around the world do or do not disagree with their interpretation of our Constitution. But I see no evidence that any judge in this country has ever believed or does believe that referring to international principles is the way to decide constitutional decisions in our system.

Senator COBURN. So you would have no trouble committing to this Committee that you will not use international law as you interpret our Constitution and our statutes?

Judge DAVIS. Well, certainly, Senator, to the extent that I am bound by the Supreme Court's pronouncements—and I would be if I am lucky enough to be confirmed by this Committee and by the Senate—to the extent the Supreme Court has indicated in a particular context that international principles played a role in their decision of an issue, then it seems to me a circuit court judge could take that into account in applying that principle.

Senator COBURN. Yes, in terms of utilization of *stare decisis*.

Judge DAVIS. Yes, exactly.

Senator COBURN. All right. Judge Hamilton, do you have any comments on that in terms of the utilization of international law? You need to turn your microphone on, if you would. It is OK. I forget all the time.

Judge HAMILTON. I forgot again. In my courtroom, it is always on.

Senator COBURN. Well, that can be dangerous at times.

[Laughter.]

Judge HAMILTON. Well, I will not tell those stories if I can avoid doing that.

I think, first of all, it is clear to all American judges that I know that when we are applying the American Constitution and interpreting it, it is the United States Constitution that we are interpreting. I do not have any misunderstanding about that myself. I do not believe anyone else does.

There are situations that we have seen in which the Supreme Court or other courts, in struggling with a difficult question, will look to guidance from wise commentators from many places—professors from law schools, experts in a particular field who have written about it. And in recent years, the Supreme Court has started to look to some courts from other countries where some members of the Court may believe that there is some wisdom to be gained.

As long as it is confined to something similar to citing law professors' articles, I do not have a problem with that. But I think all of us remember that the Constitution, after all, is the product of a rebellion against a foreign power, and it is an American document that we are interpreting and applying.

Senator COBURN. OK. So outside of scholarly pursuit, the guidance will be the Constitution and the statutes.

Judge HAMILTON. That is my view, yes.

Senator COBURN. Thank you.

In a speech in 2003, you quoted another judge who once said that part of a judge's job is to write a series of footnotes to the Constitu-

tion. You added to that that they do that every year in cases large and small. Would you kind of explain that to me, your meaning behind the statement?

Judge HAMILTON. Certainly. The speech you are referring to was in honor of my late colleague, S. Hugh Dillin, whose seat I was nominated to take back in 1994. And to give you an idea, I attended schools as a boy that Judge Dillin had desegregated, and he drew great criticism for doing that back in the 1960s. The way he described our work is the daily or weekly application of the provisions and principles of our Constitution to new cases and new situations as they arise. And at least to me, the concept of the footnote implies what we are trying to do is not something new, but work out the details of how those principles apply to new situations.

Senator COBURN. All right. Thank you very much. I would say Lee Hamilton is one of my heroes. I have great admiration and respect for him. I served with him for 6 years in the House, and he is a stellar individual.

I will submit questions to all three nominees, and I would ask for certain that the record be left open because the other members of our Caucus would like to do that as well.

Senator CARDIN. And it will be. The record will be left open for questions, and we would urge the nominees to try to answer those questions as promptly as possible so that the Committee can consider the nominations in a timely way. So the record will remain open.

I have letters of support for Mr. Perez's nomination from many elected officials, including Senator Kennedy, Governor O'Malley, Majority Leader Steny Hoyer, many members of the State Assembly, including the Republican leader, and local government officials. Without objection, I would ask that these letters be made part of our record. Hearing no objection, so ordered.

Senator KAUFMAN.

Senator KAUFMAN. Yes, Judge Davis, how do you view your role different on the circuit court of appeals than on the district court?

Judge DAVIS. I am sorry, Senator. I—

Senator KAUFMAN. How are you going to see your role as different on the circuit court of appeals as opposed to the district court?

Judge DAVIS. I see. As you can guess, Senator, I am sure, I greatly enjoyed my time as a trial judge, being in touch with lawyers, litigants, and particularly working with juries. And if I am lucky enough to be confirmed, I surely will miss that aspect of the work. But the role of the circuit judge, of course, is to select and apply the correct standard of review, be it *de novo*, abuse of discretion, or clearly erroneous, and examine the record of proceedings below to ensure that the litigants received a fair and impartial judgment that is correct according to law and within the bounds of the factual record that was presented to the trial judge, and to do so collaboratively and collegially with the two panel members on which, as you know, circuit court judges sit as panels of three.

Senator KAUFMAN. Judge Hamilton.

Judge HAMILTON. Thank you, Senator Kaufman. Like Judge Davis, I will miss trial work if I am confirmed for this position and will miss the opportunity to work on a daily basis with juries and

with lawyers in trials and conferences. I look forward to the possibility, though, of engaging in some of the legal issues in more detail, perhaps with a little more time to engage in them on those matters that are left less to the discretion of the individual trial court and more to broader rules of law that will be applicable to the whole circuit.

Senator KAUFMAN. Secretary Perez, what in your background prepares you to be head of the Civil Rights Division?

Mr. PEREZ. Well, I have spent my entire career in civil rights, Senator, and I worked almost 10 years in the Civil Rights Division, starting as a summer clerk and working my way up to the Deputy Assistant Attorney General for Civil Rights. I worked as a career person, and I have worked as a political appointee, and I recognize the critical importance of having that interaction between career staff and political staff.

The job really requires legal acumen. It requires leadership. It requires management. And I have had the privilege of working with two organizations, leading those organizations, both of whom had critical missions and both of whom had critical challenges. They were underperforming, to be quite blunt. And you learn a lot from those experiences about how to take an organization that is not firing on all cylinders and leading it. And I learned to listen. I learned to be inclusive. I learned that so many people on the front lines are going to have great ideas. I often say to people, "I have not had an original idea in years, but I pride myself on being a good listener." And I suspect that as we move back to the Division that I recall with great fondness, I hope that I can apply those experiences, including, but not limited to, my DOJ experiences, to put to bear.

Senator KAUFMAN. And what will your priorities be when you arrive, if confirmed?

Mr. PEREZ. Well, No. 1, as I have mentioned, would be de-politicizing the decisionmaking process, and that includes, again, the hiring process and substantive decisionmaking, so that on Section 5 submissions, for instance, from various jurisdictions, I want to make sure that we have the opinions of the career staff. I may not agree with career recommendations all the time, but I guarantee you I will listen to them.

I also in terms of priorities would work hard to find out what is working. I think the work that has been done protecting religious freedom is a critical—a good example of work that has been done well. The human trafficking work is work that has been done well and should be continued.

But I would also make sure that we are enforcing all the laws that are in the arsenal of enforcement of the Division—voting rights, as I have discussed; having the Division play a role in foreclosure prevention, as I have done in the State of Maryland; and the aggressive and evenhanded enforcement of hate crimes laws.

Senator KAUFMAN. I feel a little bit like Groundhog Day. This morning, I did the nomination for Mr. de Baca to be nominee for the Director of Office to Monitor and Combat Trafficking, and I asked him how he was going to coordinate with you. I guess it is only fair to ask you how you are going to coordinate with him.

Mr. PEREZ. Well, in the realm of it is a small world, when I served on the hiring committee in the early to mid-1990s, Lou de Baca was one of the people that we hired.

Senator KAUFMAN. That is what he said.

Mr. PEREZ. And so I know Mr. de Baca very well and look forward to coordinating not only with him but with other agencies on critical issues, whether it is HUD or Treasury on foreclosure, Department of Homeland Security, Department of State on the trafficking issues, Department of Education on education issues. So many of the most vexing challenges are challenges that require that cross-agency coordination.

Senator KAUFMAN. I just want to thank all three of you for agreeing to come and help us deal with the problems in the Federal Government, and I think it is really a tribute to the country that you are willing to do this, and I just want to thank you for it.

Thank you, Mr. Chairman.

Mr. PEREZ. Thank you.

Judge DAVIS. Thank you, Senator.

Judge HAMILTON. Thank you, Senator.

Senator CARDIN. Senator Feingold is here, so before I start my second round, I will give Senator Feingold an opportunity.

Senator FEINGOLD. Thank you very much, Mr. Chairman. Welcome to all the witnesses and congratulations on your nominations.

Judge Davis, I would like to start with you. As I think you know, I have a longstanding concern about Federal judges' accepting expense-paid judicial education trips from groups funded by wealthy contributors that freely admit their purpose is to influence judicial decisionmaking. You went on a number of these trips, as I understand it, but also in the spring of 2004, you decided to accept an offer to join the board of directors of one of the groups that provides these trips, the so-called Foundation for Research on Economics and the Environment, known as FREE. FREE promotes what it calls "free market environmentalism." It is well known for its opposition to many of the major environmental laws of our country, and, not surprisingly, its financial support comes from major corporations and conservative foundations.

As I understand it, an ethics complaint was filed against you for serving on FREE's board, and that led you to request an opinion from the Committee on Codes of Conduct. The Codes of Conduct Committee gave you its opinion on March 30, 2005, and you decided then to resign from the board. I want to thank you for providing that opinion and your letter requesting it to the Committee.

Let me ask you first about your letter to the Codes of Conduct Committee requesting its opinion. You assert in the letter that you do not see any difference between the ethical propriety of serving on FREE's board and taking a trip funded by FREE. It seems pretty clear to me that joining the board of an organization like FREE is actually a much more significant indication of your involvement with the organization and poses in my mind very different ethical questions.

Did you really not see the difference then, or do you see the difference now?

Judge DAVIS. I absolutely see the difference now, Senator. I did not see it back in the spring of 2004 when I was invited and agreed to join the board.

Senator FEINGOLD. What is it that you understand to be the difference now?

Judge DAVIS. Well, I have the advisory committee's opinion, the committee's opinion spelling out, as they point out, while the issue is difficult for them—they debated it for over a month—ultimately they came down on the side, having examined, among other things, the FREE website, that there was an appearance of impropriety in a judge's service on that board. And I immediately, as you point out, took action to terminate my relationship as a board member.

Senator FEINGOLD. Thank you, Judge. You did not say much at the time about your reasons for resigning, but in a June 2007 statement in a court proceeding, you asserted the committee had found a tension between your service on FREE's board and one or more of the canons of the Code of Conduct for United States judges.

But as I read the opinion, the committee very clearly said that your service on the board violated the two specific canons. It says, "Your service on the FREE Board of Trustees violates Canon 5B because there is no practical way for you to disassociate yourself from the policies advanced by FREE, and your affiliation would reasonably be seen as a personal advocacy of FREE's policy positions." And it said that your service on FREE's board "runs afoul of Canon 2A of the Code because it could create in reasonable and informed minds a perception that your impartiality may be impaired, and it lends prestige to FREE and allows FREE to exploit the prestige of the office."

There really was no wiggle room there at all, was there?

Judge DAVIS. I am not sure I understand the question, Senator.

Senator FEINGOLD. These are explicit statements of violating these canons, so this opinion really left no wiggle room around that. Is that correct?

Judge DAVIS. Oh, and that is exactly why I resigned, Senator. The comment I think that you are quoting from on the record came up in the context of a case in which an attorney sought my recusal from that case, which was a long-running case over which I had presided for many years, and he attempted to use, both before me and before the Fourth Circuit upon appeal in a mandamus action, the mere fact of my presence on the FREE board as a reason for my recusal from that case. And in denying the recusal motion, I simply alluded to, without having the opinion in front of me, trying to give him as much of an explanation for the circumstances which led to my resignation from the FREE board, I alluded to—I used the language that you just quoted. But I did not mean by that allusion on the record to capture the full flavor or weight of the Codes of Conduct Committee advisory opinion. I agree with your characterization of it, and they specifically mentioned Canons 2 and 5 and had no—

Senator FEINGOLD. Obviously, then, Judge, you agree that the committee was saying unequivocally that it was improper for Federal judges to serve on FREE's board.

Judge DAVIS. I believe that is exactly what they said, Senator, although they did say that merely reading the canons themselves

did not provide an answer to the question. They say that in the advisory opinion.

Senator FEINGOLD. OK. After reading the committee's opinion, I know you resigned from FREE's board, but did you discuss it with or give a copy of it to FREE or any FREE board member?

Judge DAVIS. I did not.

Senator FEINGOLD. Who did you share it with?

Judge DAVIS. Then-Chief Judge Wilkins of the Fourth Circuit, and you will recall, I think, the way this came up was the complaint was filed with the Fourth Circuit Judicial Council as a complaint of judicial misconduct. And in consultation with then-Chief Judge Wilkins, he and I agreed that the appropriate way to approach the matter was not to treat it as a complaint of judicial misconduct. No one ever really believed or alleged that I was guilty of misconduct. Rather, the question that was posed was a question of interpretation of the canons and the Code of Judicial Conduct. And Judge Wilkins and I then agreed that I would request of the Codes of Conduct Committee an advisory opinion, and that is exactly what I did.

And, of course, the advisory committee on its part pointed out very carefully that it does not have jurisdiction over claims of judicial misconduct, but they accepted my request for an advisory opinion in respect to the application of the canons as it relates—or as they relate to service on the board.

So it was something of a disconnect—

Senator FEINGOLD. I take it at this point you were aware that other Federal judges were similarly violating the Codes of Conduct here.

Judge DAVIS. Well, when I made the request, Senator, I did not believe I was violating the Code of Conduct.

Senator FEINGOLD. No, but once you got that letter, you were aware that other judges were in the same status, right?

Judge DAVIS. I was aware that other judges were on the FREE board.

Senator FEINGOLD. OK. Could you just explain why you took no further action when you knew that there were continuing violations of the Codes of Conduct by other Federal judges and are still taking place today?

Judge DAVIS. The understanding that I had, which has, frankly, recently been enhanced, is that an advisory opinion issued by the Codes of Conduct Committee goes to that judge at his or her request, and that there is an institutional, was my understanding, interest on the part of the Codes of Conduct Committee not to have released advisory opinions requested by individual judges.

As you, I am sure, know, Senator, each Federal judge has an independent obligation—and Justice, I might say, has an independent obligation to attend to ethical norms and to take appropriate steps to ensure that his or her behavior and activities comport with those norms at all times. And that is what I did, and when I got the advisory opinion back from the Codes of Conduct Committee, I took immediate action to take care of my issue, and I thought that that was the extent to which I had an obligation to proceed.

Senator FEINGOLD. Judge, this is not a favorite part of being a Senator asking these kinds of questions, but I think you made a genuine attempt to answer. I am very concerned about this practice, as I know you understand, of taking these trips and being involved in these kinds of boards. And I appreciate your answering the questions.

Mr. Perez, congratulations on your—

Senator CARDIN. Would the Senator yield? I am not going to take it off your time. If I could just put into the record that paragraph that Judge Davis referred to from the opinion, which reads—and I will put the whole letter in the record. “We note that your inquiry is a difficult one. It was debated at length by the Committee. We understand that the advice we gave you today would not be obvious from reviewing the canons and our previous advisory opinions. In the past, the Committee often has assumed that the inquiring judge is in the best position to evaluate the activities of a board on which he or she serves and has deferred to the inquiring judge’s determination about the propriety of service. However, in light of the wealth of information about FREE that is now available to us and to the public, we believe that we are in a position to provide you with advice as you have requested. Thus, while we never before have advised judges about this issue and acknowledge that you reasonably could have arrived at a different conclusion, after diligently reviewing the most relevant Code of Conduct material available to you, we have advised you now that your continued service on the FREE board in the future is inconsistent with Canons 2 and 5 of the Code of Conduct.”

I thank the Senator for yielding.

Senator FEINGOLD. And I ask that the entire letter be placed in the record.

Senator CARDIN. The entire letter, yes.

Senator FEINGOLD. Thank you.

Mr. Perez, congratulations on your nomination. I have heard so much about you. You seem extremely well qualified for this position. It is very important that the Civil Rights Division regain its previous stature, and I wish you well in that. I want to ask you just briefly about the issue of racial profiling.

I first introduced legislation to ban racial profiling in 2001, and President Bush actually promised in his first address to Congress to “end racial profiling in America.”

Do you agree that this is still a problem in this country? And will you work with me on legislation to finally end it?

Mr. PEREZ. I do agree, Senator, that it is a problem. I spent a good portion of my time as a Criminal Section lawyer down in Florida investigating racial profiling cases. I talked to many victims, and I look forward to working with you and others who have—you have been a long-time leader in this issue, and I remember talking about this with Michael O’Leary back in the mid-1990s. So your doggedness is much appreciated, and I look forward to working with you.

Senator FEINGOLD. Including on legislation?

Mr. PEREZ. Including on legislation. If you have questions, I would certainly be more than willing to be available to lend our insights.

Senator FEINGOLD. Thank you, and thank you, Mr. Chairman.

Senator CARDIN. Thank you, Senator Feingold.

If I might, to both Judge Davis and Judge Hamilton, Secretary Perez's work in pro bono is well known. His role at the University of Maryland Law School is well known, and I am more than happy to have Secretary Perez also respond to this.

I know from each of your records that you have been involved in pro bono, so I know that. My question to you is that, as an individual, as an attorney, as a judge, and, if confirmed, as an appellate court judge, how do you see your role in advancing equal opportunity before our courts, particularly those who do not have the resources to have the opportunities that others have in getting access to our judicial system? Judge Davis?

Judge DAVIS. Senator, I have throughout my professional career had a deep belief in and commitment to the ideal of pro bono. I think it is something that every lawyer and every judge who is privileged to be a member of this great profession of ours has such a responsibility. And I have worked diligently throughout my career to both increase opportunities for judges and lawyers to participate in pro bono activities and, more specifically, to ensure that the underserved and our young people and community members at large learn about the legal system, know their rights, and I have done so on both an individual basis and as a part of institutions.

For example, just very quickly, our court, like, I am sure, most Federal courts, makes available to pro se litigants form documents which permit pro se litigants, when they cannot find a lawyer say in an employment case or other kind of case, to come to the courthouse, pick up this form, which contains a series of check boxes and some place for writing in facts. We make it as easy as possible for these persons who have to represent themselves to come to the court and seek justice.

Just last week, for another example, our court, under the extraordinary leadership of Magistrate Judge Garvey, for not the first time put on what we call in the Federal system the "Open Doors Program," where high school students from around the Baltimore region spent the morning, including lunch, at our courthouse, put on a mock trial. I was privileged to preside over such a mock trial put on by students who served as a jury from Mergenthaler High School right there in Baltimore.

And so these are just some of the activities that I, both in my institutional capacity and in my individual capacity, reach out to the community, young people, and pro se litigants to ensure that they know about our criminal justice system, they know about our civil justice system, and know that we are there for them even when they cannot get a lawyer and that we value increasing their knowledge about the justice system.

Senator CARDIN. Judge Hamilton.

Judge HAMILTON. Senator, when I talk with new lawyers or law students, I try to encourage in every instance them to commit a substantial amount of their time to pro bono work. That was something that was critical for me in my development as a new lawyer. I try to suggest it is not only the right thing to do for the profession and for the clients they serve, but there is also a self-interest in doing so. It is a way for a young or a new lawyer to invest in his

or her career in developing skills, having opportunities to serve clients in ways that they might not be able to with their paying work that brings them along. I know that was critical for me in my development as a lawyer.

Like the District of Maryland, we also have programs in place to assist pro se litigants. I have to say also at the same time, some of the pro se litigation obviously is frivolous. It winds up taking a good deal of time from the court. But it is also an important part of our work to deal with all of those claims fairly and as expeditiously as we can.

We provide, for example, panels of lawyers who are available to be contacted by pro se litigants who would like help with their cases. We have to do that under Seventh Circuit case law, which governs how we go about the business of recruiting counsel, when we must, when we should recruit counsel for pro se litigants. So consistent with the Seventh Circuit law on the subject, we do what we can along those lines.

I also would just say briefly that I think that in my work both as a judge and as chief judge with some administrative responsibilities, I have certainly tried to make sure that in our administrative roles, in hiring new personnel and so on, that we are as much an equal opportunity employer, supervisor, and dispute resolver as we can be.

Senator CARDIN. Thank you.

Mr. PEREZ. Senator, my wife of 20 years is a legal aid lawyer of 20 years in Maryland, and now she works at a place called the Washington Legal Clinic for the Homeless. The only way they can handle cases is by partnering with law firms to handle cases on a pro bono matter.

When I first started at the Department of Justice, DOJ attorneys were forbidden from taking pro bono cases. That rule has since changed, and so some of her volunteer lawyers are currently lawyers who are coming from Government service, and if confirmed, I would certainly work hard to ensure that we maximize opportunities for Government attorneys to continue to participate in these critical projects.

Senator CARDIN. Well, as you know, one of the recommendations of our committee in Maryland was not only to establish the clinical programs in our law schools, but that every lawyer—every lawyer—should do some pro bono, and that does not exclude Government service attorneys. We think everyone has an obligation to—particularly lawyers. We are charged with the legal system. We are charged with making sure that people have access to our system, and we can do a lot to help in that regard as individual practitioners. I just encourage you as leaders in the legal community to use whatever opportunities you have to get that message across, and I thank you, Secretary Perez, for your longstanding leadership in this area.

I want to ask a question that Chairman Leahy always asks those who are seeking to become judges, and that is, can you share with us a moment during your career where you stood up for something that was not popular, stood up for people who were disadvantaged, whether it was against Government or big companies, that indi-

cated your willingness to step forward in order to protect the rights of individuals? Judge DAVIS, you seem anxious to go.

Judge DAVIS. Well, Senator, I would like to think that I brought that kind of approach to my work as a judge. Frankly, one case that might fit the mold of the question you have just asked is the case involving attempts by disabled individuals to require the circuit court for Baltimore City to bring the court facilities up to minimum standards for those who are disabled. And I, through our random assignment system, got that case. My good friend Judge Robert Bell, Chief Judge of Maryland, was named as a defendant in his official capacity, as were other judges on the court. And the claim was one of Federal law, and it was, to be sure, somewhat awkward to be sitting in such a case.

But, Senator, I did not hesitate, and the defendants in that case were ably represented by members of the Attorney General's Office of the State of Maryland, and I, on the basis of the record that was before the court, did not hesitate to enter a summary judgment in favor of the plaintiffs, the disabled individuals who wished to force the city of Baltimore and the court system in Maryland to take appropriate action, long overdue, to bring admittedly older structures but structures that housed important governmental offices such as courts into compliance with Federal law.

So I entered that judgment. It was a very collaborative process between the plaintiffs and defendants in that case, and so that is certainly one of my instances where I stood up to judges and the local and State authorities to say Federal law requires this, these individuals have every bit of right to have full access to these facilities and these programs as required by the Congress of the United States, and you have got to do it. And I am happy to say that compliance, though it took a little while, was achieved and the building was brought up to standards. And I am very proud of that.

Senator CARDIN. And how is your relationship with Judge Bell these days?

[Laughter.]

Judge DAVIS. I got very warm wishes from him just recently, Senator, and he wished me well.

Senator CARDIN. I was looking. I do not know if I saw a letter from him or not.

[Laughter.]

Senator CARDIN. Judge Hamilton.

Judge HAMILTON. Well, as some members of the Committee may be aware, a few of my cases have generated a fair amount of criticism and they have not been popular. When I worked in private practice, I would say a lot of the pro bono work that I did fits that description. I can think of, for example, a couple of cases back in the mid-1980s as America was dealing with the first waves of the AIDS epidemic, and there was a lot of fear, there was a lot of discrimination against people who tested positive.

I assisted a man, for example, a father who had been stripped of his rights as a parent because he had tested positive for the HIV virus. A State court had terminated his right as a parent of his son. I assisted in the appeal that led to the restoration of those rights.

I assisted a young boy named Ryan White, who became well known, when he was told he could not attend school after he had gained the HIV virus through a transfusion. He was a hemophiliac. He later passed away, but he was a courageous story and an inspiration to everybody who dealt with him.

Just about every other pro bono case that I handled dealt with, in essence, the less powerful or less monied against more powerful and wealthier interests, whether it was archaeological interests against coal mining interests or opposing the State government in trying to destroy a historic building.

And as I said, I think in my work as a district judge, I try not to go out of my way to be unpopular. That is just not the way we decide cases. Sometimes the right result turns out to be the popular result. Sometimes the right result is unpopular. You just go with the right result.

Senator CARDIN. Well, I thank you. That is a very meaningful response, and we all do know about those causes. So you made a huge difference. All of you have made huge differences in that regard, and we thank you for that.

The record of the Committee will remain open—let me get my formal notices here. The hearing record will remain open for 1 week for additional statements and questions from Senators. Again, we ask the witnesses to respond promptly to the questions that are asked by members of the Committee. Without objection, Chairman Leahy's statement will be made a part of the record.

I want to once again thank our nominees not only for being here and their responses to the questions that were asked, but their continued service in the public. All three of you have made incredible contributions and are going to continue to do that, and it is a pleasure to have you before our Committee. Thank you very much.

Judge DAVIS. Thank you very much.

Mr. PEREZ. Thank you, Senator.

Judge HAMILTON. Thank you, Senator.

Senator CARDIN. The hearing is adjourned.

[Whereupon, at 3:30 p.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Responses of Andre M. Davis
 Nominee to the U.S. Court of Appeals for the Fourth Circuit
 to the Written Questions of Senator John Cornyn

1. Judge Davis, since 2004 your opinions in criminal cases have been reversed by the 4th Circuit at least eight times. Six of those reversals were unanimous.

- You have repeatedly suppressed confessions that were obtained outside of interrogation, including a confession that a suspect made to his own mother in the presence of police.¹
- You have downward departed from mandatory minimum sentences.²
- You have found arrests and searches to be invalid in cases where common sense amply demonstrated that probable cause existed.³

These decisions appear to go well beyond the Fourth Circuit's law, and err on the side of criminal defendants. How can law enforcement officers and citizens know that, as a Fourth Circuit judge, you will more faithfully apply the law of the Circuit, the Supreme Court, and the Constitution?

Response: I fully accept the appellate court's rulings in these cases, in which the court rejected my assessment of the facts and/or concluded that I had misapplied the law to the evidentiary record before me. In every case that has ever come before me, I have done my best to determine the facts (where I have been the fact finder) and to apply the law to the facts impartially and fairly. I fully respect the role of appellate courts in our system and fully accept their decisions in all cases, including the cases in which they have reviewed my rulings. If confirmed as a Fourth Circuit judge, I will follow the precedents of the Supreme Court and the Circuit and continue to apply the law to the facts of each case impartially and fairly.

2. On January 7, 2003, a woman named Tonya Malone called 911 from a 7-Eleven convenience store on West Franklin Street in Baltimore. She needed police protection from a man named Gregory McNeil. The 911 operator dispatched the Baltimore police, who arrived within 5 minutes.

When the officer arrived on the scene, he saw Ms. Malone step out of a telephone booth with several children in tow. McNeill was still standing next to her. When Ms. Malone approached the officer, McNeil followed beside her, and the two proceeded to talk over one another.

The officer separated them, and asked Ms. Malone's side of the story. Ms. Malone told the officer that "she wanted [McNeil] to leave her alone," but that instead McNeill was following her and "messing with" her. McNeill tried to interrupt, prompting the officer to warn him to "chill out."

¹ See *United States v. Jamison*, 2007 U.S. App. LEXIS 27978 (2007); *United States v. Kimbrough*, 477 F.3d 144 (4th Cir. 2007).

² See *United States v. Allen*, 450 F.3d 565 (4th Cir. 2006); *United States v. Stone*, 85 Fed. Appx. 925 (4th Cir. 2004).

³ See *United States v. Dickey-Bey*, 393 F.3d 449 (4th Cir. 2004).

Ms. Malone then told the officer that she had obtained a state court protective order against McNeill. In fact, she had obtained the protective order just a few hours earlier, so recently that the order was not yet entered into the police dispatcher's system.

Once Ms. Malone told the officer about the protective order, McNeill became agitated, and threatened Ms. Malone, saying "you dead, you know I am going to get you for this," prefaced by a vile, sexist epithet. Because of this direct and vulgar threat, the officer placed Mr. McNeill under arrest.

While in custody, Mr. McNeill confessed to two bank robberies that had been committed a few months before. This confession implicated other bank robbers as well.

As District judge, you granted a motion to suppress McNeill's confession, on the grounds that his arrest had been unlawful. You opined that the officer did not have probable cause to believe that assault or harassment had occurred in his presence, and so the arrest was unlawful and the confession inadmissible.

You came to this conclusion despite all of the facts above: the 911 call; McNeill following Malone around the parking lot; the interrupting; the protective order; and the gross and violent sexist threat that she was "dead" and he would "get" her. The Fourth Circuit unanimously reversed your decision.⁴

Please feel free to add any additional facts that you believe are necessary in answering the following questions:

A. Could you please explain your reasoning in this case?

Response: I fully accept the appellate court's ruling in this case. The principal issue presented in the case and argued before me by counsel was whether, for a warrantless misdemeanor arrest, the Fourth Amendment required that the misdemeanor be committed in the officer's presence. I concluded, relying on Fourth Circuit and Supreme Court precedents, that the answer was "yes," and that no misdemeanor had been committed in the officer's presence as of the moment of arrest. On appeal, the Fourth Circuit declined to address that issue. Instead, relying on a Maryland state court decision from the 1950s, the Fourth Circuit held that for a misdemeanor to be committed in an officer's presence, not all of the elements of the offense must occur in his presence. This argument and precedent had not been presented to me.

B. Do you believe that the officer should have left Tonya Malone at the scene without arresting Gregory McNeill? Please explain.

Response: In my ruling, I commented on the fact that the arresting officer had acted quite appropriately in taking steps to protect Ms. Malone.

⁴ See *United States v. McNeill*, 484 F.3d 301 (4th Cir. 2007).

C. Do you stand behind your reasoning and interpretation of the law in the McNeill case?

Response: The “in the presence” requirement for a warrantless misdemeanor arrest seems perfectly sound in light of Supreme Court and Fourth Circuit precedent. As described above, in reversing my decision, the Fourth Circuit did not call into question my reasoning in that regard.

3. In *United States v. Dickey-Bey*,⁵ you suppressed evidence arising out of the interception by Los Angeles and Baltimore police officers of 8 kilograms of cocaine worth approximately \$200,000.

In that case, drug sniffing dogs had alerted LA police that there may have been drugs in a package addressed to “Special Design at Box 187, Mail Boxes etc., 727 DuLaney Road, Towson, Maryland.” Other packages were similarly identified by drug-sniffing dogs, all from the same return address.

The police obtained search warrants and confirmed that 4 packages from the same return address each contained a total of 2 kilograms of cocaine. They then re-sealed the packages and waited to see who would pick them up.

An employee at the Mailboxes etc. store in Towson described the man who regularly picked up packages addressed to “Special Design” at Box 187. The police stationed an undercover officer in the store, posing as an employee, with the understanding that the actual employees would signal him when the individual who picked up packages from Box 187 arrived.

At approximately 11:30 a.m., another Baltimore police officer who was staking out the scene observed a man, who matched the description provided by the Mailboxes etc. employee, back into a parking spot near the store and look around suspiciously before entering. Once the defendant entered the store, the Mailboxes etc. employees gave the undercover officer the signal. Sure enough, the defendant requested the contents of Box 187.

When defendant left the store, the police arrested him. After the arrest, the officers searched his vehicle and discovered rental contracts and keys for other mailboxes at other UPS retail stores. The addresses on these contracts corresponded perfectly with the addresses to which the other 3 packages of cocaine had been mailed.

You held that the police did not have probable cause to arrest the defendant. Your rationale for this holding was that, at the time they executed the arrest, the officers did not have probable cause to believe that the defendant knew that the package contained cocaine.

It seems clear to me, as it was to the Fourth Circuit, that in the totality of the circumstances the officers had probable cause to believe that the defendant was involved in a drug

⁵ See *United States v. Dickey-Bey*, 393 F.3d 449 (4th Cir. 2004).

conspiracy, and was not simply an innocent courier who was ignorant of the package's contents.

Please feel free to add any additional facts that you believe are necessary in answering the following questions:

A. Leaving aside the issues surrounding the search of the car, please further explain your reasoning in holding that there was insufficient probable cause to arrest the defendant.

Response: I fully accept the appellate court's rejection of my legal conclusion that the evidence presented at the hearing on the motion to suppress was insufficient to establish a "fair probability," i.e., probable cause, to believe that the person picking up the package knew that narcotics were hidden inside.

B. Do you believe that probable cause should turn on the defendant's subjective knowledge of the contents of the package, or should it turn on law enforcement's reasonable belief considering the totality of the circumstances?

Response: The Supreme Court has repeatedly emphasized that the propriety of a seizure under the Fourth Amendment hinges solely on commonsense assessments of objective facts, taking into account the totality of the circumstances. I have attempted in every case to adhere to that requirement and I will continue to do so.

C. How would a rule that turned on the defendant's subjective knowledge work in practice?

Response: Proof of a person's knowledge is permissible by both direct and circumstantial, i.e., indirect, evidence, and this is true at both the motion-to-suppress stage as well as at trial.

D. Wouldn't such a rule encourage drug criminals to keep their drugs wrapped in a box to maintain plausible deniability and avoid liability?

Response: Although I can understand your concern that might result, my role as a judge is to follow the law as written by Congress and interpreted by higher courts.

E. Do you stand behind your reasoning and interpretation of the law in the Dickey-Bey case?

Response: I fully accept the appellate court's rejection of my legal conclusion that the evidence presented at the hearing on the motion to suppress was insufficient to establish a "fair probability," i.e., probable cause to believe, that the person picking up the package knew that narcotics were hidden inside.

**Responses of Andre M. Davis
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Richard J. Durbin**

1. **Some prominent disability rights groups have criticized your record. They believe you have unfairly ruled against disabled plaintiffs in a number of employment discrimination cases. However, as you testified at your hearing, you have ruled in favor of disabled plaintiffs in a number of public accommodations cases, such as your 1998 ruling that Baltimore city courthouses were not wheelchair-accessible and violated the ADA.**

What can you say to the disability rights community to offer assurance that you will be fair and impartial when it comes to employment discrimination claims brought by disabled plaintiffs?

Response: I have spent my entire professional career abiding by a deep belief in equality of opportunity for all. In every case I have decided, I have applied the law to the facts before me fairly and impartially. I am fully committed to equality of treatment for the disabled, in employment and in all facets of American life, goals justly embodied in the Rehabilitation Act and the Americans with Disabilities Act (and its recent amendments). In this area as in all others, I have been and I remain fully and unconditionally committed to giving the remedial statutes which are the law of our land the full sweep intended by the Congress.

2. **The Alliance for Justice examined your record in employment discrimination cases generally and wrote: "Judge Davis' record indicates a propensity toward awarding summary judgment in favor of the defendant employers.... Because the result of summary judgment is so severe – the case is thrown out of court before the matters in question are resolved – the court is required to view all the evidence in the light most favorable to the plaintiff."**

Do you believe this is an accurate description of your record? Please explain.

Response: I do not believe this is an accurate description of my record. In every case I have decided, I have applied the law to the facts before me fairly and impartially.

3. **Making reasonable accommodations for people with disabilities sometimes costs money. Some people believe that tight state budgets should mean that people with disabilities should not receive the reasonable accommodations they need in order to participate equally in state programs and services
What is your view? How should a federal judge analyze such issues?**

Response: The Congress clearly understood in enacting the ADA (and its recent amendments) that costs would be entailed to both private and public employers in

carrying out the duties imposed by those statutes. The statutory scheme enacted by Congress provides the means by which all factors necessary to full implementation of Congress' goals could be achieved. My role as a judge is to follow the law as written by Congress and interpreted by higher courts.

4. **The Supreme Court has issued a number of rulings over the years that took a narrow interpretation to the ADA. As a result of these rulings, Congress passed the ADA Amendments Act last year, which makes it clear that Congress intended the ADA to be interpreted broadly in order to adequately protect the rights of the disabled.**

A. What is your understanding of the changes to the definition of "disability" under the ADA Amendments Act?

Response: I have not yet had a case in which I was required to apply the ADA amendments. Therefore, I have not had the opportunity to review and analyze this new statutory regime. However, I do understand that Congress has sought to expand the definition of disability under the ADA in significant ways, including expanding the list of major life activities, no longer considering mitigating measures, and applying the "regarded as" test to impairments that are not transitory and minor. As this is a legal issue that could actually come before me in an actual case if I am confirmed, I believe that to maintain both the appearance of impartiality as well as the actuality of impartiality, I must decline to express my views on this legal issue.

B. Do you think some of your decisions in which you took a narrow interpretation of the ADA would have come out differently under the new ADA Amendments Act? If so, please provide examples.

Response: I have not yet had a case in which I was required to apply the ADA amendments. Therefore, I have not had the opportunity to review and analyze this new statutory regime. However, I understand that Congress sought to overturn the approach that the Supreme Court developed in its *Sutton* trilogy that disability should be determined by reference to the ameliorative effects of mitigating measures and to reject the holding in *Toyota* that the ADA requires a "demanding standard" for establishing coverage and requires that an impairment severely restrict major life activities. As this is a legal issue that could actually come before me in an actual case if I am confirmed, I believe that to maintain both the appearance of impartiality as well as the actuality of impartiality, I must decline to express my views on this legal issue.

C. Do you understand the ADA Amendments Act to change the "regarded as" prong of the disability definition by permitting a plaintiff to establish a disability by showing that he or she has been discriminated against because of an actual or perceived physical or mental impairment, regardless of whether it substantially limits a major life activity?

Response: I have not yet had a case in which I was required to apply the ADA amendments. Therefore, I have not had the opportunity to review and analyze this new statutory regime. However, I understand that Congress sought to change the “regarded as” prong and expand coverage to anyone subjected to an action prohibited by the ADA because of a real or perceived physical or mental impairment that is not transitory and minor. As this is a legal issue that could actually come before me in an actual case if I am confirmed, I believe that to maintain both the appearance of impartiality as well as the actuality of impartiality, I must decline to express my views on this legal issue.

D. In deciding whether a plaintiff has a disability and is protected by the ADA, how do you go about determining whether a person’s impairment “substantially limits” a major life activity? Do you think your approach is consistent with Congress’s intent?

Response: I have sought to adhere scrupulously to binding precedents from the Supreme Court and the Fourth Circuit in the adjudication of all cases, including discrimination cases.

5. **A 2001 study by Professor Ruth Colker (published in the Ohio State Law Review) found that federal courts have ruled for defendants and against plaintiffs in 94% of ADA employment cases. The study found that the 4th Circuit had the lowest rate of decisions in favor of ADA employment discrimination plaintiffs among all the federal appeals courts, finding for plaintiffs in only 0.3 % of cases, compared to the 6% average among other appeals courts.**

Based on your experience as a federal district judge in the 4th Circuit, do you have an explanation or opinion as to why ADA employment discrimination plaintiffs lose so often in that circuit?

Response: I am unfamiliar with Professor Colker’s study and cannot provide detailed comments upon it.

6. **Many scholars have characterized the Supreme Court’s decisions invalidating parts of the ADA, the Violence Against Women Act, and the Age Discrimination in Employment Act as efforts to second-guess Congress’s judgment as to whether abrogation of state sovereign immunity is necessary to remedy a pattern of discriminatory behavior. In his dissent in *Tennessee v. Lane*, Justice Scalia complained that the test set forth in these cases casts the Court as a “taskmaster” that “must regularly check Congress’s homework to make sure that it has identified sufficient constitutional violations to make its remedy congruent and proportional.”**

A. Do you agree with this analysis by Justice Scalia?

Response: I have followed the holdings of the Supreme Court as announced in opinions signed by a majority of the justices in every case. Dissenting opinions provide me with no guidance in my duties as a judge.

B. Do you agree with the majority analysis of the Supreme Court in *Tennessee v. Lane* about the history of unconstitutional discrimination against persons with disabilities?

Response: I will follow the precedent of the Supreme Court, regardless of my personal opinions. However, the findings of the Americans with Disabilities Act make clear that it is a response to a history of discrimination against persons with disabilities in our country.

**Responses of Andre M. Davis
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Lindsey Graham**

- 1. In 2006, the Fourth Circuit vacated three defendants' guilty pleas of conspiracy to distribute crack cocaine and illegal use of firearms entered before you, finding improper judicial involvement in the plea negotiations.¹ The Court said, "We have not found a single case in which the extent of judicial involvement in plea negotiations equaled that in the case at hand."**

Do you believe that the Fourth Circuit's criticism was justified? If you were given the chance to adjudicate this case again, would you handle it differently? If so, how?

Response: I believe with the benefit of hindsight that my involvement in facilitating the guilty pleas in this case was inappropriate and that the Fourth Circuit was correct to say so. I should have (and would, were I ever confronted again with a similar situation) permitted the case to proceed to verdict by the jury without any involvement whatsoever on my part in discussing with counsel a possible change of plea by any defendant.

¹ United States v. Bradley, 455 F.3d 453 (4th Cir. 2006).

Responses of Andre M. Davis
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Charles E. Grassley

1. **In *U.S. v. Allen*, 450 F.3d 565 (4th Cir. 2006), the defendant pleaded guilty to being a felon in possession of a firearm, and his plea agreement stated that he would be subject to a 15-year mandatory minimum prison term if he was found to be an armed career criminal. He did not dispute that he qualified as such. You imposed a 63-month prison term (5.25 years), which was below the statutory minimum 15-year term required under the law. The Fourth Circuit unanimously reversed.**

- a. **Is it your view that sentencing guidelines are advisory in nature and that an appellate court should defer to the district court judge?**

Response: In light of the Supreme Court's decision in *Booker*, the federal sentencing guidelines are advisory and not mandatory. The Supreme Court has now clarified that the proper standard of appellate review of criminal sentencing is abuse of discretion. If I am confirmed, that is the standard I would apply.

- b. **In light of the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004), what is your view on the future of federal sentencing guidelines and the U.S. Sentencing Commission?**

Response: I believe the Sentencing Commission will continue to provide Congress and the courts with valuable services, e.g., empirical studies and data compilations. It will be for the Congress to determine what if any changes are appropriate to the Sentencing Reform Act, which created the guidelines. As a judge, I will follow whatever laws Congress implements.

2. **In the case *In re Hydrogen Peroxide Antitrust Litigation*, 552 F.3d 305 (3d Cir. 2008), the Third Circuit unanimously held that when weighing class status in class action cases, district courts must resolve all related factual disputes and give equal attention to evidence presented by both sides. Specifically, the Third Circuit observed that the requirements set forth in Federal Rule of Procedure 23 are "not mere pleading rules," but rather frame how district courts should test the factual sufficiency of a class certification motion. The movant bears the burden of meeting those requirements by a preponderance of the evidence, and that burden will not be met by an assurance of how the movant intends to meet these requirements. Thus, the Third Circuit rejected the notion that a plaintiff can satisfy Rule 23 by making a "threshold showing." If all of the circuit courts adopt this standard, it will potentially greatly reduce the number of class action lawsuits.**

- a. **What is your position on this issue?**

Response: As this is a legal issue that could actually come before me in an actual case if I am confirmed, I believe that to maintain both the appearance of impartiality as well as the actuality of impartiality, I must decline to express my views on this legal issue.

Responses of Andre M. Davis
 Nominee to the U.S. Court of Appeals for the Seventh Circuit
 to the Written Questions of Senator Orrin G. Hatch

1. **Judge Davis, I want to better understand your judicial philosophy, your view of a federal judge's power and role in our political system. One of the things in your record that probably addresses this most directly is the essay you wrote in connection with the 50th anniversary of the Supreme Court's decision in *Brown v. Board of Education*. In that essay, you described the judiciary as literally a supplement to what you called the "politically-induced institutional inertia, if not the cowardice, of the executive and legislative branches." You referred to those elected branches as the *primary* law-making organs of government. This sounds like you believe that the courts are a *secondary* law-making organ of government. This sounds like you believe that social and political change should be not simply an effect of court decisions, but the intended result of those decisions. I would like your comment on that. Do you believe that is the role of judges in our system of government?**

Response: I do not believe that the role of a judge is to make law or that judges should intend social or political change. I strongly believe the role of a judge is to follow the written law and apply that law to the facts that come before him or her. That is the role I have fulfilled throughout my career as a District Court judge and the role I will fulfill, if I am fortunate enough to be confirmed, as a Circuit Court judge.

2. **In that essay on *Brown v. Board of Education*, you praised the Supreme Court for "following its moral compass to reach the correct result." May judges decide cases based on their moral compass rather than the law?**

Response: No.

3. **I was a little surprised that in that essay you commented on current political and legal issues such as the war in Iraq and same-sex marriage. You are, after all, a sitting federal judge. And now you have been nominated to the appeals court circuit that has a disproportionate impact on issues such as national security and the war on terror. Looking back, at least from the standpoint of the imperative for both the reality and the appearance of impartiality, do you think that was perhaps a mistake?**

Response: I certainly did not intend to express any view on legal issues. With the benefit of hindsight and reading the essay now, I can see how a reasonable person could possibly interpret my choice of language as an expression of personal opinion on a potential legal issue that could be presented in a case before me. I should not have used this formulation.

4. **Judge Davis, I have an ongoing, active legislative role in helping to provide opportunities for our fellow citizens with disabilities. So I am sensitive to the need for judges to construe and apply disability statutes the way Congress intended. A coalition of disability groups has examined your judicial record in this area and has raised serious concerns. I have attached two of their memos on this point for your review. They say, for example, that you are unsympathetic to persons with disabilities who seek employment. They come to this conclusion by noting that, at least by their count, you have ruled only once in favor of a plaintiff's ADA employment discrimination claim. They say you impose inappropriately stringent standards, cramped interpretations, and inappropriate procedural hurdles. I am not asking you to comment about individual cases, but I would like your response to these criticisms and this way of analyzing your record. Do you believe the results of your decisions in this area reflect your sympathies? Do you think it is appropriate for judges to decide cases based on their sympathies?**

Response: I do not believe judges should decide any issue based on their sympathies.

I have spent my entire professional career abiding by a deep belief in equality of opportunity for all. In every case I have decided, I have applied the law to the facts before me fairly and impartially. I am fully committed to equality of treatment for the disabled, in employment and in all facets of American life, goals justly embodied in the Rehabilitation Act and the Americans with Disabilities Act (and its recent amendments). In this area as in all others, I have been and I remain fully and unconditionally committed to giving the remedial statutes which are the law of our land the full sweep intended by the Congress.

Responses of Andre M. Davis
Nominee to the U.S. Court of Appeals for the Fourth Circuit
to the Written Questions of Senator Jeff Sessions

Suppression Motion Reversals

1. I am very troubled by the number of cases in which you have suppressed evidence and been overturned by the Fourth Circuit. During your hearing, Senator Coburn asked you whether, in your opinion, the Fourth Circuit got any of these reversals wrong. In response, you noted one case where the Fourth Circuit's decision was later overturned by the Supreme Court, but you did not specifically comment on any of the other cases where your opinion was reversed.

For each of the following appellate cases, please state for each whether you stand by your opinion or agree with the decision of the appellate court that the evidence should not have been suppressed, and please give reasoning as to the basis of your decision:

- a. United States v. Siegel, 536 F.3d 306 (4th Cir. 2008).
- b. United States v. Jamison, 509 F.3d 623 (4th Cir. 2007).
- c. United States v. Kimbrough, 477 F.3d 144 (4th Cir. 2007).
- d. United States v. McNeill, 484 F.3d 301 (4th Cir. 2007).
- e. United States v. Custis, 150 Fed. Appx. 265 (4th Cir. 2005).
- f. United States v. Dickey-Bey, 393 F.3d 449 (4th Cir. 2004).

Response: I fully accept the appellate court's rulings in these cases, in which the court rejected my assessment of the facts and/or concluded that I had misapplied the law to the evidentiary record before me.

Summary Judgment Reversals

2. While I am a supporter of summary judgment as a procedural device, I am concerned by the number of cases you listed in your questionnaire where the Fourth Circuit reversed, finding that there was a genuine issue of material fact where you found none.

For each of the following cases, please state whether you agree with your decision or the decision of the appellate court that reversed, and please give reasoning as to the basis of your decision:

- a. Nagy v. Baltimore Life Ins. Co., 49 F. Supp. 2d 822 (D. Md. 1999), aff'd in part and rev'd in part, 215 F.3d 1320 (4th Cir. 2000).
- b. Robinson v. New Line Cinema Corp., 42 F. Supp. 2d 578 (D. Md. 1999), rev'd, 211 F.3d 1265 (4th Cir. 2000).
- c. Prudential Real Estate Affiliates, Inc. v. Long & Foster Real Estate, Inc., 208 F.3d 210 (4th Cir. 2000).
- d. Kubicko v. Ogden Logistics Services, 181 F.3d 544 (4th Cir. 1999).
- e. Motor Club of America Ins. Co. v. Hanifi, 145 F.3d 170 (4th Cir. 1998).
- f. Harold v. Cendo, 131 F.3d 134 (4th Cir. 1997).

Response: I fully accept the appellate court's determination in these cases that the non-movant had projected sufficient evidence such that a genuine dispute of material fact precluded the entry of summary judgment.

The Eighth Amendment Standard

- 3. In the appellate review of your decision Rich v. Bruce, 129 F.3d 336 (4th Cir. 1997), the Fourth Circuit addressed a case in which you entered judgment in favor of the plaintiff on his Eighth Amendment claim. On appeal, the Fourth Circuit reversed, holding that you erred since you did not find that the defendant guard had actual knowledge of a specific risk to the plaintiff.
 - a. Please state whether you agree with your decision or the decision of the appellate court that reversed, and please give your reasoning as to the basis of your decision.

Response: I fully accept the appellate court's determination in this case that the plaintiff's evidence failed to satisfy the proof requirements for an Eighth Amendment claim.

Interference with Defendant Plea Bargaining

- 4. I am very troubled by your role in the case described by the Fourth Circuit in United States v. Bradley, 455 F.3d 453 (4th Cir. 2006). According to the Fourth Circuit's opinion, you became heavily involved in trying to get the defendants to work out a plea deal with the prosecution. The Fourth Circuit's review of your actions demonstrates that you took an active role in trying to influence the defendants to take a plea: "Judicial encouragement to plead guilty was so clear that one defendant . . . complained

of it to the district court: ‘You keep telling us to cop out, like we are already guilty.’” (Id. at 464). In vacating the defendants’ convictions and remanding to a different judge, the Fourth Circuit concluded:

“We have not found a single case in which the extent of judicial involvement in plea negotiations equalled (sic) that in the case at hand. The district court repeatedly appeared to be an advocate for the pleas rather than as a neutral arbiter, and any fair reading of the record reveals the substantial risk of coerced guilty pleas. . . . We can only conclude that the district court’s role as advocate for the Defendant’s guilty pleas affected the fairness, integrity, and public reputation of judicial proceedings.” (Id. at 464-65).

- a. Please explain your conduct in this case and why you considered it to be appropriate.

Response: I believe with the benefit of hindsight that my involvement in facilitating the guilty pleas in this case was inappropriate and that the Fourth Circuit was correct to say so. I became involved in, but I did not interfere with, the plea process, at the invitation and encouragement of defense counsel. Nevertheless, I should not have gotten involved in that process at all. I should have permitted the case to proceed to verdict without any involvement whatsoever on my part in discussing with counsel a possible change of plea by any defendant.

- b. At your hearing, you testified that a good judge is one who “appreciate[s] the importance of a fair hearing and a fair and impartial judgment in every case.” Do you believe the litigants received a fair and impartial hearing in this case?

Response: Yes.

The Second Amendment

5. The Second Amendment states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

- a. Do you believe that the Second Amendment is an individual right or a collective right? Please explain.

Response: The Supreme Court held in *District of Columbia v. Heller* that it is an individual right. That is the controlling law of the land.

- b. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

Response: The Supreme Court in *District of Columbia v. Heller* did not limit the right to the context of military service or hunting.

- c. **What restrictions, if any, do you believe would be constitutional against an individual's Second Amendment rights?**

Response: Any proposed restrictions that come before me as a judge would need to be justified by the guidelines set in *District of Columbia v. Heller*.

- d. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

Response: The Supreme Court in *District of Columbia v. Heller* did not establish a standard of scrutiny. As this question may come before me in a case if I am confirmed, I believe that to maintain both the appearance of impartiality as well as the actuality of impartiality, I must decline to express my views on these legal issues.

- e. **Do you believe that the Second Amendment should be incorporated against the States?**

Response: As this question may come before me in a case if I am confirmed, I believe that to maintain both the appearance of impartiality as well as the actuality of impartiality, I must decline to express my views on these legal issues.

Judicial Philosophy

6. **During his campaign, President Obama announced: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom, the empathy to understand what it's like to be poor or African-American or gay or disabled or old- and that's the criterion by which I'll be selecting my judges."**

- a. **Which, if any, of these categories do you believe best describes your judicial philosophy as laid out by the President?**

Response: I do not believe the above quote describes a judicial philosophy. My approach in every case that comes before me is to apply the law to the facts.

- b. **During your hearing, you stated that a good judge is "one who appreciates the burdens, the challenges that the litigants before him or her has met." What weight should judges give to these considerations and how do they balance them against a neutral application of the law?**

Response: The above quote was a part of my response to Senator Coburn when he asked me about the concept of empathy. I believe that empathy is an attribute of character that provides a judge with insight and understanding of the human condition of the litigants whose cases the judge exercises authority to decide. Empathy is not a rule of decision or a basis for the decision in any legal matter. The sole task of the judge is to insure the neutral application of the law to the facts of the case and nothing is to be "balanced" against that task.

**Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Tom Coburn, M.D.**

1. **President Obama has described the types of judges that he will select as follows:
"We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges."**

- **What role do you believe empathy should play in a judge's consideration of a case?**

RESPONSE:

Federal judges take an oath to administer justice without respect to persons, and to do equal right to the poor and to the rich. Empathy - to be distinguished from sympathy - is important in fulfilling that oath. Empathy is the ability to understand the world from another person's point of view. A judge needs to empathize with all parties in the case - plaintiff and defendant, crime victim and accused defendant - so that the judge can better understand how the parties came to be before the court and how legal rules affect those parties and others in similar situations.

- **As President Obama's first judicial nominee, do you believe that you fit his criteria? Why, or why not?**

RESPONSE:

Yes, because I will continue to do my best to follow the law, to treat all parties who come before me with respect and dignity, and to understand how legal rules or decisions will affect behavior and incentives for different people and institutions.

- **Local practitioners quoted in the Almanac of the Federal Judiciary were quoted as saying: "[Hamilton] is the most lenient of any of the judges in the district." "He is one of the more liberal judges in the district. He leans toward the defense. He makes the government prove its case." "He goes out of his way to make the defendant comfortable." "In sentencing, he tends to be very empathetic to the downtrodden, or to those who commit crimes due to poverty."**
- **What is your reaction to these statements?**

RESPONSE:

As a judge, I make decisions based on the facts and applicable law of each case. I do not make decisions based on what is popular with the public or members of the bar. I agree that I make the government prove its case. I disagree with the other statements, and I believe that prosecutors and a larger sample of defense attorneys in the district would disagree with them. In terms of "making the defendant comfortable," when I take a guilty plea, I treat the defendant with respect because that is appropriate and because it is important that the decision to plead guilty is a knowing and voluntary decision. In terms of empathizing with "the downtrodden," the victims of the crimes in such cases are often equally or more "downtrodden" than the defendant. The sentencing judge has an obligation to keep in mind those victims and their injuries and losses.

2. **In your 1994 response to a confirmation questionnaire, you said that "members of the judiciary have a responsibility to exercise their power with restraint and deference to the elected branches of government, and with appropriate respect and restraint when dealing with state and local governments."**
- **How did your decision to obstruct, for seven years, Indiana's implementation of a statute requiring informed consent for women seeking abortion honor your responsibility to exercise restraint, respect, and deference to the state legislature?**

RESPONSE:

I believe my decisions in *A Woman's Choice v. Newman* were based on faithful application of the controlling "undue burden" standard to the evidence before me. That standard gives substantial respect and deference to legislatures, but still requires the court to consider actual evidence of the purpose and effects of a law restricting access to abortions.

3. **Would you agree that, in most basic terms, a judge's role is to interpret the law? If so, why, in a 2006 article, did you take issue with the popular analogy of a judge being like an umpire, calling balls and strikes? Instead, you seemed to advocate a more results-oriented approach by saying: "[T]aking into account what happened and its effects on both parties [and] what are the practical consequences...Judges do have an obligation to see that justice is done."**

RESPONSE:

I agree the judge's role is to interpret the law and to be fair to all parties. In the quoted comment in the interview, I was not advocating a "results-oriented approach" to deciding

cases. I was addressing situations that arise frequently in managing cases, especially in civil litigation, in which one side, and often both sides, might miss a deadline or fail to fulfill every detail of their obligations in discovery, or where a defendant might fail to answer the complaint on time and be subject to a default judgment. Many provisions in both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and the cases interpreting them give the judge both the power and the obligation to use discretion in excusing some failures to comply or in choosing an appropriate sanction.

In the quoted interview, I was making the point that in exercising discretion given by the Rules in such instances, I try to evaluate the results of the party's failure to comply with a deadline or other rule. Was the mistake inadvertent and excusable? Was it a deliberate tactic to gain an unfair advantage? Did the failure cause prejudice to the opposing party or to the court? Those judgments are routine in district courts, but they are not as simple as calling a ball or strike. They call for the exercise of discretion and judgment to ensure that the court will be fair to all parties.

4. **The Seventh Circuit chastised your obstruction of Indiana's informed consent statute at issue in *A Women's Choice v. Newman*. In the reversing opinion, Judge Easterbrook wrote, "[F]or seven years Indiana has been prevented from enforcing a statute materially identical to a law held valid by the Supreme Court in *Casey*, by this court in *Karlin*, and by the fifth circuit in *Barnes*. No court anywhere in the country (other than one district judge in Indiana) has held any similar law invalid in the years since *Casey*...Indiana (like Pennsylvania and Wisconsin) is entitled to put its law into effect and have that law judged by its own consequences."**

- **What is your response to this criticism? Did you ignore existing precedent to advance your own policy position on abortion?**
- **Do you stand by your decision in the *Newman* case? Do you still believe that Indiana's informed consent requirements create an undue burden for women seeking an abortion?**

RESPONSE:

I believe my decisions in *A Woman's Choice v. Newman* were based on faithful application of the controlling "undue burden" standard to the evidence before me concerning the effects of similar laws. The Seventh Circuit found that my factual findings were not clearly erroneous. I did not ignore existing precedent to advance any personal views. To the extent the criticism is based on the time it took to resolve the case, I note that the State chose not to appeal my decisions granting and then modifying a preliminary injunction in 1995 and 1997. After resolving the preliminary injunction issues, I set a prompt trial date. All parties jointly asked me to postpone the trial date on more than one occasion so they could pursue discovery, especially into some complex statistical issues.

I believe my final decision on the merits was correct based on the evidence before me, and based on the applicable case law at that time. I have not seen later evidence on the actual experience under the Indiana law, after the Seventh Circuit's decision, so I could not express an opinion now about whether the law is now imposing an "undue burden."

5. **Some of your statements in your rulings in the Newman case suggest a personal hostility to the law. For example, you complain in your 1997 ruling (980 F. Supp. 962) finally permitting the waiting-period and mandatory-disclosure provisions of the law to go into effect that these provisions "appear likely to be useless, patronizing, and annoying, and there is no evidence that these provisions will actually serve any constitutionally legitimate purpose."**

- **How would you characterize that statement today, upon reflection?**
- **Was your description - of provisions you were finally permitting to take effect - appropriate in your role as a judge?**
- **Do you stand by your characterization of the waiting-period and mandatory-disclosure provisions as "useless, patronizing, and annoying"?**
 - **Why, specifically, do/did you believe that it is "useless, patronizing, and annoying" for a pregnant woman considering abortion to be informed of:**
 - i. **the name of the physician performing the abortion?**
 - ii. **the nature of the proposed abortion procedure?**
 - iii. **the risks of and alternatives to the abortion?**
 - iv. **the probable gestational age of her baby?**
 - v. **the medical risks associated with carrying the baby to term?**
 - vi. **medical assistance benefits that may be available for prenatal care, childbirth, and neonatal care?**
 - vii. **that adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care?**

RESPONSE:

The quoted phrase reflects my view of the evidence before me as the issues were framed by the parties, not a personal policy preference. The parties and I all took the view that evidence of benefits of the challenged law, or lack of benefits, could be relevant in applying the "undue burden" standard or other standards that other Justices concluded were more appropriate. The parties presented evidence on that question of benefits, and I

made factual findings based on that evidence. The evidence indicated that most women seeking abortions gave the decision careful thought and that the doctors and clinics in Indiana were taking effective steps to ensure that all women were aware of their alternatives and had made a considered decision before having an abortion. The State had ample opportunity to present contrary evidence, subject to adversarial testing in the courtroom, showing that the informational requirements and waiting period would address real problems. The State was not able to do so, as I explained in detail. See 904 F. Supp. at 1450-52; see also 132 F. Supp. 2d at 1175 (State's attorney was unable to identify any evidence tending to show that the information requirements and waiting period actually persuaded women to decide not to have abortions they were considering).

The description of the evidence before me remains accurate with respect to the effects or lack of effects of such requirements on that record. If different evidence were presented to me in another case today, I would give that evidence a fresh look, recognizing that the evidence presented to one district court in one case ten years ago is not the complete word or the last word on the subject.

6. **In *Hinrichs v. Bosma*, you enjoined the Speaker of the Indiana House of Representatives from permitting sectarian prayer, which you ruled included any prayer mentioning the name of Jesus Christ. You wrote: "If the Speaker chooses to continue any form of legislative prayer, he shall advise persons offering such a prayer (a) that it must be non-sectarian and must not be used to proselytize or advance any one faith or belief or to disparage any other faith or belief, and (b) that they should refrain from using Christ's name or title or any other denominational appeal." You added: "The Speaker has also asked whether, for example, a Muslim imam may offer a prayer addressed to "Allah." The Arabic word "Allah" is used for "God" in Arabic translations of Jewish and Christian scriptures. If those offering prayers in the Indiana House of Representatives choose to use the Arabic Allah ... or any other language's terms in addressing the God who is the focus of the non-sectarian prayers contemplated in *Marsh v. Chambers*, the court sees little risk that the choice of language would advance a particular religion or disparage others."**
- **Following your reasoning in *Hinrichs*, if state legislators in my home state of Oklahoma decided to begin their day with a prayer that made reference to Jesus Christ, you would find that was a violation of the Establishment Clause. Is that correct? Please explain.**
 - **Also following your reasoning in *Hinrichs*, if state legislators in my home state of Oklahoma decided to begin their day with a prayer referencing Allah, you would not find that was a violation of the Establishment Clause. Is that correct? Please explain.**

RESPONSE:

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered “sectarian.” See *Lee v. Weisman* 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be “sectarian” if it “specif[ie]d details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)”). Under this reasoning, similarly, a prayer asserting that Mohammed was God’s prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, “Allah,” I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric’s prayers’ content and setting could lead one to conclude that they were sectarian.

In the *Hinrichs* case, the finding of an Establishment Clause violation was based not on any one prayer, but on evidence showing a pattern of repeated and consistent sectarian prayers. If the evidence did not show such a pattern in the hypothetical cases you described, the conclusion would not necessarily be the same.

7. **In addition to having Dawn Johnsen as your sister-in-law, from 1999 to 2007 you were on the Board of Visitors of the Indiana University law school, where Ms. Johnsen was on the faculty.**
- a. **Have you ever read any of Ms. Johnsen's writings on abortion? Did you agree with them? Have you discussed them with her?**

RESPONSE:

I recall reading one “issue brief” that Professor Johnsen wrote on the subject a couple of years ago. If I recall correctly, I thought it was a concise and accurate description of the history of the Supreme Court’s treatment of the issue, and I recall telling her so after I read it.

- b. **Have you and Ms. Johnsen ever discussed the topic of abortion?**

RESPONSE:

I am sure that we have discussed the topic from time to time, most likely in the context of family gatherings.

- c. **Did you and Ms. Johnsen ever discuss your case involving the Indiana informed-consent statute?**

RESPONSE:

After a decision was issued in the case, we probably discussed it, but I don't recall any such discussion. She has sometimes read decisions of mine that have attracted some media attention, as this case did. I never sought or received any advice from her about the case.

**Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator John Cornyn**

1. In a speech that you gave in 2003 at the dedication of the Birch Bayh United States Courthouse, you said “Judge S. Hugh Dillin of this court has said that part of our job here as judges is to write a series of footnotes to the Constitution. We all do that every year in cases large and small.”¹ Do you think that it is the role of a judge to write “footnotes to the Constitution?” What does that mean to you?

RESPONSE:

The phrase “footnotes to the Constitution,” described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. I think it is the role of judges to write such “footnotes to the Constitution,” in this sense of applying the Constitution to the facts of the particular case and adding to the body of case law interpreting the Constitution.

2. In notes from a March 2008 speech to the Indianapolis Bar Association, you wrote, in reference to Federalist Paper 78, “judges could and should refuse to enforce federal laws that were ‘contrary to the manifest tenor of the constitution.’”² The quote “contrary to the manifest tenor of the constitution” is from Federalist Paper 78. What do you think that Hamilton meant when he used the words “manifest tenor of the constitution?”

RESPONSE:

In context, I believe that Hamilton simply meant by the phrase “the manifest tenor of the constitution” the provisions of the Constitution. He used the phrase immediately after referring to specific constitutional prohibitions on bills of attainder and ex post facto laws.

- a. **Does the Defense of Marriage Act, which defines marriage to be between a man and a woman, go against the “manifest tenor of the constitution?”**

RESPONSE:

I have not studied the question or had the benefit of adversarial presentation of views, but I am not aware of any court decision concluding that such a provision would violate the United States Constitution.

¹ David F. Hamilton, *Dedication of Birch Bayh United States Courthouse*, 37 IND. L. REV. 613 (2004).

² David Hamilton, Remarks Before the Indianapolis Bar Association, March 18, 2008.

- b. **What about a law requiring women seeking abortions to receive certain medical information before undergoing the procedure?**

RESPONSE:

The answer would depend on the application of the Supreme Court's "undue burden" standard to the purpose and effects of the specific law. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

- c. **What about laws that impose tough mandatory minimums on individuals who possess child pornography?**

RESPONSE: No.

- d. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

RESPONSE:

No, the Constitution is a written text that does not evolve other than through the amendment process. However, the world to which it applies does change.

3. **President Obama has described the types of judges that he will select as follows: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges." What role do you believe that empathy should play in a judge's consideration of a case?**

RESPONSE:

Federal judges take an oath to administer justice without respect to persons, and to do equal right to the poor and to the rich. Empathy - to be distinguished from sympathy - is important in fulfilling that oath. Empathy is the ability to understand the world from another person's point of view. A judge needs to empathize with all parties in the case - plaintiff and defendant, crime victim and accused defendant - so that the judge can better understand how the parties came to be before the court and how legal rules affect those parties and others in similar situations.

- a. **Do you believe that following "the manifest tenor of the constitution" allows judges to consider empathy in their decision-making?**

RESPONSE:

Yes, because empathy is the ability to understand the world from another person's point of view, and I believe that is essential to decision-making that is fair to all parties. Empathy should not be confused with sympathy for one side or another, which has no role in the process.

- b. **You are President Obama's first judicial nominee and numerous press reports have asserted that your nomination sets the tone for future judicial nominees. Do you believe that you fall into his mold for federal judges, as described in his quote?**

RESPONSE:

Yes, I believe I am the type of judge who will apply the law to the facts in every case fairly and impartially.

- c. **According to local practitioners cited in the *Almanac of the Federal Judiciary*, you are "the most lenient of any of the judges in the district." Others quotes include: "He is one of the more liberal judges in the district. He leans toward the defense. He makes the government prove its case"; "He goes out of his way to make the defendant comfortable"; "In sentencing, he tends to be very empathetic to the downtrodden, or to those who commit crimes due to poverty." (emphasis added) What is your reaction to these statements?**

RESPONSE:

As a judge, I make decisions based on the facts and applicable law of each case. I do not make decisions based on what is popular with the public or members of the bar. I agree that I make the government prove its case. I disagree with the other statements, and I believe that prosecutors and a larger sample of defense attorneys in the district would disagree with them. In terms of "making the defendant comfortable," when I take a guilty plea, I treat the defendant with respect because that is appropriate and because it is important that the decision to plead guilty is a knowing and voluntary decision. In terms of empathizing with "the downtrodden," the victims of the crimes in such cases are often equally or more "downtrodden" than the defendant. The sentencing judge has an obligation to keep in mind those victims and their injuries and losses.

**Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Lindsey Graham**

1. **In 2005, you ruled that the prayers offered to open Indiana House sessions were sectarian Christian prayers, in violation of the Establishment Clause. You ruled that the prayers at issue were "expressly and consistently sectarian" and that such prayers may not use "Christ's name or title or any other denominational appeal." In contrast, on a post-judgment motion you ruled that the use of "Allah" in such a prayer would likely not advance a particular religion. After an intervening Supreme Court case, the Seventh Circuit dismissed the case for lack of standing.**

Please explain why you ruled that using "Allah" in such a prayer would not violate the Establishment Clause, but using "Christ" would. Under your reasoning at the time, would using "Mohammad" in such a prayer have violated the Establishment Clause?

RESPONSE:

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered "sectarian." See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be "sectarian" if it "specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"). Under this reasoning, similarly, a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, "Allah," I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric's prayers' content and setting could lead one to conclude that they were sectarian.

2. **In 2006, you suppressed evidence obtained through a warrant based on information revealed by a 9-year-old about her mother during questioning by a school social worker. You ruled that there was a violation of the mother's constitutional right of family privacy and integrity under Fourteenth Amendment substantive due process. The Seventh Circuit unanimously reversed your ruling.**

Given that law enforcement officials had some reason to believe that the child's mother was engaged in illegal activity, please explain why you did not view the government's interest in speaking to the child in this case as compelling, unlike the Seventh Circuit. Given that the child voluntarily confided in the school officials,

please explain your ruling that the method with which the evidence was obtained "shocked the conscience."

RESPONSE:

As detailed in my opinion, 2006 WL 2460757 (S.D. Ind. 2006), the child voluntarily told the principal that her mother and her boyfriend would need to get "the stuff" out if school officials visited the home. All further information was obtained when the police used the social worker to question the child for purposes of the police investigation. The police investigation was carried out for the sole purpose of a possible prosecution of the child's mother, without taking steps associated with child protection. The case was a difficult one in an area of constitutional law that does not arise often.

**Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Charles E. Grassley**

1. **In your opinion, what is the role of a judge in society? How would you define "judicial activism?"**

RESPONSE:

The role of a judge in our society is to decide cases within the court's jurisdiction according to the law and the evidence.

I would define "judicial activism" as the use of judicial power beyond the clear constraints on the court's jurisdiction, the use of biased fact-finding to reach a preferred result, and decisions that are not based on reasonable interpretations of applicable constitutional, statutory, or regulatory provisions or common law precedents. I would also apply the term to decisions that give too little deference to legislative policy judgments and/or fact-finding.

2. **In notes from a March 2008 speech to the Indianapolis Bar Association, you wrote, in reference to Federalist Paper 78, "judges could and should refuse to enforce federal laws that were 'contrary to the manifest tenor of the constitution.'" The quote "contrary to the manifest tenor of the constitution" is from Federalist Paper 78. What do you think that Hamilton meant when he used the words "manifest tenor of the constitution?"**

RESPONSE:

In context, I believe that Hamilton simply meant by the phrase "the manifest tenor of the constitution" the provisions of the Constitution. He used the phrase immediately after referring to specific constitutional prohibitions on bills of attainder and ex post facto laws.

- i. **Does the Defense of Marriage Act, which defines marriage to be between a man and a woman, go against the "manifest tenor of the constitution?"**

RESPONSE:

I have not studied the question or had the benefit of adversarial presentation of views, but I am not aware of any court decision concluding that such a provision would violate the United States Constitution.

- ii. **What about a law requiring women seeking abortions to receive certain medical information before undergoing the procedure?**

RESPONSE:

The answer would depend on the application of the Supreme Court's "undue burden" standard to the purpose and effects of the specific law. See *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

- iii. **What about laws that impose tough mandatory minimums on individuals who possess child pornography?**

RESPONSE:

No.

- iv. **Some people refer to the Constitution as a "living" document that is constantly evolving as society interprets it. Do you agree with this perspective of constitutional interpretation?**

No, the Constitution is a written text that does not evolve other than through the amendment process. However, the world to which it applies does change.

3. **In *United States v. Rinehart*, you issued a separate written order of judgment and conviction "so that it may be of assistance in the event of an application for executive clemency." In this case, you found the applicable mandatory minimum sentence to be unjust. The defendant, a 32 year-old local police officer had "consensual" sexual relations with two young girls, ages 16 and 17. According to your opinion, the sexual relationships were legal under state and federal law. The defendant, however, took pictures of one of the girls engaged in "sexually explicit conduct" and took videos of him and the other girl engaging in sexual relations. These images were on the defendant's home computer, and he was charged under the Child Protection Act of 1984, which requires a mandatory minimum of 15 years. You sentenced him to that 15 year minimum since you "could not impose a just sentence in this case." You further stated, "The only way that Rinehart's punishment could be modified to become just is through an exercise of executive clemency by the President. The court hopes that will happen."**

- a. **The Child Protection Act of 1984 passed the House by a vote of 400-1 and passed the Senate by voice vote. Do you believe that the punishments that this law sets forth are unconstitutional?**

RESPONSE:

No, I do not believe the punishments are unconstitutional.

- b. **If they are not unconstitutional, shouldn't the judgment of whether or not the punishments are "just," which is clearly a policy matter, be addressed by the elected, legislative branch?**

RESPONSE:

Decisions about just punishments begin with the decisions of the legislative branch in enacting the laws. Congress has also enacted legislation requiring judges to consider a number of factors and goals in imposing just sentences, in 18 U.S.C. § 3553(a). Judges have the duty of applying those laws in individual cases.

- c. **Do you stand by your actions in Rinehart?**

RESPONSE:

Yes, I imposed the sentence that the law required. Several circumstances made the case unusual, including the facts that under applicable Indiana law, the defendant's sexual relationships with the two girls were legal because they were of lawful age to consent, and there was no indication of any intent to distribute the photographs any further. I believe the opinion was correct for the reasons stated in the opinion, pointing out how far Rinehart's conduct was from the more heinous conduct that Congress targeted with the 15-year mandatory minimum sentence.

**Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Orrin G. Hatch**

1. **Judge Hamilton, I believe that the qualifications to be a federal judge include not only what your resume tells us but also your judicial philosophy. By that I mean your understanding of a federal judge's power and role in our system of government. In a 2003 speech for the dedication of the Birch Bayh Courthouse, you agreed with the notion that "part of our job as judges is to write a series of footnotes to the Constitution." You addressed this briefly in your hearing, but I would like a fuller explanation as well as a few examples of footnotes you have added to the Constitution?**

RESPONSE:

The phrase "footnotes to the Constitution," described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. In my view, judges do not "add" footnotes to the Constitution itself. They apply the Constitution to the facts of the particular case and add to the body of case law interpreting the Constitution.

2. **In those remarks, you said that supporters of the Equal Rights Amendment had lost the battle but won the war because the Supreme Court has since taken positions very similar to the ERA. To be honest, I find that observation disturbing because it suggests that it does not matter how the Constitution is changed, whether by the people or by judges. The Supreme Court can amend the Constitution just as much, perhaps even more, by changing its meaning as the people can by changing its words. Do you believe it was legitimate for the Court to accomplish what it would have required the ERA to accomplish? Do you believe that judicial amendments are as legitimate as popular amendments?**

RESPONSE:

I believe the development of equal protection law applied to sex discrimination over a series of cases is legitimate, similar to the development of the case law on racial classifications, from the separate-but-equal standard in *Plessy v. Ferguson* to the gradual erosion of that standard and its eventual overruling in *Brown v. Board of Education*. At the same time, of course, the courts are not justified in disregarding amendments adopted under Article V of the Constitution. Both the process of case-by-case adjudication and the Article V amendment processes are constitutionally legitimate, and were both, in my view, expected by the Framers, provided that case-by-case interpretation follows the usual methods of legal reasoning and interpretation. If there were a conflict between the two, an amendment adopted under Article V clearly would take precedence over conflicting case law.

3. **In that same vein, let me ask you about your remarks at a 2001 naturalization ceremony when you spoke about how the temptation to limit freedom can be very strong. You gave examples of limiting an *individual's* freedom of speech, religion, or property. But there is also the *collective* freedom of the people to govern themselves. When judges change the meaning of statutes or the Constitution, they change the law and undermine the ability of the people to govern themselves. I would like your comment on that.**

RESPONSE: I agree with your observation about the risk that judges can, if they err, undermine the ability of the people to govern themselves. The role of the courts is to ensure that statutes and constitutional provisions are given their intended scope and effect and are not erroneously narrowed or broadened.

4. **Judge, I have a few questions about some of your decisions. These are also directed at your judicial philosophy, your approach to judging. First, let me ask you about your decision last year in *United States v. Woolsey*. The defendant in that case received a mandatory sentence because of two previous drug felony convictions. You ignored one of those previous convictions because you thought it should have been set aside. As you put it, you treated as having been done what you believed should have been done. I find this stunning. Applying the law to the facts that were actually before you apparently would have led to a result you did not like, so you changed the facts. You, in effect, decided a different case than the one that was before you, I assume in order to reach a result you preferred. The Seventh Circuit unanimously reversed you and stated that judges do not have the authority to decide cases based on their personal views of what is wise or appropriate. I thought that was just a given. What made you think that you could, in effect, make up facts in order to achieve a particular result? Please explain why you thought you had authority to take the approach you did, treating as having been done what had not been, but which you thought should have been, done.**

RESPONSE:

When I received the Seventh Circuit's opinion in *United States v. Woolsey*, 535 F.3d 540 (7th Cir. 2008), I agreed that I had made a mistake in imposing on a 55 year old man a 25 year mandatory sentence rather than a mandatory life sentence. In making that mistake, I was not acting on the basis of personal preferences or beliefs. I was trying to apply to a conviction under the repealed Youth Corrections Act the standards Congress has set forth in 18 U.S.C. § 3553(a) for sentencing and 21 U.S.C. §§ 841 and 18 U.S.C. § 924(c) for mandatory minimum sentences in drug and firearm cases. I agree that judges should not make decisions based on their personal views of what is wise or appropriate.

5. **In your 2005 decision in *Hinrichs v. Bosma*, you held that prayers using “Christ’s name or title” or making specific theological claims about Jesus violated the First Amendment while there was “little risk” in using the name “Allah.” Against the backdrop of the Supreme Court decision upholding the constitutionality of legislative invocations, and since no one need even listen to, let alone participate, in such a prayer, isn’t such regulation of the content of prayers what America’s founders sought to guard against and the sort of “entanglement” with religion that the Supreme Court has warned against?**

RESPONSE:

In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court held that official legislative prayers did not violate the Establishment Clause where those prayers had not been used “to proselytize or advance any one, or to disparage any other, faith or belief.” Under the reasoning of that case, some official prayers are permissible and others are not, depending on the content and circumstances. As a district judge, I applied the standard and reasoning of *Marsh v. Chambers*, which required attention to the content and circumstances of the prayers.

**Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Jeff Sessions**

1. **During his campaign, President Obama announced: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom, the empathy to understand what it’s like to be poor or African-American or gay or disabled or old-and that’s the criteria by which I’ll be selecting my judges.” Which, if any, of these categories do you believe best describes your judicial philosophy as laid out by the President?**

RESPONSE:

Federal judges take an oath to administer justice without respect to persons and to do equal right to the poor and to the rich. Empathy for all parties – to be distinguished from sympathy – is important in fulfilling that oath. If confirmed, I will apply the law fairly and accurately to all parties before me.

2. **In his questionnaire, Judge Gerard Lynch noted that he got several cases wrong and that the appeals court reversed him appropriately. In which of the following cases where your decisions were either reversed or vacated do you believe the appellate court decided the case correctly? Please explain why.**

- a. **Grossbaum v. Indianapolis-Marion County Building Authority, 870 F. Supp. 1450 (S.D. Ind. 1994).**

RESPONSE:

I agree with the Seventh Circuit’s reversal, 63 F.3d 581 (7th Cir. 1995). The Seventh Circuit relied heavily on an intervening Supreme Court decision, *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), which provided helpful guidance in applying First Amendment free speech protections (as distinct from free exercise of religion protections) to these issues.

- b. **American Amusement Machine Ass’n v. Cottey, 115 F. Supp.2d 943 (S.D. Ind. 2000).**

RESPONSE:

I recognize the Seventh Circuit’s decision, 244 F.3d 572 (7th Cir. 2001), as controlling law within the circuit. I respectfully disagree with it for the reasons stated in my opinion. In summary, I do not believe the Seventh Circuit’s opinion gave sufficient weight to parents’ interests in limiting their minor children’s unsupervised access to extremely violent games in public arcades.

c. **Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005).**

RESPONSE:

I have no disagreement with the ultimate reversal on the issue of taxpayer standing, see 506 F.3d 584 (7th Cir. 2007), which was based on an intervening decision by the Supreme Court, *Hein v. Freedom from Religion Foundation*, 551 U.S. 587 (2007), which sharply curtailed reliance on taxpayer standing in Establishment Clause cases.

d. **United States v. McCotry, 2006 U.S. Dist. LEXIS 62777 (S.D. Ind. 2006).**

RESPONSE:

On the issue on which my decision was reversed, see 495 F.3d 795 (7th Cir. 2007), whether the police violated a mother's constitutional rights by interrogating her young daughter at public school to pursue a criminal investigation of her mother, I recognize the Seventh Circuit's decision as controlling law within the circuit. I respectfully disagree with it for reasons stated in my opinion.

3. **The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**

a. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain.**

RESPONSE:

I believe it is an individual right, as held in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008).

b. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

RESPONSE:

I have not considered the question before with the kind of care needed to make a court decision. However, I believe the Supreme Court's decision in *District of Columbia v. Heller* did not limit the individual right to the context of military service or hunting, but extended it to traditionally lawful uses of firearms, including defense of property and persons.

- c. **What restrictions, if any, do you believe would be constitutional against an individual's Second Amendment rights?**

RESPONSE:

The Court's opinion in *District of Columbia v. Heller* made clear that the right is important and that any restrictions on it would need to be justified by powerful reasons. At the same time, the Court said that its decision "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." 128 S. Ct. at 2816-17. Lower courts will need to examine those examples of still-valid laws and apply their teachings to other restrictions that are challenged.

- d. **What standard of scrutiny do you believe is appropriate in a Second Amendment challenge against a Federal or State gun law?**

RESPONSE:

I have not had occasion to study the matter, and have not had the benefit of full adversarial presentations of competing views. Since *District of Columbia v. Heller* declined to adopt a particular standard of review for laws regulating gun ownership, possession, and use, lower courts will need to examine the cited examples of still-valid laws and apply their teachings to other restrictions that are challenged.

- e. **Do you believe that the Second Amendment should be incorporated against the State?**

RESPONSE:

I have not had occasion to study the particular question or the broader case law on incorporation of specific provisions in the Bill of Rights into the liberty protected by the Fourteenth Amendment, and I have not had the benefit of full adversarial presentations of competing views. If the question were presented to me, I would do my best to apply faithfully the doctrines and case law developed in earlier incorporation cases.

4. **Do you believe that the spontaneous questioning of a private citizen by another citizen could ever implicate the Fifth Amendment? If so, please explain.**

RESPONSE:

I do not believe so. I understand the Fifth Amendment privilege against self-incrimination to apply to questioning by government actors, not by private individuals acting in an entirely private capacity.

5. In Video-Home-One, Inc. v. Brizzi, Civ. No. 105CV1712DFHVSS (Nov. 22, 2005), you granted a temporary restraining order blocking enforcement of an Indiana criminal law that barred the sale or display of sexually explicit material within 500 feet of a church of school. By contrast, you upheld an Indianapolis ordinance that restricted unaccompanied minors' access to violent video games in American Amusement Machine Ass'n v. Cottey, 115 F. Supp.2d 943 (S.D. Ind. 2000). In Cottey, you wrote that you saw no "principled constitutional difference between sexually explicit material and graphic violence. You were reversed in Cottey by the Seventh Circuit.
- a. Your statement in Cottey is remarkable next to your decision in Brizzi. You stated that there was no "constitutional difference between sexually explicit material and graphic violence," yet you upheld a restriction on graphic violence but enjoined enforcement of an obscenity restriction. Please explain this discrepancy.

RESPONSE:

The principal difference between the two cases is that the violent video game case dealt with limits on children's unsupervised access to violent video games in arcades, while the *Video-Home-One* case dealt with the location of stores selling sexually explicit material that is legal for adults to buy or rent. The city's violent video game ordinance contained similar restrictions on children's access to sexually explicit video games. Those restrictions were so clearly constitutional that the industry did not even try to challenge them.

Under controlling Supreme Court precedents discussed in the *Video-Home-One* opinion, restrictions on locations of stores selling legal but sexually explicit materials can be justified based on the so-called "secondary effects" they cause, such as increases in local crime. For the court to have upheld the statute, the state needed to offer evidence showing that businesses like the plaintiff (a general-audience video rental store that had a small collection of sexually explicit videos in a separate, adults-only section) would have such secondary effects on the neighborhood. The state had no such evidence. Instead, the state conceded that the statute was unconstitutional and agreed to a permanent injunction.

6. In an interview with *NUVO: Indianapolis's Alternative Voice*, you discussed procedural rules and appeared to distance yourself from the judicial role described by Chief Justice Roberts during his confirmation hearing. You stated:

"[T]he rules are so complicated that there can be traps for even very capable lawyers. So judges are given some discretion - not in deciding what the rules are, but in how tightly they will be enforced. Reasonable and conscientious judges reach different decisions from time to time. In that sense, the call is not was that a ball or strike. But taking into account what happened and its effect on both parties, what are the practical consequences. . . ."

I'm alarmed and very troubled by your statement that a judge's job is not to call the game fairly, but instead to be results-oriented. From a procedural perspective it makes little sense to rule on anything other than the law that is clearly set by Congress and to do so consistently between all litigants.

- a. Please explain your statement and how it comports with the Civil Rules of Procedure and Criminal Rules of Procedure.**

RESPONSE:

I did not say that the judge's job is not to call the game fairly, nor did I say that the judge should be "results-oriented" I was addressing situations that arise frequently in managing cases, especially in civil litigation, in which one side, and often both sides, might miss a deadline or fail to fulfill every detail of their obligations in discovery, or where a defendant might fail to answer the complaint on time and be subject to a default judgment. Many provisions in both the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure and the cases interpreting them expressly give the judge both the power and the obligation to use discretion in deciding whether to excuse some failures to comply and in choosing an appropriate sanction.

In the quoted interview, I was making the point that in exercising the discretion given by the Rules in such instances, I try to evaluate the results of the party's failure to comply with a deadline or other rule. Was the mistake inadvertent and excusable? Was it a deliberate tactic to gain an unfair advantage? Did the failure cause prejudice to the opposing party or to the court? Those judgments are routine in district courts, but they are not as simple as calling a ball or strike. They call for the exercise of discretion and judgment to ensure that the court will be fair to all parties.

- 7. During your hearing, you responded to a question from Senator Cardin that asked you to share "a moment during your career where you stood up for something that was not popular, stood up for people who were disadvantaged, whether it was against government or big companies, that indicated your willingness to step forward in order to protect the rights of individuals." As part of your response, you pointed to your time spent as a District Court judge, stating: "I try not to go out of my way to be unpopular. That's just not the way we decide cases. Sometimes the right result turns out to be the popular result; sometimes the right result is unpopular. You just go with the right result."**
- a. I agree that a judge's decision should not be based on what is popular versus what is unpopular. However, the way that a judge should decide cases is through a correct application of the law to facts - not on what he or she personally believes is the "right result." Please explain how you define the "right result."**

RESPONSE:

I define the “right result” as the result that follows from correct application of law to the facts of the case.

8. **In a 2003 speech you made a statement that “part of a judge’s job is to write a series of footnotes to the Constitution.” During your hearing, Senator Coburn asked you about this statement and you stated that: “[A] least to me, the concept of the footnote implies what we’re trying to do is not something new, but work out the details of how those principles apply to new situations.”**
- a. **Your reference to judge-made “footnotes to the Constitution” is very confusing to me. Please list and describe all the “footnotes” which you believe you have added to the Constitution during your 14-year tenure on the bench.**

RESPONSE:

The phrase “footnotes to the Constitution,” described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. In my view, judges do not “add” footnotes to the Constitution itself. They apply the Constitution to the facts of the particular case and add to the body of case law interpreting the Constitution.

- b. **Are any of the “footnotes” that you added contrary to the express language or original intent of the Founding Fathers?**

RESPONSE:

I have not added footnotes to the Constitution. I believe the constitutional decisions I have made have been consistent with the express language and original intent of the Founding Fathers.

- c. **In which areas do you believe “footnotes” remain to be written in the Constitution?**

RESPONSE:

I do not believe judges write footnotes into the Constitution. Judges will continue to decide the constitutional cases that come before them.

9. During your hearing, Senator Coburn asked you whether you believed courts should look to international law in interpreting the Constitution. In response, you stated:

“There are situations that we’ve seen in which the Supreme Court or other courts, in struggling with a difficult question, will look to guidance from wise commentators from many places, professors from law schools, experts in a particular fields who have written about it. And in recent years the Supreme Court has started to look to some courts from other countries where some members of the court may believe that there is some wisdom to be gained. As long as it’s confined to something similar to citing law professors’ articles, I don’t have a problem with that, but I think that all of us remember that the Constitution, after all, is the product of a rebellion against a foreign power, and it is an American document that we are interpreting and applying.”

- a. **In which Supreme Court decisions do you believe it was valid for the Court to look for other countries for “some wisdom to be gained”? Please explain.**

RESPONSE:

The example I had in mind was from Justice Stevens' dissenting opinion in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 133 (2001), regarding statutory interpretation. Justice Stevens quoted Justice Aharon Barak of the Supreme Court of Israel, who had written “that the ‘minimalist’ judge ‘who holds that the purpose of the statute may be learned only from its language’ has more discretion than the judge ‘who will seek guidance from every reliable source.’” That point is valid in any legal system that requires statutory interpretation. After quoting Justice Barak, Justice Stevens went on to point out that a “method of statutory interpretation that is deliberately uninformed, and hence unconstrained, may produce a result that is consistent with a court's own views of how things should be, but it may also defeat the very purpose for which a provision was enacted.”

- b. **Based on your answer to Senator Coburn, do you believe it was appropriate for members of the Supreme Court to look to international law in striking down the death penalty for person under the age of 18 in Roper v. Simmons, 543 U.S. 551 (2005)?**

RESPONSE:

No.

10. In Hinrichs v. Bosma, 400 F. Supp. 2d 1103 (S.D. Ind. 2005), you permanently enjoined sectarian prayers invoking the name Jesus Christ, yet explicitly noted that Muslim clerics could still pray to Allah. Please explain how this comports with Supreme Court precedent by not favoring one religion over another.

RESPONSE:

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. Under the reasoning of that case, some official prayers are permissible and some are not. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered "sectarian." See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be "sectarian" if it "specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"). Under this reasoning, similarly, a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, "Allah," I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric's prayers' content and setting could lead one to conclude that they were sectarian.

11. If standing had been appropriate in Hinrichs, do you believe your opinion should stand?

RESPONSE:

Yes, based on the evidence before me showing repeated and consistent sectarian official prayers. On the merits, the decision followed the controlling Supreme Court precedent in *Marsh v. Chambers* and was consistent with all other lower court decisions I knew of addressing comparable practices of official, sectarian prayer. When the Seventh Circuit addressed the merits in the decision on a stay pending appeal, the court agreed with my view of the merits. 440 F.3d 393 (7th Cir. 2006).

12. In United States v. Rinehart, 2007 U.S. Dist. LEXIS 19498 (S.D. Ind. Feb. 2, 2007), you sentenced a 32-year-old defendant to fifteen years in prison for engaging in and video-taping sexual relations with two young girls, one age 16 and one age 17. In your written opinion, you found that the sexual relationship was "consensual." You disapproved of the fifteen year mandatory minimum sentence and noted that "this court could not impose a just sentence in this case." Further, you wrote: "The only way that [the defendant's] punishment could be modified to become just is through an exercise of executive clemency by the President. The court hopes that will happen."

a. Do you stand by your statement?

RESPONSE:

Yes, because of the unusual circumstances detailed in the opinion, including the facts that under applicable Indiana law, the defendant's sexual relationships with the two girls were legal because they were of lawful age to consent, and there was no indication of any intent to distribute the photographs any further.

b. Do you believe it was appropriate for you to urge for clemency in your written opinion? Please explain.

RESPONSE:

Yes. Congress must enact legislation with broad application, and as I explained in the opinion, Rinehart's conduct fell within the letter of the law but did not, in my view, reflect the much more heinous conduct that Congress targeted with the mandatory minimum 15-year sentence. I applied the law in the case, but recognized that the President has the power to grant clemency. My understanding is that it would be unusual for a President to grant clemency in a case without giving the prosecutor and sentencing judge the opportunity to comment on the case. I thought it was appropriate to set out my views while the case was still very fresh in my mind rather than try to remember it years later.

Questions of Senator Tom Coburn, M.D.

*"Nomination of Thomas Perez to Assistant Attorney General for the Civil Rights
Division, Department of Justice"*

United States Senate Committee on the Judiciary

April 29, 2009

1. In 2006, in connection with the Center for American Progress, you wrote an article for *Mother Jones* that was critical of an amendment I offered to immigration legislation. My amendment repealed Executive Order 13166, which "requires federal agencies to ensure that people with limited English skills can access their services and programs, and also requires federal agencies to develop language access guidelines for other federally funded programs that are not directly managed by the federal government." You wrote that the amendment "could literally mean the difference between life and death for medical patients with limited English" and that I showed "a distressing disregard for the doctor-patient relationship." You further wrote that, "by promoting this amendment, [I would] undermine meaningful communication between doctors and patients – thus relegating those who do not speak English to a lower rung of our health care system."

- a. Mr. Perez, please defend your statements concerning the amendment I offered to repeal this Executive Order.

Answer: Title VI of the Civil Rights Act of 1964 provides that "No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." It is well settled pursuant to longstanding Supreme Court precedent that under Title VI and the accompanying regulations, health care providers who receive federal financial assistance have a legal obligation to ensure that people with limited English proficiency can meaningfully access the program or service. This is the law of the land, and if confirmed as Assistant Attorney General for Civil Rights, I would have an obligation to enforce it.

Executive Order 13166 was a Presidential directive issued by President Clinton telling federal agencies to (1) promulgate guidance for recipients of federal financial assistance outlining the recipient's obligations under Title VI to ensure meaningful access for people with limited English proficiency, and (2) develop and implement a plan to improve access to federally conducted programs, such as Medicare. In October 2001, following a careful review of the Executive Order, the Bush Administration issued a Memorandum that affirmed the continuing vitality of Executive Order 13166, reiterated the obligations imposed by Title VI, and reestablished that the Executive Order is consistent with Title VI, and seeks to give additional clarity to Title VI.

In my article that is referenced in your question, I outlined the aforementioned law, and discussed the interplay between the Executive Order and the obligations under Title VI. I pointed out the importance of meaningful communication between doctors and patients. Communication barriers between physician and patient can lead to medical errors, and I

provided a tragic real life example of a language barrier that resulted in a preventable death. Title VI continues to be the law of the land, and health care providers who receive federal financial assistance continue to have an obligation to ensure that people with limited English proficiency can meaningfully access the service. I agree with the Clinton and Bush administrations that the Executive Order is consistent with Title VI and will help facilitate the delivery of quality health care to people with limited English proficiency.

2. Do you believe that health care services are a civil right that should be available to all in the United States, no matter their citizenship? Why or why not?

Answer: Congress has established that citizenship is a requirement for the receipt of certain health care services, and provided limited circumstances, such as Emergency Medicaid, where citizenship is not a legal requirement for the receipt of health care services. If confirmed, I would enforce the laws that have been enacted by Congress, to the extent they fall within the jurisdiction of the Civil Rights Division.

- a. Do your goals for the Civil Rights Division include restructuring the Division to focus on health care or setting up a separate health care section?

Answer: I have not had an opportunity to conduct a thorough review of the current structure of the Civil Rights Division. As a result, I cannot make informed judgments at this juncture about what structural changes, if any, should be made within the Division.

However, no matter the structure of the Division, I do believe it has a role to play in the healthcare setting because it enforces Title VI of the Civil Rights Act of 1964, which require recipients of federal financial assistance, including but not limited to certain health care providers, to ensure that people with limited English skills can meaningfully access programs and services.

- b. During your race for Maryland Attorney General, you stated, "It's very, very important to use the office of the Attorney General, to use laws that are on the books, to expand laws that need to be on the books, and to use the Bully Pulpit to expand access to affordable health care..."¹

- i. Do you believe the Civil Rights Division has a role in affecting health care policy? If so, how?

Answer: I do believe the Division has a role to play in the healthcare setting because it enforces Title VI of the Civil Rights Act of 1964, which requires recipients of federal financial assistance, including but not limited to certain health care providers, to ensure that people with limited English skills can meaningfully access programs and services.

¹ Interview with Tom Perez, The Coffee House, Open Source Movies (July 2006), available at www.archive.org/stream/coffeehouse_TCH_111.07.06/coffeehouse_TCH_11_07.06.mp4

- ii. Would you use your position as head of this Division as a “bully pulpit” to force health care providers to provide additional services, such as requiring services to be conducted in a language other than English?

Answer: If confirmed, I will speak about the need to enforce all of the Nation’s Civil Rights laws, including Title VI, which requires recipients of federal financial assistance, including but not limited to certain health care providers, to provide people with limited English skills meaningful access to programs and services.

3. On April 6th, the Oklahoma Senate received a joint resolution from the Oklahoma House of Representatives that would declare English the official language of the State of Oklahoma. The House passed it with a vote of 66-32. One of the exceptions to the requirement that English be the primary language used by Oklahoma is if a certain official use is specifically required by federal law. The resolution notes that “federal law” does not include federal Executive Orders, and specifically excludes EO 13166. Before the Senate even had an opportunity to consider the bill, the Civil Rights Division preemptively sent a letter to Oklahoma Attorney General Drew Edmondson, warning him that the proposed “English only” state constitutional amendment may conflict with Title VI and EO 13166 and essentially threatening prosecution if it were adopted.
- a. Do you agree with the assessment by the Civil Rights Division that Oklahoma’s implementation of the amendment poses conflicts with protecting alleged civil rights of limited English proficient (LEP) persons?

Answer: I do not have sufficient information to make an informed judgment about the Oklahoma bill. If confirmed, I would carefully review the letter and the circumstances surrounding the Oklahoma proposal. States can enact “English Only” provisions as long as they comply with Title VI of the Civil Rights Act of 1964.

- b. Do you believe it is appropriate for the Civil Rights Division to issue such a letter to an individual state considering such legislation? Did the Division do so when other states were considering similar legislation?

Answer: If the Civil Rights Division believes that a state’s “English Only” provisions do not comply with Title VI of the Civil Rights Act of 1964, it would be appropriate for it to issue that sort of letter. However, I do not have sufficient information to make an informed judgment about this particular letter. I am not aware that any other state has considered exactly the legislation Oklahoma did.

- c. Thirty states have declared English as their official language, often by wide margins. Do you believe that EO 13166 undermines the right of states to declare English as their official language?

Answer: I do not believe that Executive Order 13166 undermines the rights of states to declare English as their official language. Executive Order 13166 does not create new

obligations for states. As such, states can enact such provisions as they do so in a manner that is consistent with their obligations under Title VI.

- d. Do you believe the EO 13166 has a fiscal impact on federal or state governments? Why or why not?

Answer: I do not believe that Executive Order 13166 has a fiscal impact on state or federal governments because it imposes no new requirements on them.

4. Do you believe racial preferences are constitutional? If so, when?

Answer: The Supreme Court has established that race conscious decisionmaking is constitutional in limited circumstances. That is, in order to withstand constitutional muster, the race conscious program or policy must be narrowed tailored to further a compelling governmental interest.

- a. Do you believe that racial preferences are appropriate in college or professional school admissions processes? If so, why?

Answer: In the higher education context, the Supreme Court in Grutter v. Bollinger, 539 U.S. 306 (2003), established that the educational benefits that flow from a diverse student body can constitute a compelling governmental interest justifying the use of narrowly tailored, race conscious admissions policies.

- b. Do you believe that race should play a greater role in hiring decisions by federal or state government entities than any other requirement, such as education, work experience or results of required industry tests/examinations?

Answer: I support reaching out and making special efforts to recruit groups that historically have been underrepresented in the workforce to make them aware of employment opportunities. I believe that employers should review their employment practices to include, recruitment, selection, and promotional criteria, to ensure that these criteria do not discriminate on the basis of race, religion, sex, national origin or disability, and that the criteria are predictive of successful job performance. However, I oppose requiring employers, either overtly or indirectly, to employ a less qualified applicant over a more qualified applicant because of that individual's race, religion, sex, national origin or disability.

5. In Crawford v. Marion County Election Board,² the Supreme Court rejected a facial challenge to Indiana's voter identification law by a 6-3 vote. Indiana's voter ID law requires that voters present a federal or state photo ID at the polls. In his opinion announcing the Court's judgment, Justice Stevens acknowledged that the record did not reflect any examples of in-person voter fraud in Indiana. Nevertheless, he added:

² 128 S. Ct. 1610 (2008).

It remains true, however, that flagrant examples of such fraud in other parts of the country have been documented throughout this Nation's history by respected historians and journalists, that occasional examples have surfaced in recent years, and that Indiana's own experience with fraudulent voting in the 2003 Democratic primary for East Chicago Mayor—though perpetrated using absentee ballots and not in-person fraud—demonstrate that not only is the risk of voter fraud real but that it could affect the outcome of a close election.³

Do you agree with the Court's judgment in this case?

Answer: The Supreme Court in the Crawford case recognized that preventing voter fraud is an important government interest and that Indiana's voter ID law served that interest. I agree that the United States has an important interest in ensuring that only voters who are eligible to vote actually vote, and that the United States also has an important interest in eliminating voting practices that discriminate on the basis of race, color, or membership in a language minority group.

a. If confirmed, will you make combating in-person voter fraud a priority?

Answer: The enforcement of most voter fraud cases is the responsibility of the Criminal Division of the Department of Justice, working in collaboration with United States Attorneys' offices. The Civil Rights Division has a role in cases involving situations where race, color, national origin, or religious discrimination is a factor, or where there is an allegation of a conspiracy to injure, oppress, threaten, or intimidate a voter. If confirmed, I would work collaboratively with the Criminal Division to coordinate enforcement of laws pertaining to voting.

b. A 2007 study by the University of Missouri found that there is no evidence that Indiana's photo identification law reduced voter turnout, either overall, or in counties with relatively larger racial or ethnic minority populations. Interestingly, the study also found that "The only consistent and frequently significant effect of voter ID . . . is a positive effect on turnout in counties with a greater percentage of Democrat-leaning voters."⁴ Doesn't that provide some evidence against the argument that voter identification laws disenfranchise voters?

Answer: I am not familiar with the study you cite, but if confirmed, in working with the Criminal Division on voter fraud enforcement, I would review studies relevant to the issue, including but not limited to the University of Missouri study.

c. Dawn Johnsen, President Obama's nominee to head the Office of Legal Counsel maintains that Indiana's voter ID law is "excessive and indefensible" and that the law was an attempt by Republicans to "suppress" votes. Do you agree with her assessment?

³ *Id.* at 1619 (footnotes omitted).

⁴ Jeffrey Milyo, *The Effects of Photographic Identification on Voter Turnout in Indiana: A County-Level Analysis*, Institute of Public Policy, Report 10-2007 (revised Dec. 2007), at 2.

Answer: The Court in Crawford recognized that preventing voter fraud is an important government interest and that Indiana's voter ID law served that interest. As can be seen in the Crawford opinion, the legality of voter ID laws depends on the facts and circumstances of the particular case. If I am confirmed, I will follow the Crawford precedent, which recognized that the United States has an interest in ensuring that only voters who are eligible to vote actually vote, while at the same time enforcing laws designed to eliminate voting practices that discriminate on the basis of race, color or membership in a language minority group.

6. At your hearing, you stressed your desire to ensure the "aggressive and even-handed enforcement of hate crimes laws." Please identify the existing federal hate crimes laws you will seek to enforce. Do you believe current law is sufficient to address "hate crimes" in the United States? If not, how do you believe it should be expanded? If you are not already familiar with H.R. 1913, which passed the House on April 29, 2009, please review that bill and respond as to whether you believe the expansions in that bill are appropriate or necessary.

Answer: I spent a number of years prosecuting hate crimes, and observed first hand the unique, insidious damage that hate crimes inflict not simply on the actual victims themselves, but the community as a whole. I also confronted examples of cases in which justice was not served because of weaknesses in the federal statutory framework.

Hate crime enforcement is one of the Administration's top civil rights priorities. The Civil Rights Division will enforce all of the existing hate crime statutes on the books. The Attorney General has stated, and I believe as well, that the existing federal hate crimes laws should be strengthened. The expanded federal jurisdiction in the legislation pending in Congress is a backstop for state and local jurisdictions; the majority of hate crimes cases will continue to be prosecuted by the states, as they should. The pending hate crimes legislation covers only violent attacks involving fire, a firearm, a dangerous weapon or an explosive device that cause bodily injury, and attempts to cause injury through these violent means, while protecting our freedom of speech and association.

Nomination of Thomas Perez
Question from Senator John Cornyn

1. As you may know, the Texas Legislature is considering a voter identification law for elections in the State of Texas. The Supreme Court, in a 6-3 decision last year, upheld Indiana's voter identification law. But were the State of Texas to enact such a voter ID statute—even one that was identical to the Indiana statute that was found constitutional—the law could only be implemented after the Civil Rights Division conducted a preclearance review under Section 5 of the Voting Rights Act.

Career lawyers at the Department of Justice have analyzed state voter ID laws for preclearance, most recently in 2005, in relation to a change to Georgia's voter ID law. The Section 5 preclearance review analyzed Georgia's elimination of twelve forms of identification previously accepted, reducing the acceptable forms of ID to six, all of which were photo IDs. In addition, Georgia eliminated the fail-safe option for voters who could not produce acceptable photo IDs.

Career lawyers in the Civil Rights Division concluded in an August 25, 2005, memorandum that the State of Georgia failed to meet its burden under Section 5. The career lawyers' memorandum explained that what was necessary—and what the Georgia law lacked—was a wide range of acceptable forms of identification as well as "fail-safe" options for those voters who lack an acceptable ID.

With respect to preclearance of a voter identification law enacted by the State of Texas, will you pledge to follow the advice and established practice of career lawyers as embodied in that August 25, 2005, memorandum? In other words, assuming the Texas statute is otherwise similar to the Indiana and Georgia statutes, will preclearance turn on (1) the number and type of available

identification documents, and (2) the existence of a so-called “fail-safe” option like a provisional ballot.

Answer: The Supreme Court in *Crawford* recognized that preventing voter fraud is an important government interest. It is clear from the *Crawford* case and the Georgia voter ID case that the legality of voter identification laws has to be analyzed on a case-by-case basis. Because the Texas proposal may become a matter that the Civil Rights Division may have to review pursuant to the preclearance requirements of Section 5 of the Voting Rights Act, it would be inappropriate for me to comment on this particular matter at this time. As with all Section 5 submissions, if confirmed, I will conduct a thorough and prompt review of the submissions, and will seek the views of the relevant career staff within the Voting Section of the Civil Rights Division.

Questions for Tom Perez from Senator Hatch

Mr. Perez, many Senators have expressed their view of the direction and the priorities that the Civil Rights Division should have in the new administration. I believe the division has in the last several years had a more comprehensive view of civil rights. That more comprehensive view, in my judgment, encompasses all Americans. It includes but goes beyond the limited categories of the past such as race. And so I am very concerned that the Civil Rights Division may abandon some very important civil rights initiatives in areas other than race. I also raised this issue at the confirmation hearings for Attorney General Eric Holder and Associate Attorney General Tom Perrelli. In the last several years, for example, the division has sought to protect Americans against religious discrimination. The Civil Rights Division launched what is called the First Freedom Project. The right to freely exercise religion is the first individual freedom mentioned in the Bill of Rights. I have worked for many years in this area, for example, with your former boss, Senator Kennedy. The Department has a Special Counsel for Religious Discrimination, which I believe has been very effective and very important to the success of this project. I know you mentioned this briefly in your opening statement at the hearing, but I would appreciate a fuller explanation of your view. Please describe your own view of the importance of this area of civil rights protection. Do you anticipate the Civil Rights Division maintaining this as a program or initiative? Will you consider maintaining the position of Special Counsel for Religious Discrimination? If possible, I would appreciate something more than saying you will consult with the Attorney General.

Response: If confirmed, I will make sure combating religious discrimination remains a priority of the Civil Rights Division. I believe that protecting Americans against religious discrimination is an important component of civil rights enforcement. As Special Counsel to Senator Kennedy, I had the privilege of working with your former Chief Counsel in drafting the Church Arson Prevention Act of 1996. This critical legislation, which passed unanimously, was the Congressional response to the spate of church arsons that plagued the country during this period. As a Department of Justice attorney, I also was involved in a number of prosecutions of people who targeted religious minorities and places of worship. If confirmed, I will work to ensure that the Division continues to use existing statutory tools to combat religious discrimination.

Another area in which the Civil Rights Division has been doing, if I may say, the Lord's work is combating the scourge of human trafficking. I cosponsored the reauthorization of the Trafficking Victims Protection Act last year, which was introduced by our former colleague and current Vice President Joe Biden. Human trafficking has, in my view, properly been understood to be a modern form of slavery and is properly the focus on the Civil Rights Division. My former counsel Grace Becker was committed to that effort before she became Acting Attorney General and did a great job in both capacities. Once again, you mentioned this in passing in your opening statement but I would like to hear a more complete description of your thoughts in this area. Do you believe that human trafficking is properly addressed in the civil rights context? Do you anticipate the Civil Rights Division continuing to make this an important priority?

Response: Human trafficking is a core civil rights crime, and enforcement of human trafficking laws will remain a priority of the Civil Rights Division if I am confirmed. As Deputy Assistant Attorney General for Civil Rights, I was heavily involved in the supervision of modern day slavery prosecutions. In addition, I co-chaired the Worker Exploitation Task Force, an inter-agency initiative established by then Attorney General Janet Reno to ensure that the federal government was putting its best foot forward in combating these heinous crimes. This Task Force recommended a series of legislative reforms that were enacted by Congress in 2000, and were reauthorized last year. The Civil Rights Division under President George W. Bush made great progress in combating human trafficking and, if confirmed, I will continue these efforts.

SENATOR JEFF SESSIONS
QUESTIONS FOR THE RECORD
THOMAS PEREZ

Voting

1. Do you believe non-citizens have the right to vote in federal and/or state elections?

Answer: I do not believe that non-citizens have the right to vote in federal and/or state elections.

2. One particular decision for which the Voting Section has been criticized was its role in the Georgia preclearance memo regarding Georgia's voter ID law. Notwithstanding that criticism, voter ID laws were subsequently upheld by the Supreme Court in its decision in Crawford v. Marion County Election Board, 128 S. Ct. 1610 (2008). In Crawford, the Supreme Court recognized that the threat of voting fraud is real and that it "could affect the outcome of a close election." (Id. at 1619). The Court emphasized the government's interests in counting only the votes of eligible voters and maintaining "public confidence in the integrity of the electoral process." More recently, the Georgia Voter ID law was upheld by the Eleventh Circuit, which stated that "[t]he insignificant burden imposed by the Georgia statute is outweighed by the interests in detecting and deterring voter fraud." Common Cause/Georgia v. Billups, 554 F.3d 1340, 1354 (11th Cir. 2009).
 - a. If chosen to lead the Civil Rights Division, will you follow the precedent set in Crawford and allow states to pass voter ID laws to ensure that only those who are eligible to vote can do so?

Answer: The Court in Crawford recognized that preventing voter fraud is an important government interest and that Indiana's voter ID law served that interest. As can be seen in the Crawford opinion, as well as the Georgia Voter ID law, the legality of voter ID laws depends on the facts and circumstances of the particular case. If I am confirmed, I will follow the Crawford precedent, which recognized that the United States has an interest in ensuring that only voters who are eligible to vote actually vote, while at the same time enforcing laws designed to eliminate voting practices that discriminate on the basis of race, color, or membership in a language minority group.

3. I am very concerned by evidence from recent elections that members of our armed forces overseas have been disenfranchised. Often this is the result of states failing to get ballots to the soldiers in a timely fashion, or more recently in Fairfax County, Virginia, by giving inadequate information on the ballot. The Voting Section took steps this past election cycle to address this problem, but more needs to be done. Members of our armed forces put their lives on the line so that we can have the opportunity to vote, so it is of the utmost importance that we protect their right to vote. Waiting until the time of election next year will be too late.

a. Please outline how you will be proactive in this area.

Answer: There is no excuse for any citizen to be disenfranchised, least of all the members of our armed forces overseas who are sacrificing so much for our country. If confirmed, I would aggressively enforce the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to vindicate the rights of our military voters. I would work closely with the Department of Defense, which has a dedicated staff that works to ensure members of the Armed Forces have a full opportunity to vote.

b. What steps will you take to ensure that each American soldier has the opportunity to vote in a timely fashion and to have his or her vote counted?

Answer: I will familiarize myself with the process currently in place at the Department of Defense and work with them on any adjustments that need to be made.

c. Will you commit to updating the committee on your progress in this area?

Answer: I would welcome an opportunity, if confirmed, to update the Committee on the Division's progress in this area, and to work collaboratively with you to ensure that we protect the right to vote for service members living and working overseas.

Housing

4. You stated in your hearing that you planned to use Department of Justice resources to play a role in foreclosure prevention, as you have done in the State of Maryland.
- a. If someone acquired a mortgage that they could not afford and there is no evidence that they acquired the mortgage as a result of discrimination, do

you believe that it is the role of the Civil Rights Division to prevent foreclosure?

Answer: If confirmed, I would work to protect homeowners from foreclosure by enforcing the provisions of the Fair Housing Act and the Equal Credit Opportunity Act. I would make sure that the Division continues to work with its federal law enforcement partners both within DOJ and outside (e.g. the Federal Trade Commission and the Department of Housing and Urban Development). For example, if there is not sufficient evidence of discrimination, but it appears that a borrower may have been defrauded or that a lender/broker/servicer may have violated other federal statutes, the Division would refer homeowners to the other agencies with jurisdiction. If there is evidence of criminal fraud, we would refer the matter to the FBI and the Criminal Division,

- b. Do you agree with me that Department of Justice resources should not be used to protect individuals who have fraudulently gained home mortgages by lying about their legal status?

Answer: I agree that Department of Justice resources should be used to prosecute violations of the Fair Housing Act and the Equal Credit Opportunity Act as they apply to discrimination on the part of the mortgage providers. If confirmed, I would ensure that a thorough and fair factual and legal inquiry is conducted and that all the elements of a violation are satisfied before moving forward.

- c. Please indicate how you will ensure that DOJ resources are not used to protect individuals who have fraudulently gained home mortgages by lying about their legal status.

Answer: If confirmed, I would conduct thorough and fair investigations to determine whether the facts of a particular case are a violation of the Fair Housing Act or the Equal Credit Opportunity Act. If there is no evidence or insufficient evidence of discrimination, then the matter would be closed. As in all cases, I would apply the applicable law to the particular set of facts and make a determination as to whether to proceed.

Immigration Enforcement

5. Your past association with CASA de Maryland (CASA) raises concerns. In fact, CASA promotes illegal immigration through publications such as "Know Your

Rights! Learn How to Protect You and Your Family During Immigration Raids,” a pamphlet designed to teach “people who are not United States citizens” (undocumented) to protect themselves during valid immigration enforcement actions. I understand and support the important role of the Civil Rights Division in protecting the rights of minority groups, and I think the work of the Division is vitally important. Notwithstanding, the Civil Rights Division must not act in contravention to valid enforcement actions of our federal immigration laws.

- a. What assurances can you give me that you will not use Department of Justice resources to contravene the lawful work of groups such as the Department of Homeland Security and its various law enforcement components?

Answer: If confirmed, I will work to enforce the laws that fall under the jurisdiction of the Civil Rights Division in a fair and even-handed manner. The Department of Homeland Security performs critical work, and I will work to ensure that the law enforcement activities of the Civil Rights Division will not be at cross purposes with the work of the Department of Homeland Security.

6. According to a 2006 news article, you responded to Maryland Minutemen who opposed hiring undocumented workers: “There’s a regrettably long history of xenophobes who oppose immigration. . . . The good news is that they have always remained a small fringe group, and they will continue to be.”¹
 - a. I am alarmed by this statement, Mr. Perez. It seems that you are painting with a very broad brush when you call all those who stand for a lawful system of immigration and immigration enforcement “xenophobes.” Do you stand by your statement?

Answer: After re-reading the article you reference, I am reminded that this particular statement was in reference to a particular individual who had been soundly defeated in a bid for elected office in my community because his views were not supported by the vast majority and not within the mainstream thinking in my county. I was not making reference to an entire group and regret if anyone perceived my remarks as doing so.

¹ Sebastian Montes, “Minutemen to shift focus: Immigration reform group to monitor employers; opponents decry effort,” Gazette.Net (Maryland Community Newspapers Online), May 31, 2006.

- b. You also have called the Minutemen a “radical fringe group.”² Do you stand by that statement?

Answer: I had the privilege of serving on the Montgomery County Council from 2002 until 2006. I developed a strong working knowledge of where County residents stood on a variety of important issues. If one reviews the entire quote, I stated that the Minutemen, who were beginning to enter the County at the time of the article, “don’t speak for Montgomery County” on immigration related issues. I expressed my belief that the views of the Minutemen on immigration did not reflect the views of the vast majority of my then-constituents, who strongly supported efforts by a bipartisan group of U.S. Senators, including some members of the Judiciary Committee, to enact comprehensive solutions to the immigration challenge.

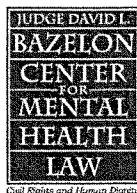
Religious Freedom

7. During your hearing you commended the work of the Department of Justice in protecting the religious freedoms of Americans. Specifically, you stated: “I think the work that has been done protecting religious freedom is a critical, a good example of work that’s been done well.” I agree with you. Please outline your priorities for the Civil Rights Division in this area.

Answer: If confirmed, combating religious discrimination will remain a priority of the Civil Rights Division. I will enforce the Religious Land Use and Institutionalized Persons Act (RLUIPA), and will ensure that the Division continues to prosecute people who violently victimize religious minorities and attack places of worship. I find this behavior abhorrent and my experience working for Senator Kennedy on the Church Arson legislation only strengthened my interest in the matter. If I am confirmed, the Division will continue to use all existing statutory tools to combat religious discrimination.

² Nancy Trejos, “Minutemen Take Campaign to Md. Centers,” THE WASHINGTON POST, Feb. 26, 2006.

SUBMISSIONS FOR THE RECORD



1101 Fifteenth Street N.W., Suite 1212, Washington D.C. 20005-5002

May 20, 2009

The Honorable Patrick Leahy
Chair, Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Judiciary Committee
United States Senate
335 Russell Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Sessions:

We write to inform you that the American Association of People with Disabilities, the Epilepsy Foundation, the National Council on Independent Living, and the Judge David L. Bazelon Center for Mental Health Law oppose the nomination of Andre Davis to the Maryland seat on the Fourth Circuit Court of Appeals. As you may know, earlier this year some of our organizations expressed serious concerns about Judge Davis's nomination, particularly about his record on disability employment discrimination cases under the Americans with Disabilities Act (ADA). Neither his hearing on April 29 nor his answers to written questions assuaged these concerns. We fear that, should his nomination be confirmed by the Senate, Judge Davis will author and otherwise participate in appellate decisions that inappropriately limit the rights of workers and others with disabilities. This opportunity to ensure that this important federal appeals court consistently protects the rights of people with disabilities will be lost.

Our decision to oppose this nomination is not made lightly. We would far prefer that this administration – and every administration – nominate judges with records indicating that they would reach decisions consistent with Congress's intent that the ADA and other disability rights laws be given broad remedial effect. Although we appreciate that, as he noted at his hearing, Judge Davis has ruled in favor of plaintiffs in cases involving issues such as physical access to courthouses, Judge Davis's decisions in disability employment discrimination cases suggest that he would continue to engage in the unduly restrictive approach to deciding such cases that Congress sought to correct when it enacted the ADA Amendments Act (ADAAA) last year. We appreciated Congress's bipartisan support for the ADAAA – including your votes and public support, as well as that of President Obama – and expected that, when given the opportunity, the President would nominate judges who would interpret the ADAAA in accordance with Congress's intent.

Sadly, Judge Davis's record indicates that he has been part of the problem Congress enacted the ADAAA to begin to solve. In some cases, Judge Davis has required plaintiffs to meet too high a standard regarding evidence of their disability before they could present their discrimination claims to a jury.¹ In other cases, Judge Davis has established inappropriate barriers for plaintiffs, including *pro se* plaintiffs, to overcome in exhausting administrative ADA employment discrimination claims.²

We have particularly grave concerns about Judge Davis's decision in *Rose v. Home Depot USA Inc.*,³ in which he set out extraordinary hurdles for a person to demonstrate that he had a disability and was protected by the ADA. The judge refused to recognize Gary Rose's disability because he "did not follow the proper protocol in determining whether he had vasomotor rhinitis" and "did not receive a proper treatment plan for his impairment." He found that Rose should have followed up with a different doctor, undergone a CT scan to rule out the possibility of a different diagnosis, and:

Once alternative causes were ruled out, Rose would have needed follow-up observation over an extended period of time to watch his symptoms after he had consistently followed a treatment regime involving both antihistamines/decongestants and, most importantly, daily use of steroid inhalers. . . . Rose would also have had to be examined after he had controlled what was the major cause of his symptoms – his smoking cigarettes. . . . If Rose continued this treatment regime, and he was one of the small percentage of patients who continued having symptoms, there were surgical options available and the possibility that the headaches might have had some other cause, such as migraines.

Rose, at 614-15. Judge Davis concluded that because Rose "refus[ed] to avail [himself] of proper treatment. . . . [he] has not . . . presented proof that he has a disability."

1. See *Martell v. Sparrows Point Scrap Processing, LLC*, 214 F. Supp.2d 527 (D. Md. 2002) (holding on summary judgment that employer did not regard a job applicant as disabled, even though evidence indicated that the employer did not hire the applicant as a crane operator precisely because of his "abnormal" hearing); *Fitch v. Solipsys Corp.*, 94 F. Supp.2d 670 (D. Md. 2000) (granting summary judgment to employer on disability discrimination and harassment claims, finding that employee who was repeatedly denied accommodations for a heart condition and lifting restriction did not have a disability and was not regarded as disabled even though employer and employer's son called him a "cripple" on different occasions, and that this conduct was not harassment).

2. See *Walton v. Guidant Sales Corp.*, 417 F. Supp.2d 719 (D. Md. 2006) (dismissing disability discrimination claim of *pro se* plaintiff for failure to timely file a charge with EEOC despite the EEOC's own determination that plaintiff's charge was timely filed, and refusing to apply equitable tolling even though plaintiff had contacted EEOC on numerous occasions to inquire about the status of his administrative charge, was initially sent the wrong form by EEOC, alleged that he timely filed the corrected form that he was sent after informing EEOC of their mistake, and was helped by EEOC to complete another charge after the deadline because they had experienced problems with their data management system and could not find his charge form); *Campbell v. Federal Express Corp.*, 918 F. Supp. 912 (D. Md. 1996) (dismissing employment discrimination claim for failure to exhaust administrative remedies because the plaintiff, who was denied a job as a courier due to his limited hand mobility, did not challenge Federal Express's refusal to hire him with the federal Department of Transportation; the ADA has never required plaintiffs in employment discrimination cases to exhaust with any federal agency except the EEOC).

3. 186 F. Supp.2d 595 (D. Md. 2002).

This type of analysis – in effect a requirement that an individual have a proper diagnosis and treatment plan in place for his disability in order to receive protection from discrimination – is particularly problematic for individuals with disabilities who are challenging to diagnose accurately and treat effectively, including many individuals with psychiatric disabilities. The notion that individuals should be denied protection under the ADA until they have spent months or years trying to obtain effective treatment to control the effects of their disabilities is a perversion of the ADA, and is certainly not suggested by the decisions of either the Supreme Court or the Fourth Circuit.⁴

Our concern about Judge Davis's overly restrictive approach to deciding ADA employment discrimination cases is not lessened by the enactment of the ADAAA, which restored the ADA's definition of disability to the broad scope intended by Congress and wrongfully restricted by decisions such as *Rose*. As you know, last year's amendments did not change many provisions of the ADA, including provisions defining discrimination under the statute; these provisions remain subject to inappropriately limiting interpretations. Further, the language of the ADAAA itself will now be interpreted by the federal courts, including the appeals courts, and their readings of this language will determine whether Congress's intent in enacting the amendments is realized.

Finally, our concern about Judge Davis's nomination is compounded by the history and expanse of the Fourth Circuit itself. Thousands of persons with disabilities reside in the five states subject to decisions of the Fourth Circuit. Yet for many years this court was considered extremely hostile to disability rights. A 2001 study found that the Fourth Circuit had the lowest rate of decisions in favor of ADA employment discrimination plaintiffs among all of the federal appeals courts, finding for plaintiffs in only 0.3 percent of cases, as compared to the 6 percent average amongst the other appeals courts.⁵ It is only in recent years, as some judges hostile to disability rights have left the bench, that some recent Fourth Circuit cases have been decided in favor of plaintiffs – often by sharply divided panels.⁶

We are convinced that this nomination has presented Congress and the administration with a golden opportunity to consolidate this trend, or to accelerate it – to nominate a jurist who will be a strong, consistent voice for disability rights on the Fourth Circuit. We expected a nominee

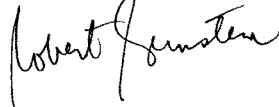
4. The White House has asserted that in deciding *Rose* Judge Davis relied on the Fourth Circuit's summary affirmation of *Tangires v. The Johns Hopkins Hospital*, 79 F. Supp.2d 587, *aff'd*, 230 F.3d 1354 (4th Cir. 2000), in which the district court found that a woman with asthma was not disabled because she had failed to take steroid medication recommended by her doctor. A summary affirmation affirms only the judgment and not the reasoning by which any particular aspect of the decision was reached. Moreover, Judge Davis's ruling that Mr. Rose "did not follow the proper protocol in determining whether he had vasomotor rhinitis" and "did not receive a proper treatment plan for his impairment" (because he should have followed up with a different doctor, gotten a CT scan, ruled out alternative causes for his symptoms, undergone extended follow-up observation after he consistently followed a particular treatment regime, and controlled his smoking) goes far beyond *Tangires*.

5. Ruth Colker, *Winning and Losing Under the Americans with Disabilities Act*, 62 Ohio State L.J. 239, 275 (2001).

6. Compare, e.g., *Wilson v. Phoenix Specialty Manf'g Co.*, 513 F.3d 378 (4th Cir. 2008) (2-1 decision holding that employee with Parkinson's Disease was protected by the ADA because employer regarded him as having a disability), with *Rohan v. Networks Presentations, L.L.C.*, 375 F.3d 266 (4th Cir. 2004) (2-1 decision holding that employee with severe and chronic depression and post traumatic stress disorder was not protected by the ADA because she did not have a disability).

likely to persuade his or her fellow judges to decide cases in ways that advance these rights, consistent with Congress's intent in enacting the ADA and other disability rights laws. Based on Judge Davis's record, we think his choice represents a missed opportunity. As such, we must regretfully oppose his nomination.

Very truly yours,

A handwritten signature in black ink that reads "Robert Bernstein". The signature is written in a cursive style with a large, prominent initial "R".

Robert Bernstein, Ph.D
Executive Director
Judge David L. Bazelon Center for Mental Health Law

Andrew Imparato
President and CEO
American Association of People with Disabilities

Eric R. Hargis
President and CEO
Epilepsy Foundation

Kelly Buckland
Executive Director
National Council on Independent Living



The Honorable Harry Reid
Majority Leader
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
361A Russell Senate Office Building
Washington, DC 20510

November 16, 2009

Dear Majority Leader Reid and Minority Leader McConnell:

I am writing on behalf of Americans United for Life to express our deep opposition to the nomination of Judge David Hamilton to the Seventh Circuit Court of Appeals. The confirmation of Judge David Hamilton to the Seventh Circuit Court of Appeals would be another step away from common ground by the President and the Democratic Senate.

We at Americans United for Life, like most Americans, believe that a nominee's judicial philosophy goes to the heart of his or her qualifications to serve as a Circuit Court judge. During his Judiciary Committee hearing, Judge Hamilton failed to distance himself from a clearly activist philosophy. As a District Court Judge, Hamilton's decisions, which are subject to review by the Seventh Circuit Court of Appeals, were reversed often.

The Court of Appeals ruled Judge Hamilton abused his judicial discretion in obstructing the right of the people of Indiana to enact constitutional pro-life legislation. For seven years, through a series of rulings in *A Woman's Choice v. Newman*, 904 F. Supp. 1434 (S.D. Ind. 1995), he blocked the enforcement of Indiana's informed consent law. Reversing Judge Hamilton's rulings, the Court of Appeals noted the law was "materially identical to a law held valid by the Supreme Court in *Casey*, by this court in *Karlin*, and by the Fifth Circuit in *Barnes*." Judge Hamilton ignored clear precedent. He tied up the court system and wasted the citizens of Indiana's financial resources requiring them to defend a constitutional law.

Judge Hamilton's judicial activism has not been limited to the issue of abortion. The Seventh Circuit reversed Judge Hamilton's ruling that prayers in the Indiana House of Representatives mentioning Jesus Christ violated the Establishment Clause, but prayers which mentioned Allah did not. *Hinrichs v. Bosma*, 400 F.Supp.2d 1103 (S.D. Ind. 2005). The Seventh Circuit unanimously reversed Judge Hamilton's denial of a rabbi's First Amendment right to

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display a Menorah as part of the Indianapolis Municipal Building's holiday display. *Grossbaum v. Indianapolis-Marion County Building Authority*, 870 F.Supp. 1450 (S.D. Ind. 1994).

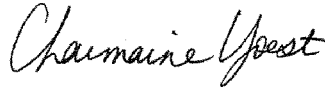
The Seventh Circuit also had to remind Judge Hamilton that he was not free to ignore prior convictions in order to avoid imposing a life sentence on a repeat offender. *United States v. Woolsey*, 535 F.3d 540 (7th Cir. 2008).

In his Senate confirmation hearing, Judge Hamilton affirmed his embrace of judicial activism. While Justice Sotomayor rejected the empathy standard during her confirmation hearing for the Supreme Court, Judge Hamilton used his hearing as an opportunity to reiterate his belief that empathy is "important" in fulfilling the judge's oath of office. However, empathy for one litigant is injustice to another, for it violates the judge's obligation to refrain from taking sides in a dispute.

Judge Hamilton's record and commitment to continue legislating from the bench not only do not warrant a promotion, but warn against it. As a district court judge, Judge Hamilton refused to follow precedent. Clearly, he will not feel bound by precedent as a Circuit Court Judge.

Americans want judges who apply the law, not make policy. We respectfully ask that you vote against Judge Hamilton's nomination. This vote will be recorded in AUL Action's annual scorecard.

Sincerely,



Charmaine Yoest, Ph.D.
President & CEO, Americans United for Life

CC:

Members of the United States Senate

Americans United for Life letter on nomination of Judge Hamilton – Page 2

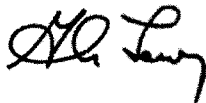
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Letter of Support for Tom Perez
April 14, 2009
Page 2 of 2

At this time of great opportunity and challenge, we believe Mr. Perez is an excellent nominee for Assistant Attorney General for Civil Rights. We are confident that he will serve our nation with distinction.

We urge the Committee to act promptly and favorably on this nomination.

Sincerely,



Glen S. Lewy
National Chairman



Abraham H. Foxman
National Director

cc: Jess N. Hordes, ADL Washington Director



ADVANCING EQUALITY

April 24, 2009

The Honorable Senator Patrick Leahy
Chairman, Committee on the Judiciary
433 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Senator Arlen Specter
Ranking Member, Committee on the Judiciary
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Asian American Justice Center ("AAJC"), a national civil rights organization dedicated to advancing and defending the civil rights of Asian Americans, we are writing to support the nomination of Thomas E. Perez for the position of Assistant Attorney General for the Civil Rights Division at the United States Department of Justice. We have worked closely with Mr. Perez throughout his career as government official and as a private citizen. We believe that he has the qualifications, leadership, intellectual capacity, and commitment necessary for this position.

Founded in 1991, the AAJC (formerly the National Asian Pacific American Legal Consortium) works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. AAJC is one of the nation's leading experts on issues of importance to the Asian American community including: affirmative action, anti-Asian violence prevention/race relations, census, English as a second language, health policy, immigrant rights, immigration, language access, television diversity and voting rights.

The Civil Rights Division is in need of strong leadership. The January 2009 Inspector General's report focused on politicized hiring and other improper personnel actions in the Civil Rights Division makes clear that the next Assistant Attorney General will need to restore the public confidence and return the division to the prominence as the premier protector of civil rights and those most vulnerable. Mr. Perez has a proven track record and the commitment to stabilize and strengthen the division.

Our first interaction with Mr. Perez was when he was working for Senator Kennedy where our affiliate the Asian Pacific American Legal Center was seeking assistance in securing visas for 72 Thai garment workers who were freed from slavery in an El Monte California sweatshop. Mr. Perez worked diligently to ensure our issues were addressed and that the garment workers were not further victimized. As a result of Mr. Perez's assistance, today those workers are U.S. citizens and their case trail blazed the path to legislation that established visas for victims of human trafficking.

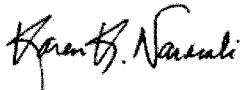
1140 Connecticut Ave. NW, Suite 1200, Washington, D.C. 20036 • T 202.296.2300 • F 202.296.2318 • www.advancingequality.org
AFFILIATES: Asian Pacific American Legal Center in Los Angeles • Asian Law Caucus in San Francisco • Asian American Institute in Chicago

AAJC also worked closely with Mr. Perez in the implementation of Executive Order 13166, Improving Access to Services by Persons with Limited English Proficiency, during his tenure as Director of the Office for Civil Rights at the Department of Health and Human Services. He understood the issues of the Asian American community and was committed to improving the lives of language minorities to ensure they could receive linguistically competent and culturally appropriate access to health care. As a private citizen, we continued to work with Mr. Perez on these issues, where he convened stakeholders to further refine and strategize on improving access.

It is evident from Mr. Perez background that he has a long history in civil rights and a strong ability to manage effectively. We are confident that if confirmed Mr. Perez will restore the Civil Rights Division and uphold the long standing mission to provide equal treatment and equal justice under the law by enforcing and defending the civil rights of all Americans in areas such as education, employment, housing, voting, criminal justice, and public accommodations.

We ask that Mr. Perez be confirmed with all deliberate speed.

Sincerely,



Karen K. Narasaki
President and Executive Director



COLLECTIVE BANKING GROUP, INC.

Board of Directors
 Rev. Dr. Kerry Hill
 President

Rev. Timothy Agbeja
 Rev. Marcellous Buckner
 Rev. Wayne Bumbry
 Rev. Nathan Butler, Sr.
 Bishop Diana Dunn
 Rev. Andrea Foster
 Rev. Dr. Leonard Hamlin
 Rev. Coletta Jones
 Elder James Jordan
 Rev. Anthony Maclin
 Rev. Don Massey
 Rev. Dr. Conrad Pridden
 Rev. Stephen Tucker
 Bishop Paul Wells

Rev. Dr. Diane Johnson
 Executive Director

Mr. Midgett Parker
 Legal Counsel

April 26, 2009

United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Members of the Senate Committee on the Judiciary:

On behalf of the Board of Directors of the Collective Banking Group, Inc., (CBG) it is my great honor to provide a recommendation for Secretary Tom Perez for the position of Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

The mission of the CBG is to establish covenant relationships with member churches and partnerships with financial institutions and other organizations for economic empowerment.

Christian Ministry, the CBG was established in 1995 as a result of concerns raised by pastors and church members in Prince George's County regarding inequitable access to services provided by local banks. Today, with over 150 member churches, the CBG partners with 3 area banks, and nearly 20 businesses and organizations that provide a wide range of financial, business and economic empowerment services to our members and congregations.

Secretary Perez has been a staunch advocate for the civil and human rights of residents of Prince George's County and throughout the state of Maryland. He has been a leader in the state's efforts to combat the foreclosure crisis, working to bring an end to predatory lending practices, and to protecting the rights of homeowners. We were proud to work with his office to provide crucial foreclosure prevention information to thousands in the state.

A committed public servant, Secretary Perez is dedicated to advancing the civil rights of all Americans. He is uniquely qualified to lead the Office of Civil Rights in the U.S. Department of Justice. I recommend him without reservation.

Sincerely,

Reverend Dr. Kerry A. Hill

Reverend Dr. Kerry A. Hill
 President

P.O. Box 47005 • Forestville, Maryland 20753 • Tel: (301) 699.8449 • Fax: (301) 699.8470
 Email: CollectiveBankingGroup@gmail.com Website: www.collectivebankinggroup.org

"Let us Rise Up and Build...The God of Heaven Will Prosper Us" (Nehemiah 2:18 & 20)

<http://judiciary.authoring.senate.gov/hearings/testimony.cfm>



< Return To Hearing

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
April 29, 2009

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

CONFIRMATION HEARING FOR

ANDRE M. DAVIS, U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

THOMAS E. PEREZ, ASSISTANT ATTORNEY GENERAL,
CIVIL RIGHTS DIVISION

DAVID F. HAMILTON, U.S. CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

SENATE JUDICIARY COMMITTEE

April 29, 2009

The Committee will come to order. Let me thank Chairman Leahy for asking me to chair today's hearing.

Today we consider two judicial nominations: Judge Andre Davis of Maryland to be a U.S. Circuit Judge for the Fourth Circuit, and Judge David Hamilton of Indiana to be a U.S. Circuit Judge for the Seventh Circuit.

We also consider today an important nomination for a leadership position in the Department of Justice. This is the nomination of Thomas E. Perez of Maryland to be the Assistant Attorney General for the Civil Rights Division.

I agree with Chairman Leahy that this Committee should move quickly to continue restoring the morale and integrity of the Department. I am pleased that this Committee and the Senate have already confirmed the top 4 positions at the Department of Justice, along with 4 of 11 the Assistant Attorneys General. We have more work to do as the first 100 days of the Obama Administration draws to a close.

Our first nominee today is Judge Andre Davis of Maryland. I was pleased to join with Senator Mikulski in recommending Judge Davis to President Obama for nomination to the vacant Maryland seat on the U.S. Court of Appeals for the Fourth Circuit. I look forward to Senator Mikulski's introduction of Judge Davis later in this hearing, as well as the introduction by former Senator Paul Sarbanes, and to having Judge Davis introduce his family and friends that are attending today's hearing.

I cannot think of a better choice for this seat. Judge Davis has an extremely long and distinguished career in the Maryland legal community, and has deep roots in Maryland. Born and raised in Baltimore – and still a resident of Baltimore – Judge Davis has an exceptional record of legal experience in our state, include working

http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3791&wit_id=6059 7/11/2009

as an Assistant U.S. Attorney, a state District Court Judge, a state Circuit Court judge, and ultimately a U.S. District Judge. He received his bachelor's degree from the University of Pennsylvania. He graduated cum laude with his J.D. from the University of Maryland School of Law, where he still teaches classes as an adjunct faculty member.

Judge Davis currently serves as a district judge for the US District Court for the District of Maryland, and has served in that position since being unanimously confirmed by the Senate in 1995.

Judge Davis has a clear appreciation for the Constitution, and he faithfully applies the law as he finds it, based on rulings of the Supreme Court and the Fourth Circuit.

Judge Davis has a longstanding record and a demonstrated commitment to protect civil rights and liberties. As a federal judge, Judge Davis has issued a number of landmark decisions on civil rights issues. Most notably, in 1998 in *Reid v. Glendening* Judge Davis ruled that the Baltimore City courthouses were not wheelchair-accessible, in violation of the Americans with Disabilities Act. He then ordered the city and state to create a plan to make the buildings accessible.

Finally, Judge Davis has been praised by lawyers in Maryland as a smart, evenhanded, fair, and open-minded judge. He has served as a judge for 22 years. He served as a state District Court judge for three years, a state Circuit Court judge for five years, and has now served as a federal district court judge in Maryland for 14 years.

As a federal judge over the past 14 years, he has presided over the closing of approximately 5,300 cases. Of that number, Judge Davis has presided over approximately 4,300 cases that went to verdict or judgment based on a trial or decision he made. He has handled the full mix of criminal and civil cases, including both bench and jury trials. Judge Davis received a "well qualified" rating from the American Bar Association's Standing Committee on the Federal Judiciary.

If confirmed, Judge Davis would be the third African-American judge to serve on the Fourth Circuit, which includes Maryland, West Virginia, Virginia, North Carolina, and South Carolina. This circuit has one of the largest populations of African-American residents of any federal circuit outside of the District of Columbia. Federal circuit courts of appeal are the final word on many areas of the law, since the U.S. Supreme Court reviews only a handful of cases each year. The decisions of these courts have an enormous impact on the lives and rights of millions of Americans.

I am confident that, if confirmed, Judge Davis will be an excellent United States Circuit Judge for the 4th Circuit, and will make Marylanders proud of his service. It is indeed fitting that Judge Davis would replace Judge Francis Murnaghan, who died in August of 2000. Judge Murnaghan was also a lifelong Maryland resident who had served on the federal bench for 20 years, after a long career as one of the most respected lawyers in Maryland. Judge Davis served as a law clerk for Judge Murnaghan on the Fourth Circuit from 1979 to 1980.

Our second nominee today is Thomas Edward Perez, the Secretary of the Maryland Department of Labor, Licensing and Regulation. President Obama has nominated Secretary Perez to serve as the Assistant Attorney General for the Civil Rights Division.

Elie Wiesel once said "indifference, after all, is more dangerous than anger and hatred." We as a nation must not tolerate discrimination, fraud, or corruption in our society. The Civil Rights Division is our nation's moral conscience and is charged with protecting all Americans against discrimination throughout our society. Whether it is discrimination in employment, education, housing, voting, personal liberties or hate crimes, the Civil Rights Division must take action and not stand on the sidelines against those that violate our laws.

I understand, and I think we all understand, that there are many problems in the country today. Our nation is in the midst of an economic downfall, we are at war, unemployment is on the rise, and our environment is suffering. But we must remember that despite all these problems, we must not and cannot forget about civil rights protections in our country. Dr. Martin Luther King, Jr. said we must be true to what we put down on paper, which means we must enforce the laws that protect our citizens from discrimination. The past eight years has not lived up to staying true to what we put on paper. Over the past eight years we have seen a serious and disheartening decline in the number of cases brought by the Civil Rights Division.

The Voting Section had not filed any cases on behalf of African American voters during a five year period, nor did it file any cases on behalf of Native-American voters throughout the entire Bush Administration. In past years, we saw the Division use its enforcement authority to deny access and instead promote barriers

http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3791&wit_id=6059 7/13/2009

to block legitimate voters from participating in the political process. Only 46 Title VII complaints were filed by the Civil Rights Division in 7 years. This is sharp contrast to the Division under the Clinton Administration which initiated 11 Title VII cases per year. Hate groups have increased by 50% since 2000. The Civil Rights Division has a lot of work to do and I believe that Secretary Perez is the best person to lead the division back to prosecuting those offenders that break our laws.

I have also consistently expressed my grave concern with the mismanagement of the Civil Rights Division under the Bush Administration. Throughout the last Congress, my concerns were unfortunately confirmed. The previous Administration had an Attorney General who lacked independent judgment in criminal investigations, personnel decisions and the protection of constitutional liberties. The Department became politicized, so much so that their own Office of Professional Responsibility and the Office of the Inspector General began independent investigations of political appointees at the Department. The joint report was publicly released on January 13, 2009, and it painted a devastating portrait of the Civil Rights Division during the tenure of Bradley Schlozman, first as a Deputy Assistant Attorney General, and then as Principal Deputy Assistant Attorney General and Acting Assistant Attorney General of the Division.

The report found that Schlozman "considered political and ideological affiliations in hiring career attorneys and in other personnel actions affecting career attorneys in the Civil Rights division. In doing so, he violated federal law – the Civil Service Reform Act – and Department policy that prohibit discrimination in federal employment based on political and ideological affiliations, and committed misconduct? Moreover, Schlozman made false statements about whether he considered political and ideological affiliations when he gave sworn testimony to the Senate Judiciary Committee and in his written responses to supplemental questions from the Committee."

Other internal Justice Department reports detailed the improper selection, hiring, and politicization of the Honors Program and Summer Law Intern Program. The Committee's investigation into the dismissal of U.S. Attorneys for failing to bring spurious voter fraud cases also contributed to the resignation of former Attorney General Gonzales.

I therefore look forward to discussing with Mr. Perez how he intends to rebuild morale at the Division, and make absolutely clear that politics or political affiliation will play no role in hiring, case management, or personnel decisions.

Secretary Perez comes before the Committee with an impressive range of experience in civil rights issues as well as management experience, and is uniquely qualified to help get the Civil Rights Division back on the right track. He has had a long and distinguished career in public service. After law school, Mr. Perez clerked for a year and then went on to join the Department of Justice, where he served for 10 years. He began at the Civil Rights Division as a trial attorney in the Criminal Section. Through the years, he moved up the ladder within the division, first as a trial attorney in the Criminal Section, then as deputy chief of the Criminal Section, and finally as Deputy Assistant Attorney General for the Civil Rights Division. He was also detailed to Senator Edward Kennedy's office as his principal advisor on civil rights, criminal justice, juvenile justice and constitutional issues. During his time at the Department of Justice, within the Civil Rights Division, he took on white supremacists, police brutality, corruption, and many additional civil rights violations. He also received the second highest award, the Attorney General's Distinguished Service Award, at the Department of Justice for his work.

After leaving the Department of Justice, he went on to the US Department of Health and Human Services where he became the director of the Office for Civil Rights. While at Health and Human Services, he was involved in developing landmark medical records privacy regulations which for the first time established a federal right to medical records privacy. After leaving HHS, he began consulting on health care and civil rights issues. He also served on the Montgomery County Council in Maryland. He became the first Latino ever to serve on the council as well as the first Latino president of the Council. Mr. Perez has shown leadership in all aspects of his work.

Secretary Perez is currently serving in Maryland Governor Martin O'Malley cabinet as the Secretary of the Department of Labor, Licensing and Regulation. As a Maryland resident myself, I can state that Secretary Perez has done an exceptional job protecting and empowering Maryland workers.

Secretary Perez is a graduate of Brown University, the John F. Kennedy School of Government and Harvard Law School, where he graduated cum laude.

Our third and final nominee we consider today is David Hamilton of Indiana to be a U.S. Circuit Judge for the Seventh Circuit. This is actually Judge Hamilton's second appearance before the Committee. Judge Hamilton

http://judiciary.senate.gov/hearings/testimony.cfm?id=3791&wit_id=6059 7/13/2009

has served as a federal district court judge for 14 years. He has received bipartisan support from both Senator Bayh and Senator Lugar. The American Bar Association's Standing Committee on the Federal Judiciary gave him a "well qualified" rating.

So let me thank these three nominees for agreeing to serve their country during this critical time, and I look forward to today's confirmation hearing.

http://judiciary.senate.gov/recordings/testimony.cfm?renderforprint=1&id=3791&witness_id=6059..7/13/2009



ROBIN CARNAHAN
 SECRETARY OF STATE
 STATE OF MISSOURI

STATE CAPITOL
 ROOM 208
 (573) 751-2379

JAMES C. KIRKPATRICK
 STATE INFORMATION CENTER
 (573) 751-4936

April 20, 2009

The Honorable Patrick Leahy
 The Honorable Arlen Specter
 United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

via facsimile – 202-224-9516
 via facsimile – 202-224-9102

Dear Senators Leahy and Specter:

We want to add our voices to the growing chorus of people recommending the confirmation of Tom Perez as Assistant Attorney General for Civil Rights.

Although we come from different political parties, we share a common belief that Tom's outstanding credentials and broad experience make him uniquely qualified to serve and succeed in this critically important role.

Tom's many years in the Justice Department's Office for Civil Rights alone prepare him well to lead that division. But his experience as a civil rights lawyer, professor, local elected official and head of a 1700 employee state agency give him a unique understanding and depth of experience that will serve the Department well. As state elected officials, we would be thrilled to have someone with Tom's knowledge and understanding of the distinct roles and interrelationship between federal, state and local governments directing the Office for Civil Rights.

Tom Perez also has an uncanny ability to listen, which allows him to get beyond the ordinary political paradigms and find common ground and new ways of solving problems. This talent will no doubt be especially valuable to a Department that will continue to face intense public scrutiny in the years ahead.

We couldn't think of a better nominee as Assistant Attorney General for Civil Rights.

Sincerely,

Robin Carnahan
 Missouri Secretary of State

Trey Grayson
 Secretary of State
 Commonwealth of Kentucky

PO Box 1767 • JEFFERSON CITY, MISSOURI • 65102
www.sos.mo.gov

State Attorneys General

A Communication From the Chief Legal Officers
of the Following States and Territories:

Connecticut * Guam * Hawaii
Iowa * Louisiana * Mississippi * New Mexico
Ohio * Rhode Island

April 29, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
Via facsimile (202) 224-9516

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
Via facsimile (202) 224-9102

Dear Chairman Leahy and Ranking Member Specter:

As the chief law enforcement officers of our respective states, we write to express our support for the nomination of Thomas Perez for Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. We believe that Mr. Perez has the experience, knowledge, and abilities to lead this important Division.

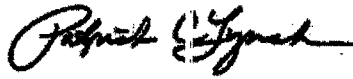
Secretary Perez would bring exemplary advocacy, leadership, and prosecutorial experience and qualifications to the Civil Rights Division. He is an experienced and nationally recognized civil rights lawyer who knows the Division well, having worked in it for almost a decade in a variety of critical positions. As a prosecutor in the Division, he was lead attorney in some of the Department's most high profile and complex civil rights cases. As Deputy Assistant Attorney General for Civil Rights, he oversaw complex litigation in the employment and education areas.

In Maryland, Secretary Perez has demonstrated a keen understanding of State government in his current position as Secretary of the Department of Labor, Licensing and Regulation. In this capacity, he has played a key role in the state's response to the ongoing mortgage crisis. He negotiated agreements with six major mortgage servicing companies to provide relief to Maryland homeowners in danger of foreclosure. One of the largest ongoing mortgage fraud prosecutions in the nation originated in Secretary Perez's office. With housing at the top of the Department of Justice's agenda, Secretary Perez will be well-situated to play a major role and to foster partnership with state and local governments to safeguard the civil rights of all Americans.

Heading the Civil Rights Division, like running an Attorney General's office, requires extensive legal, management, and leadership skills, as well as extensive experience in building coalitions. Secretary Perez has led important agencies. He currently heads a Department of about 1600 employees, and has held other senior positions in the federal government. He has a well-earned reputation as someone who listens, learns quickly, builds consensus, and leads effectively.

Mr. Perez's distinguished career demonstrates his leadership abilities, integrity and commitment to public service. We are confident that Mr. Perez would be an exceptional Assistant Attorney General for the Civil Rights Division and urge you to confirm his nomination.

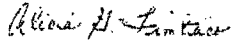
Sincerely,



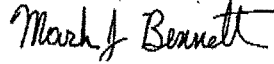
Patrick Lynch
Rhode Island Attorney General



Richard Blumenthal
Connecticut Attorney General



Alicia G. Limtiaco
Guam Attorney General



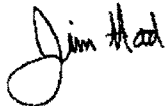
Mark J. Bennett
Hawaii Attorney General



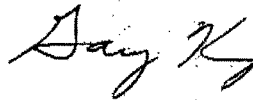
Tom Miller
Iowa Attorney General



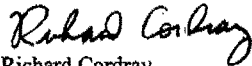
James D. "Buddy" Caldwell
Louisiana Attorney General



Jim Hood
Mississippi Attorney General



Gary King
New Mexico Attorney General



Richard Cordray
Ohio Attorney General

Cc: Members of the Senate Committee on the Judiciary

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

As the chief law enforcement officers of our respective states, we write to express our strong support for the nomination of Thomas Perez for Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. We urge his confirmation.

Secretary Perez's qualifications and credentials are exceptional. He is a nationally recognized civil rights lawyer whose breadth and depth of experience make him an ideal choice to lead the Civil Rights Division. He knows the Division well, having worked there for almost a decade in a variety of critical positions. As a prosecutor in the Division, he was lead attorney in some of the Department's most high profile and complex civil rights cases. As Deputy Assistant Attorney General for Civil Rights, he oversaw complex litigation in the employment and education areas.

In Maryland, Secretary Perez, in his current capacity as Secretary of Maryland's Department of Labor, Licensing and Regulation, has played a key role in the state's response to the ongoing mortgage crisis. He negotiated agreements with six major mortgage servicing companies to provide relief to Maryland homeowners in danger of foreclosure. One of the largest ongoing mortgage fraud prosecutions in the nation originated in Secretary Perez's office. With housing at the top of the Department of Justice's agenda, Secretary Perez will be well-situated to play a major role.


He has held leadership positions in federal, state and local government, and has worked in all three branches of the federal government. As such, he has an acute understanding of the need for the federal government to work in partnership with state and local governments to safeguard the civil rights of all Americans.

Heading the Civil Rights Division, like running an Attorney General's office, requires extensive legal, management and leadership skills, as well as extensive experience in building coalitions. Secretary Perez has led important agencies. He currently heads a Department of about 1600 employees, and has held other senior positions in the federal government. He has a well-earned reputation as someone who listens, learns quickly, builds consensus, and leads effectively.

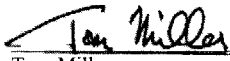
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Mr. Perez's distinguished career demonstrates his leadership abilities, integrity and commitment to public service. We are confident that Mr. Perez would be an exceptional Assistant Attorney General for the Civil Rights Division and urge you to confirm his nomination.


Sincerely,




Terry Goddard
Attorney General of Arizona



Tom Miller
Attorney General of Iowa





Martha Coakley
Attorney General of Massachusetts

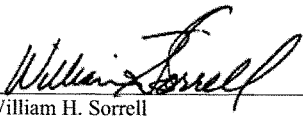


Jon Bruning
Attorney General of Nebraska

2188746.2


Mark Shurtleff
Attorney General of Utah


Rob McKenna
Attorney General of Washington


William H. Sorrell
Attorney General of Vermont

2188746.2



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April 22, 2009

Chairman Patrick J. Leahy
Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, D.C. 20510

Ranking Member Arlen Specter
Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter,

The Congressional Asian Pacific American Caucus (CAPAC) is committed to the full civic participation of Asian Americans and Pacific Islanders and underserved populations throughout our government and society. To that end, CAPAC has been working with the Obama Administration to recommend diverse and talented individuals for Administration positions. As such, we are writing to support the nomination of Tom Perez to be the next Assistant Attorney General of the Department of Justice's Civil Rights Division.

Next week, Secretary Perez will appear before your committee and we are hopeful he will be quickly confirmed. Secretary Perez is a nationally recognized civil rights lawyer and consumer advocate and currently serves as the Secretary of Maryland's Department of Labor, Licensing and Regulation (DLLR). He assumed leadership of DLLR after the agency had been largely neglected for years, and in particular its ability to enforce labor protections and wage and hour laws had been decimated. Secretary Perez has presided over the renaissance of DLLR. Under his leadership, DLLR recovered a record amount of unpaid wages of behalf of Maryland workers. He has led the effort to address the pernicious practice of misclassification of workers as independent contractors, and helped spearhead passage of the nation's first and only state living wage law. He was also the principal architect of Governor Martin O'Malley's sweeping package of reforms to address the foreclosure crisis in Maryland.

A graduate of Brown University, Harvard Law School and the John F. Kennedy School of Government, Secretary Perez has spent his entire career in public service. From 2002 until 2006, he was a member of the Montgomery County Council. He was the first Latino ever elected to the Council, and served as Council President in 2005.

Secretary Perez spent 12 years in federal public service, the bulk of it at the United States Department of Justice as a federal prosecutor for the Civil Rights Division. He started as a summer clerk in the Civil Rights Division, entered the Division as a career civil rights prosecutor through the Attorney General's Honors Program, and worked his way up to Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno.

Secretary Perez also served as Special Counsel to Senator Edward Kennedy, and was Senator Kennedy's principal adviser on civil rights, criminal justice and constitutional issues. For the final two years of the Clinton administration, Secretary Perez served as the Director of the Office for Civil Rights (OCR) at the United States Department of Health and Human Services. At OCR, he transformed the agency from a critically important yet chronically underperforming unit into an office that commanded new respect within and outside the agency, and was far better positioned to carry out its critical mandate of assisting vulnerable people by enforcing civil rights laws.

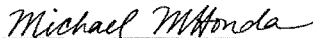
From 2001 to 2007, Secretary Perez was a law professor at University of Maryland School of Law, including a two year stint as Director of Clinical Law Programs. During his tenure at University of Maryland Law School, he taught a civil rights clinic focusing on employment issues, health law and criminal justice.

Furthermore, Secretary Perez has long been a friend and advocate for the Asian American and Pacific Islander community. He has a long record of fighting against national origin discrimination, particularly as it relates to individuals with limited English proficiency. He has also fought for medical language interpretation as a civil rights issue, for comprehensive immigration reforms, and maximizing immigration integration.

Secretary Perez's impressive experience and expertise in the area of civil rights, he is well positioned to represent the Department of Justice as the Assistant Attorney General of the Civil Rights Division. We feel confident that he will advocate and protect the needs of vulnerable populations and help to rebuild the reputation of the Department of Justice and usher in a renewed era of transparency and fairness under President Obama.

Thank you for your time and consideration of Secretary Perez's nomination.

Sincerely,



Michael M. Honda
Chair, Congressional Asian Pacific American Caucus

Congressional Hispanic Caucus
United States Congress
Washington, DC 20515

CHAIRWOMAN
NYDIA M. VELAZQUEZ
12TH DISTRICT, NEW YORK

April 29, 2009

Senator Patrick J. Leahy
Chairman
Senate Judiciary Committee
226 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member
Senate Judiciary Committee
226 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter;


On behalf of the Congressional Hispanic Caucus (CHC), we write to enthusiastically support Mr. Tom Perez to serve as Assistant Attorney General for the Civil Rights Division at the Department of Justice (DOJ). His nomination is important to our nation as we move forward on important matters concerning civil rights, voting rights, people with disabilities and many others. We urge the Senate to immediately confirm his nomination so that he can begin to work on these issues.

Tom Perez has a proven track record having served the people of Maryland on the Montgomery County Council. He also served as the state's Secretary of Labor Licensing and Regulation, and as part of the Clinton Administration in the DOJ. Mr. Perez comes to the Department of Justice after having most recently served as Maryland's Secretary of Labor, Licensing and Regulation. He was also a part of the Obama Transition Team, was elected to the Montgomery County Council from 2002-2006, and served as the Council's President in 2005.

His 12 years of experience in the Civil Rights Division as a federal prosecutor included high profile cases. One of those cases was a hate crimes case in Texas that involved white supremacists who went on a racially motivated crime spree. He later served Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno.

We urge you to immediately confirm Tom Perez for Assistant Attorney General for the Civil Rights Division at the DOJ. We are confident that he will provide strong leadership and ensure the rights guaranteed to all Americans are enforced and protected.

Sincerely,



NYDIA VELÁZQUEZ
Chair
Congressional Hispanic Caucus



CHARLES A. GONZALEZ
1st Vice Chair
Congressional Hispanic Caucus



RUBÉN HINOJOSA
2nd Vice Chair
Congressional Hispanic Caucus



JOHN SALAZAR
Whip
Congressional Hispanic Caucus

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HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

ELIJAH E. CUMMINGS
SEVENTH DISTRICT
MARYLAND

April 20, 2009

The Honorable Patrick Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

I write to express my strong, unqualified support for the confirmation of U.S. District Judge Andre Davis as U.S. Circuit Judge for the Fourth Circuit. Acknowledging the deference due to the Senate in the performance of this duty under our Constitution, I nevertheless believe that it is appropriate to voice my personal knowledge and support for this exemplary nominee.

It was my honor and privilege to study at the University of Maryland School of Law during the same time period as did Judge Davis. I recall that he received the prestigious Roger Howell Award from the faculty - and that he graduated *cum laude*.

Upon his graduation from law school, Judge Davis served as law clerk to two of the most well-respected judges of our region, Judge Frank A. Kaufman of the United States District Court for the District of Maryland and Judge Francis D. Murnaghan, Jr. of the United States Court of Appeals for the Fourth Circuit.

After several years of public service with the U. S. Department of Justice's Civil Rights Division and the United States Attorney's Office for the District of Maryland, Judge Davis earned the justifiable praise of his peers as one of Baltimore's leading attorneys in private practice, a record that, in turn, led to his appointment to the Maryland District and Circuit Courts.

In 1995, Judge Davis was confirmed by the Senate for his current seat on the United States District Court for the District of Maryland, where he now has served with distinction for nearly 14 years.

Chairman Leahy, in addition to Judge Davis' long, varied and distinguished career, I also wish to emphasize the personal characteristics that have made me proud to be his colleague at the bar. There is no member of our profession whom I regard more highly - or into whose hands I would rather place my own fate.

As a lawyer, Andre Davis was known as a lawyer's lawyer. Since being raised to the bench, he has earned the same respect. I am confident that he would serve our nation and the cause of justice well as a Judge on the Fourth Circuit.

With due respect, I urge his confirmation.

Sincerely,

Elijah Cummings, Member of Congress

EEC: mc



HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

ELIJAH E. CUMMINGS
SEVENTH DISTRICT
MARYLAND

April 20, 2009

The Honorable Patrick Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

I write to express my strong, unqualified support for the confirmation of Thomas Perez as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

The urgent need for strong, experienced and motivated leadership of the Civil Rights Division cannot be overstated.

The historic ascension of our first African American President and Attorney General reflect progress that is both substantive and lasting. As far too many Americans are painfully aware, however, this progress does not mean that our nation's long journey toward becoming a truly just and inclusive society is at an end.

President Obama and Attorney General Holder need the most qualified and determined leadership in the Civil Rights Division that America's legal community can provide. I am firmly convinced that Thomas Perez exemplifies the character, experience and dedication that will be required.

Tom Perez is gifted with a penetrating intellect honed at Brown, The Harvard Law School and The John F. Kennedy School of Government. His professional work has coupled that intellectual acumen with an exemplary record of public service and dedication to civil rights.

He has consistently advanced and defended civil rights as a federal prosecutor for the Civil Rights Division, Special Counsel for Senator Edward Kennedy, Deputy Assistant Attorney General for Civil Rights under former Attorney General Janet Reno, Director of the Office of Civil Rights at the Department of Health and Human Services and, currently, as Maryland Secretary of Labor, Licensing and Regulation.

In addition, Tom Perez taught at the University of Maryland School of Law from 2001 until 2007, where he advanced the school's nationally recognized clinical law and health program - and he currently serves on the faculty of the George Washington School of Public Health.

On a personal note, I have been privileged to work with Thomas Perez in his current role as Secretary of Maryland's Department of Labor, Licensing and Regulation. He has been a vocal leader in our shared efforts to combat foreclosures and improve workplace protections.

He has shown a great ability to bring parties together and build consensus in important policy areas without compromising his commitment to helping people. In these times of great economic distress, Tom has been a true voice for all Marylanders.

Chairman Leahy, it is hard to imagine how President Obama and Attorney General Holder could have made a better choice to help them restore the Civil Rights Division as this nation's leading defender of our fundamental freedoms. While I acknowledge proper deference to the Senate's constitutional power and responsibility in this matter, I also believe that it is essential - and appropriate - to add my personal voice in support of this nomination.

Tom Perez has committed his entire career to advancing civil rights and serving the public good. He is uniquely qualified to repair what has been broken at the Civil Rights Division - and I urge his speedy confirmation.

Sincerely,

Elijah Cummings, Member of Congress

EFC: mc

April 21, 2009

The Honorable Patrick Leahy, Chairman
433 Russell Senate Office Building
Washington, D.C. 20510-4502

The Honorable Arlen Specter, Ranking Member
711 Hart Senate Office Building
Washington, D.C. 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

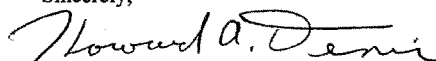
In advance of Senate Judiciary confirmation hearings, I write to respectfully express my strong support for Tom Perez to serve as Assistant Attorney General for Civil Rights in the Department of Justice.

Tom Perez and I served together as colleagues on the Montgomery County Council in Maryland for 4 years. We held field hearings together, and it was my honor to support his winning bid to become president of the Council. Tom served with great distinction! I have the utmost respect for his integrity, leadership, and personal skills.

Though we belong to different political parties, Tom Perez and I worked together closely, and formed a strong bond of friendship which continues.

I am certain that Tom Perez will serve our country with great effectiveness at the Department of Justice, and respectfully urge prompt and favorable action.

Sincerely,



Howard A. Denis
4515 Willard Ave. #2109S
Chevy Chase, MD 20815
(301) 656-3682
deniswise@comcast.net

April 20, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Thomas E. Perez

The undersigned individuals served as Assistant Attorneys General for Civil Rights in the United States Department of Justice under both Republican and Democratic Administrations. We write to support the nomination of Thomas E. Perez for that position and to urge the Committee to confirm him.

The position of Assistant Attorney General for Civil Rights is a significant appointment because the role of the Civil Rights Division in enforcing our nation's civil rights laws is important to our system of government. For each of us, it was a signal privilege to serve in that position and to lead the career lawyers of the Division in enforcing our nation's guarantees of fairness and equality.

The Civil Rights Division jurisdiction has been established by Congress to enforce anti-discrimination laws in areas such as voting rights, fair housing, education, disability access, employment, law enforcement and hate crimes. We are pleased that President Obama has stated his support for vigorous enforcement of the civil rights laws, and believe that Mr. Perez is an excellent choice to lead the Division in doing so.

Mr. Perez' qualifications and experience establish that he is well qualified to lead the Civil Rights Division. While Mr. Perez has many worthy achievements, we focus on his decade-long work as a career attorney at the Civil Rights Division from 1989-99. In that period, Mr. Perez prosecuted numerous federal civil rights violations involving racial violence, hate crimes and police misconduct nationwide, including crimes committed by white supremacists. Indeed, Mr. Perez received an Attorney General's Award for Distinguished Service for his work on prosecution of a hate crime. Mr. Perez eventually rose to Deputy Chief of the Division's Criminal Section, supervising other prosecutors, and then to Deputy Assistant Attorney General for Civil Rights, overseeing the work of the Criminal, Education and Employment Sections. (The position of Deputy Assistant Attorney General is the most responsible position in the Civil Rights Division short of Assistant Attorney General.) Most of us have personally worked with Mr. Perez and all

of us believe that his record as a prosecutor and manager is in the best traditions of the Civil Rights Division.

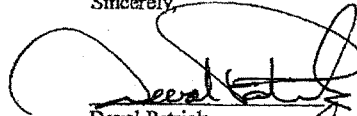
Rarely has a nominee for Assistant Attorney General had the hands-on experience in civil rights law enforcement in the Department of Justice that Mr. Perez possesses. Beyond this, Mr. Perez will bring to the leadership of the Civil Rights Division other valuable real-world experience, including his service as head of the Health and Human Services Department's Office for Civil Rights and civil rights advisor to Senator Edward Kennedy.

It is fitting that the President has nominated Mr. Perez, a former Civil Rights Division career lawyer, to head the Division. It shows the confidence of the President in the Division's career lawyers and staff and their work.

Sincerely,



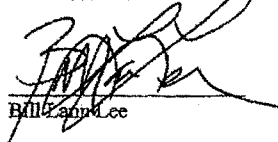
John R. Dunne



Deval Patrick



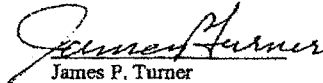
J. Stanley Pottinger



Bill Lann Lee



Stephen J. Pollak



James P. Turner

April 28, 2009

The Honorable Patrick Leahy
 Chairman
 Senate Committee on the Judiciary
 433 Russell Office Building
 Washington, D.C. 20510

The Honorable Arlen Specter
 Ranking Member
 Senate Committee on the Judiciary
 711 Hart Office Building
 Washington, D.C. 20510

Re: Nomination of Assistant Attorney General for the Civil Rights Division

Dear Chairman Leahy and Ranking Member Specter:

We both served as Assistant Attorneys General for the Civil Rights Division in the United States Department of Justice under President George W. Bush. As you know, the Division enforces the federal anti-discrimination laws that Congress has enacted in numerous areas, including criminal enforcement, disability rights, education, employment, housing, institutionalized persons and voting. It was a tremendous responsibility and privilege for us to have served in this position.

Neither of us is personally familiar with Thomas Perez, the President's nominee for this important Office, although we note favorably his prior experience at the Department of Justice. We both believe that the President should have wide latitude to appoint qualified individuals to serve in his Administration. Many well-intentioned people on both sides of the aisle feel strongly about many of the enforcement activities and initiatives the Civil Rights Division undertakes. It is an unfortunate fact that such sincerely held views have been insurmountable impediments to the confirmations of former nominees to this Office, both Republican and Democratic, rather than being the impetus for critical dialogue and constructive debate.

We strongly believe that legitimate policy differences are fair game for inquiry and debate. They should not, however, become manifestly political, particularly where the Department of Justice is concerned. We urge the Committee to treat the President's nominee to this position fairly, based upon the entirety of the record, and to resolve any close questions in favor of the President's prerogative to appoint like-minded individuals to serve within the Executive Branch. In our democratic society, this is among the many fair consequences of elections.



Ralph F. Boyd, Jr.
 Former Assistant Attorney General
 Civil Rights Division (2001-2003)

/s/ Wan J. Kim

Wan J. Kim
 Former Assistant Attorney General
 Civil Rights Division (2005-2007)



NATIONAL INSTITUTE OF HEALTH POLICY

Advancing health policy dialogue in the Upper Midwest

April 17, 2009

Senator Patrick Leahy
433 Russell Senate Office Bldg
United States Senate
Washington, DC 20510

Pat,

I wish you well. I write to endorse the President's decision to nominate Tom Perez for Assistant Attorney General for Civil Rights. And to strongly recommend you confirm him for that responsibility.

I have known Tom Perez for a number of years since I left the Senate. Much of our work has been involved in discussing policies to improve healthcare for the wide variety of Americans who lack regular access to private health and/or long term care insurance in this country. Many of these people are, from time to time in the Medicaid programs in 50 states. Others are people with disabilities whose access depends a great deal on where they live and the adequacy of state budgets to stimulate improvement in support services.

Our work was on a bi-partisan commission which has included several of my former Republican colleagues in the Senate. I also know of Tom's work in civil rights and his service in the Justice Department under both Democratic and Republican administrations. I know his politics are different from mine, and there are always important differences. But I looked forward so much to our mutual pro-bona work in the policy arena I've described, because he was a good learner and a good teacher and we always got a lot out of sessions in which Tom participated.

From the many years we worked together on this, you know my own experience in collaborating to get to common ground in challenging civil rights policy, without abandoning principal. I believe from my experience with him, that you will find Tom Perez to be just this kind of leader in the department in civil rights at a time when these particular gifts are much needed.

Sincerely,

Dave Durenberger
U.S. Senator (R-MN) 1978-95
Chair, National Institute of Health Policy

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M.H. JIM ESTEPP
 President & CEO

April 20, 2009

The Honorable Senator Patrick Leahy
 Chairman, Senate Judiciary Committee
 United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Chairman Leahy:

I'm writing in strong support for the confirmation of Thomas E. Perez as Assistant Attorney General for the Civil Rights Division at the United States Department of Justice. Mr. Perez has an impeccable record in the arena of civil rights, already punctuated by his service as Deputy Assistant Attorney General for Civil Rights in the Clinton Administration under Attorney General Janet Reno. In addition, his service as Director of the Office of Civil Rights at the United States Department of Health and Human Services further cements his well-earned reputation as an expert in the field of civil rights.

Secretary Perez's work in the State of Maryland leading the Department of Labor, Licensing and Regulation displays his ability to take on significant challenges and quickly respond with successful campaigns. His foresight at the beginning of the foreclosure crisis in the state is just one of several examples of his ability to recognize and react to a problem well ahead of his peers. The legislative package crafted with his guidance addressing the crisis was amongst the most sweeping in the nation.

On a personal level, I have known Tom Perez for many years and I consider him a man of great integrity and strong work ethic who leads by example. His leadership skills are time-tested and he has never wavered in his approach at creating consensus and applying rational solutions to seemingly untenable problems. His skills are a perfect compliment to the team already assembled to serve under Attorney General Holder.

It is my privilege and honor to know Tom Perez and I submit the Administration could not have made a better choice for the nomination to this crucial post at the Department of Justice.

Sincerely,

M.H. Jim Estopp

Cc: Senator Arlen Specter, Ranking Member

PRINCE GEORGIANS INVESTING IN PRINCE GEORGE'S COUNTY

Wed, 04/22/09 11:51:54AM FROM: Family Research Council

A message from the following conservative leaders, representing the broader conservative movement:

Edwin Meese, former Attorney General
David McIntosh, former U.S. Representative from Indiana
Tony Perkins, president of the Family Research Council
T.K. Cribb, former counselor to the Attorney General
Alfred S. Regnery, publisher of The American Spectator
Becky Norton Dunlop, president of the Council for National Policy

David Hamilton: Unqualified, Except for in Liberal Activism
Obama's First Judicial Nominee Reflects Preference of Ideology over Constitutionality

President Obama's nomination of David Hamilton to the US Court of Appeals for the 7th Circuit represents a choice based on the merits of political ideology instead of competence and impartiality. Hamilton, Obama's first judicial nominee, has none of the judicial expertise or experience required, but all of the ties to left-wing special interest groups and a record of activist rulings reflecting his personal views that only a liberal ideologue could hope for.

President Obama promised to usher in a new era of post-partisanship. Unfortunately that promise expired with his very first judicial pick, as he nominated Hamilton not on the basis of his commitment to the judicial oath but on the basis of expressed (and demonstrated) commitment to an extreme political agenda. President Obama also admitted on the campaign trail that he would select judges based not on their impartiality or understanding of the Constitution but on whether they "have life experience and they understand what it means to be on the outside, what it means to have the system not work for them," and whether they have "the empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old."

As a judge, Hamilton has shown himself to be soft on crime, radically pro-abortion, and hostile towards religion. With such a liberal activist record unmarked by significant experience, Judge Hamilton is clearly a bad and politically motivated appellate nominee.

Judge Hamilton is committed to an extreme political agenda.

- Hamilton is a former ACLU leader who lent his legal skills to the far-left special interest group.
- He was a fundraiser for the liberal activist group ACORN, the sponsor of the most comprehensive criminal voter fraud campaign in American history.

Judge Hamilton's experience as a political activist does not qualify him for a judicial office.

- In 1994, when President Clinton nominated him to the district court, the ABA rated Hamilton as 'not qualified,' apparently because of his almost purely political (as opposed to legal and judicial) experience. There is nothing in his record as a judge that suggests he's any more qualified now.

Judge Hamilton has a record of going out of his way to let criminals go free.

- He made it easier for child predators to move around in Indiana by invalidating a common-sense sex offender law designed to protect children from those same predators.
- He has a record of helping criminal defendants by suppressing evidence and warrants that would help law enforcement keep streets and families safe. He once suppressed a warrant that had been

04/22/2009 11:51AM

Wed, 04/22/09 11:51:54AM FROM: Family Research Council

issued after a child had revealed to a social worker that her mother had illegal drugs in their house.

- He took the extreme measure of ruling that a drug sniffing dog is comparable to using a thermal imaging device to look into houses.

Judge Hamilton is a typical abortion-on-demand absolutist.

- For years he used his judicial office to fight a popular Indiana law designed to reduce the number of abortions. That reasonable, common-sense law required information and a waiting period before an abortion and Judge Hamilton invalidated it despite Supreme Court precedent supporting it.

Judge Hamilton is hostile to the free exercise of religion.

- He ruled that prayers to Jesus Christ offered at the beginning of legislative sessions in the Indiana state House of Representatives violated the Constitution, but that prayers to Allah did not.

Given Hamilton's lack of qualifications and clear record of liberal ideology, the Senate should reject his nomination. President Obama's choice of Hamilton flies in the face of the desire of the vast majority of Americans for credentialed and impartial judges, and the Senate should vote accordingly.

04/22/2009 11:51AM

April 22, 2009

The Honorable Patrick J. Leahy
The Honorable Arlen Specter
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: *The Nomination and Appointment of Judge André M. Davis to the United States Court of Appeals for the Fourth Circuit*

Dear Chairman Leahy and Ranking Member Specter,

We are current and former law clerks and interns who have served the Honorable André M. Davis in his capacity as a federal and state judge in Maryland. We write, in our personal capacities, to express enthusiastic support for Judge Davis's nomination and appointment to the United States Court of Appeals for the Fourth Circuit.

Judge Davis's impressive qualifications are well-documented in his Questionnaire for Judicial Nominees. Throughout his 30-year legal career, Judge Davis has worked vigorously as a trial judge, a law professor, and a prosecutor. He has published extensively and has traveled around the world giving speeches and conducting trainings on a wide range of cutting-edge, legal topics. He has received numerous awards and has volunteered his time to many different community organizations. Although we shall not repeat all of his qualifications here, there is no question that Judge Davis is well-qualified to serve as a judge on the Fourth Circuit Court of Appeals.

But what the Questionnaire cannot tell you is what we will: Judge Davis is an extraordinary human being in every respect. His intellect, character, and work ethic are unparalleled. He is one of the most intelligent people we know, yet his desire to gain a deeper understanding about a particular case or topic never ends. From the bench, he is at ease asking litigants to educate him about a particular legal issue or a factual matter. In chambers, he values the input of his law clerks, but he rigorously studies for himself each matter before he issues a final decision. He has the highest moral and ethical standards, and he never prejudices a case. His judicial determinations are based always on careful consideration and application of the law and facts, never on personal ideology or prejudice. Judge Davis brings a strong sense of fairness to the judicial process. He treats all individuals, from criminal defendants to well-seasoned attorneys, with equal respect and dignity.

Judge Davis also embodies the highest degree of professionalism. He works tirelessly to ensure that cases are timely adjudicated. He is often the last person to leave the office, and can regularly be found in chambers on weekends working to ensure that his docket moves forward as efficiently as possible. Despite these rigors of case management and his numerous community

commitments, Judge Davis is always available for questions about the law or dialogue with clerks about cases.

Indeed, clerking for Judge Davis has been one of the preeminent learning experiences of our lives. Judge Davis has encouraged each of us, by example, to engage in a lifelong pursuit of learning. And he has encouraged each of us, both during and after our clerkships, to perform always to the best of our abilities. He remains a mentor to all of us in our post-clerkship careers as public defenders, as attorneys in government, corporate, and private practice, as civil rights advocates, and as public interest lawyers. No matter which career path any of us has chosen, Judge Davis makes a sincere effort to maintain close relationships with each of us, particularly through his biannual reunions. At each gathering, it is heartening to witness the diversity of this group, a product of Judge Davis's practice of hiring law clerks of various racial, ethnic, gender, and law school backgrounds. It is nothing less than a testament to Judge Davis's character and commitment to the ideals upon which our great nation was founded.

We would be remiss if we did not mention that rarely do we attend a community event in Baltimore without encountering adulation for Judge Davis's legacy. Community leaders, city council members, lawyers, and professors each have their own story about Judge Davis's immense contributions to improving his community. Confirming Judge Davis's nomination to serve on the Fourth Circuit would not only further his respectable legacy, but would also bolster the legacy of the Court itself.

For all of these reasons, we wholeheartedly endorse Judge Davis's nomination to the United States Court of Appeals for the Fourth Circuit, and we thank the honorable members of the Senate Judiciary Committee for their time and consideration.

Sincerely,

/s/ Cecelia Assam
Cecelia Assam
Law Clerk, 1992-93

/s/ Kathy Crosby
Kathy Crosby
Law Clerk, 1990-92, 1997-99

/s/ Lisae C. Jordan
Lisae C. Jordan
Law Clerk, 1993-94

/s/ Rudy Brioché
Rudy Brioché
Law Clerk, 1995-96

/s/ Evan S. Stolove
Evan Stolove
Law Clerk, 1995-96

/s/ Jamellah Braddock Ellis
Jamellah Braddock Ellis
Law Clerk, 1996-97

/s/ Veronica Jones

 Veronica Jones
 Law Clerk, 1996-97
/s/ Carolyn Silver

 Carolyn Silver
 Law Clerk, 1998-99
/s/ Carrie Corcoran

 Carrie Corcoran
 Law Clerk, 1994-95, 1997-98
/s/ Suzanne Sangree

 Suzanne Sangree
 Law Clerk, 1999-2001
/s/ Alexander Rundlet

 Alexander Rundlet
 Law Clerk, 1999-00
/s/ Tovah R. Calderón

 Tovah R. Calderón
 Law Clerk, 2000-01
/s/ Jennifer Pokempner

 Jennifer Pokempner
 Law Clerk, 2000-01
/s/ Jennifer Squillario

 Jennifer Squillario
 Law Clerk, 2001-02
/s/ Staci Krupp

 Staci Krupp
 Law Clerk, 2001-02
/s/ Rudhir B. Patel

 Rudhir B. Patel
 Law Clerk, 2002-03
/s/ Jamilah Jefferson

 Jamilah Jefferson
 Law Clerk, 2002-03
/s/ S. David Mitchell

 S. David Mitchell
 Law Clerk, 2003-04
/s/ Jamillia Ferris

 Jamillia Ferris
 Law Clerk, 2003-04
/s/ Heather L. Gomes

 Heather L. Gomes
 Law Clerk, 2004-05
/s/ Sahar Aziz

 Sahar Aziz
 Law Clerk, 2004-05
/s/ C. Justin Brown

 C. Justin Brown
 Law Clerk, 2005-06
/s/ Shane Anderson

 Shane Anderson
 Law Clerk, 2005-06
/s/ Seema Patel

 Seema Patel
 Law Clerk, 2006-07

/s/ Jasmine McGhee

Jasmine McGhee
Law Clerk, 2006-07

/s/ Elisabeth S. Walden

Elisabeth S. Walden
Law Clerk, 2007-08

/s/ Anand Das

Anand Das
Law Clerk, 2007-08

/s/ Nina Schichor

Nina Schichor
Law Clerk, 2008-09

/s/ Melissa Martinez

Melissa Martinez
Law Clerk, 2008-09

/s/ Arielle Harry-Bess

Arielle Harry-Bess
Intern, 2002

/s/ Lauren Mooney

Lauren Mooney
Intern, 1997

/s/ Dennis Damon

Dennis Damon
Intern, 2004

/s/ Deepti Kulkarni

Deepti Kulkarni
Intern, 2004

/s/ Melissa Archie-Burton

Melissa Archie-Burton
Intern, 2005

/s/ Samanda Hawkins

Samanda Hawkins
Intern, 2005

/s/ Michael Melick

Michael Melick
Intern, 2008

/s/ Katrina Rouse

Katrina Rouse
Intern, 2007

/s/ Emily Dubansky

Emily Dubansky
Intern, 2008

/s/ Michael Milstein

Michael Milstein
Intern, 2008

435

APR-16-2009 THU 04:37 PM AAFP INSURANCE

FAX NO. 8002237463

P. 01



April 16, 2009

US Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Attn: Majority Office (202) 224-9516
Minority Office (202) 224-9102

RE: David Hamilton

Dear Senators:

I urge you **NOT** to nominate David Hamilton for the 7th Circuit Court of Appeals. There is little evidence that he has the suitable judicial temperament worthy of such an honor. Certainly, in this great nation, there are more qualified people from which to choose.

Sincerely,

A handwritten signature in cursive script, appearing to read "Betty M. Freeman".

Betty M. Freeman, LUFC ❖ 1023 Romany Road ❖ Kansas City, MO 64113

04/16/2009 6:02PM

ALEXANDER GORDON, IV
ATTORNEY AT LAW
8615 COMMERCE DRIVE #1
EASTON, MARYLAND 21601-7421
410-822-3702
FAX 410-822-9356

April 20, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I write the Senate Judiciary Committee in strong support of the nomination of Secretary Thomas E. Perez as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. A brief review of his amazing CV stands on its own two feet. My personal interaction and professional relationship tells me that Secretary Perez is a perfect fit for this position with the Attorneys General Office.

By way of background, for thirty some years I have written numerous volumes, letters, and articles on Maryland foreclosure. I have been interviewed by NPR, Business Week, The Wall Street Journal, MSBA Journal, AP, UPI, Fox TV, and been asked to testify at the Maryland Senate Judiciary and House. I have helped draft some of the new legislation in Maryland relating to bankruptcy exemptions, protection of homeowners in foreclosure and the Rules of Procedure.

Over the last thirty years writing these books was fairly simple: the laws were largely unchanged since the Ginsburg brothers wrote *Mortgages and Other Liens* in the 1930's. Although the foreclosure system was well understood, it was a remarkably fast and lacked any fair process, let alone *due* process. Attempts for revision were uniformly rejected out-of-hand, time and time again.

Governor O'Malley saw a problem with a foreclosure process where it only required mailing a notice by regular and certified mail ten days before the auction. The only advertisements were: Wednesday, Wednesday, Wednesday, sale on Thursday: 15 days. If one did not receive the "10 day certified letter because of a two week vacation, too bad. When returning from the two week vacation one might open the 10 letter telling you, at that point, when your house *had* been sold: no right of redemption.

The Honorable Patrick J. Leahy
The Honorable Arlen Specter
April 20, 2009
Page 2

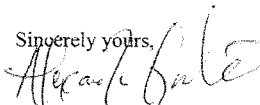
Well, the list of due process deficiencies went on and on. But no one in authority cared one little bit. Good for the author of *Gordon on Maryland Foreclosures*, Editions I-IV. Not so good for the honest but unfortunate borrower.

With that in mind, the Governor established the "Governor's Task Force to Preserve Home Ownership." The Task Force was headed by the Secretary of the Department of Labor Licensing and Regulation, Secretary Thomas E. Perez. Tom Perez diplomatically constructed a massive set of Task Forces that included elements of *all* sides. After numerous meetings and hearing, the Secretary pulled together a remarkable consensus of opinion for foreclosure reform. Lenders were slightly affected and homeowners were given a meaningful opportunity to attempt a loan restructuring, modification, or some other form of "loss mitigation," as well as a meaningful mini-moratorium on foreclosures.

Now, what was amazing to me was that all of Secretary Perez's hearings resulted in a consensus for change and improvement in the foreclosure process: service of court papers, a notice of intent to foreclose, notice forms, and the involvement of the Department of Labor Licensing & Regulation in tracking the renewal of mortgage broker licenses where ill-advised mortgages were being processed by the lenders. In days gone by, self-interest precluded the need to regulate mortgage brokers at this level. The packaging, sale, and securitization, and huge up front fees changed all the rules. The Governor signed the new foreclosure laws an Emergency Order so they would be effective as soon as possible.

I could go on and on. Clearly, Secretary Perez will be a tremendous asset to the Department of Justice. I urge his confirmation.

Thank you.

Sincerely yours,

Alexander Gordon, IV

AGIV/jk

NWGOP



Honorable Patrick Leahy
Chairman of The Senate Judiciary Committee
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

4/6/09

Re: The Nomination of U.S. District Judge – Andre Davis:

Dear Senator Leahy:

I think it is appropriate for me to provide the attached documents to citizens who are interested in maintaining integrity in our system of government. Since you are one of those distinguished citizens, you are free to disseminate this information in a manner that will serve the cause of justice and the overall public good. You can contact me at 240-602-1675 for further information. Thanks for you help.

Sincerely Yours,



Earl Gordon

Nationalist Wing of the Republican Party P.O. Box 1513 - Olney, Maryland 20830- 1513



★ ★ ★ ★ NWGOP ★ ★ ★ ★

Honorable Harry Reid
Majority Leader The United States Senate
528 Hart Senate Office Building
Washington, D.C. 20510

4/6/09

Re: Hon. Andre Davis—Nominee for the U.S. 4th Circuit Court of Appeals:

Dear Senator Reid:

This letter concerns the decision of President Obama to choose U.S District Judge, the Honorable Andre Davis, to sit on the United States 4th Circuit Court of Appeals. Before you move on this nominee, I would like you to review case # 04 – 1013 that was before Judge Davis in the U.S. District Court in Baltimore, Maryland. I think you will find a situation in this case that will make it utterly impossible to support this nominee's elevation to the U.S. 4th Circuit Court of Appeals.

Case # 04 – 1013 was brought against the defendants after acts of horrendous torture involving high frequency of electricity to the genitals of the plaintiff by one physician and by the malicious and racist attempted amputation of the genitals of the plaintiff by another physician. The medical defendants in this case participated in conspiracy, deceptions, abuse of power, fraud, and attempted medical torture under the guise of medical treatment in an effort to cover up the crime of torture by two other physicians.

And the State of Maryland Defendants and Attorney Louie W. Shaw were involved with the Johns Hopkins Hospital medical defendants in horrendous acts of conspiracy, abuse of power, fraud and public deception in an effort to cover acts of torture and to deny the plaintiff his constitutional and due process rights.

It must be noted that the conduct of the doctors who abused the plaintiff were called torture, maiming, attempted murder and medical malpractice by various physicians in medical reports and in affidavits that were given to Judge Davis. However, in an act of judicial abuse that far transcends the regular acts of professional incompetence or the ordinary acts of the abuse of judicial power, Judge Davis chose to ignore the medical reports and the affidavits of various physicians who confirmed the torture of the plaintiff, as well as other documents that proved the abuse of power, conspiracy and fraud by Maryland Health Claims Arbitration Office, Attorney Louie W. Shaw and Johns Hopkins Hospital's legal department and sided with those who torture, those who used conspiracy and deception and those Maryland state court workers who broke the law to cover up torture and tossed the case without permitting any form of discovery as the law required.—It is impossible to rule out bribery in this particular instance!

I would like you and your colleagues to examine case# 04 -1013 including all the exhibits that were attached to the Complaint and the other pleadings that were presented to Judge Davis. And Judge Davis should be given the chance to explain himself to the Senate in this particular instance. -- I am of the opinion that to add Judge Davis to a 4th Circuit Court of Appeals without first examining his conduct in case # 04 - 1013 would be an act of negligence that will further move that Court in a direction that would rob thousands of abused Americans their due process rights. -- It must be noted that two very important physicians who were involved in this case and who confirmed the torture of the plaintiff in medical reports as well as one of the lawyers who once represented me are all now deceased.

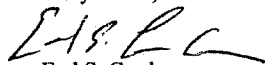
Dr. Carol Sheridan, a professor of electromyography at Georgetown University Hospital, stepped forward and objectively confirmed the torture of the Plaintiff at Sibley Hospital by a former Johns Hopkins surgeon and before she could be deposed, she was dead. Dr. Joseph Bloom, a distinguished urologist, stepped forward and objectively confirmed the torture of the Plaintiff at Sibley Hospital and recommended a second surgery to help. Someone seemed to force him to write a letter repudiating his original findings that confirmed torture and before he could be deposed, he was dead.

In an effort to intimidate the Plaintiff to drop his case against the culprits who tortured him, they cold-bloodedly and brutally murdered his mother at Sibley Hospital. -- It must be noted that one Sibley Hospital nurse confirmed that it was the medication that a Sibley doctor administered to the Plaintiff mother that was the source of her illness.

And Dr. John Lawson (a young Sibley Memorial Hospital physician) then stepped forward and made it be known to the Plaintiff that he did not know why Sibley let the things that happened to his mother happen, because standard procedures were not followed and before this very young doctor could be put under oath, he was dead. And Joseph Rosenberg, a young and distinguished lawyer who once represented the Plaintiff diligently pointed out to him the evils of the U.S. justice system against people like him, dead. -- His life was cut short. Why? He spoke the truth.

Just look at what U.S Federal District Judge, The Honorable Andre Davis, did in Case # 04 - 1013 and what Honorable James Robertson, U.S. District Judge for the District of Columbia did to the Plaintiff in Case # 1. 02CV01543 in The U.S. District Court for the District of Columbia. The corruption that these two judicial entities demonstrated in Court Orders in the Sibley Memorial Hospital torture case and the Johns Hopkins cover up and attempted torture and murder cases is fascistic, racist and an abomination. Thanks for your attention to this matter.

Truly Yours,



Earl S. Gordon

National Representative of The Nationalist Wing of The Republican Party.

WILMERHALE

April 28, 2009

Jamie S. Gorelick

The Honorable Patrick J. Leahy, Chairman
United States Senate
Committee on the Judiciary
244 Dirksen Senate Office Building
Washington, DC 20510



The Honorable Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
244 Dirksen Senate Office Building
Washington, DC 20510

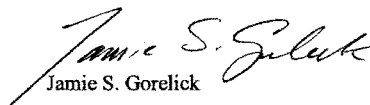
Dear Chairman Leahy and Ranking Member Specter:

I am writing in connection with the nomination of Tom Perez to become Assistant Attorney General for the Civil Rights Division. Tom was among the strongest lawyers and leaders in the Civil Rights Division when I was Deputy Attorney General. The Division benefitted from his experience and judgment, as it certainly will if he is confirmed to lead the Division.

Tom has also been a strong civic leader in Montgomery County, Maryland, where I live. He takes responsibility for the health and well-being of his community in a way that is truly admirable.

I urge his confirmation.

Sincerely yours,


Jamie S. Gorelick

Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue NW, Washington, DC 20006
Beijing Berlin Boston Brussels Frankfurt London Los Angeles New York Oxford Palo Alto Waltham Washington

WILSON

M. Gayle Hafner, Esq.
302 E. Joppa Road, #1710
Towson, Maryland 21286

April 8, 2009

Senator Patrick J. Leahy, Chair
Senator Arlen Specter, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Via electronic mail: Sarah_Hackett@judiciary-dem.senate.gov

RE: **Support** for the Nomination of **Judge Andre Davis** to the Fourth Circuit Court of Appeals

Dear Senators Leahy and Specter,

This is a personal note in support of Judge Davis' nomination to the Fourth Circuit Court of Appeals. I work at Maryland Disability Law Center and do not write on behalf of MDLC, only for myself. I have known Judge Davis for twenty years in my roles as a courtroom litigator, as a litigant in my own Americans with Disabilities Act (ADA) litigation, and as a role model for my brief service as a state administrative law judge (ALJ.) I have been a lawyer for thirty years, have significant disabilities, am a full time wheelchair user, and have profound respect for Judge Davis.

In each of my roles relative to Judge Davis, he has been a beacon of light, illuminating the path toward a fair and just outcome. I will give you brief examples of my experience with Judge Davis in these roles.

First, when Judge Davis presided in state circuit court, I worked at the Legal Aid Bureau and represented children in foster care for whom the state sought to terminate parental rights in order to implement a plan of adoption. I had the opportunity to observe Judge Davis not only in my cases but also in a variety of cases while we waited for the docket to clear for our confidential and rather long, drawn out multi-day hearings to begin. During these years, I saw Judge Davis' calm courtroom demeanor under intense pressure. His equanimity never seemed to falter no matter how hot the facts and arguments before him. I saw violently abusive spouses begin with hostility and melt into obedience under Judge Davis' steady, well reasoned and thoroughly explained protective orders.

The litigators I watched may not have agreed with his rulings, of course, but each knew exactly on what legal and equity basis he ruled. Judge Davis listened, inquired, pressed for more explanation, and was even handed in each of the hundreds of courtroom decisions I saw. Years later, he became my role model for a bench judge's appropriate courtroom demeanor.

Next, I experienced Judge Davis' equanimity when I was a plaintiff in a civil rights case. In 1996, I sued the City of Baltimore and Maryland State Judiciary in federal court to address

programmatic and architectural barriers in the two circuit courthouses' in violation of the ADA and §504 of the Rehabilitation Act. I was in one or both of the courthouses four out of five days every week. I grew physically and emotionally exhausted during my daily struggles with the inaccessible city owned and state run facilities. On rare occasions, judges would allow me to use their chamber bathrooms in consideration of how horribly inaccessible the public facilities were. My ADA counsel negotiated with the city and state courts' administrative judge to no avail. The judges in front of whom I appeared lodged complaints on behalf of lawyers, witness, and parties with disabilities with no perceivable result.

The federal lawsuit was assigned to the recently appointed Judge Andre Davis. His approach to the federal law, the ADA, § 504 and implementing regulations, parties and lawyers was clear, knowledgeable, concise, and fair. During the lawsuit, named plaintiffs expanded to include disabled jurors, disabled state court parties, and other disabled lawyers. The resulting consent decree has served thousands of people in Maryland, with and without disabilities. The two busiest buildings in Baltimore and the two busiest courthouses in Maryland are now fully accessible, within the constraints of the more than a century old courthouses. That which could be done was done.

Under Judge Davis' steady hand, the state and city worked through the multi-year remodeling project with plaintiffs' counsel and plaintiffs. Judge Davis' respect for the parties and balanced oversight during the years of this litigation serves as a model for civil rights litigation resolution, in my personal opinion.

Finally, when I was an administrative law bench judge, briefly in 1997-1998, in the state central panel, my experiences with Judge Davis served as a model for how I conducted my assigned hearings. My co-workers, teaching judges, state assistant attorneys general and private counsel who appeared to argue cases before me, and observers, complimented my judicial demeanor. My ALJ instructors seemed surprised that I could be so balanced after a long career of advocacy. I pointed out that I had been a courtroom lawyer for fifteen years and had appeared before good and not-so-good judges. Also, I understood what the lawyers and parties needed from the bench during the hearing. Judge Davis was the role model who provided me the best comments.

For the individuals and lawyers in the circuit, please recommend confirmation of Judge Andre Davis to the Fourth Circuit Court of Appeals as soon as possible. We need him.

Thank you for your consideration. Please contact me with any questions of if I may be of any service to the Committee.

Yours truly,

M. Gayle Hafner
443-692-2491 (w)
443-831-7226 (c)
410-321-4950 (h)
gayleh@mdiclclaw.org



The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

It is a great honor to recommend Thomas E. Perez for the position of Assistant Attorney General for Civil Rights.

We have had the pleasure of working with Mr. Perez in his capacity as Secretary of the Department of Labor, Licensing and Regulation, which is home to the Maryland Real Estate Commission. Secretary Perez has always worked with our industry in a cooperative manner, addressing issues such as the foreclosure crisis, abusive mortgage and lending practices, employment misclassification and the dedicated funding mechanism for the Real Estate Commission. He has demonstrated a superior intellect, a great willingness to moderate between disparate interest groups and a tireless commitment to public service.

While it is clear that Mr. Perez has both the intellect and the determination to provide leadership for the Civil Rights Division, the highest complement we can pay him is that he is a man of his word. In the negotiations over the employment misclassification legislation adopted this year by the Maryland General Assembly, Secretary Perez promised the Maryland Association of REALTORS® that the final product would not disturb the statutory exemptions from workers compensation and unemployment insurance for licensed real estate agents and brokers. The bill awaits the signature of Governor O'Malley and our concerns were incorporated into the legislation, just as Secretary Perez promised.

On behalf of the 29,000 members of the Maryland Association of REALTORS®, we urge the Judiciary Committee to act favorably on the nomination of Thomas E. Perez.

Sincerely,

A handwritten signature in black ink, appearing to read 'Iona C. Harrison'.

Iona C. Harrison
MAR President

2594 Riva Road, Annapolis, Maryland 21401-7406
800-638-6425 • Fax 410-266-7532 • www.mdrealtor.org





April 27, 2009

VIA FACSIMILE AND ELECTRONIC MAIL

The Honorable Patrick J. Leahy
 Chairman
 U.S. Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Arlen Specter
 Ranking Minority Member
 U.S. Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Re: *HNBA Endorsement of Thomas E. Perez for Assistant Attorney General for Civil Rights at the U.S. Department of Justice*

Dear Senators Leahy and Specter:

On behalf of the Hispanic National Bar Association (HNBA), we write to support and encourage the immediate confirmation of Mr. Thomas E. Perez as Assistant Attorney General for the Civil Rights Division ("Division") of the U.S. Department of Justice. The HNBA is a non-profit, non-partisan Association that represents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, law students and paralegals in the United States and Puerto Rico

As required by our *Policies and Procedures Governing Executive Endorsements (2008)*, the HNBA has conducted appropriate due diligence concerning Mr. Perez's professional qualifications for the position to which President Obama has nominated him. We also have the advantage of having worked with Mr. Perez in a variety of contexts over the years. Based on our review, it is clear that he possesses both the experience and qualifications required to distinguish himself as Assistant Attorney General.

Currently serving as Secretary of Maryland's Department of Labor, Licensing and Regulation (DLLR), Mr. Perez has spent his entire career in public service. His career showcases an impressive track record of leadership and advocacy in civil rights at the local, state and national levels of government which, together with his extensive relevant experience and strong academic credentials, render him extraordinarily well-prepared to lead the Division.

Mr. Perez received his undergraduate degree from Brown University, where he majored in International Affairs. He pursued his graduate studies at Harvard, where he received both a Master Degree in Public Policy from The Kennedy School of Government and a law degree with

HNBA Endorsement Letter for Thomas E. Perez
 April 27, 2009
 Page 2 of 2

honors from Harvard Law School in 1987. While at Harvard Law School, Mr. Perez served as the Executive Editor of the Harvard Civil Rights and Civil Liberties Law Review.

Mr. Perez began his legal career at the U.S. Department of Justice as part of the Attorney General's Honors Program, where he served as a Trial Attorney in the Criminal Section of the Division. His professional excellence led to his progression at the Division, where he eventually became the Deputy Chief of the Criminal Section in 1994. In addition, Mr. Perez developed extensive congressional and legislative experience while serving as Special Counsel to Senator Edward M. Kennedy, becoming his principal advisor on civil rights, criminal justice and constitutional issues. During the last two years of the Clinton administration, Mr. Perez served as the Director of the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services. There, he led that Office's transformation from a critically important yet chronically underperforming unit into an entity capable of effectively executing the federally mandated enforcement of civil rights laws protecting vulnerable populations.

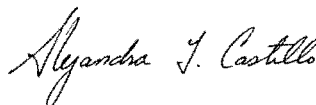
Mr. Perez is among the stellar members of the Hispanic community and has demonstrated his leadership not only at the federal level but also a leader in state and local government. In 2002, Mr. Perez became the first Latino to be elected to the Council of Montgomery County, Maryland, and served as Council President from 2005 through 2006. In 2007, he became the first Latino to oversee over 1700 employees at a state agency as Maryland's Secretary of Labor.

Mr. Perez's professional qualifications, personal attributes and dedication to public service make him an outstanding candidate to serve as the Assistant Attorney General for Civil Rights at the U.S. Department of Justice. We stand ready to assist in your deliberations should there be any questions. Please feel free to contact us at our national office at (202) 223-4777 or directly at (302) 992-4213 for Ms. Romero or (202) 271-7011 for Ms. Castillo.

Sincerely yours,



Ramona E. Romero
 National President



Alejandra Castillo
 Executive Endorsements Committee

cc: The Honorable Eric H. Holder, Jr., U.S. Attorney General
 Mr. Thomas E. Perez, Esq.
 Román D. Hernández, HNBA President-Elect
 Jessica Herrera-Flanigan, Region V President
 HNBA Executive Committee
 M. Lucero Ortiz, HNBA Director of Programs and Policy

CHRIS VAN HOLLEN
8TH DISTRICT, MARYLAND

COMMITTEE ON
WAYS AND MEANS

COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM

Congress of the United States
House of Representatives
Washington, DC 20515

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(301) 891-6582

www.vanhollen.house.gov

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

April 22, 2009

Dear Chairman Leahy and Ranking Member Specter:

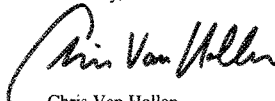
I am writing to offer my wholehearted support for the confirmation of Thomas E. Perez as Assistant Attorney General for Civil Rights. I've known Tom since 2002, and have had both the honor of serving as his representative to Congress and the privilege of having him serve as my representative to the Montgomery County Council.

I have seen firsthand Tom's ability to bridge divides and build coalitions in the interest of advancing the common good. Throughout his service to the people of Montgomery County and Maryland, this ability has gained him strong support from the business community as well as the nonprofit and faith communities. It has also allowed him to successfully spearhead the State's nation-leading efforts to combat the foreclosure crisis. He has a proven track record for making decisions based on input from all stakeholders, and for being open to all opinions even when they differ from his own.

Prior to his service to his community and his state, Tom served this country ably as a career attorney in the Civil Rights Division. His knowledge of the law and his respect for the Department of Justice as an institution guarantee that he will lead the Division with integrity and with respect for the career staff and their tireless work. His talent for building coalitions makes him a natural to reinvigorate the Division.

Tom is an outstanding citizen and a devoted public official who has served his county, his state and his country with distinction. I am honored to ask you to support his nomination.

Sincerely,



Chris Van Hollen

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS



Maryland State Bar Association, Inc.

April 28, 2009

The Maryland Bar Center
520 West Fayette Street
Baltimore, MD 21201-1781

Hon. Barbara A. Mikulski
Senator
Suite 503, Hart Senate Office Bldg.
Washington, D.C. 20510

410-685-7978
800-492-1064

Hon. Benjamin L. Cardin
Senator
Suite 509, Hart Senate Office Bldg.
Washington, D.C. 20510

By Electronic and First Class mail

fax 410-685-1016
tel 410-539-3186
www.msba.org

Re: Maryland State Bar Association Recommendation of Hon. Andre M.
Davis

Dear Senators Mikulski and Cardin:

Katherine Kelly Howard
President

Pursuant to Article 7, Section 4, of the Bylaws of the Maryland State Bar Association, the Committee on Judicial Appointments is authorized to make recommendations regarding the nominations of candidates for the United States Court of Appeals for the Fourth Circuit.

Thomas C. Cardano
President-Elect

Accordingly, the Committee on Judicial Appointments of the Maryland State Bar Association has met and reviewed the nomination of Judge Andre M. Davis to the Fourth Circuit Court of Appeals.

Thomas D. Murphy
Secretary

It is with great pleasure that I report to you and your Committee that our Judicial Appointments Committee, and therefore, the Maryland State Bar Association, **Highly Recommends** Judge Davis for this position.

John P. Kudel
Treasurer

The Maryland State Bar Association takes great pride in providing this information to you and looks forward to working with you and your staff in the future.

Paul V. Carlin
Executive Director

Sincerely:


Katherine Kelly Howard, Esq.
President

STENY H. HOYER
MAJORITY LEADER
 5TH DISTRICT, MARYLAND



Congress of the United States
House of Representatives

Washington, DC 20515-6502

April 21, 2009

The Honorable Patrick J. Leahy
 Chairman
 Committee on the Judiciary
 United States Senate
 224 Dirksen Building
 Washington, DC 20510

The Honorable Arlen Specter
 Ranking Member
 Committee on the Judiciary
 United States Senate
 224 Dirksen Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

I strongly support for the nomination of Thomas Perez for Assistant Attorney General for the Civil Rights Division of the Department of Justice, and I urge his speedy confirmation. Currently leading Maryland's Department of Labor, Licensing and Regulation, Secretary Perez has shown outstanding leadership throughout his career at all levels of government.

I have worked with Secretary Perez on many critical issues, and I consider him an excellent choice for the Civil Rights Division. He has already served there in a variety of key positions. As a prosecutor in the Division, he was the lead attorney in many high-profile civil rights cases. As Deputy Assistant Attorney General for Civil Rights, he oversaw complex litigation in the employment and education areas. As a member of the Kaiser Commission on Medicaid and the Uninsured, as well as the former Director of the Office for Civil Rights at the Department of Health and Human Services, Secretary Perez would also bring to his new role a deep understanding of health care disparities. In my state of Maryland, Secretary Perez led a 1,600-employee department and was the principal architect of Governor O'Malley's wide-ranging foreclosure prevention initiative. Secretary Perez also negotiated written agreements with major mortgage servicing companies to provide relief to homeowners facing foreclosure.

Leading the Civil Rights Division requires high-level management and consensus-building skills. I am confident that Secretary Perez possesses those skills, and I urge you to confirm his nomination.

With warmest personal regards, I am

Sincerely yours,

STENY H. HOYER

MAJORITY LEADER OFFICE:
 H-107, THE CAPITOL
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 WASHINGTON, DC 20515
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135 North Pennsylvania Street, Suite 1500
Indianapolis, IN 46204
(317) 269-2000, fax (317) 269-1915

United States Senate Judiciary Committee
Senator Patrick J. Leahy, Chair
Senator Arlen Specter, Ranking Member

April 28, 2009

Re: Nomination of Judge David F. Hamilton to the United States Court of Appeals for the Seventh Circuit

Dear Chairman Leahy and Ranking Member Specter,

On behalf of the Appellate Practice Section of the Indianapolis Bar Association, we write this letter in support of the nomination of Judge David F. Hamilton to the United States Court of Appeals for the Seventh Circuit. Our section includes appellate attorneys who are Republicans, Democrats, and Independents, but the activities of the group are non-partisan and impartial. In our personal and collective experience, we have known Judge Hamilton to be an exceptional judge, whom we believe will make an outstanding addition to the Seventh Circuit Court of Appeals.

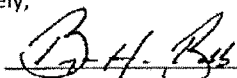
Some of our members have known Judge Hamilton since his days in private practice. We respected the quality of legal work he produced for his clients. He was kind and civil when we were on opposite sides of cases. He gained extensive trial and appellate litigation experience in both the federal and Indiana courts.

When now Senator Evan Bayh became Governor of Indiana, Judge Hamilton joined his office as Chief Legal Counsel. He performed his state government duties with diligence, excellence and fair consideration. Some of us worked with him on litigation matters, reviewing bills for constitutionality, or on public policy matters. In all matters, he brought great attention to detail and clear thinking.

After nomination and confirmation by the Senate, Judge Hamilton joined the bench of the United States District Court for the Southern District of Indiana. Our members practiced before him there, took appeals from his judgments, and defended his judgments. While we might not have always agreed with his decisions, we believe that he has always given due consideration to our arguments, and that he has always set forth the rationale of his rulings in a fair and even handed manner. He is even-handed to litigants and counsel in his court; he has discharged the duties of district judge (and more recently, Chief Judge) in an exemplary fashion; and he has adjudicated the cases before him in a professional and judicious manner. His opinions are well-reasoned, and clearly state the basis for his rulings. He is not an ideologue; he is among our finest jurists.

While we will be saddened by his departure from the District Court, we believe he will make a great addition to the federal appellate bench. In closing, we enthusiastically support the nomination of Judge David F. Hamilton to the United States Court of Appeals for the Seventh Circuit and believe him to possess the requisite intellect, experience, diligence, character and temperament that appellate litigants deserve and expect from their judges.

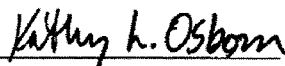
Sincerely,



Bryan H. Babb

Section Chair

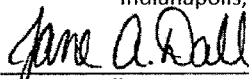
BOSE MCKINNEY & EVANS LLP
111 Monument Circle
Indianapolis, IN 46204



Kathy L. Osborn

Section Chair-Elect

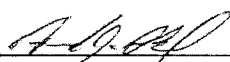
BAKER & DANIELS LLP
300 N. Meridian Street
Indianapolis, IN 46204



Jane A. Dall

Section Secretary

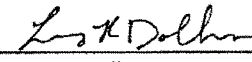
BAKER & DANIELS LLP
300 N. Meridian Street
Indianapolis, IN 46204



Arend J. Abel

Section Treasurer

COHEN & MALAD, LLP
One Indiana Square
Indianapolis, IN 46204



Lucy R. Dollens

At-Large Member

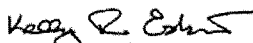
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Indianapolis, IN 46204



Michael P. Dugan

At-Large Member

DUGAN & VOLAND LL
3388 Founders Road
Indianapolis, IN 46268



Kelly Eskew

At-Large Member

BINGHAM MCHALE LLP
2700 Market Tower
Indianapolis, IN 46204



Stephen J. Peters

At-Large Member

Harrison & Moberly, LLP
10 West Market Street
Indianapolis, IN 46204

Executive Committee Members, Appellate Practice Section
INDIANAPOLIS BAR ASSOCIATION

452



Larry A. Jackson
President Emeritus

May 22, 2009

Senator Jeff Sessions
Russell Office Building 335 SR
Washington, D C 20510

Dear Senator Sessions:

The father of Judge David F. Hamilton is one of the most outstanding members of the Indiana Conference of the United Methodist Church. When I served in the 1970s at Vice President of the University of Evansville my wife and I were members of the church which Richard Hamilton served as senior minister. I know the family well and they represent exactly the kind of values which I am sure you support and wish were present in all American families. I urge you to remove the block to David Hamilton's appointment. We need men and women with his values and integrity serving as judges.

Sincerely,

Larry A. Jackson

cc. Senator Patrick Leahy ✓

*I am a summer resident of
West Wardsboro and count you as
my Senator.*

Larry Jackson

Home Address: 604 West Cambridge Avenue, Greenwood, SC 29649
Home (864) 229-3408 Email ljacks@embarqmail.com



John M. Kane
President and CEO

April 17, 2009

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlin Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

Please accept this letter as my endorsement of Mr. Thomas E. Perez as Assistant Attorney General for Civil Rights. I first met Tom when he was a member of the Montgomery County, Maryland County Council. In his capacity as a member of the County Council, he showed a true willingness to work closely with Republicans and Democrats alike and emphasized an open-mindedness that was refreshing. I met often with Tom to discuss a variety of issues affecting the livelihood of Montgomery County residents in the state of Maryland. Never once did a discussion lead to partisan politics, and more often than not, we both walked away better informed and educated.

My relationship with Mr. Perez developed further as I became Chairman of the Maryland Republican Party from 2002-2006. Over the course of those four years, we would meet on occasion to review the political landscape in the state of Maryland. We would discuss business issues, wherein he regularly showed a willingness to listen, as well as, bring different stakeholders to the table to work on issues outside the realm of partisan politics. A few folks thought it odd that a leading Democrat on the County Council of Montgomery County, Maryland maintained such a strong relationship with the chair of the Maryland Republican Party. What most of them did not understand was that with Mr. Perez, it was never about politics, but about policy and what was best for those he served.

His prior experience of working at the Justice Department, being involved in local politics dealing with the daily challenges local government, and his current role as Secretary of the Department of Licensing and Regulation, gives him a unique perspective to be able to serve, if confirmed, as Assistant Attorney General for Civil Rights.

If you have any questions, please do not hesitate to contact me on [REDACTED].

Respectfully submitted,

John M. Kane
President and CEO

IMK:jrf

6500 Kane Way Elkridge, Maryland 21075
Wash - (301) 621-2100 Balto - (410) 799-3200

EDWARD M. KENNEDY
MASSACHUSETTS

United States Senate

WASHINGTON, DC 20510-2101

April 16, 2009

The Honorable Patrick Leahy
Chairman, Senate Committee
On the Judiciary
Washington, D.C. 20510

The Honorable Arlen Specter
Ranking Member, Senate Committee
On the Judiciary
Washington, D.C. 20510

Dear Pat, Arlen and Members of the Committee:

I write to enthusiastically endorse Tom Perez's nomination to be Assistant Attorney General for Civil Rights in the Department of Justice. As you know, Tom did an excellent job for me from 1995 to 1998, on my Judiciary Committee staff when I was a member of the Committee. I believe he's an exceptional choice for Assistant Attorney General, and I urge his prompt confirmation.

During Tom's impressive service on my staff, he worked hard and well on civil rights, hate crimes, and a variety of immigration, criminal and constitutional issues. Work on civil rights has been at the core of Tom's career, which began as a prosecutor in the Criminal Section of the Civil Rights Division, where he helped bring to justice the perpetrators of hate crimes, including racially-motivated shootings. He also prosecuted law enforcement officials involved in violent and corrupt practices, and his work as a career prosecutor earned him promotion to deputy chief of the Criminal Section.

After serving on my staff, Tom returned to the Civil Rights Division as a Deputy Assistant Attorney General, supervising the Division's criminal prosecutions, and its litigation in the areas of education and employment discrimination. He had a key role in establishing the interagency Worker Exploitation Task Force, which coordinated enforcement of laws against involuntary servitude and trafficking in persons.

In 1999, Tom became Director of the Office for Civil Rights at the Department of Health and Human Services, where he led a staff of 230 people in ensuring that health and human services providers complied with civil rights laws.

Letter to Senator Leahy and Senator Specter
April 16, 2009
Page Two

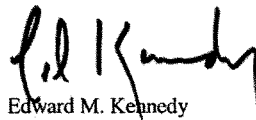
Upon leaving the federal government in 2001, Tom became a professor of law at the University of Maryland School of Law. Motivated by his strong desire to make a difference in peoples' lives, Tom also was elected to the Montgomery County Council in Maryland, and became a leader in promoting affordable housing and affordable health care, as well as improvements in education. Finally, for the past two years, Tom has served as Secretary of Maryland's Department of Labor, Licensing and Regulation.

A main unifying theme of Tom's career is his desire to help people, by ensuring that their rights are protected and that they receive the services they need. His commitment to public service and his ability to be effective in both executive and legislative positions is impressive. He has been energetic in seeking change, and working cooperatively with others to achieve it.

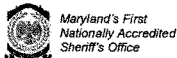
A second main theme of Tom's career has been his exceptional performance as a lawyer. He's been highly successful as a prosecutor, as a lawyer serving this Committee, as a Deputy Assistant Attorney General and as a law professor. Importantly, Tom understands the role of a government lawyer. Having been a career attorney in the Department of Justice, he knows the importance of developing effective working relationships with career employees and making sure that law enforcement decisions are made on the basis of the facts and the law, without favoritism based on partisanship or ideology. In light of the challenges that the Department of Justice, and especially the Civil Rights Division, have faced in recent years, these are indispensable qualities in an Assistant Attorney General for Civil Rights.

Tom's outstanding legal skills, his years of impressive experience as a prosecutor, his career-long commitment to enforcing civil rights, and his thorough familiarity with the legal and policy issues in the Civil Rights Division make him uniquely well qualified to lead the Division now. I strongly urge the Committee to report his nomination favorably.

Sincerely,



Edward M. Kennedy



Raymond M. Kight
Sheriff

Darren M. Popkin
Chief Deputy

50 Maryland Avenue • Rockville, Maryland 20850 • 240-777-7000 • 240-777-7148 Fax

April 21, 2009

The Honorable Patrick J. Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Recommendation for Thomas E. Perez

Dear Senator Leahy:

I first met Tom Perez following his election to the Montgomery County (Md.) Council in 2002. At that time I was not familiar with his distinguished career as a federal prosecutor, Deputy Assistant Attorney General for Civil Rights, and law school professor. But between 2002 and 2006, as Montgomery County Sheriff, I was fortunate to be able to work with Tom on numerous public safety and fiscal matters affecting the operation of the Sheriff's Office.

I became impressed with Tom's ability to quickly assess the nuances of complex law enforcement, budgetary and employment law issues. He addressed public policy issues with fairness, and in a manner that recognized and balanced the diverse positions involved in governmental decision making.

Tom's appointment as Secretary of the Maryland Department of Labor, Licensing and Regulation gave him an opportunity to use his expertise to confront problems generated by the current housing foreclosure crisis. Again he was able to craft legislative solutions that recognized and successfully addressed the respective concerns of consumers and commercial interests.

Speaking as a lifelong law enforcement officer and official, I would be delighted to witness Tom's confirmation and swearing in as the Assistant Attorney General, Civil Rights Division, Department of Justice.

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The Honorable Patrick J. Leahy
Recommendation for Thomas E. Perez
April 21, 2009
Page 2 of 2

Please accept my appreciation for your consideration of my views on this matter.

Sincerely,



Raymond M. Kight
Montgomery County Sheriff

cc:
The Honorable Arlen Specter
United States Senate
Committee on the Judiciary



OFFICE OF THE CHANCELLOR

April 24, 2009

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Baltimore County1985
University of
Maryland
Biotechnology
Institute

Chairman Patrick Leahy,
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I am writing to offer my unconditional support for President Barack Obama's nomination of The Honorable Tom Perez as the Assistant Attorney General of the U.S. Department of Justice, Civil Rights Division.

As Chancellor of the University System of Maryland (USM) I have had the opportunity to interact and work with Tom in a variety of capacities ranging from his service as a member of the Montgomery County Council to his leadership as Maryland's Secretary of Labor, Licensing and Regulation (DLLR).

As Secretary of DLLR, Tom took on the significant challenge of revamping an agency that had been long neglected and was widely seen as ineffective. Since becoming Secretary in 2007, Tom has helped the agency gain stature, and has made it one that is well-respected by lawmakers and other officials.

As I am sure you are aware Tom also served as Special Counsel to Senator Edward Kennedy, and was Senator Kennedy's principal adviser on civil rights, criminal justice and constitutional issues. Tom also served in President Clinton's Administration as the Director of the Office for Civil Rights (OCR) at the United States Department of Health and Human Services. At OCR, Perez transformed the agency from a critically important yet chronically underperforming unit into an office that commanded new respect within and outside the agency, and was far better positioned to carry out its critical mandate of assisting vulnerable people by enforcing civil rights laws.

We are very proud Tom's tireless work in the areas of civil rights, adult literacy, workforce training, and economic advancement on behalf of the citizens of Maryland. We at USM also take special pride in the fact that Tom was a member of our faculty at

the University of Maryland, School of Law, including Director of Clinical Law Programs.

Tom's commitment to advancing the civil rights of all Americans, and his devotion to the mission of the Division, make him uniquely qualified to lead the Civil Rights Division. I commend President Obama on the selection of Tom Perez for this position and ask for your support of his Senate confirmation.

Sincerely Yours,

A handwritten signature in black ink that reads "W. Kirwan". The signature is written in a cursive style with a large, stylized "W" and "K".

William Kirwan
Chancellor



Leadership Conference on Civil Rights

1629 K Street, NW
10th Floor
Washington, D.C. 20006
Phone: 202-466-3311
Fax: 202-466-3435
www.civilrights.org

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Japanese American Citizens League
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National Urban League
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National Council of La Raza
Debra Ness
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and Educational Fund
Randy Weingarten
American Federation of Teachers
Mary G. Wilentz
League of Women Voters
**COMPLIANCE/ENFORCEMENT
COMMITTEE CHAIRPERSON**
Karen K. Narasaki
Asian American Justice Center
PRESIDENT & CEO
Wade J. Henderson

April 27, 2009

The Honorable Senator Patrick Leahy, Chairman
433 Russell Senate Office Building
Washington, DC 20510-4502

The Honorable Senator Arlen Specter, Ranking Member
711 Hart Senate Office Building
Washington, DC 20510-3802

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Leadership Conference on Civil Rights, the nation's oldest, largest, and most diverse civil and human rights coalition, and the undersigned organizations, we write to express our strong support for the nomination of Thomas E. ("Tom") Perez to the position of Assistant Attorney General ("AAG") for the Civil Rights Division ("CRT" or "the Division") of the Department of Justice ("DOJ"). Mr. Perez has a breadth and depth of experience in public service, civil rights, management, and leadership that make him an exceptional candidate for this post. We applaud President Obama's selection of him for this position and urge you to support this nomination.

The Civil Rights Division faces severe challenges in recovering from eight years of abhorrent policies ranging from the loss of a significant number of career staff, to unsavory hiring practices at DOJ, to the failure to fully enforce federal civil rights laws, including not actively pursuing pattern and practice cases. It will take strong and reliable leadership combined with extensive experience at the Division to restore the Division to its previous prominence in the enforcement of civil rights laws. Tom Perez is the right person to take on that challenge.

Mr. Perez is among the most qualified individuals to be nominated for this position. With experience in the executive and legislative branches at both the federal and state levels, Tom Perez knows the complexities of government work, understands the issues he will face, is committed to securing and defending civil rights, and has the management abilities necessary to oversee the CRT and return it to its former stature. After an impressive academic career, Mr. Perez spent his first ten years in practice at the Division, where he began as a federal prosecutor in the Criminal Section, and rose to become its Deputy Chief. As such, he is the first nominee for the AAG position in over thirty-five years who has had experience as a career Division attorney. He then became Special Counsel to Senator Edward Kennedy, serving as the Senator's principal adviser on civil rights, criminal justice, and constitutional issues. In January 1998, Mr. Perez became Deputy Assistant Attorney General for Civil Rights at the Department of Justice. He was then appointed Director of the Office for Civil Rights at the Department of

"Equality In a Free, Plural, Democratic Society"

Hubert H. Humphrey Civil Rights Award Dinner • May 7, 2009



Health and Human Services (“HHS”). After leaving the federal government, Mr. Perez served as a consultant on health care and civil rights issues; and taught and directed the clinical program at the University of Maryland Law School. He also was elected to the Montgomery County Council in 2002, and served as its President from December 2004 to December 2005. Mr. Perez was appointed Secretary of Maryland’s Department of Labor, Licensing, and Regulation by Governor Martin O’Malley in January 2007.

Tom Perez’s commitment to civil rights is clear and long-standing. While in the Criminal Section of the CRT, he successfully prosecuted civil rights cases nationwide related to police misconduct and racial violence, and supervised a staff of thirty. One of his most notable cases, for which he received the Attorney General’s Award for Distinguished Service, involved the successful prosecution of three white supremacists in Texas for hate crimes. As Deputy Assistant Attorney General for the Civil Rights Division, Mr. Perez was engaged in department-wide efforts to pass hate crimes legislation and address police misconduct. He also headed an interagency Worker Exploitation Taskforce to address the growing problem of worker exploitation around the country. As Director of the Office of Civil Rights at HHS, he was integral to the Department’s initiative to end racial and ethnic disparities in health status. His accomplishments there also included expanding access for language minorities, working to find community-based health solutions for persons with disabilities, co-chairing a department-wide effort to address challenges to immigrants seeking health care access, and developing legislation for federal medical records privacy. As a member and president of the Montgomery County Council, he was instrumental in securing more affordable housing in the county and expanding health coverage for the uninsured.

In almost every position that Mr. Perez has held, he has risen to, or been appointed to, a management position. In the Civil Rights Division, he rose to become the Deputy Chief of the Criminal Section where he oversaw staff while maintaining his own caseload. As Deputy Assistant Attorney General, he managed the Criminal, Education, and Employment sections; one of his accomplishments included a thorough strategic review of the Education section to ascertain that it was fulfilling its mission of promoting equal opportunities in education. In the Office of Civil Rights in HHS, he not only managed a staff of more than 200, but also set enforcement priorities, oversaw a \$28 million budget, and advised the Secretary. He led a major revitalization effort for the agency at a time when it was facing a crisis of morale. Currently, as head of the Department of Labor, Licensing, and Regulation for Maryland, Secretary Perez runs a 1,700 person agency with a \$170 million budget. Through these experiences, Mr. Perez has shown himself to be a manager and leader who remains committed to his principles, can endure challenges, and get things done. This is the type of leadership that the Civil Rights Division sorely needs.

The Civil Rights Division was created just over 50 years ago with the passage of the Civil Rights Act of 1957. Its mission is to provide equal treatment and equal justice under the law by enforcing and defending the civil rights of all Americans in areas such as education, employment, housing, voting, criminal justice, and public accommodations. The recent controversies and ideologically motivated decision-making of the Division directly challenge its core functions and have created a Division with low morale and little impact.



Because of the immediate and difficult tasks facing the Division, it is important that the next AAG has the ability to manage effectively, an understanding of the traditions and operations of the Division, a commitment to enforcing civil rights laws, and the vision of a leader to restore the functions of the CRT. We are confident that, along with Attorney General Eric Holder, Tom Perez will return the Division to its original promise, once again working to enforce the civil rights of all Americans. In light of Mr. Perez's outstanding qualifications, we ask that you vote to confirm him quickly so that he can begin the important work of restoring the Civil Rights Division to its original stature and lead it into the 21st century.

Thank you for your consideration of our views. If you have any questions, please contact LCCR Senior Counsel Lisa Bornstein at Bornstein@civilrights.org or (202) 263-2856 or Nancy Zirkin, Executive Vice President, at (202) 263-2880.

Sincerely,

Leadership Conference on Civil Rights
 ADA Watch
 Alliance for Justice
 American Association of University Women (AAUW)
 American Federation of Labor and Congress of Industrial Organizations AFL-CIO
 Americans for Democratic Action
 Asian American Justice Center
 Bazelon Center
 Feminist Majority
 Human Rights Campaign
 Lawyers' Committee for Civil Rights Under Law
 NAACP Legal Defense Fund
 National Abortion Federation
 National Asian Pacific American Bar Association
 National Association for the Advancement of Colored People (NAACP)
 National Association of Consumer Advocates
 National Coalition for Disability Rights (NCDR)
 National Council of Jewish Women
 National Council of La Raza (NCLR)
 National Education Association
 National Fair Housing Alliance
 National Health Law Program
 National Partnership for Women & Families
 National Women's Law Center
 People For the American Way
 The Brennan Center for Justice at New York University School of Law



Leadership Conference on Civil Rights

1629 K Street, NW
10th Floor
Washington, D.C. 20006
Phone: 202-466-3311
Fax: 202-466-3435
www.civilrights.org

SUPPORT CLOTURE ON CONFIRMATION OF JUDGE DAVID HAMILTON

November 16, 2009

Dear Senator:

OFFICERS
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 Dorothy E. Height
National Council of Negro Women
VICE CHAIRPERSONS
 Judith L. Lichman
National Partnership for Women & Families
 Karen K. Narasaki
Asian American Justice Center
 William L. Taylor
Citizens' Commission on Civil Rights
TREASURER
 Gerald W. McEneaney
AFSCME
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 Barbara Amnic
Lawyers Committee For Civil Rights Under Law
 Arlene Holt Baker
AFL-CIO
 Ron Givellinger
International Union, United Automobile Workers of America
 Marcia Greenberger
National Women's Law Center
 Linda D. Hallinan
American Association of University Women
 Andrew J. Benjamin
American Association of People with Disabilities
 Benjamin Bealoux
NAACP
 Jacqueline Johnson
National Congress of American Indians
 Michael R. Keegan
People For the American Way
 Floyd Mori
Japanese American Citizens League
 Marc H. Morial
National Urban League
 Janet Margolin
National Council of La Raza
 Debra Neus
National Partnership for Women and Families
 Mary Rose Oskor
American Arab Anti-Discrimination Committee
 Terry O'Neill
National Organization for Women
 Robin Payton
NAACP Legal Defense & Education Fund, Inc.
 Barry Rood
AARP
 Dennis Van Rooyel
National Education Association
 Anthony Ruzman
American Civil Liberties Union
 Thomas A. Szasz
American American Legal Defense & Educational Fund
 David Saperstein
Religious Action Center for Reform Judaism
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National Fair Housing Alliance
 Joe Soboroff
Human Rights Campaign
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COMPLIANCE ENFORCEMENT COMMITTEE CHAIRPERSON
 Karen K. Narasaki
Asian American Justice Center
PRESIDENT & CEO
 Wade J. Henderson

On behalf of the Leadership Conference of Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we urge you to **support cloture on the confirmation of Judge David Hamilton** as Associate Judge for the U.S. Court of Appeals for the Seventh Circuit. In his fourteen years of service on the U.S. District Court for the Southern District of Indiana, Judge Hamilton has truly distinguished himself through his outstanding intellectual credentials and his respect for the rule of law, establishing himself beyond question as fully qualified and ready to serve.

Judge Hamilton will be an impartial, thoughtful, and highly-respected addition to the Seventh Circuit. The American Bar Association, which provides evaluations of nominees' integrity, competence, and temperament to serve on federal courts, recently provided a unanimous rating of Judge Hamilton as "well-qualified," the highest ranking achievable. The course of his career demonstrates his qualifications.

During his long tenure on the bench, Judge Hamilton has heard thousands of cases, and has delivered more than 1,200 opinions. He has a history of handing down fair and judicious decisions, deciding cases based upon the careful application of the law to the facts of cases. His record indicates that he understands the court's role in protecting the rights of all Americans and ensuring equal justice and treatment, and his thoughtful and articulate approach will allow litigants to feel, regardless of the outcome, that they were given a fair day in court.

Given his stellar record, Judge Hamilton has garnered broad bipartisan support, across ideological lines, reaching all corners of the legal community. He has the enthusiastic support of both of his home state senators, Sens. Evan Bayh (D-IN) and Richard Lugar (R-IN), endorsements that are echoed loudly by the practicing attorneys, academics, and other legal experts throughout Indiana who are most familiar with his record.

Despite the efforts of a small number of ideological extremists to tarnish his reputation, Judge Hamilton's record exhibits a deep respect for the Constitution and the rule of law. He has been widely praised as fair-minded and ethical, and he delivers thoughtful rulings in cases based upon their merits. For these reasons, LCCR strongly urges you to support the motion to invoke cloture on Judge Hamilton's confirmation. If you have any questions, please feel free to contact LCCR Counsel Rob Randhava at (202)-466-6058.

Sincerely,

Wade Henderson
 President & CEO

Nancy Zirkin
 Executive Vice President

"Equality In a Free, Plural, Democratic Society"

League of Dominican American Elected Officials

Board Members

Adriano Espaillat
NYS Member of Assembly

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Miguel C. Luna
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Miguel Martinez
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Reynaldo R. Martinez
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Tilo Rivas
N.J. Commissioner

Vivian Vilorio - Fisher
NY County Legislator

William Lantigua
M.A. State Rep.

Yesenia Frias
Councilwoman

April 9, 2009

The Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

We applaud President Barack Obama and Attorney General Eric Holder's nomination of Thomas Perez for Assistant Attorney General of the Civil Rights Division. Mr. Perez is exceptionally qualified to lead the division of the Department of Justice responsible for enforcing federal statutes prohibiting discrimination, particularly statutes that protect the voting rights of all Americans. If as expected, the U.S. Senate confirms Perez's appointment he will become the key official responsible for enforcing federal civil rights laws. Perez brings on-point experience to this role. Prior to his election to the Montgomery County Council in 2002, Perez served as deputy assistant attorney general for civil rights and director of the Office for Civil Rights for the Department of Health and Human Services in the Clinton administration.

One of Perez's most important tasks will be enforcing the Voting Rights Act, one of the most successful enactments of the U.S. Congress in the 20th century. It enfranchised millions of African-Americans previously denied the right to register and vote. It also empowered African-Americans and other minorities to elect candidates of their choice. From a small handful prior to 1965, the number of black elected officials in the United States soared to about 9,000 by the year 2000, according to a compilation by the Joint Center for Political and Economic Studies.

The Voting Rights Act has had a positive although less dramatic effect on the election of Latino public officials. Today about 270 Latinos serve as members of the U.S. Congress and state legislatures, according to the National Association of Latino Elected and Appointed Officials who has hailed Perez as "exceptionally qualified" to enforce "federal statutes prohibiting discrimination, and particularly statutes that protect the voting rights of all Americans." More must be done to ensure the voting rights and elected office opportunities for Latinos in the United States.

We strongly support Thomas Perez for Assistant Attorney General and trust that he will work with Congress and administration officials to strengthen the enforcement of federal voter registration and election reform laws to eliminate unfair barriers in the electoral process, and ensure the Civil Rights Division carefully scrutinizes state redistricting efforts following the 2010 Census.

League of Dominican American Elected Officials
917-547-1147

<http://judiciary.authoring.senate.gov/hearings/testimony.cfm>



[< Return To Hearing](#)

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
April 29, 2009

Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial And Executive Nominations
April 29, 2009

Today, the Judiciary Committee will hear from two well-respected Federal district court judges who have been nominated for elevation to Federal circuit courts. Judge Andre Davis from Maryland has been nominated to the Fourth Circuit and Judge David Hamilton from Indiana has been nominated to the Seventh Circuit. We will also hear today from another important Justice Department nominee. Tom Perez has been nominated to be the Assistant Attorney General in charge of the Civil Rights Division.

I thank Judge Hamilton for returning to the Committee even though he has already appeared and testified at a hearing on his nomination four weeks ago, on April 1. At that hearing, Senator Specter was the only Republican member to appear. He outlined a few cases about which he said there were concerns, but did not stay to ask questions of the nominee. Republican Senators boycotted that hearing and later delivered a letter to me suggesting that in the two weeks following the announcement of the nomination, they were unable to prepare.

Although that day was a busy day in the Senate, as many are, I tried to accommodate Senators by moving the hearing to the Capitol building itself. We had done this previously, following the 2001 anthrax attacks, in order to continue holding hearings for President Bush's nominees while our Committee hearing room remained closed. The April 1 hearing, which extended for more than an hour and a half, included participation by 11 Senators. All were able to vote and still come to the hearing just one floor below the Senate floor. Senators Klobuchar, Kaufman, Whitehouse and Schumer each participated and asked questions, as did I.

Senator Specter and Senator Kyl later spoke to me and requested that Judge Hamilton be invited back before the Committee. As I have done throughout the year, when Senators talk to me and make a request, I have tried to be accommodating. Out of respect to Senator Specter and Senator Kyl, I have, again, sought that accommodation. I hope that Republican members will reciprocate by not further delaying this nomination. I hope they will respect the nominee, and the endorsement by his home state Senator, and a senior Republican in the Senate, Senator Lugar. Again, I thank the nominee for his courtesy and apologize for disrupting his court docket for a second time in four weeks.

Unfortunately, by adopting this extraordinary approach, the Committee will not be allowed to complete consideration of the nomination within the 30 days called for over the past several years in legislation authored and introduced, twice, by Senator Specter. I had hoped that for the first judicial nomination of this presidency, one that has bipartisan support from his home state Senators, we could proceed more promptly. The Republican boycott that extended through the April 1 hearing and Easter recess is, in my view, unjustified and unfortunate. The nominee, the court to which he has been nominated, and the people who are served by the Seventh Circuit, which includes Illinois, Wisconsin and Indiana, are being denied prompt and fair consideration. The President is being penalized for making a prompt nomination in March, and for providing the background materials expeditiously on this nomination -- not only the material from the

http://judiciary.senate.gov/hearings/testimony.cfm?renderforprint=1&id=3791&wit_id=7679 7/17/2009

nominee, but also the FBI background information and even the American Bar Association peer review rating, which were received promptly after the nomination was sent to the Senate.

I view President Obama's nomination of Judge Hamilton as something to be commended rather than obstructed and delayed. The President acted quickly, and worked with both home state Senators, a Republican and a Democrat, to select a highly-qualified and respected nominee. Senator Lugar, who was consulted on the nomination and endorsed it, is a senior Republican Senator who is greatly admired throughout the Senate. Senator Bayh is known as a thoughtful Senator. Neither is extreme or radical. Just as I consistently sought to encourage President Bush to work with home state Senators, and tried to expedite confirmation of his nominees when he did, I tried to proceed promptly on the nomination of Judge Hamilton. The nomination should be noncontroversial.

I thank Senator Lugar and Senator Bayh for their introduction of Judge Hamilton at our hearing on April 1. The record from Judge Hamilton's hearing nearly a month ago contains Senator Lugar's full statement of support for a nominee he describes as "an exceptionally talented jurist" and "the type of lawyer and the type of person one wants to see on the Federal bench." Senator Lugar continued:

"I have known David since his childhood. His father, Reverend Richard Hamilton, was our family's pastor at St. Luke's United Methodist Church in Indianapolis, where his mother was the soloist in the choir. Knowing first-hand his family's character and commitment to service, it has been no surprise to me that David's life has borne witness to the values learned in his youth."

Senator Lugar also praised the process he and Senator Bayh had undertaken for recommending judicial nominees from Indiana, thanking Senator Bayh for "the thoughtful, cooperative, merit-driven attitude that has marked his own approach to recommending prospective judicial nominees" and his "strong support for President Bush's nominations of Judge Tindler for the Seventh Circuit and of Judge William Lawrence for the Southern District of Indiana." I supported both of those nominees with the endorsement of both of Indiana's Senators and both were easily confirmed.

The nomination of Judge Hamilton is in the same mold and should be confirmed as easily. Indeed, in his introduction of Judge Hamilton, Senator Lugar spelled out his criteria for deciding whether to confirm judicial nominees. I think all Senators would do well to heed his advice. He testified:

"I believe our confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will 'vote' on particular issues of public moment or controversy. I have instead tried to evaluate judicial candidates on whether they have the requisite intellect, experience, character and temperament that Americans deserve from their judges, and also on whether they indeed appreciate the vital, and yet vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws, rather than seeking to impose their own policy views."

Senator Lugar believes Judge Hamilton "is superbly qualified under both sets of criteria." So do I. Judge Hamilton is a well-respected Federal judge not known for partisanship or an ideological agenda. In light of his superb record, broad support, and unanimous "well qualified" rating from the American Bar Association, it is no wonder Judge Hamilton's nomination for this important appellate seat has the support of both home state Senators. He should be confirmed without further delay and with a strong bipartisan majority.

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MEMBER OF CONGRESS

BARBARA LEE
NINTH DISTRICT
CALIFORNIA

April 28, 2009

The Hon. Patrick Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy,

I write to express my strong support for the confirmation of Thomas Perez as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

Mr. Perez' excellent record of public service and commitment to civil rights make him an ideal choice, and would help place the Civil Rights Division back on strong footing as the nation's foremost defender of civil rights and individual liberties.

Thomas Perez has consistently defended civil rights in his numerous roles as a public servant, including as a federal prosecutor for the Civil Rights Division at DOJ, Special Counsel for Senator Edward Kennedy, Deputy Assistant Attorney General for Civil Rights in the Clinton Administration, Director of the Office of Civil Rights at the Department of Health and Human Services, and Maryland Secretary of Labor, Licensing and Regulation.

The past eight years regrettably damaged the reputation of the Department of Justice, with political affiliation and ideology serving as the basis of staff hirings and decision-making. The confirmation of Thomas Perez would mark a clean break from these years, as it would confirm a public servant not based on partisanship but on merit and a commitment to the ideals on which the Civil Rights Division was founded.

Sincerely,

A handwritten signature in black ink that reads "Barbara Lee".

Barbara Lee
Member of Congress

WASHINGTON, D.C. 20515





OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

April 27, 2009

The Honorable Patrick Leahy
Chairman
United States Senate Judiciary Committee
Washington, DC 20510

Dear Senator Leahy:

It is with great pleasure that I write to you to recommend without reservation the nomination by the President of Tom Perez to serve as Assistant Attorney General for Civil Rights.

Tom Perez is uniquely qualified to serve in this important position by virtue of his intelligence, experience, and temperament. He has worked at the federal, state, and local levels of government with considerable distinction as a U.S. Senate staffer, a federal prosecutor, as Maryland state labor secretary, and as the first Latino ever elected to the Montgomery County Council.

Tom has dedicated much of his life to working as a public servant and is a nationally known and respected civil rights lawyer and community leader. Among his long and impressive list of civic and community affiliations, he has served as Chair of Casa of Maryland and served on the Board of Directors of the National Immigration Forum.

As Maryland Secretary of Labor, Licensing and Regulation, Tom has consistently demonstrated leadership as an outspoken and steadfast advocate for the rights of Maryland's working families. And, during a difficult and historic national recession that has caused a collapse of the housing market causing many families to lose their homes, he was instrumental in the establishment of some of the nation's leading foreclosure reforms.

In the rough and tumble of local politics, Tom deployed a winning mix of principle and pragmatism, forging consensus while also pushing the envelope on such issues as prescription drug prices, predatory lending, and home foreclosures.

I believe Tom Perez has consistently demonstrated in various roles, a profound affection for the law, a zeal to fight injustice, and disarming candor and respect for all with whom he comes in contact with. He has been an extremely passionate and effective advocate for the residents of Montgomery County and the State of Maryland, and I am confident that he will bring this commitment and dedication to the federal level as Assistant Attorney General for Civil Rights.

www.montgomerycountymd.gov

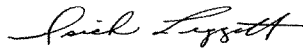
The Honorable Patrick Leahy
April 27, 2009
Page Two

Tom is also dedicated to passing on his knowledge and expertise to the next generation. He consistently carves time from his schedule to share his knowledge through classes at local universities. For five years beginning in 2001, Tom was a law professor at the University of Maryland School of Law, including a two-year stint as Director of Clinical Law Programs. Currently, he is a part-time professor at George Washington School of Public Health.

I feel strongly that Tom Perez would be a valuable addition to the Obama administration. His energy, compassion and commitment are exactly the attributes that are needed to tackle the 21st century civil rights challenges that lie before us. He has an unwavering ability to work with people of all backgrounds and points of view.

Tom Perez would be an outstanding choice to fill this position. I urge your confirmation of this nomination.

Sincerely,



Isiah Leggett
County Executive

LEWIS, FEINBERG, LEE, RENAHER & JACKSON, P.C.
ATTORNEYS AT LAW
1330 BROADWAY, SUITE 1800
OAKLAND, CALIFORNIA 94612-2519

April 24, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Arlen Specter
Ranking Minority Member, Senate Judiciary
Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Thomas E. Perez

Dear Chairman Leahy and Senator Specter:

In addition to joining the joint letter of former Assistant Attorneys General for Civil Rights dated April 20, 2009, I add a few personal reasons for supporting the confirmation of Thomas E. Perez in this separate letter.

Initially, however, I believe that Mr. Perez's background as a career lawyer in the Civil Rights Division is particularly important at this juncture because of the need to restore civil rights enforcement and to rebuild the capacity and morale among the Division's nonpartisan career lawyers. As a former line lawyer, Mr. Perez is uniquely qualified to lead the career staff. He knows the Division's traditions and has broad policy experience. He will be able to respond to the President's call for the Civil Rights Division to reinvigorate the enforcement of the nation's civil rights laws.

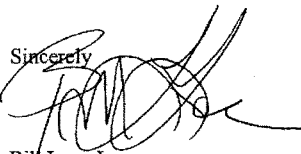
His service on Senator Edward Kennedy's staff and his years-long work on hate crimes legislation will serve him well in working with this Committee. I believe that Mr. Perez will collaborate well with the Committee in making sure that the Division fulfills its full potential as a law enforcement agency within the statutory mandates that the Congress has provided.

When he was Deputy Assistant Attorney, I saw Mr. Perez on a daily basis as he oversaw the work of the Division's Criminal, Employment and Education Sections. I believe that his work as a Deputy suggests the kind of Assistant Attorney General he will be. These sections are a cross-section of the Division's functional groupings. Mr. Perez showed a rare ability to engage the leadership and lawyers of these sections on case-level enforcement issues while also providing big picture guidance on policy issues. Mr. Perez has a light touch on management issues that goes along with his keen intelligence. He is an inspiring speaker. I have no doubt that he will be a superb leader.

Patrick Leahy and Arlen Specter
April 24, 2009
Page 2

Mr. Perez is much more than an insider. After leaving the Division, he has attained a broad range of experience in a variety of areas, director of the Office of Civil Rights at the Department of Health and Human Services, law professor, president and member of the Montgomery County Council, and Maryland Secretary of Labor, Licensing and Regulation. I believe that this broad range of experience will enable him to enforce the civil rights laws wisely and with sensitivity.

I hope these comments are useful to the Committee. If I can be of further assistance, please feel free to call me.

Sincerely

Bill Lann Lee



DEPARTMENT OF POLICE

Isiah Leggett
County Executive

J. Thomas Manger
Chief of Police

April 23, 2009

The Honorable Arlen Specter
711 Hart Senate Office Building
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510

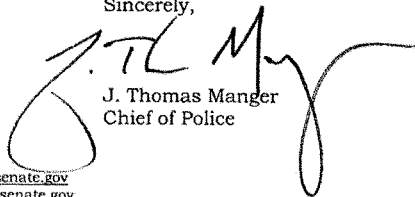
Dear Senators Specter and Leahy:

I am writing to wholeheartedly support the nomination of Thomas Perez for the position of Assistant Attorney General for Civil Rights. During Mr. Perez's tenure as a Montgomery County (Maryland) Councilman, I was impressed by his integrity, intellect and work ethic. He was a public servant in the truest sense of the word. Mr. Perez brings an ability to tackle complex problems and issues with consensus and common sense.

Mr. Perez is a public-safety advocate and brought his experience as a civil-rights attorney to benefit the Montgomery County Police Department. His assistance in training our senior police officials was very well received.

The Civil Rights Division of the Department of Justice requires someone with high ethical standards and a strong legal mind. Mr. Perez superbly fits the bill. I urge you to support his appointment.

Sincerely,



J. Thomas Manger
Chief of Police

JTM:mam
c: Sarah_hackett@judiciary-dem.senate.gov
Elizabeth_hays@judiciary-rep@senate.gov

Office of the Chief of Police

2350 Research Boulevard • Rockville, Maryland 20850 • 240-773-5000 • 301-762-7619 TTY
www.montgomerycountymd.gov



BOROUGH OF HALEDON COUNCIL

REYNALDO R. MARTINEZ
 Councilman, Borough of Haledon
 510 Belmont Avenue
 Haledon, NJ 07508
 Tel: (973) 595-7766
 Fax: (973) 790-4781
Reynaldomartinez@haledonboronj.com

April 3, 2009

The Honorable Patrick Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy:

I congratulate President Barack Obama and Attorney General Eric Holder for nominating Thomas Perez for Assistant Attorney General of the Civil Rights Division. There is no doubt that Mr. Perez's qualifications and record are outstanding. Mr. Perez will lead gracefully the division of the Department of Justice responsible for enforcing federal statutes prohibiting discrimination particularly those statutes that protect the voting rights of our diverse populations. As you know, prior to his election to the Montgomery County Council in 2002, Perez served as deputy assistant attorney general for civil rights, and director of the Office for Civil Rights for the Department of Health and Human Services in the Clinton administration.

I am aware that one of Perez's most important tasks will be enforcing the Voting Rights Act, one of the most successful enactments of the U.S. Congress in the previous century. It provided millions of African-Americans with the right to register and vote. It also gave African Americans the power to elect candidates of their choice, in turn providing African Americans with a voice in government and the decision making process. The Voting Rights Act has had a positive, albeit less dramatic effect on the election of Latino public officials. According to the US Census Bureau the estimated Hispanic population of the United States as of July 1, 2003, is 39.9 million, making people of Hispanic origin the nation's largest race or ethnic minority. This number is expected to rise significantly in the near future, and does not include the 3.9 million residents of Puerto Rico. It is imperative that the Latino population be better represented in government, and in the electoral process.

I strongly support Mr. Perez for Assistant Attorney General, and I am confident that he will work with Congress and administration officials to fortify the federal voter registration and election reform laws. With his experience, commitment, and knowledge, Thomas Perez will help to eliminate inequitable barriers in the electoral process, and make certain the Civil Rights Division carefully scrutinizes state redistricting efforts following the 2010 Census.

Sincerely,
 Reynaldo R. Martinez

Councilman
 Haledon, New Jersey

Liaison: Department of Fire Safety;
 Committees: Dept. of Public Works; Health & Welfare; Administration & Personnel;
 Commissioner: NJ Advisory Council on Corrections



Y. Maria Welch
 Respira Medical
 Chair

Ricardo Martinez
 Project Enhancement
 Corporation
 Immediate Past Chair

Board of Directors
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Bettina Guevara
 Miles & Stockbridge

Bill Villanueva
 Governors Office of
 Minority Affairs

Carmen Larsen
 Aquas, Inc.

Elaine Bonneau
 Bonneau & Associates.

Joseph Morales
 Whitford, Taylor & Preston

Juan Rubio
 Nationwide Insurance

Jerry Godwin
 Montgomery County Dept
 of Economic Development

Veronica Cool
 Wachovia

Advisory Board
Gigi Guzman
 GlobalTech Inc.

Roberto Correa
 Manufacturing Support
 Industries

April 28, 2009

Chairman Patrick Leahy, and
 United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Senator Arlen Specter
 Ranking Member
 United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Leahy:

We are an organization that represents the business interest of Latino entrepreneurs in Maryland. It is a pleasure and a privilege to endorse Thomas E. Perez for Assistant Attorney General for the Civil Rights Division. Tom is a consensus builder and a man that has navigated the tough road that divides the interest of businesses from unions. He has and continues to bring people to the table when conflict rage and opponents stand eye ball to eye ball unwilling to compromise. Time and time again, we have witnessed his extraordinary ability to build coalitions in seemingly impossible situations where people unite to talk finding common interest and ultimately resolve their challenges to the satisfaction of all.

Tom epitomizes the struggle our community has waged to gain its rightful place at the table. He is the son of Dominican parents. His father died when he was twelve. However, despite such hardships Tom persevered and received scholarships in recognition of his academic excellence. He attended Dartmouth College and Harvard Law School. Tom was the first, and so far the only, Hispanic elected to the Montgomery County Council where he ultimately served as President. He is respected for his integrity and for his work as a consumer advocate. He has worked tirelessly to help immigrants and has served on the Board of Casa of Maryland, where he spearheaded that organization as President. He has worked with, Maryland, Baltimore City and Montgomery County Hispanic Chamber of Commerce and helped the chambers grow. His interest in promoting the growth of Hispanic chambers statewide is perhaps the greatest civil rights initiative a leader can

Maryland Hispanic Chamber of Commerce
 521 Progress Drive Suite a-c BWI Tech Park Linthicum, MD 21090
 Phone: 240-686-0450 Email: customerservice@mdhcc.org

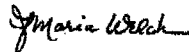
Chairman Patrick Leahy
April 28, 2009
Page 2

undertake for self reliance and hard work has always been the path each immigrant group has pursued to lift them up and contribute to the wealth of our nation.

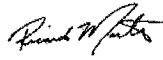
Tom was also an aggressive federal prosecutor where he tenaciously and successfully prosecuted those who denied the civil rights of others. There are still many barriers that prevent Latinos and others from owning their own home or paying debts at an interest rate that is enjoyed by others. Civil rights from our perspective translates in into economic rights and empowerment and we believe Tom is the right person to begin the process of exploring the new battle ground of economic equity that still permeates sectors of our economy. The good old boy network is a system that discriminates against those that are not good old boys and not boys at all. We hope to see a renewed interest in making the American dream a reality for all and we believe Tom with his capacity to bring diverse and conflicting groups together is the person to accomplish this final push to ensure civil right and equal rights for all.

So we ask the Committee to unanimously confirm this inspirational leader of the Hispanic community, Thomas E. Perez, as the Assistant Attorney General for the Civil Rights Division.

Sincerely,



Y. Maria Welch
Chair



Ricardo Martinez
Immediate Past Chair

04/28/2009 6:35PM



Maryland Bankers Association

April 23, 2009

The Honorable Patrick Leahy
 United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy:

On behalf of the Maryland banking industry, we are pleased to submit this letter in support of President Obama's nomination of Thomas E. Perez for Assistant Attorney General of the Civil Rights Division in the United States Department of Justice. The nomination is testimony to Mr. Perez's exceptional experience as a nationally recognized civil rights lawyer and consumer advocate.

The Maryland Bankers Association has worked with Mr. Perez in positions he has held in local and State government, most recently in his role as the Secretary of the Maryland Department of Labor, Licensing and Regulation (DLLR). Included in this cabinet position for Governor Martin O'Malley is the Division of Financial Regulation, which has sought to strengthen the role of the Maryland banking charter to enable Maryland-chartered banks to provide competitive products and services for businesses and consumers. The Division has also strengthened the enforcement authority for the Commissioner of Financial Regulation in providing oversight for those financial entities under State regulation. We have supported all of the efforts.

In addition, we worked closely with Mr. Perez as he spearheaded the Governor's Homeownership Preservation Task Force, which created one of the most comprehensive legislative packages in the Country to address foreclosure and lending practice reform. The task force process was candid, extensive and inclusive and resulted in a package of bills in the Maryland General Assembly which had widespread support, including the support of the Maryland General Assembly. This result on such an important issue is testimony to Mr. Perez's leadership and ability to bring various and often opposing viewpoints together to reach consensus.

We believe Tom Perez will serve the Administration and the Country effectively in the position of Assistant Attorney General for the Civil Rights Division of the Department of Justice and submit this letter of support for his appointment to this post. Please let me know if you have any questions.

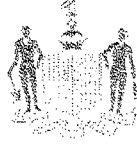
Sincerely,

Kathleen M. Murphy
 President and CEO

cc: ~~Senator~~ Arlen Specter, Ranking Committee member

Bcc: Thomas E. Perez, Office of Secretary

186 DUKE OF GLOUCESTER STREET • ANNAPOLIS, MARYLAND 21401
 (410) 269-5977 • (800) 327-5977 • FAX (410) 269-1874 • Web Site: www.mdbankers.com



STATE'S ATTORNEY
JOHN J. MCCARTHY

State's Attorney for Montgomery County
50 Maryland Avenue
Rockville, Maryland 20850

April 20, 2009

Chairman Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing to urge the confirmation of Tom Perez as Assistant Attorney General for the Civil Rights Division at the Department of Justice.

Mr. Perez currently holds the position of Secretary of Maryland's Department of Labor Licensing and Regulation. In that capacity, Tom took on the challenge of revamping a state agency that had been long neglected and widely seen as ineffective. Under Tom's leadership, this agency has gained stature and become well respected by lawmakers and other government officials.

Tom has also served as Maryland's leader to combat the mortgage foreclosure crisis. Tom played a key role in helping to craft a legislative package that has been called among the most sweeping in the nation. Tom was the first public official, that I am aware of, that several years before the current mortgage crises became apparent, publicly talked about the danger that lurked ahead in America's housing market due to a crisis in sub-prime mortgages.

Tom is a committed career public servant. Tom spent 12 years in federal public service, the majority as a federal prosecutor for the Civil Rights Division. Tom served as special counsel to Senator Edward Kennedy and was his principal advisor on civil rights and criminal justice. Tom was a law professor at the University of Maryland School of Law from 2001 – 2007 where he taught a civil rights clinic focusing on employment issues, health law and criminal justice.

Chairman Patrick Leahy
April 20, 2009
Page Two

Tom is married to Ann Marie Staudenmaier (a public interest lawyer) and father of three. Educated at our nation's finest universities including Brown and Harvard, Tom is a brilliant and articulate man of tremendous depth.

I urge you to act favorably on Tom's nomination and confirm him as Assistant Attorney General for the Civil Rights Division at the Department of Justice.

Very truly yours,



John J. McCarthy

cc: Senator Arlen Specter
Sarah Hackett



April 24, 2009

The Honorable Patrick J. Leahy, Chairman
 The Honorable Arlen Specter, Ranking Member
 Senate Committee on the Judiciary
 SD-224 Dirksen Senate Office Building
 Washington, DC 20510-6275

Dear Senator Leahy and Senator Specter:

I am writing to express support for the nomination of Tom Perez to be Assistant Attorney General for the Civil Rights Division. Mr. Perez has dedicated almost his entire professional life to public services including protecting civil rights and advocating for fair labor practices.

Mr. Perez spent 12 years in federal public service, the bulk of it at the United States Department of Justice as a federal prosecutor for the Civil Rights Division. He began his career as a summer clerk in the Civil Rights Division and with dedication and commitment worked his way up to Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno.

As Secretary of Maryland's Department of Labor, Licensing and Regulation (DLLR) Mr. Perez took an agency that had long been neglected and was widely viewed as ineffective. Under his leadership he has transformed DLLR into a national model that is widely viewed as highly effective and respected amongst lawmakers and other officials.

Whether it was as Montgomery County Council member, Deputy Assistant Attorney General or Secretary DLLR Mr. Perez has shown a passion and commitment for the extension of after school programming as well as job training and career readiness opportunities for youth. Mr. Perez also understands the importance of keeping kids safe by giving them a safe and fun place to go like a Boys & Girls Club. He recognizes the role Clubs play in preventing crime and giving all kids, no matter the background an opportunity to grow up to be happy, healthy and productive adults.

At Boys & Girls Clubs of America, we are striving to help America's youth reach their full potential and to do so in a safe environment. We believe that Mr. Perez's past history with us and his commitment to protecting civil rights and providing career readiness skills to the young people who need it most will make him a strong, effective Assistant Attorney General. That is why Boys & Girls Clubs of America wholeheartedly supports his confirmation.

Sincerely,

Kevin R. McCarthey
 Senior Vice President Government Relations



April 23, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

RE: Nomination of Thomas Perez as Assistant Attorney General, Civil Rights Division

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express our strong support for the nomination of Thomas Perez for Assistant Attorney General for the Civil Rights Division of the United States Department of Justice and urge his confirmation. I am the President of Maryland AGC, which is the state chapter of the Associated General Contractors of America, a national trade association for commercial constructors and suppliers.

We do not presume to judge Mr. Perez's credentials as a civil rights lawyer, but we do have a firm and high opinion of his capabilities as a leader and government official. His most recent position as Secretary of Maryland's Department of Labor, Licensing and Regulation brought him and his department into close contact with our industry. In that capacity, we dealt most closely with him and his leadership team on legislation to address the issue of employees being misclassified as independent contractors by employers seeking to avoid their obligations for payroll taxes and workers' compensation. As Secretary, Mr. Perez convened and led a large task force that included all interested parties with the objective of arriving at a consensus position on legislation to address the misclassification issue. As you might expect, there were strongly held points of view and embedded animosities among the various factions involved.

Because the construction industry was an area where misclassification was of great concern, we participated in the task force and in the legislative activity that followed earlier this year. As a result, I had the opportunity to work closely with Secretary Perez over the past ten months, in private meetings, as well as task force sessions and legislative hearings. During the entire process, Secretary Perez demonstrated a penetrating intellect, strong commitment to the workers of Maryland, the ability to reconcile competing interests, and discerning judgment of what was achievable. On most issues, we were able to reach mutually satisfactory compromises. Where we were not, he was an articulate, well-informed, and persuasive advocate for his point of view. Frankly, we lost more issues than we won in the areas where we disagreed.

Without fail, Mr. Perez conducted himself with integrity, rigorous attachment to facts, and an unwavering focus on the public interest he served. He managed all of this with modesty, good humor, and a genuine, if disarming, candor. Even more telling, the rest of the senior executives in his Department grew to reflect those values in their own areas of responsibility, which is the mark of a true leader. In more than 30 years of being involved in the legislative process and interacting with federal and state officials, both elected and appointed, I have not met a person for whom I have greater respect. America will be well served with Mr. Perez as Assistant Attorney General for the Civil Rights Division, and we respectfully urge you to confirm his nomination.

Sincerely,

Champe C. McCulloch
President

Maryland AGC 1301 York Road, Suite 202 Lutherville, MD 21093 P: 410-321-7870 F: 410-339-5273 www.marylandagc.org

Easton Bank & Trust

R. Michael S. Menzies, Sr.
PRESIDENT / CEO

Office: 410-819-5880
Home: 410-770-5011
Cell: 410-924-5004
Fax: 410-819-8091
e-mail: rmenzies@eastonbankandtrust.com

April 24, 2009

The Honorable Senator Patrick Leahy
Chairman, United States Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC. 20510

Dear Senator Leahy:

Mr. Thomas Perez, Esquire of Maryland has been nominated to serve as Assistant Attorney General for Civil Rights.

Mr. Perez has served as Secretary of our Maryland Department of Labor, Licensing, and Regulation and has proven to be a strong advocate for the little guy. As the President of a Community Bank I value that attribute. Mr. Perez has worked with consumer groups and banking industry representatives to derive win/win solutions for all stakeholders. Most recently he worked to design strategies to deal with foreclosure issues in Maryland. Mr. Perez is a good listener and advocates for both labor and industry.

Please accept my support of the nomination of Mr. Thomas E. Perez to serve as Assistant Attorney General for Civil Rights.

Sincerely,



R. Michael S. Menzies
President
Easton Bank and Trust
501 Idlewild Avenue
Easton, Md. 21601
410-819-5880

Chairman
Independent Community Bankers of America

Cc: The Honorable Arlen Specter, Ranking Member
United States Senate Judiciary Committee



501 Idlewild Ave. P.O. Box 629 Easton, MD 21601
410-819-0300 FAX 410-819-8091

Member FDIC



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
TRENTON NJ 08625-0080

JON S. CORZINE
Governor

ANNE MILGRAM
Attorney General

April 23, 2009

The Honorable Patrick J. Leahy
Chair, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member, United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the nomination of Thomas E. Perez for Assistant Attorney General for the Civil Rights Division of the United States Department of Justice. Mr. Perez is exceptionally qualified to lead the Division, possessing demonstrated and impeccable legal, management, and leadership skills.

I served in the Department of Justice's Civil Rights Division, Criminal Section, from 2001 to 2005, and I remain engaged with the Department through participation in the Executive Working Group. Currently, as Attorney General for the State of New Jersey, I am the chief law enforcement officer in the State, with a mandate to enforce the State's civil rights and criminal laws. I know Mr. Perez to be a committed, dedicated, and highly effective advocate and prosecutor. I look forward to working with Mr. Perez in addressing shared federal and state civil rights priorities.

Mr. Perez will bring a breadth of advocacy, policy, and leadership experience to the Division. He has had a distinguished career in the Department of Justice, serving in several roles in the Division. He has prosecuted civil rights cases in the Criminal Section and, as the Deputy Assistant Attorney General for Civil Rights, oversaw the Division's complex criminal, education, and employment litigation. Since leaving the Department, Mr. Perez has continued his commitment to public service as a faculty member at the



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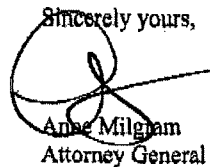
The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member

April 23, 2009
Page 2 of 2

University of Maryland School of Law and a member of the Montgomery County Council. In his current capacity as Secretary of the Department of Labor, Licensing and Regulation in Maryland, Mr. Perez has gained valuable experience and insights into the priorities and workings of state government, which complements his considerable federal and local leadership experience.

For these reasons, I am pleased to recommend Mr. Perez to the Committee. Please feel free to contact me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Anne Milgram", is written over a circular stamp. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Anne Milgram
Attorney General



THOMAS V. MIKE MILLER, JR.
PRESIDENT OF THE SENATE

MICHAEL E. BUSCH
SPEAKER OF THE HOUSE

MARYLAND GENERAL ASSEMBLY
STATE HOUSE
ANNAPOLIS, MARYLAND 21401-1991

April 22, 2009

Senator Patrick Leahy
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

We write to offer an unqualified and unhesitating endorsement of Thomas Perez's nomination to serve as Director of the United States Department of Justice's Office for Civil Rights. We know Mr. Perez to be a passionate and tireless advocate, a dedicated and responsible civil servant, and a thoughtful and respected leader. He will be a tremendous asset to the Department of Justice.

Mr. Perez was appointed to serve as Maryland's Secretary of Labor, Licensing and Regulation in January, 2007. He inherited a historically underfunded agency beset by political challenges and morale problems – a weaker leader could easily have been overwhelmed by the agency's inertia. Where others might have seen problems, Mr. Perez saw opportunity. From his first day as Secretary, Mr. Perez breathed new life into the department with a goal-oriented agenda and a commitment to pro-active, results-driven management.

The Department of Labor, Licensing and Regulation supervises job training and match services, unemployment insurance, and many of the State's licensing and regulatory boards. As Secretary, Mr. Perez had to balance the interests of the business community against our State's commitment to consumer protection. That can be a precarious tightrope, but he won praise from business leaders and consumer advocates for his willingness to listen and his ability to forge consensus.

In addition to his responsibility for the day-to-day operations of the agency, Mr. Perez helped shepherd the Governor's agenda through the General Assembly. He conducted himself with grace and aplomb, confronting skeptics and cynics with his earnest desire to improve the lives of ordinary Marylanders. His work ethic and meticulous attention to the details of policy-making earned him the trust of lawmakers across the political spectrum, and he parlayed that trust into extraordinary legislative success for working families in our state.

Page 2
April 22, 2009

Mr. Perez championed Maryland's efforts to combat the foreclosure crisis. He brought the banking industry together with consumer advocates to craft meaningful reform that put Maryland at the forefront of this critical issue. During this year's legislative session, he brought labor organizations together with industry groups to fight fraudulent misclassification of employees as independent contractors. In both instances, he won praise for bringing everyone to the table and crafting compromises which might otherwise have proved elusive.

We would be remiss if we did not raise the time honored cliché: the nation's gain will be the State of Maryland's loss. Mr. Perez's unwavering obligation to the highest ideal of public service will be an asset to the Department of Justice. His untiring commitment to his work will earn him respect and admiration from his colleagues. His innate intelligence and problem-solving abilities will help him move the Office of Civil Rights forward to the benefit of all Americans.

In the plainest and strongest terms possible, we urge you to confirm Mr. Perez as Director of the Office of Civil Rights. He is a remarkable public servant, and he will be an exceptional asset to our nation during this tumultuous period in our history.

Respectfully,



Thomas V. Mike Miller, Jr.



Michael E. Busch

CC: The Honorable Arlen Specter



Montgomery County Chamber of Commerce
51 Monroe Street, Suite 1800, Rockville, MD 20850
301-738-0015 phone • 301-738-8792 fax • www.montgomerycountychamber.com

April 22, 2009

The Honorable Senator Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Dear Senator Leahy:

On behalf of the Montgomery County Chamber of Commerce, I write to express our support for the nomination of Thomas E. Perez for the position of Assistant US Attorney General for Civil Rights.

Having served as both a member of the Montgomery County Council, and later as the Maryland Secretary of Labor, Licensing and Regulation, Mr. Perez will bring a wealth of knowledge and experience to this new post. Throughout his career, Mr. Perez has been a dedicated public servant with a passion for civil rights issues. In December of 2004, Mr. Perez became the first Latino to ever hold the position of President of the Montgomery County Council.

In our close partnership with Mr. Perez in his time as a County and State elected official, he has always demonstrated the intellect, integrity and dedication to hold a job of this stature and we urge you to confirm his nomination.

Sincerely,

A handwritten signature in cursive script, appearing to read 'G. Godwin', is written over a horizontal line.

Georgette "Gigi" Godwin
President and CEO
Montgomery County Chamber of Commerce

April 22, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

As current and former Fellows in the Francis D. Murnaghan, Jr. Appellate Advocacy Fellowship, we write to support confirmation of the Honorable André M. Davis to the seat on the U.S. Court of Appeals for the Fourth Circuit previously held by Judge Murnaghan.

The Murnaghan Fellowship was created in 2001 by Judge Murnaghan's family, friends, and former law clerks as a way to honor and extend Judge Murnaghan's professional legacy of public service and his commitment to justice for all litigants. No one exemplifies the values we have come to associate with Judge Murnaghan better than Judge Davis, who is himself a former law clerk to Judge Murnaghan.

Judge Davis has devoted his entire career to public service and has spent more than 20 years on the bench. In each capacity in which he has served, including the nearly 15 years he has spent as a U.S. District Judge, Judge Davis has earned a reputation for fairness, thoroughness and wisdom. He is also well-known in legal and community circles, and widely-admired for his kindness and compassion, which he exhibits both on the bench and in his many activities in the community. Judge Davis is a leader in every respect – as a judge, as a legal thinker, as a participant in the broader community, and as a person of fundamental decency and exceptional integrity.

Judge Davis has been an active supporter of the Murnaghan Fellowship since its inception. He has frequently spoken at Fellowship events, often discussing the need to nurture young lawyers in careers dedicated to public service. He has also taken the time to encourage many of us individually to pursue

The Honorable Patrick J. Leahy
 The Honorable Arlen Specter
 April 22, 2009
 Page 2

careers in public service. Through these interactions, we have come to experience personally the qualities of kindness and wisdom for which Judge Davis is well known.

Judge Davis would make an extraordinary contribution to the Fourth Circuit, just as he has already made extraordinary contributions to the U.S. District Court, to the Maryland legal community, and to every institution and organization of which he has been a part. We have been inspired by Judge Davis' commitment to the public good and urge his confirmation.

Sincerely,

Lewis Yelin
 2001 – 2002 Murnaghan Fellow

Wendy Hess
 2002 – 2003 Murnaghan Fellow

Joshua Auerbach
 2003 – 2004 Murnaghan Fellow

Beth Mellen Harrison
 2004 – 2005 Murnaghan Fellow

Janet Hostetler
 2006 – 2007 Murnaghan Fellow

Gregory Care
 2007 – 2008 Murnaghan Fellow

Matthew Hill
 2008 – 2009 Murnaghan Fellow

cc:

The Honorable Herb Kohl
 The Honorable Dianne Feinstein
 The Honorable Russell D. Feingold
 The Honorable Charles E. Schumer
 The Honorable Richard J. Durbin
 The Honorable Benjamin L. Cardin
 The Honorable Sheldon Whitehouse
 The Honorable Ron Wyden
 The Honorable Amy Klobuchar
 The Honorable Edward E. Kaufman

The Honorable Orrin G. Hatch
 The Honorable Charles E. Grassley
 The Honorable Jon Kyl
 The Honorable Jeff Sessions
 The Honorable Lindsey Graham
 The Honorable John Cornyn
 The Honorable Tom Coburn

April 27, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Ranking Member Specter:

As law clerks to the late Francis D. Murnaghan, Jr., we strongly support confirmation of the Honorable André M. Davis to succeed to Judge Murnaghan's seat on the U.S. Court of Appeals for the Fourth Circuit.

All of us have observed directly the distinctive judicial challenges posed by the breadth of the legal issues and human circumstances in Fourth Circuit cases. The Circuit includes centers of finance and cosmopolitan culture, distressed urban neighborhoods, suburban towns and commuter districts, and impoverished, semi-isolated rural communities. Not all litigants are represented by comparably effective counsel, and all deserve fairness and equal treatment before the law. Working with Judge Murnaghan showed us how important it is for such a wide range of cases to be addressed by a person of powerful intellect, deep learning, intuitive sympathy for all, and a steely commitment that "[j]udges should unflinchingly see that fairness prevails"¹

André Davis will be unflinching in that duty.

Most of us became acquainted with Judge Davis at annual reunions of the Murnaghan clerks. In addition to Judge Davis' humility and his sincere interest in our personal lives and professional careers, we were struck by his sharp intelligence, thoughtful nature, and unflagging commitment to justice. For example, when he was a judge on the District Court of Maryland for Baltimore City, although some members of the court did not seek out eviction cases, Judge Davis welcomed those assignments. Because of the speed with which eviction requests are processed and the gravity of the consequences for both landlord and tenant, Judge Davis appreciated the high stakes involved in this litigation, and he was committed to personal involvement in making sure that the proceedings were fair.

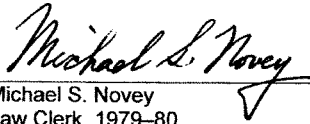
¹ *Jean v. Collins*, 155 F.3d 701, 712 (4th Cir. 1998) (Murnaghan, J., dissenting).

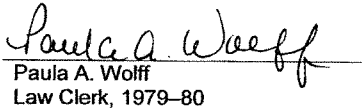
The Honorable Patrick J. Leahy
 The Honorable Arlen Specter
 April 27, 2009
 Page 2

Two of us were fortunate enough to work closely with Judge Davis, during the year when the three of us clerked for Judge Murnaghan. In chambers late at night, discussing each others' cases, we came to admire Judge Davis' intelligence and kindness, his thoroughness, his self-deprecating sense of humor, and especially his passion for justice. In bench memos, all three of us aspired to satisfy Judge Murnaghan's demanding standards for comprehensive research, rigorous even-handed analysis, and lucid expression. For Judge Davis, satisfying these standards was second nature. To this day, his commitment to excellence guides everything that he does—especially his service as a jurist.

As fellow Murnaghan clerks, we are immensely proud of Judge Davis' accomplishments and are amazed at his ability to maintain a common touch despite his pre-eminence as a federal judge. Judge Davis' life and career fully express the ideals and sense of duty that Judge Murnaghan so magnificently embodied. The possibility that Judge Davis might occupy the Fourth Circuit seat once filled by his—and our—beloved mentor is both appropriate and profound. We strongly urge his confirmation.

Sincerely,


 Michael S. Novey
 Law Clerk, 1979–80


 Paula A. Wolff
 Law Clerk, 1979–80

Is/ Mary Sarah Bilder
 Mary Sarah Bilder
 Law Clerk, 1990–91

Is/ Elizabeth Blue
 Elizabeth E. Appel Blue
 Law Clerk, 1995–96

Is/ Tovah Calderon
 Tovah R. Calderon
 Law Clerk, 2000

Is/ Lee Caplan
 Lee M. Caplan
 Law Clerk, 2000

Is/ Tracey Cote
 Tracey Goyette Cote
 Law Clerk, 1997–98

Is/ Debi Douglas
 Debi Davis Douglas
 Law Clerk, 1991–92

The Honorable Patrick J. Leahy
 The Honorable Arlen Specter
 April 27, 2009
 Page 3

Is/ Russell Engler

Russell Engler
 Law Clerk, 1983-84

Is/ Margaret Ferguson

Margaret Z. (Meg) Ferguson
 Law Clerk, 1987-88

Is/ Gregory Friel

Gregory B. Friel
 Law Clerk, 1988-89

Is/ Akiyo Fujii

Akiyo Fujii
 Law Clerk, 1987-88

Is/ Tracey George

Tracey E. George
 Law Clerk, 1992-93

Is/ Paula Gordon

Paula Ramos Gordon
 Law Clerk, 1996-97

Is/ Warren Hamel

W. Warren Hamel
 Law Clerk, 1985-86

Is/ Martin Himeles

Martin S. Himeles, Jr.
 Law Clerk, 1981-82

Is/ Charlton Howard

Charlton T. Howard
 Law Clerk, 1988-89

Is/ Amy Horton

Amy Horton
 Law Clerk, 1992-93

Is/ Margaret Hu

Margaret C. Hu
 Law Clerk, 2000

Is/ Suzanne Nora Johnson

Suzanne Nora Johnson
 Law Clerk, 1982-83

Is/ Marcy Jo Mandel

Marcy Jo Mandel
 Law Clerk, 1981-82

Is/ Jeffrey McFadden

Jeffrey E. McFadden
 Law Clerk, 1990-91

Is/ Mark Niles

Mark C. Niles
 Law Clerk, 1991-92

Is/ John Nockleby

John T. Nockleby
 Law Clerk, 1980-81

Is/ Leslie V. Owsley

Leslie V. Owsley
 Law Clerk, 1980-81

Is/ Stefanie Raker

Stefanie L. Raker
 Law Clerk, 1991-92

The Honorable Patrick J. Leahy
 The Honorable Arlen Specter
 April 27, 2009
 Page 4

/s/ Jason Robinson

Jason F. Robinson
 Law Clerk, 1999–2000

/s/ Tonya Robinson

Tonya T. Robinson
 Law Clerk, 1998–1999

/s/ Joan Ruttenberg

Joan E. Ruttenberg
 Law Clerk, 1982–83

/s/ Ann Sheehan

C. Ann Sheehan
 Law Clerk, 1989–90

/s/ Donald Tobin

Donald B. Tobin
 Law Clerk, 1996–1997

/s/ Timothy Toohy

Timothy J. Toohy
 Law Clerk, 1985–86

/s/ Lauren Willis

Lauren E. Willis
 Law Clerk, 1994–95

/s/ Susan Wittenberg

Susan Wittenberg
 Law Clerk, 1994–95

cc:

The Honorable Herb Kohl
 The Honorable Dianne Feinstein
 The Honorable Russell D. Feingold
 The Honorable Charles E. Schumer
 The Honorable Richard J. Durbin
 The Honorable Benjamin L. Cardin
 The Honorable Sheldon Whitehouse
 The Honorable Ron Wyden
 The Honorable Amy Klobuchar
 The Honorable Edward E. Kaufman

The Honorable Orrin G. Hatch
 The Honorable Charles E. Grassley
 The Honorable Jon Kyl
 The Honorable Jeff Sessions
 The Honorable Lindsey Graham
 The Honorable John Cornyn
 The Honorable Tom Coburn



NAACP Maryland State Conference
P.O. Box 67747
Baltimore, Maryland 21215

The Honorable Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

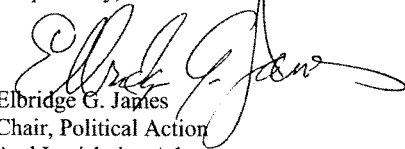
Dear Senator Leahy:

On behalf of the Maryland State NAACP, home of our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization, I strongly urge you to support the nomination of Thomas E. Perez. Tom Perez is a nationally recognized civil rights lawyer and consumer advocate who serves as the Secretary of Maryland's Department of Labor, Licensing and Regulation (DLLR). Under his leadership, DLLR recovered a record amount of unpaid wages of behalf of Maryland workers. He has led the effort to address the pernicious practice of misclassification of workers as independent contractors, and helped spearhead passage of the nation's first and only state living wage law. He was also the principal architect of Governor Martin O'Malley's sweeping package of reforms to address the foreclosure crisis in Maryland.

I have worked with Tome from his days as a member of the Montgomery County (MD) Council and I know that he has committed his entire to career to public service. When working with our community he speaks of serving as Special Counsel to Senator Edward Kennedy; and of working for the Clinton administration, serving as the Director of the Office for Civil Rights (OCR) at the United States Department of Health and Human Services. Also, of particular significance, Tom has served as a federal prosecutor for the Civil Rights Division of the Department of Justice.

Equally impressive as Tom's credentials and experience are his personal and lifelong commitment to helping and serving those who are often underserved. Tom has shown himself to be thoughtful, fair and judicious. On behalf of the Maryland State NAACP, we strongly urge your support of his nomination.

Respectfully,


Elbridge G. James
Chair, Political Action
And Legislative Advocate
Maryland State NAACP.



Janet Murguía
President and CEO

National Office
Raul Yzaguirre Building
1126 16th Street, NW
Washington, DC 20036
Phone: 202.785.1670
Fax: 202.776.1792
www.nclr.org

April 24, 2009

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Council of La Raza (NCLR), the largest national Hispanic civil rights and advocacy organization in the United States, I write in strong support for the confirmation of Tom Perez to be the next Assistant Attorney General for the Civil Rights Division at the U.S. Department of Justice.

NCLR has worked closely with Mr. Perez throughout his distinguished career in public service. Currently serving as Secretary of Labor for the State of Maryland, he is unquestionably one of the most dedicated and talented leaders in the Latino community and in the civil rights arena.

He has served with distinction in local, state, and federal government and has a long and successful track record on helping to ensure and protect the civil rights of all Americans. As Special Counsel to Senator Ted Kennedy, he was the Senator's principal advisor on civil rights and criminal justice issues. At the U.S. Department of Justice, he rose from prosecutor in the Civil Rights Division—during which he supervised the prosecution of a landmark hate crime case involving White supremacists and the African American community in Texas—to Deputy Assistant Attorney General for Civil Rights under Attorney General Janet Reno.

He was subsequently appointed Director of the Office of Civil Rights at the U.S. Department of Health and Human Services (HHS) in the Clinton administration where, as a strong advocate for cultural competence in all HHS programs, he helped to secure Executive Order 13166 which significantly improved access to services for people with limited English proficiency. As a member, and later President, of the Montgomery County Board of Supervisors from 2002 to

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2006, he led efforts to make health care more accessible to the county's residents, including the uninsured, and securing discounted prescription benefits.

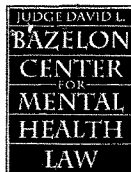
Mr. Perez is also deeply committed to inclusion and diversity and has been a strong supporter of Latino and other civil rights organizations. He has served on numerous boards, including that of CASA de Maryland, the leading Latino organization in Maryland and a prominent NCLR Affiliate.

In short, NCLR believes that Tom Perez's remarkable breadth of experience at—and ability to work with—all levels of government, his profound intellect, strong principles, and commitment to fairness, justice, and excellence will be a formidable asset to both the Department of Justice and to the administration. We hope you will give Mr. Perez every consideration for this critically important post.

Sincerely,



Janet Murguía
President and CEO



Civil Rights and Human Dignity

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William, VTCynthia M. Stinger
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Washington DCSally Zinman
Mental Health Consultants,
Berkeley CA

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Rags CollegeH. Rutherford Turnbull, III
Beach Center for Families and
Disability, University of Kansas

HONORARY TRUSTEE

Miriam Bazelon Knox
Washington DC

EXECUTIVE DIRECTOR

Robert Bernstein, PhD

Affiliations listed for information only

1101 15th Street NW, # 1212, Washington DC 20005-5002 ♦ 202/467-5730 ♦ TDD 202/467-4232 ♦ fax 202/223-0409 ♦ info@bazelon.org ♦ www.bazelon.org

April 10, 2009

The Honorable Patrick Leahy
Chair
Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Judiciary Committee
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

We write as leaders of national disability advocacy organizations to express serious concerns about the nomination of Andre Davis for the Maryland seat on the Fourth Circuit Court of Appeals. We appreciate the desire of the current Administration to select judicial nominees who are not only talented but fair and respectful of civil rights. That fairness and respect should extend to the rights of people with disabilities – as Congress reaffirmed only last year, in enacting the Americans with Disabilities Amendments Act (ADAAA). Judge Davis's record, however, raises serious concerns about whether these rights will be adequately protected by the Fourth Circuit, which has historically been a difficult forum for people with disabilities.

Among them, our organizations represent the interests of thousands of persons with disabilities. The National Council on Independent Living (NCIL) is the longest-running national cross-disability, grassroots organization run by and for people with disabilities. With over 100,000 members, the American Association of People with Disabilities (AAPD) is the largest national nonprofit cross-disability member organization, dedicated to ensuring political empowerment and economic self-sufficiency for the more than 50 million Americans with disabilities. ADA Watch/National Coalition for Disability Rights is a nonprofit alliance of hundreds of disability, civil rights, and social justice organizations united to defend and strengthen the rights of people with disabilities. The Bazelon Center is a national nonprofit organization that advocates for the rights of individuals with

04/10/2009 4:24PM

mental disabilities through litigation, policy advocacy, education, and training.

The White House has asserted that Judge Davis has a very balanced track record in disability cases. We appreciate that Judge Davis has reached decisions favorable to the plaintiffs in cases involving issues such as physical access to courthouses and housing developments, and effective communications with medical providers. These cases do not, however, assuage our concerns about Judge Davis's record in the area of employment discrimination, in which people with disabilities fare particularly poorly.¹ It is in that context that the vast majority of disability discrimination cases are brought. As such, it is in that context that we are particularly concerned with ensuring that our judges respect the civil rights of individuals with disabilities.

We could find only one published decision, in nearly 14 years on the bench, in which Judge Davis ruled in favor of the plaintiff on the substance of an Americans with Disabilities Act (ADA) employment discrimination claim.² A number of the decisions in which he ruled for the employer are deeply troubling in ways that relate to core disability community concerns:

- In *Rose v. Home Depot U.S.A., Inc.*, 186 F. Supp.2d 595 (D. Md. 2002), Judge Davis set out extraordinary hurdles for a person to demonstrate that he had a disability. The judge refused to recognize Gary Rose's disability because he "did not follow the proper protocol in determining whether he had vasomotor rhinitis" and "did not receive a proper treatment plan for his impairment." Nothing in the ADA requires a person to have a proper diagnosis or a treatment plan in place for his disability in order to receive protection from discrimination. Judge Davis, however, found that Rose should have followed up with a different doctor, undergone a CT scan to rule out the possibility of a different diagnosis, and "consistently followed a treatment regime" in order to establish his disability.

¹ See, e.g., Ruth Colker, *Winning and Losing Under the Americans with Disabilities Act*, 62 Ohio State L.J. 239 (2001) (documenting pro-defendant trial court outcomes in 94% of ADA employment discrimination cases, and appellate court reversals of pro-defendant outcomes in only 12% of these cases as compared with reversals of pro-plaintiff decisions in 42% of cases and reduction of damage awards in an additional 17.5% of cases).

² Additionally, we have identified two unpublished decisions in which Judge Davis ruled in part for a plaintiff and in part for an employer in cases involving disability-based employment discrimination claims.

This type of analysis is particularly problematic for individuals with disabilities that are challenging to diagnose accurately and treat effectively, including many individuals with psychiatric disabilities. The notion that individuals should be denied protection under the ADA until they have spent months or years trying to obtain effective treatment to control the effects of their disabilities is a perversion of the ADA, and is certainly not suggested by the decisions of either the Supreme Court or the Fourth Circuit.³

- In *Fitch v. Solipsys Corp.*, 94 F. Supp.2d 670 (D. Md. 2000), Judge Davis held that the ADA's "regarded as" prong did not protect someone who is repeatedly referred to as a "cripple" by his employer. Keith Fitch presented evidence that he was referred to by his employer as a "cripple" on multiple occasions due to a heart condition that limited him from lifting more than forty pounds. Judge Davis concluded that this was not sufficient to show that he was regarded as disabled in the context of a work environment where "employees regularly used derogatory nicknames for each other."
- In *Martell v. Sparrow's Point Scrap Processing, LLC*, 214 F. Supp.2d 527 (D. Md. 2002), Judge Davis held that the "regarded as" prong did not protect someone who is denied a job, even though the employer did not hire the applicant precisely because of his "abnormal hearing." Robert Martell presented evidence that he was regarded as substantially limited in hearing and working when an employer withdrew a job offer after learning that he had a hearing impairment, even though his hearing aids allowed him to recover "virtually all of his auditory capacity." In a holding not required by Fourth Circuit authority, Judge Davis found that Martell was not regarded as substantially limited in either hearing or working,

³ In *Rose*, Judge Davis relied on a summary affirmance in *Tangires v. The Johns Hopkins Hospital*, 79 F. Supp.2d 587, *aff'd*, 230 F.3d 1354 (4th Cir. 2000), in which the court found that a woman with asthma was not disabled because she had failed to take steroid medication recommended by her doctor. A summary affirmance affirms only the judgment and not the reasoning by which any particular aspect of the decision was reached. *Mandel v. Bradley*, 432 US 173, 176 (1977). Additionally the type of reasoning employed by Judge Davis in *Rose*, and by the court in *Tangires*, has been the subject of much criticism by courts and commentators. See, e.g., *Nawrot v. CPC Int'l*, 277 F.3d 896, 907 (7th Cir. 2002) (courts should not "meander in 'would, could, or should-have' land" and should "consider only the [mitigating] measures actually taken and consequences that actually follow").

even though the employer explicitly admitted that it refused to hire Martell because it believed that his "abnormal hearing" would create a danger in a noisy industrial setting.

- In *Campbell v. Federal Express Corp.*, 918 F. Supp. 912 (D. Md. 1996), the plaintiff, an applicant for a courier position whose left hand had been injured and lacked flexion, did not challenge Federal Express's refusal to hire him with the federal Department of Transportation. Judge Davis held that the ADA requires a person bringing an employment claim under the ADA to exhaust an administrative review process with another agency, in this case the DOT, in addition to the Equal Employment Opportunity Commission (EEOC) where an employer relies on that agency's regulations to support its defense. There is no requirement in the ADA or its regulations that plaintiffs in employment discrimination cases do so, only that they first seek relief from the EEOC before filing in federal court.
- Finally, Judge Davis requires even *pro se* ADA litigants to overcome significant hurdles in exhausting their claims before filing. In *Walton v. Guidant Sales Corp.*, 417 F. Supp.2d 719 (D. Md. 2006), Judge Davis dismissed the disability employment discrimination claim of a *pro se* plaintiff for failure to exhaust administrative remedies. Judge Davis ruled that, even though the EEOC itself considered the plaintiff to have filed a sufficient administrative charge within the statute of limitations, he had not. Judge Davis also ruled that equitable tolling should not apply. Equitable tolling applies when a *pro se* plaintiff misses a charge filing deadline due to reliance on misleading or incorrect information from the EEOC. Judge Davis held that the plaintiff here had not met this standard even though the plaintiff had contacted the EEOC on numerous occasions to inquire about the status of his administrative charge, was initially sent the wrong form by the EEOC, alleged that he timely filed the corrected form that he was sent after informing the EEOC of their mistake, and was helped by the EEOC to complete another charge after the deadline because they could not find his earlier form and had experienced problems with their data management system during the relevant time period.


These holdings demonstrate a troubling misunderstanding of Congress's intent that the ADA offer significant protections from discrimination to millions of workers with disabilities. Our concern is not diminished by the enactment last year of the ADAAA, which restored the ADA's definition of disability to the broad scope intended

by Congress and wrongfully restricted by decisions such as Judge Davis's. These decisions, erroneously decided as they are, leave us fearful that Judge Davis may similarly misinterpret last year's amendments.

The selection of judicial nominees is extraordinarily important to our community given the serious obstacles that individuals with disabilities have faced in trying to enforce their rights in the courts, particularly in the context of workplace discrimination. The Fourth Circuit is of foremost concern to us, since that court is now closely split and in recent years has decided many significant disability rights decisions by divided panels.

The ADA's protections are critical to the efforts of people with disabilities to obtain and maintain employment and to become independent and fully participating members of their communities. We are very concerned that Judge Davis's elevation to the Fourth Circuit will do little to ensure that their rights are protected. We hope that you will recognize that and will take seriously the concerns of people with disabilities in the Judiciary Committee's consideration of Judge Davis's nomination.

Very truly yours,



Robert Bernstein
Executive Director
The Judge David L. Bazelon
Center for Mental Health Law

Andrew Imparato
President and CEO
American Association of
People with Disabilities

John Lancaster
Executive Director
National Council on
Independent Living

Jim Ward
President
ADA Watch/National Coalition
for Disability Rights



**Thomas Perez – Nominee for Assistant Attorney General
Civil Rights Division, U.S. Department of Justice**

The U.S. Department of Justice (DOJ) is the principal legal authority tasked with enforcing federal fair housing laws, and it has both a clear mandate and wide discretion with respect to fair housing enforcement. Unfortunately, in recent years, DOJ has not met its responsibilities. The National Commission on Fair Housing and Equal Opportunity, co-chaired by former HUD Secretaries Jack Kemp and Henry Cisneros, released its report in December 2008 assessing the state and future of fair housing in America. One of the recommendations of the Commission was a renewed vigor and commitment to civil rights enforcement by the Department of Justice. In 2008, DOJ filed only 33 fair housing cases. The low number of cases DOJ handled was not due to a decline in civil rights violations; on the contrary, the Commission reported that more than 4 million instances of fair housing violations occur each year.

Our housing market cannot wait any longer for a commitment to fair housing enforcement. In the realm of mortgage lending, the Civil Rights Division has not recognized nor prosecuted discriminatory practices within the subprime market. It also did little to induce or require conventional lenders to operate within minority communities. **In 2008, DOJ filed only one case based on mortgage lending discrimination.**

Tom Perez is the right choice to lead this effort as the Assistant Attorney General of the Civil Rights Division at the Justice Department. He is an experienced civil rights lawyer and public servant with first-hand experience in civil rights law and policy. He is dedicated to public service, having spent ten years at the Civil Rights Division at DOJ, served as Head of Civil Rights at the U.S. Department of Health and Human Services, President of Montgomery County, Maryland Council, Special Counsel to Senator Edward Kennedy, and currently as Maryland Secretary of Labor, Licensing and Regulation.

With respect to civil rights, Mr. Perez has extensive experience prosecuting vigorously for the Civil Rights Division of DOJ. There, he handled cases of misconduct, racial violence, white supremacists, neo-Nazism, racially motivated arsons, cross burning and numerous police brutality and misconduct cases nationwide.

With regards to the foreclosure and financial crisis, Mr. Perez understands these issues and has the expertise to lead the Civil Rights Division's investigation and enforcement of civil rights and other laws that can stem abuses in the financial sector. In fact, Mr. Perez is Maryland Governor Martin O'Malley's point person on foreclosure prevention and has been working on fair housing issues from a state perspective for the past two years.

page 2 / Thomas Perez Confirmation

The nation needs an Assistant Attorney General with experience who is respected for his capabilities and integrity, and who will restore the Division to its mission of enforcing the law and hiring attorneys without regard to politics. The National Fair Housing Alliance supports the confirmation of Thomas Perez as U.S. Assistant Attorney General for the Justice Department's Civil Rights Division.

Contact:

Deidre Swesnik



April 2009



April 28, 2009

VIA FACSIMILE

The Honorable Patrick J. Leahy, Chair
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, D.C. 20510
FAX (202) 224-9516

The Honorable Arlen Specter, Ranking Member
Senate Judiciary Committee
711 Hart Building
Washington, D.C. 20510
FAX (202) 224-9102

Re: *Nomination of Thomas E. Perez to be Assistant Attorney General for the Civil Rights Division*

Dear Senators Leahy and Specter:

On behalf of the National Women's Law Center (the "Center"), an organization that has worked since 1972 to advance and protect women's legal rights, we write in strong support of the nomination of Thomas E. Perez to be Assistant Attorney General for the Civil Rights Division.

The Civil Rights Division enforces legal protections of critical importance to women, including Title VII, which prohibits sex discrimination in employment; Title IX, which protects women against sex-based discrimination in educational programs; and the Freedom of Access to Clinic Entrances (FACE) Act, which allows women to safely exercise their constitutional rights to reproductive health. In addition, the Civil Rights Division prosecutes hate crimes and crimes of human trafficking.

At this critical moment, the Civil Rights Division is in dire need of new leadership. Over the past eight years, the Civil Rights Division has failed to fulfill its mission of protecting and enforcing the legal rights of all Americans, and women and their families have suffered mightily as a result. The Division has been politicized and the excellence of the career attorney ranks has been tested and undermined. As a result, civil rights protections have been eroded over the past eight years. For example:

- The hostile climate in the Civil Rights Division, and most particularly in the Employment Section, led to the departure of a number of career attorneys. In addition, in the attorney hiring process, political appointees charged with filling career attorney positions rejected candidates with extensive civil rights backgrounds in favor of applicants with no expertise, but with demonstrated conservative political leanings.

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- During the Bush Administration, the Employment Section of the Division filed only 27 actions asserting claims of sex discrimination under Title VII, which prohibits such discrimination in employment. In comparison, approximately 50 such actions were filed during the prior Administration. The failure to prosecute employment discrimination cases meant fewer jobs, lower paychecks and more suffering and struggle for women and their families.
- The Appellate Section of the Civil Rights Division took a position in *Ledbetter v. Goodyear Tire*, 550 U.S. 618 (2007), a Supreme Court case that effectively eviscerated women's ability to enforce their right to equal pay. This position upended settled law and longstanding government interpretations.
- In several cases, the Employment Section reversed course or changed position dramatically, undermining the rights of plaintiffs in the process.
- Although the Civil Rights Division is responsible for criminal and civil actions stemming from violations of FACE, the Division during the Bush years failed to provide the Task Force on Violence Against Health Care Providers with the staffing or institutional support needed to effectively prevent, or respond to, continuing clinic violence.

As a result, it is of the utmost importance that the Assistant Attorney General for the Civil Rights Division have a strong commitment to enforcing the civil rights protections that the citizens of this nation rely upon, including the legal rights and protections specifically intended to provide women and girls with equal opportunity and the equal protection of the law.

Mr. Perez is such a person. He is eminently qualified for this position, having spent his career working to enforce and support robust civil rights protections. He worked as a career prosecutor in the Civil Rights Division of the Department of Justice, and received the Attorney General's Distinguished Service Award for his outstanding work. He was promoted to be Deputy Chief of the Criminal Section, and was later appointed Deputy Attorney General for Civil Rights. He served as Senator Edward Kennedy's Special Counsel on the Senate Judiciary Committee, acting as the Senator's principal adviser on civil rights. During the last two years of the Clinton Administration, Mr. Perez served as Director of the Office for Civil Rights at the U.S. Department of Health and Human Services, where he advised the HHS Secretary on a number of civil rights issues, including discrimination in welfare-to-work programs based on race, disability, and national origin.

Following his service in the federal government, Mr. Perez taught at the University Maryland School of Law for six years as a clinical law professor. He served on the Montgomery County, Maryland, County Council, and currently serves as Secretary of the Maryland Department of Labor, Licensing, and Regulation (DLLR). In his capacity as Secretary of DLLR, Mr. Perez has supported implementing the

NATIONAL WOMEN'S LAW CENTER, April 2009, p. 2

recommendations of the Maryland Equal Pay Commission, which helped ease the passage of a pay disparity data bill in 2008; this paved the way for the passage of the Lilly Ledbetter Civil Rights Restoration Act on April 14, 2009 (mirroring the federal Lilly Ledbetter Fair Pay Act).

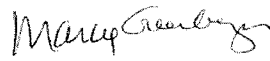
This twenty-year career in public service provided Mr. Perez not only with expertise in critical civil rights protections but also with significant leadership and management experience. For example, as Deputy Assistant Attorney General for Civil Rights, he oversaw litigation activities for the Criminal, Education, and Employment Sections and assisted in developing and implementing policy and legislative initiatives. As Director of the Office for Civil Rights in HHS, he managed a 230-person staff and a \$28 million dollar budget. And as Secretary of the Maryland DLLR, he supervises an agency of 1700 employees and manages a \$170 million budget. This experience has prepared him for the daunting task of overhauling a Division in desperate need of rebuilding.

Throughout his career, Mr. Perez has worked to protect and further legal rights and protections crucial to the women of this country. Mr. Perez has the experience and the commitment to equal justice necessary to restore the mission and vitality of the Civil Rights Division at this critical moment. Consequently, the Center offers its strong support of Thomas E. Perez to be Assistant Attorney General for the Civil Rights Division, and urges the Committee to approve his nomination quickly, so that he may begin the important work that awaits him. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,



Nancy Duff Campbell
Co-President



Marcia D. Greenberger
Co-President

Cc.: Judiciary Committee



April 18, 2009

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The Honorable Arlen Specter
Ranking Minority Member
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Zuckerman, Spodis, LLP
Christine E. Webber, Esq.
Cohen, Weiss, Haeffl & Fall, P.L.L.C.

Executive Director
John Nethercut, Esq.

Re: Support for the Appointment of Judge Andre M. Davis to the United States Court of Appeals for the Fourth Circuit

Dear Chairman Leahy and Ranking Member Specter:

It is with great pleasure and respect that I add my voice of support to those who know Judge Andre M. Davis. He will serve as a judge of the Fourth Circuit with the same commitment, intelligence, and heart we have seen throughout his life.

I have known Judge Davis since I became the Executive Director of the Public Justice Center in 2002. The Public Justice Center is a nonprofit public interest law firm in Baltimore, advocating for those who are denied justice because of their poverty or discrimination. I first met Judge Davis through the Francis D. Mumaghan Appellate Advocacy Fellowship, which provides a one year fellowship for a recent judicial clerk to work in public interest appellate advocacy at the PJC. Begun in 2001, we are proud to have hosted nine fellows to date. Judge Davis was a regular visitor and speaker at events to publicize the fellowship and at gatherings of the fellows and Judge Mumaghan's clerks. He speaks earnestly of the importance of public service, and of the role of the courts and lawyers in making justice happen in this country.

As I came to learn over the years since, Judge Davis is a well known and well respected figure throughout the Baltimore nonprofit and public interest law community. He is a member of the Board of the Open Society Institute - Baltimore, a leading philanthropist in Baltimore. OSI-Baltimore is one of the supporters of the Mumaghan Appellate Advocacy Fellowship. Judge Davis' commitment to public service is demonstrated through his current chairmanship of the Baltimore Urban Debate League and co-chair of the Advisory Board of "Community Law in Action," an organization that teaches advocacy skills to high school students. Previously, he has been chair of the board of the Legal Aid Bureau of Maryland, and Big Brothers / Big Sisters. The fact that a federal jurist would be so visibly active in the community is noticed and appreciated.

You have before you a man with an exceptionally high degree of respect as a judge, citizen, and person. The Fourth Circuit would be well served by Judge Andre Davis.

Sincerely,

John Nethercut
Executive Director



April 22, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

It is an honor to submit for your review this letter in support of the nomination of Thomas Perez for Assistant Attorney General for the Civil Rights Division of the United States Department of Justice.

St. Ambrose Housing Aid Center, Inc. is a HUD-certified non-profit housing agency founded in 1968 and a charter member of Neighborworks America. We first had the pleasure of working with Tom Perez, as Maryland Secretary of Labor, Licensing and Regulation, during his tenure as co-chair of the Homeownership Preservation Task Force convened in June 2007 to address the escalating foreclosure rates in Maryland. Through his leadership, members of the financial services sector, private bar, consumer advocates and other stakeholders engaged in robust and extensive debate that ultimately led to considerable consensus in reaching recommendations to find solutions. The recommendations resulted in sweeping bipartisan revisions to the Maryland foreclosure process and the enactment of common sense reforms to curb mortgage lending abuse in Maryland. His role as co-chair of the Task Force was the first in a series of successful initiatives brought about in order to preserve sustainable homeownership throughout Maryland.

Mr. Perez has taken an active role in addressing the current foreclosure crisis through decisive and coordinated actions. He met with members of our staff and with other non-profit housing counselors, homeowners facing foreclosure and victimized by foreclosure rescue fraud, as well as representatives from the mortgage banking industry to discuss emerging issues and obstacles facing each sector. Mr. Perez convened



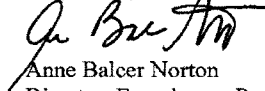
representatives from key mortgage loan servicers in order to identify areas in which servicers would agree to respond to requests for loss mitigation from Maryland homeowners within given parameters. His actions led to increased dialogue and opened the doors of communication between homeowners in Maryland and the mortgage servicers so that all parties can negotiate loss mitigation through fair and meaningful dialogue. Mr. Perez further recognized the need to increase capacity across the state in order to assist homeowners facing foreclosure through private legal counsel. He approached the Chief Judge of the Maryland Court of Appeals, the Honorable Robert Bell, to engage the judiciary and private bar in a broad scale pro bono assistance project. As a result of this unprecedented initiative, more than 800 private attorneys from across Maryland have volunteered pro bono assistance for homeowners facing foreclosure.

Under his leadership, Mr. Perez has called on his office to identify and prevent mortgage foreclosure rescue scams and swiftly respond to financial fraud. He has worked tirelessly to strengthen laws and enforcement, coordinate and expand public and private resources and to directly reach out to communities in distress across Maryland. While the above-described efforts illustrate his tireless commitment to social justice, they barely touch on the achievements that have resulted from his role as Secretary of Labor, Licensing and Regulation in Maryland, including workforce development, adult education, job training and immigration services. Tom Perez is a committed public servant and inspired leader.

Those who have had the opportunity to work closely with Mr. Perez are inspired by his leadership and commitment to justice. He is committed to public service and has the acute ability to work cooperatively with all sides of a given issue to effectuate positive change and lasting reform.

On behalf of the clients that we serve, it is an honor to request that this Committee act favorably on the nomination of Thomas Perez.

Very truly yours,



Anne Balcer Norton
Director, Foreclosure Prevention
St. Ambrose Housing Aid Center



OCA | EMBRACING THE HOPES AND ASPIRATIONS OF ASIAN PACIFIC AMERICANS

April 28, 2009

The Honorable Patrick Leahy
 United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy:

On behalf of OCA, I am writing to support the nomination of Thomas E. Perez as Assistant Attorney General for Civil Rights at the Department of Justice. Mr. Perez has excellent qualifications for this job and we are confident that if confirmed he will lead the Civil Rights Division back to its traditional stature of providing equal treatment and equal justice under the law.

Founded in 1973 as the Organization of Chinese Americans, OCA and its over 80 chapters and affiliates across the country are dedicated to advancing the social, political, and economic well being of Asian Americans and Pacific Islanders. OCA was the first Asian American and Pacific Islander organization to establish permanent headquarters in our nation's capital.

As Secretary of Maryland's Department of Labor, Licensing and Regulation, Mr. Perez took on the significant challenge of revamping an agency that had been long neglected and was widely seen as ineffective. Since taking the reins in 2007, Mr. Perez has helped the agency gain stature, and has made it one that is well-respected by lawmakers and other officials.

Mr. Perez has also been a leader of Maryland's efforts to combat the foreclosure crisis, playing a key role in crafting a legislative package that has been called among the most sweeping in the nation. The package of four laws was the result of a task force process that brought all stakeholders together. This year, working to combat the fraudulent misclassification of employees as independent contractors, Mr. Perez again brought together a broad group of stakeholders, including both labor and industry advocates.

Mr. Perez has committed his entire career to public service, most of it as a prosecutor in the Civil Rights Division. Mr. Perez's commitment to advancing the civil rights of all Americans, and his devotion to the mission of the Division, make him uniquely qualified to lead the Division. For these reasons, OCA urges for Mr. Perez's confirmation as the Assistant Attorney General for Civil Rights. Please do not hesitate to contact me should you have any questions or if OCA can provide your office with additional information that is helpful to this process.

Respectfully,

George C. Wu
 National Executive Director

Founded in 1973 as the Organization of Chinese Americans, OCA is a national organization dedicated to the social, political, and economic well-being of Asian Pacific Americans in the United States.

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ANTHONY J. O'DONNELL
Legislative District 29C
 Calvert and St. Mary's Counties
 House Minority Leader
 Environmental Matters Committee



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April 23, 2009

The Honorable Patrick Leahy
 United States Senate
 Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy:

As Minority Leader of the Maryland House of Delegates, I am pleased to support the nomination of Thomas Perez for the position of Assistant Attorney General for Civil Rights.

In my dealings with Secretary Perez, I have always found him to be fair-minded and willing to listen to a variety of views on an issue. While we have not always agreed ultimately, I have been impressed by his willingness to reach across the aisle. That is one reason I believe Tom Perez is an excellent choice to lead the Division of Civil Rights at the Department of Justice.

During Secretary Perez's tenure at the Department of Labor, Licensing, and Regulation, he has convened diverse groups of stakeholders on the foreclosure crisis, adult education and workforce training, and the misclassification of Maryland workers to forge consensus and find common ground. During the legislative session, he regularly seeks input from both Democratic and Republican members of the Maryland General Assembly. He also has been very responsive to my office regarding constituent issues and helping to resolve the same without regard to party.

It is my belief that the reason Tom works so hard to find comprehensive solutions to the everyday problems Americans face because he truly has their best interests at heart. He is a committed public servant. I am confident that Tom will lead the Division with commitment and integrity.

For those reasons, I support his nomination and strongly urge his confirmation.

Sincerely,

Anthony J. O'Donnell
 Minority Leader

STATE OF MARYLAND
OFFICE OF THE GOVERNOR



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TTY USERS CALL VIA MD RELAY

April 21, 2009

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my strong support for the nomination of Thomas Perez to be Assistant Attorney General for Civil Rights at the Department of Justice. Tom is a committed public servant who has devoted his entire career to the people of Maryland and this nation, and he is highly qualified to lead the revitalization of the Civil Rights Division.

The Department of Labor, Licensing and Regulation (DLLR) has 1600 employees and wide ranging jurisdiction. Its responsibilities range from enforcement of labor laws to the oversight of our state banking system and regulation of certain mortgage originators, to the administration of Unemployment Insurance and workforce development programs. The Department has additional consumer protection responsibilities, and the job requires a person with a wide breadth and depth of knowledge and experience.

When I asked Tom to serve as Secretary of DLLR in 2007, I frankly had no idea that the issues within his agency's jurisdiction would occupy such a prominent role in my administration so soon. Shortly after I assumed office, we were immediately confronted by the foreclosure crisis and the national recession.


Tom immediately rose to the occasion, and has been especially instrumental in leading the charge to combat the foreclosure crisis, and in helping me craft an economic security package to assist struggling Marylanders. In 2007 he co-chaired the Homeownership Preservation Task Force, and by working with all stakeholders, including both consumer groups and banking representatives, he was able to craft consensus reforms that gained broad bipartisan support in the General Assembly. Those reforms, which lengthened the foreclosure process, strengthened lending and licensing standards and created new tools to combat fraud, have been recognized as some of the most sweeping in the nation. One of the nation's largest mortgage fraud prosecutions originated in Tom's office, and has been a model of collaboration between the state and federal prosecuting authorities.

I have been particularly impressed with Tom's leadership and management skills, as well as his ability to work across party lines with the Maryland General Assembly. Tom inherited an agency with great potential that was not firing on all cylinders. He tackled critical management and leadership challenges head on, and transformed DLLR from a second tier to a top tier agency. He has brought the Department recognition it never before received from lawmakers and other officials in the State. Republicans and Democrats alike in the Maryland General Assembly have praised his policy and legal acumen, and his inclusive, engaging style.

Ⓢ

Chairman Leahy and Ranking Member Specter
Page 2

While Tom's nomination by President Obama leaves us with the difficult task of finding someone as able and well-respected to fill his shoes, I know he is the right person to lead the Civil Rights Division back to prominence. I strongly support his confirmation, and I urge you to do the same.

Sincerely,

Governor

ERIK PAULSEN
THIRD DISTRICT, MINNESOTA

FINANCIAL SERVICES
COMMITTEE

FINANCIAL INSTITUTIONS AND
CONSUMER CREDIT SUBCOMMITTEE

INTERNATIONAL MONETARY POLICY AND TRADE
SUBCOMMITTEE

OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

April 27, 2009



Congress of the United States
House of Representatives
Washington, DC 20515-2303

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SUITE 230
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FAX: (952) 405-9514
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The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter,

I am writing to express my strong support for the nomination of Thomas Perez for Assistant Attorney General for the Civil Rights Division of the United States Department of Justice and urge his confirmation.

Secretary Perez's qualifications and credentials are exceptional. He is a nationally recognized civil rights lawyer whose breadth and depth of experience makes him an ideal choice to lead the Civil Rights Division. He knows the Division inside and out, because he worked there for almost a decade in variety of critical positions. As a prosecutor in the Division, he was lead attorney in some of the Department's most high profile and complex civil rights cases. As Deputy Assistant Attorney General for Civil Rights, he oversaw complex litigation in the employment and education areas. As a member of the nonpartisan Kaiser Commission on Medicaid and the Uninsured and the former Director of the Office for Civil Rights at the U.S. Department of Health and Human Services, he has a keen understanding of health care issues that are front and center in our national dialogue.

In Maryland, Secretary Perez, in his current capacity as Secretary of Maryland's Department of Labor, Licensing and Regulation, has been a principal architect of Governor Martin O'Malley's wide ranging, successful foreclosure prevention initiative. Secretary Perez led the legislative effort that resulted in the passage of a package of reforms that were comprehensive and consensus. He negotiated written agreements with six major mortgage servicing companies to provide meaningful relief to Maryland homeowners in danger of foreclosure. One of the largest ongoing mortgage fraud prosecutions in the nation originated in Secretary Perez's office.

He has held leadership positions in federal, state and local government, and has worked in all three branches of the federal government. As such, he has an acute understanding of the need

PRINTED ON RECYCLED PAPER

for the federal government to work in partnership with state and local governments to safeguard the civil rights of all Americans.

Leading the Civil Rights Division, like running an Attorney General's office, requires extensive legal, management and leadership skills, as well as extensive experience in building coalitions. Secretary Perez has led important agencies. He currently heads a Department of roughly 1600 employees, and has held other leadership positions in the federal government. He has a well earned reputation as a consensus builder.

Mr. Perez's distinguished career demonstrates his vast leadership ability, integrity and commitment to public service. I am confident that Mr. Perez would make an exceptional Assistant Attorney General for the Civil Rights Division and urge you to confirm his nomination.

Sincerely,

A handwritten signature in black ink, appearing to read 'E.P.' or 'Erik Paulsen', written in a cursive style.

Erik Paulsen
Member of Congress



JONES LANG
LASALLE

1801 K Street, NW, Suite 1000 Washington DC 20006
tel +1 202 719 5000 fax +1 202 719 5001

29 April 2009

Honorable Patrick Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Nomination of Tom Perez to be Assistant Attorney General for Civil Rights

Dear Mr. Chairman:

I am writing to urge the Judiciary Committee and the Senate to vote to confirm the nomination of Tom Perez of Maryland to be Assistant Attorney General for Civil Rights. The nation needs someone in the Civil Rights post at the Department of Justice equal to the task of rebuilding the Civil Rights Division, someone who is worthy of the legacy of the best of those who have held the post before. Tom Perez is that person.

His resume tells you that he has spent most of his career in the field of employment and civil rights law, including significant service in the Civil Rights Division at Justice, the division he would now head. The resume clearly indicates that he has the experience on paper to perform this job competently.

But I can tell you from personal experience that Tom has the commitment, judgment and temperament to perform not just competently but to excel in the position. In his public service in Montgomery County and then at the State of Maryland, Tom demonstrated time and again that to him the American ideals of fairness and equality before the law are not abstract principles, but principles for our government and culture to live by. He is an impassioned and engaging speaker about them and is dogged about lawfully pursuing them, whether through legislation, litigation, or public advocacy.

Tom is a natural leader, inspiring by his example, his intellect, his wit and his personality. I have known Tom since he became a member of the Montgomery County Council in 2002. At the time, I was the full-time president of the Greater Washington Board of Trade, the Washington area's regional chamber of commerce. I got to observe Tom Perez at close range. We agreed on many, but not all issues. I can tell you that, while Tom never wavers from his principles, he listens to other viewpoints, works hard to forge coalitions and is an effective broker as well as advocate in negotiations.

I was chief of staff to the late Senator Daniel Patrick Moynihan, have been an appointee in the Federal Government and have been active in local and regional Washington area public policy. I have seen a wide range of executive branch leaders. Tom Perez has the talent and disposition to be among the best.

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Tom presents a hard-to-match combination of experience and talent for this particular post. I hope you will swiftly and decisively recommend Tom Perez's confirmation to the Senate.

These views are of course my own and do not necessarily express the opinion of my firm.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Peck". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Robert A. Peck
Managing Director



April 24, 2009

The Honorable Patrick Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Thomas E. Perez

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the hundreds of thousands of members of People For the American Way, we write in strong support of Thomas E. Perez who has been nominated for the position of Assistant Attorney General for the Civil Rights Division of the Department of Justice. As his record and background demonstrate, Mr. Perez is eminently qualified for this position, and we strongly urge his prompt confirmation.

As you know, the role of the Assistant Attorney General for the Civil Rights Division of the Justice Department, together with Attorney General Eric Holder, is that of enforcer of the nation's federal civil rights laws. Without a firm commitment to upholding these laws, weak enforcement of them would put every major civil rights law in this country in jeopardy, including laws prohibiting employment discrimination in the public sector under Title VII of the Civil Rights Act on the basis of race, gender, religion, national origin or disability, and laws under the Voting Rights Act, the Americans with Disabilities Act, the Equal Credit Opportunity Act and others.

We have seen in years past how a lack of commitment and sensitivity to these laws can have a direct impact on the effectiveness of the Civil Rights Division. For example, during John Ashcroft's tenure as Attorney General under former President George W. Bush, the Department filed a dismal average of three Title VII cases a year. In comparison, during the Reagan, Bush Sr., and Clinton administrations, the Justice Department averaged between 12 and 14 Title VII cases per year. We believe that with Mr. Perez as head of the Civil Rights Division this part of history will not repeat itself.

Mr. Perez has demonstrated that he has an in-depth understanding of and commitment to civil rights law and policy and is, without question, a career civil rights lawyer and public servant. Not only does he have 12 years of experience in federal public service, he spent the first ten years of his legal career in the Civil Rights Division itself prosecuting cases of misconduct and racial violence, including a fatal hate crimes case in Lubbock, Texas involving a group of white supremacists, a case involving the founder of a neo-Nazi organization who recruited boys to engage in racially motivated criminal activity, and a number of police brutality and misconduct cases. In addition, he later served as Deputy Assistant Attorney General for Civil Rights under

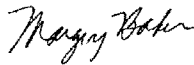
2000 M Street, NW ♦ Suite 400 ♦ Washington, DC 20036
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site <http://www.pfaw.org>

Attorney General Janet Reno, where he worked to implement laws and policies in the civil rights arena.

In his subsequent work as Director of the Office for Civil Rights at the Department of Health & Human Services (HHS), he led the enforcement of civil rights laws at the agency to ensure that health providers and others comply with federal civil rights laws. Specifically, he worked to prevent racial discrimination in health care and discrimination in welfare to work programs based on race, disability or national origin. At HHS, he also established a guidance policy on the responsibilities of health and human service providers to provide those with limited English skills meaningful access to critical health and social services. These experiences and more cannot be paralleled and are only a small sample of what Mr. Perez has accomplished in his career to promote and protect our fundamental civil rights.

In sum, Mr. Perez is a committed civil rights advocate who could not be more qualified to lead the Civil Rights Division of the Justice Department. He has demonstrated a deep commitment to the rule of law and to core constitutional values of liberty, equality, and justice for all. We urge his prompt confirmation.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program Planning



March 31, 2009

The Honorable Patrick Leahy, Chairman
 The Honorable Arlen Specter, Ranking Member
 Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the hundreds of thousands of members of People For the American Way, I write in strong support of David Hamilton, who has been nominated to be a judge on the US Court of Appeals for the Seventh Circuit Court. Chief Judge Hamilton is eminently qualified for this position and we urge his prompt confirmation.

Judge Hamilton is an accomplished and well-respected jurist who has shown a deep commitment to the rule of law and core constitutional principles of liberty, equality, and justice for all Americans. He puts principle ahead of politics and brings an open mind to every case.

Judge Hamilton graduated from Haverford College and received his law degree from Yale Law School. After clerking for Seventh Circuit Judge Richard Cudahy, he joined the law firm of Barnes and Thornburg. He served as counsel to then-Governor Evan Bayh and was a member of the Indiana State Ethics Commission before returning as a partner to Barnes and Thornburg. Since 1994, he has served on the US District Court for the Southern District of Indiana, taking on the role of Chief Judge in January 2008.

Judge Hamilton has a long public record while on the bench and has presided over hundreds of cases, many of which are reported and available for scrutiny. His opinions demonstrate his faithfulness to the rule of law over partisan politics, and as such, his nomination is supported by both Senators in his state – Democrat Evan Bayh and Republican Richard Lugar.

As noted repeatedly by the lawyers who practice before him, Judge Hamilton brings an outstanding intellect and exceptionally cogent analysis to the cases before him. His decision in *Hinrichs v. Bosma*, 400 F.Supp. 2d 1103 (S.D. Ind. 2005), concluding that the sectarian prayers offered as part of the official proceedings of the Indiana House of Representatives violated the constitutional prohibition against government establishment of religion, exemplifies the care and thoroughness he brings to the cases before him. In this case, after a careful review of the record presented to the court and a detailed analysis of precedents with respect to government-sponsored prayer, including the unique status of legislative prayer, Judge Hamilton determined that the official platform of the Speaker's podium was impermissibly being used to advance sectarian prayers favoring a particular religion. He noted, of course, that non-sectarian prayers, not used to advance or disparage any particular faith or belief, were entirely permissible. Although the Seventh Circuit Court of Appeals subsequently overturned Judge Hamilton's decision in *Hinrichs v. Speaker of the House of Representatives*, 506 F.3rd 584 (7th Cir. 2007), the

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court did so not on the merits, but on grounds that the taxpayers bringing the suit lacked standing.

Judge Hamilton carefully weighs all of the facts before him and does not pre-judge cases. *Tucker v. SmithKline Beecham Corp.*, 2008 US Dist. LEXIS 55919 (S.D. Ind. 2008), where Judge Hamilton reversed his own earlier decision, is perhaps most instructive in this regard. The case involved a wrongful death suit under Indiana law brought by plaintiff Debra Tucker against SmithKline, claiming that the company breached its duty to warn of an increased suicide risk in adults taking the drug Paxil, thereby causing the death of her brother, Father Rick Tucker. In an initial opinion, Judge Hamilton ruled that federal law preempted the claim because the federal Food and Drug Administration (FDA) required the company to include labeling that conflicted with the warning sought by the plaintiff under Indiana law. When presented with a motion to reconsider, Judge Hamilton took a fresh look at his understanding of the scope of a company's ability to modify pharmaceutical labels without FDA approval when the manufacturer has "reasonable evidence of a serious hazard" and concluded that his original determination had been incorrect. He therefore vacated his earlier judgment dismissing the suit and reopened it for adjudication on the merits. As others have noted, Judge Hamilton's second decision relied on an analysis of preemption with respect to the FDA that tracked very closely Justice Steven's recent decision for the majority in *Wyeth v. Levine*, 2009 US LEXIS 1774 (March 4, 2009).

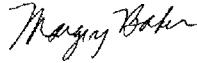
Judge Hamilton's commitment to the rule of law is evidenced by numerous decisions holding wrongdoers fully accountable for their actions. He sentenced a man convicted of producing and possessing child pornography to 100 years in prison consistent with federal sentencing guidelines. See *United States v. Turner*, 206 Fed. Appx. 572 (7th Cir. 2006) affirming the sentence. He sentenced to 60 months in prison a defendant found guilty of felony violations for knowingly making false statements in documents required to be filed under the Clean Water Act. See *United States v. Hagerman*, 525 F. Supp 2d 1058 (S.D. Ind 2007). And in *United States v. Tauer*, involving a defendant who pled guilty to bank fraud for writing bad checks and fixing bank loans to keep his real estate company afloat when it ran into financial trouble, he sentenced the man to 6 ½ years in prison and ordered him to pay \$9 million in restitution. In imposing the sentence Judge Hamilton reportedly noted his concern for the trail of broken promises and the lives the defendant had turned upside down through his fraudulent actions. See generally *US v. Tauer*, Case No. IP05-CR-0028-01-H/F (S.D. Ind. 2007); see also Press Release, US Department of Justice, Hendricks County builder Sentenced For Bank Fraud (April 12, 2007).

Judge Hamilton adheres to the Constitution and the rule of law no matter how unpopular the result. In *Doe v. Prosecutor*, 566 F. Supp. 2d 862 (S.D. Ind. 2008), Hamilton struck down a part of a statute that required sex and violent offenders who had completed their sentences and were no longer on parole, probation or any other form of court supervision to sign a consent form agreeing to have their home computers searched at any point, without notice or suspicion. Failure to provide consent was a felony under state law. Judge Hamilton concluded that the statute impermissibly forced the plaintiffs to waive their Fourth Amendment rights to privacy and security in their homes under threat of criminal prosecution for failing or refusing to do so. Concluded Hamilton, "however well intentioned, [the statute] seeks to achieve law enforcement goals with means that violate the *Fourth Amendment*." 566 F. Supp.2d. at 888.

In sum, Judge Hamilton is a careful, conscientious, and thorough jurist who brings an open mind to every case. He has demonstrated a deep commitment to the rule of law and to core constitutional values of liberty, equality, and justice for all.

We urge his prompt confirmation.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President for Policy and Program Planning

**OPENING STATEMENT OF THOMAS PEREZ, NOMINEE FOR ASSISTANT
ATTORNEY GENERAL FOR CIVIL RIGHTS, U.S. DEPARTMENT OF JUSTICE
SENATE COMMITTEE ON THE JUDICIARY
APRIL 29, 2009**

Mr. Chairman, Senator Specter and members of the Committee, I am honored to be before you today and to have the opportunity, if confirmed, to serve our country as Assistant Attorney General for Civil Rights.

It is a particular privilege to return to this Committee, where I spent more than two years working as special counsel to Senator Edward Kennedy.

I am grateful to the President and to the Attorney General for the chance to be considered for this position, and for the opportunity, if confirmed by the Senate, to return to my professional roots in the Civil Rights Division of the Department of Justice.

I would like to thank Senator Cardin and Senator Mikulski for their support, and I would also like to thank my good friend and current boss, Governor Martin O'Malley, for giving me the opportunity to serve the residents of our state. Maryland has exceptional leadership at federal, state and local levels, and I am proud to call it my home.

I also want to thank my family for their unwavering support. I have spent my entire career in public service, and while the non-monetary rewards have been priceless, I could not have done so without the love and support of my wife, Ann Marie Staudenmaier, an accomplished public interest lawyer, and my three children, Amalia, Susana and Rafael.

I also know that my parents, who inspired me to a career in public service, are here with me in spirit. My family's story is the story of millions of immigrants who come to America seeking a better life. My mother arrived in America in the 1930s from the Dominican Republic because her father was appointed Ambassador to the United States. A few years later, her father was declared "non grata" by his country for speaking out against its repressive dictator following the brutal massacre of ten of thousands of Haitians.

It was the middle of the Great Depression, and my grandparents and their nine children had very little aside from unshakeable optimism and a profound gratitude to the United States, their newly adopted homeland. My four uncles were so grateful to this country that they enlisted as legal immigrants and served in the U.S. Army during World War II.

My father also fled the ruthless regime in the Dominican Republic and came to America seeking a better life. He too developed an immediate sense of gratitude for the freedom of America and, while a legal immigrant, served with distinction as a physician in the U.S. Army. He established a strong bond with veterans and, following his discharge, dedicated the rest of his career to the Veterans Administration hospital in Buffalo, New York.

My parents taught my four siblings and me to work hard, aim high, give back and always ensure that the ladder is down for the less fortunate. They valued education, and my four siblings all

became doctors who spend a significant amount of time working with underserved communities. My father quite literally worked himself to an early grave providing for his family, dying suddenly when I was 12. Times became tougher, finances tighter, but my mother was a rock, and I had a village in Buffalo raising me. Thanks to Pell grants, work study jobs and other scholarships, I was able to follow the path to higher education that my parents set out for me.

My goal was always to become a civil rights lawyer, because I believe that civil rights continues to be the unfinished business of America. I want to ensure that everybody has an opportunity to realize the American dream. It was my own dream to work in the Civil Rights Division of the Department of Justice because it is the nation's preeminent civil rights law enforcement agency.

I have had the opportunity to serve the Division in many of its core enforcement areas, and in a number of capacities. I started as a law clerk in the Housing Section under Attorney General Meese, and later became a career prosecutor in the Criminal Section of the Division under Attorney General Thornburgh. I served on the Hiring Committee for the Honors Program under Attorneys General Barr and Reno. I served as a Deputy Chief of the Criminal Section and, following my detail to the Senator Kennedy's office, I returned as Deputy Assistant Attorney General for Civil Rights under Attorney General Reno, where I oversaw the work of the Employment, Education and Criminal Sections.

Under the tutelage of the Division's career professionals, I learned how to be a lawyer, a supervisor and a professional. I traveled across the nation and helped rebuild communities that had been torn apart by racial unrest. My first trip in the Civil Rights Division was to assist in a prosecution in Mobile, Alabama, where we were treated with great respect by then US Attorney and now Senator Sessions. I will never forget my experience in Lubbock, Texas prosecuting a group of white supremacists who went on a racially motivated killing spree; and the memorable case involving the prosecution of members of an elite police unit in Oakland who were involved in a sophisticated scheme of brutality, theft and falsification of evidence. We invariably went up against the best lawyers in town, whether it was Northern California, Mobile, Alabama or Lubbock. As a result of the leadership and fortitude of the dedicated cadre of career professionals, justice was served across America.

And so I must admit that when I read the recent Inspector General's Report on the Civil Rights Division, I was disturbed and saddened. The Civil Rights Division depicted in that report bore little resemblance to the one where I proudly served for almost a decade under both Republican and Democratic leadership.

It troubles me to see that in recent years the effectiveness and reputation of what has long been the nation's finest civil rights law enforcement agency has been damaged. The morale of committed, able career attorneys is at a low point. A brain drain has diminished the effectiveness of many of its sections. The Civil Rights Division has suffered. I am very grateful to Attorney General Michael Mukasey's efforts in stabilizing the situation.

I have a deep optimism that we can restore the Civil Rights Division to its historic position as the preeminent civil rights law enforcement agency in the federal government. At both the Office of Civil Rights at HHS and the Maryland Department of Labor, Licensing and Regulation, I was

asked to take over the reins of an agency with a critical mission but significant challenges. I tend to look at problems as opportunities. None of the challenges at the agencies I have led have proven insurmountable, and I believe the same is true for the Civil Rights Division.

If confirmed, I would begin by restoring trust between the Division's career attorneys and political leadership. Years spent as a career attorney in the Division have given me profound respect for their work and their commitment to enforcing the law. There will undoubtedly be times when I may disagree with judgments of the career leadership, but I pledge, if confirmed, always to listen and take into consideration their opinions and advice.

I will ensure that hiring is guided by a search for the most qualified candidates. The Division is a law enforcement agency, and we will find those with a passionate commitment to enforcing the law in a fair and even handed fashion. I will spend significant time in the near term addressing the brain drain that has adversely affected the Division's ability to carry out its mission. If I am confirmed, under my leadership, the Division will use all of the tools available in its arsenal to enforce the law and uphold justice. We will recognize the need for a comprehensive approach to problem solving, and we will pursue not only litigation, but outreach and education to help prevent violations of the law.

I will build bridges and create coalitions, working with sister agencies in the federal government, as well as partners in state and local governments, to ensure effective enforcement of civil rights laws. For instance, addressing the foreclosure crisis will require substantial collaboration with a wide array of federal agencies, as well as our counterparts in State Attorney General's offices and elsewhere. In my current position as Secretary of the Department of Labor, Licensing and Regulation, I have been a principal architect of the Governor's foreclosure prevention initiatives. I have seen the value of working collaboratively with a wide range of stakeholders, and I have used a wide array of tools, including enforcement, education, and coalition building.

It is important to understand areas where progress has been made, and those programs put in place in recent years that have proven successful will continue. The Division will continue to uphold religious freedom and crack down on human trafficking. At the same time, it is critical to ensure full and fair enforcement of the entire array of laws within the Division's jurisdiction. If confirmed, I will ensure that the Department plays an active role in stemming the foreclosure crisis, ensuring that the sacred right to vote is protected, and aggressively prosecuting hate crimes.

Attorney General Holder told you during his own confirmation hearing that he intends to make restoration of the Civil Rights Division and its mission a priority. If confirmed, I look forward to leading the charge.

We can rekindle the bipartisanship that has characterized the fight for civil rights throughout our nation's history by returning the Civil Rights Division to its law enforcement roots. Senator Kennedy taught me so much, but the two most important lessons were the need to build bipartisan coalitions, and the importance of remembering that idealism and pragmatism are not mutually exclusive. The most significant pieces of civil rights legislation in the past fifty years have all come through this Committee, and have all been the result of bipartisan consensus. If confirmed, I will look forward to working with you in this bipartisan spirit as we address the critical civil rights challenges confronting America today.

MAR-31-2009 16:08

Edwards Technologies, Inc

310 322 1459 P.01/01

Post-It* Fax Note	7671	Date	3/31	# of pages
To	SENATE Jud. Comm	From	R. PERRY	
Co./Dept.		Co.		
Phone #		Phone #	810-536-7070	
Fax #	202-2249516	Fax #	310-322-1459	

March 31, 2009

To: Senate Judiciary Committee
Chairman: Senator Patrick Leahy
From: Roberta Perry

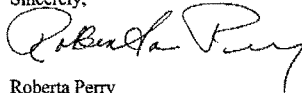
Sir,

I am writing to ask you to oppose the confirmation of Judge David Hamilton to the 7th Circuit Court of Appeals.

Hamilton is a former ACLU attorney who has an anti-faith, anti-life record. Hamilton even issued a federal court ruling that ordered the Speaker of the Indiana House to immediately stop prayers "using Christ's name or title" -- but ruled that prayers said to "Allah" were acceptable. Hamilton also has a clear pro-abortion record and personally blocked an informed consent law from taking effect.

Judicial appointments at this level are for life, which is why they require Senate confirmation. It is your sworn duty to protect and defend the Constitution. I urge you to oppose Hamilton's confirmation.

Sincerely,



Roberta Perry

03/31/2009 7:49PM

Ronald R. Peterson
President
Johns Hopkins Health System
733 N. Broadway, BRB 104
Baltimore, MD 21205

William G. Robertson
President & CEO
Adventist HealthCare
1801 Research Blvd #400
Rockville, MD 20850

April 20, 2009

Senator Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

Senator Arlene Specter
711 Hart Senate Office Building
United States Senate
Washington, DC 20510

Gentlemen:

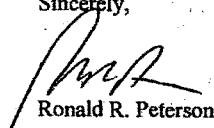
Later this month, the Senate Judiciary Committee will take up the nomination of Thomas E. Perez for the post of Assistant U.S. Attorney General for Civil Rights. We are writing in support of this nomination.

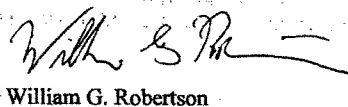
In our roles as senior leaders of two large health care organizations and through our positions on the Maryland Governor's Workforce Investment Board, we have had the opportunity to work closely with Mr. Perez in his role as the Maryland Secretary of Labor, Licensing and Regulation and in his role as a Montgomery County (Maryland) Councilman.

In all of our associations with him, we have found Mr. Perez to be a person with great capacity and passion for service, a person of incisive intellect, and a man of high ideals and ethics.

Mr. Perez has served our community and nation well in a variety of roles and we urge you to confirm him for the role of Assistant U.S. Attorney for Civil Rights.

Sincerely,


Ronald R. Peterson


William G. Robertson



The Pray In Jesus Name Project

Chaplain Gordon James Klingenschmitt
 PO Box 77077, Colorado Springs, CO 80970
 chaplaingate@yahoo.com, 719-360-5132 cell
 www.PrayInJesusName.org



3 Apr 09

Respected Advisors:

*Dr. Alton Keyes
 Declaration Alliance*

*Dr. Rick Scarborough
 Vision America*

*Judge Roy Moore
 Moral Law Foundation*

*Colonel Jim Ammerman
 Chaplaincy of Full
 Gospel Churches*

*Rev. Bob Schenk
 Nat'l Clergy Council*

*Mrs. Janet Porter
 Faith 2 Action*

*Mr. William P. Farley
 Rutherford Institute*

Mr. Mark McWilliams

Mr. Ron Watrous

To: U.S. Senate Judiciary Committee: (Senators Leahy, Specter, Hatch, Graham, Kohl, Feinstein, Feingold, Schumer, Durbin, Cardin, Grassley, Kyle, Sessions, Whitehouse, Wyden, Klobuchar, Coburn, Cornyn, Kaufman) Washington, DC 20510

RE: Please STOP Judge David Hamilton Now!

Dear Senators:

Below are the names of 1,000+ U.S. citizens who hereby petition you to OPPOSE AND FILIBUSTER President Obama's nomination of anti-life, anti-liberty, and anti-Christian Judge David Hamilton to the 7th Circuit Court of Appeals.

Whereas, Judge Hamilton issued anti-liberty, anti-Christian injunctions which prohibited any prayers offered "in Jesus name" by civilian guest pastors visiting the Indiana legislature (which bad decision was later overturned by the 7th Circuit), and

Whereas, Judge Hamilton issued anti-life rulings striking down a reasonable law requiring abortionists simply inform women about alternatives to abortion in the presence of a physician or nurse (which bad decision was also overturned by the 7th Circuit), and

Whereas, the American Bar Association rated Judge Hamilton as 'not qualified' during his original appointment to the federal bench,

Therefore, Judge David Hamilton is too extremist and unfit to serve in a place of such authority as the 7th Circuit Court, the same court which frequently overturned his bad anti-life, anti-liberty, and anti-Christian rulings.

We therefore request you OPPOSE AND FILIBUSTER the nomination

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

of the anti-life, anti-liberty, and anti-Christian Judge David Hamilton to the 7th Circuit Court of Appeals.

We the undersigned pray to God you will oppose Judge Hamilton, in Jesus' name.

God Bless you, In Jesus' name,



Chaplain Gordon James Klingenschmitt

Along with:

Wilber Macias	Woodbridge	VA
Hannah Lipscomb	Fredericksburg	VA
Angelo Faiella	San Dimas	CA
James Brooks	Kent	WA
Nancy B. Harrison	Manakin-Sabot	VA
David Allen Dorsey	Jasper	GA
Charles L. Miller	West Chester	OH
Bernard Horton	Nipomo	CA
D & K Russell	Colorado Springs	CO
Roy Cash, Jr., USN (Ret.)	Collierville	TN
Stephen Deckrow	Birmingham	MI
Elizabeth S OConnor	Grand Island	NY
Isaiah Steven Kinzer	Gilbert	AZ
Robert Wiggs	Goldsboro	NC
Brad Cline	Seattle	WA
Gayle Peters	Mesa	AZ
Greg Sabine	Brockton	MA
David L. Ingalsbe	Paynesville	MN
Vernon Miller	Raven	VA
john nelson	tucson	AZ
Felicia Scott	Hiram	GA
Ken and Faye Milone	Indianapolis	IN
Krista Young	New Hope	MN
Paul Moore	Apex	NC
Gloria Lowe	Brooklyn	MI
Susan Read Dunn	Winchester	VA
William Harris	Jackson	MO
Katherine Currey	New Smyrna Beach	FL
Karen Lynne Kennedy	Lowell	MI
Dave M. Smith	Southborough	MA
JoAnn	Milwaukee	WI
Ken	Riverside	CA
Jerry Bedingfield	Kingsport	TN

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Don Pickens	Ballwin	MO
Wayne Kerslake	Sioux Falls	SD
Robert Gregg	Chesterfield	VA
Robert Boudreau	Chebanse	IL
Aaron Q Fortenberry	Woodville	TX
Judy Gibson	Greenville	OH
Mike Townsley	Walford	IA
Dorothy Sheldon	Tustin	CA
Harriet Miller	Goshen	IN
Cheri Shelnutt	Bulls Gap	TN
Jeremy P Hogan	Omaha	NE
Michael S. McCord	Kansas City	MO
David Alan Struck	Norwood	PA
Lawrence Melocik	Baltimore	MD
Brenda J. Hyatt	Woodbine	GA
Peggy LaTorre	Fords	NJ
Bette M. Floyd	Fort Gratiot	MI
Larry Johnstone	Colorado Springs	CO
ben connally	gadsden	AL
David Bray	Independence	MO
Santos Perez Jr.	Bellingham	MA
Mark hopkins	roanoke	VA
Virginia Howard	Enterprise	AL
Mary T Baxa	Brookfield	WI
Gary Pace	Pottstown	PA
Faith Nobel Bosserman	Grand Rapids	MI
William Paul Hohman	Merrill	WI
David Ross McConnaughey	Indianapolis	IN
Lyn	Lakewood Ranch	FL
Edwin E. Karas	Waterloo	NE
Jim Howell	Jamestown	NC
Susan Richard	Plano	TX
Sarah DeSelms	Norman	OK
Janice Fricke	Independence	IA
Patrick Guire	Hopkins	MN
Harry & Dorleska Morehouse	Blue Springs	MO
REV. JIMMY JOHNSON	WALLACE	NC
Diane Booth	San Jose	CA
Edward Perkins	Milwaukee	WI
Warren Leow	Toledo	OH
geraldine collins	richmond	VA
Harriett Terry	Ozark	AL
Rob Johnston	Ellaville	GA
Karen F. Romero	Broussard	LA
Pat Eubank	Amelia Island	FL
Paul Marshall	Porterville	CA
Lis Christensen	Lorton	VA
Benjamin Rogerson	Suffolk	VA
Monica Thomas	Rehoboth	MA
Micah Flippen	College Station	TX

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Mark Thomas	Rehoboth	MA
John hemrick	college station	TX
Debra Lynne Aubrey	Lebanon	TN
Melanie Thomas	Rehoboth	MA
Matthew Thomas	Rehoboth	MA
Melody Welch	Lake Jackson	TX
Mark S. Fraser	Desha	AR
Gene Van Zandt	Brenham	TX
Richard P Harrison	Rose Hill	KS
Angela Leach	Mechanicsville	VA
Valory D Harrison	Rose Hill	KS
Hosea M. Horneman	Lynchburg	VA
William Moody	Mount Juliet	TN
Judy Heidzig	Auburn	NE
Michael Hollandsworth	Rapid City	SD
Linda Hancock	Richmond	VA
FRANCES THOMPSON	CHICKAMAUGA	GA
Geoffrey Stephan Saur	Yorktown	VA
Mr. & Mrs. A. Caruso	Farner	TN
Gerry Beaver	Amarillo	TX
WILLIAM BROOKS	MACON	GA
Wayne C. Blanks	Hampton	VA
Kathie Bennett	Tempe	AZ
Brenda Smuda	Springfield	MA
Barbara Brock	Princeton	NJ
JEFF CRASE	NORTHGLENN	CO
Richard Schmitke	Wilsonville	OR
LOIS J ROHRER	WAYNESBORO	PA
Gina Kerby	Birmingham	AL
Barbara Allore Dame	Canton	MI
Paul & Barbara Barnhart	West Alexandria	OH
Larry Swartz	Tryon	NC
Mr. & Mrs. Bob Scott	Westminster	CO
Dennis Kaiser	Kenosha	WI
Melodie Williams	Harpers Ferry	WV
Apolonio Baca	Humble	TX
John jacobson	Harlingen	TX
Monty Alan Stump	Greenville	OH
Brenda Keith	Jasper	GA
Terrence Books	Maineville	OH
Darrell Fitts	Shreveport	LA
John Birly	Rockford	IL
Rev. Dr. Wayne Franklin	Lawrenceville	GA
Thomas F Walsh	Plantation	FL
John W. Oberlin	Iron River	MI
William	Roosevelt	MN
lillian williams	mansfield	TX
Daniel S. Comer	Lincoln	MT
Rozalia Garrett	Winchester	KY
Ernest L. Williams	Mansfield	TX

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

David J. Dunning	Elkins	NH
Dora McIntosh	Gouverneur	NY
Jeff Landis	Leesburg	FL
Earl Wintermoyer	Hagerstown	MD
Jesse Dull	New Boston	TX
Dean Schneitman	Koxville	TN
Jim & Dorothy Burkett	Greencastle	PA
Mary J. Vogt	Henet	CA
margaret a warren	chattanooga	TN
lindy p kelling	raleigh	NC
nathan bailey	dallas	TX
Arlene DiRocco	Burlington	MA
James E. Koepp	Crete	NE
Tim Hines	Jacksonville	NC
Leonard Remple	Lynden	WA
Olive Esther Kingsbury	Cavendish	VT
Karen L Scott	Mascoutah	IL
donna hunter	philadelphia	PA
Michael J. Dougherty	South Portland	ME
Deborah Foxx	Mars Hill	NC
kelvin langmaid	newton	IA
Larry Allen Chastain	Jasper	GA
Dustin Blankenship	Spring Valley	MN
Mary Ann Chastain	Jasper	GA
Marty Garrett	Broken Arrow	OK
Philip N. Smith	Carlsbad	CA
Greg Casiello	Baton Rouge	LA
Leroy Ploeger	Wausau	WI
Jackie Lee Hinman	South Hill	VA
Wayne L. Shirk	Fenton	MO
Jan L. Copher	Honolulu	HI
Stanley J. Hroszowy	Pascoag	RI
Lucy L Hanks	Hiwassee	VA
Gertrude	Kenosha	WI
Christina Helvin	Enterprise	AL
Janice	Tampa	FL
Don Nichols	Eureka	CA
Donald Hugo Hauser	La Jolla	CA
Mr. and Mrs. Anthony and Janis		
Jaim	Hernando	FL
Eugene Stagg	Lutz	FL
Leonard Paul John Como	Antleope	CA
Rebecca Hermanson	Schoolcraft	MI
Lisa Rittenhouse	Cypress	CA
Nancy Kline	Shippensburg	PA
Les Patton	Middletown	PA
James Duenow	Jefferson City	MO
deborah	ft w	TX
David Bair	Fairmont	MN
Phillip C. Ollis	El Paso	TX

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Sandra DeSpain	Prince George	VA
David R Oyster	Broadway	NC
Shirley Pooler	Port Crane	NY
Claudette Dacus	Aurora	CO
Carol Schumacher	Sheboygan Falls	WI
Bobbi McMillin	Carmel	IN
Pete Macher	High Ridge	MO
Joyce Jordan	Yuba City	CA
Donald Jordan	Yuba City	CA
terry thompson	jacksonville	NC
gary hustings	woodbury	MN
James Raymond Griffith	Davilla	TX
Pamela Christian	Yorba Linda	CA
Karen Meyer	Galena	OH
Ben Needham	Athens	TN
Lois E Southard	Newport Beach	CA
Jeffrey J Baviera	Columbus	OH
Kathy Ransdell	New Albany	IN
Patricia Kerr	Fort Lauderdale	FL
Cynthia McCray	Richmond	VA
Joan Schnabel	Chevy Chase	MD
Powell Burton Stokes	Floresville	TX
Susan Voss	Magnolia	AR
Marcia K Kernan	Camino	CA
Royce Bierma	Hudsonville	MI
Moody Roberts	Rupert	WV
David A. Blattner	Findlay	OH
Arnold B. Crewey	Bluefield	VA
huy duc tran	glen allen	VI
Judith Clark	Topanga	CA
Richard Charles Hancock II	Lynnwood	WA
Kimberly Goulart	Hollister	CA
Anthony Smith	Ocala	FL
Mindy Helms Revell	Chesterfield	VA
Gianfranco Baldin	Fort Scott	KS
Stephanie Fleming	Bristol	VA
Pedro A. Hernandez	Tampa	FL
Dr. Don Touchton	Hayesville	NC
James Claussen	Lakeland	FL
Lily G.	Rialto	CA
Sally G.	Rialto	CA
M W Horne DVM	Pampa	TX
Joseph F Balena	McMurray	PA
Martha Tracy	Dallas	TX
Jonathan D Harp	Playa Del Rey	CA
Betty Jackson	La Mesa	CA
Linda Gail Jacquez	Mustang	OK
Richard A. Hanson	Umpqua	OR
Linda K. Iverson	Huntley	IL
Stephen Newbauer	Fort Wayne	IN

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Eric Mathson	Yelm	WA
Johnny R. Beaver	Yuba City	CA
Cameron Joseph Sanborn	Richmond	VA
Dan Bowden	Yorba Linda	CA
Alecia Janae Mulinic	Green River	WY
charel smith	East Palestine	OH
J.David Stewart	Winston Salem	NC
Cheri Dotterer	Hamburg	PA
David Prewitt	Lynchburg	VA
Mary L. Baker	Lake Geneva	WI
Kurt Michaelson	Nyack	NY
Linda S Spaulding	Lakeland	FL
doris dunavant	Powhatan	VA
Joyce Haskins	Florien	LA
Nancy T. Major	Phoenixville	PA
Sam Sanders	Chesterfield	MO
Michael Lynn Wade	Lexington	AL
Louis W. Winter	Orlando	FL
Anthony Smith	Richmond	VA
Nancy Bissey	Kirksville	MO
Ronald Chapman	Wheaton	IL
Richard Masci	Dallas	GA
EDGAR DAUGHTRY	KOKOMO	IN
James Machen	Toledo	OH
Deborah	East Falmouth	MA
Oliver Housknecht	Independence	MO
Marsha Schreiber	Yorba Linda	CA
John Kippley	Cincinnati	OH
John Meredith doyle	League City	TX
LATANYA DAVIS	DALLAS	TX
Eleanor L. Bennington	Staunton	VA
Donna Marie Olsen	Manchester	MD
Wesley A. Scroggins	Republic	MO
Janet Lynn McConnaughey	Indianapolis	IN
Paula M. Planck	Milford Center	OH
Betty J-G Achterhoff	Jenison	MI
Dorothy MacGinnis	Villa Park	CA
Linda Meyer	Blue Springs	MO
Judy Beene	Grand Rapids	MI
Shirley Pooler	Port Crane	NY
Joe Walker31794	tifton	GA
John Streele	Walterboro	SC
Elaine Driscoll	Auburn	NH
Karen Lynn Gann	Fredericksburg	VA
TAMIKA RABY	BATON ROUGE	LA
Chester Rodriguez	Deland	FL
Julie & Burt Parham	Lake Charles	LA
Rev Alfred Winshman	Weston	MA
Jeffrey K. Poppe	Harrison Twp.	MI
Deborah G. Brugato	Sherwood	OR

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Denise Buckbinder	Arlington	TX
Pamela Lee Peterson	Knightdale	NC
Pat Foust	Aurora	CO
Corinne Wartenweiler	Monroe	WI
PANZIE WHITTAKER	PEARISBURG	VA
Larry Hamlin	Anchorage	AK
Karri Elizabeth Cole	Va beach	VA
Gina C Hartmann	Palmer	AK
Hazel Underwood	macon	GA
Linda Walters	Creston	OH
Carl Cook	Iron River	MI
russell huggett	pardeeville	WI
Judy Dunn	Raceland	LA
NELEIGH MICHELLE SCHUERCH	SPOKANE	WA
James M. Coley	Gleason	TN
Kent Marshall	Houston	TX
Kelly Kathleen Cole	Fayetteville	TX
Joshua Cieczka	Oak Creek	WI
Joseph Kolb	Arlington	MA
lisa russell	louisville	KY
Sister Mary Margaret Rosberg	Houston	TX
Cheryl Gray	Parkersburg	WV
John J Curry	Chicago	IL
Lynda Dunaway	Rome	GA
Glen & Sylvia Cople	Torrance	CA
Mary White	Capron	IL
Thomas Maphet	Amelia	OH
Lynda M Loud	Hesperia	CA
Kimberly FitzPatrick	Colorado Springs	CO
Darrell Nelms	Houston	TX
Hazel Smith	Plant City	FL
Dieter H M Troster	New Alexandria	PA
Paulette M Dean	Cincinnati	OH
Jay Leach	Northridge	CA
Carol Collins	Columbus	OH
Mike Cahill	Doraville	GA
Catherine Marie Reese	Lincoln	NE
CE White	Magnolia	TX
Girlie Mallory	Los Angeles	CA
Lynn Lewis	Vidalia	GA
charles h sanford	greenwood village	CO
Timothy Harrington	St Petersburg	FL
Carol Jensen	Oregon	WI
Robert Johnson	Bellflower	CA
Girlie Mallory	Los Angeles	CA
William Bryden	Conway	AR
Diana D Ross	Langley	WA
Robert D Ross	Langley	WA
Lacy P	Oakland	CA
Mark Bryant	Las Vegas	NV

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Beverly Butera	Saint Charles	MO
Ruth Huggins	Duncan	AZ
Cynthia A. King	Mt. Enterprise	TX
David Gray	New Port Richey	FL
Jack Henderson	Lafayette	LA
David W Henson	Pahrump	NV
Tim E McFarlane	Auburn	WA
Victoria B. Dickey	Crescent City	CA
Anna Dale	Dover	OH
Jean Schierbrock	Vail	IA
Don Canine	Gilbert	AZ
Daren C Durey	Fredericktown	MO
Jeff Miller	Peoria	IL
David Oliverio	Cincinnati	OH
Phillip E Wright	Ruidoso	NM
Cynthia Thomas	Yazoo City	MS
William Burt	Hubbard	OR
Marty Attaway	Mesilla Park	NM
Mr. & Mrs. Joseph A. Korman	Plano	TX
Colby Henkle	wcola	SC
Mrs. Moura Regan	Coeur D Alene	ID
Todd Russell	Covington	LA
Ken Partlow	Crestview	FL
Jay Lawyer	Middleburgh	NY
Chris L. Harriman	Fort Walton Beach	FL
Bryan Robert Fritchman	Hellertown	PA
Albert Jacquez	Tecumseh	MI
Dean Dault	Cedar Springs	MI
Johann Berg	Cumming	GA
Charles McManus Jr	Maiden	NC
Craig Sheffield	La Crosse	WI
Jerry Kraus	Gahanna	OH
David S. Horton	Summerville	SC
Mary A. Davila	Whiting	IN
Patti Starr	Lehighton	PA
William	Loudonville	OH
Robert Howard	Alpharetta	GA
Edward Kruse	Beavercreek	OH
Vivian Spears	Savannah	TN
Phil Williams	Clinton	CT
Angela Flynn	Orlando	FL
Charles Johnson	Serena	IL
Donald Dempsey	Williston	VT
Patricia L Knight	West Salem	OH
Mary Ellen Hamilton	Downingtown	PA
Brian Tobey	Galway	NY
Michael Mullinax	Charlotte	NC
Jason W. Markley	Johnson City	TN
Bethany J. Markley	Johnson City	TN
Kevin Higgins	Ankeny	IA

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James Kaufmann	Hudson	FL
Allen Kyzer	Wrightsville	GA
Corrine Anderson	Lexington	NE
Bradley Teagan	Harrison Twp.	MI
Brenda Maloney	St. Cloud	FL
Rob Shipley	Miles City	MT
Bernard Johnson	Allegan	MI
ROBERT HOYING WINDSONG	MINSTER	OH
Barbara Silver	Independence	MO
Carolyn Hilpipre	Woolstock	IA
Michael A. Rogers	Gadsden	AL
Charles Hall	West Chester	OH
Mark Tamayose	Yuma	AZ
Michael David Moses	Chatfield	MN
Donald J. Hagler	Rochester	MN
Patricia Wolfe	Warner Robins	GA
Joseph Harrison	Birmingham	AL
Eugene G. Frey	Cleburne	TX
bob and kathy husband	piecerville	KS
Mary A. Ackerman	Fort Wayne	IN
Joseph Brent McPherson	Benton	AR
Barbara E. Jones	Ijamsville	MD
Korey Stellmach	Aurora	IL
Genia Norman-Combs	Grain Valley	MO
Teresa Otto	Lawrenceville	GA
MARK A SKIPPER	HUMBLE	TX
Mary Frances W. Steedley	Gainesville	GA
Kristine Beeler	Janesville	WI
Steven Beeler	Janesville	WI
Rick Moore	Columbus	OH
Mary Lirot	Joliet	IL
Kathy Wittmann	Hobe Sound	FL
Steven and Kristine Beeler	Janesville	WI
Dawn M. Cook	Durham	NC
Craig Jaroski	San Antonio	TX
Pamela Kay Hazelton	Salineville	OH
Michael Enos	Colorado Springs	CO
Timothy P. Johnson	Fort Worth	TX
Bob A Fleming	Cary	NC
Helen Russell	Crittenden	KY
Lee Ann Hess	Clinton	IN
Angi Elliott	Shelbyville	IN
James Hess	Clinton	IN
Michael Elliott	Shelbyville	IN
James Elliott	Shelbyville	IN
Jessica Yount	Webster	IN
Mrs. Deborah L Calhoun Martin	Lexington	KY
William A. Reiner	Tucson	AZ
DOUG WALKER	NASHVILLE	TN
betsy mcclain	longwood	FL

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Alisa Milner	Crittenden	KY
Frances Budahl	Watertown	WI
Robert Wyatt Buchanan	Madison	MS
Loretta B. Heard	Gloster	LA
Michael Nabors	Harrison	AR
Richard L. Hardesty	Coram	MT
Kathryn Maue	Lebanon	IN
Patricia Lynn Tanyhill	Shively	KY
Sandra Carter	Rowlett	TX
Ronald A. Leahy	Annapolis	MD
Maud Taylor	Garland	TX
Lourdes Castro	Fort Myers	FL
Mark Chamberlain	Redmond	WA
Ralph C. Wallace	Delavan	WI
Jim Beckman	Springdale	AR
Roger Wendt	Londonderry	NH
Will	Orange Park	FL
Ronald Moss	Wallingford	CT
Vanessa Castro	Fort Myers	FL
Madylon Cornwell	Glasgow	MT
Dave kasper	Whiting	IN
robert holt	west point	MS
Janice H. Mitchell	Sturgis	KY
John J Brozycki	Florida	NY
Ella Harbison	Penfield	NY
Johnathan R. Mitchell	Sturgis	KY
Dr/Mrs. John G. Bates	Cuthbert	GA
James R. Mitchell	Sturgis	KY
Rev. Victory McVay	Blairsville	GA
Charles Carlson	Allendale	SC
robert bjorklund	grand island	NE
Michael Grunewald	Inwood	WV
Patricia Stringer	La Quinta	CA
Shelton Stringer	La Quinta	CA
Louise Young	La Quinta	CA
Joan P Ambra	Escondido	CA
Jeannie Williams	Crossville	TN
Dan & Martha Casey	Colonial Heights	VA
Linda Greene	Springville	AL
joe ortega jr	vicoria	TX
frank hyer	metairie	LA
William R. Rector, MD	Kerrville	TX
Janet Wenturine	Yuma	AZ
David Robert Smith	Fallon	NV
Patricia Kuntz	Birmingham	AL
G Thomas Hutchinson	Alburtis	PA
Darick D Rudig	Billings	MT
Jose Luis M. Crespo	Fontana	CA
John and Karla Pater	Worthington	MN
Jeffrey C. Jones	Traverse City	MI

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Pat Lowery	League City	TX
Mike Lowery	League City	TX
Chris Schreiner	Prescott Valley	AZ
Eric Matthews	San Jose	CA
Richard H. Bulzacchelli, S.T.L.	Nashville	TN
Alphonzo Monzo	Dallas	TX
Reba Karen Bach	Cincinnati	OH
Janice DeLong	Virginia	VA
Angie Robinson	Lubbock	TX
Allen Clason	Pasadena	CA
Timothy Rains	Cincinnati	OH
SHEILA DAVIS	COLLEGEVILLE	PA
Daniel Davis	Wasilla	AK
GARY Gallation	Malakoff	TX
Kay Plumhoff	New Era	MI
Denise Davison	Laguna Hills	CA
Rosemary Reiter	Holdrege	NE
Toni Avance	Corinth	MS
Roberta M. Hernandez	Rancho Cucamonga	CA
Alla Casey Swan	Plymouth	MA
Gail Lander	Shell	WY
eleanor zertuche	canoga park	CA
Jessica Duram	Twin Lake	MI
Carolyn Hopper	Roswell	NM
Julie Kay Ochoa	Las Cruces	NM
Richard Waite	Springfield	MO
Annie Planas	Tujunga	CA
Mary Ann Clapsaddle	Gettysburg	PA
Tom W. Stephens	Conowingo	MD
Carla Grace Franklin	Nash	TX
freddie ward	louisville	KY
Kenneth John Beebe	Mountain Home	AR
John E. Persons	Wyoming	MI
Mark C. Hein	Cleveland Heights	OH
Perry Hagemann	Rapid City	SD
William H. Morris	Silverdale	WA
Margaret Morella	Lemont	PA
Mr. David Chase	Gravois Mills,	MO
Rick Hutchinson	Birmingham	AL
Christine Burkart	Liberty Twp	OH
Janet Skaggs	Norman	OK
David George	Urbana	OH
Michael Magers	Lake Dallas	TX
Joshua Michael Friberg	Minneapolis	MN
Colin Pilley	Sutherland	VA
Anna Mayer	Guymon	OK
Richard Benjamin Voigt	Texas City	TX
David Preston	Mount Pleasant	UT
Bob & Linda Downing	Beaver	OK
Robert Anderson	East Greenwich	RI

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Kenneth E Hofstra	Green Valley	AZ
Gena Mae Walters	Mountain Top	PA
George M Thomas, Jr	Hampton	VA
Peter and Dolores De Kroon	San Rafael	CA
Benjamin Blake Bedroske	Eau Claire	WI
Joe Russo	Crown Point	IN
Terrance Matern	N. Las Vegas	NV
JEFF MATERN	AVON	IN
Gwyn Willey	Oak Grove	MO
Donald Willey	Oak Grove	MO
Phillip Birchler	Sparta	IL
Bruce G Bulman	Caledonia	MN
Richard R Mahoney	Lapel	IN
Chris J. Brock	Chesapeake	VA
MERLYN HATCHER	BEAVER	OK
Kevin Davidson	Marshall	IL
Barry Tipton	Bastrop	TX
Harry Monty Salvin	Christmas Valley	OR
James W. Wagner II	Clarendon	PA
Curt Chadwick	Saranac	MI
Robert Powers	Jeffersonville	PA
Joseph Blanchard	Montgomery	AL
Donald A Bice	Los Lunas	NM
Roger & Belinda Barrett	Morrisonville	NY
Louise	Teutopolis	IL
Raymond Mason	Columbus	OH
marie kelly	Christmas Valley	OR
Patty McRary	Conover	NC
George Noller	Cotopaxi	CO
Joseph Dwight	Barstow	CA
Linda Robertson	Chicago	IL
Oliver W. Siebert	Bailwin	MO
Jeanna Stevenson	Perryville	AR
Phyllis Gann	Cantonment	FL
Paul David Rood	San Martin	CA
Steve Denison	Anaheim	CA
Matthew & Justine Nunan	San Bruno	CA
Jessica Ann Patterson	Chandler	AZ
JOZEFA B. JOHNSON	KEENE	NH
isabel johnston	southampton	PA
hugh johnston	southampton	PA
Janice Stewart	Crystal	MN
T Walsh	Plano	TX
M.A. Ireland	Wichita	KS
Terry Grimes	Plano	TX
Kathryn Stinson	Ashley	IL
Sharon H. Brown	La Habra	CA
Patrick Cayouette	Livonia	NY
Audra Haddad	Kinston	NC
Rosemarie Monge	Philadelphia	PA

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G. L. Reeser	Cedar Hill	MO
Sue Reddell	Harrison	AR
Charles D Evleth	Encinitas	CA
Mr and Mrs Raymond Totten	Boulder	CO
Daniel McClannahan	Green Bay	WI
Sam Sheldon	Fort Worth	TX
Bonnie Carver	Prescott Valley	AZ
Samuel Babb	Chatsworth	GA
Jennifer Suttle	Greenwood	IN
Pamela Buchanan	Upland	CA
Marsha Williamson	INDPLS	IN
Mr. Tracy Williamson	Indpls	IN
Adam Spuler	Moorestown	NJ
Rhonda Hendren	Austin	TX
James Formby	Aragon	GA
Mindy Miller	Burleson	TX
Teresa Dawn Tipton	Kingsport	TN
Carmen Bassham	Shawnee	KS
susan webb	south bend	IN
Wanda Coury	Sarasota	FL
Janet Vennetti	Orlando	FL
Sharon Boggess	Federalsburg	MD
Roger Lee Robinson	Mount Vernon	IN
Dale Kuser	Grand Terrace	CA
Justin Hage	Lakeland	FL
Alex Zanazanian	Longwood	FL
Pastor Tom Fillingier	Columbia	SC
Tim Flaig	Aurora	CO
Carol Valora	Appomattox	VA
Nancy M Johnson	Omaha	NE
Charles Larson	Mountain View	CA
Mr. & Mrs. James Egbert	Soda Springs	ID
Starlett McCarthy	Elyria	OH
Gregory Salamon	Somerset	MA
Mike Haynes	Belmont	MS
Charlotte Wilson	LaPorte	TX
Donald Hyde Jr.	Ft. Lauderdale	FL
Wyatt Valora	Appomattox	VA
Barbara L Adrian	Brookfield	MO
Denny C Dindinger	Southampton	NJ
Jimmy Allen	Prattville	AL
Bob Sivils	Sulphur	LA
Melanie Cooper	Lakeland	FL
Rosario D. Alvarez	Bay City	MI
Diane Holzapfel	Ellenville	NY
Steven Butler	Argyle	TX
Mark Pearson	Palm Coast	FL
Donna J. Pearson	Palm Coast	FL
Michael Trtost	Shorewood	WI
John Otto	Lemoore	CA

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Teresa Fuller	North Charleston	SC
Sherrie Ayers	Hewitt	TX
Robert E. Stith	Southlake	TX
Ming Huei Liu	Kendall Park	NJ
Maureen Gerrish	North Adams	MA
Paul McDowell	White	SD
RUTH HELEN BIEMILLER	CANON CITY	CO
Nilsa Ramos	Clifton	NJ
Chandrasahon Johnson	Tulsa	OK
N. Douglas McNabb	Joliet	IL
Eve R. Shaw	Spencer	OK
RICHARD BOWDEN	DOWNSVILLE	LA
John Pearson	Marietta	GA
Paul Arnold	Houston	TX
Sherry L. Leftridge	Catonsville	MD
Michael Reynolds	Aldie	VA
Donald Hoyt	Houston	TX
Bobby Jenkins	Dobson	NC
Rob Carney	Eugene	OR
Curt Collier	Lakewood	CO
Haskell Cooley	Wichita	KS
Robert Dietrich	Richmond	CA
Debi Eorgan	Homosassa	FL
MaryBeth Boulton	Medina	OH
Charles R Keel	Spring	TX
Kenneth D. Weaver, Sr.	Massillon	OH
MARYANN ROMAN	MIAMI	FL
David Siller	East Bethany	NY
Ross Asher	Houston	TX
Lillian I. Bowman	Apollo	PA
TERRY L. STOLL	CHANUTE	KS
Edward Wolford	Acton	CA
Gary Smith	Thibodaux	LA
James Ernsting	Steeleville	IL
Susan Karako	Pittsburgh	PA
Elder Isaiah Odom	Bartlett	TN
Daniel and Cathleen Bartley	Newburgh	NY
Ruby B. Smith	Darlington	IN
lisa weston	Tulsa	OK
Donald Johnson	Dayton	OH
GARY MIZAR	MURFREESBORO	TN
Mrs. Joanne Ledford	Akron	OH
P. Huggins	Chicago	IL
Mark Tarbet	Cedar Park	TX
Loretta Jones	chatsworth	GA
Jerry Jones	chatsworth	GA
Margaret F. Young	Eclectic	AL
Nell Cadenhead	Wimberley	TX
Mark T. Starr	Ellicott City	MD
jack casey	henlawson	WV

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

clyde eatmon	limestone	TN
Gerald Hassebrock	Sarasota	FL
MICHAEL MILLER	COLUMBUS	WI
Barbara A. Kelly	Highland Mills	NY
Amber Bomgardner	Jonestown	PA
Rogers French	Greenlawn	NY
Isabelle Palin	Limerick	ME
Barbara Osmundson	Myrtle Beach,	SC
Scott Whitwam	Mesa	AZ
Robert Brown	Austin	TX
Rosemary Hean	Santa Rosa Beach	FL
Peter Gallisdorfer	Lenoir City	TN
Debra Shirley	McCalla	AL
Brenda	Prospect	TN
Malinda White	Felton	PA
Margaret Ann Fain	Kegley	WV
sean laycock	shoreline	WA
Pat Maina	Hayward	WI
Janice Ball	Whitley City	KY
Constance K. Whan	Andalusia	IL
ralph szasz	cadillac	MI
jim nunn	marietta	GA
Alan Meining	Wheatland	WY
Donald R. Rhodes	Brighton	IL
Juliann Ellenbecker	Athens	WI
Barry Compton	Bath	ME
Sofia Donati	Clifton Park	NY
Rev Sharon Watson	Lorain	OH
Arthur J. Nitz	Frankfort	KY
Linda Lord	Attleboro	MA
Kevin Mitchell	Centreville	MI
Gregory	West Allis	WI
Alan Wood	St. Clairsville	OH
Leon Adams	Enterprise	AL
kentucky fanning	kansas city	MO
Tania Starkey	Georgetown	KY
Curt Beedle	Zebulon	NC
Kevin Weigerding	Willowbrook	IL
Randall Sewell	Rapid City	SD
Terry,Jana,Ian,Luke,Matthew Carlson	Cook	MN
Terry Fowler	Salisbury	NC
Jane Sparlin	Kokomo	IN
Jeanne Smith	North Richland Hills	TX
Theresa Garcia	Columbia	IL
Myron & Margaret Caldwell	Houston	TX
donna glee mccaw	waukee	IA
Bill K. Schwartz	Richfield	MN
Doug Buron	San Jose	CA
Tracy Forester	Lockhart	TX

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Carl A Nylund	Grandview	MO
Mike & Dawn Traweek	San Antonio	TX
Rickey David Fowler	Lincoln	NE
Rikki Like	Schertz	TX
Theresa Lussi	Pagosa Springs	CO
Cori Lee Gerlach	Lock Haven	PA
Cora Risely	Kalama	WA
Sharon Trodler	Whitesboro	NY
Teresa Clark	Avon	IN
Brenda Shumate	Olivehurst	CA
Timothy C. Hutchings	Whitney	TX
Jay P Blazek	Wauwatosa	WI
Pat Thames	Midland	TX
Winifred Pierson	Luray	VA
Darlene Millican	Sun City Center	FL
Veerle Wright	Amarillo	TX
Mark Schwartz	Franktown	CO
Robert E Thiess	Hagerstown	MD
Jack Czajkowski	Webster Groves	MO
Julia Czajkowski	Florissant	MO
Richard E. Wood	Ashville	OH
Peni Petersen	Saint Joseph	MI
David Campbell	Aurora	CO
Dyan H Todd	Loris	SC
Janet Houck	West Newton	PA
Paul Schuette	Pigeon	MI
robert taylor	wall	PA
Lorinda Goodfellow	Bradenton	FL
Kim Robinson	New York	NY
Cathy P. Truelove	Red Oak	TX
Phillip E. Davis II	Dallas	GA
Barbara S. Strong	Westmoreland	TN
Ronda Crouch	Westmoreland	TN
Donnie Duffey	Big Spring	TX
Kim White	Lafayette	TN
Kathy Farley	Bethpage	TN
Theresa Inman	Craig	NE
Wayne Wittmeier	Chico	CA
Cynthia Williams	Bethpage	TN
Susan A. Thompson	Neodesha	KS
Lynn Simmons	Pawcatuck	CT
Dawn Surles	Wilmington	NC
Kevin Lee Tubbleville	Tatum	TX
Thomas E Dunn	Plattsmouth	NE
Lisa Vandyke	Murfreesboro	TN
Robert G. Agnew	Conneautville	PA
Shera Ballard	Humble	TX
Betty M. Kelly	Highland	CA
Loretta Lynn Randall	Hartsville	TN
Doris Stafford	Bethpage	TN

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Romona Whittemore	Berea	KY
Jonathan Swirsky	Houston	TX
Stephen A. Townsend	Clayton	GA
Tamara Elizabeth Flynn	Casselberry	FL
Richard Whiting	West Bloomfield	MI
Bruce B. Hodgson	Lebanon	OH
Amy Pallassino	Indian Trail	NC
Ralph & Linda Storey	Houghton Lake	MI
Patricia Walden	Mission Viejo	CA
	Portland, Ore.	
John Michael Kuykendall	97236	OR
Robert J. Christian	Macomb	MI
John P Kelly	Alvin	TX
Loree Veith	Des Moines	IA
Leon Hartter	Midland	TX
Carol Mertes	South Bend	IN
Eric Wayman	Costa Mesa	CA
Mildred	Tucker	GA
Melodie Hadaway Lyons	Birmingham	AL
Judy Clement	Le Mars	IA
Larry Parrish	Memphis	TN
Gerald L. Osborn	Newbury Park	CA
Kim Hufstetler	Dalton	GA
Douglas O. Edwards	Tillamook	OR
David Hockenberry	San Jose	CA
Dean S Harner	Mount Holly	NJ
Robyn Levesque	Riverton	UT
Brenda Handel	Crofton	MD
Glen Cople	Torrance	CA
Ron Galbreath	Chehalis	WA
Jamee Hamilton	Mannford	OK
Pamela Rich	Bowie	MD
John M. Burke	Ballwin	MO
Greg Kinlaw	Tallahassee	FL
James H. Barker	Copperas Cove	TX
Dympna Anne Doran	Phoenix	AZ
James C. Savage	Worcester	MA
Noelle Kujala	Kodiak	AK
Bruce D. Walker	St. Charles	MO
Kimberle Davis	Berthoud	CO
Chaze Karanick	Chino Hills	CA
Kelly Jessen	Woodland Park	CO
Johanna Hobrath	Brunswick	OH
Noah Hamilton	hanalei	HI
Bobby Wooley	Atlanta	GA
Jason Fitzgerald	Glassboro	NJ
Deb Constien	Sun Prairie	WI
Brian Seabury	Phoenix	AZ
Jody	Firestone	CO
linda merriam	Hooksett	NH

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

jeffrey m. schum	brighton	CO
J Johnson	St Peters	MO
J Gynther	Oxnard	CA
Brittney Rountree	Henderson	TX
Grady Bennett	Kalispell	MT
Karl Hunt	Sheridan	WY
Daniel T. Najimian	Orrville	OH
Amber Sawhill	Bartlett	IL
Linda Cogswell	Crestview Hills	KY
Michael Leon Miller	Birmingham	AL
Donald Flentje	Bridgeport	MI
James Gordon	Mansfield	TX
William Meredith	Johnstown	PA
Richard A Hoefs	Fitchburg	WI
Lynn Denise Belland	Hurst	TX
Joseph Retzer	Kenmore	NY
Reynold F Durre	Stevens Point	WI
Melissa K Winter	Eau Claire	WI
Laurence Hamlin	Orange	CA
Moyné Elaine Riggs	McKenzie	TN
Jonathan Stibrál	Yankton	SD
Jennifer Naish	Birmingham	AL
Charles Lee Thomas	Kingsport	TN
Michael G. Judd	Rigby	ID
Kimberly Ann Shambo	Greenview	IL
Frank Patterson	Buffalo	MN
Cecelia L. Wagner	St. Louis	MO
Barbara L. Phillips	St. Louis	MO
Thelma P. Johnson	Overland	MO
Chaplain Lisa Jones	Ypsilanti	MI
Bessie Lee Epley	Overland	MO
Jimmy R Satterwhite Jr LMT	Porter	TX
Kathleen Rapp	Greenwood	IN
Paula Kramer	Federal Way	WA
Dr. Michael C. Barrows	Belleville	IL
Marissa Rieckhoff	Savage	MN
Nona Denny	Seattle	WA
simon Reeves	Temecula	CA
Nadine Breiner	Whitehouse Station	NJ
Alvina Newell	Vancouver	WA
Mark Deliduka	Rowland Heights	CA
Dartha Stroupe	Bessemer City	NC
Tammy Baxter	Helena	MT
Chet Hartley	Long Beach	CA
Janet Alstrom	Tucson	AZ
Suzanne E. Stranik	Seldovia	AK
Lynette Doolittle	Aiken	SC
Linda Roberts	Hamilton	OH
Betty Jean Lewis	Columbus	OH
Nancy Eldredge	Monroe	CT

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Renaë Dellinger-Petty	Hickory	NC
Richard Lewis Magee	Rustburg	VA
robert taylor	wall	PA
Dawn Israel	Wichita	KS
Bob Casagrande	St. Petersburg	FL
Anita H Blanks	Lumberton	NC
Bobbie Brown	Dallas	NC
Susan Tobias	Plattsburgh	NY
Jacki LaCerte	Schofield	WI
Marvin Lundstedt	Fontanelle	IA
Melissa Santino	Pompano Beach	FL
Thomas Yen	Fitchburg	WI
Malcolm F. Starring	Littleton	NH
Katherine	Glenview	IL
Wayne S. Stuntz	Grove City	OH
Dana Halmes	Ozark	AR
Debra S. Hines-Eisenhour	Albuquerque	NM
Mary Lou Cullen	Beaufort	SC
Eric David Geil	Stillman Valley	IL
marlene bettale	saint louis	MO
Denise Pollard	Sauk Rapids	MN
Cynthia Hinkle	Paris	KY
Terry Tullos	houston	TX
Charles McArthur	Woodstock	GA
Jan	Gainesville	FL
Triniti Zulkoski	Wayne	NE
Lindsey Marks	Plymouth	IN
Melissa G. Pickens	Warner Robins	GA
Robert Carmichael	Traverse City	MI
Carla J. Kennedy	Dennis	KS
david overland	Lynnwood	WA
Bryan Hinkle	El Sobrante	CA
mark stone	easthampton	MA
Melissa Smith	Lexington	NC
Steven Brian Tipton	Ariton	AL
Florence Threet	Avon	MN
Patricia Kamalowski	Manistee	MI
Janice and Russell Phy	Cookeville	TN
Donald Keith Barnett	Pinson	AL
David S Johnson	St.Louis	MO
rene fernandez	chicago	IL
David S Johnson	St.Louis	MO
Dana Hobson	W. Lafayette	IN
Margaret Young	Tucson	AZ
Tyler Jensen	Wayne	NE
Janie Cockrell	Grand Island	NY
cecilia styles	mount holly	NC
Iris R. Wutzke	Export	PA
Deborah A. Weeks	Monroeville	PA
wendell m. cole	franklin	GA

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Carl Mooney	Elba	AL
HW Schneider	Kailua Kona	HI
Denise Renee Lewis	Winchester	VA
Dave Palmer	Fredericksburg	VA
Angie Palmer	Fredericksburg	VA
Jenae J. Anderson	Dallas	OR
Michael J. Anderson	Dallas	OR
zack black	zion	IL
Kay Ivey	Fort Worth	TX
Scott Sharp	Nashville	IL
Ann Papuga	Phoenix	AZ
George Pecoraro	New Kensington	PA
Gloria Sue Shafer	Hanoverton	OH
Trish Lober	Antioch	TN
Kathy a Miller	buckeystown	MD
Jack A Welch Sr	Knoxville	TN
Lindsey Ledford	Las Vegas	NV
Timothy W Loud, Sr	Hesperia	CA
Brinton J Hinz	Redlands	CA
Marion Snowbarger	Oklahoma Cith	OK
Thomas M. Tjelmeland	Ely	IA
Thomas Daniel Pearson	Pueblo	CO
David Shields	Denton	TX
Irene Carol Allen	Willis	TX
Sharron Arbary	Mt. Vernon	IN
Teri Kropik	Porter	TX
Johnny Dotcom	San Benito	TX
Kim A. Hedum	White Bear Lake	MN
David Erisman	Sun City West	AZ
Gary S. Mathis	San Antonio	TX
Barbara Jarvis	Los Banos	CA
Eileen Ratigan	Beatrice	NE
Jmaes R. Grande	Naples	FL
Warren P. Jenkins	Purcellville	VA
William Wanasek	Appleton	WI
Richard P. Eason	Richmond	VA
Andy Vestal	Wilmington	NC
Florence J. Edwards	Pasadena	CA
Michael T O'Halloran	St. Louis	MO
Kathryn Hausmann	Pasadena	CA
Carlos V. Bonner	Discovery Bay	CA
Stephanie McGhee	Vestavia Hills	AL
JAMES CURTIS MADDIX	RICHMOND	VA
Diane Cooper Brubaker	Palm Bay	FL
Wayne and Carol Swann	Richmond	VA
James Schnabel	Chevy Chase	MD
Capt. Ralph H. Anderson	Spring	TX
Philip J. Bishop	Alexandria	VA
Evie R. Flowers	Bakersfield	CA
Dennis L Smith	CRIVITZ	WI

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

miguel v medina	greenville	TX
Joel Lee Sutton	Richmond	VA
Amy L. Moore	Brodnax	VA
Charles Turner	Columbia	MO
Barbara Duckworth	Warwick	MD
B. Jeff Bouldin	Spring	TX
Virga E. Luttrell	Palmdale	CA
Cecil Meadows	Aiea	HI
Patricia Dueck	mesa	AZ
evelyn fouquet	henderson	NV
Michael Mattson	Waxhaw	NC
G. Kenneth Willis Jr.	McCormick	SC
judson t minyard jr	west union	SC
David F Beach	Flanders	NJ
Vernon Smith	Micaville	NC
Laura Saunders	Capitan	NM
Darrell D. Grandy	Hooker	OK
David Fickel	New Lebanono	OH
Brent Bisnar	Laguna Niguel	CA
Adrienne A. Raborn	Baton Rouge	LA
Andrew Hartweg	Jamestown	NY
Katherine M. Knight	Metairie	LA
Johnny Zamrzla	Palmdale	CA
Shirley F. Wallace	Houston	TX
William W Watson	St Joseph	LA
Theresa M. Clauss	Warrington	PA
AL MORGAN	Mineral	VA
Richard Lee Middleton	Elmendorf	TX
Edward J. Totty	Everett	WA
John D Knollenberg	Boulder	CO
Jerry Tomlin	Sugar Land	TX
LaVonne McKillip	Muleshoe	TX
Daniel Haley	Collegeville	PA
Kobad Arjani	Albany	NY
Charlotte J. Kolzow	Lake Oswego	OR
Denise C. Worley	Baltimore	OH
Marie Abatecola	Rehoboth	MA
Neal R Wooley	Otisfield	ME
Clinton Bulkley	Sulphur Springs	TX
Linda Thompson	Tinley Park	IL
Shirley A. Jahelka	La Canada Flintridge	CA
Bonnie Moore	Goleta	CA
Sharon Parry	San Antonio	TX
Sharon Glenwinkel	Vista	CA
Wayne & Cleora Terrell	Port Arthur	TX
Charles Hansen	Leawood	KS
Joni Adams	Tampa	FL
Frank R. Hoppe	Nacogdoches	TX
Allen H Fisher	Cartersville	GA
Charles Edward Akers	Iron Station	NC

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

Deborah Augustine	West Jordan	UT
James A. Hopstetter	Brandon	FL
John T. Walker	Breckenridge	TX
Kevin Thomas	pleasant hill	MO
Connie Kane	Kittanning	PA

"And whatsoever ye do in word or deed, do all in the name of the Lord Jesus..." Col 3:17 (KJV)

April 22, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy, Ranking Member Specter and Members of the Judiciary Committee:

I am writing to offer my strong support for the confirmation of Thomas E. Perez as Assistant Attorney General for Civil Rights. Tom has devoted his entire career to public service, much of it as a career attorney in the Civil Rights Division, and he has demonstrated his commitment to protecting the rights of all Americans and upholding the law. I saw his work as a career civil servant and later came to rely heavily on his judgment when he served as a Deputy Assistant Attorney General for Civil Rights.

As a prosecutor in the Division, Tom handled some of our most sensitive civil rights cases, including one in Lubbock, Texas, involving a group of white supremacists who went on a racially-motivated killing spree. He went on to become an able manager and member of the Division leadership. His years of service to the Division have given him a deep respect for the work of the career attorneys and for the Division's critical mission.

Tom has a proven ability to bring together competing interests to work toward a common goal. He is both passionate and pragmatic, and he approaches all decisions with a critical eye. Given the current challenges confronting the Division, it is particularly important to have a person at the helm who himself was once a career attorney and has the respect of the career staff. The nomination of Tom to lead the Division sends the important message, both internally and to the outside world, that the protection of Civil Rights is a priority.

Tom was hired into the Honors Program and rose through the ranks with hard work, dedication to the Division's mission and respect for the institution and its people. I know he will be an excellent Assistant Attorney General for the Division, and I encourage his swift confirmation.

Sincerely,



Janet Reno

REPUBLICAN NATIONAL LAWYERS ASSOCIATION



November 16, 2009

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Cleta Mitchell
Co-Chair

Charles H. Bell, Jr.
President

Henther Heidelbaugh
First Vice-President

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Vice-Chair

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*Vice-President,
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Founding Chair

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Executive Director

P O. Box 18965
Washington, DC 20036

Phone: (703) 719-6335

www.RNLA.org

The Honorable Harry Reid
Majority Leader, United States Senate
522 Hart Senate Office Bldg
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader, United States Senate
361-A Russell Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Chair, Senate Judiciary Committee
493 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
335 Russell Senate Office Building
Washington, DC 20510 -0104

Dear Senators Reid, McConnell, Leahy and Sessions:

The Republican National Lawyers Association (RNLA) does not support the confirmation of Judge David Hamilton as a United States Circuit Judge for the Seventh Circuit and urges you and all senators to vote against his confirmation.

During the confirmation hearings for Justice Sonia Sotomayor, the RNLA wrote and expressed our concern that judicial nominees must be fully committed to impartially adjudicating the cases that come before them. We noted the solemn pledge of impartiality is mandated by the oath taken by federal judges and justices. We also noted that federal judges are not legislators. They are not elected and do not answer to the people and therefore should not make law. The RNLA continues to believe in these fundamental principles, and in our view, Judge Hamilton does not satisfy them. We make this determination based on the decisions Hamilton has issued while serving as a judge on the U.S. District Court for the Southern District of Indiana and because of his role as a fundraiser for the Association of Community Organizations for Reform Now (ACORN).

We feel that Judge Hamilton's rulings on the bench display his commitment to placing ideology first in judicial decision making. Moreover, Judge Hamilton subscribes to the "empathy standard" espoused by President Obama. When asked, Judge Hamilton replied that empathy is "important" in fulfilling the judicial oath. By contrast, even Justice Sotomayor renounced the empathy standard during her confirmation hearings when she said: "I apply the law to facts, not feelings to facts."

11/16/2009 12:51PM

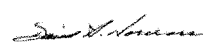
Several of Judge Hamilton's decisions are troubling and far outside the judicial mainstream. In the 2007 case of *U.S. v. Rinehart*, Judge Hamilton urged the President to grant clemency to a police officer who had pled guilty to two counts of producing child pornography. In *United States v. Woolsey*, the Seventh Circuit unanimously admonished Judge Hamilton for disregarding an earlier conviction in order to avoid imposing a life sentence on a repeat offender. In reversing, the Seventh Circuit reminded Judge Hamilton that his "decision to disregard [the defendant's] prior conviction in light of what [he] believed 'should have been done' . . . was incorrect."

Judge Hamilton's decisions in *A Woman's Choice v. Newman* are a prime example of his commitment to relying on ideology. In a series of decisions, he blocked enforcement of Indiana's law requiring informed consent for abortions for a total of seven years. The Seventh Circuit reversed Hamilton. In the court's opinion, Judge Easterbrook noted that Judge Hamilton was the only judge in the country who had held such a law unconstitutional since 1992. In fact, the Indiana law was "materially identical" to the Pennsylvania law the Supreme Court held constitutional in *Planned Parenthood v. Casey*.

Other decisions by Judge Hamilton that should be reviewed are his troubling interpretations of the First Amendment's Establishment and Free Exercise clauses, respectively, in *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005), and in *Grossbaum v. Indianapolis-Marion County Building Authority*, 870 F. Supp. 1450 (S.D. Ind. 1994). The Seventh Circuit reversed Judge Hamilton in both cases.

In conclusion, Judge Hamilton's track record of ignoring precedent and of inserting his own policy preferences into his decisions, combined with his extensive involvement with ACORN, require that all senators vote against his elevation to the Seventh Circuit.

Sincerely,


David Norcross
Chairman


Cleta Mitchell
Co-Chair


Charles H. Bell, Jr.
President

11/16/2009 12:51PM

April 28, 2009

The Honorable Patrick Leahy
The Honorable Arlen Specter
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: *Nomination of Mr. Tom Perez to be Assistant Attorney General for Civil Rights*

Dear Chairman Leahy and Ranking Republican Member Specter:

We write as former Republican staff members of the U.S. Senate Committee on the Judiciary to express our support for the nomination of Tom Perez to be U.S. Assistant Attorney General for Civil Rights. Each of us had the privilege of working directly with Tom -- often as adversaries on contentious issues of public policy -- and emerged from the experience with great respect for him as a public official of the highest integrity.

During our respective tenures on the Judiciary Committee staff, each us worked on nominations to senior Justice Department positions including the Assistant Secretary for Civil Rights. We understand that essential for any individual nominated for such a role is the willingness to advocate with passion, rigor, integrity and open-mindedness. The issues undertaken by that Division are too important to the nation to be undermined by political calculation or rigid ideology. As a result of that experience, we are confident that while we may not agree with him on every issue, Tom is nevertheless a nominee of whom the Committee and the nation can be proud.

As a member of Senator Kennedy's Judiciary Committee staff in the 1990s, Tom worked tirelessly in pursuit of his office's policy interests. A hallmark of Tom's approach with respect to those of us on the Republican staff were his efforts -- sometimes successful, sometimes not -- to find common ground on matters of mutual importance. Tom's approach was typically to seek to persuade and compromise to the extent possible, rather than resort to intimidation or invective. He was, in short, more interested in "moving the ball forward" for the common good than in scoring political points at the expense of his adversaries. The important work facing the Civil Rights Division demands that approach to leadership.

The Honorable Patrick Leahy
The Honorable Arlen Specter
April 28, 2009
Page 2

Tom Perez is a talented, experienced and decent public official. Our work with him on the Senate Judiciary Committee staff convinces us that he will lead the Civil Rights Division with openness and integrity in pursuit of the goal of equal justice, which we all cherish. It is for this reason that we urge the Committee to support his nomination.

Very truly yours,

BRIAN W. JONES
Counsel, Senate Judiciary Committee, 1997-1998

MANUS COONEY
Chief Counsel & Staff Director, Senate
Judiciary Committee, 1997-2001; Counsel,
Senate Judiciary Committee, 1989-1996

RHETT DeHART
Counsel, Senate Judiciary Committee, 1998-2001

MARK DISLER
Minority Staff Director and Majority Chief
Counsel, Senate Judiciary Committee, 1993-
1997; Counsel, Senate Judiciary Committee,
1988-1993



UNIVERSITY OF MARYLAND
SCHOOL OF LAW

April 22, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

The Honorable Arlen Spencer
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Spencer:

As Dean of the University of Maryland School of Law, I write to express my strong support for the nomination of Thomas Perez for Assistant Attorney General for the Civil Rights Division of the United States Department of Justice and urge his confirmation.

I have had the pleasure of working closely with Tom Perez since 2001 when I recruited him to join our faculty and serve as the Director of our Clinical Law Program. While at our law school, his teaching focused on employment issues, criminal justice, and the intersection of health care and civil rights with a specific focus on how to use civil rights tools to enhance access to health care for vulnerable populations. More specifically, he created the "Civil Rights: Access to Health Care for Vulnerable Populations" clinic which allowed students to address health care challenges in a variety of health care contexts, including litigation, administrative advocacy, and legislative advocacy. Although he left the law school fulltime to return to public service, first as a member of the Montgomery County Council and then to state government, he continues to be an active partner in a number of our public interest initiatives.

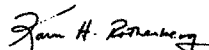
Based on his extensive experiences in federal, state and local government, Secretary Perez has an acute understanding of the need for the federal government to work in partnership with state and local governments to safeguard the civil rights of all Americans. His legal, management and leadership skills, as well as his talent in creating coalitions, has earned him the reputation as a most effective consensus builder. These are all qualities that I believe are critical for the success of the next leader of the Civil Rights Division.

Administration 410-706-7214 410-706-4045 fax	Admissions 410-706-3492 410-706-1793 fax	Career Development 410-706-2080 410-706-0870 fax	Institutional Advancement 410-706-2070 410-706-0566 fax	Registration 410-706-2045 410-706-2103 fax	Student Affairs 410-706-5235 410-706-2103 fax	Technology Affairs 410-706-5771 410-706-4045 fax
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500 West Baltimore Street, Baltimore, Maryland 21201-1786 www.law.umaryland.edu

Thomas Perez's distinguished career demonstrates his vast leadership ability, integrity and commitment to public service. I am confident that he would make an exceptional Assistant Attorney General for the Civil Rights Division and urge you to confirm his nomination. Thank you.

Sincerely,



Karen H. Rothenberg, J.D., M.P.A.
Dean
Marjorie Cook Professor of Law

KHR/tr

C.A. DUTCH RUPPERSBERGER
2ND DISTRICT, MARYLAND

- REPLY TO:**
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WASHINGTON, DC 20515
(202) 225-3061
FAX: (202) 225-3094
- THE ATBHM**
- 375 WEST PADONIA ROAD, SUITE 200
TIMONUM, MD 21083
(410) 628-2701
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Congress of the United States
House of Representatives
Washington, DC 20515-2002

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TERRORISM, HUMAN INTELLIGENCE, ANALYSIS,
AND COUNTERINTELLIGENCE
OVERSIGHT AND INVESTIGATIONS

April 27, 2009

The Honorable Patrick Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20515

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20515

Dear Chairman Leahy and Senator Specter:

I wish to add my strong support for the nomination of Thomas Perez to be Assistant Attorney General for Civil Rights at the U.S. Department of Justice.

Tom has dedicated his life to public service, to the citizens of Maryland and to the nation. He has a breadth of experience in the law, public policy and management, and, he is known as a fair minded, knowledgeable and agreeable advocate for his clients, his law students and the public at large.

I was impressed that after Tom's service in very important posts in the Administration of President Bill Clinton, he worked to put into practice the policies he advocated. He chose to work in local government, winning election to the Montgomery County Council in Maryland and earning the support of his constituents and confidence of his colleagues on the Council when they elected Tom their President. At the same time, Tom commuted to Baltimore and taught public service advocacy to law students at the University of Maryland, Baltimore Law School.

Most recently, Tom demonstrated his management skills as the Secretary of Maryland's Department of Labor, Licensing and Regulation. He energized the agency and put it at the forefront of the effort to help Maryland homeowners facing foreclosure, along with many other reforms to help protect consumers. He was well respected by legislators in Annapolis from both sides of the aisle serving in the Maryland General Assembly.

I believe Tom possesses the talents and skills to make the Civil Rights Division an outstanding performer in the Justice Department. I hope your Committee will act favorably and expeditiously on the President's nomination for Tom to serve our Country again.

Respectfully,


C. A. Dutch Ruppertsberger

CADR: sjj

1104507-11

Stephen H. Sachs
5 Roland Mews
Baltimore, Maryland 21210

April 20, 2009

Honorable Patrick Leahy
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Thomas E. Perez

Dear Mr. Chairman:

I write in enthusiastic support of President Obama's nomination of Thomas E. Perez of Maryland to be Assistant Attorney General, Civil Rights Division, Department of Justice.

I have spent a considerable part of my life at the Bar as a public lawyer, first as an Assistant United States Attorney (1961-1964), then as United States Attorney for the District of Maryland (1967-1970) and finally as Maryland's Attorney General (1979-1987). I know the demands and challenges of serving as a lawyer for the public: not only the obvious requirements of absolute integrity and sound legal judgment, but also the need to set high standards and to lead by example. And I think I can fairly lay claim to a sense of the special needs of those among us --- the poor, minorities, victims of historic discrimination --- for an effective and dedicated advocate.

Tom Perez, by temperament and training, possesses all of these qualities. I have been closely associated with his career for the past five years and am familiar with his outstanding accomplishments and his splendid reputation. In my view, he is uniquely qualified to restore the Civil Rights Division to its role as the Nation's premier voice for equal justice.

Tom's entire career has prepared him for this responsibility:

--- During his twelve years of federal public service he was a front line prosecutor in the Civil Rights Division where he prosecuted scores of tough and challenging cases, including criminal violation of constitutional rights, corrupt public officials and hate crimes. He eventually served as Deputy Assistant Attorney General for Civil Rights under Attorney General Reno.

--- He served as Special Counsel to Senator Edward Kennedy and was senator Kennedy's principal advisor on civil rights, criminal justice and constitutional issues.

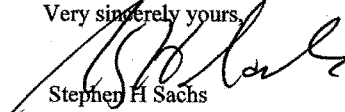
-- He was Director of the Office for Civil Rights at the Department of Health and Human Services for several years and is widely credited with revitalizing that Office and fulfilling its mission to enforce the civil rights laws that relate to the work of DHHS.

--- As Secretary of Maryland's Department of Labor, Licensing and Regulation he once again breathed new life into a moribund agency. I know first hand that DLLR has been a traditional backwater in Maryland State government. Under Tom Perez' leadership, however, it is fast becoming one of the most creative and productive departments in Maryland. DLLR has led the way in combating the foreclosure crisis, in fighting fraudulent misclassification of employees as independent contractors and in creating worker retraining programs that help insure a strong and talented workforce even in an uncertain economic era. Tom's formula for success is simple: the ability to recruit outstanding staff and the retention and reinvigoration of experienced staff, all of which is made possible by his drive, his expertise, his contagious sense of mission and his outstanding leadership skills.

These items are an outline of Tom's formidable talents and achievements. But there is something else, equally important, that I have learned over the many hours I have spent with Tom over the years. Tom Perez is committed --- committed to his core --- to the mission of the Department of Justice and to the Civil Rights Division, where his career took root. Tom knows that those lofty phrases etched into the building's marble facade are not empty phrases. They are living commands. They describe the path the Department of Justice is sworn to follow.

Tom's nomination is a credit to the Administration. The Department and the Nation will be served well by his appointment. I hope and trust that the Committee will promptly confirm this exemplary nominee.

Very sincerely yours,



Stephen H Sachs

cc: Honorable Arlen Specter



April 21, 2009

[REDACTED]

The Honorable Arlen Specter
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Specter:

I am delighted to offer the strongest endorsement of Tom Perez for Assistant Attorney General for Civil Rights.

Tom worked for me as Director of the Office of Civil Rights at the Department of Health and Human Services (HHS) during our term of office.

He inherited a dispirited office, underfunded without direction. He completely turned it around. He is a fine administrator, a skillful leader, and an articulate spokesperson.

He was also a very strong policy advisor on numerous issues in the department ranging from FDS to NIH to Medicare to welfare reform.

Tom was always a voice of reason – he listens to all sides and tries to find a solution that is viewed as absolutely fair.

I found him to be a man of great personal integrity, thoughtfulness and fairness, with a deep respect for the law and the Constitution.

I strongly and warmly recommend him for confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read "DES", with a long horizontal flourish extending to the right.

Donna E. Shalala

DES:om

Office of the President
P.O. Box 248006
Coral Gables, Florida 33124-4600
305-284-5155
Fax: 305-284-3768



MARTIN O'MALLEY
GOVERNOR
ANTHONY G. BROWN
LT. GOVERNOR

STATE OF MARYLAND
MARYLAND STATE POLICE
1201 REISTERSTOWN ROAD
PIKESVILLE, MARYLAND 21208-3899
410-486-3101
TOLL FREE: 1-800-525-5655
TDD: 410-486-0677



COLONEL
TERRENCE B. SHERIDAN
SUPERINTENDENT

April 23, 2009

The Honorable Patrick J. Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I am writing to provide you with a favorable recommendation for Mr. Tom Perez for the position of Assistant Attorney General, Civil Rights Division, Department of Justice. I have had the privilege and pleasure of working with Tom Perez for the past two years in his capacity as the Secretary of the Maryland Department of Labor, Licensing and Regulation (D.L.L.R.). During this time, Tom was instrumental in assisting the Maryland law enforcement community in its seven year endeavor to enactment regulatory legislation which requires secondhand precious metal dealers and pawn brokers to report transactions electronically. Tom's stewardship of this legislation through the General Assembly was key to its passage during the 2009 Legislative Session.

Under Tom's leadership, his D.L.L.R. staff has collaborated with various Maryland law enforcement entities to provide training on the regulatory laws controlling scrap metal, pawn, secondhand precious metal, jewelry and traveling gold shows. Additional educational initiatives directed by Tom toward the industries regulated by his agency have resulted in the affected businesses to become more compliant with the state's regulations and to work more closely with law enforcement. As such, D.L.L.R. and law enforcement have become good partners in enforcing the regulations and laws controlling these industries.

Tom Perez has also been most helpful to the Maryland Department of State Police and the citizens of this state by working closely with businesses who were facing layoffs and downsizing by providing information on recruiting by Maryland Department of the State Police. During these economic times, Tom has shown care and compassion toward those in need of his assistance.

"Maryland's Finest"

Senator Patrick Leahy
April 23, 2009
Page Two

Tom truly is an honorable man. I would add that Tom has always been fair and honest in our conversations. If he disagreed with a position, he would foster open discussion and listen to opposing viewpoints. In the end, Tom would never allow policy differences interfere or influence a relationship. I believe Tom Perez is an excellent choice for the position of Assistant Attorney General, Civil Rights Division, Department of Justice. He is a proven leader who can make a difference and has a long history of ensuring the rights of Americans are protected. Thank you again for allowing me the opportunity to provide you with my recommendation of Tom Perez for this most important position.

Sincerely,



Terrence B. Sheridan
Superintendent

TBS:flc

cc: Senator Arlen Specter



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April 22, 2009

FAX 202.224.9516

The Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

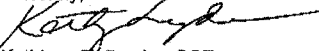
AS President/CEO of the Maryland Chamber of Commerce, I am pleased to support the nomination of Thomas E. Perez for the position of Assistant U.S. Attorney General for Civil Rights.

During his tenure as Maryland's Secretary for the Department of Labor, Licensing and Regulation, I found Mr. Perez to be outstanding in his ability to listen to both sides of an issue, seeking out opinions different than his own and providing opportunities for thorough discussion. He has a very high degree of ethics and personal integrity.

Tom has committed his entire career to public service, most of it as a prosecutor in the Civil Rights Division. I believe he would do the country a great service in this position as Assistant U.S. Attorney General for Civil Rights.

For these reasons, I support his nomination and urge your confirmation.

Sincerely,


Kathleen J. Snyder, CCE
President/CEO

cc Senator Arlen Specter, Ranking Committee Member



On behalf of State Law Enforcement Officers Labor Alliance (SLEOLA), I am writing to express support for Tom Perez to become the next Assistant Attorney General for Civil Rights in the Department of Justice. Having seen his work ethic and fair mindedness at work at Maryland's Department of Labor, Licensing and Regulation (DLLR), we would like to see him bring that same approach to this vitally important Justice Department position.

The SLEOLA's primary purpose is to unite into one labor organization all eligible organizations whose members are employed with the Maryland State Police, the Natural Resources Police, the State Forest and Park Service, the Maryland Department of General Services and the Maryland State Fire Marshal. One of our constituent groups is the Department of Labor, Licensing and Regulation Police Force. This is a small contingent of sworn officers responsible for security at DLLR in Baltimore.

Our officers who work with Secretary Perez see firsthand the dedication he has to the mission of DLLR and the people of Maryland. DLLR is experiencing a renaissance, and it is easily attributed to Secretary Perez's tenure. He displays the character and integrity that make us confident he will bring the kind of rejuvenation we saw at DLLR to the Department of Justice.

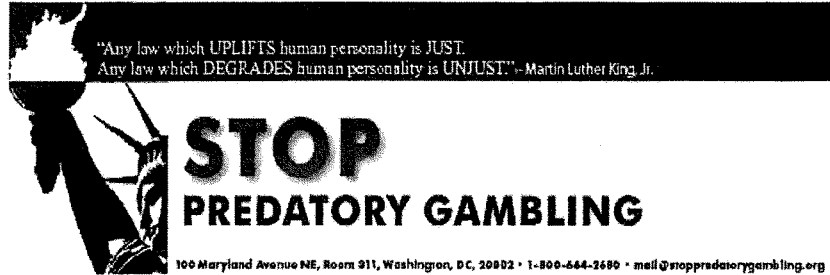
We believe Tom Perez will make an excellent Assistant Attorney General for Civil Rights, and urge you to confirm his nomination.

Sincerely,

Jimmy Dulay

Jimmy Dulay
President

P.O. Box 6647 • Annapolis, Maryland 21401
Annapolis (410) 897-0048 • Baltimore (410) 269-0640 • Washington (301) 261-2822 • Fax (410) 897-0667



April 26, 2009

The Honorable Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

As citizens who have been active leaders in the expanding national movement to stop predatory gambling, we respectfully write in opposition to the nomination of Thomas E. Perez to the position of Deputy Assistant Attorney General of the U.S. Department of Justice, Civil Rights Division.

The reason for our opposition is not based on partisanship or personality. We are non-partisan and our movement is made up of people whose views span the political spectrum. There is likely not a more politically diverse movement in America and in many ways, we are an affirmation that Americans, despite all of our differences, share basic core principles and values regardless of whether we consider ourselves a part of the political left or right.

The core democratic principle that binds us the strongest is equal citizenship. In America, we do not have kings or queens because here; all blood is considered royal. State-sponsored predatory gambling, the practice of using gambling to prey on human weakness *for profit*, blatantly violates the principle of equal citizenship. We are creating addicted, out-of-control gamblers in order to provide a small number of schemers an obscene level of unearned power and wealth, all in the name of getting someone else to pay our taxes.

Like most Americans, we strongly believe any nominee to lead our country's Civil Rights Division must reflect an unvarnished commitment to equal citizenship. Because of Mr. Perez's leadership role with the Maryland effort to promote slot machines as a source of funding public services, he comes up short of that standard.

Dr. Martin Luther King famously wrote in his *Letter from Birmingham Jail*: "Any law that uplifts human personality is just. Any law that degrades human personality is unjust." Does Mr. Perez believe

that state-sponsored predatory gambling, and specifically the promotion of slot machines by the state, passes Dr. King's test?

Taylor Branch, the Pulitzer Prize-winning historian of the Civil Rights Movement and biographer of Dr. King, offered his answer in an April 2008 *Baltimore Sun* story: "I would say a lifetime spent studying Martin Luther King and the civil rights era steeps you in what democracy requires, because that's basically what the whole civil rights movement is about. What does equal citizenship mean? To me, the first rule of the American experience is that we don't play each other for suckers. The government shouldn't play its own citizens for suckers - 'we need public money, and we're going to fleece people who are foolish enough to go in and pull one-armed bandits.'"1

As Secretary of Labor, Licensing & Regulation for the State of Maryland, Mr. Perez played a pivotal role in bringing slot machine gambling to the state.² In the words of one state legislator, Perez was "not only one of the little drummers in the governor's parade for slots, but he's leading the parade."³

Mr. Perez rationalized his willingness to compromise the principle of equal citizenship in a 2008 *Washington Post* story: "I'm motivated in large part because I want to address the problems of the uninsured. I want to address the undereducated, and I want to address the challenges confronting people who are living in the shadows of our communities. The reality is we need a funding source to address these challenges."⁴

But the way we raise money says as much about our democratic principles and values as the way we spend it. The funding source Mr. Perez promotes is based on a partnership between the state and the predatory gambling trade, a business model that only works when it takes away the freedom of other Americans. The trade admits that 90% of its profits comes from 10% of the people it targets – addicted, out-of-control people.⁵ Electronic gambling machines are the most addictive predatory gambling product of all, and they have been forced into hundreds of communities across the nation.⁶ There are now more than 800,000 machines in the country -- one for every 400 citizens.

By every definition, someone who is an addict is not free. An addict has no free will, no freedom to choose. Does Mr. Perez believe people who are addicts deserve equal protection under the law? Assuming his answer is yes, then how does his high profile work promoting a product that by all accounts will create tens of thousands of new addicts in his state square with that belief?

While we recognize the vast scope and scale of the issues before the Senate, predatory gambling belongs high on the list because it represents the daily voice of government to most Americans. Putting predatory gambling on Main Street has helped lead to a culture based on financial gimmicks, false hopes and pure chance – all of which contribute to an illusion of free money while giving cover to those who prey on human weakness for profit. "Casino capitalism" is what *The Economist* calls it. And this culture is at the very heart of the massive economic crisis we find ourselves in today.

Mr. Perez's actions and comments during the Maryland slots campaign clearly indicate a cynical willingness to take a "pragmatic" and selective approach to our nation's core principle of equal citizenship. But our country needs a person to lead the Civil Rights Division of the United States Justice Department who will challenge America to attain its democratic ideals of equal citizenship for all, not compromise them.

Thank you for your consideration.

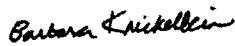
Sincerely,



Les Bernal, Executive Director
Stop Predatory Gambling Foundation
Washington, D.C.



Aaron Meisner, Chairman
Stop Slots Maryland
Maryland



Barbara Knickelbein, Co-Chair
NOcasiNO-Maryland
Maryland



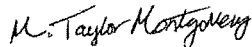
Dr. Guy Clark, Chairman
New Mexico Coalition Against Gambling
New Mexico



Pat Loontjer, Executive Director
Gambling with the Good Life
Nebraska



Lorin L. Clemenz
Indiana Coalition Against Legalized Gambling
Indiana



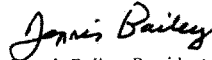
M. Taylor Montgomery
Stop the Casino 101 Coalition
California



Richard Young, President
Casino Free Mass
Massachusetts



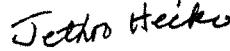
Joe Godfrey, Executive Director
Alabama Citizens Action Program
Alabama



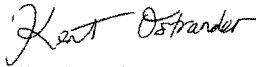
Dennis Bailey, President
Casinos No! Maine
Maine



David Anderson, Chair
Save Lakewood
Washington State



Jethro Heiko, Director
Casino Free Philadelphia
Pennsylvania




Kent Ostrander
Say No To Casinos Kentucky
Kentucky



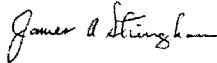
MaryBeth Gorke-Felice
Connecticut Alliance Against Casino Expansion
Connecticut



Mark Andrews, Chairman
Casino Watch
Missouri and Florida



John Thielepape, Vice Chairman
Texans Against Gambling
Texas



James Stringham, Vice Chairman
Michigan Gambling Opposition (MichGO)
Michigan



Bruce Barron, President
No Dice Pittsburgh
Pennsylvania

¹ "Slot Foes Bag a Literary Lion" *Baltimore Sun*, April 20, 2008

² "Liberal Leads The Drive for Slots in Md. Some Longtime Allies Are Surprised at Perez's Stance" *Washington Post*, November 12, 2007. Pg. B01

³ *Ibid.*

⁴ *Ibid.*

⁵ Winner Takes All By Christina Binkley, 2008. Pg. 184. (Binkley is a reporter for *The Wall Street Journal*)

⁶ Dr. Robert Breen, Director, Rhode Island Hospital. 2008 video interview
http://www.youtube.com/watch?v=jNL3FzU_gIU

**MOREHOUSE
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*Louis W. Sullivan, M.D.
President Emeritus*

April 21, 2009

The Honorable Patrick Leahy, Chairman
433 Russell Senate Office Building
Washington, DC 20510

Re: **Nomination of Thomas E. Perez to Serve As Assistant Attorney General for Civil Rights**

Dear Chairman Leahy:

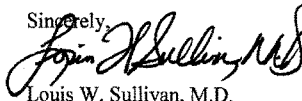
I am writing to express my strong support for the nomination of Thomas Perez to serve as the Assistant Attorney General for Civil Rights at the Department of Justice. I believe that Mr. Perez is an excellent candidate for this critical position and has the ideal combination of experience, extensive federal civil rights service under both Republican and Democratic administrations, critical leadership and management skills, and a sense of fairness.

I have worked with Mr. Perez for the past six years in my capacity as Chair of the Sullivan Commission on Diversity in the Healthcare Workforce. Mr. Perez served on this nonpartisan panel, and we held field hearings across the country and developed a blueprint for expanding access to quality health care in underserved communities by increasing diversity in the health professions. I was struck by Mr. Perez's deep knowledge of the legal and policy issues, his sound judgment and passion for the underserved. He was actively engaged in the issues, creative in his thinking, and always interested in ensuring that a wide range of views were heard.

As the former U.S. Secretary of the Department of Health and Human Services under President George H.W. Bush, I have an acute awareness of what it takes to run a large agency effectively. Among other things, it is critically important to have senior leaders within the agency who know the subject matter, are well regarded nationally and by the career staff, and can develop a vision for the agency, work collaboratively, and manage effectively. Tom Perez is a nationally recognized civil rights lawyer who enjoys an impeccable reputation as someone who is knowledgeable, inclusive, effective and even-handed.

He is an ideal nominee for Assistant Attorney General for Civil Rights, and I urge the Committee to act favorably on this nomination.

Sincerely,



Louis W. Sullivan, M.D.

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VISIT THE CHAMBER ONLINE: WWW.TALBOTCHAMBER.ORG

April 23, 2009

Senator Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing on behalf of the Talbot County Maryland Chamber of Commerce to urge your support of the nomination of Tom Perez to become the next Assistant Attorney General for Civil Rights in the Department of Justice. During his time as Secretary of the Maryland Department of Labor, Licensing and Regulation, we have come to know him and believe that he possesses exactly the qualities needed to excel in this important post.

Talbot County is a rural County on Maryland's Eastern Shore. Our Chamber has an impressive array of members, from manufacturers of military drone aircraft to the traditional seafood industry, and they are keenly in tune to how government affects their businesses.

Secretary Perez brought a new dynamism to Maryland's Department of Labor, Licensing and Regulation. His efforts to improve Maryland's workforce development system have been supportive of the needs of workers and businesses alike.

We asked Secretary Perez to be the keynote speaker for our annual dinner, and while many of our members did not see eye to eye with him ideologically, he listened intently to their concerns. By the end of the evening, it was clear that he had gained their respect and admiration.

It is our view that Tom Perez will be an excellent Assistant Attorney General for Civil Rights. He is abundantly qualified, yes, but our membership has had the chance to size him up. It is our view that Tom Perez will serve our country well in the very important post with in the Department of Justice.

Sincerely,

Alan I. Silverstein

Alan I. Silverstein, IOM
President & CEO

cc. Senator Arlen Specter, Ranking Member

Honorable Patrick J. Leahy, Chair
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, D.C. 20510

Re: Judge Andre M. Davis - in support

Dear Chairman Leahy and Members of the Judiciary Committee:

It is with pleasure that I write to urge the confirmation of Judge Andre M. Davis to the United States Court of Appeals for the Fourth Judicial Circuit. Judge Davis exudes the intellect, temperament, experience and personal background to guarantee that his participation on the Court of Appeals will garner respect and confidence for that esteemed institution.

To know Judge Davis is to know that he loves the law. His experiences in law school, where he excelled as a student, likely motivated his desire to continue to study and to teach law. I have had the benefit of supervising numerous law students and attorneys who have studied under his tutelage. To a person they are excessive in their praise for their professor. I have supervised students and attorneys for nearly thirty years and can state unequivocally that the excitement and loyalty expressed by students of Judge Davis is exceptional. He marks young lives with his parsing, lively debates.

We in Maryland are fortunate to have had Judge Davis preside over our State district and circuit courts. Serving the City of Baltimore provided his Honor with unique exposure to cases significant for their breadth and volume. His experiences in State court will enhance his contributions to Fourth Circuit Court of Appeals. While Judge Davis possesses characteristics of an academic, and is especially adroit in matters of constitutional and criminal law, he is grounded by the procedural and substantive corpus of local practice. His capability, demeanor and leadership in State court made him a natural candidate for promotion to the Federal District Court of Maryland.

Many attorneys with whom I practice share a perception that while Judge Davis does not suffer fools gladly, he controls his courtroom in a manner that promotes justice. I have observed Judge Davis extend himself and challenge attorneys to reconsider or restate their positions, or offer additional time for attorneys to posit their argument in order to assure that their client has a fair opportunity to be heard. I have witnessed him show great respect for a client as he rules against them. He provides frank assessment of arguments which give his court room unique transparency. Such demonstrations reflect his desire to make justice fair and accessible. I suspect this is a driving force in his character which will propel his continued success.

Judge Davis' rulings and history of civic engagement will likely be scrutinized by your staff and your committee. The opinions and activities speak for themselves, as does his employment history. His various roles as professor, federal prosecutor, private practitioner, civil rights attorney with the Department of Justice, state district court judge, state circuit court judge, and federal district court judge contribute to his having an acute understanding of our judicial system and the realities within that structure. Our President has nominated a man with rich life experiences to sit in judgment on important issues.

It is also significant for me and the clients I serve that Judge Davis takes to the U.S. Court of Appeals an experience that is different than many of his colleagues. I write not only of race but also of a man whose experiences should do much to complement the composition of our higher courts. Justice Davis has roots in Baltimore City. He went to a state law school. He has belonged to local citizens groups. His knowledge base is not simply his legal teaching, practice and judicial training; but includes that he is a part of our community in ways not frequently reflected by the jurists sitting on the Courts of Appeals. In this regard he will bring an American experience to the bench which will enrich that institution and bring confidence to its people.

Finally, I note that I write from my perspective of being a public interest attorney for nearly thirty years and having practiced in both the state and federal court systems. I have been counsel for a Juvenile Justice Committee, Chief Attorney at Maryland Legal Aid Bureau and am currently Director of Litigation at Maryland Disability Law Center. My clients have always been persons who are below the federal poverty level or youth or persons with disabilities. It is my personal belief that I continue to serve these clients by endorsing Judge Davis. I believe this to be true even when I disagree with certain decisions he has written and while I have not always been successful in presenting before him. I think it highly appropriate that this distinguished man, who once clerked for Judge Mumghan, Jr., should occupy the seat that has been vacant since his passing. I trust the Committee will move to fill that vacancy.

Sincerely,

Lauren Young
513 Pine Tree Drive
Severna Park, MD 21146
410-975-9898
bechillyoung@verizon.net

cc: Honorable Arlen Specter



Maryland Retailers Association

171 Conduit Street, Annapolis, MD 21401
(410) 269-1440 • Fax (410) 269-0325 • www.mdra.org

April 24, 2009

Chairman Patrick Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

I am writing to you in support of the appointment of Thomas Perez by the President of the United States to head the Civil Rights Division of the U. S. Justice Department. I have worked with Secretary Perez on various issues during his tenure as the Maryland Secretary of Labor and Licensing and I have found him to be reasonable, open-minded and willing to work issues toward a consensus favorable to all parties. Also as a former sitting Judge I find his demeanor and temperament excellent for the position to which he has been appointed.

Secretary Perez has committed his entire career to public service, most of it as a prosecutor in the Civil Rights Division. Tom's commitment to advancing civil rights of all Americans and his devotion to the mission of the Division, make him uniquely qualified to lead the Division.

I ask that you and your Committee support the appointment of Tom Perez as head of the Civil Rights Division of the U. S. Justice Department. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Zellmer", is written over a horizontal line. The signature is fluid and cursive.

Jeffrey Zellmer
Legislative Director

From:Katz & Korin

317+464+1111

04/28/2009 15:58

#651 P.002/003

SALLY FRANKLIN ZWEIG, ATTORNEY AT LAW
 DIRECT LINE : (317)464-2626 • EMAIL : SZWEIG@KATZKORIN.COM



THE EMELIE BUILDING • 334 NORTH SENATE AVENUE • INDIANAPOLIS, INDIANA 46204
 TELE: (317) 464-1100 • FAX: (317) 464-1111

April 28, 2009

VIA FACSIMILE
 202-224-9516

Senator Patrick J. Leahy
 Committee Chairman
 United States Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Leahy and the Honorable Members of the United States Senate Committee on the Judiciary:

I note that the committee will be again considering the nomination of the Honorable David F. Hamilton, to the Seventh Circuit Court of Appeals in a second hearing this Wednesday. I write in support of this nomination as a member of the bar practicing in the Southern District of Indiana. I also write as an active member of our legal community involved in several initiatives serving the community at large where Judge Hamilton has demonstrated a level of extraordinary service coupled with consummate skills as a jurist.

It is most noteworthy however that he has always served his community and his profession in ways that have earned him unstinting bipartisan respect. The simple fact that both Senator Lugar and Senator Bayh have commended him for your consideration is nothing more than a reflection that would ring true back home in Indiana, where his career has always engendered that same respect across partisan lines.

His nomination to the Seventh Circuit Court of Appeals comes as no surprise to the lawyers who practice in our district as he has consistently distinguished himself as insightful, fair-minded, and possessed of piercing analytical skills extremely well suited to an appellate court.

I am well aware that Judge Hamilton's lengthy credentials have been thoroughly presented for this Committee's consideration, but did want to note that in addition to his unwavering official service, Judge Hamilton often takes up initiatives simply for the good that they accomplish. It was my privilege to be involved when he worked to establish an Inn of Court to better serve the Indianapolis area litigation bar. The Inns of Court movement was founded to promote the highest levels of professionalism, ethics, and skills for the bench and bar. It succeeds only with devoted energy and leadership; both of which Judge Hamilton provided. As a founding force for the Sagamore Inn of Court, he accomplished those goals. The Inn is thriving and has received national recognition for the quality of its programming - no small accomplishment with stiff competition. Membership in the Inn is by invitation, and it is meant to offer a unique mentoring opportunity for young lawyers along with the chance to really get to know "masters" of the Inn -- judges from all courts and experienced practitioners from varied areas of litigation based practice. He volunteered considerable time and talent to this effort and continues to do so. He leads by example for our community and when looking for a judge who is able to foster confidence in the highest standards for the judicial branch of

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Senator Patrick J. Leahy
April 28, 2009
Page 2

government, it is exactly this sort of impeccable inspiration that makes Judge Hamilton's nomination a welcome one.

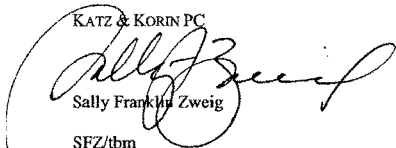
He brings a level of soaring competence and professionalism to all that he does, and is a most worthy nominee for the Seventh Circuit Court of Appeals.

The Committee on the Judiciary has the opportunity to place Judge Hamilton in an office with a broader sphere of influence. Please be assured that this Committee's recommendation for his confirmation may be made without hesitation. It would be a nomination that every supportive Senator would look back upon with pride.

Please add this information in further support that the Committee will serve the public well by voting in favor of his confirmation.

Sincerely,

KATZ & KORIN PC


Sally Franklin Zweig

SFZ/tbm

04/28/2009 3:58PM

**NOMINATION OF GERARD E. LYNCH, NOMI-
NEE TO BE CIRCUIT JUDGE FOR THE SEC-
OND CIRCUIT, AND MARY L. SMITH, NOMI-
NEE TO BE ASSISTANT ATTORNEY GEN-
ERAL, TAX DIVISION, U.S. DEPARTMENT OF
JUSTICE**

TUESDAY, MAY 12, 2009

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

The Committee met, pursuant to notice, at 2:36 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Schumer, presiding.

Present: Senators Schumer, Klobuchar, and Sessions.

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S.
SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. The hearing will come to order, and I want to welcome Judge Lynch and Ms. Smith and your families as well who I see here. You look like families, anyway, which just means you are very nice looking and proud.

Anyway, first Judge Lynch. Judge Lynch, I could not be more pleased to have a second opportunity to honor your hard work and service to the law, all the more so because your story begins in your hometown of Brooklyn, which is my hometown, too.

Judge Lynch, who currently sits as a U.S. District Judge in the Southern District of New York, comes to us for confirmation to the Second Circuit, much as he did in 2000 for his first confirmation, with an unimpeachable record of moderation, consistency, intelligence, and dedication to exploring all facets of complex legal questions.

In his 9 years on the bench, he has issued nearly 800 opinions, tried nearly 90 cases to verdict, and has been overturned by the Second Circuit only 12 times. And one of those times, I might add, the Second Circuit was in turn reversed by the United States Supreme Court.

There should not be any doubt that Judge Lynch is not an ideologue. His opinions and writings show moderation and thoughtfulness. He is pragmatic. His peers and those who practice before him have found him to be both probing and courteous—in sum, very judicial in his temperament.

(577)

In response to questions before the Senate Judiciary Committee in 2000, Judge Lynch said, “A judge who comes to the bench with”—and I would like my colleague to particularly hear these lines—that is not you, Amy.

[Laughter.]

Senator KLOBUCHAR. Thank you very much for clarifying that for the record.

Senator SCHUMER. “A judge who comes to the bench with an agenda or a set of social problems he or she would like to solve is in the wrong business.”

Senator SESSIONS. Amen.

Senator SCHUMER. Let the record show Senator Sessions noted his assent to that sentiment.

I could not agree more, and I expect and hope that my colleagues on the Committee feel the same way.

As I have said many times, my criteria for selecting good judges are three: Excellence, legal excellence, no political hacks; moderation—I do not like judges too far right, as Jeff knows, but I also do not like judges too far left; and diversity—I try to put as many women and people of color on the bench as I can.

There is no question that Judge Lynch meets the standard of excellence. He was first in his class—he was first in both classes at Columbia, college and law school. I hope he had a good time while he was there. His opinions are scholarly—I mean, I figure if you are first in your class for one, you deserve to have a good time at the other. But he was first in his class both—and one that was overturned by the Second Circuit was lauded by the panel as “a valiant effort by a conscientious district judge.”

There is no question Judge Lynch is, in fact, a moderate. His impressively low reversal rate should give the lie to any argument he is outside the legal mainstream. I might note here, too, that three of those 12 reversals came in cases in which he had ruled for the government and against plaintiffs who had alleged various forms of government misconduct.

Now, the rap on Judge Lynch in 2000 among the 36 who voted against him was that he would be an “activist.” The view arose from an out-of-context outtake from two law review articles. I will repeat now what I said then. In both of these articles, then-Professor Lynch expressed the moderate view that the Constitution cannot, as a practical matter, remain frozen in the 18th century. The Constitution should not be expanded, but it must be interpreted.

To illustrate my point about why Judge Lynch should be accepted as a paragon of moderation, I want to read two quotes.

First, “Text is the definitive expression of what was legislated.”

Second, “A text should not be construed strictly and should not be construed leniently. It should be construed reasonably to contain all that it fairly means.”

The second quote was written by Associate Justice Antonin Scalia. The first quote, sounding almost the same, was from Judge Lynch.

At the end of the day, we could revisit old arguments about Judge Lynch’s previous writings, but we do not have to. There is no reason to take snippets of what he has written in the course of

a long and august career and try to read them like a sidewalk psychic reads palms. Instead, let us look at his copious opinions and rulings. He has been the definition of law-enforcing and justice-seeking. He has ruled for the State against prisoners, but he has also ruled the State must protect due process rights of those it seeks to detain. He has sentenced defendants convicted of horrible crimes to life without parole. And he has also expressed concerns when he thinks a sentence might be too long while imposing the sentence in complete accordance with the law. He has issued complex and scholarly opinions in securities and antitrust cases.

We have covered excellence and moderation. Let me say a word now about diversity. Judge Lynch obviously is not a nominee who fits this bill. There is no way to get around that. But I want to note another kind of diversity that I believe deserves mention. Before he went on the bench, Judge Lynch sought out opportunities to be more than a smart professor living in an ivory tower. He spent a total of 5 years in the U.S. Attorney's Office in the Southern District of New York, as chief of the Appellate Section and chief of the Criminal Division. He worked as counsel to a prominent law firm, and he took on numerous pro bono cases. In short, he lived the life of a real lawyer while teaching and writing. And driven by his own conscience, he even registered for the draft during the Vietnam War rather than seek a college deferment. That speaks lots. It does. I salute you for that, Judge.

This is someone who has sought out a diversity of experiences which he now brings to the table as a judge. I look forward to this new chapter in Judge Lynch's service to our country.

I also look forward to Ms. Smith's continued service at the Department of Justice. Mary L. Smith is the President's nominee to be Assistant Attorney General for the Tax Division at the Department of Justice.

Ms. Smith, you have an impressive and distinguished career, and we are happy to welcome you back to public service. As you know, the Bush administration's management of the Justice Department was abysmal, in my opinion. I am particularly pleased to see a nominee with your background, the professionalism and excellence to help get DOJ back on its feet.

Although the Tax Division was not denuded by the previous administration the same way some of the other Divisions were, it remains vital that all members of the Justice Department leadership be committed to the ideals that the Department of Justice has embodied for so much of its history. I am confident you will help the President and the Attorney General in their mission to restore the integrity and reputation of the Department.

With that, I yield to our—and I want to congratulate him publicly. Is it official yet?

Senator SESSIONS. Sort of—yes.

Senator SCHUMER. It is official. It was first sort of official, but then became official. I want to congratulate Jeff Sessions on his ascension to be the Ranking Member of the Judiciary Committee. As I have said publicly to the press, Jeff and I do not agree on a whole lot of issues, but he is a straight shooter. He tells you what he thinks, and you can sit down and come to agreements and compromises with him even when you are far apart on the issues. So

I think he will be a proud addition as Ranking Minority to the Judiciary Committee.

And now I call on Senator Sessions for a statement.

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

Senator SESSIONS. Thank you. Mr. Chairman, it is great to be with you, and I would like to welcome both our nominees today.

Judge Lynch, I really enjoyed our conversation yesterday. You are a man of judgment and integrity and good brain power and insight, and I appreciated that opportunity.

I know Senator Schumer was a big defender of yours last time. He had a lot of confidence in your ability. I made a speech that I thought was pretty persuasive, and he followed me and almost convinced me after you did a good job with that debate. So I did vote against you at that time based on—

Senator SCHUMER. Not good enough, evidently.

[Laughter.]

Senator SESSIONS. And a number of other Senators did. But it is a lifetime appointment that you are seeking to the Federal appellate court, and I think the Senate's obligation is very real, and that is to examine the nominee carefully, and it should not be taken lightly.

The people of the country have only one opportunity to decide whether an individual is worthy of this high office, and that is this one, and so we have to fulfill our duty. And we will ask you to answer certain questions such as: As a nominee, do you understand that your role as a judge is to follow the law, regardless of personal feelings and preferences? Does he or she understand the role of precedent? Can the nominee put aside political views which may be appropriate as a legislator, executive, or even professor, but interpret that law as written? And will the nominee keep his or her oath to uphold the Constitution first and foremost?

As to legal skill and personal integrity and ability to decide cases, I think your record is good, and I certainly respect that.

In 2000, when you were first nominated to the district judgeship, I expressed concern that you might harbor activist tendencies and legislate from the bench. As a result, I think 35 members joined me in opposing that confirmation. I still have some concerns on your record while on the bench, especially when considered in conjunction with some of your written remarks in the past criticizing the textualist approach to constitutional interpretation.

Some of your rulings and statements have reminded me of my concerns 9 years ago about willingness to be bound by the law and the Constitution. One of my concerns relates to Judge Lynch's handling of the *Pabon-Curz* case, where a defendant accused of distributing hundreds of images of graphic child pornography faced a possible 10-year minimum sentence. Judge Lynch did not approve of this sentence, and he said so, but it was prescribed by the law. He said, "Pabon is a young and sympathetic defendant who faces a draconian penalty for his offenses."

He then sought to inform the jury that the defendant faced a mandatory 10-year sentence which would have enabled the jury to nullify Congress' policy judgment on the appropriate prison term

for this kind of sentence and would be contrary to the Federal law that the juries are not told about what the sentences will be. So I am concerned that those feelings may have led you to go beyond the normal legal requirements that a judge has.

I do not want to and I am not going to evaluate Judge Lynch, however, on this one case. To his credit, he gave the prosecution an opportunity openly to appeal the decision to the Second Circuit, which did reverse his decision. But I am concerned about this case because it does appear that feelings may have trumped the text of the law and the will of Congress. Given the small number of cases that the Supreme Court accepts for review each term, our appellate courts are often the court of last resort for litigants.

So I come to this with an open mind and would cite, in addition to Senator Schumer's compliments, a very nice letter I received today from Mary Jo White, former United States Attorney in Manhattan, and she is strongly of the view that you are an excellent nominee and would be an excellent judge, and I am impressed that you had experience as a prosecutor as well as a defense lawyer. So I look forward to looking at that and see where we go from here.

Some of the judges, probably less than 5 percent or so, that I opposed that President Clinton nominated, some of those I opposed, I was proven right, in my view—some of which I am not so sure, and, Judge, I think you are in that category.

I would also like to thank Ms. Smith for being here today. She is nominated to head the Tax Division. She comes before the Committee with an extensive resume, but one that appears to be lacking in substantive tax experience and criminal law experience. So I have some concerns in this regard given the volume and complexity of the matters handled by the Tax Division, and we look forward to exploring that.

Thank you, Mr. Chairman.

Senator SCHUMER. Thank you. Senator Klobuchar has graciously agreed to make her opening statement when she asks questions, and so we will give her a little more time.

Now I would like to call on my colleague from New York, Senator Kirsten Gillibrand, who is doing a great job here in the Senate.

Senator Gillibrand.

PRESENTATION OF GERARD E. LYNCH, NOMINEE TO BE CIRCUIT JUDGE FOR THE SECOND CIRCUIT, BY HON. KIRSTEN E. GILLIBRAND, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator GILLIBRAND. Thank you, Senator Schumer, and thank you, Ranking Member Sessions. I appreciate you holding this hearing and the opportunity to introduce Judge Gerard Lynch today. I am pleased to be able to speak in support of one of New York's finest jurists.

President Obama has chosen one of the country's outstanding legal minds with his nomination of Gerard Lynch to the United States Court of Appeals for the Second Circuit. I had the great privilege of being a clerk on the Second Circuit for the Honorable Roger J. Miner, who is now serving senior status, so I hope that if, indeed, Judge Lynch is confirmed that he will get to serve with him.

Gerard Lynch is an accomplished and distinguished jurist whose experience and erudition make him an excellent nominee for the United States Court of Appeals for the Second Circuit. His distinguished biography is a study in excellence: A commitment to learning, a commitment to the law, and the actualization of some of the highest ideals of our country.

Judge Lynch grew up in a working-class neighborhood of Brooklyn. The son of an airline mechanic and a homemaker, Judge Lynch was the first in his family to attend college. After graduating first in his class from Regis High School, he received his B.A. from Columbia in 1972, where he was valedictorian. He received his J.D. from Columbia in 1975 and again graduated first in his class.

Following law school, he clerked for Judge Wilfred Feinberg of the U.S. Court of Appeals for the Second Circuit from 1975 to 1976, and for Justice William Brennan on the U.S. Supreme Court from 1976 to 1977. Justice Brennan, as you know, the second longest serving Justice on the Supreme Court, is also considered one of the great men and jurists of our time. His decisions have largely stood the test of time and continue to have a direct effect on our daily lives. His decisions stood for the rights of the individual against the immense power of the state.

Judge Lynch in his own life dedicated much of his life to the same goal in a variety of positions in which he served, including Assistant U.S. Attorney to the Southern District of New York, Special Counsel for the New York Special Commission to investigate city contracts, chief counsel for the New York Commission on Government Integrity, associate counsel for the Iran-contra Independent Counsel, chief of the Criminal Division for the Southern District of New York U.S. Attorney's office, and special counsel for the Office of Independent Counsel. In all of these positions, his responsibilities were grounded in the concepts of integrity, transparency, and accountability, and in an enduring dedication to the rule of law.

The importance of educating young students in the law is also of great importance to Judge Lynch. As a legal scholar and an educator, he spent 9 years on the faculty of Columbia Law School, becoming full professor after only 9 years, and was awarded an endowed chair in 1996. An expert in both criminal law and procedure, Judge Lynch is the author of significant legal articles on the subject of purpose, structure, function, advantages, and disadvantages of the RICO statute.

Judge Lynch has served on the United States District Court for the Southern District of New York for the last 9 years and has earned the reputation for fairness and toughness. The strength of his logic and grounding in law is witnessed by the fact that he has tried over 90 cases to a verdict and rarely has been reversed by the Second Circuit.

Judge Lynch is held in extremely high regard by his peers and is widely viewed as one of New York's finest jurists. Leading members of the New York legal community testified to his brilliance, his fairness, his commitment, and his preparation. I enthusiastically support Judge Lynch's nomination because of his character, integ-

riety, and intellect. We are so fortunate that we have a jurist such as Judge Lynch serving the public good in our legal system.

Thank you, Mr. Chairman.

Senator SCHUMER. Well, thank you, Senator Gillibrand, for an excellent statement, typically, and thank you for being here.

Senator GILLIBRAND. You are welcome.

Senator SCHUMER. Okay. I think we are now ready to—I did not give a long introduction of Mary Smith, so let me just fill in our membership about her background as well.

Mary Smith is a native of Illinois. She graduated with honors from the University of Chicago Law School. She clerked also as a circuit court clerk on the Eleventh Circuit. If confirmed, she is going to bring to the Justice Department a record of excellence and professionalism as well as her unique perspective as a woman and a Native American.

Ms. Smith has an impressive and distinguished legal career over 18 years with substantial experience in the public and private sectors. From 1994 to 2001, she served with distinction in various government positions—Department of Justice, Associate Director of Policy Planning for the White House Domestic Policy Council, and associate counsel in the White House Counsel's Office. She was the highest-ranking Native American in the White House during the Clinton administration. She dedicated herself to the improvement of the legal profession, holding leadership positions with various national and State bar associations. Her nomination has been greeted enthusiastically by the legal community, and there is a long list of enthusiastic greeters.

I want to thank Ms. Smith for coming here and for her willingness to serve.

I also would ask unanimous consent that the statement of her Senator, Senator Durbin, my friend and colleague, be submitted to the record, without objection.

Now let me call both our nominees to the witness stand here. I guess we will call it that. And please remain standing as I administer the oath of office.

Will you both stand and be sworn? Okay. Do you affirm that the testimony you are about to give before the Committee will be—please raise your right hand. They did not put that here, but let us do it. Do you affirm 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?

Judge LYNCH. I do.

Ms. SMITH. I do.

Senator SCHUMER. Thank you. You may be seated.

First, I am going to call on Judge Lynch. Please introduce your family, tell us who they are. It is always nice to see families here. Then if you have some brief remarks, you may make them. Then we will call on Mary Smith doing the same. And then we will go to question.

So, Judge Lynch, you are on.

**STATEMENT OF GERARD E. LYNCH, NOMINEE TO BE CIRCUIT
JUDGE FOR THE SECOND CIRCUIT**

Judge LYNCH. Thank you, Mr. Chairman. I want to introduce my family who are here with me today: My wife of 37 years, Dr. Karen Marisak, who is a clinical psychologist; and with me also is the apple of my eye, my son, Christopher, who is graduating from law school in 2 weeks; and with me and with him is his fiancée, Ms. Katie Wilson, who starts a Ph.D. program in economics next year. So I am very grateful to them for being here.

I have no real opening statement other than to thank the President for the great honor that he has done to me in nominating me for this position; to thank you, Senator Schumer, and Senator Gillibrand for the very kind remarks that you made; to thank the other Senators for being here, and particularly to thank Senator Sessions for his courtesy to me in meeting with me yesterday, as he referred to.

But other than that, I stand prepared to answer any questions that anyone has.

[The biographical information of Judge Lynch follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

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

Gerard Edmund Lynch

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

United States Circuit Judge for the Second Circuit

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

United States District Court for the Southern District of New York
Daniel P. Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Additional Office:

Columbia University School of Law
435 W.116th Street
New York, NY 10027

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

1951; Brooklyn, New York

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

1972 – 1975, Columbia University School of Law; J.D., 1975

1968 – 1972, Columbia College, Columbia University in the City of New York; B.A. summa cum laude, 1972

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation

from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2003-present
Columbia Law Review
435 W. 116th Street
New York, NY 10027
Member, Board of Directors (unpaid)

2000-present
United States District Court, Southern District Of New York
500 Pearl Street
New York, NY 10007
United States District Judge

1977-present
Columbia University School of Law
435 W. 116th Street
New York, NY 10027
Member of the Faculty of Law
(Paul J. Kellner Professor of Law, since 1996; Vice Dean, 1992-97;
Professor of Law, 1987-96; Associate Professor 1980-86;
Assistant Professor 1977-80)
(On public service leave, 1980-83; 1990-91)

2000-2000
New York Council of Defense Lawyers
New York, NY
Member, Board of Directors (unpaid)

1999-2000
Office of Independent Counsel Carol Elder Bruce
Washington, DC
Special Counsel (part time)

1992-2000
Covington & Burling, LLP
(formerly Howard Smith & Levin LLP; formerly Howard Darby & Levin)
1330 Avenue of the Americas
New York, NY 10019
(present address: 620 Eighth Avenue, New York, NY 10018)
Counsel

1990-1992
United States Department of Justice
Office of the United States Attorney, SDNY

One St. Andrew's Plaza
New York, NY 10007
Chief, Criminal Division

1988-1990
Office of Independent Counsel, Iran/Contra
555 Thirteenth Street NW
Washington, DC 20004
Associate Counsel (part time)

1987-1988
Office of Independent Counsel James C. McKay
Washington, DC
Associate Independent Counsel (part-time)

1987-1987
New York State Commission on Government Integrity
(Califano Commission)
1 World Trade Center
New York, NY
Chief Counsel (part time)

1986-1986
City Of New York Special Commission to Investigate City Contracts (Martin
Commission)
Special Counsel (part time)

1980-1983
United States Department of Justice
Office of the United States Attorney, SDNY
One St. Andrew's Plaza
New York, NY 10007
Assistant United States Attorney, Criminal Division
(Chief Appellate Attorney, 1983; Deputy Chief Appellate Attorney, 1982-83)

1976-1977
The Honorable William J. Brennan, Jr.
Associate Justice
Supreme Court of the United States
Washington, DC 20543
Law Clerk

1975-1976
The Honorable Wilfred Feinberg
United States Circuit Judge
United States Court of Appeals for the Second Circuit

United States Courthouse
40 Foley Square
New York, NY 10007
Law Clerk

1974-1974
Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll
919 Third Avenue
New York, NY 10022
(now known as Kramer, Levin, Naftalis & Frankel, LLP;
present address: 1177 Avenue of the Americas, New York, NY 10036)
Summer Associate

1972-1975
Office of Columbia College Admissions
212 Hamilton Hall
Columbia University
New York, NY 10027
Interviewer and Admissions Representative
(part time during law school terms and full time during summers of 1972 and 1973)

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

No military service.
Registered for Selective Service 1969.

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

Wien Prize for Social Responsibility (awarded by Columbia Law School), 2008
Elected to Membership, American Law Institute, 1998
Presidential Award for Outstanding Teaching (university-wide, faculty-voted), 1997
Willis Reese Award for Excellence in Teaching (law school, student voted), 1994

Law School:
John Ordronaux Prize (graduated first in class), 1975; James Kent Scholar (highest academic honors), 1972-73, 1973-74, 1974-75; Lawrence S. Greenbaum Prize (winner, Harlan Fiske Stone moot court competition), 1974; prizes for best performance in torts, contracts, property and constitutional law.

College:

Albert Asher Green Prize (valedictorian), 1972; David Truman Award (outstanding contribution to the academic life of the College), 1972; Earle Prize in Classics, 1972; Phi Beta Kappa, 1971; John Jay National Scholarship, 1968; National Merit Scholarship, 1968

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

Association of the Bar of the City of New York
 Committee on Federal Courts, 1993-1996
 Committee on Criminal Advocacy, 1986-1989
 Council on Criminal Justice, Subcommittee on Federal Sentencing Guidelines,
 1986-1987
 Committee on Legal Education and Admission to the Bar, 1978-1981, 1984-1986

New York State Bar Association
 Committee on Civil Prosecution, 1992-1994

New York Council of Defense Lawyers
 Member, Board of Directors, 2000

Second Circuit Library Committee, 2006-present

Advisory Committee to Second Circuit Rules Committee, 1999-present

Second Circuit Judicial Conference, Planning and Program Committee, 1989-1992

United States District Court for the Eastern District of New York, Committee on
 Revision of Local Criminal Rules, 1989-1992

American Law Institute, 1998-present
 Board of Advisors, Model Penal Code Sentencing Revision Project, 1999-present

Advisory Board, Cologne School of International Doctoral Studies, Faculty of Law,
 University of Cologne, Germany, 2006-present

Consultant, MacArthur Foundation Law and Neuroscience Project, 2007-present

Civil Liberties Advisory Panel, White House Commission on Aviation Safety and
 Security, 1997

10. **Bar and Court Admission:**

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

New York, 1976

I have remained a member of the bar in good standing from that date to the present without lapses. However, as a federal judge I have been in retired/judicial status since 2000.

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

New York state courts (1976)
 Supreme Court of the United States, 1985
 United States Court of Appeals for the Second Circuit, 1979
 United States Court of Appeals for the Fourth Circuit, 1989
 United States Court of Appeals for the District of Columbia Circuit, 1989
 United States District Court for the Southern District of New York, 1992
 United States District Court for the Eastern District of New York, 1992

All dates are dates of first admission; in all cases I have remained a member of the bar in question in good standing from that date to the present without lapses.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Other than the professional affiliations listed above, I have not been a member of clubs or organizations, with the exception of cultural, charitable or public interest organizations of which one becomes a "member" by making charitable contributions.

I do not recall the beginning date of current such memberships which include:
 Metropolitan Museum of Art
 Museum of Modern Art
 New York City Ballet Guild
 School of American Ballet

Alvin Ailey American Dance Theater
 Symphony Space
 Wildlife Conservation Society (Bronx Zoo)
 National Wildlife Federation
 American Automobile Association
 WNET-TV (New York public television)
 WNYC (New York public radio)
 WBGO (Newark public radio)

Prior such memberships (terminated in 2000):
 American Civil Liberties Union (approximately 1975 - 2000)
 New York Civil Liberties Union (approximately 1975 - 2000)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I have never been, nor would I ever be, a member of any club or organization that discriminates on the basis of race, gender, religion, national origin, age, disability, or sexual orientation.

12. Published Writings and Public Statements:

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

Academic Publications:

Marvin Frankel: A Reformer Reassessed, ___ Federal Sentencing Reporter ___ (2009 forthcoming)

Letting Guidelines be Guidelines (and Judges be Judges), OSCJL Amici: Views from the Field, at <http://osjcl.blogspot.com> (January 2008), reprinted in 5(2) Ohio State Journal of Criminal Law 1 (supp.) (2008)

Why Not a Miranda for Searches?, 5 Ohio State Journal of Criminal Law 233 (2007)

Sentencing: Learning From, and Worrying About, the States, 105 Columbia Law Review 933 (2005)

Revising the Model Penal Code: Keeping It Real, 1 Ohio State Journal of Criminal Law 219 (2003)

Screening versus Plea Bargaining: What Are We Trading Off? 55 Stanford Law Review 1399 (2003)

Prosecution: Prosecutorial Discretion, in Dressler (ed.), 3 Encyclopedia of Crime & Justice 1246 (2d ed. 2002)

RICO (Racketeer Influenced and Corrupt Organizations Act), in Dressler (ed.), 3 Encyclopedia of Crime & Justice 1343 (2d ed. 2002)

Sentencing Eddie, 91 Journal of Criminal Law and Criminology 547 (2001), excerpted in Podgor, Henning, Garcia and Taslitz, Criminal Law: Concepts and Practice (2005)

Our Administrative System of Criminal Justice, 66 Fordham Law Review 2117 (1998), excerpted in O'Sullivan, Federal White Collar Crime (2001)

Toward a Model Penal Code, Second (Federal?): The Challenge of the Special Part, 2 Buffalo Criminal Law Review 295 (1998)

Plea Bargaining: El Sistema No Contradictorio de Justicia Penal en Estados Unidos, 1998/A Nueva Doctrina Penal 293 (Buenos Aires 1998)

The Role of Criminal Law in Policing Corporate Misconduct, 60 Law & Contemporary Problems 23 (1997)

William J. Brennan, Jr., American, 97 Columbia Law Review 1603 (1997)

The Sentencing Guidelines as a (Not-So-Model) Penal Code, 7 Federal Sentencing Reporter 112 (1994), reprinted in FSR Highlights from a Decade of Guideline Sentencing, 10 Federal Sentencing Reporter 25 (1997)

The Allocation of Discretion Under the Guidelines (Conference Proceedings), 101 Yale Law Journal 2066 (1992)

How Useful is Civil RICO in the Enforcement of Criminal Law? 35 Villanova Law Review 929 (1990)

A Conceptual, Practical and Political Guide to RICO Reform, 43 Vanderbilt Law Review 769 (1990)

A Reply to Professor Goldsmith, 88 Columbia Law Review 802 (1988)

RICO: The Crime of Being a Criminal, Parts I & II, 87 Columbia Law Review 661 (1987); Parts III & IV, 87 Columbia Law Review 920 (1987), excerpted in Leonard Orland (ed.), Corporate and White Collar Crime: An Anthology (1995), and in numerous casebooks

The Lawyer as Informer, 1986 Duke Law Journal 491 (1986)

Constitutional Law as Moral Philosophy, 84 Columbia Law Review 537 (1984)

Review of Ely, Democracy and Distrust, 80 Columbia Law Review 857 (1980), reprinted in Michael J. Glennon (ed.), A Constitutional Law Anthology (1992)

Review of Berger, Government by Judiciary, 63 Cornell Law Review 1091 (1978)

Op-ed and Popular Publications:

The Problem Isn't in the Stars but in a Misguided Law, The Washington Post, Feb. 22, 1998, at C3

Special Prosecutors: What's the Point? The Washington Post, May 28, 1995, at C7 (with Philip K. Howard)

IRS Can't Lasso Leona with a Loophole, New York Newsday, Aug. 25, 1989

RICO Law is Too Much of a Good Thing, New York Newsday, Jan. 11, 1989, at 55

Insult to Injury, The New Republic 198(14):17 (April 4, 1988)

Review of Woodward and Armstrong, The Brethren, Columbia College Today, March 1980, at 8

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

Committee on Criminal Advocacy, Association of the Bar of the City of New York, Report on Megatrials, June 1988 (reprinted in White Collar Crime Reporter 2(6):1 (1988)).

I do not recall having been the principal author of any other bar association reports or the like, although it is possible that I was. I am sure that the various bar committees and the like listed above issued reports of various kinds during the period of my membership. Other than the report listed above, I do not have copies of any such reports and I have no specific recollection of their content.

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

On or about July 17, 1998, I testified before the House Judiciary Committee with respect to the Racketeer-Influenced and Corrupt Organizations Act (RICO). I do not have a copy of the full testimony. However, a Lexis search produced a copy of the prepared statement that I submitted or read in connection with that testimony.

On or about April 27, 2000, I testified before this Committee in connection with my nomination as District Judge. I do not have a transcript of this testimony.

It is possible that I have testified on another occasion, but I have no specific recollection.

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

I have never given anything in the nature of a political speech before a public forum or any speech that was, to my knowledge, reported in the press. I have frequently spoken or lectured before bar or judicial groups, continuing legal education panels, alumni or student organizations, academic conferences and the like. I have not kept a listing of such occasions. A search of my electronic calendar (which extends back to 1999), and of my memory has yielded the events set forth below.

I have not made it a practice to keep copies of the remarks made or notes used on such occasions, but where I have retained such copies (or copies of notes from which I spoke) I attach them. I am not aware of any such events attracting any press coverage.

Feb. 6, 2009. Academic Conference on "Studying the Judiciary," Duke Law School. Audience of academics and judges. I was a member of a panel commenting on academic articles. My comments concerned a paper studying the work of Administrative Law Judges, and the substance of my remarks was to encourage academics to devote more study to the work of judges other than Supreme Court Justices or other appellate judges, since most of the work of the judiciary goes on in the trial courts.

Nov. 18, 2008. Award Luncheon, Columbia Law School, Rainbow Room, New York City. Audience of Columbia Law School Alumni. I received the Lawrence Wien Award for Social Responsibility. I accepted the award and made brief remarks on the importance of public service.

Aug. 8, 2008. American Bar Association Panel on White Collar Crime, Intercontinental Hotel, New York City. Audience of Lawyers. Panel Discussion on Recent Developments in White Collar Crime. I believe I provided practice tips on post-Booker sentencing advocacy, but the panel was quite informal and I don't recall much of the substance.

June 2 and 9, 2008. New York County Lawyers Association, New York City. Audience of lawyers. Moderated Continuing Legal Education Panel on Federal Civil Practice.

March 31, 2008. Continuing Legal Education Program, Cornell Club, New York City. Audience of Lawyers. Participated in judges' panel on Federal Civil Practice.

March 27, 2008. Columbia Law Review Banquet, Columbia Club, New York City. Audience of members and alumni of Columbia Law Review. Introductory/welcoming remarks praising the year's work of the Law Review.

Jan. 22, 2008. Federal Bar Council Second Circuit Courts Committee, US Courthouse, New York City. Audience of Committee members. I believe this was part of a "Meet the Judges" series where I made some remarks about what judges like to see in lawyers practicing before them and answered questions.

Oct. 27, 2007. New York Council of Defense Lawyers, Westchester, New York. Audience of criminal defense lawyers, prosecutors and judges. I believe that I participated as moderator of a panel, rather than as a speaker. Usually these programs are in the format of a legal problem in which a moderator calls upon prosecutors, defense lawyers and judges on the panel to explain how they would handle such a problem in actual practice. I do not think that I would have made any substantive remarks; my job at such panels is to be the Socratic questioner rather than speaker.

Oct. 10, 2007. Association of the Bar of the City of New York. Audience of lawyers. Moderated Continuing Legal Education Program: The ABC's of Federal Criminal Practice.

Sept. 20, 2007. American Judicature Society, Devitt Award Presentation, Houston, Texas. Audience of Judges and Lawyers. I was part of the Committee that voted to award the prize to Judge Carolyn Dineen King, and I believe I made some brief remarks on why we made the choice, but I was not the primary presenter and I don't recall for sure whether I was called upon to say something.

Aug. 14, 2007. Panel on the Legal Profession and Professional Responsibility. Audience of Columbia Law School First Year Students. General remarks on the significance of legal ethics in their education and future careers.

June 12, 2007. Presentation of the Stimson Medal for Outstanding Performances by Assistant United States Attorneys, Association of the Bar of the City of New York. Audience of prosecutors and other lawyers. General praise for the traditions of the Justice Department and specific praise for the recipients of the award.

June 11, 2007. Panel on cross-examination, United States Courthouse, New York City. Audience of Assistant United States Attorneys and summer interns. Participated in panel of judges discussing effective cross-examination techniques.

Nov. 4, 2006. Conference, Stanford Law School, Audience of law professors, students, and practitioners. I don't recall the substance of the conference, but I believe it had to do with white collar crime.

Oct. 28, 2006. Federal Bar Council, Lenox, Massachusetts. Continuing Legal Education Program. Audience of lawyers. I don't recall the subject of whatever panel I participated in.

Oct. 6, 2006. Conference on *Miranda v. Arizona*. An expanded version of the talk I gave was published as *Why Not a Miranda for Searches?*, 5 *Ohio State Journal of Criminal Law* 233 (2007), listed above among academic articles.

March 7, 2006. Judges' Panel at Fordham Law School on post-Booker sentencing. Audience of law students and practitioners. Discussion among several judges from around the country about the impact of *United States v. Booker* on sentencing practice.

Mar. 3, 2006. American Bar Association Conference on White Collar Crime, San Francisco, California. Audience of lawyers. Participated in panel discussion on post-Booker sentencing.

Jan. 11, 2006. New York County Lawyers Association, Federal Courts Committee, New York City, Audience of Committee Members. I believe this was part of a "Meet the Judges" series where I made some remarks about what judges like to see in lawyers practicing before them and answered questions.

Apr. 9, 2005. Institute for Law and Economic Policy, Naples, Florida. Audience of lawyers, mostly plaintiffs' lawyers in securities class action. Participated in panel on recent developments in securities law.

Mar. 10, 2005. Federal Bar Council, US Courthouse, New York City. Audience of lawyers. Part of panel in Continuing Legal Education program on sentencing practice after *United States v. Booker*.

Jan. 21-22, 2005. Symposium on State Sentencing Guidelines, Columbia Law School, New York. Audience of law professors. I was the general organizer and moderator of this conference, and I believe participated in several panels as speaker or moderator. The papers presented at the conference filled an entire issue of the *Columbia Law Review*. My principal contribution was the summary introduction to that issue, *Sentencing: Learning From, and Worrying About, the States*, 105 *Columbia Law Review* 933 (2005), listed above with academic articles.

Oct. 22, 2004. American Judicature Society, Devitt Award Presentation, New York City. Audience of Judges and Lawyers. Presentation of the Devitt Award to Judge Wilfred Feinberg. I made a principal speech in praise of Judge Feinberg.

Oct. 6, 2004. Association of the Bar of the City of New York. Moderated public discussion of the film, "Capturing the Friedmans." Audience of lawyers. Panel included prosecutors, defense lawyers, and psychological experts on child abuse.

Sept. 22, 2004. Association of the Bar of the City of New York. Audience of lawyers. Continuing Legal Education program on confusion in sentencing law and practice following *Blakely v. Washington*. Participated in panel.

May 17, 2004. Association of the Bar of the City of New York. Audience of lawyers. Continuing Legal Education program regarding federal tax investigations. I don't recall this panel. I must have been the moderator rather than a presenter because I don't know that much about the subject.

Feb. 19, 2004. Federal Bar Council. Continuing Legal Education Program. Manzanillo, Mexico. Audience of lawyers and judges. Participated in panels on the case of *Korematsu v. United States* and the legal response to terrorism.

Oct. 18, 2003. New York Council of Defense Lawyers, Westchester, New York. Audience of criminal defense lawyers, prosecutors and judges. This was a similar event to the one listed above for Oct. 27, 2007.

Sept. 17, 2003. New York State Bar Association, Commercial Litigation Section, New York City. Audience of Committee Members. I believe this was part of a "Meet the Judges" series where I made some remarks about what judges like to see in lawyers practicing before them and answered questions.

Feb. 21, 2003. Federal Bar Council, Continuing Legal Education Program, Kona, Hawaii. Audience of lawyers. I do not recall the subject of the panels in which I participated.

Jan. 4, 2003. Association of American Law Schools, Washington, D.C. Audience of law professors. Spoke on a panel on revision of the Model Penal Code. An expanded version of this talk was published as *Revising the Model Penal Code: Keeping It Real*, 1 *Ohio State Journal of Criminal Law* 219 (2003), listed above with academic articles.

Nov. 4, 2002. Association of the Bar of the City of New York. Audience of lawyers. Continuing Legal Education program regarding handling conflicts of interest in criminal cases.

June 3, 2002. Association of American Law Schools, Washington, D.C. Audience of law professors. Conference on the law of evidence. My calendar reflects that I spoke at this conference, but I do not recall the substance of my remarks.

Feb. 12-16, 2002. Aspen Institute, Aspen, Colorado. Co-moderated seminar in law and terrorism for business leaders.

Nov. 8, 2001. Columbia Law School Alumni of Philadelphia. Philadelphia, Pennsylvania. Audience of Columbia Law alumni. I don't recall the substance of the event.

Oct. 29, 2001. New York University School of Law, Colloquium on Criminal Law. Audience of law professors, students, judges, lawyers. Formal lecture on the then-recent decision of the Supreme Court in *Apprendi v. New Jersey*.

Oct. 20, 2001. New York Council of Defense Lawyers, Westchester, New York. Audience of criminal defense lawyers, prosecutors and judges. This was a similar event to the one listed above for Oct. 27, 2007.

Apr. 12, 2001. Federal Bar Council. New York City. Continuing Legal Education program on the ethical limits of criminal representation. Audience of lawyers. I have no recollection of the nature of my participation.

July 7, 2000. American Bar Association Panel. New York Hilton Hotel, New York City. Audience of lawyers. My recollection is that I spoke on *Apprendi v.*

New Jersey as part of a panel addressing recent significant Supreme Court cases, but I do not have a clear recollection.

Nov. 4, 1999. Conference, American University School of Law, Washington, DC. This is reflected in my calendar, and I have a recollection of being there. I do not recall the subject of the conference or the nature of my participation.

Nov. 23, 1996. SUNY at Buffalo Conference on Rethinking Federal Criminal Law. Audience of law professors. An expanded version of the talk I gave was later published as *Toward a Model Penal Code, Second (Federal?): The Challenge of the Special Part*, 2 *Buffalo Criminal Law Review* 295 (1998), listed above among academic articles.

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

I have not given interviews or commented to the press on legal issues since becoming a judge in 2000. Before going on the bench, I was frequently asked by reporters to comment on legal issues of public interest. I have done my best to identify all items called for in this question, by searching electronic databases as well my personal files. What follows is a list of all occasions, to the best I have been able to recover them, on which I have been quoted in the press as the result of such an interview or inquiry.

"Court Looks Again at Race and Peremptory Challenges," *Trial*, Oct. 1, 2005, p. 68(3)

"Man in the News: James Brien Comey," *New York Times*, Dec. 2, 2001, p. 1A

"Gender Madness on Columbia's Campus," *The Freeman*, Mar. 2001, p. 40

[Note: This is not an interview, but appears to cite comments I made at some earlier time to the Columbia University Senate.]

"Due Process at Columbia," *Wall Street Journal*, Oct. 4, 2000, p. A26

"Starr Search," *The New Republic*, Apr. 3, 2000, p. 15

"Jurors' Trust in Police Erodes in Light of Diallo and Louima," *New York Times*, Mar. 9, 2000, p. B1.

"Columbia U. Prof Nominated for Seat in United States District Court," *Columbia Daily Spectator*, Mar. 6, 2000

"Men, Women: We're not *that* Different," *USA Today*, Mar. 3, 2000, p. 15A

"Columbia U. Senate Passes Sexual Misconduct Policy," *Columbia Daily Spectator*, Feb. 28, 2000

"In Diallo Trial, Best Option is Albany," *New York Times*, Dec. 23, 1999, p.B1

"An Aggressive Prosecutor Now Enters the Limelight as Starr's Successor," *New York Times*, Dec. 19, 1999, p. 48

"Letters Swamp Judge in Volpe Sentencing," *New York Daily News*, Dec. 12, 1999, p. 13

"Prosecutor Seeks Takeover of Boxing Group," New York Times, Nov. 23, 1999, p.1
 "Judge Overturns Verdict in 1980 Murder," New York Times, Nov. 12, 1999, p. B4
 "Robert Ray Pays Tribute to Kenneth Starr," National Public Radio, Oct. 18, 1999
 "Judge Bars Hirschfeld from Paying Jurors Despite Dubious Legal Authority," AP, Sept. 14, 1999
 "Accused Cops Split on Strategy in Brawl Trial," New York Post, Sept. 5, 1999, p. 22
 "Plan to Hire Top Trooper Hits a Snag," Newark Star-Ledger, July 31, 1999, p. 1
 "Fraud Conviction Reversed in Air Crash Insurance Case," New York Times, July 8, 1999, p. C19
 "Court Reverses Fraud Convictions on General Re Unit, Ex-CEO Brennan," Dow Jones Business News, July 7, 1999
 "Prosecutor Wins Bid to Get Tripp's Tapes," Augusta (Ga.) Chronicle, June 26, 1999, p. A8
 "State to Get Tripp Tapes," Baltimore Sun, June 26, 1999, p. 1A
 "State Ordered to Turn Over Tripp Tapes," AP, June 26, 1999
 "Experts: Reactions Vary Depending on Where You Live," Norfolk (Va.) Virginian-Chronicle, June 26, 1999, p. A1
 "Ouster of Jurors Derails '97 Case," Arizona Republic, June 23, 1999, p. 1A
 "Fallout from Scandal Claims Two Top Lawyers at Morgan Stanley," New York Times, June 11, 1999, p. C1
 "Police Officer Charles Schwarz Convicted," National Public Radio, June 9, 1999
 "Prosecutors Face a Challenge," New York Newsday, May 27, 1999, p. A47
 "Obstacles for Defense in Louima Brutality Trial," New York Daily News, May 9, 1999, p. 18
 "Volatile Claims Launch NYPD Assault Trial," Los Angeles Times, May 5, 1999, p. A1
 "Keeping a High Profile in Cases Against Police," New York Times, Apr. 29, 1999, p. B1
 "Counsel Law Gets Bad Name," New York Newsday, Apr. 15, 1999, p. A8
 "Libya Turns Over Pan Am Suspects," New York Daily News, Apr. 6, 1999, p. 28
 "The Diallo Shooting: The Charges," New York Times, Apr. 1, 1999, p. B5
 "In Court, Tricky Terrain," New York Newsday, Mar. 29, 1999, p. A7
 "Grand Jury Hands Up Indictments," National Public Radio, Mar. 26, 1999
 "McDougal Trial Raises Questions of Contempt," Washington Post, Mar. 22, 1999, p. A3
 "3 Officers in Diallo Case Ask for Delay in Inquest," New York Times, Feb. 27, 1999, p. B3
 "Pirro Indictment Similar to Helmsley Case," Westchester Journal News, Feb. 24, 1999, p. 5A
 "An Indictment? No Need to Hurry," Chicago Sun-Times, Feb. 14, 1999, p. 3
 "Indictment of President Appears More Unlikely," Washington Post, Feb. 12, 1999, p. A1

"No Legal Effect Seen in Censure," Baltimore Sun, Feb. 1, 1999, p. 6A
 "Lewinsky Faces Her 23rd Round," Washington Post, Feb. 1, 1999, p. A1
 "Senators Expanding their Roles in Trial," Baltimore Sun, Jan. 17, 1999, p. 1A
 "With Witnesses, Risk Before Any Rewards," Washington Post, Jan. 8, 1999, p. A17
 "Starr's Ethics Adviser Quits Over Testimony," Washington Post, Nov. 21, 1998, p. A1
 "Focus Shifts to Starr's Conduct," Baltimore Sun, Oct. 19, 1998, p. 1A
 "Clinton Case Hinges on Constitutional Phrase," USA Today, Oct. 9, 1998, p. 6A
 "The Testing of a President: the Judge," New York Times, Oct. 4, 1998, p. 33
 "Starr's Team Turning Focus From Lewinsky," Baltimore Sun, Oct. 2, 1998, p. 1A
 "Law on Videotaping Favors Activist," Newark Star-Ledger, Sept. 30, 1998, p. 16
 "Ex-Prosecutors Wary of Starr Case," New York Newsday, Sept. 28, 1998, p. A5
 "Verdict from a Jury of Top Constitutional Law Professors," PR Newswire, Sept. 28, 1998
 "Whose Best Witness?," New York Newsday, Sept. 27, 1998, p. A7
 "Crisis Has its Roots in Jones Case Ruling," Boston Globe, Sept. 23, 1998, p. A1
 "The Clinton Testimony," New York Newsday, Sept. 23, 1998, p. A54
 "Perjury Defense is Plausible, While Narrow," Boston Globe, Sept. 22, 1998, p. A1
 "Correction," Baltimore Sun, Sept. 19, 1998, p. 2A
 "Setting the Stage for Clinton Videotape," Baltimore Sun, Sept. 18, 1998, p. 1A
 "Kendall's Skill Doubted in Videotape Handling," Washington Post, Sept. 18, 1998, p. A19
 "What's Next for Starr?," National Public Radio, Sept. 17, 1998
 "Two Options, Both Unpleasant," USA Today, Sept. 16, 1998, p. 6A
 "House Panel Weighs Release of More Details," Boston Globe, Sept. 15, 1998, p. A1
 "Legally, Politically, President is Boxed In," Washington Post, Sept. 15, 1998, p. A1
 "Legal Pros Divided on Case Against Bill," New York Daily News, Sept. 12, 1998, p. 10
 "Congress Must View Facts Through Prism of the Constitution," Bergen (NJ) Record, Sept. 12, 1998, p. A1
 "Report Gives the House Host of Difficult Issues," Washington Post, Sept. 12, 1998, p. A1
 "Starr's Grand Juries Continue Their Work," Baltimore Sun, Sept. 11, 1998, p. 24A
 "Anti-Mob Law is Versatile Tool," Richmond Times-Dispatch, Sept. 8, 1998, p. A-2
 "In Real World, 'Obstruction' is a Legal Rarity," Los Angeles Times, Sept. 8, 1998, p. A1
 "A Defense for Clinton Begins to Take Shape," Washington Post, Aug. 24, 1998, p. A1
 "Louima Case Still Far From Trial," New York Daily News, Aug. 23, 1998, p. 28

“Mea Culpa Littered with Lawyerisms,” New York Daily News, Aug. 18, 1998, p. 7
 “The Legal Gamble is to Say Just Enough,” Washington Post, Aug. 18, 1998, p. A1
 “Unprecedented Telecast Beamed to a Limited Audience,” Newark Star-Ledger, Aug. 16, 1998, p. 8
 “Experts Scoff at Perjury Loophole Proposed for Clinton,” Washington Post, Aug. 15, 1998, p. A6
 “Obstruction is Key Accusation Against President,” Austin American-Statesman, Aug. 13, 1998, p. A14
 “The Three Little Words that Becloud a Presidency,” New York Times, Aug. 13, 1998, p. A19
 “Among Aides, Private Consensus Leans Against Clinton Testifying,” Washington Post, July 5, 1998, p. A4
 “A Major Decision for Women’s Rights?,” Village Voice, June 30, 1998, p. 22
 “Supreme Court Strikes Down Government Fine for First Time,” AP, June 22, 1998
 “Court: Some Fines are Excessive,” AP Online, June 22, 1998
 “Experts: Starr’s Defense is Shaky,” New York Daily News, June 15, 1998, p. 6
 “Starr: Admits Leaks?,” National Journal: The Hotline, June 15, 1998
 “Baiting the Hook with Small Fry,” New York Times, May 10, 1998, Sec. 4, p. 3
 “Testing of a President: the Prosecutor,” The New York Times, May 6, 1998, p. A20
 “Effort to Oust Gotti Lawyer Reopens Debate on Tactics,” New York Times, May 4, 1998, p. B6
 “Many Called in Whitewater Could Get Aid with Legal Bills,” Arkansas Democrat-Gazette, May 3, 1998, p. A21
 “The Prosecutor: Stifled or Unproductive Efforts?,” Washington Post, May 1, 1998, p. A17
 “Kenneth Starr Has Lost His Credibility,” Salon.com, Apr. 8, 1998
 “Proof Was Not There – Experts,” New York Daily News, Apr. 2, 1998, p. 7
 “How the New York Times, the Washington Post, and the Independent Counsel Law Screwed Bruce Babbitt,” Washington Monthly, Apr. 1, 1998, p. 14(5).
 [Note: this appears not to be an interview, but a quotation from a published article from 1995 listed above in response to question 12 (a).]
 “Courting Controversy: A New Book by an Insider Claims Law Clerks Have Inordinate Influence Over the Supreme Court,” Time Magazine, Mar. 30, 1998, p. 31
 “Questions Remain About Lynda Hong’s Death,” Columbia Daily Spectator, Mar. 27, 1998
 “Congress Aims to Scale Back Counsel’s Post,” Buffalo News, Mar. 22, 1998, p. 1A
 “Whatever Starr Does, Everyone Says that Law Must Go,” Pittsburgh Post-Gazette, Mar. 21, 1998, p. A16
 “Both Parties Eye Revamping Rules for Special Prosecutor,” Baltimore Sun, Mar. 20, 1998, p. 1A

"Paula's Suit Trial Bound," New York Daily News, Mar. 14, 1998, p. 17
 "McDougal to be Buried in Friend's Family Plot," Arkansas Democrat-Gazette, Mar. 10, 1998, p. A1
 "And Creating New Crimes," Washington Post, Feb. 27, 1998, p. A25
 "Starr's Nemesis is Starr," Denver Post, Feb. 26, 1998, p. B11
 "Probe Bogs Down in Tangle of Privilege," Washington Post, Feb. 26, 1998, p. A11
 "For Counsel, A Thin Line Divides Can and Should," New York Times, Feb. 25, 1998, p. A21
 "Legal Battle in Clinton Probe Getting 'Much Too Personal,'" Washington Post, Feb. 25, 1998, p. A1
 "A Search for Truth, or a Partisan Inquisition?," New York Times, Feb. 22, 1998, Sec. 4, p. 16
 "Examining Tactics of Federal Prosecutors," CNN Today, Feb. 12, 1998
 "Public and Private Wars," Washington Post, Feb. 11, 1998, p. A14
 "Testing of a President: Legal Issues," New York Times, Feb. 10, 1998, p. A19
 "Lewinsky May Face Grand Jury," CNN Inside Politics, Feb. 9, 1998
 "Ammo He Must Have to Shoot Down Prez," New York Daily News, Feb. 7, 1998, p. 6
 "Testing of a President: The Overview," New York Times, Feb. 7, 1998, p. A1
 "Error by U.S. Imperils Witnesses in Case Over Wall St. Mob Ties," New York Times, Feb. 3, 1998, p. A1
 "Off Limits: Jones Lawyers Barred from Using Lewinsky Evidence," New York Newsday, Jan. 30, 1998, p. A5
 "A Break for Clinton?," New York Newsday, Jan. 30, 1998, p. A5
 "Truth . . . And the American Way," Hobart (Australia) Mercury, Jan. 30, 1998
 "Tough Case to Prove," New York Newsday, Jan. 29, 1998, p. A5
 "Bill Wants Earlier Paula Trial Date," New York Daily News, Jan. 27, 1998, p. 4
 "Slaying Charge Called Justified by Confession," New York Times, Jan. 23, 1998, p. B5
 "Federal Jury Indicts Officer in Choking of Bronx Man," New York Times, Jan. 14, 1998, p. B3
 "New Charges in Beating Linked to Heart Attack," New York Times, Jan. 9, 1998, p. B3
 "Spano May Not Stick with Guilty Plea," New York Times, Dec. 3, 1997, p. C5
 "Unabomber Jurors Grapple Sanity Plea," Vancouver Columbian, Nov. 14, 1997, p. B10
 "Death Penalty Central Issue in Unabomb Trial," Saint Paul Pioneer Press, Nov. 12, 1997, p. 1A
 "Kaczynski's Fight for Life," San Jose Mercury News, Nov. 12, 1997, p. 1A
 "Many Eager for Role in Unabomber Trial," Akron Beacon Journal, Nov. 11, 1997, p. A2
 "Unabomb Suspect Faces All-Star Team," Newark Star-Ledger, Nov. 9, 1997, p. 50
 "Prosecution Leader Known for Attention to Detail," San Jose Mercury News, Nov. 2, 1997, p. A23

"Judge Is Ready, Prosecutor Is Not, Case Dismissed," New York Times, Oct. 5, 1997, p. 39
 "Anti Stalking Bill Could Pop 'Razzi," New York Daily News, Sept. 7, 1997, p. 30
 "Prosecutors Join Forces in Torture Case," New York Times, Sept. 4, 1997, p. B3
 "Bomb Trial Judge Tries to Put Jury at Ease," New York Times, Aug. 10, 1997, p. 31
 "Letters to the Editor: Huang Can be Granted Immunity," Wall Street Journal, July 25, 1997, p. A15
 "Autumn of His Life?: Bill Cosby May Win Extortion Trial but Suffer a Dent to His Reputation," Time Magazine, July 21, 1997, p. 36
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13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

On May 25, 2000, after confirmation by the United States Senate, I was appointed by President Clinton to be a United States District Judge for the Southern District of New York. I entered duty on August 31, 2000 and have served to the present date.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over 94 trials, and have handled between 2000 and 3000 cases through judgment or other resolution.

1. Of these, approximately what percent were:

jury trials? 79%; bench trials 21%

civil proceedings? 70%; criminal proceedings? 30%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

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Cheong v. Okayama Enterprises, Inc., 2000 WL 1404379 (Sept. 25, 2000)

Green Party of the State of New York v. Weiner, 2000 WL 1280913 (Sept. 8, 2000)

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

Criminal:

1. United States v. Rosalie Garcia, Manuel Roman, and Ricardo Silva, 01 Cr. 1110, 10/31/05-12/6/05.

Three defendants charged with running a narcotics enterprise and multiple murders in furtherance of that enterprise. All defendants convicted on all counts and sentenced to life without parole.

All convictions and sentences affirmed, United States v. Garcia, 2008 WL 2229406 (2d Cir. May 29, 2008).

For the Government: AUSA David Rody, 212-637-2304

For Garcia: Avi Moskowitz, Moskowitz & Book, 1372 Broadway, NYC, 212-221-7999, and Bobbi Sternheim, Rochman Platzer Fallick Sternheim Luca & Pearl, 666 Third Avenue, NYC, 212-697-4090

For Roman: George Goltzer, Goltzer & Adler, 100 Church Street, NYC, 212-608-1260, and Jean Barrett, Ruhmke & Barrett, 47 Park Street, Montclair, NJ, 973-744-1000

For Silva: David Greenfield, 100 Lafayette Street, NYC, 212-481-9350, and Andrew Patel, 111 Broadway, NYC, 212-349-0230

2. United States v. Christian DelRosario and Gallipote Rivera, 03 Cr. 501, 6/6/05-7/5/05.

A drug boss and hired hitman charged with murder in aid of racketeering. Both defendants convicted and sentenced to life without parole.

All convictions and sentences affirmed, United States v. Rivera, 2008 WL 1711280 (2d Cir. Apr. 11, 2008).

For the Government: AUSA Christopher Conniff and AUSA Christopher Garcia, 212-637-1022

For DelRosario: Ivan Fisher, 2511 E.61st Street, NYC, 212-517-5000

For Rivera: Edward Wilford, 20 Vesey Street, NYC, 212-528-2741

3. United States v. Kimberly Jones and Monique Dopwell, 04 Cr. 340, 2/28/05-3/17/05.

The recording artist known as "Lil Kim" and an associate charged with conspiracy, obstruction of justice, and perjury during grand jury investigation into shooting incident. Both defendants convicted of conspiracy and all perjury counts. Jones sentenced to a year and a day, Dopwell to two months.

No appeals were taken. Opinions regarding pretrial motions in the case can be found at United States v. Butler, 351 F. Supp.2d 121 (S.D.N.Y. Nov. 4, 2004), and United States v. Butler, 2004 WL 2274751 (S.D.N.Y. Oct. 7, 2004).

For the Government: AUSAs Cathy Seibel and Daniel Gitner. AUSA Seibel is now Judge Seibel of the SDNY, 914-390-4271; AUSA Gitner is now with Lankler, Siffert & Wohl, 500 Fifth Avenue, NYC, 212-921-8399

For Jones: Mel A. Sachs (trial) (now deceased), and Paul Shechtman, Stillman Friedman & Shechtman (sentence), 425 Park Avenue, NYC, 212-223-0200

For Dopwell: Brian Kaplan, Goldberg & Kaplan, 55 Broad Street, NYC, 212-269-2363

4. United States v. Stephen Madori, 02 Cr. 274, 2/24/03-2/28/03.

Organized crime figure charged with loansharking. Defendant convicted on all counts and sentenced to 51 months in prison.

Conviction affirmed (but remanded for technical correction with respect to supervised release term), United States v. Madori, 419 F.3d 159 (2d Cir. 2005). Opinion rejecting new trial motion can be found at United States v. Madori, 2004 WL 2274756 (S.D.N.Y. Oct. 7, 2004)

For the Government: AUSA Adam Siegel and AUSA Diane Gujarati, 212-637-2507. AUSA Siegel is now with Freshfields Bruckhaus Deringer LLP, 520 Madison Avenue, NYC, 212-277-4000

For Madori: Edward Panzer, 75 Maiden Lane, NYC, 212-514-5335

5. United States v. Jorge Pabon Cruz, 01 Cr. 1187, 10/8/02-10/16/02.

Young defendant charged with transmission of child pornography. Defendant convicted and originally sentenced to 10 years in prison.

Conviction affirmed but imposition of 10-year sentence reversed on ground that sentence was not mandatory, United States v. Pabon-Cruz, 391 F.3d 86 (2d Cir. Dec. 3, 2004). Opinions denying motion to exclude evidence at sentencing and denying various post-trial motions can be found at United States v. Pabon Cruz, 321 F. Supp.2d 570 (S.D.N.Y. Mar. 10, 2003), and 255 F. Supp.2d 200 (S.D.N.Y. Feb. 4, 2003), respectively. Defendant ultimately sentenced to 4 years in prison.

For the Government: AUSA Alexander Southwell. AUSA Southwell is no longer with the US Attorney and I am not aware of his present contact information.

For Pabon Cruz: Jennifer Brown, Federal Defenders, 212-417-8700, and Deirdre von Dornum, Federal Defenders, 718-330-1208

Civil:

1. SEC v. James N. Stanard, 06 Civ. 7736, 9/8/08-9/17/08

Former chairman of reinsurance company charged with securities fraud in SEC civil enforcement action. Defendant found liable after bench trial.

Findings of fact and conclusions of law can be found at SEC v. Stanard, 2009 WL 196023 (S.D.N.Y. Jan. 27, 2009)

For the SEC: Preethi Krishnamurthy and Jack Kaufman, Securities and Exchange Commission, Three World Financial Center, NYC, 212-336-0116

For Stanard: James D. Mathias, DLA Piper LLP, Baltimore, MD, 410-580-4208, and Paul R. Grand, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, PC, 565 Fifth Avenue, NYC, 212-880-9510

2. Browne Sanders v. Madison Square Garden, L.P. 06 Civ. 589, 9/10/07-10/2/07.

Plaintiff vice-president of Madison Square Garden sued her employer and then-New York Knicks coach Isiah Thomas for sexual harassment and retaliation. Jury returned a verdict for plaintiff for \$11.7 million, and case subsequently settled.

An opinion denying defendants' motion for summary judgment can be found at 525 F. Supp.2d 364 (S.D.N.Y. Sept. 5, 2007).

For plaintiff: Anne C. Vladeck, Vladeck, Waldman, Elias & Engelhard, P.C., 1501 Broadway, NYC, 212-403-7327

For defendant MSG: Ronald M. Green, Epstein Becker & Green, P.C., 250 Park Avenue, NYC, 212-351-4500

For defendant Thomas: Kathleen L. Bogas, Eisenberg & Bogas, P.C., 33 Bloomfield Hills Parkway, Bloomfield Hills, MI, 248-258-6080

3. Eisai Co. v. Dr. Reddy's Laboratories, Ltd., 03 Civ. 9053, 3/5/07-3/14/07

Action for patent infringement under Hatch-Waxman Act, concerning validity of the patent for the compound rabeprazole, the active ingredient in the acid-reflux drug Aciphex. Patent was found valid.

The judgment was affirmed in all respects by Eisai Co. Ltd. v. Dr. Reddy's Laboratories, Ltd., 533 F.3d 1353 (Fed. Cir. July 21, 2008).

Findings of fact and conclusions of law can be found at Eisai Co., Ltd. v. Dr. Reddy's Laboratories, Ltd., 2007 WL 1437834 (S.D.N.Y. May 14, 2007). Opinions addressing summary judgment motions can be found at Eisai Co., Ltd. v. Dr. Reddy's Laboratories, Ltd., 472 F. Supp.2d 493 (S.D.N.Y. Oct. 6, 2006), and Eisai Co., Ltd. v. Teva Pharmaceuticals USA, Inc., 2006 WL 2872615 (S.D.N.Y. Oct. 6, 2006). An opinion resolving a discovery dispute can be found at Eisai Ltd. v. Dr. Reddy's Laboratories, Inc., 406 F. Supp.2d 341 (S.D.N.Y. Dec. 21, 2005).

For Eisai: Joseph M. O'Malley, Paul, Hastings, Janofsky & Walker, LLP, 75 E. 55th St., NYC, 212-318-6000

For Dr. Reddy's: Maurice B. Ross and Louis Weinstein, Budd Lerner P.C., 150 John F. Kennedy Pkwy, Short Hills, NJ, 973-379-4800

For Teva: David M. Hashmall, Goodwin Proctor LLP, 599 Lexington Avenue, NYC, 212-813-8800

4. Astor Holdings, Inc. v. Roski, 01 Civ. 1905, 4/13/04-4/20/04

Plaintiff sued for tortious interference with contract in connection with a dispute over rights to stage and televise "robot wars" – combats between remote-controlled fighting machines. The jury returned a verdict for the defendant.

An appeal was filed but withdrawn. An opinion addressing defendant's motion for summary judgment can be found at Astor Holdings, Inc. v. Roski, 325 F. Supp.2d 251 (S.D.N.Y. Aug. 12, 2003). Opinions in connection with earlier motion practice can be found at Astor Holdings, Inc. v. Roski, 2002 WL 72936 (S.D.N.Y. Jan. 17, 2002), and Astor Holdings, Inc. v. Roski, 2002 WL 1058057 (S.D.N.Y. May 23, 2002).

For plaintiff: Fran M. Jacobs, Duane Morris LLP, 380 Lexington Ave., NYC, 212-692-1000

For defendants: Daniel Scott Schecter, Latham & Watkins, 633 West Fifth Street, Los Angeles, CA, (213) 485-1234

5. Recticel v. Bay Industries, 01 Civ. 6133, 9/8/03-9/19/03

Action for breach of contract in connection with sale of a business, in which defendant claimed that plaintiff had breached environmental warranties. After a bench trial with an advisory jury, plaintiff was awarded \$5.77 million.

The judgment was affirmed in all respects by Recticel Foam Corp. v. Bay Industries, Inc., 2005 WL 807010 (2d Cir. Apr. 7, 2005).

Findings of fact and conclusions of law can be found at RUS, Inc. v. Bay Industries, Inc., 2004 WL 1240578 (S.D.N.Y. May 25, 2004). An opinion denying motions for summary judgment can be found at RUS, Inc. v. Bay Industries, Inc., 322 F. Supp.2d 302 (S.D.N.Y. Apr. 1, 2003).

For plaintiff: Richard A. DePalma, now of Baker & McKenzie, 1114 Avenue of the Americas, NYC, 212-626-4590

For defendant: Douglas J. Klingberg, Ruder Ware, 500 Third Street, Wausau, WI, 715-845-4336

Finally, although it did not proceed to verdict, I should note one other significant trial. In Disability Advocates Inc. v. NYS Office of Mental Health, 02 Civ. 4002, tried from 4/3/06-4/13/06, I conducted a bench trial on a challenge to the use of disciplinary confinement against mentally ill New York State prisoners. The case resulted in a settlement favorable to the prisoners that attracted considerable press attention. Counsel for plaintiffs: Sarah Kerr, Legal Aid Society, NYC, 212-577-3530, and James Benkard, Davis Polk & Wardwell, 450 Lexington Ave., NYC, 212-450-4000. Counsel for defendants: Lee Adlerstein, NYS Attorney General's Office, 120 Broadway, NYC, 212-416-8650.

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. In re Refco Capital Markets, Ltd. Brokerage Customer Securities Litigation, 586 F. Supp.2d 172 (2009). Numerous other published and unpublished opinions in this

and related matters in the complex Refco bankruptcy and securities multi-district litigation can easily be found via Westlaw.

Counsel: Scott Edelman, Milbank Tweed, 1 Chase Manhattan Plaza, NYC, 212-530-5149; Richard Rosen, Paul Weiss, 1285 Avenue of the Americas, NYC, 212-373-3305. Numerous other counsel are listed in the opinion.

2. SEC v. Universal Express, Inc., 546 F. Supp. 2d 132 (2008); 475 F. Supp.2d 412 (2007).

Counsel: Julie Lutz and Leslie Hughes, SEC, Denver, CO, 303-844-1056; Arthur W. Tifford, Tifford & Tifford, P.A., Miami, FL, 305-439-8230

3. Boyd v. AWB Ltd., 544 F. Supp.2d 236 (2008).

Counsel: Seth R. Gassman, Cohen Milstein Hausfeld & Toll, 150 E. 52d Street, NYC, 212-838-7797; Robert H. Baron, Cravath Swaine & Moore, 825 Eighth Avenue, NYC, 212-474-1000

4. Tse v. UBS Financial Services, 568 F. Supp.2d 274 (2008).

Counsel: John A. Beranbaum, Beranbaum Menken Ben-Asher & Bierman, LLP, 80 Pine Street, NYC, 212-509-1616; Mary Gambardella, Epstein Becker & Green, P.C., 250 Park Avenue, NYC, 212-351-4500

5. Global Gold Mining LLP v. Robinson, 533 F. Supp.2d 442 (2008).

Counsel: Edward G. Kehoe, King & Spalding, LLP, 1185 Avenue of the Americas, NYC, 212-556-2222; Dana Chandler McGrath, Allen & Overy, 1221 Avenue of the Americas, NYC, 212-610-6376

6. Arista Records v. Lime Group LLC, 532 F. Supp.2d 556 (2007).

Counsel: Katherine Forrest, Cravath Swaine & Moore, 825 Eighth Avenue, NYC, 212-474-1000; Charles Stewart Baker, 713-226-6676

7. Telenor Mobile Communications v. Storm LLC, 524 F. Supp. 2d 332 (2007).

Counsel: Robert Sills, Orrick Herrington & Sutcliffe, 666 Fifth Avenue, NYC, 212-506-3782; Pieter van Tol, Lovells, LLP, 590 Madison Avenue, NYC, 212-909-0661; Ronald S. Rolfe, Cravath Swaine & Moore, 825 Eighth Avenue, NYC, 212-474-1000

8. Johnson & Johnson v. Guidant Corp., 525 F. Supp.2d 336 (2007).

Counsel: Harold Weinberger, Kramer Levin Naftalis & Frankel, LLP, 1177 Avenue of the Americas, NYC, 212-715-9132; Stuart J. Baskin, Shearman & Sterling LLP, 599 Lexington Avenue, NYC, 212-848-4000

9. In re Global Crossing, Ltd. Securities Litigation, 471 F. Supp.2d 338 (2006).

Numerous other published and unpublished opinions in connection with this complex securities and ERISA multidistrict litigation can easily be found via Westlaw.

Counsel: Jay W. Eisenhofer, Grant & Eisenhofer, Wilmington, DE, 302-662-7000; numerous other counsel are listed in the various opinions in the case.

10. Jones v. Goord, 435 F. Supp.2d 221 (2006).

Counsel: Peter Simmons, Fried Frank Harris Shriver & Jacobson, One New York Plaza, NYC, 212-859-8419; Barbara Hathaway and Barbara Maddox, Office of the Attorney General, 120 Broadway, NYC, 212-416-8560

e. Provide a list of all cases in which certiorari was requested or granted.

I don't believe that certiorari was ever sought directly from any decision of mine. The only case over which I presided that eventually was reviewed by the Supreme Court was Twombly v. Bell Atlantic Corp., ___ U.S. ___ (May 21, 2007), rev'g 425 F.3d 99 (2d Cir. 2005), rev'g 313 F. Supp.2d 174 (S.D.N.Y. 2003). In that case, the Supreme Court agreed with the decision I had reached and reversed the judgment of the Second Circuit that had reversed me.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

1. Hardy v. Walsh Manning Securities LLC, 341F.3d 126 (2d Cir. Aug. 19, 2003), vacating in part 2002 WL 2031607 (S.D.N.Y. Sept. 5, 2002). I confirmed an arbitration award. The Court of Appeals reversed in part, by a 2-1 vote. I respectfully disagree with the majority.

2. Pugh v. Goord, 345 F.3d 121 (2d Cir. Sept. 22, 2003), vacating and remanding 184 F. Supp. 2d 326 (S.D.N.Y. Jan. 3, 2002). I granted summary judgment to the state in a lawsuit by Muslim inmates seeking various religious accommodations. They were right; I jumped the gun on summary judgment.

3. United States v. Reyes, 353F.3d 148 (2d Cir. Dec. 19, 2003), reversing 249 F. Supp. 2d 277 (S.D.N.Y. 2003). This was the only time in over eight years on the bench that I suppressed evidence. On reflection, I now think the Court of Appeals had the better of the argument.

4. Security Ins. Co. v. Old Dominion Freight Line, Inc., 391 F. 3d 77 (Dec. 2, 2004), reversing 2003 WL 22004895 (S.D.N.Y. Aug. 22, 2003). I granted summary judgment in a case against a carrier, and the Court of Appeals found a material issue of fact.

5. United States v. Pabon-Cruz, 391 F.3d 86 (2d Cir. Dec. 3, 2004), affirming 255 F. Supp. 2d 200 (2003) but vacating sentence. I imposed a ten-year sentence on a defendant charged with advertising child pornography, believing that was a mandatory sentence. The Court of Appeals held that the statute provided for a 10-

year mandatory sentence *if* a jail sentence was imposed, but permitted a fine in lieu of any imprisonment at all, based on a literal reading of the statute.

6. *Twombly v. Bell Atlantic Corp.*, ___ U.S. ___ (May 21, 2007), rev'g 425 F.3d 99 (2d Cir. 2005), rev'g 313 F. Supp.2d 174 (S.D.N.Y. 2003). I dismissed the complaint in an anti-trust case; the Second Circuit reversed; the Supreme Court reversed them and said I was right. I suppose I could have listed this as a "significant opinion," but it was the Supreme Court's opinion that was ultimately significant, not mine.

7. *Century 21, Inc. v. Diamond State Ins. Co.*, 442 F.3d 79 (2d Cir. Mar. 21, 2006), rev'g 2004 WL 1117897 (S.D.N.Y. May 18, 2004). Insurance dispute. I interpreted the commercial liability policy not to require the insurer to defend a claim for selling infringing goods; the Court of Appeals ruled that it did.

8. *Bernstein v. Pataki*, 2007 WL 1113263 (2d Cir. Apr. 3, 2007), rev'g 409 F. Supp.2d 306 (S.D.N.Y. 2005). I dismissed a complaint by involuntarily committed psychiatric patients claiming that they were unconstitutionally placed in overly restrictive facilities. The Court of Appeals reversed. I must have been very wrong, because the state promptly settled the case on terms favorable to the plaintiffs.

9. *Hudson v. Universal Studios*, 2007 WL 1555755 (2d Cir. May 30, 2007), rev'g in part 2006 WL 1148695 (S.D.N.Y. Apr. 28, 2006). I held that a pro se plaintiff's copyright claim that an Eddie Murphy movie was stolen from plays he had written was precluded by res judicata. The Court of Appeals found that aspect portion of his claims had not been addressed by the prior court that had considered them.

10. *Sarl Louis Feraud Intl. v. Viewfinder, Inc.*, 489 F.3d 474 (2d Cir. June 5, 2007), rev'g 406 F. Supp.2d 274 (S.D.N.Y. 2005). I declined to enforce a French judgment that an American photographer had violated the intellectual property rights of fashion designers by publishing pictures of their collections, finding that the French judgment was inconsistent with the First Amendment. The Court of Appeals held that further proceedings were necessary with respect to whether the fair use doctrine was applicable and whether French law provided an equivalent defense.

11. *In re Salomon Analyst Metromedia Litig.*, 544 F.3d 474 (2d Cir. Sept. 30, 2008), rev'g 236 F.R.D. 208 (S.D.N.Y. 2006). I certified a class in a securities fraud lawsuit. The Court of Appeals, while praising my "valiant effort to reconcile the conflicting messages from our Court on class certification standards," *id.* at 484, applied a more restrictive standard that it had created in an opinion delivered after I had ruled. In that opinion as well, the Court of Appeals had singled out my opinion in this case as "a valiant effort by a conscientious district judge" to make sense of Second Circuit law on the subject. *In re Initial Public Offering Securities Litigation*, 471 F.3d 24, 40 n.11 (2d Cir. 2006).

12. *Ramos v. City of New York*, 2008 WL 4810545 (2d Cir. Nov. 4, 2008), vacating in part 2006 WL 2871969 (S.D.N.Y. Oct. 6, 2006). I granted judgment on the

pleadings dismissing a plaintiff's false arrest and malicious prosecution claims. The Court of Appeals affirmed in part, but found that the plaintiff had properly alleged malicious prosecution vacated the portion of the decision finding the false arrest claim time-barred, holding that the Supreme Court's decision in Wallace v. Kato, 549 U.S. 384 (2007), which came after my decision, delayed the time of accrual of the claim.

I cannot recall any case in which the Court of Appeals affirmed a judgment of mine but was critical of my handling of the case.

The only other matter that should be brought to the Committee's attention under this heading is that the Court of Appeals issued a writ of mandamus directing me not to inform a jury of the mandatory minimum penalty in a criminal case. The order is neither published nor electronically available, so far as I know, but the issue is discussed in my post-trial opinion in United States v. Pabon Cruz, 255 F. Supp.2d 200, 214-15 (2003), and the Second Circuit's opinion affirming the conviction, 391 F.3d 86, 90-91 (2004).

Putting all of this in context, it should be noted that through the end of 2008, I had issued over 750 opinions published on Westlaw, and tried 90 cases to verdict. The Court of Appeals has not reversed the result of a single trial over which I have presided.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Nearly all decisions addressing significant motions and/or resolving cases on the merits are decided by opinion and order. All opinions and orders of this Court, so far as I am aware, are published electronically on Westlaw and/or Lexis. A very small number of substantive are decided by brief orders, with abbreviated stated reasons, or by oral opinions. Procedural issues, scheduling matters, discovery disputes and a host of similar administrative questions are resolved by unpublished orders, all of which are docketed and for the most part accessible to the public through the Electronic Case Filing system of the federal courts.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Other than opinions cited above, the only case that I can recall in this category is Mental Hygiene Legal Service v. Spitzer, 2007 WL 4115936 (S.D.N.Y. Nov. 16, 2007), aff'd, 2009 WL 579445 (2d Cir. Mar. 4, 2009).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

Cases in which I sat by designation on the Second Circuit:

In re Venture Mortgage Fund, L.P., 282 F.3d 185 (2002)
 Better TV, Inc. of Bennington v. Public Service Board, 42 Fed. Appx. 498 (2002)
 United States v. Fernandez-Antonia, 278 F.3d 150 (2002)
 Lambert v. New York State Office of Mental Health, 22 Fed. Appx. 71 (2001)
 Grullon v. United States, 22 Fed. Appx. 70 (2001)
 Morrissey v. General Motors, 21 Fed. Appx. 70 (2001)
 United States v. Ierardi, Dkt. No. 01-1002*
 United States v. Brunet, 275 F.3d 215 (2001)
 Capicotto v. Puglisi, 25 Fed. Appx. 51 (2001)
 Carvalho v. NYS Dept. of Taxation, 21 Fed. Appx. 71 (2001)
 Sorri v. Bell Atlantic, 45 Fed. Appx. 80 (2002)
 United States v. Pavlotskiy, 47 Fed. Appx. 590 (2002)
 Coastal Aviation v. United States, Dkt. No. 02-6001*
 Gonzalez v. Travis, 45 Fed. Appx. 83 (2002)
 Shaffer v. Schenectady School District, Dkt. No. 01-9319*
 United States v. Carneglia, 47 Fed. Appx. 27 (2002)
 The Fonda Group v. Neptune Paper Enterprises, Inc., 45 Fed. Appx. 82 (2002)
 Feeley v. New York City Police Dept., Dkt. No. 02-7148*
 Ackoff-Ortega v. Windswept Pacific Entertainment Corp., 46 Fed. Appx. 663 (2002)
 Drax v. Reno, 338 F.3d 98 (2003).
 Dunham v. Travis, 313 F.3d 724 (2002).
 Jenks v. DeMazza, Dkt. No. 02-7085*
 Arculeo v. On-Site Sales & Marketing, LLC, 425 F.3d 193 (2005)
 United States v. Robinson, 430 F.3d 537 (2005)
 Yu v. INS, 128 Fed. Appx. 199 (2005)
 Hailey v. New York City Transit Authority, 136 Fed. Appx. 406 (2005)
 Grant v. Goord, 155 Fed. Appx. 551 (2005)
 United States v. Gotti, 459 F.3d 296 (2006)
 United States v. Castro, 175 Fed. Appx. 469 (2006)
 United States v. Castillo, 2006 WL 1070904 (2006)
 United States v. Castillo, 186 Fed. Appx. 25 (2006)
 Gui Fang Chan v. Gonzales, 177 Fed. Appx. 172 (2006)
 Filippov v. Gonzales, 177 Fed. Appx. 147 (2006)
 Genao v. NYC Dept. of Parks and Recreation, 178 Fed. Appx. 142 (2006)
 Filippelli v. United States, Dkt. No. 05-2976*
 Deyo v. C.I.R., 180 Fed. Appx. 275 (2006)
 Ling-Ling Zhu v. Dept. of Justice, 179 Fed. Appx. 785 (2006)
 Osbourne v. Gonzales, 197 Fed. Appx. 783 (2006)
 United States v. Villalona, 184 Fed. Appx. 23 (2006)
 United States v. Day, 201 Fed. Appx. 27 (2006)

Beskovic v. Gonzales, 467 F.3d 223 (2006)
 Ti Wu Gao v. Gonzales, 200 Fed. Appx. 31 (2006)
 Lewis v. City of Buffalo Police Dept., 2009 WL 424232 (2009)
 Bader v. Goldman Sachs Group, Inc., 2009 WL 427323 (2009)
 Pleener v. NYC Board of Education, 2009 WL 454011 (2009)
 Abrahams v. Appellate Division, 2009 WL 454007 (2009)
 Lavayen v. Duncan, 2009 WL 453252 (2009)
 United States v. Navarro, 2009 WL 481616 (2009)
 Smallwood v. Lupoli, 2009 WL 579419 (2009)
 In re Delta Airlines, 2009 WL 577588 (2009)
 Stokes v. Girdich, 2009 WL 579139 (2009)
 Alzamora v. Village of Chester, 2009 WL 578630 (2009)
 Portillo-Escamilla v. Holder, No. 08-2916 (2009)*
 Ayazi v. New York City Board of Education, 2009 WL 648612 (2009)
 Vaughn v. Leeds, Morelli & Brown, P.C., 2009 WL 690024 (2009)

*I have been unable to locate a citation for a published or unpublished opinion for these cases.

Second Circuit cases in which I wrote opinions:

Wynn v. AC Rochester, 273 F.3d 153 (2001) (per curiam opinion).
 Asoma Corp. v. SK Shipping Co., 53 Fed. Appx. 581 (2002) (summary order).
 Grochowski v. Phoenix, 318 F.3d 80, 89 (2003). (dissent). In Cox v. NAP Const. Co., 10 N.Y.3d 592 (2008), the New York Court of Appeals unanimously agreed with my dissent.
 United States v. Crowley, 318 F.3d 401 (2003) (majority opinion).
 Nicholas v. Goord, 430 F.3d 652, 677 (2005) (concurring opinion).
 Royal and Sun Alliance Ins. Co. v. Century Intl. Arms, Inc., 466 F.3d 88 (2006) (majority opinion).
 Shechet v. Favali, 2006 WL 1308656 (2006) (summary order).
 Lucky Brand Dungarees, Inc. v. Ally Apparel Resources LLC, 206 Fed. Appx. 10 (2006) (summary order).
 Triestman v. Federal Bureau of Prisons, 470 F.3d 471, 477 (2006) (dissenting opinion).

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

I have endeavored to comply with the command of 28 U.S.C. § 455(a), disqualifying myself in cases in which my impartiality might reasonably be questioned, as well as in the specific instances set forth in § 455(b). Toward that end, I have supplied our clerk's office with a list of litigants in which a financial interest requires disqualification, so that I am notified when those litigants appear in a case randomly assigned to me. In the interest of avoiding disqualification, I have divested myself of holdings of common stock, retaining investments only in bonds and mutual funds, which raise fewer issues of disqualification.

I have also disqualified myself from all cases involving Columbia University, both because I continue to teach part-time at Columbia Law School and because of my long and close association with that institution. For my first five years on the bench, I maintained a policy of recusing from any case in which the law firm of Covington & Burling, with which I had been associated before being appointed, represented any party. After eight years on the bench, I no longer apply that policy; however, so far as I am aware, that law firm has not appeared before me in any case.

I have a recollection of having recused myself in at least one or two matters in which federal prisoners challenged convictions that were obtained when I was Chief of the Criminal Division in the United States Attorney's Office for this District, and had actual or nominal supervisory responsibility over their cases. As that was long ago, the situation has not come up often. I cannot remember the specifics.

I have recused myself in two cases that I can recall in which I had personal association with the parties. One was legal malpractice case, First Trust v. Moses & Singer, 99 Civ. 1947, in which I had social friendship with the defendant; the other was an employment discrimination case, Hall v. Meridian Capital Group, 08 Civ. 9570, in which I had represented one of the defendants in an unrelated matter some years ago. In each case the recusal was sua sponte.

In SEC v. Universal Express, Inc., 2007 WL 2947431 (2007), counsel for one of the defendants moved for me to recuse myself based on a concern that threats addressed to the receiver I had appointed in the case might lead me to be prejudiced against the defendant. I denied the motion, noting that none of the threats were in any way

associated with the moving defendant, and that threats against a judge or court personnel are not generally a valid basis for recusal in any case. My reasoning is laid out in the cited opinion. (I later received threats directly against myself and my family in the same case. For the same reasons, I determined not to recuse myself. I disclosed these threats to the remaining parties in the case, none of whom, to my recollection, made a further motion.)

A similar situation arose in a criminal case, United States v. Reyes, 02 Cr. 1195. In that case, the defendant filed various meritless and vexatious liens against me. For similar reasons, but without a written opinion, I determined that recusal was neither required nor appropriate.

15. **Public Office, Political Activities and Affiliations:**

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

I have never been a candidate for elected public office.

The only public offices I have held have been the appointed positions in government service as a law clerk, prosecutor, and judge listed elsewhere in this questionnaire. I have had no unsuccessful nominations for appointed office.

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

I have never been an official of any political party or election committee, nor been a member of any political club. I have never held any position or served in any political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

1976-1977; I served as a law clerk to The Honorable William J. Brennan, Jr., Supreme Court of the United States

1975-1976; I served as a law clerk to The Honorable Wilfred Feinberg, United States Court of Appeals for the Second Circuit

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

I have never maintained an office for the practice of law. From 1977-1980, and from 1983-1989, while teaching at Columbia Law School, I handled occasional legal matters, mostly pro bono and on occasion for paying clients.

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

2000-present
United States District Court, Southern District Of New York
500 Pearl Street
New York, NY 10007
United States District Judge

1992-2000
Covington & Burling, LLP
(formerly Howard Smith & Levin LLP; formerly Howard Darby & Levin)
1330 Avenue of the Americas
New York, NY 10019
(present address: 620 Eighth Avenue, New York, NY 10018)
Counsel

1990-1992
United States Department of Justice
Office of the United States Attorney, SDNY
One St. Andrew's Plaza
New York, NY 10007
Chief, Criminal Division

1988-1990
Office of Independent Counsel, Iran/Contra
555 Thirteenth Street NW
Washington, DC 20004
Associate Counsel (part time)

1980-1983
United States Department of Justice
Office of the United States Attorney, SDNY
One St. Andrew's Plaza

New York, NY 10007
Assistant United States Attorney, Criminal Division
(Chief Appellate Attorney, 1983; Deputy Chief Appellate Attorney, 1982-83)

1974
Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll
919 Third Avenue
New York, NY 10022
(now known as Kramer, Levin, Naftalis & Frankel, LLP;
present address: 1177 Avenue of the Americas, New York, NY 10036)
Summer Associate

The activities listed above constitute either full-time or significant part-time commitments. In addition, I have had occasional short-term or less extensive part-time involvements in public service, as follows:

Special Counsel, Office of Independent Counsel Carol Elder Bruce (special prosecutor investigating allegations regarding Interior Secretary Bruce Babbitt), 1999-2000.

Associate Independent Counsel, Office of Independent Counsel James C. McKay (special prosecutor investigating Attorney General Edwin Meese's alleged involvement in Wedtech scandal), 1987-88.

Chief Counsel, New York State Commission on Government Integrity (Califano Commission), 1987

Special Counsel, City of New York Special Commission to Investigate City Contracts (Martin Commission), 1986

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

To the best of my recollection, I have never served as an arbitrator or mediator.

b. Describe:

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

My primary activity between completing my judicial clerkships and becoming a judge was teaching law. Since 1977, I have been a member of the faculty of law of the Columbia University School of Law, engaging in

full-time teaching and research during most of that time. My primary specialization, both as a teacher and as a practicing lawyer, has been in criminal law. In addition to courses and seminars in the general field of criminal law, such as substantive criminal law, criminal procedure, sentencing, criminology, criminal litigation, and ethical issues in criminal practice, I have taught from time to time other subjects, including contracts, constitutional law, professional responsibility, legal education, immigration law and international human rights, in both classroom and clinical settings.

Apart from teaching and scholarship, I have had various administrative responsibilities at the law school, including service for five years as Vice Dean, with responsibility for curriculum, teaching assignments, and hiring of adjunct instructors; chairing the search committee for our present dean, chairing the curriculum and judicial clerkship committees at various times, and serving as a University Senator.

However, unlike many legal academics, I made it a point to acquire practical knowledge of the law. While a member of the Faculty, I twice took extended leaves to engage in public service, serving as a full-time federal prosecutor for a total of five years. In addition, after returning from the first of these stints in 1983 I made a practice of regularly taking legal assignments, including government service, pro bono, and paying matters, on a part-time basis, within the limits permitted by the Law School. These assignments include the following:

(1) 1980-1983. As an Assistant United States Attorney for the Southern District of New York, I investigated and tried criminal cases for the United States. Initially, I was assigned to the General Crimes Unit, working on matters that could be tried in less than a week. Subsequently, I was assigned to the Major Crimes Unit, working on white collar and political corruption cases, and to the Appeals Unit, where I was responsible for supervising the Office's criminal appellate litigation. When I left to return to full-time teaching, I was the Office's Chief Appellate Attorney.

(2) 1983-1988. After leaving the government and returning to Columbia, I occasionally handled matters, mostly but not exclusively on a pro bono basis, including cases in the Supreme Court and in the United States Court of Appeals for the Second Circuit, both as counsel of record to parties and representing various *amici curiae*, including the American Civil Liberties Union and the Association of the Bar of the City of New York. I also served as part-time associate counsel to Independent Counsel James C. McKay, in connection with his investigation into allegations against Attorney General Edwin Meese arising out of the so-called "Wedtech"

affair, and for brief periods as Counsel to New York City and State Commissions investigating corruption in city and state government.

(3) 1988-1990. As part-time Associate Counsel in the Office of Independent Counsel, Iran/Contra, I was responsible for briefing and arguing substantive motions in the case of United States v. Oliver North, as well as having primary responsibility for the Office's appellate litigation in the North and Fernandez cases. In these roles I supervised and coordinated a large team of lawyers, and had primary responsibility for arguing legal matters in the district court and in the courts of appeals.

(4) 1990-1992. As Chief of the Criminal Division in the United States Attorney's Office, SDNY, I was responsible for supervision and management of all the Office's criminal cases, and for the supervision of approximately 135 federal prosecutors. In this capacity I argued several appeals and appeared in district court as needed to express the position of the Office. I advised AUSAs on a daily basis in the conduct of trials and investigations, and regularly made decisions regarding those cases. I personally handled a small number of investigations and litigations, but did not personally try any cases.

(5) 1992-2000. After returning again to teaching, I became counsel to the firm of Howard Darby & Levin (later Howard Smith & Levin; now the New York office of Covington & Burling), primarily handling white collar criminal defense and regulatory matters. While I appeared in both the district court and in the court of appeals in a civil matter, and represented clients in regulatory investigations, the bulk of the practice involved white collar criminal work: conducting internal investigations, representing witnesses and subjects in grand jury investigations, and criminal appeals. I have argued several criminal appeals, and have advocated clients' interests before prosecutors and regulatory bodies. During this period, in addition to representing paying clients of the firm, I handled a number of pro bono matters and served as counsel to Independent Counsel Carol Bruce in connection with her investigation of Secretary Babbitt.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

As noted above, my primary specialization has been in criminal law, with an emphasis on federal criminal law. My principal former client, by any measure, was the government of the United States of America, since my only periods of full-time law practice, and some of my most significant part-time assignments, have been as a federal prosecutor, either with the Department of Justice or with Independent Counsel. As a defense lawyer, my specialization was in white collar and regulatory matters. Typical clients included individual attorneys, business executives and

entrepreneurs who were witnesses or subjects in grand jury investigations or defendants in criminal cases; occasionally I represented or advised business firms or corporations.

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

During my periods of public service listed above (as an Assistant United States Attorney, 1980-1983 and 1990-1992, and as Associate Independent Counsel, 1988-1990), I appeared in court regularly – during my first tenure as an AUSA, on a daily basis, and regularly if somewhat less frequently in the other periods. From 1992-2000 I appeared in court occasionally in connection with my practice as Counsel to Covington & Burling and predecessor firms.

- i. Indicate the percentage of your practice in:

(A)	federal courts;	90%
(B)	state courts of record;	5%
(C)	other courts;	0%
(D)	administrative agencies	5%

- ii. Indicate the percentage of your practice in:

1.	civil proceedings;	5%
2.	criminal proceedings.	95%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Approximately 10. Of those, all but two were as chief or sole counsel, and two were as associate counsel.

- i. What percentage of these trials were:

1.	jury;	90%
2.	non-jury.	10%

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

I have argued one case in the Supreme Court, United States v. Koecher, 475 U.S. 133 (1986). The case was dismissed as moot. I do not have a copy of the transcript of the oral argument. The case is fully described in section 17, part G, below.

I was also on the brief for the respondent in United States v. Albertini, 472 U.S. 675 (1985), in which I was primarily responsible for the statutory argument.

I was the principal author of amicus briefs for the American Civil Liberties Union in United States v. Ursery, 518 U.S. 267 (1996), Austin v. United States, 509 U.S. 602 (1993), and New York v. Burger, 482 U.S. 691 (1987).

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- a. the date of representation;
 - 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.

A. United States v. Brennan. United States Court of Appeals for the Second Circuit, Dkt. Nos. 97-1440, 97-1441. Argued April 30, 1998, decided July 7, 1999. Reported at 183 F.3d 139.

I represented John V. Brennan, former president and CEO of United States Aviation Underwriters, Inc., the managing company of the largest aviation insurance consortium in the United States, in his appeal from his conviction, along with the company, of mail fraud in connection with the allocation of responsibility for an airline crash. Mr. Brennan was sentenced to nearly five years' imprisonment, and his company to fines and restitution of over \$40 million. (I was not involved in the case until after the trial.) The case involved numerous complex issues including the fiduciary responsibilities of insurers, the proper scope of the mail fraud statute in application to non-disclosures by fiduciaries, the application of the McCarran-Ferguson Act, whether the alleged misrepresentations by the defendants were sufficient to support mail fraud liability, and the proper venue in mail fraud cases.

The Second Circuit reversed the conviction and ordered the indictment dismissed on grounds of improper venue (the issue I argued orally to the court), and in dictum suggested that there were serious difficulties with the legal theories underlying the government's case. The government did not seek further review of the case.

I was counsel of record for Mr. Brennan, and briefed and argued the case for him, with the assistance of Cindy Soohoo, an associate at Howard Smith & Levin (now at

Covington & Burling, 1330 Avenue of the Americas, NYC, 212-841-1120), and Edward A. McDonald, of Reboul, MacMurray, Hewitt, Maynard and Kristol (45 Rockefeller Plaza, NYC, 212-841-5700), who was also trial counsel. USAU was represented by Andrew L. Frey, of Mayer Brown & Platt (1675 Broadway, NYC, 212-506-2635), with the assistance of Julie E. Katzman, then an associate at Mayer Brown, later a member of the staff of the Senate Judiciary Committee (202-224-0957), and David M. Zornow, of Skadden, Arps, Slate, Meagher & Flom (919 Third Avenue, NYC, 212-735-3000), who was also trial counsel. (The briefs for the two appellants constituted an integrated whole, composed by both firms.) The Government was represented by AUSAs Alan B. Vickery and Lee G. Dunst, Assistant United States Attorneys for the Eastern District of New York. The panel consists of Judges Jon O. Newman, Pierre N. Leval and Aronld Wexler (of the EDNY, by designation).

B. United States v. Blarek, United States Court of Appeals for the Second Circuit, Dkt. Nos. 98-1291, 98-1292. Decided in unreported opinion December 23, 1998.

I represented on appeal Frank Pellecchia and Alexander Blarek, two decorators and interior designers who were convicted of money laundering offenses for decorating houses and apartments in Colombia for Jose Santacruz Londono, a major drug trafficker, and receiving payment from funds derived from Santacruz's drug trafficking activities. The case received significant publicity, because it involved the conviction of otherwise legitimate businessmen for money laundering offenses and RICO violations as a result of their acceptance of tainted funds. The conviction was affirmed, a petition for certiorari (filed on behalf of petitioners by Alan Dershowitz) was denied.

I was counsel of record for Mr. Blarek, and briefed and argued the appeal for both defendants, with the assistance of Theodore R. Posner, then an associate at Howard, Smith & Levin, later legislative counsel to Rep. Sander M. Levin, 2268 Rayburn House Office Building, Washington, DC 20515-2212, 202-225-4961. I am not aware of his present position. Co-Counsel, representing Mr. Pellecchia, who also was trial counsel, was Paul Shechtman, of Stillman Friedman & Shechtman, 425 Park Avenue, New York, 212-223-0200. The Government was represented by Mark Lerner and Richard Weber, Assistant United States Attorneys for the Eastern District of New York. The panel was composed of Judges Guido Calabresi, Thomas Meskill, and Milton Pollack (of the SDNY, by designation).

C. United States v. Pedro Lara, United States Court of Appeals for the Second Circuit, Docket Nos. 93-1750, 93-1773, 93-1780, 93-1794, 93-1795, 93-1837. Argued November 14, 1994, decided February 2, 1995. Reported at 47 F.3d 60.

I represented on appeal, pro bono by special appointment of the District Court, Pedro Lara, a young man who had been convicted of narcotics offenses. The most significant aspect of the appeal was that the Government was appealing a downward sentencing departure made by Judge John Martin of the Southern District, on the ground that the

amount of narcotics attributed to Mr. Lara grossly overstated his culpability, because it represented an aggregate amount of narcotics distributed over a long period of time by a large organization of which he was accused of being only a minor part. We were unsuccessful in urging grounds for reversal of Mr. Lara's conviction, but successful in resisting the Government's appeal.

I briefed and argued the appeal for Mr. Lara, with the assistance of Stephen R. Peikin, then an associate of Howard Darby & Levin, later an AUSA in the Southern District of New York, now a partner in Sullivan & Cromwell (125 Broad Street, 212-558-7228). Two other appellants were represented by Martin G. Fogelson (470 Park Avenue South, 686-4262) and James C. Neville (20 Vesey Street, 233-0858). (Their appeals were largely independent of mine.) The government was represented by AUSA Michael S. Sommer of the SDNY, now a partner in McDermott, Will & Emery, 50 Rockefeller Center, NYC, 212-547-5400. The panel consisted of Judges Jon O. Newman and Pierre N. Leval, and the late Judge Francis X. Altimari.

D. Milbank, Tweed, Hadley & McCloy v. Chan Cher Boon. United States Court of Appeals for the Second Circuit, Docket No. 93-7418. Argued October 18, 1993, decided January 3, 1994. Reported at 13 F.3d 537.

I represented Carol Sui Han Leo, the plaintiff in a suit for violation of fiduciary duty against the law firm of Milbank, Tweed, Hadley & McCloy, on an appeal from a judgment in her favor for approximately two million dollars. Mrs. Leo, acting through an agent named Chan Cher Boon, had retained Milbank, Tweed to represent her in an effort to purchase a bankrupt Swiss bank. After Boon was fired as agent, he associated himself with a competing syndicate, and Milbank, Tweed undertook to represent that group in opposition to the interests of Mrs. Leo. The judgment was affirmed. The opinion of the Court of Appeals emphatically rejected the firm's claims that its conduct had been appropriate.

I argued the case in the Court of Appeals, and was primarily responsible for briefing the appeal, along with Sara E. Moss and Robert P. Haney, partners in Howard, Darby & Levin, and Nancy L. Kestenbaum, an associate of the firm, who were trial counsel. (Ms. Moss is now General Counsel of The Estee Lauder Companies, Inc., 767 Fifth Avenue, NYC, 212-572-4200); Mr. Haney and Ms. Kestenbaum are partners in Covington & Burling, New York, NY.) Opposing counsel was Harvey R. Miller of Weil, Gotshal & Manges, 767 Fifth Avenue, NYC, 212-310-8000. The panel consisted of Judges Joseph M. McLaughlin, Dennis G. Jacobs and Thomas M. Reavley (of the Fifth Circuit, by designation). (In addition to the appeal, I also had primary responsibility for oral argument of the defendants' motions for judgment notwithstanding the verdict and for a new trial before the District Court, Chief Judge Thomas P. Griesa, United States District Court for the Southern District of New York.)

E. United States v. Oliver North, United States Court of Appeals, Docket No. 89-3118. Argued February 6, 1990, decided July 20, 1990. Reported at 910 F.2d 843 (as modified, 920 F.2d 940).

I was asked by Independent Counsel Lawrence E. Walsh to join the staff of the Office of Independent Counsel, Iran/Contra, to supervise the responses to substantive legal motions in the prosecution of Oliver North. The defendant made numerous pre-trial motions to dismiss the indictment and for other relief, and, with the assistance of a rather large team of lawyers, we succeeded in persuading the District Court to reject virtually all of them and to proceed to trial on the indictment. (Several counts were later dismissed on prosecution motion pursuant to the Classified Information Procedures Act because of the Government's refusal to declassify various documents material to the case.) After Mr. North was convicted on a few counts, I returned to supervise the briefing of the appeal, and to argue the case. The convictions were reversed.

I handled most of the briefing and argument of substantive pre-trial motions, with the assistance of Bruce Green (now a professor at Fordham University School of Law, 212-636-6851) and a number of other lawyers, before the late Judge Gerhard Gesell, and briefed and argued the appeal, with the help of a number of others. Barry S. Simon of Williams & Connolly, 725 12th Street N.W., Washington, D.C. 20005, 202-434-5000, argued on behalf of Mr. North. The appellate panel consisted of Judges Laurence H. Silberman, David B. Sentelle and Patricia Wald.

F. Appeal of the United States (United States v. Fernandez), United States Court of Appeals for the Fourth Circuit, Docket No. 89-5804. Argued August 23, 1989, decided September 29, 1989. Reported at 887 F.2d 465. (See also United States v. Fernandez, 913 F.2d 148 (4th Cir. 1990).)

This was another matter I handled for the Independent Counsel, Iran/Contra. The case involved important issues under the Independent Counsel Act and the Classified Information Procedures Act. The matters involved litigation between the United States (represented by the Justice Department) and itself (represented by the Independent Counsel). In essence, the Attorney General sought to take an interlocutory appeal from a ruling of the District Court, rejecting the Independent Counsel's proposal to substitute redacted versions of classified materials that the Court had ruled relevant to the case. Independent Counsel's position was that the decision to take such an appeal was confided to Independent Counsel, not to the Attorney General. (Although both halves of "the United States" agreed that the District Court should have allowed the substitution, the question was who would control the prosecution, including the tactical choice of when to attempt to accommodate the Court's rulings and when to appeal.) We were successful in having the Attorney General's appeal dismissed, but the victory was ultimately meaningless; the District Court eventually dismissed the case, ruling that the refusal to declassify documents would deprive the defendant of a fair trial. I also argued the Independent Counsel's later appeal of that order, but the decision was affirmed.

I handled the briefing and argument of both appeals in the Fourth Circuit. The Attorney General's position was argued by then-Assistant Attorney General Edward S.G. Dennis, Jr., with the assistance of Ronald K. Noble (now a Professor of Law at NYU, 212-998-6702). Both appeals were heard by a panel consisting of Judges Robert F. Chapman, J. Harvie Wilkinson III and William W. Wilkins, Jr.

G. United States v. Hana Koecher, United States Supreme Court, Docket No. 84-1922. Decided February 25, 1986. Reported at 475 U.S. 133.

In this case, I represented Hana Koecher, the wife of an accused Czechoslovakian spy. Mrs. Koecher was subpoenaed to testify before a grand jury investigating her husband, and declined to testify on grounds of the spousal privilege. Her claim was upheld by the Second Circuit (755 F.2d 1022), in one of Judge Henry Friendly's last opinions, and the Government sought and received certiorari from the Supreme Court. The case was referred to me by the ACLU, and I took the case on a pro bono basis in the Supreme Court. The issue presented was whether there is a "co-conspirator exception" to the marital testimonial privilege. In the end, the case was dismissed as moot when my client and her husband were traded to the Russians in exchange for the freedom of the Soviet dissident and activist Natan Sharansky.

I briefed and argued the case in the Supreme Court, with the assistance of George Kannar of the ACLU (now a law professor at the State University at Buffalo (716-645-2400)). The Government brief was signed by then-Solicitor General Charles Fried, then-Assistant Attorney General (now Judge) Stephen Trott, then-Deputy Solicitor General Andrew Frey (now a member of Mayer Brown & Platt, 1675 Broadway, New York, NY, 212-506-2635 in New York), then Assistant to the Solicitor General Andrew Pincus, and AUSA Barry Bohrer (now a member of Morvillo, Abramowitz, Grand, Iason & Silberberg, 565 Fifth Avenue, New York, NY 10017, 212-856-9600), but my recollection is that someone else from the Solicitor General's Office, whose name I cannot recall, argued the case. I was not involved in the case before it reached the Supreme Court. I did make a brief appearance in the District Court in connection with entering the agreements that mooted the case, before the Honorable Shirley Wohl Kram, United States District Court for the Southern District of New York. The United States was represented at that proceeding by then-AUSA Bruce Green (now a professor at Fordham University School of Law, 212-636-6851).

H. United States v. Andrea Aiello, United States Court of Appeals for the Second Circuit, Docket Nos. 84-1404, 84-1405 and 84-1413. Argued March 25, 1985, decided Aug. 7, 1985. Reported at 771 F.2d 621 (2d Cir. 1985).

This was the first case I ever handled as a defense lawyer after leaving the United States Attorney's Office in 1983. The defendant, a tile importer from Buffalo, was convicted of importing narcotics. The case involved a significant issue – whether the Government, in seeking a warrant for video surveillance without audio, was required to comply with

standards analogous to those required by statute for aural electronic surveillance. The Court of Appeals held that it was not, and affirmed the convictions.

I briefed and argued the case for Mr. Aiello with respect to the electronic surveillance issues. Co-counsel were Anne C. Feigus and Mark F. Pomerantz, then of Fischetti, Feigus & Pomerantz, now a member of Paul Weiss Rifkind Wharton & Garrison, 1285 Avenue of the Americas, 212-373-3010). The Government was represented by then-AUSA William J. Cunningham III of the Eastern District of New York. The panel consisted of Judge Ralph K. Winter, and the late Judge Walter R. Mansfield and James L. Oakes.

I. United States v. Patrick J. Cunningham and John J. Sweeney, United States District Court for the Southern District of New York, Indictment No. 81 Cr. 458. Tried May 24, 1982 to June 18, 1982.
Appeal to United States Court of Appeals for the Second Circuit, Docket Nos. 83-1046, 83-1052, 82-1402. Argued September 28, 1983, decided November 28, 1983. Reported at 672 F.2d 217 (2d Cir. 1983).
(See also United States v. Cunningham, 672 F.2d 1064 (2d Cir. 1982).)

United States v. Marie Falco, United States District Court for the Southern District of New York, Indictment No. 81 Cr. 415. Tried December 14-23, 1981.
Appeal to United States Court of Appeals for the Second Circuit, Docket No. 82-1104 Decided August 10, 1982, in an unreported opinion.

These were the most significant cases I tried as a line prosecutor. Patrick Cunningham, a former New York State Democratic Chairman, was convicted of tax evasion, perjury and obstruction of justice, along with his brother-in-law John Sweeney, and, in a related case separately tried, his secretary, Marie Falco, was convicted of perjury. The defendant was a politically significant figure, and the case was sharply contested. The cases were tried personally by United States Attorney John S. Martin, Jr., who selected me to be co-counsel, with significant responsibility for witness preparation, briefing of legal issues (including an attorney disqualification motion that was granted, leading to an appeal to the Second Circuit and reversal of the District Court's order), and presentation of the cases in court, including delivering the main summations in both trials. All three defendants were convicted, and I had primary responsibility for briefing and arguing the appeals, in which all convictions were affirmed (and three counts on which the District Court had set aside the verdict were reinstated).

I was trial co-counsel, and briefed and argued the Government's position on appeal, with United States Attorney John S. Martin, Jr. (later United States District Judge, SDNY, now a member of Martin & Obermaier LLC, 565 Fifth Avenue, 883-0000). Mr. Cunningham was represented by Michael Tigar (now Professor of Law at American University, 202-274-4088), Mr. Sweeney by Michael Kennedy, and Ms. Falco by Gerald B. Lefcourt (148 E.78th Street, 737-0400). The Cunningham case was tried before the late Judge Charles L. Bricant; the panel on appeal consisted of Judges Amalya L. Kearse

and Ralph K. Winter, and the late Judge Walter R. Mansfield; the panel on appeal of the disqualification motion consisted of Judge Amalya L. Kears, the late Judge Thomas Meskill, and the late Judge Charles Metzner of the SDNY, sitting by designation. The Falco case was tried before the late Judge Vincent L. Broderick.

J. United States v. Steven Weil, United States District Court for the Southern District of New York, Indictment No. 81 Cr. 57. Tried June 25, 1981 to July 13, 1981. Appeal to the United States Court of Appeals for the Second Circuit, Docket No. 81-1374. Decided February 16, 1982 in an unreported opinion.

This was the most significant case I tried solo as a line prosecutor. Steven Weil was a stock manipulator who was convicted of multiple counts of perjury before the Securities and Exchange Commission. The trial lasted three weeks, and the defendant raised a defense of mental impairment as a result of injuries suffered in an air crash. The case involved the presentation of a number of kinds of complex evidence, including securities experts and deposition testimony of a Swiss investor, and the testimony of somewhat notorious co-operating witnesses Jerome Allen and Phillip Stoller. In addition, the defendant put on a substantial case, necessitating the cross-examination of witnesses including an expert neurologist, an expert psychiatrist, the defendant's wife, and a former prosecutor who had investigated the defendant in an earlier case. The defendant was convicted on all counts and the convictions were affirmed by the Second Circuit in an unreported opinion.

I was sole trial and appellate counsel for the United States. The defendant was represented by Paul Holian of Boston, Massachusetts. (There is no current listing for Mr. Holian in the Martindale-Hubbell on-line Lawyer Locator.) The trial judge was the Honorable Robert W. Sweet.

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

Before becoming a judge, my primary legal activities fell into three categories. First, and most significantly, I have been engaged in teaching law and legal scholarship. Since 1977, I have been a member of the faculty of the Columbia University School of Law. Since the spring of 1979, in my second year of teaching, when I was asked to take over a section of the first-year course in criminal law, my primary field of specialization has been criminal law and procedure. I have devoted more of my time to teaching itself than is perhaps common among faculty at major research universities, and I am proud to have received several awards in recognition of the quality of classroom teaching and

devotion to the educational needs of my students. I have also written a number of articles, one of which, on the federal RICO statute, has been widely cited, and excerpted in casebooks and other works.

Second, I have engaged in significant public service. Beginning with my earliest jobs as a law clerk, I have devoted a significant part of my career to serving the public. The bulk of this experience has been in law enforcement. As a full-time federal prosecutor in the Southern District of New York, from 1980-1983, I investigated and tried criminal cases, and served as Deputy Chief and Chief Appellate Attorney, briefing or supervising the briefing of scores of appeals. I later returned to the United States Attorney's Office from 1990-1992, at the request of then-United States Attorney Otto Obermaier, to serve as Chief of the Criminal Division, with supervisory responsibility over the entire criminal docket of the Office. In addition to that, I have served on a part-time basis as associate or special counsel to three different independent prosecutors, James McKay, Lawrence Walsh, and Carol Elder Bruce. Since 2000, I have been a United States District Judge for the Southern District of New York.

Finally, after leaving government service in 1992, I served as a part-time counsel at the law firm of Howard, Darby & Levin and successor firms, now a part of Covington & Burling. This activity has enabled me to see the practice of law from the standpoint of the private sector, both in the criminal process, representing witnesses and subjects of investigations as well as engaging in the appellate litigation described above, and in occasional complex civil cases.

I have never engaged in lobbying activities.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have been a member of the Faculty of Law at Columbia Law School since 1977. In those years, I have taught the following courses:
 Contracts: 1977-79
 Criminal Law: 1979-80, 1984-89, 1992-95, 1997-2009
 Constitutional Law: 1978-80, 1984-85, 1988
 Criminal Procedure: 1986, 1993-94, 1996, 1998-2000
 Professional Responsibility: 1984, 1993-96, 1998-2000

I have also taught seminars in the following subjects:
 Legal Education: 1978
 Human Rights: 1989
 Criminology: 1991-92, 1995-96
 Sentencing: 1993-94, 2002-08
 Comparative Constitutionalism: 1994-96

White Collar Crime: 1993
 Professional Responsibility in Criminal Practice: 1999

I have also taught clinical seminars in the following subjects:
 Criminal Litigation: 1983-84, 1986, 1988-89
 Immigration Law: 1987

I taught constitutional law for one semester at Cardozo Law School in the 1980s; I do not remember the precise year. I have also taught a course in American Criminal Procedure at Hebrew University in Jerusalem in spring 2000, various courses in American Law at the Universities of Leiden and Amsterdam in the Netherlands in the summers of 1979, 1984, 1986, 1988, and 1990, and a course dealing with American approaches to the investigation and prosecution of white collar and organized crime at the University of Tokyo in the fall of 1998. I have guest-lectured at various other universities, including Yale Law School and the University of Buenos Aires.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no such expectations or agreements. As listed on the attached financial statement, I have accumulated a TIAA-CREF retirement account as a result of my employment at Columbia, which will be available to me as a retirement fund.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

While serving as a district judge, I have continued to teach one course and one seminar annually at Columbia Law School, with the permission of the Chief Judge of the Circuit, within the time and income limits permitted to judges. I would expect to continue that commitment in most years. Other than that I do not expect to pursue any other outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.
- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I am not aware of any conflict of interest issues not already fully discussed above in section 14 (Recusal).

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Throughout my career, I have devoted my primary attention to legal scholarship, public service, and law reform activities, and never sought out the most lucrative opportunities available to me. Thus, my primary employment since graduation from law school has been in teaching and in government service, rather than in law firms or in the service of private clients.

Even while in law teaching, however, I have made it a point to engage in pro bono legal activities. For example, two of the most significant matters I have litigated (United States v. Koecher and United States v. Lara, both discussed above) were pro bono matters (and most of the others were prosecutions in which I represented the government). I have also written a number of amicus curiae briefs for the American Civil Liberties Union, all without compensation.

From 1992 to 2000, I devoted about one day per week to law practice, and I tried to devote some portion of that to pro bono activities. In the case of United States v. Lara, for example, I was appointed to handle an appeal on behalf of an indigent criminal defendant. The time devoted to that case without compensation ranked it as one of my largest time commitments during 1993 and 1994.

As noted above, I have devoted considerable time to bar association and other law-improvement activities throughout my career.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

To this point, my involvement in the process has consisted exclusively of the following: I received a call from Senator Charles Schumer of New York, who advised me that the White House anticipated appointing me to the Second Circuit. I did not solicit such a nomination and I was not told what circumstances led to their interest. I briefly discussed with Senator Schumer's staff the procedures that would ensue. I have had numerous contacts with personnel of the White House Counsel's Office and the Justice Department regarding the paperwork required for their processes and for this Committee. My nomination was submitted to the Senate on April 2, 2009.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

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 counsel)*

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 Richard Brusca
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 Skadden, Arps, Slate, Meagher & Flom LLP
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 Washington, D.C. 20005
 T: (202) 371-7000
For Defendants-Appellees (co-counsel)

6. *Peterson Builders, Inc. v. United States*, 34 Fed. Cl. 182 (1995), *aff'd*, 155 F.3d 566 (1998). Prior to my time at Tyco and Skadden, I also served as a trial attorney for the United States Department of Justice Civil Division where I served as principal attorney for a number of trials and appeals. One of my biggest cases involved minesweeper ships that were used during the Persian Gulf War. This was one of the older cases in the office. I received this case from another attorney in the office as it was heading for trial. I quickly had to become acquainted with the facts of the case and with the engineering terms used in ship building. Because the case was so old, my client, the Navy, at one point discussed settling the case. I assured my client that we should not settle because we had a high probability of prevailing. I tried the case by myself, and the government won.

United States Court of Federal Claims
 Judge Bruggink

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For Plaintiff-Appellant Peterson Builders, Inc. (opposing counsel)

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Lieblichre@navsea.navy.mil
For Defendant-Appellant, United States (co-counsel)

7. *Total Medical Management v. United States*, 104 F.3d 1314 (Fed. Cir. 1997) and *Trauma Service Group v. United States*, 104 F.3d 1321 (1997). At the Department of Justice, I represented the government on issues of first impression regarding whether certain memoranda of understanding with military health providers were contracts. I won in a case I was handling, and then also took over the appeal of a related case. The government prevailed in both cases.

United States Court of Appeals for the Federal Circuit
 Judges: Archer, Chief Judge, Michel and Rader, Circuit Judges.

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 Law Offices Of J C Rand
 221 S. Fayette St.
 Alexandria, VA 22314-3519
 T: (703) 548-7480
For Plaintiff, Total Medical Management (opposing counsel)

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 2300 One Nashville Place
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R. Alan Miller
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For Defendant, United States (co-counsel)

8. *Willow Beach v. United States* [no published decision]. In another case, I represented the National Park Service in a breach of contract action brought by one of its Nevada concessioners. Because the government was required by statute to pay the concessioner the value of its property interest in the concession, the expert depositions were critical in this case. Prior to the deposition of plaintiff's expert witness, I sent plaintiff's counsel an offer of judgment which was approximately one-tenth of the amount that the plaintiff was seeking to recover. During my questioning of plaintiff's expert, I completely undercut his credibility as an expert as well as his valuation methodology. When I arrived back in Washington, D.C., the morning after a red-eye flight from the deposition in Nevada, plaintiff's faxed acceptance of my offer of judgment was in my office mailbox.

U.S. Court of Federal Claims
 Judge Wilkes C. Robinson

Robert Lamson Crowell
 Crowell, Susich, et al
 510 West Fourth Street
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 T: (702) 882-1311
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Ellen Mary McElligott
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 T: (202) 514-2000
For Defendant, United States (co-counsel)

9. *Grutter v. Bollinger, et al*, 539 U.S. 306 (2003). I was retained by several members of Congress to file an *amicus* brief in support of the University of Michigan's affirmative action programs.

Supreme Court of the United States
 Chief Justice Rehnquist, Justices Ginsburg, Breyer, Scalia, Thomas, and Kennedy.

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10. *Zlotolow v. United States*, 35 Fed. Cl. 163 (1996). I tried a case on whether the government had properly renewed its lease on a postal facility. I was able to prevail after trial.

United States Court of Federal Claims
Judge Margolis

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For Defendant, United States (co-counsel)

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

I have been involved in many governmental investigations and internal investigations for boards of directors. I have not engaged in lobbying other than lobbying for issues for the American Bar Association such as increases for legal services funding, the Akaka Native Hawaiian legislation, and judicial pay increases.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have taught the National Institute of Trial Advocacy Annual Intensive Session in Trial Advocacy Skills at the Georgetown Law School in 2003, 2005, and 2007. I also taught the NITA Deposition Skills class, to the best of my knowledge, in 2003.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have options in Covidien and Tyco Electronics. At the moment, they are all underwater.

Description	Option type	Grant date	Options exercisable	Options outstanding	Expiration date	Option price	Option cost	Market value	Unrealized gain
PLAN NUMBER L40C	NQO	11/22/05	1,144	1,144	07/20/10	33.5230	38,350.31	12,629.76	0.00
TYCO ELECTRONICS LTD.	NQO	11/22/05	1,144	1,144	07/20/10	46.0705	52,704.65	22,376.64	0.00
Current share price: \$11.04									
Total stock options				2,288			91,054.96	35,006.40	0.00
PLAN NUMBER L40CCOV	NQO	11/22/05	1,144	1,144	07/21/10	36.9903	42,316.90	38,026.56	0.00
COVIDIEN LTD.									
Current share price: \$33.24									
Total stock options				1,144			42,316.90	38,026.56	0.00

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See financial disclosure form.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

None that I am aware of.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities,

listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Throughout my career, I have taken on pro bono matters, including at Ross & Hardies and at Skadden, Arps, Slate, Meagher & Flom LLP. While at Skadden, I worked on two pro bono appellate matters. I also serve on the Board of the Chicago Bar Foundation ("CBF") which is dedicated to ensuring that everyone in the Chicago metropolitan area has equal access to justice, particularly the low-income and disadvantaged people who are in most critical need of the protections of our civil legal system. Through grants, advocacy and other leadership, the CBF takes a system-wide approach to improving access to justice and focuses on those objectives that are best achieved by working together as a community. I also currently serve as one of thirteen Commissioners on the ABA's Commission on Women in the Profession. As part of my duties on the Commission, I am Chair of the Women of Color Committee and direct the Women of Color Research Initiative, a nationally-known research program that has developed seminal research and landmark reporting on the hiring and retention of women of color in the legal profession. Under my leadership, the Commission recently published *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*, a compilation of information, insights, and advice gathered from a national sample of prominent women partners of color in private practice and an examination of the practices at their firms that contributed to their success. I am also spearheading the next two phases of research conducted by the Women of Color Committee, which focuses on women of color who are attorneys in the corporate and government sectors. As with the earlier phases of this work, the next phases of research will focus on many issues which have not been previously examined in these environments, such as hiring, advancement and retention, performance evaluations, compensation, and working relationships with clients and colleagues.

FINANCIAL STATEMENT

Mary Smith

NET WORTH

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

ASSETS				LIABILITIES			
Cash on hand and in banks	\$500	000.	00	Notes payable to banks-secured			00
U.S. Government securities-add schedule			0	Notes payable to banks-unsecured			00
Listed securities-add schedule	\$196	000.	00	Notes payable to relatives			00
Unlisted securities--add schedule			00	Notes payable to others			00
Accounts and notes receivable:			00	Accounts and bills due			00
Due from relatives and friends			00	Unpaid income tax			00
Due from others			00	Other unpaid income and interest			
Doubtful			00	Real estate mortgages payable-add schedule	\$223	000.	00
Real estate owned-add schedule	\$260	000.	00	Chattel mortgages and other liens payable			00
Real estate mortgages receivable			00	Other debts-itemize:			00
Autos and other personal property	\$10	000.	00				
Cash value-life insurance			00				
Other assets itemize:							
Retirement accounts	\$170	000.	00				
				Total liabilities	\$223	000.	00
				Net Worth	\$923	000.	00
Total Assets	\$1,146,	000.	00	Total liabilities and net worth	\$1,146,	000.	00
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker			00	Are any assets pledged? (Add			No

or guarantor			schedule)			
On leases or contracts		00	Are you defendant in any suits or legal actions?			No
Legal Claims		00	Have you ever taken bankruptcy?			No
Provision for Federal Income Tax		00				
Other special debt		00				

DETAIL LISTING (SCHEDULE) OF ASSETS AND LIABILITIES		
		AMOUNT
Listed Securities		
	AIM Charter Fund Class A	\$ 1,100
	Microsoft Stock	\$ 1,850
	Sherwin Williams stock	\$22,000
	T. Rowe Price Dividend Growth Fund	\$ 2,800
	American Funds Growth Fund of America Class B (AGRBX)	\$ 1,950
	Google stock Class A	\$15,000
	McDonald's stock	\$39,500
	General Electric Stock	\$19,000
	Coca-Cola Stock	\$13,800
	Smith Barney account invested in Legg Mason Partners Aggressive Growth Fund Class B (SAGBX)	\$68,000
	UBS Account with stock in Tyco International, Tyco Electronics and Covidien	\$21,000
	Total	\$196,000
Retirement Accounts		
	IRA Rollover invested in Putnam Fund for Growth and Income	\$ 28,000
	Roth IRA Invested in Fidelity Contra Fund and Fidelity Growth and Income	\$ 2,200
	IRA invested in American Funds Growth Fund of America (AGRBX)	\$ 7,300
	Tyco Retirement Savings and Investment Plan	\$ 26,500
	Skadden Arps Retirement Savings Plan	\$ 66,000
	Thrift Savings Plan	\$ 40,000
	Total	\$170,000
Real estate owned		
	Condo in Chicago, Illinois	\$260,000
Real estate mortgages payable		
	Mortgage on condo, Chicago, IL	\$223,000

Senator SCHUMER. Thank you, Judge Lynch.
Ms. Smith.

**STATEMENT OF MARY L. SMITH, NOMINEE TO BE ASSISTANT
ATTORNEY GENERAL, TAX DIVISION, U.S. DEPARTMENT OF
JUSTICE**

Ms. SMITH. Thank you, Mr. Chairman. It is a great honor to be before this Committee as the President's nominee to be the Assistant Attorney General for the Tax Division at the Department of Justice. I hold the Tax Division and the Department of Justice in the highest regard.

Early in my career, I served as a career trial attorney in the Civil Division at the Department of Justice, and I have the highest degree of respect for all the career public servants, knowing firsthand how hard they work and how dedicated they are.

The Tax Division is one of the premier litigating Divisions in the Department of Justice and has enjoyed a long tradition of excellence since its inception by President Roosevelt. If I am so fortunate to have my nomination recommended by this Committee and confirmed by the Senate, I can assure you that I will devote my full abilities to continue the Tax Division's long tradition of excellence.

I am very fortunate today to be joined here by both friends and family from both Chicago and DC. My mother, Caroline Smith, along with her good friend, Carol Ruddy, flew here from Chicago to be here today, and from DC. I have my good friend, Debbie Premisler, along with her three daughters—Yushoda, Sunita, and Lakshmi. Also, my good friend Nancy Gist and Eric Barron are here, as well as several members of the Tax Division who I hope I will be fortunate enough to serve with.

[The biographical information of Ms. Smith follows:]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Mary L. Smith

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

Assistant Attorney General for the Tax Division, U.S. Department of Justice

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

Office address:

Schoeman Updike Kaufman & Scharf
333 West Wacker Drive, Suite 300
Chicago, Illinois 60606



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

August 28, 1962, in Chicago, Illinois.

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

University of Chicago School of Law, attended from 10/89 to 06/91. J.D., *cum laude*, received in June 1991.

Loyola University of Chicago School of Law, attended from 08/88 to 05/89.

Loyola University of Chicago, attended from 08/80 to 05/84. B.S., *magna cum laude*, received in May 1984.

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

06/08 – present. Partner, Schoeman Updike Kaufman & Scharf, 333 West Wacker Drive, Chicago, Illinois 60606.

11/08 – 01/09. Member, Obama-Biden Transition Team for the U.S. Department of Justice.

08/05 – 07/07. Senior Litigation Counsel, Tyco International (US) Inc., 9 Roszel Road, Princeton, New Jersey 08540.

08/04 – 11/04. Senior Advisor on Native American Policy, Kerry/Edwards '04, Washington, D.C.

05/01 – 08/05. Senior Associate, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, D.C. 20005.

04/00 – 01/01. Associate Counsel to the President, White House Counsel's Office, The White House, Washington, D.C.

05/97 – 04/00. Associate Director of Policy Planning, Domestic Policy Council, The White House, Washington, D.C.

03/97 – 05/97. Policy/Research Analyst, Welfare to Work Partnership, 1301 Connecticut, N.W., Washington, D.C. 20036.

12/96 – 03/97. Revenue Assistant, Presidential Inaugural Committee, Washington, D.C.

06/96 – 11/96. Assistant to Political Strategy and Assistant to Press Secretary, Clinton/Gore '96, Washington, D.C.

08/94 – 06/96. Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, Washington, D.C.

06/92 – 08/94. Associate, Ross & Hardies, Chicago, Illinois.

09/91 – 06/92. Judicial Clerk, Hon. R. Lanier Anderson III, U.S. Court of Appeals for the Eleventh Circuit, Macon, Georgia.

06/91 – 08/91. Research Assistant, Professors Mary Becker and Anne-Marie Burley, University of Chicago School of Law, Chicago, Illinois.

10/90 – 12/90. Intern, U.S. Attorney's Office for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois.

6/90 – 9/90. Summer Associate, Mayer, Brown & Platt, Chicago, Illinois.

05/89 – 09/89. Extern, Hon. Ilana Diamond Rovner, U.S. District Court for the Northern District of Illinois, Chicago, Illinois.

11/87 – 07/88. Senior Systems Engineer, Northern Trust Bank, Chicago, Illinois.

06/84 – 11/87. Systems Programmer, Walgreens Company, Deerfield, Illinois.

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

security number) and type of discharge received, and whether you have registered for selective service.

None.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.
- Co-Editor, Best Overall Newsletter for 2006-2007 for the American Bar Association's Section of Litigation *In-House Litigator*
 - Co-Chair, District of Columbia Bar Association Award for Best Section for the Litigation Section (June 2008)
9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

- Member, Commission on Women in the Profession (August 2006 – present).
- Delegate for the National Native American Bar Association, ABA House of Delegates (February 2007 – present).
- Member, Select Committee, ABA House of Delegates (August 2008 – present).
- Member, Multicultural Women Attorneys Network (MWAN) (2006 – 2008).
- Council Member, Section of Individual Rights and Responsibilities (2007 – present).
- Co-Chair, Public Education Committee, Section of Individual Rights and Responsibilities (2006 - 2007).
- Vice Chair, Civil Rights and Equal Opportunity Committee, Section of Individual Rights and Responsibilities (2005 - 2006).
- Co-Chair, 2008 Corporate Counsel CLE Planning Committee, Section of Litigation.
- Co-Chair, Content Committee, Section of Litigation (August 2008 - present).
- Co-Chair, Committee Newsletters Committee, Section of Litigation (July 2007 – August 2008).
- Co-Editor, Committee on Corporate Counsel Newsletter, Section of Litigation (August 2005- July 2007).

American Bar Foundation

- Fellow (2007 – present).

Association of Corporate Counsel

- Member, Corporate and Securities Committee (2006 – June 2008).
 - o Vice-Chair, Corporate and Securities Committee (October 2007 – June 2008).
- Member, Litigation Committee (2006 – June 2008).

Chicago Bar Association

- Member, Board of Managers (June 2008 – present).

Chicago Bar Foundation

- Board Member (July 2006 – present)
 - o Member, Audit Committee (September 2007 – present).

District of Columbia Bar Association

- Member, Section of Litigation Steering Committee (June 2005-).

- o Co-Chair, Section of Litigation Steering Committee (September 2007 – present).
 - o Chair, Litigation Section Nominating Committee (2005 – 2006).
 - o Co-Chair, Litigation Section Program Committee (2005 – 2007).
- Native American Bar Association
 - Board Member (2007 to present)
 Native American Bar Association of D.C.

10. **Bar and Court Admission:**

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

D.C. Court of Appeals, 2001
 Supreme Court of Illinois, 1991

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

STATE AND FEDERAL COURT ADMISSIONS

Court	Status (active, inactive)	Approx. Date Admitted (if Available)
1. Supreme Court of Illinois	Active	12/10/91
2. District of Columbia	Active	12/03/01
3. Supreme Court of the United States	Active	05/20/96
4. U.S. Court of Appeals for the Third Circuit	Active	09/28/92
5. U.S. Court of Appeals for the Fourth Circuit	Active	4/25/02
6. U.S. Court of Appeals for the Fifth Circuit	Active	12/18/01
7. U.S. Court of Appeals for the Seventh Circuit	Active	09/04/92
8. U.S. Court of Appeals for the Ninth Circuit	Active	06/14/05
9. U.S. Court of Appeals for the Eleventh Circuit	Active	08/29/05
10. U.S. Court of Appeals for the District of Columbia Circuit	Active	07/15/02

11. U.S. Court of Appeals for the Federal Circuit	Active	06/20/96
12. U.S. District Court for the District of Columbia	Active	06/03/02
13. U.S. District Court for the Northern District of Illinois	Active	08/14/92
14. U.S. District Court for the Central District of Illinois	Active	08/14/92
15. U.S. District Court for the District of Maryland	Active	11/19/01
16. U.S. Court of Federal Claims	Active	8/18/94

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

None.

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

N/A.

12. **Published Writings and Public Statements:**

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

The Rule of Law for Native Americans: Why Increased Funding for Tribal Justice Systems is Needed, AMERICAN BAR ASSOCIATION SECTION OF LITIGATION MINORITY TRIAL LAWYER NEWSLETTER, Vol.6 No. 4 (Summer 2008) (with Jerry Gardner).

In-House Journey to Success for Women Lawyers, AMERICAN BAR ASSOCIATION SECTION OF LITIGATION COMMITTEE ON CORPORATE COUNSEL IN-HOUSE LITIGATOR JOURNAL, Vol. 21 No. 3 (Spring 2007) (with Teresa Rider Bult).

Managing Concurrent Litigation And Government Investigations from An In-House Perspective, AMERICAN BAR ASSOCIATION SECTION OF LITIGATION COMMITTEE ON CORPORATE COUNSEL NEWSLETTER, Vol. 20 No. 2 (Winter 2006) (with Andrea L. Zopp).

Wage Gap Must Be Attacked On More Than One Front, CHICAGO TRIBUNE, Feb. 27, 2002, at C6 (with Robin Leeds).

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

August 2008. *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*, available at <http://www.abanet.org/women/woc/VisiblySuccessful.pdf>.

August 7, 2008. Comments to the Financial Accounting Standards Board (FASB) about proposed standards requiring disclosure of loss contingencies arising from pending or threatened litigation. D.C. Bar Section of Litigation Public Statement, available at http://www.dcbar.org/for_lawyers/sections/statements/cfm.

Funding for Tribal Justice Systems. Urges Congress to support quality and accessible justice by ensuring adequate, stable, long-term funding for tribal justice systems. American Bar Association Resolution 117A passed at Annual Meeting in August 2008. [08A117A].

Hawaiian Governing Entity. Urges Congress to pass legislation to establish a process to provide federal recognition for a native Hawaiian governing entity, defined as an authority similar to that which American Indian and Alaska Native governments possess. American Bar Association Resolution 108B passed at Annual Meeting in August 2006. [06M108B]

Voting Rights Act. Supports the reauthorization of the Voting Rights Act of 1965 as amended through 1992. American Bar Association Resolution 108 passed at Annual Meeting in August 2005. [05A108].

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

None.

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

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

- IPQC 7th eDiscovery Conference, San Francisco, CA, "Exploring E-Discovery Solutions While Minimizing Costs," Panelist (April 28, 2009) (Forthcoming).
- American Bar Association Mid-Year Meeting, Boston, Massachusetts, Hearing on "State of Diversity in the Legal Profession," Presenter (February 12, 2009).
- American Bar Association Commission on Women in the Profession, Summit for Women In-House Counsel Capture Your Power: Your Role in Advancing Women in the Legal Profession, Chicago, Illinois, "Your Power Makes a Difference: Young Partner Panel," Moderator (May 15, 2008).
- Cleveland Metropolitan Bar Association, Improve Your Bottom Line: Hire, Retain and Promote Women and Minority Lawyers, Cleveland, Ohio, "Strategies for Overcoming Barriers Facing Women and Minority Lawyers," Panelist (May 9, 2008).
- Minority Corporate Counsel Association, The 8th Annual Pathways to Diversity Conference, New York, New York, "Visible Invisibility: Women of Color in Law Firms," Panelist (November 9, 2007).
- Association of Corporate Counsel Annual Meeting, Chicago, Illinois, "Securities Litigation & Derivative Actions: Trends and High Risk Activities", Panelist (October 29, 2007).
- American Bar Association, The 11th Annual National Institute on Class Actions, Chicago, Illinois, "Current CAFA Consequences: Has Class Action Practice Changed," Panelist (October 19, 2007).
- ABA Editors' Symposium, "Best Practices for Staff-Assisted Editors," Chicago, Illinois, Panelist (September 28, 2007).
- ABA Annual Meeting, CLE Panel, San Francisco, CA, "Being the Best Lawyers (Who Also Happen to be Minority Women) We Can Be: Trading Strategies and Sharing Secrets Among the Baby Boomers, Gen X and Gen Y," Panelist (August 11, 2007).
- "Women of Color in the Legal Profession: Success Strategies for Law Firms," Chicago, Illinois, Panelist (June 19, 2007).
- ABA Editors' Symposium, "Getting the Best Material: Finding and Working with Authors," Chicago, Illinois, Panelist (September 28, 2006).

- ABA Annual Meeting, Presidential Plenary Panel, Honolulu, Hawaii, "The Legal Status of Native Hawaiians," Honolulu, HI, Panelist (August 3, 2006).
 - Council on Legal Education Opportunity ("CLEO"), Thurgood Marshall Legal Educational Opportunity Program, 2006 Mid-Summer Professional Development Seminar And Career Fair, Detroit, Michigan, "Navigating the Corporate World: In-House Counsel," Panelist (June 10, 2006).
 - American Bar Association, Section of Litigation Annual Conference, Los Angeles, California, "Editors' Workshop: How to Get Articles for Young Lawyers," Panelist (April 21, 2006).
- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

I have done my best to identify all items called for in this question, including through a review of my personal files and searches of publicly available electronic databases. I have located the following:

Native American Calling Radio Program, January 2001.

Native American Calling Radio Program, January 2004.

Shea Anderson, *Indians Carve Bigger Role in Politics*, Albuquerque Tribune, November 18, 2003 at A1.

Lynn Sweet, *Chicagoans Stay Until End*, Chicago Sun-Times, January 14, 2001 at 22.

13. Public Office, Political Activities and Affiliations:

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

None.

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

06/08-11/08. Member of Native American Policy Committee, Criminal Justice Policy Committee and Women's Policy Committee, Obama campaign.

08/08-11/08. Member of Women's Leadership Group, Obama-Biden campaign.

- 08/08-11/08. Member of Illinois Finance Committee, Obama-Biden Campaign.
- 08/08. Illinois Delegate to the Platform Committee, Democratic National Convention.
- 03/07-06/08. Member of D.C. Finance Committee, Hillary Clinton for President.
- 03/07-06/08. Member of Women for Hillary, Hillary Clinton for President.
- 08/07-06/08. Member of Business Women's Council, Hillary Clinton for President.
- 03/07-06/08. Member of Native American Policy Group, Hillary Clinton for President.
- 07/04. D.C. Delegate to the Credentials Committee, Democratic National Convention.
- 08/04 – 11/04. Senior Advisor on Native American Policy, Kerry/Edwards '04, Washington, D.C.
- 11/03-03/04. Member of Women for Kerry, Kerry Campaign.
- 06/96-11/96. Assistant to Political/Strategy and Assistant to Press Secretary, Clinton/Gore '96.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

09/91-06/92. Judicial Clerk, U.S. Court of Appeals for the Eleventh Circuit, Macon, Georgia, Honorable R. Lanier Anderson III.
 - ii. whether you practiced alone, and if so, the addresses and dates;

I never practiced alone.
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

06/08-Present. Partner, Schoeman Updike Kaufman & Scharf, 333 W. Wacker Drive, Suite 300, Chicago, Illinois 60606.

08/05-07/07. Senior Litigation Counsel, Tyco International (US) Inc., 9 Roszel Road, Princeton, NJ 08540.

05/01-08/05. Senior Litigation Associate, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, D.C. 20005.

04/00-01/01. Associate Counsel to the President, White House Counsel's Office, The White House, Eisenhower Executive Office Building, 17th and G Streets, N.W., Washington, D.C. 20501.

05/97-04/00. Associate Director of Policy Planning, Domestic Policy Council, The White House, Eisenhower Executive Office Building, 17th and G Streets, N.W., Washington, D.C. 20501.

08/94-06/96. Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, 1100 L Street, N.W., Washington, D.C. 20530.

06/92-08/94. Associate, Ross & Hardies, 150 N. Michigan Ave., Chicago, Illinois 60601.

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

Since July 2008, I have served as an arbitrator for the Cook County Mandatory Arbitration Program. Most of the cases involve automobile accidents. None of the cases have been significant.

b. Describe:

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

The general character of my law practice has been litigation. From 1992-1994, I generally practiced in products liability, appellate matters, and general commercial litigation. From 1994-1996, my practice generally consisted of government contracts and appellate matters. From 1997-2000, I worked on a range of policy and legislative matters. From 2000-2001, I worked on policy, legislative, and constitutional matters. From 2001-2005, I worked on class actions, securities class actions, government investigations, internal investigations, and appellate matters. From 2005-2007, I served as in-house counsel generally managing securities, executive compensation, and insurance litigation. From 2008 through the present, I focus on general commercial litigation, securities litigation, and investigations.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

From 1992-1994, I represented manufacturers, criminal defendants, and other corporate clients in litigation matters. From 1994-1996, I represented the United States Government in government contract matters and appellate litigation. From 1997-2000, I served as a policy advisor to the President of the United States. From 2000-2001, I represented the

President of the United States on a range of matters including ethics and legislative matters. From 2001-2005, my clients included corporate clients, banks, credit card companies, and insurance companies. I specialized in class actions, securities litigation, internal investigations, and government investigations. From 2005-2007, I represented Tyco International Ltd. in securities litigation, government investigations, tax matters, and employment matters. From 2008 to the present, I have been attempting to build a practice from corporate clients.

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

The percentage of my practice which has consisted of litigation is about 85 percent. With the exception of 1992-1996, I have appeared in court only occasionally. During 1992-1996, I appeared in court frequently.

- i. Indicate the percentage of your practice in:

1. federal courts; 70%
2. state courts of record; 10%
3. other courts; n/a
4. administrative agencies 20%

- ii. Indicate the percentage of your practice in:

1. civil proceedings; 90%
2. criminal proceedings. 10%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried three cases to judgment in which I was the sole counsel.

- i. What percentage of these trials were:

1. jury; 0%
2. non-jury. 100%

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

I have filed an amicus brief in the Supreme Court of the United State as counsel of record for several members of Congress in the case of *Grutter v. Bollinger*, 539 U.S. 306 (2003).

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - 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. *In re Tyco Intern., Ltd., Securities Litigation*, MDL No. 02-1335-B (D. N.H.) (Barbadoro, J.) (various reported cases). Dates of representation: 08/05 to 07/07. I served as Senior Litigation Counsel at Tyco International (US) Inc. where I managed the securities class action multi-district litigation relating to the Dennis Kozlowski era – the largest case pending at the Company and one of the largest cases pending in the country. This multi-district litigation arose out of more than 30 cases pending at the Company. At Tyco, I was the primary in-house counsel responsible for the management and strategy of the consolidated securities class action, a related case brought by the State of New Jersey, and an alleged securities fraud case brought relating to the telecommunications sector, among others. In 2007, the major portion of the litigation was settled for approximately \$3 billion. The settlement, reached after five years of litigation and the production of over 80 million pages of documents by the Company represents the single largest payment from any corporate defendant in the history of securities class action litigation. As part of my responsibilities, I managed a multi-million dollar budget, over 40 outside counsel, and over 60 contract attorneys.

U.S. District Court for the District of New Hampshire
Judge Paul Barbadoro

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2. *Tyco International Ltd. v. AIG Life of Bermuda Ltd. (formerly known as American General Life of Bermuda Ltd); L. Dennis Kozlowski; and Butterfield Trust (Bermuda) Limited*, Index No. 2006: No. 82, filed on March 6, 2006 (amended April 6, 2006) filed in the Supreme Court of Bermuda. Dates of representation: 08/05 to 11/06. While in-house at Tyco, I crafted a unique strategy that permitted my client to release over \$70 million in liability. Tyco was confronted with a situation where it still had to carry its former CEO's, Dennis Kozlowski, excessive life insurance policy on its books, despite the fact that a criminal court had convicted Mr. Kozlowski of receiving unauthorized compensation. Under accounting guidance, without an explicit court order or release from Mr. Kozlowski, with whom Tyco was currently in litigation in federal court in New Hampshire over his compensation, the Company had to carry the liability for the life insurance policy on its books. I devised a strategy whereby Tyco brought litigation in Bermuda, as the insurance contract was governed by Bermuda law, to seek the Bermuda equivalent of a declaratory judgment that the insurance policy was void as the result of fraud by Mr. Kozlowski at the time of contract formation by his looting of the Company

to unlawfully inflate his compensation. Without the filing of this action in Bermuda, Tyco would have had to wait until the related New Hampshire case with Mr. Kozlowski was adjudicated, which would have been several years in the future. After the case was pending less than a year, I was able to negotiate a settlement with Mr. Kozlowski's lawyers, the insurance company, and the Bermuda trust company which was very advantageous to my client.

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3. *Smith v. Salish Kootenai College*, 434 F. 3d 1127 (9th Cir. 2006) (*en banc*). I filed an *amicus curiae* brief on behalf of the National Congress of American Indians in a case involving the issue of whether a non-Indian plaintiff consents to the civil jurisdiction of a tribal court by filing claims against an Indian defendant arising out of activities within the reservation where the defendant is located.

United States Court of Appeals for the Ninth Circuit
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4. *Spirgel, et al. v. USEC, Inc.*, Nos. 02-1459, 02-1489, 2003 WL 21689097 (4th Cir. July 21, 2003). At Skadden, I represented the United States Enrichment Corporation, Inc. ("USEC"), in a matter that involved Sections 11 and 12 of the Securities Act of 1933 involving an initial public offering of the USEC, which operates the only uranium enrichment facility in the United States and had previously been part of the United States Government. This case was dismissed at the trial level, and the dismissal was upheld by the Fourth Circuit.

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5. *Hayes, et al. v. Crown Central Petroleum*, No. 02-2190, 2003 WL 22365985 (4th Cir. Oct. 17, 2003). At Skadden, I also worked on a purported securities class action arising out of alleged misstatements in a proxy statement under Section 14 of the Securities Exchange Act for a going-private transaction. There were several large law firms involved in this case, and I was the only attorney who urged that we renew defendants' motion to dismiss so that the entirety of the complaint would be dismissed. I argued the second motion to dismiss, and this time plaintiffs' claims were dismissed in their entirety. This case was upheld by the Fourth Circuit.

United States Court of Appeals, Fourth Circuit
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Senator SCHUMER. Thank you, Ms. Smith, and we welcome all of your family and friends, and particularly your Mom. Great to see you, and I am sure you a very, very proud of your daughter.

Okay, good. So let me ask some questions here. First question for Gerry Lynch, since he is from Brooklyn. I forgot. What high school did you go to? This is what Brooklynites ask one another.

Judge LYNCH. I went to Regis High School in Manhattan.

Senator SCHUMER. Regis. Yes, I remember that. Regis is probably the finest Catholic school in New—well, I do not want to get myself in trouble—one of the finest Catholic schools in New York State, really excellent as a school. And where did you live in Brooklyn?

Judge LYNCH. I lived on the Brooklyn-Queens border in Ridgewood.

Senator SCHUMER. Ridgewood. Nice. What street?

Judge LYNCH. 67th Avenue, right near the Fresh Pond Road subway.

Senator SCHUMER. That is really the Queens—

Judge LYNCH. That is in the Queens end, yes. Before that, though, I was born on the Brooklyn side in what was then Bethany Deaconess Hospital, and I lived on Underdunk Avenue.

Senator SCHUMER. Underdunk Avenue. 67th Road is right near St. Pancras. That is really Glendale, wouldn't you call it?

Judge LYNCH. Well, 67th Avenue is different from 67th Road.

Senator SCHUMER. Oh, 67th Avenue, Okay.

Judge LYNCH. You know Queens as well as Brooklyn, Senator.

Senator SCHUMER. That was my old congressional district, and just this Sunday—I ride my bike all over the city, and so I love to go ride and see churches. So I went to St. Matthias.

Judge LYNCH. That is my parish.

Senator SCHUMER. Right, and I saw the pastor. He was greeting the parishioners as they came out. And here is what you would be happy to know. They had five masses that day—one in English, one in German, one in Polish, one in Italian, and one in Spanish, which shows you the diversity of the great Ridgewood neighborhood, and it is beautiful. What a beautiful church. I do not know the history, how they got—it is a European style church right there in Ridgewood. It is gorgeous.

I have no more—no.

[Laughter.]

First, Judge Lynch, tell me who your model is of an appellate judge. Give me somebody you—

Judge LYNCH. The judge that I clerked for when I graduated from law school was Judge Wilfred Feinberg, and I think he is the model of an appellate judge. He recently received the so-called Devitt Award, which is a kind of lifetime achievement award for Federal judges. He is now 89 and still sits as a senior judge, still with the same intelligence and meticulousness.

But what I learned from him was the judicial craft. He was a very—and is a very cautious—I will use the past tense often because of when I worked for him.

Senator SCHUMER. Right.

Judge LYNCH. But it is still true today. He is a very careful judge who always—when I drafted opinions for him, he always wanted to make sure that any word that was said, any sentence that we said,

had to be backed up by precedent. I would sometimes say, "But, Judge, isn't that obvious?" He would say, "Well, but do we really have to say it then if there is not a precedent to back it up?" And so I learned that kind of craft from him.

Senator SCHUMER. Great. Yes, and he was one of the outstanding judges. I think my friend Kevin Bain clerked for him several years before you did. Okay.

Do you believe in judicial restraint? And explain your answer, including your own definition of what "judicial restraint" means.

Judge LYNCH. Well, I think the principal thing that—there are two pieces that I would say are the principal things about judicial restraint. One is in the ordinary kind of case that does not have any constitutional dimensions or anything of the sort, judges are to decide only the issues that are before them, so that quite apart from respect for the legislature, just in any ordinary case it is very important that courts sit to decide the dispute that is before them, not to go beyond that and talk about other broader issues that are not necessary to the decision of that case. So that is one important aspect of judicial restraint.

The other is that where constitutional questions are part of the case, courts should presume that what legislatures do is constitutional. I will speak only on the Federal level to start with. The Congress is not only a co-equal branch, but it is the branch that speaks for the people. When there is a law that is adopted by Congress, signed by the President, it is to be expected that both the Congress and the President have considered constitutional matters and decided that the law is constitutional.

Now, the court has to make its own decision about a constitutional issue. That is our responsibility. That is our oath. But there still should be an assumption that what has been done is constitutional, and it should only be overturned if the law is clearly unconstitutional according to the text of the Constitution and the precedents that have been established.

Senator SCHUMER. Thank you.

Now to Ms. Smith. The Tax Division serves as the enforcement arm, of course, of the IRS. At its helm you would play a large role in determining government's tax enforcement priorities. How will you prioritize and allocate resources between civil and criminal enforcement? How do you plan to allocate resources between large high-profile tax cases and garden variety enforcement actions? And what is your view of the role of the Tax Division within the Department of Justice?

Ms. SMITH. Thank you, Senator. I guess I will answer the last part of that question first. I think the Tax Division has an important role within the Department of Justice, and as you mentioned, Senator, it is the enforcement arm for the IRS, and it serves an important function in that it instills confidence in taxpayers that our tax system is fair, and the role of the Tax Division is to enforce the tax laws fairly and consistently.

In terms of prioritizing, it will matter what cases come up. I know traditionally the Department has about 3,000 civil cases pending at any given time, has about 1,700 criminal cases, and I believe the resources will be allocated appropriately. And in terms

of high-profile cases, every case will get the resources it needs, and if a case deserves more resources, I will ensure that that happens.

Senator SCHUMER. Let me ask you this: Last week, President Obama announced a new initiative to crack down on offshore tax havens. What role do you envision the Tax Division playing in implementing the President's plans? Do you anticipate approaching these issues from a civil or criminal perspective? And how will you decide?

Ms. SMITH. Senator, these are just proposals that have been made. As I said, the Tax Division's role is to enforce the law. If some of these proposals—if Congress deems it fit to pass these proposals and they are signed into law, we will use our resources accordingly to enforce the laws, if passed, both criminal and civil, in that area.

Senator SCHUMER. Okay. Thank you. My time has expired.

Let me call on my colleague, Senator Sessions.

Senator SESSIONS. Thank you.

Ms. Smith, on that particular question, there are some real concerns that if we act the way the President is proposing, we could have a perverse tendency to cause people to move their corporate headquarters out of the United States. It is such a complex area.

Will you commit to us that, if called upon to evaluate that, you will give both sides of that issue and make sure the President is aware of the possible perverse results of some of these proposed changes?

Ms. SMITH. Yes, Senator. If I am so fortunate enough to be confirmed and we are asked in the Tax Division for our opinion, we will certainly give it fair consideration. And I have no preconceived notions other than to enforce our tax laws fairly.

Senator SESSIONS. Well, I am a believer that people ought to pay their taxes. I try to pay mine. I think most Americans do. And when people do not, they are cheating not only the government but their fellow citizens. And I think a good, aggressive Tax Division is important, and I do not buy into the idea that somehow we should not respect the tax department or the IRS, who have a thankless task sometimes.

Judge Lynch, with regard to your actions concerning the individual that was charged with pornography on their computer, had quite a number of pretty gruesome and explicit pornography images on the computer, you felt that the sentence was too heavy, the mandatory minimum that Congress had set. Would you just tell us what you did and how the appeal took place and how you would justify that since it did appear to be that, as a judge, you were taking a position explicitly contrary to the law?

Judge LYNCH. No, I do not think so, Senator, but I am happy to explain my actions.

First, in that case, it seems to me that I was entirely respectful of the government. I proposed to do something that is unusual, but that in a very recent case, the Second Circuit has now said is something that a district judge may do in an appropriate case, which is to advise the jury of what the sentencing consequences of their decision would be. So I put it to the government in a proposed charge where I told them not only that I was proposing to do that, but also that I would instruct the jury, as I instruct every jury,

that if they found guilt beyond a reasonable doubt, they must on their oath return a guilty verdict.

There was nothing in the charge that encouraged any kind of nullification. I did not allow any lawyer to argue and did not propose to allow any lawyer to engage in an argument for nullification.

I told the government that I was going to do that, not as any kind of threat but in order to give them the opportunity that, if they wished, they could seek review of that decision. They did. The Second Circuit told me I should not do that, and I did not do that.

I would go on to say that when the defendant was convicted of these offenses, I did impose what I believed and what the prosecutor and the defense lawyer and the probation department believed was the mandatory sentence that Congress had ordained.

It turned out I was wrong. One embarrassing part of the case to, I think, the whole legal system is that the statute did not, in fact, impose a mandatory sentence in the view of the Second Circuit because of a glitch in the wording of the statute, and they sent it back to me with instructions to impose a sentence under the ordinary guidelines and rules of sentencing and not according to what we had all thought was the mandatory sentence. So I followed the directions of the higher court at every turn.

If I may say one other thing, Senator, I should also say I would certainly understand a hesitation on the part of any member of this body to confirm a judge that they thought did not appreciate the seriousness of child pornography. As a prosecutor and as a judge, I have been forced to look at some of this material. It is not only repulsive, it—that is not even the issue. It is not about obscenity. It is about the fact that these images are the record of atrocities committed against children. And I have no doubt about the seriousness of that offense.

I have only had one other such case. In that case, I gave a gentleman a sentence that will keep him in prison until he is nearly 70 years old. He is now in his mid-50's. But in this particular case—I do not want to re-argue the case, but it was a different situation.

Senator SESSIONS. Well, what is pretty clear is that under what everyone thought at the time, 10 years was the mandatory sentence, and you personally did not agree with it, and you personally took a step that I think—maybe the Second Circuit subsequently has changed the law. But at that time, judges were not empowered to tell what the sentence would be to the jury because that clouds their decisionmaking process. Their role in the process was to decide the guilt or innocence, and the defendant would then have to suffer whatever the penalties call for.

So weren't you, in effect, showing your personal view that you felt this was an excessive sentence, overcame the normal processes, leading to, in a delay, an expensive appeal which the prosecutor might have capitulated in and given in to your threat and allowed the case forward, but instead apparently they decided, no, we are not going to give in to that, we are going to take it up on appeal—which you gave them the right to do—and then it was reversed at some great expense and delay.

Judge LYNCH. Well, the delay was about 2 days of—

Senator SESSIONS. I think that is the way I read it as a prosecutor. I know how a judge can work you over and put you in a tough position, and it looks like to me the prosecutor said no, and he stood up. Sometimes you fold up in the face of a good, strong judge. And this time he said no and prevailed.

Judge LYNCH. Well, Senator, I think if you consulted any of the U.S. Attorneys who have served in that position while I have been a judge or any of the United States Attorneys under whom I served as a Federal prosecutor, I think that they would be unanimously of the view that I am a fair judge, that I do not threaten prosecutors or browbeat prosecutors, that I do not play games and tricks, that I do not try to force prosecutors to do things that they do not want to do or that they do not think is right to do; that I am a straight shooter and I tell the prosecutor what I plan to do, just as I tell defense lawyers what I plan to do and give them the opportunity to argue to me that I am mistaken and, if necessary, to take appeals. And I think anyone in New York would be very surprised at the idea that I would try to browbeat a prosecutor or trick a prosecutor.

Senator SESSIONS. Well, that is what this was. I mean, you told them: You will either agree to this kind of sentence, or I am going to do something that is unprecedented. I am going to tell the jury what the minimum sentence is, which the prosecutor had a right to object to, and you forced the prosecutor to choose whether to knuckle under or appeal, and the prosecutor appealed and reversed you.

Now, that is what happened. I am not saying that is the only—that a person is not entitled to make an error, and I am not saying that 10 years might have been too severe in this case. I do not know the facts. You knew them better than I. I am not criticizing you for that. But I think on this particular question, you went beyond the normal role of a judge. Wouldn't you agree?

Judge LYNCH. Well, I certainly respect your view of that, Senator, but I would question one thing or one way that you are putting this. I never threatened the prosecutor to agree to this sentence or I will do something. I had suggested to the prosecutor, as I sometimes do—we have a very large district and a lot of young prosecutors. And I suggested to the prosecutor that he make sure that his office was supportive of the position that was being taken and that he seek review of that. He did. They decided to prosecute under this statute, and that was fine.

During the trial I suggested that this was something that I was going to do. There was never any quid pro quo or any idea that—

Senator SESSIONS. Didn't you suggest that 4 years you thought was appropriate?

Judge LYNCH. I do not think I ever said that. That is the sentence that I ultimately gave 2 years later when it came back—

Senator SESSIONS. Well, basically you said you felt the sentence was too heavy as mandated, and you wanted the prosecutor to review the recommendation and seek review by higher officials in the Department of Justice—which you have a right to do, I think. I think that is a healthy thing to do. But they did not agree.

Judge LYNCH. They did not agree. They absolutely did not—there is no question about that, Senator. And there is no question the

Second Circuit thought I was wrong, told me so. They have done it on other occasions.

Senator SESSIONS. But not too many.

Judge LYNCH. Not too many. But if they do, then I have to follow what they say, and I have always tried to follow what the higher courts tell me is the law.

Senator SESSIONS. My time is up.

Senator SCHUMER. Senator Klobuchar.

Senator KLOBUCHAR. Thank you very much, Chairman.

Thank you to both of our nominees and their families. I just wanted to, first of all, acknowledge Ms. Smith, who I am proud to congratulate, because she is also a fellow graduate of the University of Chicago Law School. I have had a very big University of Chicago day. I actually introduced Cass Sunstein at his nomination hearing this morning.

We are in the middle of an economic crisis, Ms. Smith, and I am eager to hear more about what you think of the role of the Tax Division in ensuring the fair application of the tax laws and enforcing the laws and bringing those who cheat the laws to justice.

Judge Lynch, you have had a distinguished record on the bench for the last 10 years, and you were a public servant long before that as a Federal prosecutor and as counsel to a number of investigative commissions and independent counsels.

I do note, just reading your biography here, that you served as an Assistant U.S. Attorney and chief of the Criminal Division under two Republican administrations. And I know you had a good exchange there with Senator Sessions. I am just going to ask you if you wanted to clarify. You were saying you wanted to clarify the difference between the cases, one in which you put someone away who was a child pornographer—or engaged in child pornography—until he was 70 and this case where you felt that a shorter sentence was warranted.

Judge LYNCH. Well, in both cases, the crime, the principal crime, was transmission of child pornography over the Internet. Neither of these individuals made the pornography or were in the commercial distribution of pornography. The older man, however, had a record of pedophilia, certainly had a past history of child abuse. He also engaged with the undercover officer, who was pretending to be first a mother and then a child, in seductive behavior and attempting to engage the child ultimately in sexual activities. He made no pretense of recognizing that he had a problem, either defended or denied his actions at all times, and seemed to me to be a rather dangerous individual.

Mr. Pabon-Cruz was 18 years old. He had started engaging in this collection of images before he was 18 years old. He had no record of any sexual activity of any kind, as far as anyone knew, whatsoever. He acknowledged that he had a problem and wanted to seek treatment for it.

I asked the government at the sentencing, the ultimate sentencing, when I had discretion—it did not matter when it was a mandatory sentence or I thought it was a mandatory sentence. But I asked the government if they had any information for me about young people who may be attracted to child pornography, whether there is scientific evidence that such people pose a danger, whether

there is any evidence about whether early treatment makes a difference, or whether this is something that is ingrained in somebody from an early age. And they told me they did not really know; they did not have any evidence one way or the other. And there may be such evidence. I do not know. But in that situation it seemed to me that a lesser sentence was appropriate in that case.

Senator KLOBUCHAR. Well, thank you very much for that explanation.

Ms. Smith, one thing that I have asked a number of the nominees for the Department of Justice is really stemming out of our own experience in Minnesota where a U.S. Attorney was put in who was more of a political a municipality. There were some huge problems with management that resulted in the office. When Attorney General Mukasey came in, he put in a different U.S. Attorney, and things have been much more calm and under control. And it always had been a gem of an office, and I saw firsthand the problem of politicizing the office, an office when I was county attorney, the biggest county in Minnesota, for 8 years I worked extensively with the U.S. Attorney's Office, and I saw that destruction.

I know there have also been morale issues at the Justice Department, and I wonder if you could just talk briefly about how you see that as improving and what you see your role will be in that.

Ms. SMITH. Thank you, Senator. I am aware of some of the past problems at the Department, and I just want to say at the outset, for the Tax Division and, I guess, across the Department, politics should play no role in enforcement of our tax laws. I guess I am happy to say that from some of the past problems that the Tax Division, I think, fared pretty well in that regard. And I know that there is a large number of outstanding attorneys in the Division, and I look forward to working with them and maintaining the highest standards of integrity, as I have a deep appreciation for that from my time as a career lawyer at the Department.

Senator KLOBUCHAR. Thank you. Could you talk about the role you see of the Tax Division in combating financial fraud? We are seeing more and more of these cases, from Bernie Madoff to a number of white-collar cases we are seeing across the country.

Ms. SMITH. Thank you, Senator. Yes, we are in difficult economic times lately, and I think it is important—the Division plays an important role in enforcing our tax laws, and they must do so fairly and consistently so that taxpayers have confidence in the system. And if I am so confirmed, I know the Department already coordinates with U.S. Attorney's Offices around the country in prosecuting cases, and I look forward to continuing to do that.

Oftentimes, the tax cases are the ones that actually get prosecuted if the evidence is not developed in other aspects, and so I think the Tax Division plays an important role in doing that.

Senator KLOBUCHAR. I think that is a good point. The other thing I saw in our State courts was just prosecuting some of these cases, we had one involved eight airline pilots who were pretending they lived in another State that did not have income taxes and had post office boxes there, and our Revenue Department of the State said they literally had, I do not know, hundreds—a lot of money, thousands and thousands and thousands of dollars, hundreds of thousands of dollars come in after that case because it served a deter-

rent effect. And I know that earlier this year, the Federal Tax Division had a huge success when the Federal district judge accepted a deferred prosecution agreement between UBS, where UBS agreed to pay \$780 million in fines while acknowledging that it participated in a scheme to defraud the U.S.

Do you believe that this has sent a message to other companies that might be helping taxpayers to defraud the U.S.? And how significant of a problem do you believe that these offshore tax havens are?

Ms. SMITH. Yes, thank you, Senator. Just to clarify at the start, I am not part of the Department so I know no non-public information about the case. But it has received a lot of publicity, and I do think that part of the role of the Tax Division is to—there are not unlimited resources, unfortunately, so they have to pick cases that need to be prosecuted, and sometimes the cases get wide publicity and they do serve as a deterrent to others, and I hope that will be the case with the UBS case.

And in terms of offshore tax avoidance, that is a growing problem, and I know the Division has been actively engaged on that, and I look forward, if confirmed, to continuing that, because I think that the problem of international tax avoidance is a growing problem, and I look forward to working closely with the IRS and other folks at Treasury to try to combat that problem.

Senator KLOBUCHAR. Thank you very much.

Senator SCHUMER. I have asked all the questions that I have, but I am going to call on Senator Sessions for a second round.

Senator SESSIONS. Thank you.

Ms. Smith, I think the Tax Division of the U.S. Department of Justice is a very important thing. There are 350 lawyers, most of them career lawyers who are deeply immersed in the complexities of the U.S. tax law. They have established certain precedents that they try to adhere to over the years. They decide what kind of cases need to be defended, what kind of defenses on appeal they need to make, what kind of defenses not to make. And it is a very technical matter.

I remember another New Yorker, Rudy Giuliani, when he was leaving as U.S. Attorney, and he had a different opinion than, I guess it was, former President Bush had about who should replace him. And he at one point in exasperation said, "Well, I would like him to appoint somebody who can at least contribute to the discussion every now and then," in reference to a nominee that he thought had no experience in the work of the U.S. Attorney.

So you have virtually no experience in tax work, it seems to me. First, would you tell us what tax experience you have? How would you characterize that as you come into this very important office with quite a number of superb attorneys?

Ms. SMITH. Thank you, Senator. I have spent the last several years litigating complex financial litigation, extremely complex. I worked in-house at Tyco, and I was responsible for the huge, sprawling, consolidated, multidistrict litigation arising out of the Kozlowski era, and I came in after the fact to help clean that up and put the company on the right course.

That case involved many different allegations of security fraud. There were very complex accounting issues. There were five re-

statements by the company involved in that litigation, and there were also some tax issues. And I have to say, Senator, that I delved in deeply to that and oftentimes knew the facts of the accounting issues better than most of the people involved in the case. I worked closely with our accounting experts, and I believe that my financial background would serve me well in this position.

Senator SESSIONS. Well, admittedly, that is just not much. I usually think that the nominations should be of persons who already have experience and some years in these areas. I have just got to tell you, that is troubling to me. I do not know why it would be necessary to choose someone who does not have a lot of experience in the area.

What about management experience? Have you had much management experience?

Ms. SMITH. Yes, Senator. When I was at Skadden Arps here in DC, I used to manage large teams of attorneys and legal assistants, and also in my role at Tyco, which was a huge litigation, I managed all of our outside counsel and over 100 contract attorneys. And my role was probably not the traditional in-house counsel role. I actually was driving the strategy and reviewing all the briefs and advising on who should be working on what projects. And I assigned personally all of the outside counsel individually to depositions or other matters on the case.

Senator SESSIONS. Are you familiar with the Tax Division standards on illegal tax shelters?

Ms. SMITH. Senator, I have read some things, but as I said, I am not in the Department yet, so I am sure that I will read more if I am so confirmed.

Senator SESSIONS. Well, you have a good academic record, and you have had success in the private sector. That I do not doubt. But I am just a bit uneasy to have someone with so little experience in this position. I do not have any information that you lack integrity or a good work ethic, so I just want to raise those questions. I may submit a few written questions to you along that line.

Ms. SMITH. Thank you, Senator.

Senator SESSIONS. Judge Lynch, I do not know that I asked you—we debated it last time when you did a memorial address for Justice Brennan, whom you clerked for, and it was always sort of a significant matter to me that he dissented on every death penalty case, which I thought was breathtaking, because he declared that the Eighth Amendment cruel and unusual punishment prohibition outlawed the death penalty when within the Constitution itself there are quite a few references to capital crimes, to not taking life without due process, and every State at the time the Constitution was adopted had a death penalty, and so did the Federal Government.

So the people who adopted the Constitution had no idea that someone would take the “cruel and unusual punishment” language 200 years later and say the Constitution prohibits the death penalty.

Now, we can all disagree on it, but I guess—let me ask you—and you praised him at that memorial address and said that you should interpret the Constitution, at least Justice Brennan did, in light of what happens today and not some 18th century textbook, as I re-

call. So do you mean that an appellate judge is free to take the Constitution and just give its meaning that has been established for 200 years a new meaning because it is today and not then?

Judge LYNCH. No, of course not, Senator. The Constitution is a written document. That is what gives it its power and its legitimacy. That is why, unlike many countries, statutes that are passed here are subject to judicial review because the people established a Constitution. And it is only the Constitution that they established, the written Constitution, that gives any judge the authority to say that something is unconstitutional. That is not some free range power of the judge. That is because the Constitution, as it exists, as it is written, is the law of the land.

What changes is society, not the Constitution, and there are certainly, as we all know, problems that come up in our society that the Framers had no idea of. Recently, the Supreme Court decided a case about whether—not that recently anymore. A few years ago. A case about whether technology that could look inside somebody's house from outside constituted a search.

Now, James Madison I do not think would have had much thought about that, of course. But the principle in the Constitution talked about reasonable and unreasonable searches and seizures. And a court is going to have to look at the contemporary problems and apply to that the principles that are adopted in the Constitution. And there is nothing in a dictionary from the 18th century that is going to help with that.

Of course, we do know what the Framers thought about searches and seizures, and we should look back to that for guidance in applying it to these new problems.

Senator SESSIONS. Well, I think that is correct. But I do not think—and I am not going to ask you to criticize the man who gave you your job as a law clerk on the U.S. Supreme Court, which is quite an honor to achieve. But I will. I think that is not the principle he used. This was not a question of high-tech examples of search and seizure. It was an absolute reversal of the plain textual language of the Court by twisting one clause and causing it to override a whole bunch of other clauses. Fortunately, no members of the Court now adhere to that view, but at the time two did, and many thought the Court may continue that line of reasoning. But, fortunately, they have drawn back.

Well, those are issues that are important. I think you have to give—as Professor Van Alstyne of Duke once said, if you respect the Constitution, really respect it, you will enforce it like it is written, not like you would like it to be. And in the long run, all our liberties are better protected in that way.

Mr. Chairman, I appreciate your courtesy in allowing me to ramble on. I think these are important questions, and I intend to give both these nominees a fair evaluation.

Senator SCHUMER. Well, thank you, Senator Sessions, and I appreciate your questions and your desire to be very fair here.

I am going to ask unanimous consent that we submit—there are 33 letters in the record supporting the nomination of Mary Smith. I would like to pay particular attention or note particularly the letter from Nathan Hochman. He was the former person who occupied the position for which Mary Smith has been nominated, and it says

he has complete confidence in her, which I think is a pretty good recommendation, particularly in light of Senator Sessions' legitimately asking the experience you have had in the Division.

If there are no more questions, we are going to hold the record open for a week so people can submit written questions. We thank both the witnesses and your families. I am sure they are all proud of you. And we look forward to considering both of your nominations.

With that, the hearing is adjourned.

[Whereupon, at 3:35 p.m., the Committee was adjourned.]

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

QUESTIONS AND ANSWERS

Responses of Gerard E. Lynch
 Nominee to the U.S. Court of Appeals for the Second Circuit
 to the Written Questions of Senator Jeff Sessions

1. **During your courtesy visit to my office on May 11, 2009, I asked you how your sentencing departures compared to other district court judges in the Second Circuit. You said that based on a recent report, your departure rate was average in comparison. I am encouraged by this, and I am interested to see a copy of the report that you referenced. Please include a copy of the report with your answers to Questions for the Record.**

Response: The report is attached. (The markings were made when I received the report; it is the only copy I have.) As the table shows, my rate of non-Government-sponsored (i.e., non-cooperator) departures was 27.7%. The rate for the district as a whole was 28.6%.

2. **President Obama has described the types of judges that he will nominate to the federal bench as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

- a. **What role, if any, do you believe that empathy should play in a judge’s consideration of a case?**

Response: As I understand the word, “empathy” means the ability to understand another person’s state of mind or emotion, despite not having had the same experiences as that person. I believe that it is important for judges to make every effort to understand the experiences and arguments of all litigants who appear before them – defendants, crime victims and police officers; employers and employees; the rich and the poor – lest they find themselves limited by their own experiences and opinions.

- b. **Do you believe that a judge should be empathetic to a criminal defendant? What about a victim? Is it appropriate for a judge to identify with either party?**

Response: I believe that judges should do their best to understand the positions of all parties, the better to apply the law impartially. A judge should not identify with either side.

- c. **Do you believe that empathy should play a part in sentencing?**

Response: A judge should attempt to understand the experience and history of both defendants and crime victims, in order to apply fairly and impartially the considerations mandated by 18 U.S.C. 3553(a), which encompass the impact of the crime on the victim and the history and circumstances of the defendant.

- d. **Did empathy play a role in your decision in *United States v. Pabon-Cruz* to give a jury instruction that would have invited jury nullification of what was believed at the time to be a ten-year mandatory minimum sentence?**

Response: I don't think that "empathy" was a factor. The rationale for this decision – which I fully accept, in light of the ruling of the Second Circuit, was erroneous – was that unlike most cases, in which the jury fully understands the seriousness of the crime charged, in that case the jury may have misperceived the relative seriousness of the two overlapping charges in the case.

3. **The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**

- a. **Do you believe that the Second Amendment is an individual right or a collective right? Please explain your answer.**

Response: The Supreme Court held in *Heller* that the Second Amendment protects an individual right. I fully accept that holding, which I believe is consistent with the text and history of the provision and with the overall structure of the Bill of Rights.

- b. **Do you believe an individual Second Amendment right exists outside the context of military service or hunting? If so, please explain.**

Response: Yes. The reasoning of *Heller* is inconsistent with a limitation of the right to such a narrow context.

4. **In many of your opinions you cite and correctly apply Second Circuit precedent. In some cases (e.g., cases involving the *Miranda* rule), you seem to have done so reluctantly.**

- a. **In your view, what is the role of circuit court judges in interpreting and applying precedent?**

Response: The role of circuit judges in applying precedent is the same as that of district judges. Both are bound by Supreme Court and by prior circuit precedent, and their job is to apply, fairly and accurately, the holdings and reasoning of such precedents.

- b. **If you are elevated to the Second Circuit, in what areas do you believe you will have greater freedom than at the district court level?**

Response: Essentially none. The role of precedent is the same in both courts. I have sat by designation as a circuit judge in numerous cases, and I believe that my record in those cases reflects the same respect for precedent as my record as a district judge.

5. **In one case, you cited to your own law review article to support a statement you had made regarding RICO. In another case, you cited to your experience as a law professor. Do you believe it is appropriate to cite to works that include your own personal opinions or your own experience when issuing judicial opinions?**

Response: Articles by law professors are not, of course, sources of law. When they are cited by courts, they are usually cited for the research they contain. I do not find anything inappropriate in that. The RICO article to which you refer has been cited 12 times by courts, including the Supreme Court in *Reves v. Ernst & Young*, 507 U.S. 170, 180 (1993), generally for its survey of the legislative history of the statute.

The other case to which I believe you refer is *Katt v. City of New York*, 151 F. Supp. 2d 313, 357 (S.D.N.Y. 2001). Under the Supreme Court's decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 516 U.S. 869 (1995), the role of the trial judge in assessing proffered expert testimony is to determine, among other things, whether the expert's methodology was consistent with accepted professional standards. In admitting the testimony of a proffered expert in criminology, I noted that I had personal familiarity with the academic standards in that field. I do not find anything inappropriate about that reference. The Second Circuit affirmed the admission of the testimony summarily, "for substantially the same reasons as stated in the opinion of the District Court." *Krohn v. New York City Police Department*, 60 Fed. Appx. 357 (2d Cir. 2003).

6. **What role do you believe international law has in interpreting U.S. statutes and the U.S. Constitution? Do you agree with me that it was improper for Justice Kennedy to look to international law in *Roper v. Simmons*, 543 U.S. 551 (2005)?**

Response: International law has no direct bearing on the meaning of American statutes or of the Constitution. The Constitution and laws of the United States are to be interpreted according to their own texts and histories, and not according to the law of other nations. To the extent that Justice Kennedy, or any other judge, took international law as a binding source of authority for the meaning of the United States Constitution, I would disagree with that.

7. **In a symposium commentary entitled "Why Not a Miranda for Searches?," 5 OHIO STATE J. CRIM. LAW 1 (Fall 2007), you asserted that a Miranda-type rule that would invalidate consents to search unless the party whose consent is sought is first advised that he or she has a constitutional right to refuse such consent would be a "good thing." You advocated for this rule even though you acknowledge that "Miranda was not the product of inevitable judicial frustration, but of affirmative policy choice in a particular historical context."**

- a. **Why impose an additional procedural burden on the police when, as you concede in your article, there is no historical evidence of a demonstrable problem with consent searches as there was with confessions, which led to the adoption of the Miranda rule?**

Response: The argument for imposing such a burden is not to solve a social problem, but to respect the precedent established by *Miranda v. Arizona*, which was already established law when the Supreme Court decided the comparable question in the Fourth Amendment context in *Schneckloth v. Bustamonte*. Of course, whatever my academic views about the consistency of the two precedents, both are binding Supreme Court authority, and as a district judge I have applied both cases – *Miranda* and *Schneckloth* – in the cases to which each apply.

b. Wouldn't such a rule inevitably result in more evidence being excluded and thus more crimes going unpunished?

Response: The loss of evidence is always regrettable, but in these contexts it is the inevitable cost of respecting the decision of citizens who choose to invoke their rights. As in the case of *Miranda*, the loss of evidence results not from the warning, but from the citizen's right, guaranteed by the Constitution, to choose not to cooperate with a police investigation.

Table 1

**COMPARISON OF SENTENCE IMPOSED AND POSITION
RELATIVE TO THE GUIDELINE RANGE**
Fiscal Year 2005, Post-Booker - 2008, 3rd Quarter Preliminary Cumulative Data
(October 1, 2007, through June 30, 2008)

	National		Southern New York		Gerard E. Lynch	
	n	%	n	%	n	%
TOTAL CASES¹	243,911	100.0	5,762	100.0	166	100.0
CASES SENTENCED WITHIN GUIDELINE RANGE	148,766	61.0	3,132	54.4	86	51.8
CASES SENTENCED ABOVE GUIDELINE RANGE	3,859	1.6	26	0.5	0	0.0
DEPARTURE ABOVE GUIDELINE RANGE	1,530	0.6	9	0.2	0	0.0
Upward Departure From Guideline Range ²	1,071	0.4	4	0.1	0	0.0
Upward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	459	0.2	5	0.1	0	0.0
OTHERWISE ABOVE GUIDELINE RANGE	2,329	1.0	17	0.3	0	0.0
Above Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	1,716	0.7	10	0.2	0	0.0
All Remaining Cases Above Guideline Range ⁵	613	0.3	7	0.1	0	0.0
GOVERNMENT SPONSORED BELOW RANGE⁶	60,741	24.9	961	16.7	34	20.5
§5K1.1 Substantial Assistance Departure	34,913	14.3	856	14.9	33	19.9
§5K3.1 Early Disposition Program Departure	17,648	7.2	0	0.0	0	0.0
Other Government Sponsored Below Range	8,180	3.4	105	1.8	1	0.6
NON-GOVERNMENT SPONSORED BELOW RANGE	30,545	12.5	1,643	28.6	46	27.7
DEPARTURE BELOW GUIDELINE RANGE	9,545	3.9	365	6.4	20	12.0
Downward Departure From Guideline Range ²	5,961	2.4	189	3.3	17	10.2
Downward Departure With <i>Booker</i> /18 U.S.C. § 3553 ³	3,584	1.5	176	3.1	3	1.8
OTHERWISE BELOW GUIDELINE RANGE	21,000	8.6	1,278	22.2	26	15.7
Below Guideline Range With <i>Booker</i> /18 U.S.C. § 3553 ⁴	17,025	7.0	1,076	18.7	23	13.9
All Remaining Cases Below Guideline Range ⁵	3,975	1.6	202	3.5	3	1.8

¹This table reflects the 252,805 cases sentenced nationally on or after October 1, 2007, with court documentation cumulatively received, coded, and edited at the U.S. Sentencing Commission by September 8, 2008, 5,848 of which were from the District of Southern New York and 169 were sentenced by Judge Gerard E. Lynch. Of these, 8,894 cases nationally, 86 cases from the District of Southern New York and three sentenced by Judge Gerard E. Lynch were excluded because information was missing from the submitted documents that prevented the comparison of the sentence and the guideline range.

²All cases with departures in which the court did not indicate as a reason either *United States v. Booker*, 18 U.S.C. § 3553, or a factor or reason specifically prohibited in the provisions, policy statements, or commentary of the *Guidelines Manual*.

³All cases sentenced outside of the guideline range in which the court indicated both a departure (see footnote 2) and a reference to either *United States v. Booker*, 18 U.S.C. § 3553, or related factors as a reason for sentencing outside of the guideline system.

⁴All cases sentenced outside of the guideline range in which no departure was indicated and in which the court cited *United States v. Booker*, 18 U.S.C. § 3553, or related factors as one of the reasons for sentencing outside of the guideline system.

⁵All cases sentenced outside of the guideline range that could not be classified into any of the three previous outside of the range categories. This category includes cases in which no reason was provided for a sentence outside of the guideline range.

⁶Cases in which a reason for the sentence indicated that the prosecution initiated, proposed, or stipulated to a sentence outside of the guideline range, either pursuant to a plea agreement or as part of a non-plea negotiation with the defendant.

SOURCE: U.S. Sentencing Commission, 2005 - 2007 Datafiles, USSCFY05 - USSCFY07, and Preliminary 2/08 Datafile, USSCFY08.

in U.S. income on Tyco's tax returns and was sentenced to three years in prison. Additionally, I interacted with the tax department on issues involving state tax payments for various former senior executives. Finally, I interacted with the tax department regarding the approximately \$3 billion settlement of the Tyco securities litigation and issues involving its tax treatment. *See, e.g., 26 U.S.C. § 162.*

Nathan J. Hochman, the most recent Assistant Attorney General for the Tax Division, has supported my nomination, stating that he is confident that I "will provide strong leadership for the Division and [I am] a good choice for the position." Former Solicitor General Theodore B. Olson has urged my swift confirmation, calling me "a fine choice to be this nation's Assistant Attorney General for the Tax Division."

Responses of Gerard E. Lynch
Nominee to the U.S. Court of Appeals for the Second Circuit
to the Written Questions of Senator Orrin G. Hatch

1. **Judge Lynch, I believe that the Senate owes some deference to a President's nominees, so long as they are qualified. In the case of judicial nominees, qualifications include a proper understanding of the power and role of judges in our system of government. So I am interested in knowing more about your judicial philosophy. When Justice William Brennan died, the *Washington Post* described him as the voice of the Supreme Court's "social revolution" and said that he "found the essential meaning of the Constitution not in the past but in contemporary life." Do you agree with that description of Justice Brennan's judicial philosophy and do you share it?**

Response: I would not characterize Justice Brennan as a "social revolution[ary]." I think that Justice Brennan believed, rightly or wrongly, that the values he found in the Constitution derived from the ideals of the Framers.

As for my own "judicial philosophy," I believe that the role of the courts is to decide disputes between citizens by impartial application of the law, as it is found in the Constitution and laws of the United States and of the several states, and not to "solve" perceived social problems or to advance any political agenda.

2. **In the memorial article you wrote about Justice Brennan that appeared in the *Columbia Law Review*, you described as "a simple necessity" Justice Brennan's "belief that the Constitution must be given meaning for the present" and wrote that judges must derive that meaning "in light of their own wisdom and experience, and in light of the conditions of American society today." This is clearly directed at the meaning of the Constitution itself rather than its application to the facts of a particular case. Do you believe that judges can and should determine the meaning of the Constitution according to their own wisdom and experience, in light of American society today, and in order to make sense for the present generation?**

Response: The Constitution is a written document, many of the provisions of which were deliberately written to adopt broad principles. The fundamental meaning of those principles is fixed and unchanging, and judges may not revise or repeal or add to that meaning. But courts are constantly faced with new contexts in which the application of those principles to new realities is debatable. Of necessity, judges must draw on their understanding of those realities in deciding the concrete meaning of the unchanging principles as applied to the facts of those cases.

3. **In that memorial article, you wrote that a judge determining the Constitution’s meaning “in the way that he believed made the most sense today seems far more honest and honorable than the pretense that the meaning of those principles can be found in eighteenth- or nineteenth-century dictionaries.” Do you consider the view that the Constitution’s meaning was determined by those who made it law to be, in any way, dishonest or dishonorable? I assume you know that when judges seek the original meaning of a constitutional provision (or a statutory provision, for that matter), they are not limited to dictionaries. What do you believe the search for original meaning is a pretense for?**

Response: There is nothing dishonest or dishonorable about seeking to understand the historical background of a legal provision. Where history gives a clear answer as to the intended meaning of a constitutional provision, that meaning should be adopted. However, historical evidence is sometimes incomplete, and historians often dispute the meaning of the available evidence. Historical evidence can be used, intentionally or inadvertently, to reach decisions that accord with a judge’s personal predilections. It is only a judge’s sense of restraint, and understanding of the proper role of the courts, rather than any particular theory of interpretation, that can protect against such decisions.

4. **In *Marbury v. Madison*, the Supreme Court said that America’s founders “contemplated [the Constitution] as a rule for the government of courts, as well as of the legislature.” If judges can use such things as their own experience or contemporary events and conditions to change the meaning of the Constitution, don’t judges govern the Constitution? How can the Constitution limit judges if judges can define the Constitution?**

Response: I do not believe that judges can change the meaning of the Constitution according to their own opinions or contemporary events. Judges must do their best to interpret the Constitution not according to their own preferences, but according to the text, the history and the body of precedent that makes up our law. Only in that way can the Constitution limit the judiciary. I believe that my record in the nearly nine years I have served on the district court demonstrates that I approach the task of judging in that spirit and with that sense of restraint.

**Responses of Gerard E. Lynch
Nominee to the U.S. Court of Appeals for the Second Circuit
to the Written Questions of Senator Tom Coburn**

1. Judge Lynch, you have said that the U.S. v. Pabon-Cruz case—in which an 18-year-old defendant was convicted of “advertising to receive, exchange, or distribute child pornography...and receiving or distributing child pornography,” subject to a 10-year mandatory minimum sentence — was “without question the worst case of [your] judicial career.”

- a. Please explain why applying a mandatory minimum sentence in this case was so difficult for you.

Response: The defendant in that case was barely more than a minor himself. He was only 18 and emotionally underdeveloped. There was no evidence that he had ever had sexual contact with a child (or, indeed, with anyone). He had not created any pornography and was not involved in commercial distribution. He was remorseful and recognized that he was in need of treatment. I believed that he deserved punishment, including a prison term, but under the circumstances a ten-year term seemed unduly harsh. However, despite my personal opinion, I applied the mandatory minimum as I believed it was required by the law.

- b. What was it that caused you to empathize with that defendant, who had hundreds of images of child pornography on his computer?

Response: My decision was based on the specific facts of the case, not on any feelings I did or did not have about the defendant.

- c. Do you agree that purveyors and viewers of child pornography further contribute to the exploitation of children?

Response: Yes.

2. With respect to mandatory minimums —

- a. Do you agree that it is within Congress’s discretion and authority to legislate mandatory minimums for certain criminal offenses?

Response: Yes.

- b. In your view, is it ever appropriate for judges to depart from those statutory sentences (in cases where guilt is not an issue)?

Response: No.

c. Please give examples of other cases in which you applied a mandatory minimum sentence.

Response: I have always complied with mandatory minimum sentences as passed by Congress and sentenced defendants to whom a mandatory sentence was applicable at or beyond the mandatory minimum. Indeed, in the Pabon-Cruz case itself, despite my misgivings about the severity of the sentence, I imposed a 10-year mandatory minimum sentence because I believed the law required it. (That sentence was reversed because the Second Circuit determined that the sentence was not in fact mandatory.) I have imposed mandatory sentences in scores of other cases. For example:

- (a) In the only other child pornography case I have handled, the defendant faced a five-year mandatory sentence. I gave him 12½ years.
- (b) I have sentenced at least five drug-gang murderers to mandatory life terms.
- (c) Almost all narcotics offenders prosecuted in our district face mandatory five- or ten-year sentences, and/or mandatory consecutive five-year gun possession sentences, because smaller drug cases are generally left to state prosecution. I have sentenced scores of such offenders, and I have always imposed the required sentence (or a higher one, where such was warranted).

d. Will you commit to honoring mandatory minimum statutes — even those you do not like — if you are confirmed to the Second Circuit Court of Appeals?

Response: Yes.

3. You once said you believed that the Second Amendment was more of a “structural provision preserving state militias” than a “protection of a substantive right ‘to keep and bear arms.’” (agreeing with Professor John Hart Ely, who stated his belief in the book “Democracy and Distrust”)

a. In light of the landmark *Heller* decision, has your view of the Second Amendment changed? If so, how?

Response: As the Supreme Court ruled in *Heller*, the Second Amendment protects an individual right in the people to bear arms. In the book review from 1980 to which you refer, I argued that the text and history of the Bill of Rights did not support Professor Ely’s position that the Second Amendment could be counted as a clear example of his non-individual rights theory of the Bill of Rights.

b. Do you believe the Supreme Court got the *Heller* decision right — that the Second Amendment protects an individual right to keep and bear arms?

Response: Yes, I agree with the Supreme Court’s decision in *Heller* that the Second Amendment protects an individual right to keep and bear arms.

4. **President Obama has described the types of judges that he will select as follows: “We need somebody who’s got the heart, the empathy, to recognize what it’s like to be a young teenage mom. The empathy to understand what it’s like to be poor, or African-American, or gay, or disabled, or old. And that’s the criteria by which I’m going to be selecting my judges.”**

a. **What role do you believe that empathy should play in a judge’s consideration of a case?**

Response: As I understand the word, “empathy” means the ability to understand another’s state of mind and emotion. I believe that it is important for judges to make every effort to understand the experiences and arguments of *all* litigants who appear before them – defendants, crime victims and police officers; employers and employees; the rich and the poor – lest they find themselves limited by their own experiences and opinions.

b. **Do you believe you fit President Obama’s criteria?**

Response: Yes.

5. **As a judge, you are charged with applying the law as it is written — removing personal opinion and bias from your work.**

a. **In your experience, is it possible to divorce your personal opinion from your work as a judge?**

Response: Yes. That is a judge’s job.

b. **What measures have you implemented in your chambers to help you honor this duty?**

Response: In my chambers, I attempt to understand the arguments of the parties, to research the law, and then to apply the law impartially to the case at hand.

**Senator Jeff Sessions
Questions for the Record
Mary L. Smith**

1. You are nominated to be the Assistant Attorney General for the Tax Division, but you have a surprising lack of experience in tax law. I am very concerned about your lack of experience in this area. Based on the information contained in your questionnaire and your hearing testimony, it appears that you have only worked on tax issues on two limited occasions, in your position as in-house counsel at Tyco and during your tenure in the Clinton Administration. I want to give you a chance to supplement the record.

- a. Please list any advanced degrees you have pursued in tax law.

I have not pursued any advanced degrees in tax law.

- b. Please list all Continuing Legal Education credits you have taken relating to tax law.

At present, I do not have any Continuing Legal Education credits relating to tax law. I plan to do so on a going-forward basis.

- c. Please list any speeches or presentations you have given or articles you have written on tax law issues.

I have not given any speeches or presentations or written any articles on tax law issues.

- d. Please list any awards you have received specifically for your work on tax law.

I have not received any awards specifically related to tax law.

- e. Please describe the specific tax issues that you handled during your tenure in the Clinton Administration.

While in the White House, I worked closely with the National Economic Council on legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act (FUTA). I spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this disparity in tax policy between tribal governments and state

governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill.

2. At your hearing, I asked you about your experience with tax law and, in response, you stated that while you were in-house counsel at Tyco, you worked on tax issues while working on “multi-district litigation ... rising out of their Kozlowski era.” Can you tell me specifically which sections of the Internal Revenue Code were involved in that litigation and describe their relevance to the case?

While serving as in-house counsel at Tyco, I dealt with a number of tax issues. I interacted with the Tyco tax department on a variety of issues, including the tax treatment of several items, such as those involving theft loss and charitable contributions. See, e.g., 26 U.S.C. §§ 165 and 170. I also worked with the tax department on issues which dealt with the tax treatment of certain items arising from corporate acquisitions, as well as the proper classification of acquisition expenses. See, e.g., 26 U.S.C. § 269. I also advised the tax department on responding to IRS subpoenas. In addition, two of the Company’s Senior Vice Presidents of Tax were either witnesses or potential witnesses in the multi-district securities litigation for which I was responsible. One of the former heads of Tyco’s tax department, R. Scott Stevenson, ultimately pled guilty to failing to report more than \$170 million in U.S. income on Tyco’s tax returns and was sentenced to three years in prison. Additionally, I interacted with the tax department on issues involving state tax payments for various former senior executives. Finally, I interacted with the tax department regarding the approximately \$3 billion settlement of the Tyco securities litigation and issues involving its tax treatment. See, e.g., 26 U.S.C. § 162.

- a. While litigating that case, what percentage of your time was spent working on tax issues?

Approximately 5 percent of my time was spent on tax issues.

3. A large percentage of the Tax Division’s cases are criminal cases. Please describe your criminal law experience.

Throughout my career, I have worked on criminal matters. While in law school, I served as an intern in United States Attorney’s Office for the Northern District of Illinois. During my clerkship in the Eleventh Circuit, I worked on criminal cases. I worked on a habeas

case arising out of a criminal matter while at a law firm in Chicago. During my time at Skadden, Arps, Slate, Meagher & Flom LLP, I worked on a murder case on a pro bono basis. When I was at Tyco, I interacted and cooperated with the Manhattan District Attorney's Office on a regular basis regarding the convictions of Tyco's former CEO, L. Dennis Kozlowski, and former CFO, Mark Swartz, as well as supervising the filing of pleadings in the criminal proceedings to protect Tyco's interests.

4. Have you ever practiced before the Tax Court? If so, please describe the case(s) and your role in the case(s)?

I have not practiced before the Tax Court. The Tax Division represents the United States and its officers in civil and criminal litigation arising under the internal revenue laws in all courts except the United States Tax Court.

5. One area of focus of the Tax Division is the prosecution of illegal tax shelters of corporations. Have you ever worked on any cases or matters involving tax shelters?

I have not worked on cases or matters involving tax shelters.

Question for Mary Smith from Senator Hatch

Ms. Smith, I believe that the Senate owes some deference to a President's nominees, so long as they are qualified. That is the question I have for you. I see that you have some experience in private practice, a few years in the Justice Department's Civil Division, and a lot of political campaign experience. But what I do not see in your background is any tax experience. That concerns me because the division which you have been nominated to head is a specific rather than a general one. That suggests the need for specific rather than general expertise and experience in the person heading that division. You do not have that expertise and experience, at least as far as I can see, in contrast to the men and women who have headed the tax division in the past in both Republican and Democratic administrations. I know you addressed this briefly in your hearing, but I would like you to explain, concretely and in detail, how you are qualified for this position and how the kind of experience and expertise you do have compensates for the lack of what others have brought to this position in the past.

At its heart, the Tax Division is a litigating division in the Department of Justice. I have extensive litigation experience across a range of sectors – for the government, in a private law firm, and as in-house counsel. I understand first-hand the work of the Justice Department's career trial attorneys, having been a career attorney in the Civil Division. I understand how the Department of Justice works, both from my time there and from my extensive interactions with the Department on policy and budget matters when I was in the White House. I have extensive experience with the federal budgeting process from my time in the White House, where I interacted almost daily with persons in the Office of Management and Budget. In addition, for the last several years, I have concentrated my practice on complex financial litigation that involved accounting and securities issues. I have dealt with tax issues, both while at the White House and at Tyco. I believe that I can give a fresh eye to the tax issues litigated by the Tax Division if I am so fortunate to be confirmed to be the Assistant Attorney General for the Tax Division.

While in the White House, I worked closely with the National Economic Council on legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act (FUTA). I spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this disparity in tax policy between tribal governments and state governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill.

While serving as in-house counsel at Tyco, I dealt with a number of tax issues. I interacted with the Tyco tax department on a variety of issues, including the tax treatment of several items, such as those involving theft loss and charitable contributions. See, e.g., 26 U.S.C. §§ 165 and 170. I also worked with the tax department on issues which dealt with the tax treatment of certain items arising from corporate acquisitions, as well as the proper classification of acquisition expenses. See, e.g., 26 U.S.C. § 269. I also advised the tax department on responding to IRS subpoenas. In addition, two of the Company's Senior Vice Presidents of Tax were either witnesses or potential witnesses in the multi-district securities litigation for which I was responsible. One of the former heads of Tyco's tax department, R. Scott Stevenson, ultimately pled guilty to failing to report more than \$170 million

Senator Grassley's Questions for Mary L. Smith, Nominee to be Assistant Attorney General, Tax Division, U.S. Department of Justice

1. Why do you want to head the Tax Division of the Justice Department?

The Tax Division is one of the premier litigating divisions in the Department of Justice, and the Tax Division holds a central place in the nation's tax litigation system. If confirmed, I will be thrilled to make a contribution to this important mission. I have a strong sense of public service from my time both as a career trial attorney at the Department of Justice and from my roles in the White House, both in the Domestic Policy Council and the White House Counsel's Office. When I was a trial attorney at the Department of Justice, I took my responsibility seriously to represent the United States and to protect taxpayer funds. I am honored to be nominated to head the Tax Division, and I feel the Division has some of the best attorneys in the Department of Justice. I am excited to be a part of the tax enforcement system, and I feel that my extensive litigation background, particularly in complex financial litigation, will serve me well if I am so fortunate to be confirmed as the Assistant Attorney General for the Tax Division.

2. How and why does your experience uniquely qualify you to head the Tax Division of the Justice Department?

At its heart, the Tax Division is a litigating division in the Department of Justice. I have extensive litigation experience across a range of sectors – for the government, in a private law firm, and as in-house counsel. I understand first-hand the work of the Justice Department's career trial attorneys, having been a career attorney in the Civil Division. I understand how the Department of Justice works, both from my time there and from my extensive interactions with the Department on policy and budget matters when I was in the White House. I have extensive experience with the federal budgeting process from my time in the White House, where I interacted almost daily with persons in the Office of Management and Budget. In addition, for the last several years, I have concentrated my practice on complex financial litigation that involved accounting and securities issues. I have dealt with tax issues, both while at the White House and at Tyco. I believe that I can give a fresh eye to the tax issues litigated by the Tax Division if I am so fortunate to be confirmed to be the Assistant Attorney General for the Tax Division.

3. What is your tax legal experience? Please identify any and all legal work you have performed that involved tax issues. Please provide specifics of the tax work you did.

While in the White House, I worked closely with the National Economic Council regarding legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act (FUTA). I spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this

disparity in tax policy between tribal governments and state governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill. While serving as in-house counsel at Tyco, I dealt with a number of tax issues. I interacted with the Tyco tax department on a variety of issues, including the tax treatment of several items including those involving theft loss and charitable contributions. *See, e.g.,* 26 U.S.C. §§ 165 and 170. I also worked with the tax department on issues which dealt with the tax treatment of certain items arising from corporate acquisitions, as well as the proper classification of acquisition expenses. *See, e.g.,* 26 U.S.C. § 269. I advised the tax department on responding to IRS subpoenas. In addition, two of the Company's Senior Vice Presidents of Tax were either witnesses or potential witnesses in the multi-district securities litigation for which I was responsible. One of the former heads of Tyco's tax department, R. Scott Stevenson, ultimately pled guilty to failing to report more than \$170 million in U.S. income on Tyco's tax returns and was sentenced to three years in prison. Additionally, I interacted with the tax department on issues involving state tax payments for various former senior executives. Finally, I interacted with the tax department regarding the approximately \$3 billion settlement of the Tyco securities litigation and issues involving its tax treatment. *See, e.g.,* 26 U.S.C. § 162.

4. In your opinion, what areas of the tax laws are you the most knowledgeable?

I believe that I have a broad-based general knowledge of tax issues which will serve me well, given the myriad of issues in which Tax Division is involved.

5. Do you believe that your tax experience favorably compares to previous Assistant Attorney Generals for the Tax Division at the Justice Department? Why?

The Tax Division of the Department of Justice is a litigating division of the Department and serves as the enforcement arm of the Internal Revenue Service (IRS). The Tax Division does not make tax policy; it merely enforces existing law. I have spent my career as a litigator and a trial attorney, focusing on complex financial matters and securities enforcement matters. Since the division is the enforcement arm of the IRS and as a litigating component, I believe that I can quickly assimilate the facts and law in litigation handled by the Tax Division and would use these skills that I have honed throughout my years as a litigator and trial attorney, if I am so fortunate to be confirmed to be the Assistant Attorney General for the Tax Division. In fact, Nathan J. Hochman, the most recent Assistant Attorney General for the Tax Division, has supported my nomination, stating that he is confident that I "will provide strong leadership for the Division and [I am] a good choice for the position."

6. Have you ever given any speeches or presentations on tax law or tax issues?

I have not given any speeches or presentations on tax law or tax issues.

7. Have you written any law reviews or articles on tax law or tax issues?

I have not written any law reviews or articles on tax law or tax issues.

8. Have you participated in any tax law conferences or CLEs?

I have not participated in tax law conferences or CLEs, but I expect to participate on a going-forward basis.

9. What kind of tax issues and problems are you particularly interested in?

I am interested in enforcing the tax laws fully, fairly, and consistently. If I am confirmed, my top priorities for the Tax Division will include improving coordination with the IRS, the Treasury Department and U.S. Attorneys Offices across the country; rooting out tax fraud and abuse; combating offshore tax avoidance; increasing international enforcement along with the IRS; ensuring that the Tax Division maintains the highest ethical standards; and ensuring that there is fair and uniform enforcement of the tax laws.

10. Have you ever worked on cases with the Tax Division of the Justice Department?

I have not worked on cases with the Tax Division of the Justice Department.

11. Have you ever worked on cases with or before the Internal Revenue Service?

I have not worked on cases with or before the Internal Revenue Service.

12. Are you familiar with the cases that the Tax Division is currently working on?

Through public reports, I am familiar with some of the cases in which the Tax Division is currently engaged.

13. Are you familiar with the tax standards and guidelines utilized by the Tax Division?

Yes, I am familiar with the tax standards and guidelines utilized by the Tax Division.

14. What do you see as the greatest challenges for the Tax Division of the Justice Department?

Stopping the spread of tax shelters and increasing international enforcement, two of my priorities, are among the greatest challenges for the Tax Division. If I am confirmed, I will use the Tax Division's resources in a way that best promotes the Division's mission to enforce the nation's tax laws fully, fairly and consistently.

15. Are there any areas of improvement for the Tax Division that you are going to pursue if you are confirmed?

I believe that the Tax Division is doing a good job of enforcing the tax laws fairly and consistently. I understand that each year, the Tax Division has about 7,000 civil cases in process, handles several hundred civil appeals, and most recently, has authorized between 1,300 and 1,800 prosecutions each year. In addition, in FY 2008, the Tax Division directly saved the Government approximately \$1 billion without taking into account the billions it saved by the legal precedent it set. I will strive to improve coordination with the IRS, the Treasury Department, and the U.S. Attorney's Offices as well as to try to improve international enforcement efforts.

16. If you are confirmed, what will be your priorities for the Tax Division?

If I am confirmed, my top priorities for the Tax Division will include improving coordination with the IRS, the Treasury Department and U.S. Attorneys Offices across the country; rooting out tax fraud and abuse; combating offshore tax avoidance; increasing international enforcement along with the IRS; ensuring that the Tax Division maintains the highest ethical standards; and ensuring that there is fair and uniform enforcement of the tax laws.

17. If you are confirmed, what kind of relationship will you foster for the Tax Division with the Internal Revenue Service?

If I am confirmed, I will strive to foster an open and cooperative relationship with the Internal Revenue Service.

18. What kind of management experience do you have?

I have management experience from both my time at Tyco and at Skadden. At Tyco, I was responsible for the one of the largest litigation matters pending in the country – the multi-district class action securities litigation arising out of the acts of former Tyco management. At any given time, there were over 40 outside counsel and over 60 contract attorneys working on this matter. I supervised all of the outside counsel and gave specific assignments to each of Tyco's outside law firms, and, in many instances, to particular attorneys at those law firms. As for the contract attorneys, prior to my arrival at Tyco, no one had a handle on all the projects at the contract review center and how many attorneys were working on each project. I instituted a process whereby on a regular basis we reviewed all the projects and the number of attorneys working on certain projects. Based on these reviews, during certain periods, I made the decision to substantially reduce the number of contract attorneys. At Tyco, I also managed an over \$50 million budget and I have extensive budgeting experience.

At Skadden, I often supervised large teams of lawyers and legal assistants during government investigations and civil litigation. I regularly taught the younger attorneys how to perform certain tasks and reviewed their work. I worked to motivate the younger attorneys by spending time with them and explaining to them how their work fit into the overall plan and strategy for the case or investigation. We often worked long hours and under tight deadlines, but I worked to ensure that all the persons on the team felt that their work was important and appreciated.

19. Do you think that IRS Criminal Investigations should be permitted to work directly with US Attorneys instead of having DOJ Tax approval in most cases?

The Tax Division was created in 1933 by President Franklin Delano Roosevelt to centralize the supervision of federal tax litigation because the previous arrangement had produced conflicting positions. I believe that the Tax Division has served this function well for the government and for taxpayers. It is this coordination and review function by the Tax Division which provides for consistent enforcement of the tax laws and instills public confidence in our tax system. Because the Division independently reviews the merits of tax cases that the Internal Revenue Service requests be brought or defended, it is able to ensure that the government takes litigating positions that are consistent with applicable law and policy while best promoting voluntary compliance.

20. What amount of time do you think is appropriate for IRS CI agents to spend on assisting Justice Department prosecutions that are not tax-related? What benefit does the Justice Department derive from using such assistance when such resources may be better used for tax enforcement? Aren't we robbing Peter to pay Paul by using resources for non-tax issues?

Since I am not at the Department of Justice, I do not have specific knowledge about this issue. However, if confirmed, I will review the use of these resources.

21. Do you believe that dual purpose summons are appropriate?

Yes, the Supreme Court has ruled the Internal Revenue Service is not required to serve a John Doe summons when, during an investigation of a known taxpayer's liability, it serves one summons to obtain information that may be relevant to the known taxpayer's liability and to ascertain the identities of other taxpayers that may not be in compliance with the revenue laws.

22. Due to the controversy surrounding the use of the term "tax protester", the most recent Assistant AG for Tax coined the term "tax denier". Do you agree with this terminology and do you expect to use it?

The most recent Assistant AG, Nathan Hochman, used the term "tax defier" to refer to a person "who rejects the fundamental basis, the legal underpinnings of our entire tax system, and flies in the face of legal precedent going back decades that has upheld the Constitutional and statutory validity of that system." I think the terminology is a fair use of the problem it seeks to address. And, I do expect to use it, as the Tax Division in April 2008 launched the National Tax Defier Initiative to reaffirm and reinvigorate the Tax Division's commitment to investigate, pursue and, where appropriate, prosecute those who take action to defy and deny the fundamental validity of the tax laws.

23. What changes would you suggest to the civil injunction program to combat abuse by preparers?

I understand that since 2000, the Tax Division has obtained injunctions against more than 400 tax-fraud promoters and return preparers. These numbers represent a dramatic increase over the 1990's, when the total number of promoters and preparers enjoined was less than 25 for the entire decade. While much has been accomplished, much remains to be done. If confirmed, I plan to work with the IRS to encourage them to keep sending referrals and to coordinate trainings to help agents and Chief Counsel attorneys learn about the injunction process and how to conduct an investigation that leads to a successful injunction referral.

24. Do you think the current number of such injunctions has a sufficient deterrent effect?

I understand that since 2000, the Tax Division has obtained injunctions against more than 400 tax-fraud promoters and return preparers. These numbers represent a dramatic increase over the 1990's, when the total number of promoters and preparers enjoined was less than 25 for the entire decade. The schemes the Division has enjoined during the past several years cost the Federal Treasury more than \$2 billion, and placed an enormous administrative burden on the IRS. If permitted to go unchecked, these schemes would undermine public confidence in the integrity of our tax system, and require the IRS to devote substantial resources to detecting, correcting, and collecting the resulting unpaid taxes. While there has been a significant deterrent effect from these efforts, much remains to be done.

25. What role should the DOJ Tax Division have in distinguishing aggressive tax planning from obstruction of justice, i.e., KPMG and UBS?

Since I am not in the Department, I do not have specific knowledge of particular cases. The role of the Tax Division is to enforce the tax laws fairly and consistently. In keeping with that role, the Division independently reviews the merits of tax cases that the IRS requests be brought or defended, and ensures that the government takes litigating positions that are consistent with applicable law and policy while best promoting voluntary compliance. Accordingly, the role of the Tax Division is to evaluate the law and the facts in every case and to take a position that is consistent with applicable law.

26. How would you coordinate the activities of the Southern District of New York and other U.S. Attorneys' offices that are outside the direct supervision of the AAG for Tax? Do you think the tax function of the Southern District of New York should be placed under the supervision of the AAG for Tax?

In the Tax Division, the Deputy Assistant Attorney General for Criminal Matters and the Deputy Assistant Attorney General for Civil Matters, along with the experienced attorneys in the criminal and civil enforcement sections, work closely and cooperatively with the Assistant United States Attorneys in the Southern District of New York in both criminal and civil matters. Just like with other U.S. Attorneys Offices, the Division often provides litigating assistance to the Southern District of New York. Given the cooperative and productive relationship, I would not seek to change the structure.

27. What is your view of the Cheek defense? Do you believe that willful ignorance should ever be a defense to a criminal charge?

In *Cheek v. United States*, 498 U.S. 192 (1991), the Supreme Court held that a tax defier's belief that he was not violating the federal tax laws based on a misunderstanding caused by the complexity of the tax law itself – if a genuine, good faith belief – would be a valid defense to charges of tax evasion. The Court also ruled that a belief that the tax law is invalid or unconstitutional is not based on a misunderstanding caused by the complexity of the tax law, and is not a valid defense. The Tax Division's role is to enforce the laws not make the laws. So I will adhere to applicable Supreme Court precedent.

Follow-up Questions of Senator Tom Coburn, M.D.

“Nomination of Mary Smith to be Assistant Attorney General, Tax Division, Department of Justice”

United States Senate Committee on the Judiciary

May 19, 2009

1. Ms. Smith, I see from your resume that you have some litigation experience. How many cases have you tried to judgment as either first chair or the sole litigating attorney?

I have tried three cases to judgment as the sole and principal attorney.

- a. Of those cases, how many involved complex tax issues, tax policy or related to the internal revenue code?

None of these cases involved tax issues.

- b. Of the cases where you were lead attorney, in how many did you appear as a prosecuting attorney?

I have not served as a prosecuting attorney.

- c. Of the cases where you were lead attorney, in how many did you appear before a jury?

I have not appeared before a jury.

- d. Of all cases in which you have appeared in court in any capacity, how many cases were before a jury on issues related to tax law or tax policy?

I have not appeared before a jury on issues related to tax law or tax policy.

2. Throughout your career you have worked in both political and non-political positions. In which of those positions did you gain specific training, experience and knowledge in tax law or tax policy that would qualify you for this position?

While in the White House, I worked closely with the National Economic Council on legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act (FUTA). I spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this disparity in tax policy between tribal governments and state governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill.

While serving as in-house counsel at Tyco, I dealt with a number of tax issues. I interacted with the Tyco tax department on a variety of issues, including the tax treatment of several items, such as those involving theft loss and charitable contributions. See, e.g., 26 U.S.C. §§ 165 and 170. I also worked with the tax

department on issues which dealt with the tax treatment of certain items arising from corporate acquisitions, as well as the proper classification of acquisition expenses. *See, e.g., 26 U.S.C. § 269.* I also advised the tax department on responding to IRS subpoenas. In addition, two of the Company's Senior Vice Presidents of Tax were either witnesses or potential witnesses in the multi-district securities litigation for which I was responsible. One of the former heads of Tyco's tax department, R. Scott Stevenson, ultimately pled guilty to failing to report more than \$170 million in U.S. income on Tyco's tax returns and was sentenced to three years in prison. Additionally, I interacted with the tax department on issues involving state tax payments for various former senior executives. Finally, I interacted with the tax department regarding the approximately \$3 billion settlement of the Tyco securities litigation and issues involving its tax treatment. *See, e.g., 26 U.S.C. § 162.*

3. What will be your strategy regarding the Department's approach to offshore tax evasion? How will the Department structure its negotiations with countries that are havens for tax evasion in order to gain important information to initiate criminal prosecutions?

It is of paramount importance to our system of voluntary compliance with federal tax laws that the citizens of this country have confidence that the system is fair. There is general agreement in the tax administration community that there is no "silver bullet" that will solve the problems of offshore tax avoidance. If there were such a magic solution, it would already have been implemented. Rather, an integrated approach is needed. Within this integrated approach, the Tax Division will work closely with the Internal Revenue Service and utilize the enforcement tools available to it in combating offshore tax evasion, including both criminal and civil actions and the issuance of summons to gather vital information for the IRS. However, the role of the Tax Division is to enforce the tax laws not to make laws or negotiate with countries. Rather, negotiations with countries are the purview of the Treasury and State Departments.

4. The Tax Division employs over 350 attorneys in 14 civil, criminal and appellate sections. What management experience in your background has prepared you to lead the Tax Division? Please provide specific examples.

I have management experience from both my time at Tyco and at Skadden. At Tyco, I was responsible for the one of the largest litigation matters pending in the country – the multi-district class action securities litigation arising out of the acts of former Tyco management. At any given time, there were over 40 outside counsel and over 60 contract attorneys working on this matter. I supervised all of the outside counsel and gave specific assignments to each of Tyco's outside law firms, and, in many instances, to particular attorneys at those law firms. As for the contract attorneys, prior to my arrival at Tyco, no one had a handle on all the projects at the contract review center and how many attorneys were working on each project. I instituted a process whereby on a regular basis we reviewed all the projects and the number of attorneys working on certain projects. Based on these reviews, during certain periods, I made the decision to substantially reduce the number of contract attorneys. At Tyco, I also managed an over \$50 million budget and I have extensive budgeting experience.

At Skadden, I often supervised large teams of lawyers and legal assistants during government investigations and civil litigation. I regularly taught the younger attorneys how to perform certain tasks and reviewed their work. I worked to motivate the younger attorneys by spending time with them and explaining to them how their work fit into the overall plan and strategy for the case or investigation. We often worked long hours and under tight deadlines, but I worked to ensure that all the persons on the team felt that their work was important and appreciated.

- a. The Tax Division has both civil and criminal sections. How much of your litigation experience involved criminal cases?

About 10 percent of my litigation experience has involved criminal cases. I have worked on criminal matters throughout my career. While in law school, I served as an intern in United States Attorney's Office for the Northern District of Illinois. During my clerkship in the Eleventh Circuit, I worked on criminal cases. I worked on a habeas case arising out of a criminal matter while at a law firm in Chicago. During my time at Skadden, Arps, Slate, Meagher & Flom LLP, I worked on a murder case on a pro bono basis. When I was at Tyco, I interacted and cooperated with the Manhattan District Attorney's Office on a regular basis regarding the convictions of Tyco's former CEO, L. Dennis Kozlowski, and former CFO, Mark Swartz, as well as supervising the filing of pleadings in the criminal proceedings to protect Tyco's interests.

- b. Of those criminal cases, how many did you try to judgment as first chair or sole litigating attorney?

I did not try any criminal cases to judgment as first chair or sole litigating attorney.

- c. Of those criminal cases, how many cases involved criminal tax issues?

None of these criminal cases involved criminal tax issues.

5. The Tax Division has an office under its civil section focused on the Court of Federal Claims, which "defends all tax suits filed in the United States Court of Federal Claims."

- a. How many times have you appeared before the Court of Federal Claims?

I have appeared before the Court of Federal Claims on numerous occasions. From 1994-1996, while I was a trial attorney at the Department of Justice, I practiced exclusively before the Court of Federal Claims.

- b. How many briefs or other documents have you filed with the Court of Federal Claims?

I have filed an extremely large number of briefs and other documents with the Court of Federal Claims.

Questions for Mary Smith
Nominee for Assistant Attorney General for the Tax Division
From Senator Carl Levin
May 22, 2009

In General

(1) Please describe your tax experience that qualifies you to lead the Tax Division of the U.S. Department of Justice (DOJ).

At its heart, the Tax Division is a litigating division in the Department of Justice. I have extensive litigation experience across a range of sectors – for the government, in a private law firm, and as in-house counsel. I understand first-hand the work of the career trial attorneys, having been a career attorney at the Department of Justice. I understand how the Department of Justice works, both from my time there and from my extensive interactions with the Department on policy and budget matters when I was in the White House. I have extensive experience with the federal budgeting process from my time in the White House, where I interacted almost daily with persons in the Office of Management and Budget. In addition, for the last several years, I have concentrated my practice on complex financial litigation that involved accounting and securities issues. I have dealt with tax issues, both in the White House and at Tyco. I believe that I can give a fresh eye to the tax issues litigated by the Tax Division.

While in the White House, I worked closely with the National Economic Council on legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act (FUTA). I spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this disparity in tax policy between tribal governments and state governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill.

While serving as in-house counsel at Tyco, I dealt with a number of tax issues. I interacted with the Tyco tax department on a variety of issues, including the tax treatment of several items, such as those involving theft loss and charitable contributions. See, e.g., 26 U.S.C. §§ 165 and 170. I also worked with the tax department on issues which dealt with the tax treatment of certain items arising from corporate acquisitions, as well as the proper classification of acquisition expenses. See, e.g., 26 U.S.C. § 269. I also advised the tax department on responding to IRS subpoenas. In addition, two of the Company's Senior Vice Presidents of Tax were either witnesses or potential witnesses in the multi-district securities litigation for which I was responsible. One of the former heads of Tyco's tax department, R. Scott Stevenson, ultimately pled guilty to failing to report more than \$170 million in U.S. income on Tyco's tax returns and was sentenced to three years in prison. Additionally, I interacted with the tax department on issues involving state tax payments for various former senior executives. Finally, I interacted with the tax department regarding the approximately \$3 billion settlement of the Tyco securities litigation and issues involving its tax treatment. See, e.g., 26 U.S.C. § 162.

(2) How do you view the relationship and respective roles of the Assistant Attorney General for the Tax Division, the Treasury Assistant Secretary for Tax Policy, and the Commissioner of the Internal Revenue Service (IRS)?

1

I view the relationships between the Assistant Attorney General for the Tax Division, the Assistant Secretary for Tax Policy at the Treasury Department, the Commissioner of the Internal Revenue Service (IRS), as well as the IRS Chief Counsel as extremely important, and I will strive to foster an open and cooperative relationships with all of them. As for the role of the Assistant Attorney General for the Tax Division, the Tax Division of the Department of Justice is a litigating division of the Department and serves as the enforcement arm of the IRS (IRS). The Tax Division does not make tax policy; it merely enforces existing law. The Treasury Department and the IRS are responsible for formulating tax policy along with Congress.

(3) What are your top priorities if confirmed?

If I am confirmed, my top priorities for the Tax Division will include improving coordination with the IRS, the Treasury Department and U.S. Attorneys Offices across the country; rooting out tax fraud and abuse; combating offshore tax avoidance; increasing international enforcement along with the IRS; ensuring that the Tax Division maintains the highest ethical standards; and ensuring that there is fair and uniform enforcement of the tax laws.

(4) The United States loses an estimated \$100 billion each year from offshore tax abuse. If confirmed, what priority would you place on tackling that problem and what steps would you advocate?

It is of paramount importance to our system of voluntary compliance with federal tax laws that the citizens of this country have confidence that the system is fair. I believe that tackling offshore tax abuse should be a priority. There is general agreement in the tax administration community that there is no "silver bullet" that will solve the problems of offshore tax avoidance. If there were such a magic solution, it would already have been implemented. Rather, an integrated approach is needed. Within this integrated approach, the Tax Division will work closely with the Internal Revenue Service and utilize the enforcement tools available to it in combating offshore tax evasion, including both criminal and civil actions and the issuance of summons.

(5) DOJ has calculated that, during FY2008, the Tax Division collected nearly \$180 million through affirmative tax litigation and defended suits seeking tax refunds totaling over \$800 million, on a budget of less than \$93 million. It has also determined that, over the past four years, the Tax Division has, on average, returned \$14 to the Treasury for every \$1 spent on attorney salaries and expenses. Do you support increasing Tax Division resources to enable it to file more affirmative tax cases?

If I am confirmed, I will work to ensure that the Tax Division has sufficient resources to promote the Division's mission to enforce the nation's tax laws fully, fairly, and consistently.

Tax Haven Banks

(6) The Permanent Subcommittee on Investigations ("Subcommittee"), which I chair, has held several hearings examining financial institutions which are located in tax havens and which have assisted U.S. clients in evading payment of U.S. taxes. In 2008, DOJ filed charges against one such bank, UBS AG, which then entered into a deferred prosecution agreement, paid a \$750 million fine,

and admitted to participating in a scheme to defraud the United States and IRS. DOJ also filed charges against former and current UBS officials for conspiring with U.S. clients to defraud the IRS. In addition, DOJ served a civil John Doe summons on UBS seeking the names of approximately 52,000 U.S. clients with \$18 billion in Swiss accounts that were not disclosed to the IRS, and filed a court petition to enforce the summons.

(a) What is your view of the legal actions taken against UBS and its personnel?

Since I am not in the Department, I have no specific knowledge of the Department's actions in this matter other than what has been reported publicly and am not in a position to comment on them.

(b) Should the United States continue the ongoing litigation to enforce the John Doe summons against UBS AG in order to obtain the 52,000 U.S. client names?

Since I am not in the Department, I have no specific knowledge of the Department's actions in this matter other than what has been reported publicly and am not in a position to comment on them.

(c) The Swiss Government has apparently offered to renegotiate its tax treaty with the United States to provide a greater exchange of tax information if the United States would terminate the pending John Doe summons proceeding. What is your reaction to that offer?

Since I am not in the Department, I have no specific knowledge of the Department's actions in this matter other than what has been reported publicly and am not in a position to comment on them. I would defer to other agencies regarding treaties.

(d) If confirmed, would you support taking similar legal action against other tax haven banks that assist U.S. clients to evade U.S. taxes?

If I am confirmed, I will use the resources of the Tax Division in a way that best promotes the Division's mission to enforce the nation's tax laws fully, fairly, and consistently, including working to combat offshore tax avoidance.

(7) DOJ has filed separate criminal charges against two U.S. taxpayers with UBS Swiss accounts containing millions of dollars for which U.S. taxes were not paid. More such prosecutions are expected.

(a) Do you support DOJ's devoting resources to prosecuting such U.S. accountholders?

Since I am not in the Department, I have no specific knowledge of the Department's actions in this matter other than what has been reported publicly and am not in a position to comment on them. However, there are obligations of United States taxpayers holding assets in overseas accounts. A United States taxpayer is free to hold accounts offshore or in a foreign bank. But the United States taxpayer still must report

information about those assets and the income they generate, and pay all United States taxes that result from that income. Taxpayers who fail to make disclosure or to report their income are potentially subject to civil penalties and, in appropriate circumstances, criminal prosecution.

(b) If the John Doe summons were upheld and UBS provides the names of 52,000 clients, what are your thoughts about how to manage this caseload?

Since I am not in the Department, I have no specific knowledge of the Department's actions in this matter other than what has been reported publicly and am not in a position to comment on them. Nonetheless, as for any case, I believe that the resources of the Tax Division will have to be allocated appropriately and that the Tax Division will have to work cooperatively with the U.S. Attorney's Offices across the country if the case unfolds in this manner.

(c) What is your view on when to treat these cases as criminal versus civil matters?

With regard to any potential case, the decision to proceed either criminally or civilly depends on the particular facts and applicable law.

(d) Do you support DOJ's focusing on not only on the account holders, but also on the banking, tax, and other professionals who advised or facilitated use of the UBS Swiss accounts?

Since I am not in the Department, I have no specific knowledge of the Department's actions in this matter other than what has been reported publicly and am not in a position to comment on them.

Offshore Tax Abuse

(8) The Stop Tax Haven Abuse Act, S. 506, has been endorsed by the Obama Administration, and a similar bill was cosponsored by President Obama when he was a Senator in the last Congress. It would make offshore tax cases easier to uncover, investigate, and prove in court. If confirmed, would you support its enactment into law?

If I am confirmed, I would be happy to review the Stop Tax Haven Abuse Act.

(9) Last year, my Subcommittee held a hearing which disclosed that the United States is losing billions of dollars from the failure of foreign persons to pay U.S. taxes owed on U.S. stock dividends. If confirmed, would you support allocating DOJ resources to identify the nonpayment of dividend taxes and take enforcement action against persons who failed to pay those taxes?

If I am confirmed, I will use the resources of the Tax Division in a way that best promotes the Division's mission to enforce the nation's tax laws fully, fairly, and consistently.

Abusive Tax Shelters

(10) The Tax Division has devoted significant resources to fighting complex tax shelters used to enable corporations and high-income individuals to evade payment of billions of dollars in U.S. taxes. DOJ has disclosed that it is currently litigating about 94 civil tax shelter cases.

(a) If confirmed, would you support continuing the Tax Division's focus on these cases?

Yes, stopping the spread of tax shelters and increasing international enforcement, two of my priorities, are among the greatest challenges for the Tax Division.

(b) Would you also support the Department's strategy of focusing not only on the taxpayers who use the tax shelters, but also the tax professionals who designed, marketed, and implemented them?

Yes, stopping the spread of tax shelters and increasing international enforcement, two of my priorities, are among the greatest challenges for the Tax Division.

(c) What is your view on treating more of these cases as criminal rather than civil matters?

The decision to proceed either criminally or civilly depends on the particular facts and applicable law.

Incorporation Practices

(11) In 2006, the international Financial Action Task Force on Money Laundering (FATF) criticized the United States for forming nearly two million corporations and limited liability companies each year without identifying their beneficial owners, in violation of FATF's international anti-money laundering standards. FATF asked the United States to correct this deficiency by July 2008, but the United States missed that deadline, in part because the states have been unable to agree on beneficial ownership disclosure rules that would meet the FATF standards. At a 2006 Subcommittee hearing, DOJ, Treasury, and IRS officials testified that U.S. corporations are sometimes misused for purposes of tax evasion, money laundering, or other misconduct, and that missing beneficial ownership information impeded federal investigations and enforcement actions. If confirmed, would you support enactment of S. 569, a successor bill to a Levin-Coleman-Obama bill in the last Congress, to strengthen U.S. incorporation practices and meet FATF standards?

If I am confirmed, I would be happy to review S. 569.



SUBMISSIONS FOR THE RECORD
ALL INDIAN PUEBLO COUNCIL

CHAIRMAN JOE A. GARCIA

VICE CHAIRMAN GREGORY T. ORTIZ

February 3, 2010

Senator Harry Reid
 Senate Majority Leader
 Hart Sen. Ofc. Bldg., Room 522
 Washington, DC 20510

Senator Mitch McConnell
 Senate Minority Leader
 Russell Sen. Ofc. Bldg., Rm. 361-A
 Washington, DC 20510

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Bldg.
 Washington, DC 20510

Senator Jeff Sessions
 Ranking, Senate Judiciary Comm.
 224 Dirksen Senate Office Bldg.
 Washington, DC 20510

Re: Confirmation of Mary Smith as DOJ Assistant Attorney General

Dear Senators Reid, McConnell, Leahy and Sessions:

On behalf of the All Indian Pueblo Council (AIPC), representing 20 Pueblo Indian Nations in New Mexico and Texas, I write to express our support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division of the U.S. Department of Justice.

Ms. Smith is an accomplished litigator who has the skills to succeed as the head of the Tax Division. Having worked as a trial attorney in the DOJ Civil Division (where she never lost a case), she understands the Justice Department as an institution and the perspective of the career staff. Not to mention, she has an incredible work ethic and more litigation and management experience than many of her predecessors. She has worked at Skadden, Arps, Slate, Meagher & Flom LLP, and also served as a partner at Schoeman, Updike, Kaufman & Scharf LLP, a woman-owned firm. In addition, she was the in-house attorney responsible for managing a large multi-district litigation at Tyco International.

In addition to her impressive legal credentials, Ms. Smith is also a dedicated member of the Native American community. Over her career, she has worked tirelessly to improve the visibility and access of Native Americans in the legal profession and to advance Native American civil rights. Ms. Smith is a member of the Cherokee Nation and, if confirmed, would be the first Native American to hold the rank of Assistant Attorney General in the 140-year life of the Department of Justice. In fact, she would be the highest ranking Native American in DOJ history.

Ms. Smith is a first-rate attorney whose experience spans government, private practice and the private sector. AIPC is confident that she possesses the skills, experience, and

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 505.881.1992 fax: 505.881.1992 admin@20pueblos.org www.20pueblos.org

high degree of professionalism required to succeed as the first ever Native American Assistant Attorney General at the DOJ, and we respectfully urge her swift confirmation.

Best regards,



Joe A. Garcia
Chairman, All Indian Pueblo Council

All Indian Pueblo Council
2401 12th St. NW, Albuquerque N.M. 87104
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October 21, 2009

Senator Harry Reid
Senate Majority Leader
522 Hart Senate Office Building
Washington, DC 20510

Senator Mitch McConnell
Senate Minority Leader
361-A Russell Senate Office Building
Washington, DC 20510

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary
Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Confirmation of Mary Smith as DOJ Assistant Attorney General

Dear Senators Reid, McConnell, Leahy and Sessions:

I write to urge a swift vote for Mary L. Smith to be Assistant Attorney General for the Tax Division at the United States Department of Justice.

I am the Tribal Chairman/CEO, Jamestown S'Klallam Tribe, and the President, Washington Indian Gaming Association. I currently am the Treasurer and a member of the Executive Committee of the National Congress of American Indians (NCAI) and have previously served for two terms as NCAI president. I worked closely with Mary during her years in the Clinton White House and always found her to be fully prepared on complex subject matters and extremely diligent. I am confident that Mary will provide strong leadership for the Division and is a good choice for the position.

Both from her time as a trial attorney at the Department of Justice and from her work on the transition regarding the Tax Division, Mary is familiar with the work and the organization of the Tax Division. Mary has worked to familiarize herself with the issues and the substantive work of the Tax Division. Mary's extensive litigation background in heavily-regulated areas will translate well to the type of cases litigated by the Division. I believe that Mary has the experience and abilities to lead the Tax Division.

President Obama has been extremely supportive of Tribal sovereignty, Treaties and community issues and has worked to appoint several Native Americans to high levels in his

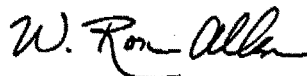
The Honorable Harry Reid
The Honorable Mitch McConnell
October 21, 2009

administration, including Mary, who will be the highest-level Native American appointment in the Department of Justice. In fact, there has never been a Native American who has served at the Assistant Attorney General level at the Department. We firmly believe it is time that Mary is confirmed to this position.

On June 15, 2009, President Obama addressed the members of NCAI, and noted that Mary would be joining his Administration in the near future. More than four months have passed since the President's remarks. On November 5, 2009, the President will host a White House Tribal Nations Conference, where leaders from the 564 federally recognized tribes will meet with the President and senior members of his administration. I urge that Mary be confirmed before this conference so that Mary will be able to join other Native American appointees as a member of the administration.

Our Tribe is honored to support Mary L. Smith as Assistant Attorney General for the Tax Division, and I urge a vote on her confirmation promptly.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO

Cc: National Congress of American Indians (NCAI)
Senator Patty Murray
Senator Maria Cantwell
Congressman Norm Dicks



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DENNIS W. ARCHER

April 29, 2009

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Senator Arlen Specter
 Ranking Member, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

As you know, I served as an Associate Justice of the Michigan Supreme Court, as Mayor of Detroit, and as Past President of the American Bar Association. I have great respect for public service and the importance of adherence to the rule of law.

Mary's career spans the government, private practice, and the private sector. Mary was a trial attorney at the U.S. Department of Justice where she served as the principal attorney in a number of trials and appeals. While she hails from Chicago, Mary spent a number of years in the White House as a member of the Domestic Policy Council, where she was responsible for policy areas that are key to advancing the rights of women and minorities, including domestic violence, equal pay, Native American issues, civil rights issues, and hate crimes. At the end of her tenure on the Domestic Policy Council, Mary moved to the White House Counsel's Office where she served as Associate Counsel to the President.

After leaving the White House, Mary joined Skadden, Arps, Slate, Meagher & Flom LLP in Washington, D.C., specializing in securities litigation, internal investigations, and class action defense, followed by an in-house position at Tyco International (U.S.) Inc. in New Jersey. At Tyco, Mary managed one of the nation's largest securities fraud class actions – the high profile litigation arising out of the Dennis Kozlowski era and the Company's most troublesome litigation. Recently, the major portion of the litigation was settled for approximately \$3 billion, representing the single largest payment from any corporate defendant in the history of securities class action litigation. As part of her responsibilities, Mary managed a multi-million dollar budget, over 40 outside counsel, and over 60 contract attorneys.

C O U N S E L O R S A T L A W

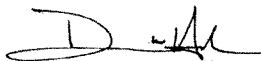
DETROIT NASHVILLE WASHINGTON, D.C. TORONTO PHOENIX
 BLOOMFIELD HILLS ANN ARBOR LANSING GRAND RAPIDS

Senator Patrick J. Leahy
Senator Arlen Specter
April 29, 2009
Page 2

Mary is passionate about advancing women and persons of color in the legal profession and working to eradicate barriers to the full participation of all in the legal profession. She not only calls on her own experiences as a woman lawyer of color, she is able to build bridges with people of many different racial and ethnic backgrounds to take concrete steps for advancing the diversity of the legal profession. Her many activities within the American Bar Association, the National Native American Bar Association, the Chicago Bar Association, and the Chicago Bar Foundation show a deep commitment to making diversity a reality.

I enthusiastically support Mary Smith's nomination as Assistant Attorney for the Tax Division, and I urge her confirmation.

Sincerely,



Dennis W. Archer

DWA/ma

Counselors At Law

DETROIT NASHVILLE WASHINGTON, D.C. TORONTO PHOENIX
BLOOMFIELD HILLS ANN ARBOR LANSING GRAND RAPIDS

BOIES, SCHILLER & FLEXNER LLP

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April 28, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

Having previously served as Special Trial Counsel for the United States Department of Justice in its successful antitrust suit against Microsoft, I care deeply about the Justice Department and its goal of enforcing this nation's laws fairly and pursuant to the rule of law. I believe that Mary Smith will lead the Department's Tax Division with dedication, sound judgment and integrity.

I have known Mary for several years, and I worked closely with her while she served as Senior Litigation Counsel at Tyco International (US) Inc. where she was responsible for the sprawling multi-district litigation arising out of the criminal acts of former Tyco management. I served as lead counsel for Tyco in the case of *In re Tyco International Ltd. Securities Litigation*, which has been called "the most complex securities class action in history."

This case involved extensive and complex accounting and tax issues. Mary came to the case in 2005 following an internal investigation which had been conducted in 2002. The case involved hundreds of witnesses and over 80 million pages of documents. In a short time, Mary became intimately familiar not only with the facts and law of the case, but the intricate accounting principles and issues which spanned several years and five restatements of Tyco's financial statements. In fact, Mary knew many of these accounting issues better than many of the outside counsel involved in the case, some of whom had been involved in the case for some time. I was impressed with Mary's ability not only to grasp complex financial concepts but to assimilate that knowledge into a cohesive strategy for the case.

Given the scope of the case, there were many moving parts, including hundreds of witnesses and a great number of outside law firms. Mary was the focal point of coordinating many of the defense counsel in the case. She fairly listened to the concerns and issues of all

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BOIES, SCHILLER & FLEXNER LLP

The Honorable Patrick J. Leahy
The Honorable Arlen Specter
April 28, 2009

involved with the result that the overwhelming majority of former Company employees cooperated with the defense and there were no internecine conflicts between competing law firms. The case moved forward with efficiency and with air of collegiality – a feat not to be underestimated.

Mary effectively supervised, questioned, and where necessary challenged her outside counsel on case strategy and tactics. She took her fiduciary duty to her client seriously and acted with the greatest ability and integrity. I believe she will bring these same qualities to her position at the Department of Justice.

I am pleased to support Mary Smith as Assistant Attorney General for the Tax Division at the U.S. Department of Justice. I would be happy to respond to any questions you or your staff may have.

Sincerely,



David Boies

EDWARDS ANGELL PALMER & DODGE LLP

One Giralda Farms Madison, NJ 07940 973.520.2300 fax 973.520.2600 expdlaw.com

Paulette Brown
Partner & Chief Diversity Officer

May 6, 2009

VIA FEDERAL EXPRESSSenator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510Re: **Mary L. Smith**

Dear Chairman Leahy and Ranking Member Sessions:

It is an honor to write a letter on behalf of Mary Smith who has been nominated to be Assistant Attorney General for the Tax Division of the United States Justice Department. Over the past several years, I have come to know Mary in a number of capacities and I am confident that she will serve our country well as Assistant Attorney General. Based upon her background, experience and work ethic, Mary is ideally suited for this position.

As a past president of the National Bar Association, I have worked closely with other bar associations of color, including the Native American Bar Association. Mary has been a major contributor to that Association's goals and ideals, where she serves as a member of its Board. Mary has not limited her efforts to the Native American Bar Association, she has also worked tirelessly for Individual Rights and Responsibilities Section of the American Bar Association in a number of capacities. In each position, Mary has advanced the rights of others.

Mary succeeded me as Chair of the Women of Color Committee for the ABA's Commission on Women in the Profession. (For a period of time, our terms on the Commission on Women overlapped.) As current Chair, Mary has taken this committee and its initial project, "Visible Invisibility: Women of Color in Law Firms" to the next two levels, focusing first on how women can be successful in the large law firm setting and second on women of color in government and the private sector. As can be gleaned from Mary's resume, she knows first hand the experiences of women of color in each of these arenas.

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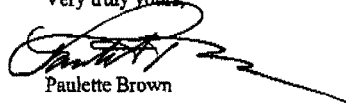
Senator Patrick J. Leahy
Senator Jeff Sessions
May 6, 2009
Page 2

At Tyco, Mary was Senior Litigation Counsel, responsible for the coordination of all Tyco legacy litigation matters and managed a multi-million dollar budget, along with 40 outside counsel, of which I was one. My interaction with Mary in this context was rewarding and instructive. It was during this attorney/client relationship that I came to appreciate the depth of Mary's knowledge in the area of securities and her keen analytical skills.

Mary was recently elected to the Board of Governors of the American Bar Association, where I was looking to work with her once again. Of course, if Mary is confirmed, I will miss out on this opportunity. I looked forward to working with Mary once again, learning from her and getting her unique perspective on issues. Serving as Assistant Attorney General for the Tax Division is clearly more important and more impactful.

Please advise if you need further information.

Very truly yours,



Paulette Brown

PB/am



**ILLINOIS STATE
BAR ASSOCIATION**

Jack C. Carey - President

May 5, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Mary Smith
Assistant Attorney General, Tax Division

Dear Chairman Leahy:

I first met Mary when I served as President-Elect of the Illinois State Bar Association. We were colleagues in the House of Delegates of the American Bar Association. Mary was the Delegate from the National Native American Bar Association. As both President-Elect and President of the ISBA, I appreciated Mary's candor, her preparedness, and her personality.

While serving with her in the ABA House of Delegates, I appreciated her dedicated, passionate and thoughtful service to both the Illinois Delegation and the ABA. She attended Illinois Delegation Pre-ABA meetings either personally or by phone; she was always prepared and she always brought insight to the issues which were going to be discussed by the ABA.

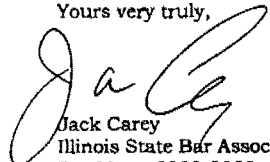
For the past two years, during ABA Law Day, Mary has joined with the ISBA in lobbying for additional funds for the Legal Services Corporation. She is sensitive to the needs of those who require legal services but are unable to obtain them.

Mary has had substantial legal experience in both the public and private sector. She has clerked for a federal judge, interned at the US Attorney's Office for the Northern District of Illinois, served as Trial Attorney in the Civil Division, and Commercial Litigation Branch with the Department of Justice. Finally, she enjoyed a political appointment in the Clinton White House, holding the positions of both Domestic Policy Counsel and White House Counsel's Office.

The Honorable Patrick J. Leahy
The Honorable Arlen Specter
May 5, 2009

It is without reservation I support Mary Smith's nomination as Assistant Attorney General for the Tax Division. I urge confirmation.

Yours very truly,



Jack Carey
Illinois State Bar Association
President, 2008-2009

Sheldon S. Cohen



Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

June 18, 2009

Dear Chairman Leahy and Ranking Member Sessions,

I write to express my strong support for Mary L. Smith to be Assistant Attorney General for the Tax Division at the United States Department of Justice.

During the Johnson Administration, I served as both Chief Counsel for the Internal Revenue Service (IRS) and as IRS Commissioner. During that time, I worked closely with the Tax Division of the Department of Justice. The Tax Division of the Department of Justice is a litigating division of the Department and serves as the litigation and enforcement arm for the IRS. The Tax Division does not make tax policy. The Treasury Department and the IRS are charged with tax policy-making. The Tax Division merely enforces existing law in federal courts.

As a litigating division, the Assistant Attorney General is well-served to have significant litigating experience, particularly in the area of complex financial litigation. Mary Smith has this experience. I have had the opportunity to meet with Mary at length. We discussed the Tax Division and its work. I believe that Mary is well-qualified for the position, and has the experience necessary to lead the Tax Division. She will be a superb leader for the Tax Division.

I applaud President Obama's selection of her for this position and urge her swift confirmation.

Sincerely,

A handwritten signature in black ink that reads "Sheldon S. Cohen".

Sheldon S. Cohen, Esq.

*Criminology & Criminal Justice
Policy Coalition*



The Honorable Patrick Leahy
433 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
335 Russell Senate Office Building
United States Senate
Washington, DC 20510

November 12, 2009

Dear Senators Leahy and Sessions:

On behalf of the Criminology and Criminal Justice Policy Coalition, a partnership between the Academy of Criminal Justice Sciences and the American Society of Criminology, we write to urge your support for the nomination of Dr. James P. Lynch to serve as the next Director of the Bureau of Justice Statistics (BJS) at the Department of Justice. We hope that the Senate Judiciary Committee will move swiftly in confirming his nomination.

We believe Dr. Lynch is an outstanding candidate, who will bring with him experience in survey design, an understanding of criminal justice issues broadly, and a working understanding of the Bureau and its needs. Dr. Lynch currently serves as a Distinguished Professor at John Jay College in New York. He spent the previous nineteen years as a faculty member in the Department of Justice, Law and Society (JLS) at American University, ultimately serving as chair of the department before joining John Jay in 2005. Over the course of his career, he has been elected to serve on the Executive Board of the *American Society of Criminology*, the editorial boards of *Criminology* and the *Journal of Quantitative Criminology*, and as Deputy Editor of *Justice Quarterly*.

The Bureau of Justice Statistics is responsible for collecting, analyzing, and disseminating data on crime, criminal offenders, and victims of crime. The information that the Bureau collects is critical to Federal, State, and local policymakers, and plays a key role in developing effective responses to combating crime. BJS conducts the National Crime Victimization Survey, and is our nation's source for demographic statistics about all aspects of the justice system: including the processing of people accused of crime, the management and administration of justice, and even some aspects of the impact of the justice system on families and communities. Reports

from BJS are relied upon to compare states' sentencing practices, learn about the fast-evolving drug problem in the nation, measure correctional growth and costs, and estimate cost-savings of alternative criminal justice strategies. There is no other source for data and reports such as these, and the independence of this office makes its findings of inestimable importance for planning and evaluation of criminal justice policies and practices.

Experience has shown that for a successful Director, BJS requires a person knowledgeable in the scientific aspects of demography, the mechanical particulars of gathering and preparing survey data for public use, and the protocols for scientifically acceptable sampling and statistical estimation. The nation can ill afford weak leadership of this crucial source for data on which policy makers and scientists alike rely. Dr. Lynch's years of experience as a researcher and leader in our field have prepared him to excel in this role. In 1980 he joined the Bureau of Social Science Research and over the next six years served as the manager of the National Crime Survey Redesign. He has also chaired the American Statistical Association's Committee on Law and Justice Statistics, and served as a member of the National Academies of Science panel reviewing BJS programs. We are confident that Dr. Lynch will bring to this position his sophisticated understanding of survey research and design, and his knowledge of the application of public justice data to criminal justice planning and management.

Our organizations, the American Society of Criminology and the Academy of Criminal Justice Sciences, represent criminologists, researchers, and practitioners in the fields of criminology, prevention and treatment of crime and delinquency, and criminal justice. On behalf of our more than 6,000 members, we urge you to support the nomination of Dr. Lynch to serve as the next Director of BJS.

Sincerely yours,



Richard Rosenfeld
 President, 2009-2010
 American Society of Criminology
 Curators Professor
 Department of Criminology and Criminal Justice
 University of Missouri - St. Louis



Janice Joseph
 President, 2009-2010
 Academy of Criminal Justice Sciences
 Professor
 Criminal Justice Program
 Richard Stockton College of New Jersey

AMERICAN SOCIETY OF CRIMINOLOGY
 1314 KINNEAR RD., SUITE 212
 COLUMBUS, OH 43212-1156
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 E-MAIL: ASC@ASC41.COM
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ACADEMY OF CRIMINAL JUSTICE SCIENCES
 7339 HANOVER PARKWAY, SUITE A
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DANNY K. DAVIS

7TH DISTRICT, ILLINOIS

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SUITE 130
CHICAGO, ILLINOIS 60624
(773) 629-7620

BROADVIEW DISTRICT OFFICE:
2301 ROOSEVELT ROAD
BROADVIEW, ILLINOIS 60159
(708) 348-8887

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May 5, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

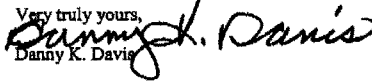
Dear Chairman Leahy and Ranking Member Sessions:

It is my pleasure to express my strong support for the nomination of Mary L. Smith as Assistant Attorney General for the Tax Division and to urge her confirmation.

I know Mary from her many community activities in Illinois. She is a board member for both the Chicago Bar Association and Chicago Bar Foundation. She also is a member of the Illinois delegation in the American Bar Association's House of Delegates. Mary also served as a Delegate from Illinois to the 2008 Democratic Convention in Denver.

Mary's broad experience in both the public and private sector make her well-qualified to be Assistant Attorney General for the Tax Division at the Department of Justice. In private practice, Mary specializes in complex financial investigations and litigation. Earlier in her career, she served as a Trial Attorney in the Department of Justice. Her experience as a career attorney at the Department will serve her well in understanding the stellar work done by the career public servants in the Tax Division.

Mary will help lead the Department with dedication, sound judgment and integrity. I wholeheartedly support her nomination, and urge the full Senate to confirm her as expeditiously as possible.

Very truly yours,

Danny K. Davis

Congress of the United States
House of Representatives
Washington, DC 20515-1307

COMMITTEE ON
WAYS AND MEANS
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 14th DISTRICT, ILLINOIS

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OVERSIGHT AND GOVERNMENT REFORM
 SUBCOMMITTEE ON
 NATIONAL SECURITY AND FOREIGN AFFAIRS

SUBCOMMITTEE ON
 DOMESTIC POLICY

Congress of the United States
House of Representatives
 Washington, DC 20515-1314

May 7, 2009

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 DIXON, IL 61021
 (815) 288-0680

137 SOUTH STATE STREET
 SUITE 344
 GENeseo, IL 61254
 (309) 944-3558

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Senator Jeff Sessions
 Ranking Member, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to express my strong support for the nomination of Mary L. Smith as Assistant Attorney General for the Tax Division and to urge her confirmation.

I came to know Mary through her community involvement in Illinois. Mary is a leader in the Chicago legal community as a board member for both the Chicago Bar Association and Chicago Bar Foundation. She also is a member of the Illinois delegation in the American Bar Association's House of Delegates. Mary has fought over the years for increased funding for legal service providers in the state of Illinois.

Mary is also extremely committed to public service having served as a Trial Attorney in the Department of Justice as well as both a member of the Domestic Policy Council and Associate Counsel to the President in the Clinton White House. In these roles, Mary worked on legal, legislative and policy issues to help citizens across the country. She has displayed a consistent dedication to serving the country and the State of Illinois. I believe that Mary Smith will be a strong addition to the leadership of the Department.

President Obama has made an excellent decision in nominating Mary Smith to be the next Assistant Attorney General for the Tax Division. I know she will bring able leadership and integrity to the Department of Justice. In short, Mary Smith is a fine choice to be this nation's Assistant Attorney General for the Tax Division. I urge her swift confirmation.

Very truly yours,

Bill Foster
 Bill Foster

PRINTED ON RECYCLED PAPER

NANCY E. GIST



May 6, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions,

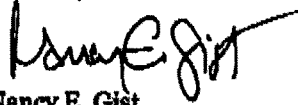
I am writing to express my enthusiastic support for the confirmation of Mary L. Smith, President Obama's nominee to serve as Assistant Attorney General for the Tax Division.

I served as Director of the Bureau of Justice Assistance in the Clinton administration, and had occasion to work with Mary first when she was Associate Director of Policy Planning at the Domestic Policy Council, and then when she was Associate Counsel to the President. Our work together focused on hate crimes and civil rights initiatives. Mary proved to be a smart, savvy negotiator, organizing and leading a disparate group of advocates and agency representatives with a firm but unflinchingly gracious hand. As she has demonstrated throughout her legal career, Mary is a lawyer of great judgment and integrity, as well as a strong and capable leader. With her extensive securities and financial litigation experience, and her varied legal practice in major law firms, at a Fortune 500 company, and as a career lawyer as well as a political appointee in the federal government, Mary will bring solid legal grounding and a unique perspective to the Tax Division.

In addition, Mary has a significant record of service to the profession through her active engagement with the American Bar Association, the Chicago Bar Association, the District of Columbia Bar Association and the Native American Bar Association. In each instance, she has been a leader on issues of fairness and equity within the profession and beyond.

I have no doubt that Mary will prove to be an outstanding leader of the Tax Division, and I urge that the Senate act swiftly to confirm her.

Sincerely yours,



Nancy E. Gist

K&L|GATES

K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, MA 02111-2950
t 617.261.3100 www.klgates.com

April 28, 2009

Michael S. Greco


Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I write to express my strong support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division in the Department of Justice.

As Past President of the American Bar Association I have observed first-hand Ms. Smith's leadership, integrity, perseverance, and her considerable skills as a lawyer and public servant. She is a principled leader and dedicated attorney. Ms. Smith's longstanding commitment to public service is exemplary and her wide experience and substantive knowledge in the field of tax law is excellent.

Ms. Smith has served her community and the legal profession through the offices she has held in the American Bar Association ("ABA"), the National Native American Bar Association, the Chicago Bar Association and the District of Columbia Bar Association. She currently serves as one of thirteen Commissioners on the ABA's Commission on Women in the Profession. She is Native American and an enrolled member of the Cherokee Nation, and she is the first enrolled tribal member to serve on the Commission in its twenty-year history. As part of her duties on the Commission, Ms. Smith is Chair of the Women of Color Committee and directs the Women of Color Research Initiative, a nationally-known research program. She also currently serves as a member of the Council of the Section of Individual Rights & Responsibilities, a Section widely known as the "conscience" of the ABA and of which I am a former Chair. Ms. Smith is a member of the Illinois Delegation to the ABA House of Delegates, where she serves as the representative for the National Native American Bar Association. As a Delegate she works tirelessly to improve the visibility and access of Native Americans in the legal profession and Native American civil rights. At the 2008 ABA Annual Meeting, Ms. Smith was one of the principal drafters of and a lead advocate for

K&L|GATES

Senator Patrick J. Leahy
Senator Arlen Specter
April 28, 2009
Page 2

a resolution that passed the House and which supports increased funding for tribal courts and tribal justice systems.

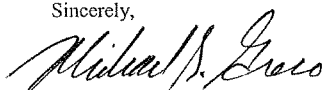
In the ABA's Litigation Section Ms. Smith has risen through the ranks to become a member of the Section's leadership. She currently is Co-Chair of the Content Committee. She has served as Co-Chair for the Litigation Section's Corporate Counsel CLE Program, which is one of the Section's well-attended conferences. She also served as Co-Editor of the *In-House Litigator*, which was recognized as Best Overall Newsletter for 2006-2007 under her leadership.

Ms. Smith's broad-based experience in both the public and private sectors makes her well-qualified to be Assistant Attorney General for the Tax Division. From 1994 to 1996, she was a Trial Attorney in the Civil Division, Commercial Litigation Branch, in the Department of Justice. During that time she never lost a case. From 1997 to 2000 she served as Associate Director of Policy Planning, Domestic Policy Council, at the White House. From 2000 to 2001 she was Associate Counsel to the President in the White House Counsel's Office.

In private practice, from her time at Skadden, Arps, Slate, Meagher & Flom LLP to her tenure as in-house counsel at Tyco International, Ms. Smith has had lead responsibility for large, complex matters involving finance and accounting issues.

For these reasons, I am pleased that Mary L. Smith has been nominated for, and I strongly support her confirmation to, the position of Assistant Attorney General for the Tax Division in the U.S. Department of Justice. She will be an outstanding addition to the Department.

Sincerely,



Michael S. Greco

MSG:gmoc



HUNTON & WILLIAMS LLP
 RIVERFRONT PLAZA, EAST TOWER
 951 EAST BYRD STREET
 RICHMOND, VIRGINIA 23219-4074

TEL 804 • 788 • 8200
 FAX 804 • 788 • 8218

ROBERT J. GREY, JR.

FILE NO:

April 27, 2009

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Senator Arlen Specter
 Ranking Member, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division

I have known Mary for the past several years through various positions in the American Bar Association ("ABA"), including during 2004-2005 when I was President of the ABA. I have seen Mary work her way up through the ranks of the ABA, while assuming positions of increasing responsibility and leadership.

Mary holds many leadership positions in the ABA. Mary currently serves as one of thirteen Commissioners on the ABA's Commission on Women in the Profession. She is Native American and an enrolled member of the Cherokee Nation, and she is the very first enrolled tribal member to serve on the Commission in its twenty-year history. As part of her duties on the Commission, Mary is Chair of the Women of Color Committee and directs the Women of Color Research Initiative. She also holds leadership positions in both the Section of Litigation as well as the Section of Individual Rights and Responsibilities, where she is a member of the Council. Mary currently is a member of the Illinois Delegation to the ABA House of Delegates, where she serves as the representative for the National Native American Bar Association.

ATLANTA AUSTIN BANGKOK BEIJING BRUSSELS CHARLOTTE DALLAS HOUSTON LONDON
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**HUNTON &
WILLIAMS**

Senator Patrick J. Leahy
Senator Arlen Specter
April 27, 2009
Page 2

Within the ABA, Mary works consistently to raise the visibility of Native Americans and issues important to the Native American community. She has worked on two resolutions, which have since become official ABA policy, to advance issues of important to Native Americans. For instance, last year, she helped to ensure passage of a resolution to promote additional funding for tribal justice systems. Mary also serves as a mentor to women and persons of color. This past February both she and I testified at a Diversity Hearing at the ABA Mid-Year meeting in Boston. Through this diversity initiative, the ABA seeks to expand its diversity efforts by reaching out to a variety of stakeholders within the legal profession to examine how the face of diversity has changed over the years and what direction diversity may take in the future.

Outside of the ABA, Mary has a breath of experience that makes her well-suited to head the Tax Division at the Department of Justice. From 1994-1996, Mary served as a career Trial Attorney at the Department of Justice where she was the principal attorney for a number of trials and appeals. Following her stint at the Department of Justice, Mary spent a number of years in the White House both as a member of the Domestic Policy Council and as Associate Counsel to the President, where she was responsible for policy areas including criminal justice, tax issues, Native American policy, and civil rights issues.

After leaving the White House, Mary joined Skadden, Arps, Slate, Meagher & Flom LLP in Washington, D.C., specializing in securities litigation, internal investigations, and class action defense. From 2005-2007, Mary served as the principal in-house attorney on the wide-ranging litigation stemming from the illegal acts of former Tyco management. As part of the responsibilities, Mary supervised a large team of outside attorneys, drove strategy for the litigation, and managed a multi-million dollar budget. Currently, Mary is Partner at Schoeman, Updike & Kaufman, LLP, one of the nation's largest women-owned firms.

I enthusiastically support Mary Smith's nomination as Assistant Attorney General for the Tax Division and urge her rapid confirmation.

Very truly yours,



Robert J. Gray, Jr.
ABA President, 2004-2005



RAMONA E. ROMERO
NATIONAL PRESIDENT

May 11, 2009

VIA FACSIMILE AND ELECTRONIC MAIL

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
433 Russell Senate Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
U.S. Senate Committee on the Judiciary
335 Russell Senate Building
Washington, DC 20510

Re: *HNBA Letter of Support of Mary L. Smith for Assistant Attorney General
of the Tax Division in the U.S. Department of Justice*

Dear Senators Leahy and Sessions:

On behalf of the Hispanic National Bar Association (HNBA), I write to support the immediate confirmation of Ms. Mary L. Smith as Assistant Attorney General for the Tax Division of the U.S. Department of Justice. The HNBA is a non-profit, non-partisan organization that represents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, law students and paralegals in the United States and Puerto Rico.

We support President Obama's nomination of Ms. Smith due to her broad experience as a lawyer and her impressive career as an attorney in both the private sector and the federal government. Since graduating *cum laude* from the University of Chicago School of Law in 1991, she has excelled as a well-respected practitioner and litigator. For the last several years, Ms. Smith has been a partner at the law firm Schoeman, Updike & Kaufman in Chicago. Her experience in the private sector also includes serving as Senior Litigation Counsel at Tyco International (US), Inc. and as a senior associate at Skadden, Arps, Slate, Meagher & Flom, LLP in Washington, D.C.

Ms. Smith has substantial management experience that makes her a strong candidate to run the Tax Division. For example, while working at Tyco, she managed a securities class action multi-district litigation that required her to oversee a multi-million dollar budget and to manage over 40 outside counsel and 60 contract attorneys. This managerial experience will serve her well as Assistant Attorney General, a post that will

HNBA Letter of Support for Mary L. Smith
May 11, 2009
Page 2 of 2

require her to oversee a large staff while working with Attorney General Holder to implement President Obama's tax policy.

Ms. Smith's experience in the private sector is complemented by prior government service. In the Clinton White House, Ms. Smith served as the Associate Counsel to the President and Associate Director of Policy Planning. Earlier in her career, Ms. Smith was a trial attorney for the U.S. Department of Justice Civil Division. These experiences show the reach of Ms. Smith's abilities and her capacity for tackling an array of problems across the legal spectrum.

The HNBA supports the development of a diverse U.S. Department of Justice staffed by the best and the brightest attorneys from the many rich cultures and groups in the United States. Ms. Smith's accomplishments and her identification as an enrolled member of the Cherokee Nation further this goal.

In sum, Ms. Smith's professional qualifications, personal attributes and dedication to public service make her an outstanding candidate to serve as the Assistant Attorney General of the Tax Division in the U.S. Department of Justice. We stand ready to assist in your deliberations should there be any questions. Please feel free to contact me at our national office at [REDACTED]

Sincerely yours,



Ramona E. Romero
National President

cc: The Honorable Eric H. Holder, Jr., U.S. Attorney General
Ms. Mary Smith, Esq.
Román D. Hernández, HNBA President-Elect
Jessica Herrera-Flanigan, Region V President
Alejandra Castillo, Co-Chair of HNBA Executive Endorsements Committee
HNBA Executive Committee
M. Lucero Ortiz, HNBA Director of Programs and Policy

BINGHAM

Nathan J. Hochman

May 11, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

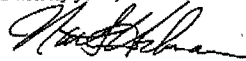
I write to express my support for Mary L. Smith to be Assistant Attorney General for the Tax Division at the United States Department of Justice.

Most recently, I served as Assistant Attorney General for the Tax Division during the Bush Administration. I met Mary during the transition where she was responsible for the Tax Division. Since that time, I have had the opportunity to talk to Mary about the Tax Division and its work. I am confident that Mary will provide strong leadership for the Division and is a good choice for the position.

Mary's background as both a career government attorney and a political appointee in the Clinton White House will serve her well at the Tax Division. Mary has tremendous regard for the excellent work of the career public servants in the Division as well as a deep knowledge of how the Department operates. In addition, Mary's private practice experience in complex financial litigation gives her a working background for the type of cases litigated by the Division.

I am happy to support Mary L. Smith as Assistant Attorney General for the Tax Division.

Sincerely yours,



Nathan J. Hochman

NJH/rb

Bingham McCutchen LLP
The Water Garden
Fourth Floor
North Tower
1620 26th Street
Santa Monica, CA
90404-4060

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Washington, DC 20005

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Fax +1 202 639 9355
www.whitecase.com

Direct Dial [REDACTED]

April 23, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Support For The Confirmation of Mary L. Smith As Assistant Attorney General
For The Tax Division

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

I have known Mary for the past few years through various positions in the American Bar Association ("ABA"), including my current position as President-Elect of the ABA. I have found that Mary works tirelessly on many issues including promoting the advancement of women in the legal profession and in the many ways in which she has shown vision, leadership, collegiality, and support for positive changes, all in the context of practicing law with excellence and according to the highest ethical standards.

Mary is passionate about advancing women and persons of color in the legal profession and working to eradicate barriers to the full participation of all in the legal profession. She not only calls on her own experiences as a woman lawyer of color, she is able to build bridges with people of many different racial and ethnic backgrounds to take concrete steps for advancing the diversity of the legal profession. Her many activities in the ABA, the National Native American Bar Association, the Chicago Bar Association, and the Chicago Bar Foundation show a deep commitment to making diversity a reality.

ABU DHABI ALMATY ANKARA BEIJING BERLIN BRATISLAVA BRUSSELS BUCHAREST BUDAPEST DÜSSELDORF FRANKFURT HAMBURG
HELSINKI HONG KONG ISTANBUL JOHANNESBURG LONDON LOS ANGELES MEXICO CITY MIAMI MOSCOW MUNICH NEW YORK
PALO ALTO PARIS PRAGUE RIYADH SAO PAULO SHANGHAI SINGAPORE STOCKHOLM TOKYO WARSAW WASHINGTON, DC

WASHINGTON 1593522

April 23, 2009

WOMEN'S CASE

Mary currently serves as one of thirteen Commissioners on the ABA's Commission on Women in the Profession. She is Native American and an enrolled member of the Cherokee Nation, and she is the very first enrolled tribal member to serve on the Commission in its twenty-year history. As part of her duties on the Commission, Mary is Chair of the Women of Color Committee and directs the Women of Color Research Initiative, a nationally-known research program that has developed seminal national research and landmark reporting on the hiring and retention of women of color in the legal profession.

Under Mary's leadership, the Commission recently published *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*, a compilation of information, insights, and advice gathered from a national sample of prominent women partners of color in private practice and an examination of the practices at their firms that contributed to their success. Mary is also spearheading the next two phases of research conducted by the Women of Color Committee, which focuses on women of color who are attorneys in the corporate and government sectors. As with the earlier phases of this work, the next phases of research will focus on many issues which have not been previously examined in these environments, such as hiring, advancement and retention, performance evaluations, compensation, and working relationships with clients and colleagues.

Mary currently is a member of the Illinois Delegation to the ABA House of Delegates, where she serves as the representative for the National Native American Bar Association. This past year, she assisted in an effort to press for passage of the Lilly Ledbetter Fair Pay Act, which would reverse a 2007 Supreme Court decision and allow women to sue for pay discrimination once they discover the discrimination.

While she hails from Chicago, Mary spent a number of years in the White House both as a member of the Domestic Policy Council and as Associate Counsel to the President, where she was responsible for policy areas including criminal justice, tax issues, Native American policy, and civil rights issues.

After the White House, Mary joined Skadden, Arps, Slate, Meagher & Flom LLP in Washington, D.C., specializing in securities litigation, internal investigations, and class action defense, followed by an in-house position at Tyco International (US) Inc. in New Jersey. At Tyco, Mary managed one of the nation's largest securities fraud class actions. As in-house counsel, Mary acted on her commitment to diversity. She substantially increased the participation of women lawyers and lawyers of color serving as outside counsel in the Tyco litigation, and serving as a role model for other lawyers in the position of managing major litigation. She also played a continuing mentoring role, and co-authored an article offering practical advice for women seeking to advance their in-house careers, *In-House Journey to Success for Women Lawyers*, published in the ABA's Section of Litigation Committee on Corporate Counsel In-House Litigator Journal, Vol. 21 No. 3 (Spring 2007).

In the past year, Mary also provided policy advice to President Obama's campaign, including in the area of women's issues. She was a delegate to the Democratic Convention last August and, most recently, served on the Obama-Biden Transition Team for the U.S. Department of Justice.

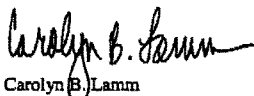
April 23, 2009

WHITE CARE

In her law practice, Mary is Partner at Schoeman, Updike & Kaufman, LLP, one of the nation's largest women-owned firms. Her selection of the Schoeman firm as the setting for her private practice also reflects Mary's commitment to diversity in her every day work life, and her ability to serve as a role model for women lawyers and lawyers of color.

I enthusiastically support Mary Smith's nomination as Assistant Attorney General for the Tax Division. She is one of the most talented and dedicated lawyers I have worked with. I am confident she will lead the Tax Division with the same brilliance and exemplary ability she has demonstrated throughout her career.

Very truly yours,



Carolyn B. Lamm



November 10, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Committee on the Judiciary
United States Senate
Washington, DC 20510

NOV 18 2009 2:34
College of Arts and Sciences
Department of Criminology
and Criminal Justice
One University Boulevard
St. Louis, Missouri 63121-4400
Telephone: 314-516-5031
Fax: 314-516-5048

Dear Senators Leahy and Sessions:

I am writing to offer my highest support for the nomination of James P. Lynch for the position of Director of the Bureau of Justice Statistics in the Office of Justice Programs, U.S. Department of Justice. The Bureau of Justice Statistics (BJS) is a small but absolutely critical agency charged with developing, gathering, and maintaining the Nation's statistics on crime and justice. The Director of the agency must be someone who is highly skilled, knowledgeable about the value of crime and justice statistics, and committed to the principals and practices of a federal statistical agency as stated by the National Research Council. Dr. Lynch possesses all of these qualities and more. He is also widely respected by his peers, as evidenced by his elections to various offices of the American Society of Criminology, his prestigious academic appointments, and his position as editor of the Journal of Quantitative Criminology. He has also served on the American Statistical Association advisory committee to BJS and as a research fellow to the agency. There is no other criminologist who possesses this range of expertise and experience with crime and justice statistics.

I have known Dr. Lynch for many years, most recently through our service on the National Academy of Sciences Committee on National Statistics, which was charged with assessing the full range of statistical programs at BJS. It was evident throughout our numerous meetings that Dr. Lynch is the preeminent expert on the data collections of BJS, and that he has a clear and objective eye for assessing the quality and usefulness of these statistical systems. I believe he will be dedicated servant to both the public and to government officials who depend on unbiased data for informing policy decisions about crime and justice in the United States.

I believe that the Nation would be fortunate to have Dr. Lynch serve as Director of the Bureau of Justice Statistics and I very strongly urge the Senate to confirm his nomination.

Respectfully,

Janet L. Lauritsen
Professor

an equal opportunity institution



Leadership Conference on Civil Rights

1629 K Street, NW
16th Floor
Washington, D.C. 20006
Phone: 202-466-3311
Fax: 202-466-3435
www.civilrights.org

May 11, 2009

OFFICERS
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National Council of Negro Women

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Asian American Justice Center
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University Women
Andrew J. Targenton
American Association of People with
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Benjamin Justice
NAACP
Jacqueline Johnson
National Congress of American Indians
Kathryn Kolbert
People For the American Way
Floyd Mori
Japanese American Citizens League
Marc H. Morial
National Urban League
Janet Margolis
National Council of La Raza
Debra Nuss
Amnesty
Mary Rose O'Rourke
American Arab Anti-Discrimination
Committee
John Payton
NAACP Legal Defense &
Educational Fund, Inc.
Dennis Van Rooyel
National Education Association
David Sperstein
Religious Action Center for Reform
Judson
Sharon L. Smith
National Fair Housing Alliance
Joe Solomonoff
Human Rights Campaign
Andrew L. Stern
Service Employees
International Union
John Traviss
Moroccan American Legal Defense
and Educational Fund
Randy Weingarten
American Federation of Teachers
Mary G. Wilson
League of Women Voters

**COMPLIANCE/ENFORCEMENT
COMMITTEE CHAIRPERSON**
Karen K. Naranjo
Asian American Justice Center
PRESIDENT & CEO
Wade J. Henderson

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Specter:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil rights coalition, we write to express our strong support for the historic nomination of Mary L. Smith to serve as Assistant Attorney General for the Tax Division in the Department of Justice. If confirmed, Ms. Smith will be the first Native American to hold the rank of Assistant Attorney General at the Department of Justice.

Ms. Smith is passionate about advancing women and persons of color in the legal profession and working to eradicate barriers to the full participation of all in the legal profession. Beginning in 1997, we worked with Ms. Smith when she was in the White House as a member of the Domestic Policy Council on trying to expand the scope of the federal hate crimes statute to include gender, sexual orientation, and disability. LCCR lead a coalition of outside groups which worked on this initiative for several years, and Ms. Smith was the main policy person in the White House interacting with the coalition on this initiative. Ms. Smith spent a considerable amount of time on the legal and policy issues surrounding the proposed legislative as well as organizing a number of events to highlight the issues. Ms. Smith worked diligently organizing the first-ever White House Conference on Hate Crimes which was held at George Washington University in November 2007. Over the next several years, Ms. Smith worked tirelessly on this legislation and planning events to highlight the need for the expanded law, including an April 2000 event with federal and local prosecutors, including Janet Napolitano, then a United States Attorney and now Secretary of the Department of Homeland Security and Amy Klobuchar, then a local prosecutor and now a U.S. Senator and a member of this esteemed Committee.

In the White House, Ms. Smith was one of the leaders who worked to get the historic Violence Against Women Act reauthorized. Ms. Smith worked tenaciously to ensure that this vital piece of legislation was reauthorized. Ms. Smith also fought to ensure equal

"Equality in a Free, Plural, Democratic Society"



pay for women. She drafted policy initiatives that would ensure that women receive equal pay for equal work. She also spearheaded an initiative that would prepare women for non-traditional jobs. It is through this work that Ms. Smith has truly made a difference of advancing women and persons of color in the legal profession and beyond.

Since her time in the White House, Ms. Smith has only continued to build her wealth of experience in both heavily-regulated areas and toward improving diversity. From 2001 to 2005, she was an attorney at Skadden, Arps, Slate, Meagher & Flom LLP in Washington, D.C. While at Skadden, Ms. Smith specialized in governmental investigations and securities class actions. During her time at Skadden, she filed an *amicus* brief on behalf of several members of Congress in support of the University of Michigan's affirmative action programs on a pro bono basis. Following her time at Skadden, Ms. Smith managed one of the nation's largest securities fraud class actions as in-house counsel at Tyco International. As in-house counsel, Ms. Smith acted on her commitment to diversity. She substantially increased the participation of women lawyers and lawyers of color serving as outside counsel in the Tyco litigation, and served as a role model for other lawyers in the position of managing major litigation.

It is clear from both the volume and breath of the policy initiatives and litigation for which Ms. Smith was responsible that she is an excellent choice to head the Tax Division. Ms. Smith is a team player and a coalition builder, and we strongly support her nomination.

Sincerely,

Wade Henderson
President and CEO
LCCR

Nancy Zirkin
Executive Vice President
LCCR

LEWIS, FEINBERG, LEE, RENAHER & JACKSON, P.C.
ATTORNEYS AT LAW
1330 BROADWAY, SUITE 1800
OAKLAND, CALIFORNIA 94612-2519

May 6, 2009

Honorable Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Jeff Sessions
Ranking Minority Member, Senate Judiciary
Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Nomination of Mary L. Smith for Assistant Attorney General for Tax

Dear Chairman Leahy and Senator Sessions:

I write to support the nomination of Mary L. Smith for Assistant Attorney General for the Tax Division and urge her confirmation by the Judiciary Committee.

I have known and worked with Mary since 1997, particularly in the 1997-2001 period when she worked in the White House as Associate Director of the White House Domestic Policy Council and the White House Counsel's Office and when I served as Assistant Attorney General for Civil Rights. As Assistant Attorney General, I had occasion to work with other individuals who headed the Tax Division and know generally the skills needed to perform that job.

Mary and I worked together on many issues, such as proposed legislation to strengthen the federal hate crimes statute, to reauthorize the Violence Against Women Act, to recognize the status of Native Hawaiians, and to speed resolution of federal employee civil rights complaints. More recently, Mary and I also served together on President Obama's Transition Team to review the work of the Justice Department for the then-incoming Administration.

After Mary left the Clinton Administration, she worked for a private law firm and for Tyco International as litigation counsel on complex litigation matters. At Tyco, for instance, she worked with the executive team and oversaw a large group of outside counsel and contract attorneys dealing with tax and securities issues in several jurisdictions.

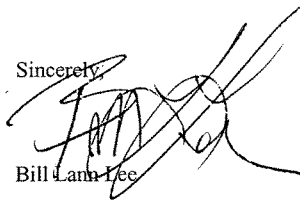
Mary has always impressed me as an even-handed, level-headed individual with excellent judgment. When she worked in the White House on policy initiatives, I found her to be very sensitive to Department of Justice enforcement issues and very flexible in accommodating those interests and the interests of individual, business, and other governmental stakeholders in framing policy proposals. She worked very well with Justice Department career lawyers. She struck me as a highly ethical individual. I am sure that her work at Tyco and private practice has given her a breadth of perspective and hands-on experience on tax and business issues and managerial expertise that will greatly assist her as Assistant Attorney General for Tax.

Patrick Leahy and Jeff Sessions
May 6, 2009
Page 2

I believe also that Mary would take very seriously her oath to enforce the Constitution and laws of the United States fairly, and that she cares very much for the Department of Justice as an institution. I also believe that she would work well with this Committee and Congress. She has a seriousness of purpose combined with a light touch and friendliness.

I therefore enthusiastically recommend Mary Smith for Assistant Attorney General for the Tax Division.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lamb Lee", written over the word "Sincerely,".

Bill Lamb Lee

William B. Lytton

April 21, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

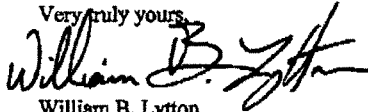
I served as an Assistant U. S. Attorney in both the Northern District of Illinois and the Eastern District of Pennsylvania in the late 1970s and early 1980s. I also served as deputy special counsel to President Ronald Reagan and as special counsel to President George H.W. Bush. As a result of these experiences, I have great respect for public service in general and for the Department of Justice in particular. We need good people in public service and I believe that Mary Smith will be a strong addition to the leadership of the Department.

I met Mary while I was the executive vice president and chief legal officer of Tyco International Ltd. In September of 2002, I joined Tyco in the wake of the scandal that was the result of the actions of the prior management team. As part of the new senior management team at Tyco, we had the enormous task of restoring confidence in and stability to the business, safeguarding the jobs of some 250,000 employees, and dealing with the various legal issues that arose out of the actions of the prior management. Part of my job was to bring in lawyers of proven ability and integrity. Mary was one of the people I brought into Tyco and she worked under my leadership managing the extensive, multi-district class action litigation that was then pending. Mary supervised all aspects of the litigation and spearheaded much of the strategy for the litigation. Mary quickly mastered all aspects of the litigation. She worked tirelessly and with the upmost ethical standards.

Mary also has dedicated a significant amount of her career to public service. From 1994 to 1996, Mary was a Trial Attorney in the Civil Division, Commercial Litigation Branch, at the Department of Justice. During this time, Mary managed an extensive docket of cases and worked diligently on behalf of the Department. From 1997 to 2000, Mary was Associate Director of Policy Planning, Domestic Policy Council, at the White House. From 2001 to 2001, Mary was Associate Counsel to the President in the White House Counsel's Office.

In short, Mary Smith is a fine choice to be this nation's Assistant Attorney General for the Tax Division. I urge the Senate to act quickly on her confirmation.

Very truly yours,

A handwritten signature in black ink, appearing to read "William B. Lytton". The signature is fluid and cursive, with a large initial "W" and "L".

William B. Lytton

771



AMERICAN UNIVERSITY

WASHINGTON, D.C.

DANIEL MARCUS

April 30, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing to express my support for the confirmation of **Mary L. Smith** as Assistant Attorney General for the Tax Division.

I served as Associate Attorney General from 2000-2001, Acting Associate Attorney General from 1999-2000, and Senior Counsel in the White House Counsel's Office from 1998-1999. At the Department of Justice, I supervised the Tax Division, and I am familiar with its work.

During my tenure at the White House and the Department of Justice, I worked with Mary Smith on a number of policy issues while she was a member of the Domestic Policy Council and later when she served as an Associate Counsel to the President. In all my dealings with Mary, I found her to be intelligent, thoughtful, and energetic. Mary's experience during the last eight years as a senior litigation lawyer for a major corporation and at two law firms has undoubtedly enhanced her already formidable talents.

Mary has the professional qualifications and the personal skills that will make her an effective manager and a good colleague for the excellent career lawyers of the Tax Division. I urge the Committee to recommend Mary's confirmation to the full Senate.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Marcus".

Daniel Marcus

WASHINGTON COLLEGE OF LAW

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April 28, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

I served as Deputy White House Counsel and Deputy Assistant to the President of the United States during the Clinton Administration. During my time in the White House, I worked closely with Mary while she was a member of the Domestic Policy Council and was so impressed with her abilities that I helped recruit her to join the Counsel's Office. It was one of my best decisions.

Mary is an absolutely superb lawyer and she will be an outstanding Assistant Attorney General. I have observed Mary's career develop from her time in the White House to private practice at one of the country's most prominent law firms to her stint as in-house counsel managing one of the largest, most complex securities cases. She has achieved tremendous success in all of these capacities and she enjoys a well-earned and well-established reputation for excellence.

While in the White House, I, along with Mary, worked closely with members of this committee to draft compromise language on legislation which was eventually signed by the President. Mary worked closely with both majority and minority Committee members to resolve issues involving constitutional questions. I was impressed with Mary's ability to work across party lines to develop innovative policy solutions.

Mary has the ability to juggle many projects and issues at one time. I can think of no one who works harder. Her ability to build consensus is a testament to her integrity and respect for other viewpoints. She is also exceptionally well qualified for positions at the highest levels of public service. She has superb judgment, knows how to work on matters that are in the public eye, and is a person of unquestioned character and integrity.

I am pleased to support Mary Smith as Assistant Attorney for the Tax Division. I know that she will serve the Department and the country well.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. P. Marshall". The signature is written in a cursive style with some capital letters.

William P. Marshall
Kenan Professor of Law
University of North Carolina
Chapel Hill, NC 27599



ORRICK, HERRINGTON & BUTCLIFFE LLP
CORPORATE GROUP
1152 15TH STREET, NW
WASHINGTON, D.C. 20005-1706
tel 41 202-339-8600
fax 41-202-339-8700
WWW.ORRICK.COM

April 29, 2009

Michael J. Madigan

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter, Ranking Member
Senate Committee on the Judiciary
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Mr. Chairman and Senator Specter:

I write to wholeheartedly support the nomination of Mary Smith to be Assistant Attorney General for the Tax Division of the Department of Justice. With the President's announced priority of reforming our badly outdated, inefficient and inequitable tax code, Mary would be a positive force and the right kind of leader. In addition, the Tax Division would no doubt benefit from a fresh critical look at all aspects of tax enforcement. Mary's wide and varied background of experience will serve her well in this regard.

As a trial lawyer who has interfaced with the Tax Division in recent years, I believe that Mary would bring the energy and changes needed in the future critical years ahead. As a Republican, I think the President has made an outstanding choice to lead the critically important Tax Division.

Mary Smith is exceptionally qualified and hopefully will be confirmed without delay.

Sincerely,

Michael J. Madigan

cc: Judiciary Committee Members

Abner Mikva

April 30, 2009

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Pat
Dear Senator Leahy,

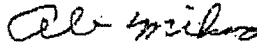
I am writing in strong support of the nomination of Mary L. Smith as Assistant Attorney General for the Tax Division at the Department of Justice. She will make an outstanding head of that department.

Mary was Associate Counsel to President Clinton when I first came to know her. I observed then that Mary was diligent and hardworking. Since then, I have continued to be impressed with her work efforts and work ethics. She has served in government both as a career employee and as a political employee, which has given her a real appreciation of the importance of both categories of federal employees to make the system work as it should. She previously worked as trial attorney in the Civil Division at Justice and in the Domestic Policy Council at the White House.

In the private sector, Mary worked at one of the largest and most prestigious law firms in the country and as counsel to a Fortune 500 company. She understands tax law as well as all of the other issues that she will confront in the position of Assistant Attorney General.

Mary is one of people that brings pride to the cause of government service. She will be an outstanding addition to this Administration and I urge her confirmation with great enthusiasm.

Kindest Personal Regards,



Abner J. Mikva
Former White House Counsel
Former Chief Judge, U.S. Court of Appeals, DC Circuit
Former U.S. Congressman



NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

May 8, 2009

The Honorable Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 433 Russell Senate Office Building
 Washington, DC 20510

**Re: Recommendation of Mary L. Smith for confirmation as Assistant
 Attorney General for the Tax Division**

Dear Senator Leahy:

We are writing on behalf of the National Asian Pacific American Bar Association (NAPABA) to support Mary L. Smith for the position of Assistant Attorney General for the Tax Division at the United States Department of Justice. NAPABA is a national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. Now in its twenty-first year, NAPABA represents the interests of 58 affiliate organizations and over 40,000 Asian Pacific American attorneys. NAPABA works to promote diversity in the legal profession and justice, equity, and opportunity for Asian Pacific Americans. This is accomplished in part through partnering with other organizations and individuals who share a commitment to our mission. Ms. Smith -- a Native American who continues to stay involved with the racial and ethnic minority communities -- is such an individual.

Mary Smith is highly qualified to serve as Assistant Attorney General for the Tax Division as evidenced by her years of service both in the public and private sectors. From 1997-2001, she served in the Clinton White House as Associate Counsel to the President and Associate Director of Policy Planning where she was responsible for a number of policy areas. She was the highest-ranking Native American in the White House during the Clinton Administration. From 1994-1996, she served as a Trial Attorney at the Department of Justice, where she never lost a case.

In addition to her public service, Ms. Smith has held several positions in the private sector that have helped prepare her for the duties and responsibilities of Assistant Attorney General, including her current position as a litigation partner at the women-owned firm of Schoeman, Updike, Kaufman & Scharf LLP. Ms. Smith's practice focuses on complex litigation and business counseling. She has represented clients in

1612 K STREET, NW, SUITE 1400 • WASHINGTON, DC 20006
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Senator Leahy
 May 8, 2009
 Page 2

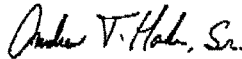
government investigations, class actions, civil actions, and criminal proceedings. She has tried a number of cases to victory as lead counsel.

Ms. Smith is a long-standing NAPABA friend and, in fact, has been a member. She knows us well and we know her. Since its inception in 1992, she has been actively involved with the Coalition of Bar Associations of Color (CBAC) that consists of officers and leaders of the national bar associations of color – NAPABA, the National Bar Association, the Hispanic National Bar Association and the National Native American Bar Association (NNABA). Ms. Smith has been a NNABA board member for the past several years. In that capacity, Ms. Smith has worked with NAPABA and the other bars of color in promoting policies that advance diversity in the legal profession and ensures that lawyers of color thrive over the course of their careers.

Over the years, there have been several occasions where Ms. Smith has worked particularly closely with NAPABA on important matters. For instance, while in the White House, Ms. Smith worked tirelessly with the Department of Justice and Congressional staff on legislation to establish a process to provide federal recognition and to restore self-determination to Native Hawaiians. Additionally, she worked closely with NAPABA staff and others at NAPABA on the issue. As a Native American intimately familiar with the special political and legal relationship between the United States and Native Americans, Ms. Smith adroitly advised NAPABA and answered all the questions raised regarding the Native Hawaiian self-determination legislation in great detail and in a very thoughtful manner.

As a national bar association that engages in advocacy on behalf of Asian Pacific Americans, NAPABA is very pleased to support the swift confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division. She is an accomplished lawyer whom we have come to respect as someone who embraces NAPABA's goals.

Sincerely,



Andrew T. Hahn, Sr.
 President
 National Asian Pacific American Bar Association



Tina Matsuoka
 Executive Director
 National Asian Pacific American Bar Association


National Association of Women Lawyers®

the voice of women in the law®

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Lisa Gilford
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 Chicago, IL

May 5, 2009

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Senator Jeff Sessions
 Senate Judiciary Committee
 335 Russell Senate Office Building
 Washington, DC 20510

Re: Nomination of Mary L. Smith: Assistant Attorney General for Tax
 Division in the Department of Justice

Dear Senators Leahy and Sessions:

I am writing on behalf of the National Association of Women Lawyers
 ("NAWL"), a national legal professional organization devoted to the interests of
 women lawyers and women's rights, to express our support for the nomination
 of Mary L. Smith to serve as Assistant Attorney General for the Tax Division in
 the Department of Justice. Ms. Smith is a stellar candidate, and we urge her
 swift confirmation.

NAWL is the oldest women's bar association in the country and has thousands
 of individual, law firm, public sector, and corporate department members across
 the country. We provide professional development opportunities for women
 lawyers at every stage of their careers. NAWL also participates in legal and
 public policy issues by participating in *amicus* briefs, international law
 endeavors, review of Supreme Court nominees, and other activities.

Mary Smith has dedicated a significant amount of her career to public service
 and pro bono efforts, making a difference in advancing women and persons of
 color in the legal profession and beyond. From 1994 to 1996, Ms. Smith also
 served as a trial attorney for the United States Department of Justice Civil
 Division where she served as principal attorney for a number of trials and
 appeals. From 1997 to 2001, Ms. Smith served in the Clinton White House as
 Associate Counsel to the President and Associate Director of Policy Planning
 where she was responsible for a number of policy areas including domestic
 violence, equal pay, homelessness, transportation safety, food safety, Internet
 gambling, Native American issues, civil rights issues, and hate crimes. In the
 White House, she was one of the leaders who worked tenaciously to ensure
 reauthorization of the historic Violence Against Women Act, legislation with
 which NAWL has been very involved. Ms. Smith also fought to secure equal
 pay for women, drafting policy initiatives that would ensure women receive
 equal pay for equal work. She also spearheaded an initiative that would prepare
 women for non-traditional jobs.

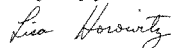
• American Bar Center • 321 North Clark Street, M.S. 15.2 • Chicago, IL 60654 •
 • Phone: (312) 988-6186 • Fax: (312) 988-5491 • nawl@nawl.org • www.nawl.org •

From 2001 to 2005, as an attorney at Skadden, Arps, Slate, Meagher & Flom LLP in Washington, D.C., Ms. Smith specialized in governmental investigations and securities class actions, and on a pro bono basis she filed an *amicus* brief in the United States Supreme Court on behalf of several members of Congress in support of the University of Michigan's affirmative action programs.

Ms. Smith currently serves as one of thirteen Commissioners on the ABA's Commission on Women in the Profession and is the first enrolled tribal member to serve on the Commission in its twenty-year history. As part of her duties on the Commission, she serves as Chair of the Women of Color Committee. Under her leadership, the Commission recently published *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms*, a compilation of information, insights, and advice gathered from 28 prominent women partners of color in national law firms and an examination of the practices at their firms that contributed to their success. Ms. Smith is also spearheading the next two phases of research which will focus on women of color who are attorneys in the corporate and government sectors. NAWL is extremely familiar with her outstanding work in this area.

The Department of Justice employs a large number of lawyers in the federal government, particularly women. Ms. Smith has a proven track record of advocating for programs that benefit women as well as promoting women in the legal profession. In addition, her complex litigation experience involving highly-regulated, financial issues makes her well-suited to head the Tax Division.

Very truly yours,



Lisa Horowitz
President, 2008-09
National Association of Women Lawyers

cc: Mary L. Smith

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• Phone: (312) 988-6186 • Fax: (312) 988-5491 • nawl@nawl.org • www.nawl.org •



NATIONAL BAR ASSOCIATION

Reply To:

Rodney G Moore
President
Atlanta, GA

May 12, 2009

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Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the National Bar Association ("NBA"), which represents a network of approximately 44,000 African American attorneys and judges nationwide, I urge you and the members of the United States Senate Judiciary Committee to confirm the nomination of Mary L. Smith to the position of Assistant Attorney General for the Tax Division.

Ms. Smith is qualified to serve as Assistant Attorney General for the Tax Division as evidenced by her years of service both in the public and private sectors.

Ms. Smith served in the Clinton White House as Associate Counsel to the President and Associate Director of Policy Planning where she was responsible for a number of policy areas including domestic violence, equal pay, homelessness, transportation safety, food safety, Internet gambling, Native American issues, civil rights issues, and hate crimes. She was the highest-ranking Native American in the White House during the Clinton Administration. During her time in the White House, Ms. Smith was the architect for a historic Native American policy initiative which spanned areas such as health care, economic development, education, the digital divide, and criminal justice issues. This initiative resulted in an increase in funding of \$1.1 billion for Native American programs across all federal agencies. She was also Co-Chair of a Working Group to get the Violence Against Women Act reauthorized.

NATIONAL BAR ASSOCIATION, 1225 11th Street, N.W., Washington, DC 20001 - 4217 • Tel: 202-842-3900 • Fax: 202-289-6170
(219200.0001/A0265506_1) www.nationalbar.org
84th ANNUAL CONVENTION • August 1 - 8, 2009 • San Diego, CA

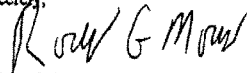
Senator Patrick J. Leahy
 Senator Arlen Specter
 May 12, 2009
 Page 2

While in the White House, Ms. Smith worked closely with the National Economic Council regarding on legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act ("FUTA"). Ms. Smith spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this disparity in tax policy between tribal governments and state governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill.

In addition to her public service, Ms. Smith has held several positions in the private sector that have given her significant preparation for the execution of the duties and responsibilities of Assistant Attorney General, including her current position as a litigation partner at the women-owned firm of Schoeman, Updike, Kaufman & Scharf LLP. Ms. Smith's practice focuses on complex litigation and business counseling. She has represented clients in government investigations, class actions, civil actions, and criminal proceedings. She has tried a number of cases to victory as lead counsel. Ms. Smith has represented clients in matters alleging securities fraud, RICO violations, ERISA violations, breach of contract, constitutional issues, and breach of fiduciary duties. She also served as Senior Litigation Counsel at Tyco International (US) Inc. where she managed the securities class action multi-district litigation relating to the Dennis Kozlowski era - the largest case pending at the Company and one of the largest cases pending in the country.

For these reasons, the National Bar Association urges the swift confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

Sincerely,



Rodney G. Moore, Esq.
 President, National Bar Association

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 ATTORNEYS ADMITTED SOLELY IN THE JURISDICTION WHERE LISTED OFFICE IS LOCATED, UNLESS OTHERWISE NOTED

NATIONAL CONGRESS OF AMERICAN INDIAN



October 29, 2009

The Honorable Harry Reid
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

On behalf of the National Congress of American Indians, I write to express our strong support for the confirmation of Mary Smith to be the Assistant Attorney General for the Tax Division within the Department of Justice.

NCAI has many years of experience working with Ms. Smith during her service with the federal government and in private practice. She is an experienced professional with a deep understanding of the law and the federal government system. We have every confidence in her capabilities, but this confidence is heightened by our experience with her work ethic. The federal government cannot possibly have enough people like Mary Smith – she gets results that consistently exceed the highest expectations.

In addition, Mary is a member of the Cherokee Nation of Oklahoma and when she is confirmed she will be the highest ranking Native American ever to serve at the Department of Justice. It is widely known among tribal leaders that her nomination has been pending for an overly long period and the frustration is growing. We respectfully request that the Senate move forward as quickly as possible with her confirmation.

Thank you very much for considering our views. As always, we greatly appreciate your support for tribal governments.

Sincerely,

Jefferson Keel
President

EXECUTIVE COMMITTEE

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Jefferson Keel
Chickasaw Nation

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Dan Arnold
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ROCKY MOUNTAIN

Scott Russell
Crow Tribe

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SOUTHERN PLAINS

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Joe Garcia
Ohkay Owingeh

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Rene Coch
Ute Indian Tribe

EXECUTIVE DIRECTOR

Jacqueline Johnson Pata
Tlingit

NATIONAL CONGRESS OF AMERICAN INDIANS

May 4, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

**Re: Support for Mary Smith, Assistant Attorney General for the Tax
Division of the U.S. Department of Justice**

Dear Chairman Leahy and Ranking Member:

I am writing to express the National Congress of American Indians' (NCAI) support for the confirmation of Ms. Mary L. Smith as Assistant Attorney General for the Tax Division of the U.S. Department of Justice.

Ms. Smith is an outstanding attorney, and a dedicated member of the Native American community. We are delighted and thrilled with her nomination.

The National Congress of American Indians is the oldest and largest advocacy organization of tribal governments. NCAI was founded in 1994 in response to adverse Federal policies. It is a sign of a major change in Federal and Indian relations when a tribal member is nominated for the position of Assistant Attorney General for the Tax Division of the Department of Justice.

Ms. Smith has been an advocate for improving the relationship between the legal system and tribal governments for several years. She works tirelessly to improve the visibility and access of Native Americans in the legal profession and Native American civil rights. In the last several years, she has worked to advance access to justice in tribal communities.

Ms. Smith also served in the Clinton White House as Associate Counsel to the President and Associate Director of Policy Planning where she was responsible for a number of policy areas including domestic violence, equal pay, homelessness, transportation safety, food safety, Internet gambling, Native American issues, civil rights issues, and hate crimes.

She was the highest-ranking Native American in the White House during the Clinton Administration. During her time in the White House, Mary was the

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Ojibwa-Crowagah
(Pueblo of San Juan)

FIRST VICE PRESIDENT

Jefferson Keel
Chickasaw Nation

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TREASURER

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Chippewa Indians

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Ahtak Native Community

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Chesterok Nation

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SOUTHERN PLAINS

Darrell Flying Man
Cheyenne-Arapaho Tribe

SOUTHWEST

Derek Valdo
Pueblo of Acoma

WESTERN

Alvin Moyle
Fullan Paiute Shoshone Tribe

EXECUTIVE DIRECTOR

Jacqueline Johnson-Pata
Utegi

NCAI HEADQUARTERS

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Washington, DC 20036
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202-466-7797 fax
www.ncai.org

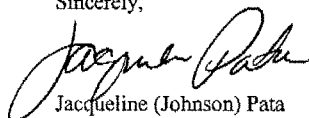
architect for a historic Native American policy initiative which spanned areas such as health care, economic development, education, the digital divide, and criminal justice issues. This initiative resulted in an increase in funding of \$1.1 billion for Native American programs across all federal agencies.

In addition, while in the White House, Ms. Smith was a leader in affecting passage of a change to the Federal Unemployment Tax Act (FUTA). Her efforts helped to ensure passage of tribal FUTA language in the final FY 2001 omnibus appropriations bill that provided equity to Indian tribes by treating tribal governments the same as state and local governments.

Ms. Smith is a first-rate litigator whose experience spans government, private practice and the private sector. She served as a trial attorney in the Civil Division at the Department of Justice where she never lost a case. She has worked at Skadden, Arps, Slate, Meagher & Flom LLP, and currently is a partner at Schoeman, Updike, Kaufman & Scharf LLP, a woman-owned firm. In addition, she was the in-house attorney responsible for managing a large multi-district litigation at Tyco International.

The National Congress of American Indians strongly supports the nomination of Ms. Mary L. Smith, and respectfully urges her swift confirmation.

Sincerely,



Jacqueline (Johnson) Pata
Executive Director



April 27, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express the National Native American Bar Association's support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division of the U.S. Department of Justice.

Mary is an outstanding attorney, and a dedicated member of the Native American community. We are delighted and thrilled with her nomination.

The National Native American Bar Association (NNABA) serves as the national association for Native American attorneys, judges, law professors and law students, and attorneys who practice Indian law. NNABA strives to be a leader on social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians. Unfortunately Natives are dramatically underrepresented in the legal field and in the federal government.

Mary has been a board member of NNABA for the past several years. Mary currently is a member of the Illinois Delegation to the American Bar Association (ABA) House of Delegates, where she serves as the representative for the NNABA. As a Delegate, Mary works tirelessly to improve the visibility and access of Native Americans in the legal profession and Native American civil rights. In the last several years, she has worked on two resolutions to advance access to justice in tribal communities. At the 2008 Annual Meeting, Mary was one of the principal drafters and lead advocates for a resolution that passed the House and which supported increased funding for tribal courts and tribal justice systems.

Mary also served in the Clinton White House as Associate Counsel to the President and Associate Director of Policy Planning where she was responsible for a number of policy areas including domestic violence, equal pay, homelessness, transportation safety, food safety, Internet gambling, Native American issues, civil rights issues, and hate crimes. She was the highest-ranking Native American in

The Honorable Patrick J. Leahy
The Honorable Arlen Specter
April 27, 2009

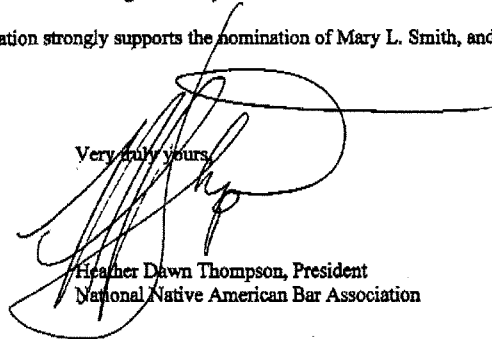
the White House during the Clinton Administration. During her time in the White House, Ms. Smith was the architect for a historic Native American policy initiative which spanned areas such as health care, economic development, education, the digital divide, and criminal justice issues. This initiative resulted in an increase in funding of \$1.1 billion for Native American programs across all federal agencies.

In addition, while in the White House, Mary was a leader in affecting passage of a change to the Federal Unemployment Tax Act (FUTA). Mary's efforts helped to ensure passage of tribal FUTA language in the final FY 2001 omnibus appropriations bill that provided equity to Indian tribes by treating tribal governments the same as state and local governments.

Mary is a first-rate litigator whose experience spans government, private practice and the private sector. Mary served as a trial attorney in the Civil Division at the Department of Justice where she never lost a case. She has worked at Skadden, Arps, Slate, Meagher & Flom LLP, and currently is a partner at Schoeman, Updike, Kaufman & Scharf LLP, a woman-owned firm. In addition, she was the in-house attorney responsible for managing a large multi-district litigation at Tyco International.

The National Native American Bar Association strongly supports the nomination of Mary L. Smith, and respectfully urges her swift confirmation.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'H. Thompson', is written over a horizontal line. The signature is highly cursive and loops around the line.

Heather Dawn Thompson, President
National Native American Bar Association



October 27, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary
Committee 224 Dirksen Senate Office
Building
Washington, DC 20510

Re: Confirmation of Mary Smith as Assistant Attorney General for the Tax Division of the U.S. Department of Justice.

Dear Chairman Leahy and Ranking Member Sessions:

This is a follow-up letter to our letter dated April 27, 2009 expressing the National Native American Bar Association's (NNABA) support for the confirmation of Mary Smith as Assistant Attorney General for the Tax Division of the U.S. Department of Justice. We are very concerned with the lack of progress on Mary's nomination.

Mary Smith is not only a highly qualified nominee, she is an historic nominee. Mary is a member of the Cherokee Nation and, if confirmed, she would be the first Native American to hold the rank of Assistant Attorney General in the 140-year history of the Justice Department. She would be the highest ranking Native American in DOJ history.

We think quick movement on her nomination is particularly urgent considering that President Obama is hosting a historic meeting with Tribal leaders on Thursday November 5th, and timely considering that November is Native American Heritage month.

In addition to her tax experience, Mary also has numerous leadership qualifications required by the job including being a seasoned litigator, and extensive management and Justice experience.

Mary is a seasoned litigator who has had multiple trials and courtroom experience. The Tax Division is about litigation, enforcing the federal tax laws and defending the United States in court. The head of the Tax Division needs first and foremost to be a person with significant litigation experience, and Mary Smith fits the bill. She has been a litigator in the Justice Department, in two large law firms, and in one of the largest corporations in the country

Mary is also a highly qualified manager. The Tax Division is an office with over 350 attorneys. When she worked on the Tyco litigation, Mary managed over 100 lawyers and a \$50 million budget. She managed large litigation teams while working at the Skadden Arps law firm. And

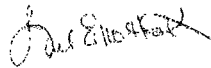
The Honorable Patrick J. Leahy
The Honorable Jeff Sessions
October 27, 2009

during her service in the White House Domestic Policy Council, she helped manage and coordinate the work of multiple federal agencies.

Mary also knows the Justice Department. She worked at Main Justice as a trial attorney in the Civil Division, and she was a key member of President Obama's Justice Department review team last winter. She understands the Justice Department as an institution, and the perspective of the DOJ career staff.

The National Native American Bar Association is concerned with the delay with Mary Smith's nomination, and respectfully urges her swift confirmation.

Sincerely,



Lael Echohawk, President
National Native American Bar Association



May 1, 2009

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senator Leahy:

We are writing to voice our strong support for the nomination of Mary L. Smith to be the Assistant Attorney General for the Tax Division at the Department of Justice. We have worked with Mary over the course of many years and have the highest respect for her legal abilities, her tenacity in pursuit of fairness and justice, and her commitment to the law.

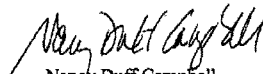
The National Women's Law Center was founded in 1972, and has worked since that time to advance women's rights and opportunities in education, employment, health, and family economic security. We have had an opportunity to work with Mary Smith from the time she served as Associate Counsel to the President and Associate Director of Policy Planning for President Clinton to her substantial and ongoing efforts on behalf of women and people of color within the American Bar Association (ABA).

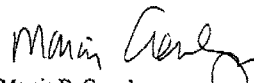
Through the ABA, she has worked tirelessly to advance opportunities for women and persons of color in the legal profession and beyond. For example, she currently serves as one of thirteen Commissioners on the ABA's Commission on Women in the Profession, the first enrolled tribal member to serve on the Commission in its twenty-year history. She is Chair of the Women of Color Committee and directs the Women of Color Research Initiative, a nationally known research program that has engaged in groundbreaking investigation of the hiring and retention of women of color in the legal profession.

These activities amplify the important perspectives and skills she would bring to bear as Assistant Attorney General for the Tax Division, in addition to her impressive career as an attorney in a variety of private practice settings. We believe that she would be an exceptional asset to the Department of Justice, and therefore personally support her nomination with enthusiasm.

Please feel free to be in touch with either of us if there is further information that we can provide.

Sincerely,


 Nancy Duff Campbell
 Co-President


 Marcia D. Greenberger
 Co-President

With the law on your side, great things are possible.

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Native American Rights Fund

1500 Broadway, Boulder, Colorado 80302-6296 • (303) 447-8760 • FAX (303) 443-7776

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GRANT WRITER/EDITOR

Ray Ramirez

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ATTORNEYS

Heather R. Kendall-Miller
Natalie A. Landreth

Website: www.narf.org

May 5, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Bldg
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
711 Hart Building
Washington, DC 20510

Dear Senators Leahy and Specter:

I am writing on behalf of the Native American Rights Fund (NARF), which is the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Indian tribes, organizations and individuals nationwide, to express our support for the nomination of Mary L. Smith to serve as Assistant Attorney General for the Tax Division at the Department of Justice. If confirmed, Ms. Smith will be the first Native American to hold the rank of Assistant Attorney General at the Department of Justice. Ms. Smith is a stellar candidate, and we urge her swift confirmation.

The Department of Justice plays a vitally important role in ensuring public safety in Indian Country and safeguarding the federal trust relationship. Under federal law, many Indian communities are completely dependent on the Department of Justice for investigation and prosecution of violent crimes and other felonies committed on Indian reservations. The Department also plays an important role in ensuring the consistent enforcement of tax laws with regard to Indian tribes, recognizing the nation-to-nation relationship between tribes and the federal government.

Ms. Smith served in the Clinton White House as Associate Counsel to the President and Associate Director of Policy Planning where she was responsible for a number of policy areas including Native American issues. She was the highest-ranking Native American in the White House during the Clinton Administration. During her time in the White House, Ms. Smith spearheaded a comprehensive Native American policy initiative across all federal agencies which spanned areas such as health care, economic development, education, the digital divide, and criminal justice issues. This initiative resulted in an increase in funding of \$1.1 billion for Native American programs, including a \$300 million increase for the Indian Health Service at the Department of Health and Human Services and a new initiative at the Department of Education to train 1000 new Native American teachers.

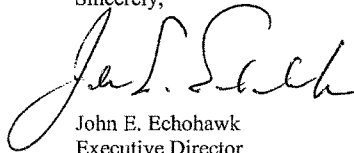
In addition, while in the White House, Ms. Smith was one of the main leaders working for a change to the Federal Unemployment Tax Act (FUTA). Ms. Smith's efforts helped to ensure passage of tribal FUTA language that provided equity to Indian tribes by treating tribal governments the same as state and local governments.

After leaving the White House, Ms. Smith continued to work on behalf of the Native American community. She filed an *amicus curiae* brief on behalf of the National Congress of American Indians in *Smith v. Salish Kootenai College*, 434 F. 3d 1127 (9th Cir. 2006) (*en banc*). In addition, Ms. Smith has served for the past few years as the National Native American Bar Association's delegate to the American Bar Association (ABA) House of Delegates, where she has championed increased funding for tribal justice systems and support for legislation to establish a process for federal recognition for Native Hawaiian sovereignty.

For these reasons, the Native American Rights Fund is pleased to support the historic nomination of Mary L. Smith to be Assistant Attorney General for the Tax Division at the U.S. Department of Justice.

I thank you in advance for your consideration of this request.

Sincerely,



John E. Echohawk
Executive Director

Beth Nolan



May 6, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman and Senator Sessions:

I am writing to convey to the Senate Judiciary Committee my enthusiastic support for the nomination of **Mary L. Smith** to be Assistant Attorney General for the Tax Division.

I have known Ms. Smith since we worked together in the White House during the time I served in President Clinton's administration as Counsel to the President. Ms. Smith was in the Domestic Policy Council at the beginning of my tenure, and after several months as Counsel, I hired Ms. Smith to serve as Associate Counsel to the President, based on her outstanding work on a range of legal policy matters and her excellent reputation throughout the government.

Ms. Smith's responsibilities in the Counsel's Office covered a broad range of matters, and she delivered consistently excellent work. The hallmark of her career has been her ability to address nearly any legal issue put before her—whether it's a tax matter, or civil rights, or massive class action litigations—with sophistication and genuine understanding of the context and consequences of the legal decision at hand. She is probing in her legal assessments, and straightforward and clear in her analysis. Moreover, Ms. Smith is an astute listener who seeks the input of many constituencies to ensure that her decisionmaking is fully informed and balanced. She is an excellent manager who can handle a number of significant, complex, and time-sensitive matters with appropriate attention to each.

Mary Smith will make a superb Assistant Attorney General for the Tax Division. I hope the Committee will act favorably on her nomination as quickly as possible, so that the Department, the Administration, and the Country will have the benefit of her valuable service.

Very truly yours,



Beth Nolan

GIBSON, DUNN & CRUTCHER LLP

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May 6, 2009

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(202) 530-9575

Client No.
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Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

As you know, I served as Solicitor General during the Administration of George W. Bush and as Assistant Attorney General for the Office of Legal Counsel during the Administration of Ronald Reagan. I have great respect for the Department of Justice, its missions and for the men and women who serve there, and deep convictions concerning the qualities that are important in leadership positions at the Department. I believe that Mary Smith will be a strong addition to the leadership of the Department.

I worked with Mary while she was managing the extensive, multi-district litigation at Tyco International. Mary supervised all aspects of the sprawling litigation at the trial and appellate levels. She is a first-rate litigator. Mary also has

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PARIS MUNICH BRUSSELS DUBAI SINGAPORE ORANGE COUNTY CENTURY CITY DALLAS DENVER

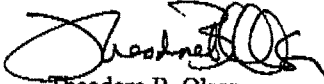
GIBSON, DUNN & CRUTCHER LLP

May 6, 2009
Page 2

dedicated a significant amount of her career to public service. From 1994 to 1996, Mary was a Trial Attorney in the Civil Division, Commercial Litigation Branch, at the Department of Justice. From 1997 to 2000, Mary was Associate Director of Policy Planning, Domestic Policy Council, at the White House. From 2001 to 2001, Mary was Associate Counsel to the President in the White House Counsel's Office.

In short, Mary Smith is a fine choice to be this nation's Assistant Attorney General for the Tax Division. I urge her swift confirmation.

Very truly yours,



Theodore B. Olson

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November 1, 2009

Senator Harry Reed
 Senate Majority Leader
 522 Hart Senate Office Building
 Washington, DC 20510

Senator Mitch McConnell
 Senate Minority Leader
 361-A Russell Senate Office Building
 Washington, DC 20510

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Senator Jeff Sessions
 Ranking Member, Senate Judiciary
 Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Re: Confirmation of Mary Smith as DOJ Assistant Attorney General

Dear Senators Reid, McConnell, Leahy and Sessions:

I am writing to urge swift and positive action on a confirmation vote for Mary L. Smith to be Assistant Attorney General for the Tax Division of the United States Department of Justice.

I am the President of the United South and Eastern Tribes Inc. (USET), an inter-tribal organization representing 25 Federally recognized Indian nations from Maine to Texas. USET and its members have had the opportunity to work with Mary many times over the years. In every respect, she has displayed professionalism and intellect of the highest order. It is a point of special pride for us that she is a member of the Cherokee Nation and an outstanding role model to our Native youth.

Mary has excelled in all her undertakings, including her time as a trial attorney at the Department of Justice, working in the White House on difficult policy matters, serving as general counsel for Tyco International, and in private law practice. This background, along with her deep knowledge of the law and her amazing ability to lead and work with people, make her an outstanding prospect for the position of Assistant Attorney General. She is the kind of leader we need in the Federal government.

"Because there is strength in Unity"

It is no small matter to us that she would be the highest level Native American ~~appointment to the U.S. Department of Justice in history.~~ Once sworn into office she will not only do Indian country proud, but even more she will serve the United States with distinction and honor.

I urge your action upon Mary's nomination as soon as possible and thank you for your attention to this matter. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Paterson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brian Paterson, President

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May 4, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Members of the Senate Judiciary Committee:

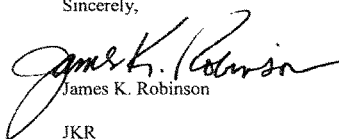
I write to support the nomination of Mary L. Smith to serve as the Assistant Attorney General for the Tax Division of the Department of Justice.

Having served myself as an Assistant Attorney General at the Department (Criminal Division 1998-2001), I am confident that Ms. Smith's extraordinary legal and public service career has prepared her well to do an outstanding job in leading the Department's Tax Division.

I had the pleasure of working with Ms. Smith during our service on the Obama-Biden Transition Team where we served as members of the U.S. Justice Department's Agency Review Team. Ms. Smith was an energetic and highly productive member of the team. The insight she gained during this process will serve her well as a key member of the Justice Department's management team.

I am pleased to support Ms. Smith's nomination and to urge her prompt confirmation.

Sincerely,


James K. Robinson
JKR

James K. Robinson [REDACTED]
USActive 16224265.1

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 CHAIR, COMMERCE, TRADE
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 1ST DISTRICT, ILLINOIS
 WEBSITE: <http://www.house.gov/rush>

May 7, 2009

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 (202) 225-0393 (FAX)

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The Honorable Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Jeff Sessions
 Ranking Member, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

It is my pleasure to express my strong support for the nomination of Mary L. Smith as Assistant Attorney General for the Tax Division of the United States Department of Justice and to urge her confirmation.

Mary has spent the last several years promoting diversity in general and specifically in the legal profession. Mary is passionate about advancing women and persons of color in the legal profession. Mary promotes diversity through many activities within the American Bar Association (ABA), the National Native American Bar Association (NNABA), the Chicago Bar Association, and the Chicago Bar Foundation.

Mary currently is a member of the Illinois delegation for the ABA's House of Delegates, where she serves as the representative for the NNABA. Mary is Native American and an enrolled member of the Cherokee Nation. In this capacity, Mary tirelessly works to improve the visibility and access of Native Americans in the legal profession. In the last several years, she has worked on two resolutions to help the Native American community and to advance access to justice in tribal communities. Most recently, at the 2008 ABA Annual Meeting, Mary was one of the principal drafters and lead advocates for a resolution that passed the House which supported increased funding for tribal courts and tribal justice systems.

In addition, Mary has participated in ABA Day for the last several years and presses for increased legal services funding for persons in Illinois. In addition, this past year, she

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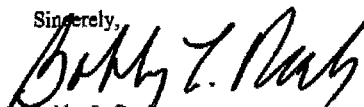
coordinated an effort to press for passage of the Lilly Ledbetter Fair Pay Act, which would reverse a 2007 Supreme Court decision and allow women to sue for pay discrimination once they discover the discrimination.

From 1997 through 2001, Mary served in the Clinton White House both as Associate Counsel to the President and Associate Director of Policy Planning where she was responsible for a number of policy areas involving the Department of Justice. She regularly interacted with members of the Department on a range of policy and legal issues, including criminal issues, liability issues, domestic violence, Internet gambling, Native American issues, civil rights issues, and hate crimes. She was the highest-ranking Native American in the White House during the Clinton Administration.

She currently is a partner at the woman-owned law firm, Schoeman, Updike, Kaufman & Scharf. Prior to that, she served as Senior Litigation Counsel at Tyco International (US) Inc. where she was responsible for the securities class action arising out of the acts of former Tyco management. She was hired after the fact to manage the situation on behalf of new management and the shareholders. The case recently settled for approximately \$3 billion, which was the largest payment by any single corporate defendant in the history of securities litigation. As part of her responsibilities, Mary managed a multi-million dollar budget, over 40 outside counsel, and over 60 contract attorneys.

Earlier in her career, from 1994 to 1996, Mary served as a career trial attorney in the Commercial Litigation Branch of the Civil Division of the Department of Justice. Again, I am pleased to lend my enthusiastic support to Mary L. Smith to be Assistant Attorney General for the Tax Division of the U. S. Department of Justice.

Sincerely,



Bobby L. Rush
Member of Congress

BLR:sw

800

MAYNARD COOPER
& GALE PC
ATTORNEYS AT LAW

H. Thomas Wells, Jr.
[REDACTED]

May 6, 2009

[REDACTED]
The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
433 Russell Senate Office Building
Washington, D.C. 20510

[REDACTED]
Honorable Jeff Sessions
Ranking Member, Senate Judiciary Committee
335 Russell Senate Office Building
Washington, D.C. 20510

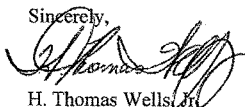
Re: Mary L. Smith

Dear Senators Leahy and Sessions:

Mary Smith has been nominated to be Assistant Attorney General for the Tax Division at the U.S. Department of Justice. I have had the chance to know Mary through professional association for several years, and I commend her to you for favorable consideration by the Committee. She is currently a partner in the Chicago office of Schoeman, Updike and Kaufman, law firm which also has offices in New York. She previously served as Senior Litigation Counsel at Tyco International (U.S.), Inc., where she had interaction with the Tax Department on a number of issues relating to the corporation.

I hope that you will favorably consider her nomination, and give her nomination a swift confirmation.

Sincerely,



H. Thomas Wells, Jr.

HTW/psr

1901 SIXTH AVENUE NORTH 2400 REGIONS/HARBERT PLAZA BIRMINGHAM, ALABAMA 35203-2618 205.254.1000 FAX 205.254.1999

WWW.MAYNARDCOOPER.COM

JUDITH A. WINSTON



May 1, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Support for the Nomination and Confirmation of Mary L. Smith for the Position of
Assistant Attorney General for the Tax Division, Department of Justice

Dear Senators Leahy and Specter:

I am delighted to have the opportunity to write in support of the nomination of Mary L. Smith for the position of Assistant Attorney General for the Tax Division. I have known Ms. Smith for many years. We met and worked together during the Clinton Administration when I served first as the General Counsel, and subsequently Undersecretary, in the U.S. Department of Education and second as the Executive Director of President Clinton's Initiative on Race in the White House. I am currently semi-retired from the practice of law and working occasionally as a consultant on federal education law and policy issues.

Mary Smith is an extraordinary lawyer who possesses not only excellent analytical skills and judgment but also broad experience in many areas of law and policy. I believe the breadth of her experience as well as her strong intellectual capacity and legal talent make her particularly well suited to lead the Tax Division in the Department of Justice. She is a person who is sensitive to both the beneficial and potential adverse impact of law, regulations and policy on diverse communities and individuals from disparate cultures and socio-economic levels. She is also knowledgeable about and sensitive to issues of critical concern to corporate and business interests. Mary's prior work at the White House on the staff of the Domestic Policy Counsel, in the Office of White House Counsel, her service at the Department of Justice as well as her work in private practice demonstrate of her extensive and varied legal experience.

What may be less obvious in a review of her resume is her deep commitment to advancing and securing the rights of all Americans with special emphasis on issues that affect disproportionately women and people of color. She has worked on policy to combat hate crimes and secure equal pay for women. She was responsible for creating a comprehensive Native American policy agenda across federal agencies. As a

Letter to Senators Leahy and Specter re: Nomination and Confirmation of Mary L. Smith for the Position of Assistant Attorney General for the Tax Division, Department of Justice
May 1, 2009

Page 2 of 2

Native American woman enrolled in the Cherokee nation, she brings a lived experience that helps to inform her superior work on issues of equity and fairness. Moreover, Mary brings with her to every aspect of her work a generous and warm spirit that infects her work with her colleagues and all who have had the pleasure of working with her. She is gracious and careful in her manner and speech. My work with her not only advanced my understanding and knowledge of the issues we worked on together but also provided me and others an opportunity to enjoy her company and look forward to her positive attitude and participation.

For all of the foregoing reasons, I am pleased to add my name and comments to those of others supporting the nomination of Mary L. Smith as Assistant Attorney General for the Tax Division in the U.S. Department of Justice. If you would like me to respond to questions or provide additional information about my knowledge of Mary's qualifications for this position, please do not hesitate to contact me. My telephone number is [REDACTED] and my email address is: [REDACTED].

Sincerely,



Judith A. Winston

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May 7, 2009

Senator Patrick Leahy
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Senator Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: **WBA's Endorsement of Marv Smith**

Dear Senators Leahy and Specter:

On behalf of the Women's Bar Association of the District of Columbia, I write to express the WBA's strong endorsement of Mary L. Smith as Assistant Attorney General for the Tax Division of the United States Department of Justice. Ms. Smith's breadth of experience in the law-firm, in-house corporate, and government practice of law, combined with her commitment to diversity and greater inclusion in the legal profession, in our view, make her uniquely qualified to serve in this important role in the Justice Department. Ms. Smith's temperament, judgment, work ethic, and management experience will be invaluable assets in this position in managing and helping to develop policy for the Tax Division. In addition, Ms. Smith's sustained long-standing service to the profession, through her work in a variety of bar associations, and to retaining women and minorities in the legal profession, through her work on the American Bar Association's Commission on Women in the Profession and Section of Individual Rights and Responsibilities, demonstrate her commitment to a diverse and inclusive work place and to listening to a variety of viewpoints will serve the country well in this position.

In contacting references for Ms. Smith, we in the WBA were impressed with the enthusiasm that the references uniformly expressed for Ms. Smith's nomination for this important position. Ms. Smith's references unvaryingly referred to her strategic thinking, good judgment, fairness, follow-through, and capacity and appetite for hard work. A former colleague at Tyco International, John S. Jenkins, Jr., Vice President, Corporate Secretary, and International General Counsel, emphasized that Ms. Smith "works collegially in a team environment and has excellent judgment when faced with the options for resolving a legal problem."

Women's Bar Association of the District of Columbia
2020 Pennsylvania Avenue, NW, Suite 446
Washington, DC 20006
Phone: 202-639-8880 Fax: 202-639-8889
Email: admin@wbadc.org Web: www.wbadc.org

WBA Endorsement of Mary L. Smith
Page 2

Ms. Smith has been very active in a variety of bar associations, including the American Bar Association's Section on Individual Rights and Responsibilities, the Native American Bar Association, and the ABA Section of Litigation, pursuing her varied interests and passions with a dedication and commitment to results and excellence obvious to all fortunate to work with her. We in the WBA are very impressed with her work in the past three years as a member of the ABA Commission on Women in the Profession. Seats on the Commission are highly coveted slots appointed by the ABA President. Ms. Smith has well earned her seat, chairing for the past two years the Commission's Women of Color Initiative. Ms. Smith's vision in organizing and moving the Commission's work forward has been key to the Commission's leadership on these issues and the Commission's nationally renowned report on increasing diversity in the legal profession, *Visibly Successful*, published in 2008.

Ms. Smith has demonstrated a sustained level of excellence and commitment to justice and access to opportunity for all throughout her career. In surveying the breadth of Ms. Smith's experience and her service to our country and to the legal profession, we know of no other Native American woman lawyer in the Washington, DC area (or, indeed, in the country) who has accomplished so much at such a young age. We are convinced, from reviewing her record and body of work and from doing our due diligence, that Ms. Smith possesses the skills, temperament, and management ability to serve as an effective leader of the Tax Division at the United States Department of Justice.

Very truly yours,



Jennifer Maree
President

cc: WBA Board of Directors
WBA Judicial and Executive Endorsements Committee

McDermott Will & Emery

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Munich New York Orange County Rome San Diego Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Charles R. Work
Attorney at Law

May 4, 2009

Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Arlen Specter
Ranking Member, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

As Chairman Leahy may recall, I served as an Assistant U.S. Attorney in the District of Columbia and as a former deputy administrator of the Law Enforcement Assistant Administration. I am also a former president of the D.C. Bar. In my career, I have tried to combine public service, service through bar associations, and zealous representation of my clients in private practice. I believe that Mary Smith has already achieved all three of these goals.

I first met Mary several years ago when she was the liaison counsel for a large putative class action filed in the D.C. federal court. Mary coordinated filings and strategy for all of the defendants' counsel. Mary kept up-to-date in a case where, at various points, weekly filings were the norm. I saw Mary successfully argue a motion at the trial court where she was able to prevent her client from being required to produce a voluminous amount of documents. I was impressed with Mary's performance in that case, both inside and outside the courtroom.

Mary also has dedicated a significant amount of her career to public service. From 1994 to 1996, Mary was a Trial Attorney in the Civil Division, Commercial Litigation Branch, at the Department of Justice. During this time, Mary managed an extensive docket of cases and worked diligently on behalf of the Department. From 1997 to 2000, Mary was Associate Director of Policy Planning, Domestic Policy Council, at the White House. From 2001 to 2001, Mary was Associate Counsel to the President in the White House Counsel's Office.

U.S. practice conducted through McDermott Will & Emery LLP.

600 Thirteenth Street, N.W. Washington, D.C. 20005-3096 Telephone: 202.756.8000 Facsimile: 202.756.8087 www.mwe.com

Senator Patrick J. Leahy
Senator Arlen Specter
May 4, 2009
Page 2

Finally, I know that Mary is involved in many bar activities and hold offices in the American Bar Association, National Native American Bar Association, Chicago Bar Association, and the District of Columbia Bar Association. In fact, Mary currently is Co-Chair of the D.C. Bar Litigation Section Steering Committee, a section that was awarded the Best Section award last year under Mary's leadership.

As any litigator who is worth her salt, Mary is able to quickly assimilate the facts and law in pending cases. As such, Mary Smith is superbly qualified to be Assistant Attorney General for the Tax Division. I urge the Senate to act quickly on her confirmation.

Sincerely,



Charles R. Work

Enclosures

df

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THE CHICAGO BAR ASSOCIATION

321 South Plymouth Court
 Chicago, Illinois 60604-3923
 Tel (312) 554-2000
 Fax (312) 554-2054
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May 6, 2009

Senator Patrick J. Leahy
 Chairman, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Senator Arlen Specter
 Ranking Member, Senate Judiciary Committee
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

I am writing to express my support for the confirmation of Mary L. Smith as Assistant Attorney General for the Tax Division.

My frame of reference includes my over 30 year legal career, my roles as Presiding Judge of the Circuit Court of Cook County's First Municipal District and as President of the Chicago Bar Association (CBA), and my work in local and state bar groups and programs. While it has been my privilege to work with a broad array of lawyers, I am pleased to work with Mary while she serves on the CBA's Board of Managers. Mary is committed to serving the Chicago legal community, particularly in these turbulent economic times.

Mary returned to Chicago in the past few years and quickly became a leader in the legal community here. Even before her full-time return to Chicago, she had joined the board of the Chicago Bar Foundation ("CBF") and would fly in for each CBF board meeting because of the importance of her commitment to the goals and programs of the CBF. Mary is passionate about improving access to justice in Illinois.

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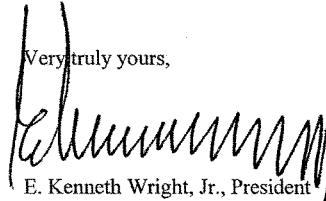
The Honorable Patrick J. Leahy
The Honorable Arlen Specter
May 6, 2009

Mary also has dedicated a significant amount of her career to public service, both here in Chicago and in Washington, D.C. During law school, she worked as an extern for a federal judge in Chicago and as an intern in the U.S. Attorney's Office for the Northern District of Illinois. Following law school, Mary served as a career Trial Attorney in the Civil Division, Commercial Litigation Branch, at the Department of Justice. After that, she was a political appointee in the Clinton White, holding positions in both the Domestic Policy Council and in White House Counsel's Office.

In her law practice, Mary is Partner at Schoeman, Updike & Kaufman, LLP, one of the nation's largest women-owned firms, Her practice focuses on complex litigation and business counseling.

I am pleased to support Mary Smith's nomination as Assistant Attorney General for the Tax Division.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Kenneth Wright, Jr.", with a long, thin vertical line extending downwards from the end of the signature.

E. Kenneth Wright, Jr., President

NOMINATIONS OF THOMAS MCLELLAN, NOMINEE TO BE DEPUTY DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY; ALEJANDRO MAYORKAS, NOMINEE TO BE DIRECTOR OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY; CHRISTOPHER SCHROEDER, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, DEPARTMENT OF JUSTICE

WEDNESDAY, JUNE 24, 2009

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

The Committee met, pursuant to notice, at 10:45 a.m., room SD-226, Dirksen Senate Office Building, Hon. Dianne Feinstein, presiding.

Present: Senators Feinstein, Klobuchar, Kaufman, and Sessions.

OPENING STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator FEINSTEIN. The meeting of the Judiciary will come to order, and I want to thank you all for coming today. This is a bit of an unusual morning because we just had the Articles of Impeachment read on the floor of the Senate, which necessitates the presence of all Senators, and we will have a cloture vote on a nominee at 11. So it's going to be a hearing that will be split. It would be my intention to begin the hearing and go close to the end of the vote, and if the staff would be alert and tell us when there are 3 minutes left on the vote, we will then recess and then come back.

I have the honor of introducing the three executive nominees for today's nomination hearing. It is my hope that this committee and the Senate will work to confirm them swiftly so that these executives have an opportunity to get to their work.

Our first nominee is Thomas McLellan, who has been nominated to be Deputy Director of the Office of National Drug Control Policy. Mr. McLellan is currently CEO of the Treatment Research Institute and Professor of Psychiatry at the University of Pennsylvania School of Medicine. He previously served as editor-in-chief of *The Journal of Substance Abuse Treatment*. He's been recognized for his leadership. He's a recipient of the Life Achievement Award of the

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American Society of Addiction Medicine. So, I look forward to his nomination.

The second nominee that we will be hearing from today is Alejandro Mayorkas, who has been nominated to be Director of the U.S. Citizenship and Immigration Services at the Department of Homeland Security. He is currently a litigation partner at O'Melveny & Meyers, and before his tenure in the private sector Mr. Mayorkas served as a U.S. Attorney for the Central District of California, and as an Assistant U.S. Attorney for 9 years.

Our final nominee today is Christopher Schroeder who has been nominated to be Assistant Attorney General at the Office of Legal Policy in the Department of Justice. Mr. Schroeder is a law professor at Duke and has previously worked as Acting Assistant Attorney General of the Department of Justice's Office of Legal Counsel, as Chief Counsel on the Senate Judiciary Committee, and as Special Nominations Counselor to then-Senator Joe Biden.

The Ranking Member of the Committee, who is Senator Jeff Sessions, is expected to attend, but in the interest of time I do think we should begin.

It is my understanding that Mr. Kaufman—excuse me, Senator Kaufman—would like to make a few brief introductory remarks.

Senator.

**STATEMENT OF HON. EDWARD E. KAUFMAN, A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator KAUFMAN. Thank you, Madam Chairman. I want to congratulate all three for volunteering to work in the Federal Government and take on some very interesting challenges, but especially I want to call attention to Chris Schroeder. Chris and I have worked together for 19 years, teaching a course at Duke for law students and public policy students on the Congress.

I have never met anyone with more integrity, more intellect, more principles in my entire life than Chris Schroeder, so I just wanted to make a special comment on him. The reason I'm doing this is because at 11 we are going to have a vote, and then at 11:30 I have to preside. I also want to say to his family, which I'm sure he'll introduce, what a distinguished family.

It's a special week for Chris because his daughter Emily married Brian on Saturday in an extraordinarily wonderful ceremony, so it's a very special week. Again, I think we are especially privileged in having all three of you, but it's my personal relationship with Chris Schroeder, to take on this responsibility. Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator.

Senator, no comment?

Senator KLOBUCHAR. No. I'd just like to hear from the nominees. Thank you, Senator.

Senator FEINSTEIN. Well, they'll be next up.

Senator Hagan was going to be here, but she is not. When she comes, we'll be very pleased to hear from her. But if the three nominees would please come. If you would remain standing and affirm the oath.

[Whereupon, the witnesses were duly sworn.]

Senator FEINSTEIN. Thank you. Please be seated.

All right. Why don't we begin with Mr. McLellan with an opening statement, if you will, and then Mr. Mayorkas and Mr. Schroeder.

STATEMENT OF THOMAS MCLELLAN, NOMINEE TO BE DEPUTY DIRECTOR, OFFICE OF NATIONAL DRUG CONTROL POLICY

Mr. MCLELLAN. Chair Feinstein, other members of the Judiciary Committee, I come before you seeking your confirmation of my nomination to the position of Deputy Director, White House Office of National Drug Control Policy.

I, first, want to say thank you for squeezing this hearing in on your very busy schedule; I appreciate it.

Senator FEINSTEIN. Thank you.

Mr. MCLELLAN. I'd like to acknowledge some of the people that are important in my life. First, my family. I am here representing my sister, Bonnie Catone, and colleague, my son Andrew, his wife Liz, and, importantly, my wife and colleague, Danni Carise. My family has suffered the pains of addiction, but we've also enjoyed the benefits of recovery from addiction.

I'd also like to acknowledge my research colleagues from the Treatment Research Institute in Philadelphia. It is their effort, their intelligence, their tolerance that produced the many accomplishments that ultimately led to my nomination. I appreciate that.

Finally, I would like to thank the other supporters here, my friends and colleagues from the worlds of policy, treatment, prevention, law enforcement that are here to support me. It means a great deal. I think it also signifies the importance of the issues we're about to discuss.

So you've read by now that I have 35 years of research experience. It's academic research experience. I am eager to bring that experience forward to work shoulder-to-shoulder with Director Gil Kerlikowske and the very fine members of the Office of National Drug Control Policy that I've met.

I have much to learn and many to learn from, but I want to say that I'm extremely optimistic. This is a very important time and I think we can bring the very best evidence-based treatment, prevention, and law enforcement policies this country has seen. I think we can significantly affect, in a positive way, drug problems in this country.

With that, I'm quite happy to answer any questions you may have.

[The biographical information of Thomas McLellan follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

**Andrew Thomas McLellan; A. Thomas McLellan;
Thomas McLellan; Tom McLellan**
2. **Position:** State the position for which you have been nominated.

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

**Treatment Research Institute
600 Public Ledger Building
150 S. Independence Mall (west)
Philadelphia, PA 19106**
4. **Birthplace:** State date and place of birth.

**May 29, 1948
New York City, New York
U.S.A.**
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

**1972-1976 Bryn Mawr College – PhD, Experimental Psychology, 1976
1971 Trinity College, Oxford University – Special Study Group Psychology
1966-1970 Colgate University – BA, dual major (Psychology and Biology), 1970**
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Professional Employment History

1992 to present

Treatment Research Institute (non profit research org.) – CEO

600 Public Ledger Building

150 S. Independence Mall (west)

Philadelphia, PA 19106

1978 to present

University of Pennsylvania – Professor of Psychiatry

3400 Spruce St.

Philadelphia, PA 19104

1994 – 2000

DeltaMetrics (for- profit research org.) – Scientific Director

600 Public Ledger Building (Shared offices with Treatment Res. Inst.)

150 S. Independence Mall (west)

Philadelphia, PA 19106

1975 – 2002

Veterans Administration – Research Psychologist

3900 University Avenue

Philadelphia, PA 19104

Pro Bono Work

1995 Member, US-China Drug Research Task Force, Beijing

1995 Science Policy Board Member, National Institute on Drug Abuse

1995 - 2003 Member, National Advisory Council, National Institute on Drug Abuse
Chair, NIDA Council Steering Committee 2001 - 2003

1995 - 2006 Drug Policy Advisor, National Football League

1996 Advisor National Academy of Science, Institute of Medicine

1997 - 2001 Associate Editor, Alcoholism: Clinical and Experimental Research

1997 Committee Member, National Academy of Science, Institute of Medicine

1997 - 2001 Advisor, Office of National Drug Control Policy, Research and Evaluation

1998 - 2002 Associate Editor, Journal of Studies on Alcohol

1998 Advisor, Physician Leadership on National Drug Policy

1998 Advisor, Swiss National Science Foundation, Bern, Switzerland

1999 Advisor, World Health Organization

1999 Extramural Member, NIAAA Panel for Review of Research Portfolio

2000-2009 Editor in Chief, Journal of Substance Abuse Treatment

2000-2001 CSAT National Treatment Plan – Section Chair

2000-2009 Advisor to government of Greece on drug abuse treatment/Advisor on
Evaluation, KETHEA, Inc., of Greece

2004 Member, NIAAA Treatment Research Internal Review Group

2004 Member, National Academy of Sciences, Institute of Medicine Panel,
“Crossing the Quality Chasm in Behavioral Health Treatment”

- 2000 United Nations Office of Public Health, Project Director – “Investing in Drug Abuse Treatment”
- 2004 World Health Organization Committee on Essential Medicines – Methadone
- 2006 National Quality Forum Steering Committee. Evidence-Based Practices to Treat Substance Use Conditions
- 2007 Scientific Director, HBO Documentary Films “Addiction”
- 2007 Member DSM V - Committee - Revising diagnostic criteria for Substance Use Disorders

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

1971 – 1976 US Army Reserve
157th Infantry Brigade
Honorable Discharge

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

- 2001 Life Achievement Award – British Society of Addiction Medicine
- 2002 Distinguished Contribution (In Addiction Medicine) Swedish Medical Association
- 2002 Significant Contribution Award – Italian Society of Addiction Medicine – Milan, Italy
- 2003 Thomas Okey Honorary Lecture – British Medical Society
- 2003 Lifetime Achievement Award - American Society of Addiction Medicine
- 2003 Institute for Scientific Information, most “Highly Cited Researcher” in psychology/psychiatry 1980 - 2000
- 2003 Robert Wood Johnson Foundation, Innovator Award
- 2003 First Recipient – Johns Hopkins University Innovators Award lecture
- 2004 Lifetime Service Award, National Association of State Alcohol and Drug Abuse Directors
- 2004 Owens Award and Lecture, University of Georgia
- 2005 Distinguished Research Scholar Award – American Journal on Addictions
- 2006 McGovern Award Association for Medical Education and Research in Substance Abuse
- 2007 Distinguished Achievement Award, Institute for Behavioral Health
- 2007 Marian Fischman Lecture - Columbia University, New York.
- 2008 Louis DeLaparte Distinguished Lecture. University of South Florida.

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

Not Applicable

10. **Bar and Court Admission:**

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

Not Applicable

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

Not Applicable

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

- 1976 – 2009 **Member of the Board of Directors:College on Problems of Drug Dependence**
This is a professional research society that holds an annual research meeting and publishes a journal (Drug and Alcohol Dependence)
- 1995 - 2000 **Member of the Board of Directors, Johnson Institute Foundation**
- 1998 – 2007 **Member, American College on Neuropsychopharmacology**
This is also a professional research society that holds an annual research meeting and publishes a journal (Neuropsychopharmacology)
- 1999 – 2000 **Member, Research Society on Alcoholism**
This is also a professional research society that holds an annual research meeting and publishes a journal (Alcoholism)
- 2005 **Board of Directors Member – Drug Strategies Inc.**
- 2009 **President, College on Problems of Drug Dependence**
- 2007- 2009 **Member of the Board of Directors for the Partnership for a Drug Free America**

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin

No, membership is based only on research interests and expertise.

12. Published Writings and Public Statements:

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

BOOKS: note: copies of these are at TAB A

1. Addiction Research and Treatment: Converging Trends, by E. Gottheil, A. T. McLellan, and K.A. Druley (editors) Pergamon Press, N.Y., 1979.
2. Matching Patient Needs and Treatment Methods in Alcohol and Drug Abuse, by E. Gottheil, A.T. McLellan, K.A. Druley (eds.) Charles Thomas Pub., Chicago, 1981.
3. McLellan A.T., Bragg A., and Cacciola J., Escape From Anxiety and Stress, Chelsea House Pub., New York, 1985.
4. McLellan A.T., Investing in Drug Abuse Treatment: A Discussion Paper for Policy Makers. United Nations International Drug Control Programme. United Nations Press. N.Y., N.Y., 2001.
5. Volpicelli J.R., Pettinati H.M., McLellan A.T. and O'Brien C.P., Combining Medication and Psychosocial Treatments for Addictions: The BRENDA Approach. Guilford Press, NY, NY, 2001.

Unable to Provide:

1. Substance Abuse and Psychiatric Illness, by E. Gottheil, A.T. McLellan, and K.A. Druley (eds.), Pergamon-Maxwell, N.Y., 1980.

RESEARCH PUBLICATIONS, PEER REVIEWED:

Note: copies of these articles are at TAB B-1

1. McLellan, A.T., Druley, K.A.: A comparative study of response to treatment in court-referred and voluntary drug patients. Hospital and Community Psychiatry, 28: 241-249, 1977.
2. McLellan, A.T., Druley, K.A.: The readmitted drug patient: Evidence of failure or gradual success? Hospital and Community Psychiatry, 28:764-766, 1978.

3. McLellan, A.T., Druley, K.A., Carson, J.E.: Evaluation of substance abuse problems in a psychiatric hospital. Journal of Clinical Psychiatry, 39(5):425-430, 1977.
4. McLellan, A.T., Luborsky, L.: Our surprising inability to predict the outcomes of psychological treatments- with special reference to treatments for drug abuse. American Journal of Drug and Alcohol Abuse, 5(4):387-398, 1978.
5. McLellan, A.T., Hery, D.S., Druley, K.A.: Staff drinking patterns and approach to patient drinking problems within a psychiatric hospital. American Journal of Drug and Alcohol Abuse, 5(4): 507-516, 1978.
6. McLellan, A.T., Woody, G.E. O'Brien, C.P. Development of psychiatric illness in drug abusers. New England Journal of Medicine, 301:1310-1314, 1979.
7. McLellan, A.T., MacGahan, J., Druley, K.A.: Changes in drug abuse clients 1972-1978: Implications for revised treatment. American Journal of Drug and Alcohol Abuse, 6(2):151-162, 1979.
8. Alterman A.I., Erdlen F.R., McLellan A.T., Mann S.T. Problem drinking in hospitalized schizophrenic patients. Addictive Behaviors, Vol. 5, 273-276, 1980.
9. Krieger, E., McLellan, A.T., Parente, R. Opening move in substance abuse therapy: Appropriateness of treatment assignment. American Journal of Drug and Alcohol Abuse, 7(3&4): 347-359, 1980.
10. Marcovici, M., McLellan, A.T., O'Brien, C.P., Rosenzweig, J.: Risk for alcoholism and methadone treatment: A longitudinal study. Journal of Nervous & Mental Disease, 168: 556-558, 1980.
11. McLellan, A.T., Druley, K.A., O'Brien, C.P., Kron, R., Alterman, A.I.: Matching substance abuse patients to appropriate treatments: A conceptual and methodological approach. Drug and Alcohol Dependence, 5(1980): 189-195, 1980.
12. McLellan, A.T., Luborsky, L., O'Brien, C.P., Woody, G.E.: An improved diagnostic evaluation instrument for substance abuse patients: The Addiction Severity Index. Journal of Nervous & Mental Disease, 168(1): 26-33, 1980.
13. McLellan, A.T., O'Brien, C.P. Luborsky, L., Woody, G.E., Kron, R. Are the "addiction-related" problems of substance abusers really related? Journal of Nervous and Mental Disease, 169(4)232-239, 1981.
14. Alterman, A. & McLellan, A.T.: A framework for refining the diagnostic categorization of substance abusers. Addictive Behaviors, 6: 23-27, 1981.
15. Marcovici, M., O'Brien, C.P., McLellan, A.T., Kacian, J.: A clinical, controlled study of levo-alpha-acetylmethadol in the treatment of narcotic addiction. American Journal of Psychiatry, 138(2):234-236, 1981.

16. McLellan, A.T., Ball, J.C., Rosen, L., O'Brien, C.P. Pretreatment source of income and response to methadone maintenance: A follow-up study. American Journal of Psychiatry, 138(6):785-789, 1981.
17. LaPorte, D., McLellan, A.T., Erdlen, F., Parente, R. Treatment outcome as a function of follow-up difficulty in substance abusers. Journal of Consulting and Clinical Psychology, 49(1):112-119, 1981.
18. LaPorte, D., McLellan, A.T., O'Brien, C.P., Marshall, J. Treatment response in psychiatrically impaired drug abusers. Comprehensive Psychiatry, 22(4):411-419, 1981.
19. O'Brien, C.P., Woody, G.E., McLellan, A.T. Long-term consequences of opiate dependence. New England Journal of Medicine, 304(18): 1098-1099, 1981.
20. Stitzer, M.L., Griffiths, R.R., McLellan, A.T., Grabowski, J., Hawthorne, J.W., Diazepam use among methadone patients: Patterns and dosages. Drug and Alcohol Dependence, 8(1981): 189-199, 1981.
21. McLellan, A.T., Erdlen, F.R., Erdlen, D.L., O'Brien, C.P. Psychological severity and response to alcoholism rehabilitation. Drug and Alcohol Dependence, 8(1981): 23-35, 1981.
22. McLellan, A.T., Woody, G.E., Luborsky, L., O'Brien, C.P. Druley, K.A. Is treatment for substance abuse effective? JAMA, 247(10): 1423-1428, 1982.
23. McLellan, A.T., Luborsky, L., Woody, G.E., Druley, K.A., O'Brien, C.P. Predicting response to alcohol and drug abuse treatments: Role of psychiatric severity, Arch. Gen. Psychiat., 40(1983): 620-625, 1983.
24. McLellan, A.T., Luborsky, L., Woody, G.E., O'Brien, C.P., Druley, K.A. Increased effectiveness of substance abuse treatment: A prospective study of patient-treatment "matching". Journal of Nervous and Mental Disease, 171(10): 597-605, 1983.
25. Greenstein, R.A., Evans, B.L., McLellan, A.T., O'Brien, C.P. Predictors of favorable outcome following naltrexone treatment. Drug and Alcohol Dependence, 12(1983): 173-180, 1983.
26. Woody, G.E., Luborsky, L., McLellan, A.T., O'Brien, C.P., Beck, A.T., Blane, J., Hole, A., and Herman, I. Psychotherapy for opiate addicts: Does it help? Archives of General Psychiatry, 40 (1983):639-645, 1983.
27. O'Brien, C.P., Woody, G.E., McLellan, A.T. Modern treatment of substance abuse. Drug and Alcohol Dependence, 11: 95-97, 1983.
28. McLellan, A.T., Griffith, J., Childress, A.R., and Woody, G.E. The psychiatrically severe drug abuse patient: Methadone maintenance or therapeutic community? American Journal of Drug and Alcohol Abuse, 10(1):77-95, 1984.
29. Woody, G.E., McLellan, A.T. and Luborsky, L., O'Brien, C.P., Blaine J.D., Fox, Sonja, Herman, Ira, and Beck Aaron T. Severity of psychiatric symptoms as a predictor of

- benefits from psychotherapy: The veteran's administration- Penn study. American Journal of Psychiatry, 141:10, 1172-1177, 1984.
30. Woody, G.E., Luborsky, L., McLellan, A.T., O'Brien, C.P., Beck, A T, Blaine, J, Herman, I, Hole, A, Psychotherapy for Opiate Addicts. Psychopharmacology Bulletin, 19: 766-772, 1984.
 31. Woody, G.E., O'Brien, C.P., McLellan, A.T. Treatments for Opiate dependence. Psychiatry Annals, 14(4):257-263, 1984.
 32. Luborsky, L., McLellan, A.T., Woody, G.E., O'Brien, C.P., Auerbach, A. Therapist success and its determinants. Archives of General Psychiatry, 42: 602-611, 1985.
 33. McLellan, A.T., Luborsky, L., Cacciola, J., Griffith, J., Evans, F., Barr, H.L., and O'Brien, C.P. New data from the Addiction Severity Index: Reliability and validity in three centers. Journal of Nervous and Mental Disease, 173(7): 412-23, 1985.
 34. Childress, A.R., McLellan, A.T., O'Brien, C.P. Behavioral therapies for substance abuse. International Journal of the Addictions, 20(6&7): 947-969, 1985.
 35. Woody, G.E., McLellan, A.T., Luborsky, L., O'Brien, C.P. Sociopathy and Psychotherapy Outcome. Archives of General Psychiatry, 42: 1081-1086, 1985.
 36. McLellan, A. T. Childress, A. R., O'Brien, C. P., Ehrman, R. and Pashko, S. Extinguishing conditioned responses during opiate dependence treatment: Turning laboratory findings into clinical procedures. Journal of Substance Abuse Treatment, 3: 33-40, 1986.
 37. Luborsky, L. Crits-Cristoph, P., McLellan, A.T., Woody, G.E., Piper, W., Lieberman, B., Imber, S., and Plikonis, P. Do therapists vary much in their success? Findings from four outcome studies. American Journal of Orthopsychiatry. 56(4): 501-512, 1986.
 38. Childress AR., McLellan A.T. & O'Brien C.P. Abstinent opiate abusers exhibit conditioned craving, conditioned withdrawal and reductions in both through extinction. British Journal of. Addiction, 81(1986): 655-660, 1986.
 39. Childress AR., McLellan A.T. & O'Brien C.P. Role of conditioning factors in the development of drug dependence. Psychiatric Clinics of North America, 9(3): 413-425, 1986.
 40. Childress AR., McLellan A.T. & O'Brien C.P. Conditioned responses in a methadone population: A comparison of laboratory, clinic and natural settings. J. Substance Abuse Treatment, 3 173-179, 1986.
 41. Milby J.B., Gurwitsch R.H., Weibe D.J., Ling W., McLellan A.T. and Woody G.E. Prevalence diagnostic reliability of methadone maintenance detoxification fear. American Journal of Psychiatry, 143(6): 739 - 743, 1986.
 42. Alterman A.I., McLellan A.T. A factor-analytic study of Tarter's Hyperactivity-MBD Questionnaire. Addictive Behaviors, 11, 287-294, 1986.

43. Woody, G.E., McLellan, A.T., Luborsky, L., O'Brien C.P. Twelve-month follow-up of psychotherapy for opiate dependence. American Journal of Psychiatry, 144(5): 590-596, 1987.
44. Wang, R., Mallon, J., Alterman, A.I., & McLellan, A.T. Alcohol and dilated cardiomyopathy: incidence and correlation with clinical outcome. Journal of Substance Abuse Treatment, 4: 209-213, 1988.
45. McLellan, A.T., Woody G.E., Luborsky L., Goehl, L. Is the counselor an "Active Ingredient" in substance abuse rehabilitation? Journal of Nervous and Mental Disease, 176(7): 423-430, 1988.
46. O'Brien C.P., Terenius L., Nyberg F., McLellan A.T., Eriksson I. Endogenous opioids in cerebrospinal fluid of opioid-dependent humans. Biol. Psychiatry, 24: 649-662, 1988.
47. O'Brien C.P., Childress A.R., Arndt I.O., McLellan A.T., Woody G.E., Maany I. Pharmacological and behavioral treatments for cocaine dependence: Controlled studies. Journal of Clinical Psychiatry, 49(2): 17-22, 1988.
48. Arndt I.O., McLellan A.T., O'Brien C.P. Abstinence treatments for opiate addicts: Therapeutic community or Naltrexone? Journal of Substance Abuse Treatment, 275-281, 1989.
49. O'Brien C.P., Woody G.E., McLellan A.T., Driscoll G., Childress A.R., Alterman A.I., Ehrman R., Metzger D. Reports from research centers: Substance abuse treatment research center Philadelphia VA medical center and the University of Pennsylvania. British Journal of Addiction, 83: 1261 – 1270, 1989.
50. Gerstley L., McLellan A.T., Alterman A.I., Woody G.E., Luborsky, L., and Prout, M., Ability to form an alliance with the therapist: A possible marker of prognosis for patients with antisocial personality disorder. American Journal of Psychiatry, 146(4): 508-512, 1989.
51. Gerstley L.J., Alterman A.I., McLellan A.T., Woody G.E. Antisocial personality disorder in patients with substance abuse disorders: A problematic diagnosis? American Journal of Psychiatry, 147(2): 173-178, 1990.
52. O'Brien C.P., Childress A.R., McLellan A.T., Ehrman R. Integrating systematic cue exposure with standard treatment in recovering drug dependent patients. Addictive Behaviors, 15: 355-365, 1990.
53. Wang R.Y., Alterman A.I., Searles J.S., McLellan A. T. Alcohol abuse in patients with dilated cardiomyopathy: Laboratory vs. Clinical Detection. Arch/ Intern Med. 150: 1079-1082, 1990.
54. Woody G.E., McLellan A.T., and O'Brien C.P. Research on psychopathology and addiction: treatment implications. Drug and Alcohol Dependence, 25: 121-123, 1990.
55. Alterman A.I., Hall J., Purtill J.J., Searles J., Holohan J., McLellan A.T. Heavy drinking and its correlates in young men. Addictive Behaviors. 15:95-103, 1990.

56. Woody G.E., McLellan A.T., Alterman A.I. and O'Brien C.P. Encouraging collaboration between research and clinical practice in alcohol and other drug abuse treatment. Alcohol Health and Research World, 15(3): 221 - 227, 1991.
57. Gottheil E., McLellan A.T., Druley K.A. Length of stay, patient severity and treatment outcome: Sample data from the field of alcoholism. Journal of Studies on Alcohol, 53(1): 69-75, 1992.
58. Alterman A.I., Droba M. and McLellan A. T. Response to Day Hospital Treatment by Patients with Cocaine and Alcohol Dependence. Hospital and Community Psychiatry, 43 (9): 930-932 1992.
59. Watkins K.E., Metzger D.S., Woody G.E. and McLellan A.T. High risk sexual behaviors of intravenous drug users in and out of treatment: Implications for the spread of HIV infection. American Journal Drug and Alcohol Abuse, 18 (4), 389 - 398, 1992.
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- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None

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

TESTIMONY:

Note: Copies of testimony submitted are contained in TAB C.

- 1. Rogue Online Pharmacies: The Growing Problem of Internet Drug Trafficking:** Hearing before the Committee on the Judiciary, Senate, 110th Cong., 1 (May 16, 2007).
- 2. Performance and Outcome Measurement in Substance Abuse and Mental Health Programs:** Hearing before the Subcommittee on Substance Abuse and Mental Health Services of the Committee on Health, Education, Labor, and Pensions, Senate, 108th Cong., 2 (July 20, 2004).
- 3. Measuring the Effectiveness of Drug Addiction Treatment:** Hearing before the Subcommittee on Criminal Justice Drug Policy and Human Resources of the Committee on Government Reform, House of Representatives, 108th Cong., 2 (March 30, 2004).
- 4. Causes and Consequences of Alcohol Use:** Hearing before the Committee on Governmental Affairs, Senate, 100th Cong., 2 (June 16, 1988).

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

I have attached copies of PowerPoint slides for 116 presentations I have given over the past 5 – 6 years (PowerPoint at TAB D). The dates on those presentations give an indication of the year and approximate date of last use. While this provides an essentially complete description of all topics, it does not account for the date and time of each presentation. Each presentation has been delivered multiple times and to multiple audiences (see below). I simply have not kept records due to the volume of requests I receive (about 3 – 5 per month for the past 25 years).

In the interests of providing a full account of *what* I have presented and *to whom* I have presented, I offer the following. All talks and presentations have focused upon the research done by myself and my colleagues and this work can be divided into four themes: scientific studies evaluating the effectiveness of various types of alcohol and other drug treatments; scientific studies evaluating the efficiency and public value of various types of treatment financing, purchasing and regulatory systems; an historical and conceptual review of how addiction and addiction treatment have been conceptualized and treated – emphasizing the differences between an acute and a continuing care perspective; and finally, translational research studies helping to bring scientific forms of addiction treatment into contemporary treatment settings and systems.

There are also only four kinds of audiences for these talks. I estimate that about 65% of the talks given have been to researchers and scientists in scientific meetings and academic colloquia, both nationally and internationally. Addiction treatment providers and provider organizations represent about 20% of the audiences to whom I have spoken. The remaining audiences have been groups of city, state and national legislators (about 50 of these groups) and to groups of parents whose children have been affected by addiction. Of course these are not exact figures or times but they represent my best estimates in the absence of official records.

As can be seen from the attached PowerPoint presentations, I have discussed topics entirely in terms of the experimental evidence (from clinical, health services and policy research studies done by me and my colleagues (all of these are published in the above cited papers) as well as by other researchers. The specific content of these talks has evolved over the years with the increase in research studies and available evidence. Importantly these talks do not present my subjective opinions or views on these topics. All talks for the past 25 years have been reports of research studies and other factual data from the published papers presented above.

What follows are specific titles of these presentations with descriptions of content. As indicated, each of these talks has been given to multiple audiences and multiple times over the years and I do not have records on the exact dates or even the number of times each has been presented.

1. **Bridging the Treatment-Research Gap: ASI-Based Procedures Ready for Use in Your Program** – Presents research done by the Institute of Medicine on the gap between the known effective elements of addiction treatment and the types of care

provided by the treatment system. Concludes with practical suggestions for how to implement evidence-based evaluation and assessment at the individual program level.

2. **Bridging the Treatment Research Gap: Evidence-Based Procedures Ready for Use in Your Program** - Presents research done by the Institute of Medicine on the gap between the known effective elements of addiction treatment and the types of care provided by the treatment system. Concludes with practical suggestions for how to implement evidence-based therapies and interventions at the individual program level.
3. **Substance Abuse Treatment: What is It? Why Does It Seem Ineffective/Lessons Learned from Research in Other Fields of Healthcare** - Presents research done by myself and colleagues on treatment delivered in an “acute care” vs. a “chronic care” model, used by the rest of healthcare. Illustrates the conceptual differences and differences in clinical and evaluation methods.
4. **Drug Abuse Treatment, What are the Goals? How are they Measured? Are They Appropriate?** - Presents research done by myself and colleagues on the organization, financing and management of addiction treatment. Illustrates the conceptual differences and differences in clinical methods.
5. **Substance Abuse Treatment: What Works? Why Does Treatment seem so Ineffective? Lessons from Research in Other Fields of Healthcare** - Presents research done by the Institute of Medicine, myself and colleagues on various types of medications, therapies and interventions. Illustrates the potential effectiveness of addiction treatment but also the conceptual, and organizational barriers to delivering more effective care.
6. **Don't Adapt Evidence Based Practices: Adapt the System!** - Presents treatment system barriers to the implementation of scientific (evidence-based) treatments. Concludes with organizational and management procedures used in business research to address these barriers.
7. **Re-Considering Addiction: Implications from a Chronic Care Perspective** - Presents research done by myself and colleagues on treatment delivered in an “acute care” vs. a “chronic care” model, used by the rest of healthcare. Illustrates the conceptual differences and differences in clinical and evaluation methods.
8. **The Future is Now! New Options for Alcohol Treatment** - Presents research done by the Institute of Medicine, myself and colleagues on various types of medications, therapies and interventions. Illustrates the potential effectiveness of these new forms of addiction treatment but also the conceptual, and organizational barriers to delivering more effective care.
9. **Matching Patients and Treatments: The Importance of Treatment Factors** - Presents research done by myself and colleagues showing increased effectiveness from matching particular types of medications, therapies and interventions to specific types of patients.

10. **Re-Considering the Evaluation of Addiction Treatment: From Post-Treatment Follow-up to “Recovery Monitoring”** - Presents research done by myself and colleagues on the differences in outcomes and the improved clinical information gained when treatment is delivered and evaluated in a “continuing care” model.
11. **Re-Considering Addiction: Clinical Questions to Guide New Research** - Presents research done by the Institute of Medicine, myself and colleagues on various types of medications, therapies and interventions. Illustrates the potential effectiveness of addiction treatment but also the need for new research on the conceptual, and organizational barriers to delivering more effective care.
12. **Is Substance Abuse Treatment Effective...Why Doesn't it Seem That Way?** - Presents research done by myself and colleagues on treatment delivered in an “acute care” vs. the “continuing care” model, used by the rest of healthcare. Illustrates the conceptual differences, perceived outcome differences and differences in clinical and evaluation methods from these two approaches.
13. **Is Addiction Treatment Effective? Implications From a Continuing Care Perspective** - Presents research done by myself and colleagues on treatment delivered in an “acute care” vs. a “chronic care” model, used by the rest of healthcare. Illustrates the conceptual differences and differences in clinical and evaluation methods.
14. **Evaluation of CASAWORKS for Families** – This is a report of a single large research study of a comprehensive addiction treatment intervention delivered to unemployed, addicted women receiving TANF benefits. Results are discussed in terms of the added public value to integrating addiction treatment into the context of other health and human services for multiple problem populations such as TANF recipients.
15. **Evaluation of CASAWORKS for Families** – Same as above – interim findings.
16. **Evaluation of CASAWORKS for Families** – Same as above – interim findings.
17. **Substance Abuse Treatment: What is It? Why Does it Seem Ineffective? Lessons from Research in Other Fields of Healthcare** – This is a fundamental discussion of the concepts, methods, “active ingredients” and results from contemporary addiction treatments. This talk has been presented to many audiences outside of the addiction field to provide basic information about the nature, structure, function and reasonable expectations from addiction treatment.
18. **What is Recover? Can We Measure It?** – The most successfully treated cases of addiction do not simply stop drug or alcohol use, they change their relationships with family and society and they become more fully functioning citizens. The combination of abstinence as well as better health, social function and personal responsibility has been characterized as “Recovery” but because of its complex nature it has not had a standard

operational definition that would enable it to be measured and studied and promoted. This talk represents the work of the Betty Ford Institute to do that consensus definition.

19. **Center for Organization and Management in Addiction Treatment** – This is a description of a University of Pennsylvania and Treatment Research Institute research center that has used the principles of better business practices to help the addiction treatment system address the financing, management, regulatory and purchasing barriers to improving treatment quality and effectiveness.
20. **Extra-treatment Factors in the Course of Alcohol Problems: Treated and Untreated Populations** – This talk presents a review of research by myself and my colleagues on the personal, family, health and social factors that can modify and ultimately determine the effectiveness of contemporary addiction treatments.
21. **The Drug Evaluation Network System: DENS** – This is a talk describing the results of a large multi-state study that characterized the nature of the US treatment system and the patients who entered that system between 1999 – 2004. The study was terminated but provided the best data available to date on the fundamental aspects of the US treatment system and the problems presented by the patients who entered that system each year.
22. **The Drug Evaluation Network System: DENS** – Same as above – interim findings.
23. **Engaging Detoxification Patients into Continuing Rehabilitation: Performance-based Contracting** – This talk describes the findings from a state-wide (Delaware) study of purchasing incentives applied at the treatment program level to promote the continuation of addiction care following simple detoxification. The intervention was not effective and provides an important lesson on the use of incentives in healthcare.
24. **Issues That Will Affect Addiction Treatment and Presumptuous Recommendations** – This was a discussion of contemporary issues outside of the addiction treatment system that will nonetheless affect the delivery of care. They included the emergence of managed care, the reliance on residential treatment by the criminal justice treatment, the absence of agreed upon standards of effectiveness, and the increased number of effective medications available for the treatment of alcohol and other drug problems. The presentation concludes with a discussion about evidence based solutions to prepare the field for these forces.
25. **Program of Research to Integrate Substance Use Issues into Mainstream Healthcare.** - This is a description of a University of Pennsylvania and Treatment Research Institute research center that has worked with the four largest primary care medical societies to show them how unhealthy levels of alcohol and other drug consumption have adversely affected the treatment, costs and outcomes of treatments for other chronic illnesses such as hypertension, asthma, diabetes, various cancers, sleep problems and chronic pain. The research presented medical solutions to controlling unhealthy substance use that would improve the effectiveness of treatments for other chronic illnesses such as those above.

26. **Re-Thinking Addiction Treatment?** - Presents research done by me and my colleagues on treatment delivered in an “acute care” vs. a “chronic care” model, used by the rest of healthcare. Illustrates the conceptual differences and differences in clinical and evaluation methods from approaching addiction as a continuing care condition; and discusses the system changes required to implement that form of care.
27. **What’s Wrong With Addiction Treatment?** – This is basically the same talk as the one just described but with a somewhat different title.
28. **NIDA Health Services Research Task Force Report and Recommendations.** – This is a report of a commission I co-chaired on behalf of the NIDA that discussed suggestions for improving the breadth and public health return from NIDA health services research.
29. **Measurement Challenges In Addiction Treatment.** – There have not been standard, agreed upon measures of patient severity at treatment admission or treatment effectiveness within the addiction treatment system. This talk reviews the research from many researchers in the addiction field and suggests common measurement domains and methods that might bring standardization to the field.
30. **Is Addiction Treatment Effective? Implications From a Chronic Care Perspective -** Presents research done by me and my colleagues on treatment delivered in an “acute care” vs. a “chronic care” model, used by the rest of healthcare. Illustrates the conceptual differences and differences in clinical and evaluation methods from approaching addiction as a continuing care condition; and discusses the system changes required to implement that form of care.
31. **Is Addiction Treatment Effective?** – Same as above with a slightly different title.
32. **Bridging the Treatment Research Gap - We May Have to Start With a Rope Bridge!**
– This is a presentation discussing the results of the Institute of Medicine report on the gap between the known effective methods of treating addiction and the methods that are most widely used. The presentation discusses the organizational and financing barriers to upgrading the treatment system according to IOM guidelines.
33. **REAL WORLD MATCHING – Who/What Should be Matched to What/Where??** – Presents the results of 5 studies done by me and my colleagues showing increased effectiveness of matching specific types of treatments to particular types of patients.
34. **Drugs VIA the Internet, Nature, Extent, Implications, Online “Pharming”** Presents the results of a series of studies done by me and my colleagues investigating the sale of pharmaceutical drugs over the internet without a prescription.
35. **What’s Wrong With Addiction Treatment: What Could Help?** - This is a presentation discussing the results of the Institute of Medicine report on the gap between the known effective methods of treating addiction and the methods that are most widely

used. The presentation discusses the organizational and financing barriers to upgrading the treatment system according to IOM guidelines.

36. **Effectiveness, Quality, Performance: What's the Difference? & How do you use them?** – Presents standard definitions for these three terms and why they are different. The presentation continues with a discussion of how to measure each and why they are complementary but not identical. The presentation concludes with a description of a performance management system used by several state treatment systems.
37. **What's Wrong With Addiction Treatment: What Could Help?** – This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses.
38. **Changing Addiction Treatment: Moving From Placement to Management Thinking** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses.
39. **Changing Addiction Treatment: Moving From Placement to Management Thinking.** Same as above.
40. **Re-Considering Addiction Treatment- Have We Been Thinking Correctly?** – Same as above.
41. **Re-Considering Addiction Treatment- How Can Treatment be More Accountable and Effective?** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses. Here the emphasis is on the development of management systems derived from other industries to monitor the quality and effectiveness of care.
42. **A New Treatment Model?- Lessons from Physician Health Plans.** This presentation discusses the results of a ten year study of 1,000 addicted physicians participating in Physician Health Programs in 16 states. Findings show outstanding effectiveness and point to a type of continuing care treatment that has not been available to non-physicians.
43. **Improving S/A Outcomes: Moving Toward Medical Culture** – This presentation discusses the benefits to general medicine, and particularly the treatment of chronic illness, from addressing unhealthy substance use. In a corresponding manner the presentation discusses the potential benefits to addicted patients from incorporating more medical care and medications for addiction and psychiatric problems.
44. **Re-Considering Addiction Treatment: Have We Been Thinking Correctly? (Does Anything Work?)** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses. Here the emphasis is on the development

of management systems derived from other industries to monitor the quality and effectiveness of care.

45. **Re-Considering Addiction Treatment: How Can Treatment be More Accountable and Effective? A Business Perspective.** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses. Here the emphasis is on the development of management systems derived from other industries to monitor the quality and effectiveness of care.
46. **Re-Considering Addiction Treatment: Implications From a Chronic Care Perspective.** This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses.
47. **Is Substance Abuse Treatment Effective...Lessons From Research in Other Fields of Healthcare.** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses.
48. **Re-Considering Addiction Treatment: Have We Been Thinking Correctly?** - Same as above
49. **Re-Considering Addiction Treatment: How Can Treatment be More Accountable and Effective? A Business Perspective.** This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses. Here the emphasis is on the development of management systems derived from other industries to monitor the quality and effectiveness of care.
50. **Re-Considering Addiction Treatment: How Can Treatment be More Accountable and Effective? A Business Perspective** Same as above – interim findings
51. **Re-Considering Addiction Treatment: Have We Been Thinking Correctly? (Kaiser)** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses. Here the emphasis is on tailoring the lessons learned in other parts of the addiction treatment system to the Kaiser Permanente system.
52. **Substance Abuse Treatment: What is it? Why Does it Seem Ineffective?** - This is a fundamental discussion of the concepts, methods, “active ingredients” and results from contemporary addiction treatments. This talk has been presented to many audiences outside of the addiction field to provide basic information about the nature, structure, function and reasonable expectations from addiction treatment.

53. **TRI : Yesterday, Tomorrow & TODAY.** – This is a presentation describing the structure and research portfolio of my non-profit research institute. It describes the results of our various studies over the years.
54. **Re-Considering Addiction Treatment: Implications From a Chronic Care Perspective** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses. Here the emphasis is on the development of management systems derived from other industries to monitor the quality and effectiveness of care.
55. **What's Wrong With Addiction Treatment: What Could Help?** - This is another version of the talk about evidence based treatments, delivered in a continuing care model and monitored continuously as is now done in the treatment of other chronic illnesses. Here the emphasis is on the development of management systems derived from other industries to monitor the quality and effectiveness of care.
- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

TRANSCRIPTS for TELEVISION INTERVIEWS:

Note: actual transcripts are at E1

1. **Teens' prescription drug abuse via the Internet is growing problem**
CBS News Transcripts, May 17, 2007 Thursday, 496 words
2. **Senate holds hearings on drugs being available over the Internet**
CBS News Transcripts, May 16, 2007 Wednesday, 454 words
3. **Detox not enough, conference told**
CBC News, July 10, 2007 Tuesday 3:28 PM GMT, 408 words
4. **CHANGING LIVES**
Public Affairs Television, "Bill Moyers", March 30, 1998

INTERVIEW AVAILABLE ON VIDEO

Four copies of the series tapes are provided to the Committee and are labeled TAB E-2.: VIDEO

1. **Hoffman, J., & Froemke S. (Producers). (2007). Addiction [Motion Picture]. United States: HBO Documentary Films.**

I was interviewed as part of the HBO television series "Addiction." I served as Scientific Adviser to the series and appeared briefly describing some promising treatment methods from my research findings.

INTERVIEWS, QUOTES AND ATTRIBUTIONS IN PRINT

I have not kept records of interviews that resulted in print but a lexis-nexus search has been conducted. A list of cites follows and the actual text of the interviews or quotes and attributions are attached at TAB E-3.

1. TREATING DRUG-ADDICTED DOCTORS IS GOOD MEDICINE
Sun-Sentinel (Fort Lauderdale, Florida), March 3, 2009 Tuesday, JEWISH JOURNAL; Pg 28, 949 words, Staff report
2. Wanted: Chemical dependency counselors
San Angelo Standard-Times (Texas), February 19, 2009 Thursday, OPINION/VIEWPOINTS/", 1139 words, ERIC A. SANCHEZ Special to the Standard-Times
3. Bare-bones rehab leads addicts on sober road
The Denver Post, February 15, 2009 Sunday, A SECTION; Pg. A-01, 1888 words, Nancy Lofholm The Denver Post
4. Most overdose fatalities in W. Virginia due to nonmedical use of pharmaceuticals
Reuters Health Medical News, December 9, 2008 Tuesday 9:00 PM EST, PUBLIC HEALTH, 339 words
5. HARFORD PROGRAM AIMS TO HELP INMATES STAY OUT; INNOVATIVE EFFORT PROVIDES DRUG TREATMENT, MENTAL HEALTH CARE AND TRANSPORTATION
The Baltimore Sun, November 4, 2008 Tuesday, LOCAL; Pg. 3A, 1240 words, David Kohn, david.kohn@baltsun.com
6. What Addicts Need; Addiction isn't a weakness; it's an illness. Now vaccines and other new drugs may change the way we treat it.
Newsweek, March 3, 2008, COVER STORY: SCIENCE; Science; Pg. 36, 3939 words, By Jeneen Interlandi; With Raina Kelley
7. On Florida Coast, Addicts Find Home in an Oasis of Sobriety
The New York Times, November 16, 2007 Friday, Section A; Column 0; National Desk; Pg. 1, 1650 words, By JANE GROSS; Terry Aguayo contributed reporting from Miami.
8. So, What Made Me an Addict? Experts Debate Whether Disease or Defect Is to Blame
The Washington Post, August 28, 2007 Tuesday, Correction Appended, HEALTH; Pg. HE01, 1931 words, Maia Szalavitz; Special to The Washington Post

9. Track money flow to stop movement of addictive drugs
San Jose Mercury News (California), May 28, 2007 Monday, OPINION, 807 words, By Keith Humphreys
10. Panel Hears of E-Pharmacies Selling Narcotics Without Prescriptions
WASHINGTON INTERNET DAILY, May 17, 2007 Thursday, TODAY'S NEWS, 690 words
11. ONLINE PHARMACIES AND DRUG TRAFFICKING
CQ Congressional Testimony, May 16, 2007 Wednesday, CAPITOL HILL HEARING TESTIMONY, 1342 words
12. 'Rogue' Internet Pharmacies Fueling Rx Abuse, Panel Told
Washingtonpost.com, May 16, 2007 Wednesday 5:44 PM EST, 1024 words, Brian Krebs, washingtonpost.com Staff Writer, washingtonpost.com
13. HEALTHCARE ACCESS; National effort to improve addiction treatment quality moves forward Law & Health Weekly, December 30, 2006, EXPANDED REPORTING; Pg. 294, 552 words
14. National Effort to Improve Addiction Treatment Quality Moves Forward; Advancing Recovery Partnerships Working to Improve Addiction Treatment Success Rates
Ascribe Newswire, December 5, 2006 Tuesday 2:06 AM Eastern Time, 966 words
15. Treatment gains on research: New and effective medications that suppress drug cravings have been a huge advancement in the treatment of substance abusers. Last week was National Addictions Awareness Week
Edmonton Journal (Alberta), November 26, 2006 Sunday, SUNDAY READER; Pg. F5, 1534 words, William Celis, Freelance
16. PSYCHIATRIST: TODAY'S ADDICTION TREATMENTS OFTEN SHORT-SIGHTED
US States News, October 10, 2006 Tuesday 4:54 AM EST, 303 words, US States News
17. BRAIN RESEARCH IS KEY TO HOPE; NEW DRUGS, NEW APPROACH FUEL MAJOR EFFORTS FOR MANY TO HAVE PRODUCTIVE LIVES
Wisconsin State Journal (Madison, Wisconsin), August 21, 2006 Monday, FRONT; Pg. A1, 1208 words, WILLIAM CELIS Public Access Journalism
18. A CLOSER LOOK: ALCOHOLISM; All part of managing a disease
Los Angeles Times, August 14, 2006 Monday, HEALTH; Features Desk; Part F; Pg. 1, 923 words, Susan Brink, Times Staff Writer
19. Research offers new hope
The Myrtle Beach Sun-News (South Carolina), August 10, 2006 Thursday, A; Pg. 1, 1710 words, William Celis, Public Access Journalism

20. Treatment catching up with brain and genetic research
Centre Daily Times (State College, PA), August 8, 2006 Tuesday, A; Pg. 1, 174 words,
William Celis, McClatchy Newspapers
21. Physician substance abusers spur Tx research; Clinical report
Family Practice News, June 15, 2006, Pg. 42(1), 706 words, Kirn, Timothy F.
22. Physician programs inspiring substance abuse treatment efforts; care and treatment;
Statistical Data Clinical Psychiatry News, June 1, 2006, Pg. 44(1), 709 words, Kirn,
Timothy F.
23. The Real OC
Salt Lake City Weekly (Utah), May 26, 2005 Thursday, Pg. 22, 4691 words
24. Fighting the stigma linked to addiction; Summit urges better treatment of costly social ills
The Herald-Sun (Durham, NC), April 18, 2005 Monday, DURHAM; Pg. B1, 1075 words,
JIM SHAMP jshamp@heraldsun.com; 419-6633
25. Just say ... nothing? The parental 'drug talk' fades
Christian Science Monitor (Boston, MA), March 7, 2005, Monday, USA; Pg. 01, 1063
words, By Alexandra Marks Staff writer of The Christian Science Monitor
26. Rap on drug treatment called unfair
Salt Lake Tribune (Utah), September 25, 2003, Thursday, Final; Pg. B3, 422 words, Jacob
Santini, The Salt Lake Tribune
27. Penn prof is creating a guide to addiction treatment
The Philadelphia Inquirer, SEPTEMBER 15, 2003 Monday CITY-D EDITION,
FEATURES HEALTH & SCIENCE; Pg. C03, 464 words, Stacey Burling INQUIRER
STAFF WRITER
28. IT TAKES A BIT MORE THAN WILLPOWER
Charlotte Observer (North Carolina), June 23, 2003 Monday ONE-THREE EDITION
Correction Appended, HEALTH; KAREN GARLOCH - CHECKUP; Pg. 1E, 512 words,
KAREN GARLOCH, Staff Writer
29. Teens get the word on drug culture
The Philadelphia Tribune, May 13, 2003, Vol. 119; No. 51; Pg. 4B, 770 words, Jones,
Ayana
30. Your Brain on Alcohol
US News & World Report Special Issue, January 1, 2003 Wednesday, 3525 words, Susan
Brink
31. Staying Clean

The New York Times, February 10, 2002 Sunday, Section 6; Column 1; Magazine Desk; Pg. 34, 7477 words, By Peggy Orenstein; Peggy Orenstein is a contributing writer for the magazine and the author of "Flux: Women on Sex, Work, Love, Kids and Life in a Half-Changed World."

32. Drug treatment gets big boost, October 5, 2000, Thursday,, 431 words
33. CITY REPORT: Help me complete a mission
Call and Post (Cleveland), April 23, 1998, Vol. 83; No. 17; Pg. 2A, 318 words, Patmon, Bill
34. MOYERS STAYS 'CLOSE TO HOME' IN ADDICTION SERIES
The Commercial Appeal (Memphis, TN), March 29, 1998, SUNDAY,, 879 words, Tom Walter The Commercial Appeal
35. THE TYRANT OF YOUR LIFE'; ADDICTION FOCUS OF PBS SERIES
Plain Dealer (Cleveland, Ohio), March 29, 1998 Sunday, FINAL / ALL, LIVING; Pg. 1J, 1663 words, By KAREN R. LONG; PLAIN DEALER REPORTER
36. Coming to terms with addiction; Bill Moyers examines what may be America's No. 1 health problem in an upcoming 5-part series on PBS
Florida Times-Union (Jacksonville, FL), March 24, 1998 Tuesday,, City Edition, 1614 words, Nancy McAlister, Times-Union television writer
37. Treating addicts makes more sense
Morning Star (Wilmington, NC), March 19, 1998, Thursday, 422 words
38. PHYSICIANS URGE HELP FOR ADDICTS GROUP SAYS MEDICAL CARE FOR DRUG USERS COSTS LESS THAN PRISON. LONG-TERM TREATMENT IS CALLED EFFECTIVE.
Akron Beacon Journal (Ohio), March 18, 1998 Wednesday I STAR EDITION, NATION; Pg. A1, 1044 words, Raja Mishra, Knight Ridder Newspapers, The Associated, Press contributed to this report.
39. PUBLIC HEALTH: DOCTORS ARGUE DRUG ABUSE IS A DISEASE
American Health Line, March 18, 1998, ACCESS/QUALITY/COST, 926 words
40. Study: Treatment Best for Addicts
Associated Press Online, March 18, 1998; Wednesday, Washington - general news, 696 words, LAURAN NEERGAARD
41. MEDICAL SOLUTION FOR ADDICTION SEEN
The Commercial Appeal (Memphis, TN), March 18, 1998, WEDNESDAY,, 366 words, The Associated Press
42. Health Digest

Fort Worth Star-Telegram (Texas), March 18, 1998, Wednesday, 544 words, Wire Reports

43. DRUG ADDICTION JUST ANOTHER TREATABLE DISEASE, STUDY SAYS
Plain Dealer (Cleveland, Ohio), March 18, 1998 Wednesday, FINAL / ALL, NATIONAL;
Pg. 17A, 541 words, FROM STAFF AND WIRE REPORTS
44. Doctors push care, not prison, for drug addicts
USA TODAY, March 18, 1998, Wednesday, 480 words, Steve Sternberg
45. Medical leaders come out in favor of treatment for drug users instead of punishment
Knight Ridder Washington Bureau, March 17, 1998, Tuesday, WASHINGTON, 911
words, By Raja Mishra
46. Medical training faulted in substance-abuse cases; A panel headed by a Brown University
professor says medical schools should better prepare students to recognize and treat
alcoholism and drug abuse.
Providence Journal-Bulletin (Rhode Island), February 13, 1996, Tuesday, 406 words, C.
EUGENE EMERY JR.; Journal-Bulletin Science Writer
47. Slaves to substance abuse
Health Quest: The Publication of Black Wellness, January 31, 1994, Vol. 1; No. 3; Pg. 57,
1941 words, Green, Connie
48. SUBSTANCE ABUSE WAR NEEDED
Calgary Herald (Alberta, Canada), July 4, 1993, Sunday, FINAL EDITION, CITY & LIFE;
Pg. A4, 364 words, MARIO TONEGUZZI
49. PENN STUDY SHOWS DRAMATIC SUCCESS FOR MERCY DRUG AND ALCOHOL
REHAB PROGRAM
PR Newswire, October 15, 1992, Thursday, State and Regional News, 439 words
50. Drying out is just a start: alcoholism; includes related article
Medical World News, February 13, 1989, Pg. 56(7), 4180 words, Trubo, Richard
51. Drug Deaths and Pavlov's Dogs
The Washington Post, October 23, 1988, Sunday, Final Edition, OUTLOOK; PAGE C3;
OUTPOSTS, 2178 words, Richard Restak

13. **Public Office, Political Activities and Affiliations:**

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

None

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

None

Legal Career: Answer each part separately. – **Not Applicable** -

14. **Litigation:** **Not Applicable- None:**

15. **Legal Activities:** **Not Applicable - None**

16. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I do not have a syllabus from any course I have taught. The following are the classes I have taught with a brief synopsis of the course matter and topics.

University of Pennsylvania School of Medicine

- **Statistical Methods 301 – Introduction to statistics for physicians – 1980-1993**
This is an introductory course for third year medical students describing how to analyze research findings from research studies. Methods such as analysis of variance and covariance, linear and multiple regression, and multivariate logistic regression are discussed in the context of data from clinical trials
- **Graduate Seminars (for Fellows and Residents in Medicine) – 1987-2008**
All of those that follow are elective seminars for post graduate fellows in medicine and psychology.
 - Assessment and Measurement – 1987-2000** This is an advanced course on how to design and test clinical interviews and questionnaires used to assess patient problems at the beginning of treatment, during the course of care and at post treatment follow-up points. Issues of reliability and validity and Item Response Theory were discussed in

the context of data from existing instruments developed by my research group.

Treatment Outcome Evaluation Methods -2000-2008 This is an advanced course describing the methods for obtaining outcome information on patients with substance use and mental health illnesses; as well as how to analyze and interpret the findings from those evaluations. Methods were described in the context of actual evaluations done by my research group.

Graduate Topics in Addiction Treatment – 1998-2002 This is an elective course that is basically a team-taught seminar series presenting topics from the research done by faculty within the Psychiatry Department. My particular lectures had to do with patient assessment, outcome evaluation and instrument development.

17. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have resigned from the Treatment Research Institute (TRI) and will receive no further salary from the Institute. I will retain my existing TRI retirement account. I have requested a leave of absence from the University of Pennsylvania. I will receive no salary or benefits from the University during my tenure at ONDCP. I will retain my University of Pennsylvania retirement account. I have no deferred income or future benefits from any other business interests or professional services.

18. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not.

19. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

Please see my nomination public financial disclosure Standard Form 278.

20. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

Please see attached Form.

21. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Through the course of the nomination process, I have consulted with the Office of Government Ethics and with the designated ethics official at the Office of National Drug Control Policy to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with this nomination process, I have consulted with the Office of National Drug Control Policy's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with ONDCP's designated agency ethics official.

22. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

Please see Pro Bono Work section of **Employment Record, question number 6.**

FINANCIAL STATEMENT

NET WORTH



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

ASSETS			LIABILITIES		
Cash on hand and in banks*	30	000	Notes payable to banks-secured		0
U.S. Government securities-add schedule		0	Notes payable to banks-unsecured		0
Listed securities-add schedule*	740	000	Notes payable to relatives		0
Unlisted securities--add schedule		0	Notes payable to others		0
Accounts and notes receivable:		0	Accounts and bills due		0
Due from relatives and friends		0	Unpaid income tax		0
Due from others		0	Other unpaid income and interest		0
Doubtful		0	Real estate mortgages payable-add schedule*	738	000
Real estate owned-add schedule*	1 355	000	Chattel mortgages and other liens payable		0
Real estate mortgages receivable		0	Other debts-itemize:		0
Autos and other personal property*	222	000			
Cash value-life insurance		0			
Other assets itemize.*					
Veterans Admin Thrift Savings	55	000			
			Total liabilities	738	000
			Net Worth	1 664	000
Total Assets	2 402	000	Total liabilities and net worth	2 402	000
CONTINGENT LIABILITIES		0	GENERAL INFORMATION		
As endorser, comaker or guarantor		0	Are any assets pledged? (Add schedule)		No
On leases or contracts		0	Are you defendant in any suits or legal actions?		No
Legal Claims		0	Have you ever taken bankruptcy?		No
Provision for Federal Income Tax		0			
Other special debt		0			

* See attached schedule

Schedule describing McLellan answers on Financial Statement for Non-Judicial Nominees

ASSETS

Cash on hand	\$30,000
Source is Carise Money market acct plus our checking accounts	
Listed Securities (All IRA or 403B retirements)	
U of Penn & TRI Vanguard Windsor	\$320,000
U of Penn & TRI TIAA (Trad)	\$182,500
U of Penn & TRI CREF (Stock)	\$182,500
TRI Vanguard Int. Val. Fund	\$6,000
TRI Vanguard Int. Health Fund	\$5,000
TRI Vanguard Int. Growth Fund	\$6,000
TRI Vanguard Health Care Fund	\$14,000
Personal Wachovia Retirement	\$24,000
Sources within Wachovia IRA - Open End Mutual Fund	
Wells Fargo Adv End SL-I	
Artio Gbl Intl Eq II I	
DWS Inv Tr Core FXD CI I	
Harbor Intl Fund	
Pimco Total Return Instl	
TCW Divers Val-I	
Touchstn Snds CP Inst GR	
Western Asset Core BD-I	
Real Estate	
	\$675,000
	\$680,000
Autos & Personal Property	
2001 Porsche	\$22,000
2006 Audi	\$20,000
1987 Wilbur (34' Boat)	\$160,000
~15 paintings and some antique furniture	\$20,000
Other Assets	
McLellan Vet. Admin. Thrift Saving	\$55,000

LIABILITIES

Real Estate Mortgages	
Wells Fargo Home mortgage - Phila	\$275,000
Chase Home Mortgage - Ocean City	\$338,000
Chase Second Mortgage - Ocean City	\$125,000

Senator FEINSTEIN. Thank you very much, Mr. McLellan.
Mr. Mayorkas.

STATEMENT OF ALEJANDRO MAYORKAS, NOMINEE TO BE DIRECTOR OF U.S. CITIZENSHIP AND IMMIGRATION SERVICES, DEPARTMENT OF HOMELAND SECURITY

Mr. MAYORKAS. Thank you, Senator.

Senator FEINSTEIN. If you'd speak directly into the mic and pull it close to you. Thank you.

Mr. MAYORKAS. Today I have the extraordinary honor——

Senator FEINSTEIN. You have to pull the mic closer to you.

Mr. MAYORKAS. Thank you, Senator.

Senator FEINSTEIN. Good. Much better.

Mr. MAYORKAS. Today I have the extraordinary honor of being before the Senate Judiciary Committee as President Obama's nominee to head the U.S. Citizenship and Immigration Services. It is a privilege, and I humbly thank you for considering my nomination.

Thank you, Senator. I am very grateful that you are here on what I hope will be my return to public service. As you know, I am very grateful for the opportunity I had to serve as an Assistant U.S. Attorney, and then the U.S. Attorney for the Central District of California.

It has always been a source of great pride that you, Senator Feinstein, recommended me to the President to serve as the U.S. Attorney. Those extraordinary years were formative and formidable ones, and I thank you for your confidence in me then and again now.

I have many people to thank today. Many parents wish for their children a better life than the one they themselves have had. This is an aspiration difficult to even define for me. My father and mother sacrificed much to create for me a childhood and a path to accomplishment, bounded only by my own performance.

Unfortunately, my father was not well enough to travel here today, but my parents filled my life with three terrific siblings: My sister Kathy, and my younger brothers, James and Anthony, both of whom are here today.

I am also blessed to have the support of three wonderful women: My wife Tanya, my almost 9-year-old daughter Giselle, and my 4-year-old daughter Amelia.

Last, I would like to thank my mother. I am sometimes asked why I work so hard. With any small good I achieve, if I do some small thing that makes life better for someone else, then I believe those around me will have met a little bit of my mother, a better soul and a warmer heart there could never be.

If this Committee and the Senate find me deserving of confirmation, I pledge my every effort to ensure that U.S. CIS fulfills its mission with energy and focus. Key to this is ensuring clarity of mission, pursuing robust communication and outreach with Congress and stakeholders, anticipating and planning for future demands, and motivating and retaining personnel.

As you know, I previously had the honor to lead the U.S. Attorney's Office for the Central District of California, an office of 245 Assistant U.S. Attorneys, responsible for the largest Federal judicial district in the Nation, comprised of approximately 180 cities

with an aggregate population of approximately 18 million people. I know what it takes and what it means to lead, and what can be accomplished when the dedicated men and women of a Federal agency are motivated to do their very best in the service of our country.

If I am confirmed, I will conduct an overall review of the agency. As a nominee, I have had an opportunity to engage with officials in U.S. CIS and to begin in my own mind the task of outlining priorities. First, clarity of mission is critical in enhancing the public profile of the agency and instilling public confidence in the secure, fair, and effective administration of our Nation's immigration laws.

I am committed to ensuring U.S. CIS delivers high-quality customer service to those who are eligible to receive benefits. Protecting our national security and public safety is a critical component of the U.S. CIS mission, not an afterthought. This means we must continue to strive to improve the agency's fraud prevention and detection operations, increase collaboration with ICE and other law enforcement agencies to respond to fraud, and to improve the efficiency and accuracy of the E-Verify system.

Second, I believe it is critical to enhance transparency and improve the flow of information from the agency to Congress and the appropriate stakeholders to ensure those concerned about particular issues understand U.S. CIS actions and are able to enact effective immigration regulations and laws.

Third, we must always look to the future. It is critical to position U.S. CIS to meet current and future immigration demands. To this end, we must ensure the successful progress and implementation of business transformation, increase the efficiency of domestic and international operations, and improve detection and prevention of system abuse.

Fourth, developing a motivated workforce is important to ensure high-quality service, and retaining such a workforce is always a challenge. If I am confirmed, I commit to doing my very best to review the needs of the U.S. CIS workforce and to implement programs and policies that serve to motivate and retain employees.

As one who was granted citizenship through the beneficence of our government and by virtue of my family's journey to this country, I understand deeply the gravity, as well as the nobility, of the mission to administer our immigration laws efficiently and with fairness, honesty, and integrity. The most important responsibility of U.S. CIS is its authority to bestow citizenship. As a naturalized citizen, I have a deep understanding and appreciation of this mission.

My parents, sister and I were once refugees. In 1960, we fled Cuba. My father lost the country of his birth, and my mother, for the second time in her young life, was forced to flee a country she considered home. But our flight to security gave us the gift of this wonderful new homeland; I know how very fortunate I am.

I am honored to be before you today. I am deeply humbled the President nominated me to be the Director of the U.S. Citizenship and Immigration Services, and I thank you for your consideration.

[The biographical information of Alejandro Mayorkas follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).
 - Alejandro Nicholas Mayorkas (Nickname: "Ali")
2. **Position:** State the position for which you have been nominated.
 - Director, U.S. Citizenship and Immigration Services, Department of Homeland Security
3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.
 - O'Melveny & Myers LLP, 400 South Hope Street, 16th Floor, Los Angeles, CA 90071
4. **Birthplace:** State date and place of birth.
 - Havana, Cuba; November 24, 1959
5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.
 - Law School: Loyola Law School; Los Angeles, CA; 1982-1985; J.D., 1985
 - College: University of California at Berkeley; Berkeley, CA; 1977-1978 and September 1979-1981.B.A., 1981. University of California at Los Angeles; Los Angeles, CA; January-June 1979.
6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

Employment:

- Law Partner, O'Melveny & Myers LLP, 400 South Hope Street, Los Angeles, CA 90071 (September 2001 – present)
- United States Attorney, Central District of California, 1200 United States Courthouse, 312 North Spring Street, Los Angeles, CA 90012 (1998 - 2001)
- Assistant United States Attorney, Chief, General Crimes Section, Central District of California, 1200 United States Courthouse, 312 North Spring Street, Los Angeles, CA 90012 (1996-1998)
- Adjunct Professor, Loyola Law School in Los Angeles, California. (1996-1997)
- Assistant United States Attorney, Central District of California, 1200 United States Courthouse, 312 North Spring Street, Los Angeles, CA 90012 (1989-1996)
- Associate, Patterson, Belknap, Webb & Tyler (during portion of timeframe, known as Rosenfeld, Parnell & Shames) 1875 Century Park East, Los Angeles, CA 90067 (April 1989 - September 1989, February 1986 - April 1987)

- Associate, Cooper, Epstein & Hurewitz, (law firm no longer in existence), 345 N. Maple Drive, Beverly Hills, CA 90210 (April 1987 - March 1989)
- Law Clerk, Law Office of Colyn Desatnik, 9665 Wilshire Boulevard, Beverly Hills, CA 90212 (October 1985 - January 1986)
- Law Clerk, Law Office of Dennis M. Harley, 2000 Riverside Drive, Suite 200, Los Angeles, CA 90039 (June 1983 - May 1985)
- Assistant Law Librarian, Fulop & Hardee (law firm no longer in existence), Beverly Hills, CA (June 1981 - August 1982)

Other Affiliations:

- Bet Tzedek Legal Services, Non-profit legal services, Board Member (2002 - present), Board Chair (2008 - present)
- California Commission on the Fair Administration of Justice, Non-profit State Commission, Commissioner (2004 - 2008)
- Federal Bar Association, Los Angeles Chapter, Member (2006 - 2008)
- Charles R. Drew University of Medicine and Science, Board of Trustees Member (2005-2008)
- American Bar Association's Committee on Ethics and Professionalism, Co-Chair (2005-2008)
- Cedars Sinai Medical Center, Board of Governors Member (2005 - present), Audit Committee Member (2005-2007)
- Loyola Law School Center for Juvenile Law & Policy, Law School legal clinic, Member, Board of Advisors (2005 - present)
- Anti-Defamation League, Regional Board Member (2003 - present)
- Planned Parenthood Los Angeles, Board Member (2002 - present), Board Secretary (2006 - 2008), and Advocacy Project Board Member (2005 - present)
- United Friends of the Children, Board Member (2002 - present)
- Women Against Gun Violence, Advisory Board Member (2001 - 2002)
- Executive Committee, Criminal Law Section, State Bar of California, Member (1997)

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.
- None
8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Government Service

- United States Postal Inspection Service Award for the successful prosecution of Buford O. Furrow, Jr.
- Special commendations from U.S. Attorney General Janet Reno and F.B.I. Director Louis J. Frech for the successful prosecutions in Operation Polar Cap (drug money laundering cases)
- Commendations from the F.B.I. and the I.R.S. for the successful prosecution of the federal tax, loan fraud, and money laundering case against Heidi Fleiss

- Commendation from the U.S. Department of Justice for successfully directing Operation Senior Sentinel in the Central District of California (nationwide takedown of illegal telemarketers)
- Commendations for the successful prosecution of ten civil forfeiture actions in *United States v. Steven D. Wymer* (white collar fraud forfeiture actions)
- Commendation from the D.E.A. for outstanding contributions in the field of law enforcement
- Commendation from the United States Secret Service for outstanding contributions in the field of law enforcement
- Commendation from Concerned Citizens for judicial excellence
- Special Achievement Awards for outstanding service as an Assistant United States Attorney
- Named in 1999, 2000 by the Daily Journal as one of the 100 most influential attorneys in California

I have received numerous additional awards from federal, state, and local law enforcement agencies for outstanding contributions in the field of law enforcement. However, I have not retained information on the specific awards or the dates of the awards.

Private Law Practice

- Named in 2008 by the National Law Journal as one of the “50 Most Influential Minority Lawyers in America”
- Named in 2006, 2007, 2008 by Los Angeles Magazine as a Los Angeles “Super Lawyer”
- Named in 2007, 2008 as one of the “Best Lawyers in America” in “Best Lawyers in America.”
- Recipient, O’Melveny & Myers’ Values Award, annual award given to two partners worldwide who exemplify the firm’s values of leadership, excellence, and citizenship
- Chair, Warren Christopher Scholarship Committee
- Chair, O’Melveny & Myers’ Values Awards Committee
- Loyola Law School Alumnus of the Year Award (2001)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.
- American Bar Association, Co-Chair, Committee on Ethics and Professionalism (2005 - 2007), Member (1986 - present, intermittently)
 - Hispanic National Bar Association, Member (2009)
 - Association of Business Trial Lawyers, Member (2007 - present)
 - Federal Bar Association, Los Angeles Chapter, Member (2006 - 2008)
 - American Bar Foundation, Member (2007 - 2008)
 - Cuban American Bar Association, Member (1998 - 1999)
 - Los Angeles County Bar Association, Member (1994-1999)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.
 - California State Bar (1986 – present)

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.
- California State Courts (1986 – present)
 - United States District Court, Central District of California (1986 – present)
 - Ninth Circuit Court of Appeals (1986 – present)

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.
- Human Rights Watch, Member (2007 - present)
 - Pacific Council on International Policy, Member (2006 - present)
 - Nature Conservancy, Member (2005 - present)
 - World Affairs Council, Member (2005 - present)
 - United Friends of the Children, Board Member (2002 - present)
 - American Jewish Committee, Member (2002 - present)
 - Chancery Club, Member (2001 - present)
 - Sierra Club Member (2001 - present)
 - University of California at Berkeley Alumni Association, Member (1981 - present, intermittently)
- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.
- None of these organizations currently or, to my knowledge, formerly discriminated on the basis of race, sex, or religion

12. Published Writings and Public Statements:

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

Two case notes in Loyola Law School's *Entertainment Law Journal*:
 "Explicit Drafting of Royalty Contracts"(1984)
 "Relief for Innocent Creators" (1984)

Copies attached as Exhibit A

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association,

committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

- Column from the Co-Chairs, ABA Committee on Ethics and Professionalism Volume 4, No. 1, Winter 2006
- Column from the Co-Chairs, ABA Committee on Ethics and Professionalism Volume 4, No. 2, Spring 2006
- "Lights, Camera, Ethics! An Interactive Discussion of Ethics and Professionalism with Scenes from Your Favorite Legal Films," ABA Section of Litigation Annual Conference, April 2006

Copies attached as Exhibit B

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.
- Notes of speeches as United States Attorney for the Central, District of California, 1998 - 2001:
 - Speech at induction ceremony, United States Attorney for the Central District of California, November 16, 1999
 - February 2, 1999 press conference for Mexican Mafia indictments
 - January 28, 1999 press conference, U.S. v. Kingman Quon
 - March 16, 1999 press conference, Operation Eastern Approach
 - April 29, 1999 press conference, U.S. v. Howard Hernandez et al.
 - June 7, 1999 press conference, U.S. v. John David Ward et al.
 - July 8, 1999 press conference, civil rights
 - July 15, 1999 press conference, stop senior abuse
 - August 12, 1999, press conference, U.S. v. Buford Furrow, Jr.
 - August 31, 1999 statement to the Congressional Black Caucus
 - October 27, 1999, press conference, U.S. v. Thomas O'Donnell et al.
 - December 15, 1999, press conference, HUD Housing Fraud Initiative
 - February 23, 2000, press conference, Rampart Division
 - March 17, 2000, press conference, U.S. v. Patrick J. Naughton
 - April 5, 2000, press conference, U.S. v. Edward Ruiz et al.
 - June 15, 2000, press conference, Operation Tar Pit
 - July 18, 2000, press conference, 18th Street Gang, CLCS
 - July 26, 2000, press conference, MDMA ("Ecstasy")
 - August 31, 2000, press conference, U.S. v. Mark Simeon Jakob (Emulex)
 - September 27, 2000, press conference, Craig Consumer Electronics et al.
 - December 5, 2000, press conference, sale of illegal pharmaceuticals
 - January 16, 2001, press conference, Pico Union/Rampart Weed and Seed
 - January 24, 2002, press conference, U.S. v. Buford Furrow, Jr.
 - March 30, 2001, press conference, U.S. v. Nino Floyd Durden

Copies attached as Exhibit C

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions,

conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

- o Notes for comments for September 2008 Hispanic National Bar Association panel on corporate compliance and responsible corporate citizenship
- o Notes for comments for July 31, 2008 Ninth Circuit Judicial Conference panel on "Spanning the Globe: Dilemmas of Law and Policy" (effects of globalization on courts and counsel)
- o April 18, 2008 American Bar Association, Section of Litigation conference panel, "Real to Reel - Images of Ethics and Professionalism in the Courtroom" (no notes)
- o Notes for speech at June 27, 2007 ACLU luncheon
- o March 6, 2006 American Bar Association White Collar Crime conference panel discussion on the Sarbanes-Oxley Act: The New Corporate Standards (no notes)
- o Notes as moderator for late 2003 (possibly October) Los Angeles County Bar Association panel on United States Attorney's Office and SEC prosecutions of white collar crime
- o July 2003 Practicing Law Institute Corporate Compliance workshop (no notes)
- o April 2003 American Bar Association, Section of Litigation conference panel on trial advocacy topic (no notes)
- o March 2003 Orange County Bar Association conference of general counsel, panel discussion of criminal and SEC enforcement
- o August 25, 2001 speech at Concerned Citizens annual award dinner
- o May 2001 speech at Loyola Law School, La Raza graduation celebration (no notes)
- o March 2001 speech at Law Enforcement Ethics symposium (no notes)
- o March 8, 2001 American Bar Association White Collar Crime conference panel discussion on compliance with *Brady* obligations (no notes)
- o February 15, 2001 Practicing Law Institute Corporate Compliance workshop panel discussion on corporate compliance programs (no notes)
- o February 20, 2001 speech to Culver Marina Bar Association, "New Challenges for Federal Law Enforcement at the Beginning of the 21st Century"
- o December 13, 2000 speech regarding the prosecution of hate crimes, sponsored by the Japanese American Citizens League, Organization of Chinese Americans, Coalition for Humane Immigrant Rights, American Jewish Committee, Asian Pacific Legal Center, Southern Christian Leadership Conference (no notes)
- o October 26, 2000 speech to Chancery Club (Los Angeles lawyers' luncheon club)
- o October 19, 2000 speech for induction of Stephen Larson as United States Magistrate Judge
- o October 17, 2000 lecture at University of Southern California Law School class on local criminal justice (no notes)

- October 6, 2000 speech at Los Angeles Police Department Integrity 2000 seminar
- October 2, 2000 roundtable discussion at UCLA School of Law, regarding guns and violence (no notes)
- September 2000 speech at Federal Bar Association, Riverside Chapter, luncheon
- September 14, 2000 panel discussion, Loyola Law School, responsibility of the criminal justice system to detect and deter police abuse
- July 12, 2000 speech to summer law associates program of the Anti-Defamation League, Los Angeles (no notes)
- July 11, 2000 speech at unveiling of the "Tower of Hope" Beverly Hills, CA
- June 27, 2000 speech at U.S. Department of Justice Bureau of Justice Assistance conference
- June 15, 2000 speech to Association of Deputy District Attorneys
- May 27, 2000 speech, Graduate Commencement Exercises, Chapman University School of Law (no notes)
- May 24, 2000 welcoming remarks, Hate Crimes Seminar, United States Attorney's Office, Central District of California
- May 2000 speech to Los Angeles County Bar Association, Corporate Law Department Section (no notes)
- May 15, 2000 speech to lawyers at Munger, Tolles & Olson LLP
- April 2000 participation on panel for Ninth Circuit Judicial Conference (no notes)
- March 9, 2000 speech, Chief Special Agents Association (no notes)
- February 2, 2000 speech to American Jewish Committee, Los Angeles Chapter
- January 20, 2000 speech at RAND on federal criminal prosecution of gun violence (no notes)
- January 14, 2000 speech, U.S. Department of Justice Bureau of Justice Assistance, collaborative approach between federal and local law enforcement
- November 17, 1999 speech, Chapman University School of Law and Orange County Hispanic Bar Association (no notes)
- November 8, 1999 panel, Southern California Gun Law Enforcement Conference
- November 5, 1999 speech, Outstanding Corporate Counsel Award Dinner
- November 2, 1999 panel, Healthcare Fraud Prosecution (no notes)
- October 1999 speech, Federal Bar Association, Inland Empire Chapter, 1999 Annual Installation of Officers (no notes)
- October 1, 1999 speech at the California State Bar Convention, environmental crimes prosecutions
- September 21, 1999, Association of Business Trial Lawyers, Los Angeles chapter, panel moderator, "How to Make Your Trial Shorter, and Why You Should"
- July 13, 1999 speech, Nursing Home Fraud, Abuse and Neglect Conference
- June 24, 1999 speech, Thirteenth Annual Joint Regulatory Conference, hosted by the U.S. Securities and Exchange Commission, Los Angeles
- May 12, 1999, Los Angeles County Bar Association panel discussion, Diversity on the Bench (no notes)
- May 11, 1999, PricewaterhouseCoopers Symposium on White Collar Crime, panelist (no notes)

- o April 20, 1999 American Bar Association, White Collar Crime Committee, Los Angeles chapter, "Crossfire - a Dialogue Between the U.S. Attorney's Office And the Criminal Defense Bar" (no notes)
- o April 1999, Fifth Annual Women Litigators Forum, panel discussion, "The Art of Negotiation" (no notes)
- o March 3, 1999 meeting of Anti-Defamation League executive committee, "Expanding Civil Rights Enforcement"
- o February 1999 introduction of Antonio Gonzalez at Mexican American Bar Association, Los Angeles, installation dinner
- o January 14, 1999, Bryan Cave LLP Securities Roundtable, panel discussion (no notes)

Copies attached as Exhibit D

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.
 - To the best of my recollection, I provided interviews to:
 - o "The Enforcer," Los Angeles Magazine (September 1, 2000)
 - o KCRW (local radio station, discussing gang/gun violence)
 - o Local radio show broadcast from Pasadena, California

I do not have transcripts or recordings. A Lexis search conducted to recover dates was unsuccessful.

13. Public Office, Political Activities and Affiliations:

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.
 - United States Attorney for the Central District of California, December 1998 - April 2001, Appointed by President Clinton
 - Assistant United States Attorney for the Central District of California, September 1989 - December 1998, Appointed by Attorney General Richard Thornburgh
 - In November 2008, I joined the then-President Elect's United States Department of Justice Agency Review Team. I led the Team's review of the Department of Justice's Criminal Division. I served in that capacity from November 2008 through January 2009, and my service was on a volunteer basis.
- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.
 - Hosted fundraiser in two local (Los Angeles, California) campaigns:

Wendy Greuel, Los Angeles City Controller
Eric Garcetti, Los Angeles City Council

- Raised funds for an event for Senator Dianne Feinstein
- Volunteered at phone bank for Barack Obama

These are the events I am able to recall at this time.

14. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:
- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;
 - I did not serve as a clerk for a judge.
 - ii. whether you practiced alone, and if so, the addresses and dates;
 - I have not practiced alone.
 - iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.
 - **Law Office of Colyn Desatnik**
Beverly Hills, California
Part-time law clerk, October 1985 - January 1986 (estimated)
 - **Rosenfeld, Parnell & Shames (became the Los Angeles, CA office of Patterson, Belknap, Webb & Tyler)**
Los Angeles, California
Litigation Associate, January 1986 - April 1987 (estimated)
 - **Cooper, Epstein & Hurewitz**
Los Angeles, California
Litigation Associate, April 1987 - April 1989 (estimated)
 - **Patterson, Belknap, Webb & Tyler**
Los Angeles, California
Litigation Associate, April 1989 - September 1989 (estimated)
 - **United States Department of Justice**
United States Attorney's Office for the Central District of California, Los Angeles, California

Assistant United States Attorney, Asset Forfeiture Section, 1989-1992
Assistant United States Attorney, Criminal Division, 1992-1993 (estimated)
Assistant United States Attorney, Major Frauds Section, 1993-1996

Assistant United States Attorney, Chief, General Crimes Section,
1996-1998
United States Attorney for the Central District of California, 1998-
2001

- **O'Melveny & Myers LLP**
Los Angeles, California
Litigation partner, September 2001 - present

iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

- I have not served as a mediator or arbitrator in such proceedings.

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

- January 1986 - September 1989. During this period, I served as an associate working on complex business litigation. I researched and drafted legal memoranda, conducted civil discovery, and assisted in pre-trial motion practice in matters pending in federal and state courts.
- September 1989 - January 1992 (estimated). During this period, I served as a prosecutor in the newly-created Asset Forfeiture Section of the United States Attorney's Office. I prosecuted cases to seize and forfeit property purchased with illegal proceeds or used to facilitate the commission of crimes. The majority of these cases targeted properties involved in or derived from narcotics trafficking or investment fraud.
- January 1992 - January 1993 (estimated). During this period, I served as a criminal prosecutor in the United States Attorney's Office. I prosecuted a wide array of criminal cases, including narcotics trafficking, immigration crimes, bank robberies and other violent crimes, and other federal offenses.
- February 1993 - January 1996 (estimated). During this period, I served as a criminal prosecutor in the Major Frauds Section of the United States Attorney's Office. I specialized in the prosecution of complex white collar fraud. I also served as Coordinator of the Telemarketing Fraud Task Force, a task force comprised of federal, state, and local law enforcement agencies focused on the investigation and prosecution of telemarketing fraud.
- January 1996 - December 1998. During this period, I served as the Chief of the General Crimes Section of the United States Attorney's Office. In that capacity, I trained and managed all incoming Assistant United States Attorneys in their prosecution of criminal cases, including in the areas of violent crime, immigration, narcotics trafficking, and fraud. I also continued to prosecute my own caseload in the area of white collar fraud.
- December 1998 - April 2001. During this period, I served as the United States Attorney for the Central District of California. I led an office of approximately 245 Assistant United States Attorneys in the largest federal judicial district in the nation. I oversaw the prosecution of cases in every area of federal law enforcement, including cases of public corruption, high-tech and computer-related crime, immigration, organized crime, investment fraud, violent crime, narcotics trafficking, and international money laundering. I also oversaw the office's Civil Division. I served as Vice Chair of the Attorney General's Advisory

Subcommittee on Civil Rights and as a member of the Subcommittee on Ethics in Government.

- September 2001 - Present. During this period, I have worked as a litigation partner in the firm of O'Melveny & Myers LLP. My practice has been devoted primarily to complex business litigation. I also lead internal investigations on behalf of companies and advise them and their Boards with respect to corporate compliance programs and other aspects of responsible corporate citizenship.
 - i. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.
 - January 1986 - September 1989. During this period, I worked as an associate primarily on behalf of companies involved in business litigation.
 - September 1989 - April 2001. During this period, my only client was the United States. As noted above, I focused on federal law enforcement, handling or overseeing cases in every area of federal prosecution and developing particular expertise in the prosecution of white collar fraud.
 - September 2001 - present. During this period, I have represented primarily companies involved in business litigation. I also have handled internal investigations on behalf of both public and private companies.
- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.
 - i. Indicate the percentage of your practice in:
 1. federal courts;
 2. state courts of record;
 3. other courts;
 4. administrative agencies
 - ii. Indicate the percentage of your practice in:
 1. civil proceedings;
 2. criminal proceedings.
 - January 1986 - April 1987 (estimated). I would estimate that, during this period, eighty percent of my litigation practice was in federal court and the remaining twenty percent was in state court. All of my litigation work was in civil proceedings. I did not appear in court.
 - April 1987 - April 1989 (estimated). I would estimate that, during this period, virtually all of my litigation practice was in state court. All of my litigation work was in civil proceedings. I rarely, if ever, appeared in court.
 - April 1989 - September 1989 (estimated). I would estimate that, during this period, virtually all of my work was in connection with a civil administrative proceeding. I did not appear in court.
 - September 1989 - January 1992 (estimated). During this period, I served as an Assistant United States Attorney. All of my work was in federal court. I prosecuted quasi-criminal matters that were technically civil proceedings (the

civil forfeiture of property tied to violations of federal criminal law). I appeared in federal court on a weekly basis.

- January 1992 - January 1996 (estimated). During this period, I served as an Assistant United States Attorney. All of my work was as a federal criminal prosecutor. I appeared in federal court on a weekly basis.
 - January 1996 - December 1998 (estimated). During this period, I served as an Assistant United States Attorney and the Chief of the General Crimes Section. In these capacities, I worked as a federal criminal prosecutor and as a supervisor of all new federal criminal prosecutors. I appeared in federal court on a weekly basis.
 - December 1998 - April 2001 (estimated). During this period, I oversaw an office of federal criminal prosecutors and federal civil attorneys representing the United States. I would estimate that eighty to ninety percent of my work was in federal criminal proceedings and the remaining ten to twenty percent of my work was in federal civil proceedings. I did not appear in court.
 - September 2001 - present. I would estimate that sixty to seventy percent of my work has been in civil proceedings, the great majority of which have been in state court. The remaining portion of my practice involves internal investigations or the representation of companies involved in civil or criminal government investigations. I appear in court infrequently.
- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
- i. What percentage of these trials were:
1. jury;
 2. non-jury.
- As an Assistant United States Attorney prosecuting civil asset forfeiture cases, I was the sole trial attorney in approximately five cases tried to verdict, three of which were tried to a jury. I also was the supervising trial attorney in several additional civil asset forfeiture prosecutions tried to verdict.
 - As an Assistant United States Attorney prosecuting criminal cases, I was the sole trial attorney in three criminal cases tried to a jury verdict; I was co-counsel in two cases tried to a jury verdict; and, I was the supervising trial attorney in approximately fifteen to twenty additional criminal prosecutions tried to a jury verdict.
- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.
- I have not appeared before the Supreme Court of the United States.

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe

in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
 - 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. *Amerco v. PricewaterhouseCoopers LLP*
Case Number CV2003-011032
Superior Court of the State of Arizona, County of Maricopa
Courtroom of the Honorable Mark W. Armstrong

Served as co-lead counsel for defendant PricewaterhouseCoopers in a sophisticated accounting malpractice case. Case was filed in 2003 and settled in approximately 2004.

Lead co-counsel in the case were:

Linda Smith
O'Melveny & Myers LLP
1999 Avenue of the Stars
8th Floor
Los Angeles, CA 90067
(310)246-6801

H. Michael Clyde
Brown & Bain P.A.
2901 North Central Avenue, Suite 2000
Phoenix, AZ 85012
(602) 351-8000

Principal counsel for plaintiff Amerco was:

Ronald Jay Cohen
Cohen Kennedy Dowd & Quigley
2425 East Camelback Road, Suite 1100
Phoenix, AZ 85016
(602) 252-8400

2. *American Interbanc Mortgage, LLC v. Bankrate, Inc. et al.*
Case Number 02 CC 04857
Superior Court of the State of California, County of Orange
Courtroom of the Honorable Robert H. Gallivan

Lead counsel in defense of an antitrust boycott case. Case was filed in 2002 and settled in approximately 2005 before trial.

Principal counsel for plaintiff American Interbanc were:

William D. Cluster
Gibson, Dunn & Crutcher LLP

4 Park Plaza, Suite 1400
Irvine, CA 92614-8557
(949) 451-3800

Mary A. Dannelley
4 Park Plaza, Suite 100
Irvine, CA 92614
(949) 252-1600

3. *Geter v. Screen Actors Guild*
Case Number BC 297050
Superior Court of the State of California, County of Los Angeles
Courtroom of the Honorable Kenneth Freeman

Served as co-lead trial counsel for defendant Screen Actors Guild in an employment discrimination case. Case was tried to a jury and settled during trial in 2005.

Co-counsel were:
Catherine B. Pepe
c/o O'Melveny & Myers LLP (retired)
610 Newport Center Drive, 17th Floor
Newport Beach, CA 92660
(949) 760-9600

Eric Amdursky
O'Melveny & Myers LLP
2765 Sand Hill Road
Menlo Park, CA 94025
(650) 473-2644

Principal counsel for plaintiff Deborah Geter were:
Dan Stormer
Hadsell & Stormer, Inc.
128 North Fair Oaks Avenue, Suite 204
Pasadena, CA 91102-3645
(626) 585-9600

Rick Hicks and Eugenia Hicks
499 North Cannon Drive
Suite 307
Beverly Hills, CA 90210
(310) 472-8073

4. *United States v. Wanis Koyomejian et al.*
Case Number CR 89-189-CBM
Courtroom of the Honorable Consuelo B. Marshall
United States District Court for the Central District of California

Co-lead trial counsel in the prosecution of what was known as Operation Polar Cap, then one of the largest money laundering cases in U.S. history. The

government proved that more than \$300 million in narcotics proceeds were laundered through complex gold bullion transactions. 1993

There were more than ten defendants in the case. Only one of the defendants, Jimmy Contreras, went to trial; I obtained a conviction as the sole trial counsel in a re-trial of the case. The other defendants pled guilty.

Co Counsel was:

Richard Rathmann
Then Assistant United States Attorney
312 North Spring St.
Los Angeles, CA 90012

Defense attorneys:

Donald M. Re
660 South Figueroa Street
Suite 2109
Los Angeles, CA 90017
(213) 623-4234

Steve Cochran
Katten Muchin & Zavis
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
(310) 788-4455

David Reed
8530 Wilshire Boulevard, Suite 404
Beverly Hills, CA 90211
(310) 854-5246

Jay Lichtman
3550 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90010
(213) 386-3878

David McLane
Kaye, McLane & Bednarski LLP
128 N. Fair Oaks Avenue
Pasadena, CA 91103
(626) 844-7660

These are all of the counsel I have been able to identify.

5. *United States v. Heidi Fleiss*
Case Number CR 94-603-CBM
Courtroom of the Honorable Consuelo B. Marshall
United States District Court for the Central District of California

Co-lead trial counsel in the successful prosecution of Heidi Fleiss on charges of

federal conspiracy, tax fraud, and money laundering charges. Defendant Fleiss was convicted at trial. 1995

My co-counsel was:
Mark C. Holscher
Kirkland & Ellis LLP
777 South Figueroa Street
Los Angeles, CA 90017

Trial counsel for defendant Heidi Fleiss were:

Robert C. Bonner
Thomas C. Holliday
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7370

6. *United States v. Real Property located at 2401 Santiago Drive, Newport Beach, California*
Case Number CV 92-0099-RAG
Courtroom of the Honorable Richard A. Gadbois, Jr. (deceased)
United States District Court for the Central District of California

Prosecuted this and nine other related civil forfeiture actions against properties acquired by criminal defendant Steven D. Wymer. Wymer purchased or maintained these properties with the proceeds of his fraudulent institutional investment scheme. At the time, these actions together represented the largest white collar fraud forfeiture actions in the nation. The cases were resolved in the government's favor in 2003, before trial.

Defendant Steven Wymer's principal defense attorney were:

James D. Riddet
Stokke & Riddet
2677 North Main Street, Suite 100
Santa Ana, CA 92705
(714) 543-2700

Paul Gabbert
2115 Main Street
Santa Monica, CA 90405
(310) 399-3259

7. *United States v. Anthony Edwards et al.*
Case Number CR 95-1197-GHK
Courtroom of the Honorable George H. King (earlier pending in the courtroom of the Honorable James M. Ideman, retired)
United States District Court for the Central District of California

Sole prosecutor of twelve defendants who participated in a fraudulent telemarketing operation. Losses exceeded \$1.6 million. Leaders of the telemarketing operation as well as every salesman who could be identified were prosecuted. All of the defendants pled guilty in 1995-1996.

Defense attorneys for the lead defendants were:

Michael D. Nasatir
2119 Main Street
Santa Monica, CA 90405
(310) 399-3259

Michael Lightfoot
Crowell Moring LLP
800 Wilshire Boulevard, Suite 500
Los Angeles, CA 90017
(213) 622-4750

These are all of the counsel I have been able to identify.

8. *United States v. David Stafford et al.*
Case Number CR 94-088-JGD (and related cases)
Courtroom of the Honorable John G. Davies (retired)
United States District Court for the Central District of California

Sole prosecutor of five telephone salesmen involved in a \$16 million telemarketing fraud. All five defendants pled guilty in 1994.

The most prominent defense attorneys were:

Brian Sun
Jones Day LLP
555 South Flower Street, 50th Floor
Los Angeles, CA 90071
(213) 248-2858

Richard Steingard
Sheppard, Mullin, Richter & Hampton
333 South Hope Street, 48th Floor
Los Angeles, CA 90071
(213) 620-1780

Christopher Caldwell
Caldwell, Leslie & Proctor
1000 Wilshire Boulevard, Suite 600
Los Angeles, CA 90017
(213) 629-9040

Michael D. Nasatir
Nasatir, Hirsch & Podberesky
2115 Main Street
Santa Monica, CA 90405
(310) 399-3259

Gary Lincenberg
 Bird, Marella, Boxer, Wolpert, Nessim, Dooks & Lincenberg
 1875 Century Park East, 23rd Floor
 Los Angeles, CA 90067
 (310) 201-2100

These are all of the counsel I have been able to identify.

9. *United States v. Lissa Yuson et al.*
 Case Number CR 96-818-R
 Courtroom of the Honorable Manuel L. Real
 United States District Court for the Central District of California

Lead prosecutor of individuals involved in health care fraud and insurance fraud. Defendants Lissa Yuson and Alex Yuson operated medical clinics located in Southern and Northern California. Through these medical clinics, the defendants processed fraudulent personal injury claims. Three defendants pled guilty. 1996

Defense counsel included:

Paul Potter
 Potter, Cohen & Samulon
 3852 East Colorado Boulevard
 Pasadena, CA 91107
 (626) 795-6081

Robin Scroggie
 Last known information:
 333 South Grand Avenue
 37th Floor
 Los Angeles, CA 90071
 (213) 620-9576

Stephen Webber
 Last known information:
 3435 Wilshire Boulevard, Suite 1800
 Los Angeles, CA 90010

These are all of the counsel I have been able to identify.

10. *United States v. Hugo Rincon*
 Decision published at 28 F.3d 921 (9th Cir. 1994).
 Ninth Circuit Judges Clifford Wallace, Stephen Trott, T.G. Nelson

Successfully briefed in the Ninth Circuit the basis of excluding at trial a defense witness who intended to testify as an expert in the field of eyewitness identification. Defendant's conviction was affirmed in the Ninth Circuit's published opinion.

The defense attorney was:

Deputy Federal Public Defender Neison Marks
 Former telephone number: (213) 894-2854

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

- My most significant legal activity has been my work as a federal prosecutor in the United States Attorney's Office for the Central District of California. I served as the United States Attorney, the Chief of the General Crimes Section, as a line criminal prosecutor in the Major Frauds Section, and as a civil prosecutor in the Asset Forfeiture Section. As the United States Attorney I led approximately 245 Assistant United States Attorneys in their prosecution of criminal and civil cases and their defense of the United States. As the Chief of the General Crimes Section, I trained and managed all incoming Assistant United States Attorneys in their prosecution of criminal cases in many areas of federal law enforcement, including violent crime, immigration, narcotics trafficking, and fraud.
- I am currently serving as lead counsel in significant pending civil litigation. One example of the pending litigation in which I serve as lead counsel for the defendant is:
 - *Vietnam Telecom International v. Qwest Communications International Inc. et al.* Case Number BC 364137, Superior Court of the State of California, County of Los Angeles, Courtroom of the Honorable Joanne O'Donnell, Department 37. This is a complex civil litigation in which a Vietnamese state-owned telephone company alleges fraud in the inducement of a telecommunications contract.
- I also advise companies cooperating in law enforcement's regulatory or criminal investigations.
- I have not performed lobbying activities.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

- In approximately 1996-1997, I served as an Adjunct Professor of trial advocacy at Loyola Law School in Los Angeles, California.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

- Pursuant to the O'Melveny & Myers LLP Partnership Agreement, if I were to withdraw from the partnership for government service I would receive the following: (1) The return of my capital contribution, less deductions for monies and taxes owed, three months after the end of the month I withdraw from the firm. This payment would be fixed before I leave the firm and, while its precise amount is not yet certain, the approximate amount is \$147,781; (2) A lump sum payment of approximately 60% of the average amount I earned in the three years preceding my withdrawal from the firm, reduced to present value and less deductions for the O'Melveny retirement plans. This payment would be received on my last day with the firm and, while its precise amount is not yet certain, the approximate amount is \$738,351; (3) A pro-rata payment of partnership income covering the period from 2/1/09 through to my last day of employment with the firm, less deductions for O'Melveny retirement plans. This amount is not yet certain. In addition, as a participant in the O'Melveny Client Equity Investment Program, I would receive the value of my participation in the plan on the last day of my employment with the firm, the approximate value of which is \$1,117.07.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

- I have none.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

- Copy of Form SF278 attached as Exhibit E.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

- See Attached Statement.

22. **Potential Conflicts of Interest:**

a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

- In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency

ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.
- In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Homeland Security's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

- My extensive pro bono work on behalf of the disadvantaged is reflected in my service on the Boards of Directors of numerous community organizations (See response to question 7). Most notably, I serve as Chairman of the Board of Directors of Bet Tzedek Legal Services, an organization in Los Angeles, California dedicated to providing access to justice to the poor, and as a member of the Board of Directors of United Friends of the Children, an organization in Los Angeles, California dedicated to assisting foster youth in their transition to independent living. I have performed a considerable amount of pro bono legal work for United Friends of the Children, including my successful defense at trial of a foster youth who was mistakenly charged with a criminal offense.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	\$558,911.31	Notes payable to banks-secured	
U.S. Government securities-add schedule		Notes payable to banks-unsecured	
Listed securities-add schedule	\$68,259.00	Notes payable to relatives	
Unlisted securities--add schedule		Notes payable to others	
Accounts and notes receivable		Accounts and bills due -- Chase Credit Card bill	\$6,493.87
		AAA Auto Insurance bill	\$2,095.63
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid income and interest	
Doubtful		Real estate mortgages payable-add schedule	\$1,847,375.00
Real estate owned-add schedule	\$2,700,000	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts-itemize:	
Autos and other personal property	\$89,755.00	Liability in connection to sale of O'Melveny & Myers LLP building -- This loss involves the sale of a building owned in partnership by the firm. My share of the loss will be deducted from monies I receive on my departure from the firm.	\$299,828.00
Cash value-life insurance			
Other assets itemize:			
Law Partnership capital account	\$467,659.00		
Government TSP	\$165,342	Total liabilities	\$2,155,792.50
401K Account	\$295,390.77	Net Worth	\$2,524,144.58
Defined Benefit -- O'Melveny & Myers	\$334,620		
Total Assets	\$4,679,937.08	Total liabilities and net worth	\$4,679,937.08

CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor		Are any assets pledged? (Add schedule)	No
On leases or contracts	\$1,962	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			

FINANCIAL STATEMENT**SCHEDULES****ASSETS - LISTED SECURITIES**

<u>SECURITY</u>	<u>VALUE</u>
CISCO SYSTEMS	\$13,461
CITIGROUP	\$1,404
GENERAL ELECTRIC	\$13,670
GUARANTY BANCORP	\$1,050
INTEL	\$6,416
MAGUIRE PROPERTIES	\$1,008
MICROSOFT	\$7,956
OPTIMAL GROUP	\$17,750
PFIZER	\$5,544

REAL ESTATE OWNED

PERSONAL RESIDENCE, LOS ANGELES, CA	\$2,700,000.00
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REAL ESTATE MORTGAGES

CITI MORTGAGE (for personal residence)	\$1,847,375.00
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AFFIDAVIT

I, ALEJANDRO N. MAYORKAS, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

MAY 27, 2009
(DATE)

Alejandro N. Mayorkas
(NAME)

Karen R. Williamson
(NOTARY)

LA2:885003.2

Karen R. Williamson
Notary Public, District of Columbia
My Commission Expires 2/28/2011

Senator FEINSTEIN. Thank you very much.
Mr. Schroeder.

**STATEMENT OF CHRISTOPHER SCHROEDER, NOMINEE TO BE
ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY,
U.S. DEPARTMENT OF JUSTICE**

Mr. SCHROEDER. Thank you, Madam Chair, Senator Klobuchar, other members of the Committee.

If I may, Senator Kaufman indicated my family was here too, if I could introduce them, briefly, to you.

Senator FEINSTEIN. Please do, by all means.

Mr. SCHROEDER. My wife, Kate Barlett, of 34 years, my eldest daughter Emily, who, as Senator Kaufman said, was married this Saturday to our new son-in-law, Brian, and our youngest, Lilly, who is a constituent of yours, a resident of Berkeley, California where she's attending law school, and our middle child, Ted Schroeder, who is a member of Senator Kaufman's staff.

Senator FEINSTEIN. Wonderful.

Mr. SCHROEDER. It's a pleasure to have them here with me today, and it is an even deeper pleasure and honor to have been nominated for this position by the President, and if the Senate sees fit, to then be able to return to the Justice Department, where I've worked previously. The Department is an organization I admire deeply. The professionals and the political appointees there, in my experience, are people of outstanding ability and integrity. I am eager to participate in serving the country to give them the best system of administering justice that we can achieve.

At the same time, I've worked for this committee before and I appreciate the prerogatives and importance of this institution, as well as the other body's prerogatives. I am looking forward, in the position of Assistant Attorney General to the Office of Legal Policy, to working closely with this Committee and moving the country forward on a number of issues of importance to everybody.

So with that, I will welcome any questions you may have.

[The biographical information of Christopher Schroeder follows.]

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES

PUBLIC

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

Christopher Henry Schroeder

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

Assistant Attorney General, Office of Legal Policy, Department of Justice

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

**Duke University School of Law, Corner of Science and Tower view Drives,
Box 90360, Durham, NC 27708-0360**

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

1948; Springfield, Ohio

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

**University of California, Berkeley, School of Law, 9/1971 to 6/1974, JD degree
received 6/1974.**

Yale Divinity School, 9/1968 to 6/1971, MDiv degree received 6/1971.

Princeton University, 9/1964 to 6/1968, BA degree received 6/1968.

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

**Duke University, Professor of Law (July 1979 to present) and Professor of Public
Policy Studies (1999 to present) and Director, Program in Public Law at Duke Law
School (2000 to present)**

**Duke University School of Law, Corner of Science and Towerview Drives,
Durham, NC 27708-0360**

O'Melveny & Myers, of Counsel (August 2005 to present)
1625 Eye Street, Washington DC 20005

O'Melveny & Myers, consultant (Jan 2002 to August 2005)
1625 Eye Street, Washington DC 20005

Center for Progressive Reform, Vice President (February 2002 - June 2008)
Member Scholar (February 2002 to present)
455 Massachusetts Ave., NW #150-513
Washington, DC 20001

United States Department of Justice, Counselor to the Assistant Attorney General,
Office of Legal Counsel (April 1993 to January 1994)
950 Pennsylvania Avenue, NW
Washington, DC 20530

United States Department of Justice, Deputy Assistant Attorney General (April
1995 to January 1997)
950 Pennsylvania Avenue, NW
Washington, DC 20530

Senator Joseph R. Biden, Jr., Impeachment Trial Counsel (January 1999 - February
1999)
221 Russell Senate Office Building
Washington, DC 20510

United States Senate Judiciary Committee, Chief Counsel (July 1992 - February
1993) 224 Dirksen Senate Office Building
Washington, DC 20510

United States Senate Judiciary Committee, Special Nominations Counsel (July 1987-
January 1988; February 1988 - June 1990; July 1991 - October 1991)
224 Dirksen Senate Office Building
Washington, DC 20510

Armour, Schroeder, St. John Wilcox and Goodin, Partner (June 1977- June 1979)
505 Sansome Street, San Francisco, CA 94111 (current firm name: Goodin,
McBride, Squeri, Day & Lamprey)

Earl Warren Legal Institute, University of California, Berkeley, research associate
(June 1976- June 1977)
415 Boalt Hall, Berkeley, CA 94720

McCutchen, Doyle, Brown and Enersen, associate (June 1974 - June 1976)

**Three Embarcadero Center, San Francisco, CA 94111
(current firm name: Bingham McCutchen)**

**McCutchen, Doyle, Brown and Enersen, summer associate (summer 1973)
Three Embarcadero Center, San Francisco, CA 94111
(current firm name: Bingham McCutchen)**

**Research Assistant to Professor John Hetland, University of California, Berkeley
(summer 1972)
467 Boalt Hall, Berkeley, CA 94720**

**New York City Bureau of the Budget, research associate (summer 1970)
1 Centre Street, NY, NY 10007**

**Dwight Hall, Yale University, summer intern (summer 1969)
67 High Street, New Haven, CT 06511**

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

I registered for selective service. I did not serve.

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

Rockefeller Fellowship, 1969-1971

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

**California Bar Association
American Bar Association
District of Columbia Bar Association**

10. **Bar and Court Admission:**

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

**California Bar, December 18, 1974
United States Supreme Court Bar, August 10, 2000**

**United States Court of Appeals for the D.C. Circuit, February 7, 2003
District of Columbia Bar, September 15, 2006**

No lapses in membership.

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

**California State Courts, December, 1974
United States District Court, Northern District of California, January 1975
United States Court of Appeals for the Ninth Circuit, July 1975
Supreme Court of the United States, August 2000
United States Court of Appeals for the District of Columbia Circuit, February 2003
District of Columbia Courts, September 2006**

No lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

**Park Boulevard Presbyterian Church, June 1975 to June 1979
Pilgrim United Church of Christ, September 1979 to present
YMCA, 1993 to Present
Center for Progressive Reform, February 2002 to present, Founding Vice-president until July 2008
American Constitution Society, co-chair of Separation of Powers and Federalism issue group, September 2002 to present
National Research Council of the National Academies, Committee on the Use of Third Party Toxicity Research with Human Research Participants, member 2003-2004
Institute of Medicine, National Academies, Committee on the Assessment of the U.S. Drug Safety System, member 2005-2007
Sierra Club (in the 1990s. I have no records showing dates)
Natural Resources Defense Council (in the 1990s. I have no records showing dates)**

- b. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

None of the above organizations currently discriminates or has formerly discriminated on the basis of race, sex, religion or national origin.

12. Published Writings and Public Statements:

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I have located the following:

Harry Truman's Continuing Legacy: Administrative Law Reform and Environmental Lawmaking, THE ENVIRONMENTAL LEGACY OF HARRY S. TRUMAN (Karl Boyd Brooks, ed.), 2009, Truman State University Press.

KEEPING FAITH WITH THE CONSTITUTION (with Goodwin Liu and Pamela Karlan), (2009), American Constitution Society.

ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY, sixth edition, (with Robert Percival, Alan Miller and James Leape), (forthcoming 2009), Aspen Publishing (also all previous editions).

***The United States' Failure to Act* (with Robert Glicksman) in ECONOMIC THOUGHT AND THE FAILURE OF U.S. CLIMATE CHANGE POLICY (David Driesen, ed.) forthcoming 2009, MIT Press.**

PRESIDENTIAL POWER STORIES (with Curt Bradley), (2008), Foundation Press.

ENVIRONMENTAL LAW: STATUTORY AND CASE SUPPLEMENT WITH INTERNET GUIDE 2007-2008 (with Robert Percival), (2008), Aspen Publishing. (This is a book of statutes and edited judicial decisions, with no editorial content. I have supplied one copy of the book.)

***Public Choice and Environmental Policy*, in PUBLIC LAW AND PUBLIC CHOICE (Dan Farber and Anne O'Connell, eds.), (forthcoming 2009),**

Elgar Press.

Lessons from the 1970s for Climate Change, forthcoming Lewis and Clark (Distinguished Visitor lecture, Fall 2008).

Legislating to Address Climate Change: Some Lessons from the Field, 3 ENV'T'L & ENERGY L. & POLY 236 (2008).

Beyond Cost-Benefit Analysis: A Pragmatic Reorientation, 32 HARV. ENV. L. REV. 433 (2008) (with Sidney A. Shapiro).

California, Climate Change and the Constitution, 25 No. 4 ENVIRONMENTAL FORUM 50 (July/August 2008) (with Erwin Chemerinsky, Brigham Daniels, Brettmy Hardy, Tim Profeta and Neil Siegel).

The Nixon Tapes Case, in PRESIDENTIAL POWER STORIES (Schroeder and Bradley, eds.), 2008, Foundation Press.

Introduction to PRESIDENTIAL POWER STORIES (Schroeder and Bradley, eds.), 2008, Foundation Press (with Curtis Bradley).

Supreme Court Pre-emption Doctrine, in PREEMPTION CHOICE (William Buzbee, ed.), 2008, Cambridge University Press.

California, Climate Change and the Constitution, 37 ENVIRONMENTAL LAW REPORTER NEWS AND ANALYSIS 10653 (Sept. 2007) (with Erwin Chemerinsky, Brigham Daniels, Brettmy Hardy, Tim Profeta and Neil Siegel).

Some Notes on a Principled Pragmatism, 95 Calif. L. Rev. 1703 (2007).

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A NEW PROGRESSIVE AGENDA FOR PUBLIC HEALTH AND THE ENVIRONMENT (with Rena Steinzor, eds.), (2005), Carolina Academic Press.

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MAGAZINE, Spring 2005, 27-28.

Foreword, Conservative and Progressive Legal Orders, 67 LAW & CONTEMPORARY PROBLEMS 1 (2004).

Priests, Prophets and Pragmatists, 87 MINNESOTA LAW REVIEW 1065 (2003).

Environmental Law, Congress and the Court's New Federalism Doctrine, 78 INDIANA LAW REVIEW 413 (2003).

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Lost in the Translation: What Environmental Regulation Does that Tort Cannot Duplicate, 41 WASHBURN L.J. 583 (2002).

Excerpt from "The Case for Judicial Review," as seen in *The Washington Post*, December 6, 2001 (with Walter E. Dellinger III), DUKE LAW MAGAZINE, Spring 2002, at 22.

The Multistate Tobacco Settlement and the Problem of Social Regulation Beyond the Power of State Government, 31 SETON HALL L.J. 612 (2001).

Regulating Automobile Pollution: An Environmental Success Story for Democracy?, 20 ST. LOUIS U. PUB. L. REV. 21 (2001).

The Causes of the Recent Turn in Constitutional Interpretation, 51 DUKE LAW JOURNAL 307 (2001).

Third Way Environmentalism, 48 KANSAS LAW REVIEW 801 (2000).

Clear Consensus, Ambiguous Commitment: A Review of Dan Farber's Eco-Pragmatism 98 MICH. L. REV. 1876 (2000).

Putting Politics and Law in the Right Places – Replacing the Independent Counsel Act, 61 LAW & CONTEMPORARY PROBLEMS 163 (1999).

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PROBLEMS 1 (1999).

Rational Choice versus Republican Moment Explanations for Environmental Laws, 1969-73, 9 DUKE ENV'T L. & POLICY FORUM 29 (1998).

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Causation, Compensation and Moral Responsibility, in PHILOSOPHY OF TORT LAW (David Owen, ed., Oxford University Press, 1995).

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Corrective Justice and Liability for Increasing Risks, 37 UCLA LAW

REVIEW 439 (1990).

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Response Prepared to White House Analysis of Judge Bork's Record: Statement of Committee Consultants, 9 CARDOZO L. REV. 219 (1987) (with Jeffrey Peck) (*The Biden Report*). (This report was written while Jeff Peck and I were working as Senate Judiciary Committee consultants. It was subsequently published verbatim by the Cardozo Law Review.)

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Schroeder, Wiggins & Wormhoudt, *Flexibility of Scale in the Large Conventional Coal-Fired Powerplants*, ENERGY POLICY (June 1981).

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Slate Column, "What Congress Gets to Know," (with Walter Dellinger), March 26, 2007.

Chicago Daily Law Bulletin Op-ed, "The Purse Isn't Congress' Only

Weapon,” (with Walter Dellinger), March 15, 2007.

New York Times Op-ed, “The Purse Isn’t Congress’ Only Weapon,” (with Walter Dellinger), March 14, 2007.

Georgetown Law Faculty Blog, “Untangling the Debate on Signing Statements,” (with David Barron, Walter Dellinger, Dawn Johnsen, Neil Kinkopf, Marty Lederman, Richard Shiffrin, and Michael Small), July 31, 2006.

Op-ed in *Raleigh News and Observer* on the transition to a new administration, December 17, 2000.

“The Case for Judicial Review,” with Walter Dellinger, *Washington Post* Op-ed, December 6, 2001.

“Environmental Center More Than Arm of Law School,” *Duke Chronicle*, September 1, 2000

“Low Roads to the High Court,” *New York Times* Op-ed, October 23, 1991, at A23.

“The New Torture Memos,” *Executivewatch.net*, April 21, 2009.

“Executive Power and the 80% Problem,” *Executivewatch.net*, March 24, 2009.

“Government Narrows Its Argument in Gtmo Habeas Cases,” *Executivewatch.net*, March 16, 2009.

“Obama’s Policy on Signing Statements,” *Executivewatch.net*, March 9, 2009.

“OLC Releases Two Profoundly Important Legal Memos,” *Executivewatch.net*, March 5, 2009.

“Bush OLC Repudiates Its Own Opinions,” *Executivewatch.net*, March 2, 2009.

“Supreme Court May NOT Decide Indefinite Detention,” *Executivewatch.net*, February 27, 2009.

“Johnsen’s Confirmation Hearing as OLC Head – The Right Choice,” *Executivewatch.net*, February 25, 2009.

“Midnight Regulations: Congress Lends a Hand,” *Executivewatch.net*, February 24, 2009.

“Obama Says: No Habeas in Bagram,” *Executivewatch.net*, February 23,

2009.

“Testimonial Immunity for White House Aides?” Executivewatch.net, February 20, 2009.

“Can the United States Detain Indefinitely? The Case of the Uighurs,” Executivewatch.net, February 19, 2009.

“Confirmation Hearings Set for Two Key Justice Department Officials,” Executivewatch.net, February 18, 2009.

“Still More on State Secrets,” Executivewatch.net, February 17, 2009.

“More on States Secrets,” Executivewatch.net, February 16, 2009.

“Revisiting the Torture Memos,” Executivewatch.net, February 14, 2009.

“Secret Law,” Executivewatch.net, February 13, 2009.

“Holder Hearings – Part II,” Executivewatch.net, February 11, 2009.

“No Change in State Secrets – Yet,” Executivewatch.net, February 10, 2009.

“Lingering Issues of Executive Privilege – Part I,” Executivewatch.net, February 9, 2009.

“The Incredibly Slippery Idea of Executive Authority – the Holder Hearings Part I,” Executivewatch.net, February 7, 2009.

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I have located the following:

**National Research Council of the National Academy of Sciences, Intentional Human Dosing Studies for EPA Regulatory Purposes (2004)
The National Academies,
500 Fifth Street, N.W.
Washington, D.C. 20001**

At the request of the Environmental Protection Agency, the National Academies formed an advisory panel to examine the appropriateness of accepting data for regulatory purposes from studies that intentionally exposed human subjects to toxic substances. This is the final report of that panel.

Institute of Medicine of the National Academies, The Future of Drug Safety (2007)

The National Academies,
500 Fifth Street, N.W.
Washington, D.C. 20001

At the request of the Food and Drug Administration, the Institute of Medicine formed an advisory committee to examine ways to improve the drug safety system in the United States. This is the final report of the advisory committee.

Center for Progressive Reform, Unnatural Disaster: The Aftermath of Hurricane Katrina (2005).

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I have located the following:

Invited Witness, House Judiciary Committee, Subcommittee on Constitution, Civil Rights and Civil Liberties, From the Department of Justice to Guantanamo Bay: Administration Lawyers and Administration Interrogation Rules, June 26, 2008.

Principles to Guide the Office of Legal Counsel (with Walter Dellinger, Dawn Johnsen, Randolph Moss, Joseph R. Guerra, Beth Nolan, Todd Peterson, Cornelia T.L. Pollard, H. Jefferson Powell, Teresa Wynn Roseborough, Richard Shiffrin, William Michael Treanor, David Barron, Stuart Benjamin, Lisa Brown, Pamela Harris, Neil Kinkopf, Martin Lederman, Michael Small), December 21, 2004 [published, 81 Indiana Law Journal 1345 (Fall 2006)].

Invited Witness, Senate Judiciary Committee, "Importance of Balance on the DC Circuit for Environmental Policy," September 24, 2002

Invited Witness before the Senate Judiciary Committee on "Clinton's 11-hour Pardons," February 14, 2001

Testimony on the Constitutionality of Government Printing Office oversight of Executive Branch Printing, before the Committee on Rules and Administration of the United States Senate, July 24, 1996

Justice for All: Reducing Costs and Delay in Civil Litigation (Report of a Task Force), 1989, The Brookings Institution, Washington, D.C.

Comments of the Clean Air Trust on the EPA's Proposed Rule, Prevention of Significant Deterioration and Non-Attainment New Source Review: Routine Maintenance, Repair and Replacement, 67 Fed. Reg. 80290 (Dec. 31, 2002) [Docket No. A-2002-4]

Amicus Curiae Brief for Senators Hillary Rodham Clinton, Jon S. Corzine, James M. Jeffords, Patrick J. Leahy, Barbara Boxer, Frank R. Lautenberg, John F. Kerry, Christopher J. Dodd, Charles E. Schumer and Jack Reed and the Clean Air Trust in State of New York v. U.S. EPA, United States Court of Appeals for the District of Columbia Circuit, 02-1387 (October 26, 2004)

Application of the Ineligibility Clause, November 31, 1996 (20 U.S. Op. Off. Legal Counsel 410, 1996 WL 33101192 (O.L.C.))

Access to Classified Information, November 26, 1996 (20 U.S. Op. Off. Legal Counsel 402, 1996 WL 33101195 (O.L.C.)).

Validity of Congressional-Executive Agreements that Substantially Modify the United States' Obligations Under an Existing Treaty, November 25, 1996 (20 U.S. Op. Off. Legal Counsel 389, 1996 WL 1185163 (O.L.C.)).

Legal Effectiveness of Congressional Subpoenas Issued After an Adjournment *Sine Die* of Congress, November 12, 1996 (20 U.S. Op. Off. Legal Counsel 372, 1996 WL 1185162 (O.L.C.)).

UN Draft Declaration on the Rights of Indigenous Groups, November 1, 1996 (20 U.S. Op. Off. Legal Counsel 371, 1996 WL 33101200 (O.L.C.)).

Department of Justice Participation on the Internal Revenue Service Undercover Review Committee, October 8, 1996 (20 U.S. Op. Off. Legal Counsel 352, 1996 WL 33101201 (O.L.C.)).

The Constitutionality of Cooperative International Law Enforcement Activities Under the Emoluments Clause, October 7, 1996 (20 U.S. Op. Off. Legal Counsel 346, 1996 WL 33101198 (O.L.C.)).

Permissible Accommodation of Sacred Sites, September 18, 1996 (20 U.S. Op. Off. Legal Counsel 331, 1996 WL 33101199 (O.L.C.)).

Applicability to Executive Privilege to Deliberations Regarding Assertion of Privilege, September 11, 1996 (20 U.S. Op. Off. Legal Counsel 324, 1996 WL 33101189 (O.L.C.)).

Immunity of the Council to the President from Compelled Congressional Testimony, September 3, 1996 (20 U.S. Op. Off. Legal Counsel 308, 1996 WL 33101184 (O.L.C.)).

Contractor Access to Information from Interstate Identification Index, August 15, 1996 (20 U.S. Op. Off. Legal Counsel 299, 1996 WL 33101193 (O.L.C.)).

Nomination of Sitting Member of Congress to Be Ambassador to Vietnam, July 26, 1996 (20 U.S. Op. Off. Legal Counsel 284, 1996 WL 33101197 (O.L.C.)).

Government Printing Office Involvement in Executive Branch Printing, July 23, 1996 (20 U.S. Op. Off. Legal Counsel 282, 1996 WL 33101186 (O.L.C.)).

Constitutionality of Statute Governing Appointment of United States Trade Representative, July 1, 1996 (20 U.S. Op. Off. Legal Counsel 279, 1996 WL 33100948 (O.L.C.)).

Authorization of Immigration Emergency Fund Reimbursements, November 8, 1995 (19 U.S. Op. Off. Legal Counsel 278, 1995 WL 917144 (O.L.C.)).

The Food and Drug Administration's Discretion to Approve Methods of Detection and to Define the Term "No Residue" Pursuant to the Federal Food, Drug, and Cosmetic Act, October 13, 1995 (19 U.S. Op. Off. Legal Counsel 247, 1995 WL 1767991 (O.L.C.)).

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. "Video provided" entries have been copied onto 6 DVDs. Four of these contain multiple entries, and each of these four will display an index of the contents when the DVDS are loaded. I have located the following:

LENS Conference 2009, A panel discussion on surveillance,

detention and interrogation, April 16, 2009 (video provided).

Duke Alumni Talk, A discussion of the First 100 Days of the Obama Administration. Duke Law School, April 18, 2009 (lecture notes provided).\

Panel discussion on Regulation of Greenhouse Gases under the Clean Air Act: NAAQS and SIPs, Harvard/Duke Environmental Workshop, March 26, 2009 (lecture notes provided).

Lecturer for federal judges on National Security and the Law of Surveillance, sponsored by the Federal Judicial Center, Duke University, March 11, 2009. (lecture notes provided)

Invited Speaker, "War Powers and the Executive," Federalist Society, Yale Law School, 127 Wall Street, New Haven, CT 06511 February 28, 2009. (no notes available)

A panel discussion at the annual law students conference of the Federalist Society in which I discussed original understanding of the title of "commander-in-chief," and the light this understanding sheds on the scope of contemporary presidential authority.

Invited Speaker, "Reforming Regulatory Impact Analysis," Public Interest Environmental Conference, University of Florida, PO Box 117620, Gainesville, FL 32611, February 27, 2009 (no notes available)

A panel discussion as part of a national conference of public interest environmental organizations in which I discussed ways to improve the regulatory impact analysis process.

Invited Speaker on Separation of Powers, Thrower Symposium, Emory School of Law, 1310 Clifton Rd., Atlanta, Georgia 30322, February 12, 2009. (no notes available)

An annual conference sponsored by the Emory Law School. I discussed the scope of presidential authority under the doctrine of separation of powers.

"Are Empiricists Asking the Right Questions about Judicial Decision-Making?" February 6, 2009 (video provided).

Supreme Court Update, November 17, 2008 (video provided).

Election 2008, November 5, 2008 (video provided).

Invited Commentator on McGarity and Wagner, Bending Science, Case Western Reserve University, School of Law, 11075 East Blvd., Cleveland, OH 44106, October 29, 2008. (no notes available)

A panel discussion to commemorate the publication of Bending Science by Wendy Wagner, a member of the Case Western faculty. I analyzed the importance of the major themes of the book for enabling the United States to make more productive use of science in making regulatory decisions.

DELPF Symposium, October 24, 2008 (video provided).

Delivered the Distinguished Visitor Lecture, "Regulating Greenhouse Gases: Lessons from the 1970s," Lewis and Clark School of Law, September 23-25, 2008 (lecture notes attached).

Panelist, Contractors in Wartime: Accountability and Transparency, Duke National Security Conference, April 10, 2008 (video provided).

Lecturer, Duke Judicial Workshop on the Law of National Security, sponsored by the Federal Judicial Center and Duke Law School, PO Box 90360, Durham, NC 27708, March 13, 2008. (no notes available)

As part of a workshop for approximately 40 federal judges, I conducted a class reviewing the law of national security surveillance.

Invited Lecture, University of Houston School of Law Conference on US Climate Change Legislation, February 8, 2008. (no notes available)

A lecture to a law school and general community audience. Topic: Lessons learned from our prior experience with environmental legislation.

Interviewed Jack Goldsmith about his new book, "The Terror Presidency," Duke Law School, PO Box 90360, Durham, NC 27708, November 13, 2007. (no notes available)

A public interview with the author before a general audience of law students, faculty and staff about the contents of Goldsmith's book, recounting his experiences as head of the Office of Legal Counsel.

Invited Lecturer, "Climate Change and United States Response,"

**Michigan State University Environmental Speaker Series,
November 1, 2007 (lecture notes attached).**

The Court of Public Opinion, September 29, 2007 (video provided).

**Speaker, "The Bush Administration and Air Quality," annual
SEALS conference, Amelia Island, Florida, August 2, 2007. (no
notes available)**

**A panel discussion at the annual meeting of the Southeastern
Association of Law Schools, discussing the activities of the
EPA during the Bush administration in improving the
nation's air quality.**

**Speaker, "President Truman and the Administrative Procedure
Act," at the annual Truman Conference, this year on President
Truman and the Environment, at the Truman Library, Key West,
Florida, June 8, 2007 (video provided).**

**Speaker, Duke Law School Conference (Program in Public Law
and LENS) on National Security, April 13 -14, 2007 (video
provided).**

**Lecturer, Duke Judicial Workshop on the Law of National Security,
sponsored by the Federal Judicial Center and Duke Law School, PO
Box 90360, Durham, NC 27708, March 15, 2007. (no notes
available)**

**As part of a workshop for approximately 40 federal judges, I
conducted a class reviewing the law of national security
surveillance.**

**Speaker, New York Chapter of the Anti Defamation League,
Emergency Powers and the Constitution, New York University
School of Law, 40 Washington Square, NY, NY 10012 March 13,
2007. (no notes available)**

**Symposium sponsored by the New York Chapter of the Anti
Defamation League. I discussed the role of the Constitution
in times of national emergency.**

**Panelist, Duke Program in Public Law Symposium, Impact of the
Kelo Decision, February 26, 2007 (video provided).**

**Panelist, Duke Program in Public Law Symposium on the Military
Commissions Act, February 12, 2007 (video provided).**

Panelist, William and Mary Bill of Rights Institute Symposium on

Presidential Signing Statements, William and Mary School of Law, P.O. Box 8795, Williamsburg, VA 23187, February 3, 2007. (no notes available)

A panel discussion at the annual symposium of the Bill of Rights Institute. I discussed the pros and cons of the use of presidential signing statements.

Briefing for Congressional Staff on Congress's constitutional authorities with respect to regulating the commitment of troops to Iraq, Russell Senate Office Building, Washington, DC, January 10, 2007. (no notes available)

A panel discussion sponsored by the American Constitution Society for congressional staff on the authorities available to Congress for regulating troop levels in Iraq. I provided my views on the subject.

Invited Guest to debate Presidential Signing Statements with former Rep. Mickey Edwards and Senator Arlen Specter, NPR's "Justice Talking," Philadelphia, Pa., November 17, 2006. (no notes available)

I participated in this national radio program discussing the pros and cons of presidential signing statements.

Presented paper, "A Principled Pragmatism," UC Berkeley Law School, Boalt Hall, Berkeley, CA, at Symposium honoring Paul Mishkin, October 27, 2006. (no notes available)

A symposium honoring Professor Paul Mishkin. I commented on several articles written by Professor Mishkin.

Invited Speaker, Institute of Medicine Drug Forum, La Jolla, California, to discuss final report of Institute of Medicine/National Academy of Sciences Report on the United States Drug Safety System, October 25, 2006. (no notes available)

A panel discussion on the recent IOM report on the US Drug Safety System. As a member of the committee that wrote the report, I summarized part of the report's findings.

Invited Speaker, Patriot Act Issues, Exploris, Raleigh, North Carolina, October 1, 2006. (no notes available)

A public forum in downtown Raleigh, to discuss the contents of the USA PATRIOT Act.

Constitution Day, September 18, 2006 (video provided).

Supreme Court Preview, August 28, 2006 (video provided).

Panelist, Preemption, American Constitution Society National Conference, Washington, DC, June 2006. (no notes available)

A discussion of the Supreme Court's preemption doctrine and the use of preemption by federal administrative agencies. I presented my views on several aspects of these topics.

Panelist, National Security and Civil Liberties: Striking the Right Balance, Duke University, Durham, NC, April 2006 (video provided).

Speaker, Conference on Disasters and Environmental Law, UCLA Law School, Los Angeles, CA, April 2006. (no notes available)

At this conference sponsored by UCLA Law School, I discussed aspects of the national, state and local responses to Hurricane Katrina.

Featured Speaker, Separation of Powers During Emergencies, Georgia State School of Law, Atlanta, GA, April 2006. (no notes available)

I presented a public law, sponsored by the American Constitution Society at Georgia State School of Law, on the significance of separation of powers doctrine during times of national emergency.

Lecturer, Duke Judicial Workshop on the Law of National Security, sponsored by the Federal Judicial Center and Duke Law School, PO Box 90360, Durham, NC 27708, March 16, 2006. (no notes available)

As part of a workshop for approximately 40 federal judges, I conducted a class reviewing the law of national security surveillance.

Participant, Conference on Delegating Sovereignty, Duke Law School, Durham, NC, March 3-4, 2006.

The Law of Risk Assessment, Duke University, February 3, 2006 (lecture notes attached).

Participant, "What's on the Supreme Court Docket?", a Supreme

Court preview, Duke Law School, Durham, NC, January 25, 2006 (video provided).

Invited Speaker, "Environmental Regulations: What They do and Why It Matters," Michigan State Environmental Speaker Series, November 3, 2005 (lecture notes attached).

Invited Speaker, "The Law of Risk Analysis," joint Statistics Department and Institute of Statistical Studies workshop, Iowa State University, October 27, 2005 (lecture notes attached).

Invited Speaker, Executive Authority in National Security Matters, University of Indiana School of Law, 211 South Indiana Avenue, Bloomington, Indiana, October 7, 2005. (no notes available)

At a conference sponsored by the American Constitution Society chapter at the University of Indiana Bloomington, I commented on a paper delivered by Neil Kinkopf, discussing the practical difficulties facing congressional efforts to participate in national security decision making during emergencies.

Update on the Global War on Terrorism, September 28, 2005 (video provided).

Debate participant, The Judicial Nomination Process, Federalist Society, Duke Law School, PO Box 90360, Durham, NC 27708, September 22, 2005. (no notes available)

A discussion of the nomination and confirmation process, concentrating on Supreme Court nominations.

The Legacy of Chief Justice Rehnquist, Duke Law School, PO Box 90360, Durham, NC 27708, September 8, 2005 (video provided).

Speaker, The Legacy of Justice O'Connor, Duke Law School, PO Box 90360, Durham, NC 27708,, August 30, 2005. (no notes available)

A panel discussion on the legacy of retiring justice Sandra Day O'Connor.

Moderator, "Progressive Politics or Progressive Constitutional Law," plenary session of the American Constitution Society, Washington, DC, July 31, 2005. (no notes available)

I moderated this panel discussion without providing

substantive remarks of my own.

Invited Speaker, "Hydrogen," presented to the Berkeley Environmental Workshop, University of California, Berkeley, School of Law, Boalt Hall, Berkeley CA, April 18, 2005. (no notes available)

I presented a paper to a workshop of law students and faculty on the prospects for converting from a hydrogen based transportation system.

Invited Speaker, Triangle Institute for Security Studies First Responder Workshop, on Patriot Act Issues, William Friday Center, University of North Carolina, Chapel Hill, NC, April 14, 2005. (no notes available)

A panel discussion, in which I discussed the role of military commissions in the history of armed conflict involving the United States.

LENS Conference, April 8, 2005 (video provided).

Lecturer, Duke Judicial Workshop on the Law of National Security, sponsored by the Federal Judicial Center and Duke Law School, PO Box 90360, Durham, NC 27708, March 17, 2005. (no notes available)

As part of a workshop for approximately 40 federal judges, I conducted a class reviewing the law of national security surveillance.

Invited Speaker, Martin Luther King presentation on Environmental Justice, Duke University, Durham, NC 27708, January 17, 2005. (no notes available)

An address sponsored by Duke University. I discussed the emergence of environmental justice as a concern for environmental policy makers, as part of a celebration of MLK Day.

2004 DELPF Symposium, November 19, 2004 (video provided).

Invited Speaker, "Alternative Grounds for Protecting the Environment," University of Florida, Gainesville, FL, November 12, 2004. (no notes available)

I presented a paper to a group of legal academics on preemption law and environmental policy. A paper based on

the talk was subsequently published as *Federalism's Values in Programs to Protect the Environment, Strategies for Environmental Success* 247 (Michael Allan Wolf, ed., 2005).

Invited Speaker, Implications of the Election for Environmental Policy, Fuqua School of Business, Duke University, Durham, NC 27708, October 28, 2004. (no notes available)

A panel discussion at Duke's business school. I commented on expected environmental priorities for President Bush's second term.

Debate with Michael Greve, Federalist Society, Duke University, Durham, NC 27708, "State Attorneys General: Problem or Peril?" October 19, 2004. (no notes available)

A discussion sponsored by the Duke Chapter of the Federalist Society on the pros and cons of efforts by state attorneys general to sue national enterprises under various state law doctrines.

Invited Speaker, "The Media and Big Trials," Southern Newspapers Publishers Ass'n Annual Convention, the Greenbrier, 330 W. Main Street, White Sulphur Springs, WV 24986, October 11, 2004. (no notes available)

A panel discussion at the annual meeting of the Southern Newspapers Publishers Ass'n, discussing the tensions between fair trial norms and media coverage in cases receiving large amounts of publicity.

Conference on Detention, Interrogation and the Powers of the Executive, September 17, 2004, 6th Annual Public Law Conference (video provided).

Presentation with Scott Silliman on Detention and Prosecution of Terrorists, September 7, 2004 (video provided).

34th Annual Duke Law Journal Administrative Law Conference, April 2, 2004 (video provided).

Invited Panelist, Federalist Society National Lawyers Convention, Washington, DC, "The Bollinger Decisions ... Back to Bakke?" November 15, 2003. (no notes available)

A panel discussion on the significance of the affirmative action decisions involving admissions procedures at the University of Michigan. I presented my views on the

significance of Gruter and Gratz.

Introductory address and moderator, "Natural Resources Policy Under the Bush Administration," November 14, 2003, Duke University (video excerpts provided).

PATRIOT Act Presentation at NC Bar CLE in Cary, NC, Immigration Law, October 30, 2003. (no notes available)

To a group of lawyers receiving CLE credit, I discussed some of the aspects of the USA PATRIOT Act affecting immigration rules and regulations.

"Civil Liberties and Terrorism," Annual Program on Anniversary of September 11, 2001-September 11, 2003, Duke Law School, Durham, NC 27708. (no notes available)

I moderated a discussion before a law school audience, faculty, students, staff, and did not provide substantive comments of my own.

Panel Participant at American Constitution Society Annual Meeting, Affirmative Action After the Bollinger Decisions, Washington, D.C., August 2, 2003. (no notes available)

A panel discussion on the significance of the affirmative action decisions involving admissions procedures at the University of Michigan. I presented my views on the significance of Gruter and Gratz.

Invited Panelist, American Enterprise Institute, 1150 Seventeenth Street, NW., Washington DC 20036. Environmental Federalism, May 13, 2003. (no notes available)

A panel discussion on the appropriate role of federal and state regulatory authority in addressing environmental issues. I presented my views on the subject.

Spoke on the USA Patriot Act to Meeting to Duke Librarians, Durham, NC, 27008, March 11, 2003. (no notes available)

This was a meeting of Duke librarians. I discussed aspects of the USA PATRIOT Act most germane to libraries, concentrating on the business records section, Section 215.

"A Year Later," 9/11 Panel Discussion Moderator, Duke Law School, September 11, 2002 (video provided).

Supreme Court Preview, University of North Carolina School of Law, Chapel Hill, NC, September 5, 2002. (no notes available)

I discussed some of the cases the Supreme Court had accepted for its upcoming October Term.

“Science in the Agencies,” Conference on Science in the Agencies, Duke University School of Law, Durham, NC 27708, May, 2002. (no notes available)

A meeting of law professors discussing the role of science in regulatory decisionmaking. I discussed the role of science in environmental regulation.

Moderator and Panelist, Alumni Forum, April 13, 2002, “Responding to Terrorism,” Duke University School of Law, PO Box 90360, Durham, NC 27708. (no notes available)

A panel discussion held during Alumni weekend at Duke University. I discussed several significant aspects of the USA PATRIOT Act.

Invited Speaker, “Legislative Responses to Terrorism: National Security vs. Civil Rights,” at the Security Challenges After September 11th: National and International Perspectives Conference, April 11-12, 2002, Center on Law Ethics and National Security, Program in Public Law, Duke University, PO Box 90360, Durham, NC 27708. (video provided)

Invited Speaker, 32nd Annual Administrative Law Conference, Executive Privilege and the Bush Administration, March 29, 2002 (video provided).

Invited speaker, “National Defense and Civil Liberties,” at the Terrorism: Threat and Response Conference, sponsored by the Triangle Institute for Security Studies and the United States Army War College, Friday Center, University of North Carolina, Chapel Hill, NC, February 28, 2002. (no notes available)

I discussed aspects of the USA PATRIOT Act at this annual conference.

Invited speaker, sponsored by the Durham School Board, Durham, NC: Partners for Youth, Duke/Durham partnership, on civil liberties, February 16, 2002. (no notes available)

I talked with a group of 15 students on privacy and other

civil liberties issues of particular relevance to students in public education.

Delivered paper, "Implications of Rehnquist Court Decisions on Congressional Authority over Environmental Policy," University of Indiana, School of Law, February 2, 2002. (no notes available)

A conference attended by law professors and law students. I delivered a paper on potential limitations on federal regulatory authority in light of the Supreme Court's modern Commerce Clause decisions.

Panelist at Mecklenburg County Bar Public Law Forum, "National Security vs. Civil Liberties: How Far Should We Go?," Charlotte, NC, January 10, 2002. (no notes available)

A panel discussion before an audience composed of members of the general public in Charlotte. The topic was the proper balance between civil liberties and national security.

Featured Speaker, Duke Alumni Forum, New York City, on civil liberties and national security, November 28, 2001. (no notes available)

This was an event for Duke alumni in New York City. I discussed the USA PATRIOT Act.

Speaker, Public International Law Forum, Duke University School of Law, Durham, NC 27708, on Military Tribunals, November 19, 2001. (no notes available)

A public discussion at Duke Law School. I discussed the history of military commissions.

Luncheon Speaker, meeting of Sanford Institute Board of Visitors, Duke University, Durham, NC 27708, "The Balance Between Civil Liberties and National Security," November 9, 2001. (no notes available)

A meeting of the Public Policy Institute's Board of Visitors. I discussed surveillance and interrogation issues.

Featured Speaker, Inaugural meeting of UNC and Duke chapters of the American Constitution Society, School of Social Work, University of North Carolina, Chapel Hill, NC, November 8, 2001. (no notes available)

A meeting of law students. I discussed interrogation and

surveillance issues.

Presented paper, "Tort Law As An Alternative to Enforcement of Environmental Regulations," Washburn School of Law, 1700 SW College Ave., Topeka, KS 66621, October 19, 2001. (no notes available)

An academic conference at Washburn. I presented a paper comparing tort law vs. regulation as mechanisms for addressing environmental problems.

Dinner Panelist, Duke Law School Board of Visitors, Durham, NC 27708, "The Balance Between Civil Liberties and National Security," October 12, 2001. (no notes available)

A meeting of the Duke Law School's board of visitors. I discussed surveillance, detention and interrogation issues.

Presented Paper "Deliberative Democracy and the Effort to Replace Politics with Law," at the 3rd Annual Public Law Conference, Duke University School of Law, Durham, NC 27708, "The Law of Politics," October 11-12, 2001. (no notes available)

This was a conference attended by law professors and students. I presented a paper discussing the theory of deliberative democracy.

Moderated University Forum on the Legal Aftermath of September 11, Duke University, Durham, NC 27708, October 3, 2001. (no notes available)

Discussion of the Patriot Act and other responses to September 11 at Duke University to a university and general community audience.

Invited speaker at AEI/Brookings Federalism Project workshop on Environmental Federalism, Washington, DC, September 20, 2001. (no notes available)

I presented my views on the roles of state vs. federal regulation in addressing environmental issues.

Public Forum on World Trade Center Disaster, September 12, 2001 (video excerpts provided). (no notes available)

Speaker at Law School Town Meeting, co-sponsored by Program in Public Law, to discuss terrorism and responses

to it.

Participant and commentator at "Beyond Cynicism," conference on the future of administrative law, Cornell University School of Law, Myron Taylor Hall Ithaca, NY 14853, March 9-11, 2001. (no notes available)

A legal conference attended by faculty and students. I presented views on the consequences for public policy of public cynicism toward the elected branches of government.

Panelist, Federalist Society meeting in Washington, D.C., "Tort Liability, The Structural Constitution and the States," January 11, 2001. (no notes available)

At a national meeting of the Federalist Society, I discussed the respective roles of state and federal governments in regulating environmental problems.

Organized a university town hall meeting with Bruce Jentleson, Bob Keohane, and John Aldrich, on the election battles in Florida, held at the Sanford Institute, Duke University, Durham, NC 27708. (no notes available)

I discussed the legal issues raised in the Bush v. Gore litigation.

"Election 2000: What Happens Next?" Duke Law School, Durham, NC 27708, November 29, 2000 (video excerpts provided). (no notes available)

Organized and chaired law school town hall meeting, which was also webcast, on the election legal battles in Florida.

Duke Public Law Conference, Duke Law School, Durham, NC 27708 "EPA at 30: Evaluating and Improving the Environmental Protection Agency," December 7-8, 2000. (no notes available)

Conference of the Program in Public Law, attended by students and faculty. I presented a paper discussing the successes and failures of EPA in defending its rules in federal courts.

"Bush v. Gore," Duke Law School, Durham, NC 27708, November 30, 2000. (no notes available)

A Duke law school discussion of the legal claims being

advanced in the challenge to Florida's vote count in the 2000 election.

Presented paper, "Clean Air, Autos and American Citizens: Can These Three Just Get Along?," at "Ten Years After the 1990 Amendments to the Clean Air Act: Have We Cleared the Air?," St. Louis University School of Law, St. Louis, MO, November 17, 2000. (no notes available)

Law conference attended by faculty and students. I discussed the improvements in air quality that have been made since 1970.

Delivered talk at Duke University Public Forum, Duke University, Durham, NC 27708 "The Election: What Does It Mean?" November 15, 2000. (no notes available)

In a public forum at Duke University, I discussed the issues being raised about the vote count in Florida.

Delivered talk at Duke Program in Public Law Brown Bag Lunch Series, "The Electoral College and Close Elections," November 10, 2000. Duke University School of Law, Durham, NC 27708. (no notes available)

I discussed the role of the Electoral College and the history of close presidential elections in the United States.

Presented Paper, "Causes of the Recent Turn in Constitutional Interpretation," at the 2nd Annual Duke Public Law Conference, Durham, NC 27708 October 6-7, 2000. (no notes available)

A law conference attended by faculty and students. I presented a paper discussing the Supreme Court's movement away from Warren Court liberalism.

Introduced Janet Reno prior to her delivering an address at Duke Law School, Durham, NC 27708 May 19, 2000. (no notes available)

Audience of Duke law students and faculty. Brief introductory remarks.

Presented "EPA and the Courts" at the Conference on Sustainable Governance, Duke University Nicholas School of the Environment, Durham, NC 27708, April, 2000. (no notes available)

An academic conference attended by faculty and students. I

presented a paper discussing the successes and failures of EPA in defending its rules in federal courts.

Addressed Office of General Counsel attorneys, United States Environmental Protection Agency, Washington, D.C. (plus 19 remote EPA locations via teleconferencing), on "Pro-Industry and Pro-Environmental Challenges to EPA Rules," April 10, 2000. (no notes available)

I presented research findings on the successes and failures of EPA in defending its rules in federal courts.

Federalist Society Conference, Washington, D.C., "Regulation v. Litigation," February 23, 2000; panel discussion with David Vladeck, Ted Olsen, George Priest, moderated by C. Boyden Gray, on The Public Choice of Regulation versus Litigation. (no notes available)

I discussed the relative advantages of tort law vs. regulation in addressing environmental problems.

Conference on the Third Way, University of Kansas School of Law, 1535 W. 15th Street, Lawrence, KS 66045, February 3, 2000, presented paper, "Third Way Environmentalism." (no notes available)

An academic conference attended by faculty and students. I discussed "third way" approaches to environmental controls, including cap-and-trade programs.

Faculty Workshop, Minnesota School of Law, Walter F. Mondale Hall, 229 19th Avenue South, Minneapolis, MN 55455, November 1999, "Reconsidering Public Choice." (no notes available)

I presented a paper discussing public choice theory.

Faculty Workshop, UCLA School of Law, Hilgard Avenue, Los Angeles, CA 90095 October 1999, "Reconsidering Public Choice." (no notes available)

I presented a paper discussing public choice theory.

Duke Program in Public Law Conference, Duke University School of Law, Durham, NC 27708, "Is Congress Failing, Or Is It Just Misunderstood?," September 12, 1997. (no notes available)

Panel Discussion at Duke University, open to the public. I

analyzed public polling data and scholarly writing exploring reasons for the low approval rating of the Congress.

“Advising the President,” an address given at the University of Oregon School of Law, 1221 University of Oregon, Eugene, Oregon, 97403, January 1997. (no notes available)

I discussed the role of the Office of Legal Counsel.

“Who Is the Government Attorney’s Client?,” an address given to the ABA and Center on Law, Ethics, and National Security, Washington, D.C., December 9, 1996. (no notes available)

I discussed the role of the Office of Legal Counsel in providing legal advice to the executive branch.

“Cooperation between the Justice Department and Other Agencies,” an address to Department of Treasury Lawyers, December 6, 1996 (lecture notes attached).

“Advising the President,” an address given at the University of Kansas School of Law, Lawrence, Kansas, November 20, 1996 (lecture notes attached).

Panelist, “Should Public Values Guide Risk Policy?” at Cummings Colloquium on Environmental Law, Duke University, November 16, 1996. (no notes available)

I discussed the significance of moral and ethical values in determining risk regulation.

Talk, “Congressional Oversight,” National Federalist Society Meeting, Washington, D.C., November 15, 1996. (no notes available)

I discussed the function of congressional oversight in maintaining the appropriate balance in the separation of powers.

Presented Paper, “Legal Luck,” Columbia Law School Law and Philosophy Workshop, Columbia Law School, 435 West 116th Street, New York, NY 10027, November 1989. (no notes available)

I presented a paper on the theory of tort law.

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

I have done my best to identify all items called for in this question, including a thorough review of my personal files and searches of publicly available electronic databases. I have located the following:

“Obama: Ignore Signing Statements,” Josh Gerstein, Politico.com March 9, 2009.

“Declassified Memos Provide Look Into Bush Policies,” Melissa Block, NPR, March 3, 2009.

“Duke Lecturer Kaufman Aims to Make an Impact in Senate,” Will Robinson, Duke Chronicle, February 18, 2009.

“Obama’s Orders Only the State of a Detainee Policy Overhaul,” Jonathan S. Landay, McClatchy Newspapers, January 22, 2009.

“Kaufman Ready to Take Biden’s Senate Seat,” Randall Chase, Associated Press, January 16, 2009.

“Law Prof Picked for Biden Seat,” Will Robinson, Duke Chronicle, November 25, 2008

“Five Questions for Christopher Schroeder,” Shuchi Parikh, Duke Chronicle, July 8, 2008

“Adwatch: Edwards Threatens Congress with Loss of Health Care If a Universal Plan Does Not Pass,” John Edwards, Associated Press, November 13, 2007.

“Fight Over Documents May Favor Bush, Experts Say; Contempt Charge Precedents Cited in Firings Case,” Dan Eggen and Amy Goldstein, Washington Post, July 21, 2007.

“Power Struggle over Iraq Timetable Expected to Drag On,” Ron Hutcherson, Mc-Clatchy-Tribune, April 4, 2007.

“Authority of Congress to Enact Timetables for Iraq Withdrawal,” NPR NewsHour, April 2, 2007.

“Leaders Unruffled by Rally for Marriage Amendment,” Jim Nesbitt, Raleigh News and Observer, March 9, 2007.

“Seeing Red Over Gray Areas,” Brian Friel, *National Journal*, January 27, 2007.

“Letter Penned by Former President Nixon Donated to Duke,” Tiffany Webber, *The Chronicle*, November 29, 2005.

“Duke Law School Gets Nixon Letter on Watergate Tapes,” Associated Press, November 23, 2005.

“Duke Acquires Nixon Letter; He Told Judge He Wouldn’t Yield Tapes,” Anne Blythe, *Raleigh News and Observer*, November 22, 2005.

“Reno Reflects on Life, Law at Duke Lecture,” Wenjia Zhang, *the Duke Chronicle*, September 27, 2005.

“Position of Spouse as Next of Kin Has Deep Roots in Civil, Biblical Law,” Allen Breed, Associated Press, March 29, 2005.

A New Progressive Agenda for Public Health and the Environment, Center for American Progress, February 2, 2005

“Coble Backs Bill to Veto High Court; The Proposal Would Give Congress the Power to Overturn Some Supreme Court Decisions,” Mark Binker, *Greensboro News & Record*, March 21, 2004.

NPR commentary on Supreme Court Term, September 18, 2003.

“Looking Back at This Term’s Decisions by the U.S. Supreme Court,” Lynn Neary, National Public Radio, July 8, 2003.

“Sodomy Arrest Guidelines Revised; Critics Say Rules on Solicitation Is Still Weighted Against Gays,” Cristina C. Breen, *Charlotte Observer*, July 6, 2003.

“Bush Document Cover-up Administration Fights to Block Public Access,” John Yang, *ABC News*, August 27, 2002.

“University Raises Bar for Centers,” Kevin Lees, *Duke Chronicle*, April 24, 2002.

“GAO Goes to Court to Get Cheney Data; Disclosure: It’s the First Time the Watchdog Agency Has Sued the Executive Branch. White House Vows a Legal Battle,” David Savage, *Los Angeles Times*, February 23, 2002.

Guest on *Charlotte Talks*, an hour long discussion and call-in show on the Charlotte, NC, public radio station, WPAE, on the topic “National Security vs. Civil Liberties, Striking the Balance,” January 9, 2002.

Interviewed in *Legal Times*, December 24, 2001, on “The Home Front,” a

discussion of civil liberties issues after September 11, 2001.

“Video Could Be Trial Evidence,” Karen Crummy, The Boston Herald, December 14, 2001.

“Burton Wants Bush to Turn Over Mob Documents,” Maureen Groppe, Gannet News Service, December 14, 2001.

“Debate Over Whether the USA Patriot Act will be Enough for Law Enforcement Officials to Protect Against Future Terrorist Activity,” Barbara Bradley, NPR, November 25, 2001.

“White House Seeks to Restore Its Privileges; Congress Finding Bush Administration Strongly Resists Some Requests for Internal Documents,” Ellen Nakashima and Dan Eggen, Washington Post, September 10, 2001.

“Experts Speculate on Senate Race,” Matt Atwood, Duke Chronicle, August 24, 2001.

“Bluster, Not Bacon, Gave ‘Senator No’ Edge; But with Helms’ Departure, GOP May Look to More Moderate Candidates in Effort to Retain His Seat,” Christopher Kirkpatrick, Durham Herald-Sun, August 23, 2001.

“Thank You, Dear Friends,” John Wagner, Raleigh News and Observer, August 23, 2001.

“Shift to Alter Image of NC Experts Say GOP Can Reshape Environment All Its Candidates Run In,” Ann Doss Helms, Charlotte Observer, August 22, 2001.

“Making Academic Marriages Work,” Jennifer Chorpening, Durham Herald-Sun, February 18, 2001

“Federal Prosecutors in New York Investigating Bill Clinton’s Last Minute Pardon of Fugitive Financier Marc Rich,” Barbara Bradley, NPR, February 15, 2001.

NewsHour Interview, Gwen Ifill, NPR, February 14, 2001.

“Duke Legal Journal Debates the Effects of Clinton’s Presidency,” Jennifer Chorpening, Durham Herald-Sun, January 21, 2001.

“Supreme Court Has a History of Surviving Crises,” Frank Davies and Frank Lockwood, Miami Herald, December 14, 2000.

“Scholars Say High Court Damaged Itself – and Bush,” Raleigh News and Observer, December 14, 2000.

“No ‘Crisis’ Yet from Electoral Uncertainty, Say Legal Scholars,” Robert

Kaiser, Washington Post, December 11, 2000.

“High Court Move Seen as Partisan; Critics Say the Supreme Court’s 5-4 Decision to Halt the Vote Count in Florida Jeopardizes Its Legitimacy,” Robert Kaiser, Contra Costa Times, December 10, 2000.

NewsHour Interview, Margaret Warner NPR, December 1, 2000.

“Duke Law Prof Mulls Options Facing the Nation,” Jennifer Chorpene, Durham Herald-Sun, November 11, 2000.

“Supreme Court to Hear Case on Clean Air Act’s Constitutionality,” Nina Totenberg, NPR, November 7, 2000.

“The Nation: Split Decisions; The Court Rules, America Changes,” Linda Greenhouse, New York Times, July 2, 2000.

“Senate Panel to Subpoena Documents on Elian Raid,” William Gibson, Fort Lauderdale, Sun-Sentinel, June 9, 2000.

“Local Scholars Say GOP Tactic Turns Process in New Direction,” James Shiffer, Raleigh News and Observer, December 13, 1998.

“Special Report: The Clinton Crisis; Starr’s Law School,” Chris Burritt, Atlanta Journal and Constitution, September 13, 1998.

“Clinton Missed His Chance to Appoint Liberal Judges, Lawyers Say,” Laurie Asseo, Associated Press, February 4, 1996.

The Hotline, July 25, 1990.

“Schroeder Helps Craft Progressive Agenda for Environment, Public Health,” Fall 2006, at 3-4, Duke Environmental law

All the following interviews are from DUKE LAW MAGAZINE:

Faculty Focus: Testimony, “Schroeder Says “Torture Memo” Skipped OLC Best Practices,” Winter 2009, Volume 27, Number 1, at 36.

Sustainable Advocacy: The Next Generation, “Christopher Schroeder: At the Intersection of Environment and Public Health,” Fall 2007/Winter 2008, Volume 25, Number 2, at 29.

“A Piece of History: Law Library Receives Nixon Letter Claiming Executive Privilege,” Spring 2006, Volume 24, Number 1, at 12.

“Altered Terrains: Duke Law Brings Experience and Insight to the Legal Dilemmas Raised by the War on Terror,” Spring 2005, at 18.

“Altered Terrains: Program in Public Law Offers Wide-Ranging Debate,”
Spring 2005, at 24.

“Public Law Conference to Recognize Achievements of Professor William Van Alstyne,” Spring 2004, at 37.

“Justice Anthony M. Kennedy Offers Insight into Workings of U.S. Supreme Court,” Spring 2003, at 6.

“Public Law Conference Questions Characterizations of Law,” Spring 2003, at 8.

“Faculty Exchanges and Collaborations Add Perspectives,” Fall 2002, at 16.

“Ideas That Matter: The Law of Politics Conference,” Spring 2002, at 12.

“At Conference, Scholars Debate Status of the U.S. Constitution,” Spring 2001, at 8.

“Faculty in the News and on the Election,” Spring 2001, at 35.

“The Ken Starr Files: What Price Will Clinton Pay?,” Fall 1998, at 7, 8, 9.

“Dellinger, Powell and Schroeder: Duke’s Triumvirate in the Halls of Justice,” Spring 1997, at 3, 4.

“Extra-Curricular Activities: The Faculty and Public Service,” Winter 1991, at 23.

13. Public Office, Political Activities and Affiliations:

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

**United States Department of Justice, Counselor to the Assistant Attorney General,
Office of Legal Counsel (April 1993 to January 1994)
950 Pennsylvania Avenue, NW
Washington, DC 20530
President William Clinton**

United States Department of Justice, Deputy Assistant Attorney General (April 1995 to January 1997)

950 Pennsylvania Avenue, NW
Washington, DC 20530
President William Clinton

Senator Joseph R. Biden, Jr., Impeachment Trial Counsel January 1999 - February 1999)
221 Russell Senate Office Building
Washington, DC 20510

United States Senate Judiciary Committee, Chief Counsel (July 1992 - February 1993) 224 Dirksen Senate Office Building
Washington, DC 20510

United States Senate Judiciary Committee, Special Nominations Counsel July 1987- January 1988; February 1988 - June 1990; July 1991 - October 1991)
224 Dirksen Senate Office Building
Washington, DC 20510

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

None.

14. **Legal Career:** Answer each part separately.

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

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

I have not clerked for a judge.

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

I have not practiced law alone.

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

Duke University, Professor of Law (July 1979 to present) and Professor of Public Policy Studies (1999 to present) and Director, Program in Public Law at Duke Law School (2000 to present)
Duke University School of Law, Corner of Science and Towerview Drives,
Durham, NC 27708-0360

O'Melveny & Myers, of Counsel (August 2005 to present)
1625 Eye Street, Washington DC 20005

O'Melveny & Myers, consultant (Jan 2002 to August 2005)
1625 Eye Street, Washington DC 20005

Center for Progressive Reform, Vice President February 2002 - June 2008
455 Massachusetts Ave., NW #150-513
Washington, DC 20001

United States Department of Justice, Counselor to the Assistant Attorney General, Office of Legal Counsel (April 1993 to January 1994)
950 Pennsylvania Avenue, NW
Washington, DC 20530

United States Department of Justice, Deputy Assistant Attorney General (April 1995 to January 1997)
950 Pennsylvania Avenue, NW
Washington, DC 20530

Senator Joseph R. Biden, Jr., Impeachment Trial Counsel January 1999 - February 1999)
221 Russell Senate Office Building
Washington, DC 20510

United States Senate Judiciary Committee, Chief Counsel (July 1992 - February 1993) 224 Dirksen Senate Office Building
Washington, DC 20510

United States Senate Judiciary Committee, Special Nominations Counsel July 1987- January 1988; February 1988 - June 1990; July 1991 - October 1991)
224 Dirksen Senate Office Building
Washington, DC 20510

Armour, Schroeder, St. John Wilcox and Goodin, Partner (June 1977- June 1979)
505 Sansome Street, San Francisco, CA 94111 (current firm name: Goodin, McBride, Squeri, Day & Lamprey)

Earl Warren Legal Institute, University of California, Berkeley, research associate (June 1976- June 1977)

415 Boalt Hall, Berkeley, CA 94720

McCutchen, Doyle, Brown and Enersen, associate (June 1974 - June 1976)
Three Embarcadero Center, San Francisco, CA 94111
(current firm name: Bingham McCutchen)

McCutchen, Doyle, Brown and Enersen, summer associate (summer 1973)
Three Embarcadero Center, San Francisco, CA 94111
(current firm name: Bingham McCutchen)

Research Assistant to Professor John Hetland, University of California, Berkeley
(summer 1972)
467 Boalt Hall, Berkeley, CA 94720

New York City Bureau of the Budget, research associate (summer 1970)
1 Centre Street, NY, NY 10007
Dwight Hall, Yale University, summer intern (summer 1969)
67 High Street, New Haven, CT 06511

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

None.

b. Describe:

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

Between 1974 and 1979, I practiced law in San Francisco. Initially I was an associate with the firm of McCutchen, Doyle, Brown and Enersen. I was associated with the general federal and state litigation group. Assignments included work on a consumer class action case brought against Chevron Corporation for alleged defects in one line of gasoline sold in California; work on several employment discrimination actions; work on appellate briefs in several land use cases in the Lake Tahoe area.

After two years at McCutchen, I started a small firm with four colleagues. For the next two years most of my time consisted of two types of work. Our firm represented the receiver in bankruptcy of a real estate investment trust and involved efforts to recoup assets for the trust, which had been the general partner in a number of limited real estate partnerships in California and neighboring states. I also assisted the Environmental Defense Fund in intervening in rate cases of California public utilities before the California Public Utility Commission. The nature of EDF's intervention was to

encourage the PUC to require the utilities to investigate opportunities for saving energy through conservation measures and for investing in renewable resources as alternatives to approvals of new coal-fired power plant capacity.

Between 1979 and the present, I have been a law professor at Duke Law School, a position that I continue to hold. While I worked as a law professor during this period, I did not practice law. In the 1990s, I took several leaves of absence to work in the Office of Legal Counsel of the Department of Justice. In that capacity I provided legal advice to the President, the White House and other agencies and departments of government on a wide variety of legal subjects.

In 2002, I became a consultant to the firm of O'Melveny and Myers in Washington. Since 2005, I have held an of counsel position with O'Melveny and Myers in Washington DC. I have averaged approximately a day a week in this relationship. I am affiliated with the appellate practice group. I have provided advice and legal analysis to Bank of America on a patent reform amendment, to ExxonMobil on litigation filed against the company in federal district court in the District of Columbia involving their affiliate in Indonesia, to Morgan Stanley in perfecting an appeal to the United States Supreme Court from a lawsuit challenging the legality of long term energy contracts.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

1974 to 1979:

General federal litigation, including class action defense, employment discrimination defense, land use and real estate litigation and public utility commission representation
Chevron Corporation
California Cannery and Growers
National Real Estate Fund
Environmental Defense Fund

1979 to 2002:

Administrative law, constitutional law, Clean Air Act administrative proceedings and representation
The United States of America
The Clean Air Trust

2002 to present:

General federal litigation, including alien tort claims act and related tort defense
Exxon Mobil
Bank of America

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

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

1974 to 1979: I appeared very infrequently during this period.

Federal courts	65%
State courts of record	30%
Other courts	0%
Administrative Agencies	5%

1979-2005: I never appeared in court during this period.

Federal courts	95%
Administrative Agencies	5%

2005 to Present: I never appeared in court during this period.

Federal courts	100%
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During the periods in which I have practiced law my practice has concentrated on litigation. I have not appeared in court on behalf of a client since 1979. During my time as a professor of law, I have filed comments in rulemakings by the Environmental Protection Agency on behalf of the Clean Air Trust, but have not appeared before any administrative agency.

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

Civil proceedings: 100%
Criminal proceedings: 0%

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

None.

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

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

I have authored one amicus brief, representing the Clean Air Trust in *Whitman v. American Trucking Association*, 531 U.S. 547 (2001).

I participated in writing a petition for certiorari on behalf of Exxon Mobil in *Exxon Mobil Corp v. John Doe*, 07-81 (2007).

15. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- 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.

None.

16. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

During the 1980s and early 1990s, I worked for the Senate Judiciary Committee in several different capacities, including as its general counsel. In that position I was responsible for supervising the staff that worked on the Committee's full legislative agenda as well as its nominations work. After these experiences, I had the privilege of working for the Office of Legal Counsel in the Department of Justice, including a period in which I was the acting AAG for the office. Here I worked on a wide variety issues of constitutional law and statutory interpretation, advising both the President and other departments and agencies in the executive branch.

From 1999 to 2005 I provided legal advice on various occasions for the Clean Air Trust, a nonprofit organization devoted to supporting full implementation of the Clean Air Act. In that capacity, I wrote an amicus brief to the United States Supreme Court in the case of *Whitman v. American Trucking Association* (2001). The brief focused on the issue of how best to interpret the provision of the Clean Air Act requiring the Environmental Protection Agency to set air quality standards at a level "requisite to protect the public health." In a unanimous opinion, the Supreme Court adopted the interpretation advanced in the amicus brief.

I also prepared on behalf of the Clean Air Trust a submission to the EPA in a rulemaking proceeding in which the EPA was proposing to revise rules governing the approval of new sources of air pollution. I also wrote and filed on the behalf of the Clean Air Trust an amicus brief to the federal Circuit Court of Appeals for the District of Columbia Circuit in support of a challenge brought against the final rule issued by the EPA.

Since 2005 I have had an of counsel relationship with the law firm of O'Melveny and Myers. I am affiliated with their appellate practice and in that capacity I have provided legal advice in several matters. The two most substantial matters upon which I have worked are:

1. O'Melveny provides advice to Exxon Mobil with regard to litigation pending in the federal district court in the District of Columbia. I have provided legal advice concerning jurisdictional and choice of law issues in that litigation.
2. O'Melveny has provided legal advice to Bank of America with respect to a possible amendment to the Patent Reform Act pending in the last Congress. The advice concerned the constitutionality of the proposed amendment as well as whether the amendment would expose the United States Treasury to potential liability. In addition to preparing memoranda memorializing this analysis, I attended a meeting with Senator Leahy to discuss the amendment, a meeting with Senator Leahy's staff and a meeting with the staff of the Congressional Budget Office. In all cases, the purpose of my attendance was to discuss the constitutional issues and any other legal issues raised by the proposed amendment, should they arise.

The preceding paragraphs describe legal activities I have undertaken while on leaves of absence from my main career as a professor of law, or, in the case of my association with O'Melveny, as an adjunct to my work at my law school. When not engaged in the above pursuits, by far my most significant legal activities involve my law teaching and legal scholarship. In addition, I have worked on a variety of legal policy matters related to environmental law, one of my main fields of research and writing. I have served on two expert panels of the National Academies, one advising the EPA on how to regulate its use of experimental data developed from studies that intentional dose human beings with a toxic substance, the other advising the FDA on means to improve its regulation

of drug safety. This second report played a constructive role in the Congress's most recent consideration of revisions to FDA's enabling legislation.

17. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have taught the following courses at Duke University. I have searched my files and copied the syllabi that I have located:

Environmental Law 1979 to present

Major topics: the History of Environmental Regulation, the Clean Air and Water Acts, Superfund and the Regulation of Toxic Substances

Constitutional Law, 1997 to present

Major topics: Separation of Powers, the Commerce Clause, Justiciability, Procedural Due Process and Equal Protection

Comparative Constitutional Law, 2002-2003

Major topics: Separation of Powers and Due Process.

Administrative Law, 1993-1998

Major topics: The Administrative Procedure Act, Justiciability

Congress (cross-registered with Public Policy) 1993 to present

Major topics: The legislative process, media coverage of the Congress, the role of staff, leadership, and the president in a legislator's decision making; the electoral connection, constituency service.

Toxic Substances Regulation 1988

Major topics: Common law approaches to toxics litigation; the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Superfund statute. Property, 1990-1999

Estates in land, the Rule Against Perpetuities; Recording statutes; Covenants and Easements; Landlord/tenant.

Civil Procedure, 1979-1990

The Federal Rules of Civil Procedure, personal jurisdiction.

18. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I anticipate receiving approximately nine thousand dollars a year from book royalties for the environmental law casebook that I co-author.

I continue to hold interest in my 403(b) investment accounts, which have been contributed to by myself and Duke University. These assets are reflected in my

financial statement. Neither Duke University nor I will make any additional contributions to these accounts while I am serving in this position.

19. **Outside Commitments During Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service? If so, explain.

No.

20. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

I am submitting a copy of the financial disclosure report.

21. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

22. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, affiliations, pending and categories of litigation, financial arrangements or other factors that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Justice's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department's designated agency ethics official.

23. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each. If you are not an attorney, please use this opportunity to report significant charitable and volunteer work you may have done.

I speak often to groups in North Carolina, Durham and Duke University on legal issues of concern to the public. My response to question 12(d) includes these speaking engagements from 1996 to the present. I have testified before Congressional committees in my private capacity. I have given advice on legal matters pending before the Congress to members of both the House and the Senate. I have spent considerable time working without compensation on projects addressing problems of environmental quality and human health. In recent years, much of that work has been through the Center for Progressive Reform. In my Of Counsel capacity at O'Melveny and Myers, I have supervised associates who are handling pro bono criminal appeals for the Maryland Office of the Public Defender.

FINANCIAL STATEMENT

NET WORTH

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

ASSETS		LIABILITIES	
Cash on hand and in banks	\$330,000	Notes payable to banks-secured	None
U.S. Government securities-add schedule	None	Notes payable to banks-unsecured	None
Listed securities-add schedule	\$3,162,655	Notes payable to relatives	None
Unlisted securities--add schedule	\$30,000	Notes payable to others	None
Accounts and notes receivable:	None	Accounts and bills due	None
Due from relatives and friends	None	Unpaid income tax	None
Due from others	None	Other unpaid income and interest	None
Doubtful	None	Real estate mortgages payable-add schedule	\$384,000
Real estate owned-add schedule	\$950,000	Chattel mortgages and other liens payable	None
Real estate mortgages receivable	None	Other debts-itemize:	None
Autos and other personal property	\$100,000		
Cash value-life insurance	\$5,000		
Other assets itemize:	None		
		Total liabilities	\$384,000
		Net Worth	\$4,178,655
Total Assets	\$4,562,655	Total liabilities and net worth	\$4,562,655
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, comaker or guarantor	None	Are any assets pledged? (Add schedule)	None
On leases or contracts	None	Are you defendant in any suits or legal actions?	No

Legal Claims	None	Have you ever taken bankruptcy?	No		
Provision for Federal Income Tax	None				
Other special debt	None				

Schedule of Listed Securities for Christopher Schroeder and Katharine T. Bartlett

Christopher Schroeder Retirement Accounts

TIAA Traditional (Annuity)	\$473,903.14
TIAA-CREF Stock	\$582,536.86
CREF Stock	\$134,976.81
TIAA-CREF International Equity Index Fund - Retirement Class	\$106,061.99
TIAA-CREF Large-Cap Value Fund - Retirement Class	\$69,986.10
TIAA-CREF Large-Cap Value Index Fund - Retirement Class	\$3,597.05
TIAA-CREF Mid-Cap Growth Fund - Retirement Class	\$44,557.03
TIAA-CREF Mid-Cap Value Fund - Retirement Class	\$31,637.44
TIAA-CREF Mid-Cap Value Index Fund - Retirement Class	\$39,539.16
TIAA-CREF Social Choice Equity Fund - Retirement Class	\$123,530.07
American Funds EuroPacific Growth Fund	\$28,651.21
TIAA- CREF Real Estate	\$43,926.91
TIAA- CREF Fixed Income	\$527,657.78
CREF Bond Market	\$416,197.47
CREF Inflation-Linked Bond	\$65,199.22
Western Asset Core Plus Bond Portfolio	\$40,520.97
TIAA-CREF High-Yield Fund - Retirement Class	\$5,740.12
CREF Money Market	\$41,965.70
TOTAL	\$1,669,990.39

Katharine Bartlett Retirement Accounts

TIAA Traditional (Annuity)	\$759,258.26
TIAA-CREF Stock	\$467,565.15
CREF Stock	\$28,815.64
TIAA-CREF International Equity Index Fund - Retirement Class	\$120,105.03
TIAA-CREF Large-Cap Value Fund - Retirement Class	\$62,172.58
TIAA-CREF Large-Cap Value Index Fund - Retirement Class	\$3,870.14
TIAA-CREF Mid-Cap Growth Fund - Retirement Class	\$49,844.95
TIAA-CREF Mid-Cap Value Fund - Retirement Class	\$60,332.04
TIAA-CREF Mid-Cap Value Index Fund - Retirement Class	\$6,540.99
TIAA-CREF Social Choice Equity Fund - Retirement Class	\$135,883.78
TIAA- CREF Real Estate	\$38,884.88
TIAA- CREF Fixed Income	\$106,216.77
CREF Bond Market	\$66,951.22
CREF Inflation-Linked Bond	\$27,596.73
Western Asset Core Plus Bond Portfolio	\$5,486.28
TIAA-CREF High-Yield Fund - Retirement Class	\$6,182.54
TOTAL	\$1,371,925.06

Christopher Schroeder and Katharine Bartlett joint brokerage account with TIAA-CREF Brokerage Services

COLUMBIA MID CAP VALUE FUND CLASS Z	\$3,569.82
NORTHERN SMALL CAP VALUE FUND	\$2,368.39
PIONEER CULLEN VALUE FUND CLASS A	\$11,331.28
T ROWE PRICE INTERNATIONAL GROWTH & INCOME ADV CLASS	\$9,834.24
T ROWE PRICE TAX FREE INCOME FUND ADVISOR CLASS	\$26,205.61
THORNBURG LIMITED TERM MUNICIPAL FUND CLASS A	\$24,818.96
TRANSAMERICA PREMIER EQUITY FUND INVESTOR CLASS	\$7,611.00
Cash Reserve	\$5,000.00
Total	\$90,740.23

Unlisted Securities

Bartlett Land Trust	\$30,000
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Real Estate

Durham North Carolina	\$350,000.00
Belfast, Maine	\$600,000.00

Real Estate Mortgages

Wachovia Bank and Trust, (Durham property)	\$99,000.00
Countrywide, 3 Delemos Street, (Belfast property)	\$285,000.00

Senator FEINSTEIN. Thank you very much.

I think we'll begin the questions. Mr. McLellan, as you know, the high-intensity drug trafficking areas, called HIDTAs, enhance and coordinate drug control efforts among various local, State, and Federal agencies. The program provides agencies with coordination, equipment, technology, and I have found them very effective.

Can you describe what efforts you will take as Deputy Director to improve the coordination of the HIDTAs along the southwest border?

Mr. MCLELLAN. Senator, the HIDTAs are a critical part not only of our supply reduction effort, but I think an integral part as well of our prevention effort. In turn, the Southwest Border Initiative, a recent but very important one, I have not been fully briefed upon yet.

I know that the HIDTA will play an important role in the policies of the many Federal agencies that are already working on that initiative. As you know, our office successfully defended against an effort to reduce funding for HIDTAs. We back the HIDTAs and we expect it will play a very important role in the Southwest Border, as well as other initiatives.

Senator FEINSTEIN. Just so you know, I am a border State Senator and there is no question but that what is happening in Mexico is having a deep impact all throughout America's southwest border, and therefore the ability to move soundly, aggressively, and legally to prevent the movement of drugs, and also prevent the movement of guns from America down to the cartels is very important.

I know that you are probably very much involved on the demand side of the drug issue, which of course is America's problem and we need to address it. However, this other side, because of the killings and the terrible things that cartels are capable of and their infusion of their assets into our country along the southwest border is really of critical concern. We have border tunnel after border tunnel now going under the border, moving drugs, also moving people, and I suspect moving guns.

Mr. MCLELLAN. Yes.

Senator FEINSTEIN. So these HIDTAs on the southwest border, in my view, should be given the highest priority and I would hope that you would do so.

Mr. MCLELLAN. Senator, I commit that our office will continue to rank the HIDTAs at the highest priority. I completely agree with you. It was a welcome thing to see the Southwest Border Initiative. If confirmed, I look forward to getting more fully briefed on all of the aspects of it. As somebody who knows most about demand, I know it's not possible to have an effective demand reduction strategy without effective supply reduction. So, they work hand in hand.

Senator FEINSTEIN. Thank you. Thank you very much.

Mr. Mayorkas, I wanted to ask you a question about children and immigration raids. There are increasing cases of children and parents, even nursing mothers, separated in the process of ICE going in and moving a family, the parents of which may well be undocumented but the children may well be American citizens, taking them into immediate custody and moving them back to their home in another country.

Between 1998 and 2007, the United States removed nearly 2.2 million unauthorized aliens, 108,000 of these were parents of United States citizen children who essentially were left.

So my question is this: How can the Citizen and Immigration Service work with ICE to keep track of the number of children, including U.S. citizen children, left behind when undocumented parents are detained or deported? What policy guidance would you put in place to guide CIS officers when providing ICE information on the deportation of parents?

Mr. MAYORKAS. Thank you very much, Senator, for your question. I know the importance of the issue to you. Senator, I am very well aware of the difficulties and the tragedies that could befall a family upon separation of parents and children and the dangers that children can be placed in should that separation be effected.

I commit to you, Senator, and to this entire Committee that I will work with personnel in the Department, and specifically with personnel at ICE under the leadership of John Morton, whom I had the privilege of working with side-by-side when we both served in the Department of Justice, to address this issue. I commit to you that I will work with you, with other members of this Committee, and your staffs to develop programs that address this issue and try, to the best of our abilities, in compliance with the law, to avoid separation that only brings tragedy and danger to others.

Senator FEINSTEIN. Well, I very much appreciate this and I am not going to forget it. Ever since the Elian Gonzalez case, I think the issue of the innocent child who's left behind, as well as the innocent child who is a citizen who is left behind and what happens to that child and what resources are brought to bear is really critical. So I won't forget that.

Now, you stated that you will work to improve fraud prevention and detection. How do we better detect fraud and take back control of our immigration system so that we can instill public confidence in it? There is a great deal of fraud in virtually all programs connected with immigration. What do we do about that?

Mr. MAYORKAS. Thank you, Senator. There certainly is. I believe the agency, from my preliminary introduction to it, has begun to implement measures such as a fraud and compliance monitoring mechanism with respect to the E-Verify system.

I intend, should I be honored with confirmation to the position which I seek, to conduct an agency review. One of the critical components of that will be a focus on the prevention, detection, and the ability to address fraud. I will be working with my counterparts, should I be confirmed, in the Department to ensure the aggressive prosecution of individuals who are identified and apprehended in connection with fraud, and to build systems in each and every facet of our programs to protect the system from fraud so that those individuals who seek, through lawful channels, the benefits of our immigration efforts, can enjoy them.

Senator FEINSTEIN. Thank you very much.

Mr. Schroeder, I have a question that is very important to me as the Chairman of the Senate Select Committee on Intelligence, and it is this. I know you don't speak for the administration, but we have been asking, over and over again, for the official view on several pieces of legislation that we need to mark up and move

through the Senate. We will mark it up in Intelligence and it will probably have a sequential referral to this Committee, Judiciary.

This includes—well, you know the State Secrets bill, the Reporter Shield legislation, but that's not exactly what I'm talking about. There are three sunset provisions of the PATRIOT Act, namely the roving wire tap, business records, and lone wolf. We would like to have the administration's view on whether we reauthorize those three items for an undetermined period of time, or reauthorize them for a limited period of time, or do not authorize one or all of them. We can't seem to get that information out of the Department of Justice.

Now, the mark-up is coming up in the Intelligence Committee, so my question is this: If confirmed, will you please be an advocate for getting decisions out of the Justice Department to the critical committees that are actually marking up legislation which involves these items? I mean, we have two right now, Reporter Shield and State Secrets in this Committee, and we need the views of the administration.

Mr. SCHROEDER. Yes, I will.

Senator FEINSTEIN. I'll hold you to it. Short answer. I won't forget it.

[Laughter.]

Thank you.

And second, do you believe that the laws of armed conflict, the laws of war, allow for the preventive detention of individuals if Article 3 court has determined that they are enemy combatants or otherwise meet international standards?

Mr. SCHROEDER. Senator, I'm tempted to give you another short answer, which is, I don't know. But let me expand on that a bit. I do believe that the laws of war, as I understand them—and I'm not an expert in this field and would need to consult, of course, with other people before giving you a definitive judgment—do recognize the ability of armed services to retain as prisoners of war combatants that had been captured on the battlefield for the duration of the conflict. The Supreme Court has recognized that principle.

The difficulty I suppose you're referring to is, what's the status of someone who is picked up as a terrorist and considered to be part of al-Qaeda or some other kind of terrorist organization where we're now involved in the war on terror, which may not have a definitive ending. Can we simply detain people indefinitely when they're in that status?

I will—I will—I know this is an important and complicated question, and I just haven't studied it myself enough in order—

Senator FEINSTEIN. Right.

Mr. SCHROEDER [continuing]. To be able to give you a personal answer here.

Senator FEINSTEIN. Right.

Mr. SCHROEDER. Let alone be able to speak for the Department, of which I am not yet a part.

Senator FEINSTEIN. Right. Well, if I might respectfully offer my view. Dealing with this on this Committee and the Intelligence Committee, my view is this, that if a detainee is adjudged to be an enemy combatant either by a military commission—they can be

held subject to due process, which would mean a review by a body, a court or another duly designated body, to review, on a regular basis, that case. It is my belief that that would meet the strictures of the Constitution and be an acceptable way to handle it. We're going to need to solve that very shortly, so we are going to be wanting advice from the Department of Justice and have not received it up to this point.

Mr. SCHROEDER. Well, again, Senator, I think that's another issue in which this body deserves the best advice that the executive branch can offer on complicated questions like this, and I will be—hopefully—in a position to be able to work with this committee and other people in the Department to be of assistance to you in resolving some of these difficult questions.

Senator FEINSTEIN. Well, thank you very much.

I note that Senator Klobuchar has gone to vote, and I note that Senator Sessions is voting and will be along shortly. I will go, since there's just a few minutes left in the vote, and recess the Committee. If you would stand by, we will convene just as fast as I can get back.

Thank you very much.

[Whereupon, at 11:15 a.m., the Committee was recessed.]

[After Recess 11:29 a.m.]

Senator SESSIONS. Senator Feinstein was heading on down to vote. I had voted, so she told me to go ahead and get started and I will do that. I promised to behave and not say anything that she'd have to be here to watch me ask, because she is the person chairing this hearing.

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

Senator SESSIONS. I'd like to welcome each of you. I've had an opportunity to talk to two of you and I've enjoyed that very much. It's an important hearing. You're being nominated for important offices, and Congress, and the Senate particularly, should fulfill its responsibility of consenting to these appointments. I hope that we can work together on the issues that are facing the country, drug matters, national security, immigration, and other matters of quite large significance that you will be involved in in your agencies.

The Office of Legal Policy is the primary policy advisor to the Attorney General and the Deputy Attorney General. I know last week, Attorney General Holder testified before the Committee and I expressed concern about some of the decisions that had been made to date under his leadership, those that deal with terrorism and other issues.

He told this Committee his first priority was to work to strengthen the activities of the Federal Government and to protect the American people from terrorism, so I think that was a good statement. But it does appear to me that, instead of really taking the lead in these issues, the Attorney General seems to be focusing less on actual protection and more on a pre-9/11 criminal law mind-set. We also discussed Guantánamo and some other issues and we did not discuss, Mr. McLellan, at length on the drug questions that are important in our country today.

So, Mr. Schroeder, I'm interested to hear your policy goals for OLP. You've been a consistent critic of the previous administration's policies on the war on terror and you criticized the Department for invoking the State Secret privilege. You're joining a Department that has already invoked it three times this year, and we're dealing with legislation concerning that now that I am uneasy about and oppose as written. So, I'm concerned about some of your policy positions there.

Mr. Mayorkas, I enjoyed meeting with you. You've been the U.S. Attorney in charge of, perhaps, the largest U.S. Attorney's Office in the country, one of the largest.

Mr. MAYORKAS. Certainly one of the largest, Senator.

Senator SESSIONS. The Los Angeles U.S. Attorney's Office in California. You've dealt with so many of the issues that you'll be dealing with now. I enjoyed our conversation. I feel like you have good instincts concerning these matters and I believe you're committed to the rule of law, and I look forward to working with you on that.

I'll just start off with some questions. Mr. McLellan, we did not get to talk, but I was appointed U.S. Attorney in 1981. Over half the high school seniors, according to a University of Michigan study, admitted to using an illegal drug, I think, in the month prior to that.

President Reagan announced an intolerance policy that went from the military, who started drug testing and they eliminated drug use in the military virtually entirely when it was a serious detriment to the military prior to that.

We started partnership groups throughout the country.

I helped found the Mobile Bay Area Partnership for Youth, the Coalition for a Drug-Free Mobile, and those organizations were powerfully effective in dealing with young people. We spent money in schools to urge kids not to use drugs and the result was—I don't know how many years ago, but we were at half that number. Half as many graduating seniors said they'd used an illegal drug as there were in 1979, 1980. And I believe that that's an important principle.

Now, part of that is signaled by, I believe, criminal law. I have supported modifying the criminal penalties for crack cocaine and some other things I think maybe are stronger than need be and need balancing and more fairness.

But fundamentally, I am worried about a mood that's out there that the Obama administration may be acquiescing in, that this is all a mistake, that we just are too hard on drugs and people are overreacting to it, that too many people are being convicted and it doesn't work, and we should just tax it or some other such thing as that.

Historically, since the founding of the drug czar, ONDCP, your office has been the one that's stood up against that and said, no, drugs are detrimental to our country, laws do make a difference. We need to maintain a position of hostility to drug use in America and point that out and stand firm, and urge young people not to participate.

So we've got the medical marijuana enforcement issue. The Associated Press reports Gil Kerlikowske, chief of the ONDCP office,

has not endorsed the idea of an all-options review of drug policy, but has suggested scrapping the “war on drugs label”, and placing more emphasis on treatment and prevention. Attorney General Holder has said, Federal authorities will no longer raid medical marijuana facilities in California, which are against U.S. law, although not against California law. Attorney General Holder’s position on allowing medical marijuana is contrary to the position taken by the Drug Enforcement Administration.

According to the AP, the U.S. Drug Enforcement Administration remains on record against the legalization of medical marijuana, which it contends has no scientific justification. “Legalization of marijuana,” DEA says, “no matter how it begins, will come at the expense of our children and public safety. It will create dependency and treatment issues and open the door to the use of other drugs, impaired health, delinquent behavior, and drugged drivers.” The DEA also says, “Marijuana is now at its most potent, in part because of refinements in cultivation.”

So let me ask you, do you agree with the Drug Enforcement Administration’s position that “legalization of marijuana, no matter how it begins, will come at the expense of our children and public safety”?

Mr. MCLELLAN. Senator, I appreciate your obvious interest in this very important issue. It may be among the most important in our administration.

I want to assure you of a couple of things. First of all, this administration has said categorically, marijuana should remain illegal. It should remain Schedule II and it should remain illegal. I personally, and our office, support that.

Two, you talk about medical marijuana. It is a fact that it has been looked at for medicinal purposes; most plants have. There is no other medicine that I know of that is prescribed in smokable form, and there’s a reason for that: It’s very difficult to control. Properly, this is under the jurisdiction of the Food & Drug Administration. We have the safest drugs, safest medical devices in the country, in the world, because of those policies.

If there are medicinal constituents in marijuana, they should be extracted, developed, tested for potency and purity in the same way that all other medicines are. The last time that I’m aware that popular sentiment pushed for the introduction of a new medication like this was Laetrile. Laetrile was thought to be withheld from the public. In fact, it was later found not to be effective, and indeed, toxic. We don’t want to repeat the mistakes of the past. This is the—

Senator SESSIONS. Are you saying that the FDA does not now control marijuana? Or does it, in a case like where it’s declared to be for medicinal use?

Mr. MCLELLAN. I would just repeat: Marijuana itself should remain illegal. Medicinal—

Senator SESSIONS. Well, you present a difficult question when the State of California—

Mr. MCLELLAN. Right.

Senator SESSIONS1 [CONTINUING]. FINDS OTHERWISE, AND MAYBE OTHER STATES HAVE, TOO. I THINK THAT’S A MISTAKE. DEA HAS SAID OVER THE YEARS—SEE IF YOU AGREE—THAT THERE ARE OTHER MEDI-

CATIONS THAT WILL DO AS GOOD OR BETTER, AND THAT AS YOU INDICATED, SOME HAVE ARGUED THAT PILLS OR SOME OTHER FORM OF EXTRACTING FROM MARIJUANA WHAT MEDICINAL VALUE IS THERE COULD BE UTILIZED. BUT THERE SEEMS TO BE A DRIVE TO USE THAT ARGUMENT TO WEAKEN THE RESISTANCE TO LEGALIZATION OF MARIJUANA. WOULD YOU AGREE?

Mr. McLELLAN. The position of ONDCP, the position of this administration is that marijuana is a Schedule II substance, should remain illegal. Okay. Any medicine derived from any plant is properly the provision of the Food & Drug Administration and should undergo testing that way. That's my official view.

Senator SESSIONS. Have you—do you know if that's so today, that they are actually doing that?

Mr. McLELLAN. I'm sorry, I didn't hear you.

Senator SESSIONS. Do you know if that's true today, that FDA is evaluating it?

Mr. McLELLAN. I know that the National Institutes of Health has awarded grants to look at some of the constituents in marijuana, and indeed some of those constituents have medicinal properties. I do not know whether the FDA is evaluating any of them.

Senator SESSIONS. Madam Chairman, my time is over. I spent most of it just in opening remarks, so if I could just follow up.

I would just say to you that I know you come from a treatment background. Do you personally favor the legalization of marijuana? Have you made any statements to that effect?

Mr. McLELLAN. Senator, I do not favor the legalization of marijuana. ONDCP does not favor it, the administration does not favor it.

Senator SESSIONS. Well, good. I think we need to be clear on that. All I am saying is, because when you sound an uncertain trumpet it reduces the societal rejection to these drugs. That was the big thing in the early 1980s. We had to go from this tolerance mentality to intolerance. I had a lot of people, young people that I hired and worked with, who'd say, "when I was in college, you'd go to a party and people would break out marijuana."

"After this happened, if I was at an event and somebody brought marijuana out, I left and my friends would leave." So, this was a victory of psychological importance when we said, this is not healthy for America. Not healthy, and good people shouldn't participate, good people shouldn't be involved in it.

Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much.

I want to turn right away to Senator Klobuchar because she has a time issue. But just for the record, marijuana is not currently regulated by the FDA. Medical marijuana is not.

Senator Klobuchar.

Senator KLOBUCHAR. Okay. Thank you very much.

Mr. McLellan, I was a former prosecutor before I had that job and we had a drug court in our county. I will tell you, when we first got started, the police really didn't like the drug court. Some of them still don't, but we made some improvements in terms of making sure that gun cases, felons in possession of guns, did not go through that, that violent crime cases were taken out. There were some real issues. The joke was that a drug dealer could just

have a—if he wanted to use a gun he would have drugs, because then he could go through drug court.

So we changed that and I think it made a lot of difference for the reputation of the court, and then of course was allowed for the good work of drug courts to go on. So I just wondered if I could hear your view about drug courts and how we can make them effective across the country.

Mr. MCLELLAN. Senator, I am, by training, a researcher. I believe in evidence. The evidence on drug courts is overwhelmingly positive. It is among the most positively evaluated of all the interventions we've looked at.

Senator KLOBUCHAR. Very good. Thank you.

Then as a person who does analysis and numbers and evidence, the other thing I hope you'll look at is treatment programs. My State has some of the best treatment programs in the country, but I am very aware of the fact that there can be varying results from treatment programs. I don't think, with all the money we spend, that we do enough in terms of evaluating that and I wondered if that would be a focus of yours.

Mr. MCLELLAN. Senator, treatment is an issue that I have thought a lot about. First, while substance use is a preventable behavior, addiction is an illness and it is an illness that is largely genetic and it has biological consequences.

Second, we have very—thanks to the research that's been done in the last 15 to 20 years—effective, potent medications, behavioral treatments, and community interventions.

But third, like the rest of health care, issues of financing, delivery, organization, are important to be able to get evidence-based interventions that work into the hands of people that need them so badly.

Senator KLOBUCHAR. Okay. Thank you.

Mr. Mayorkas, are those your children there at the end?

Mr. MAYORKAS. Yes, they are, Senator.

Senator KLOBUCHAR. Well, if you can run your office the way they've behaved, I think it's quite impressive.

[Laughter.]

I especially liked your youngest daughter, who appeared to be counting the seconds as some of my colleagues asked questions.

[Laughter.]

It was very impressive.

Actually, I have a question about a case that actually is involved in our State, and it was a sentence commutation that was granted to Carlos Vignali. I know you're aware of this case. Mr. Vignali was convicted in 1994 for his role in a drug ring that delivered more than 800 pounds of cocaine from Los Angeles to Minneapolis. His sentence was commuted by President Clinton in 2001, and he had served less than half of his sentence.

As a former prosecutor and someone that has seen firsthand the effects of drugs in our community, I can tell you there was a lot of concern from the U.S. Attorney when this sentence was commuted in Minnesota and from our law enforcement officers. Could you talk about your involvement—I think you supported that commutation at the time—and whether you regret it now?

Mr. MAYORKAS. Thank you very much, Senator. I appreciate and very well understand your question, both as a former prosecutor and as a representative of the people of the State of Minnesota who are the victims of the criminal conduct underlying your question.

Senator, when I received a call from the White House I telephoned the Department of Justice, as protocol dictated, and queried whether I had permission to return the call. I had never received a call from the White House before. I was granted that permission and I made the call.

At the outset of that brief conversation I was asked whether I recommended the commutation, and I said I did not. It was not my case. I was not familiar with the facts of the case, and full deference should be accorded the U.S. Attorney for the District of Minnesota whose case it was.

In questions following regarding the concepts of rehabilitation, the role of family in rehabilitation and the like, I made comments that clearly were construed, and not unfairly so, to mean that my opinion leaned in favor of commutation.

Senator, when I was first given the opportunity to comment publicly about my conversation, because that permission was not granted immediately, I readily and without qualification admitted that it was a mistake on my part to engage in that conversation at all. I repeat without qualification: My statement that it was a mistake to engage in that conversation at all.

Senator KLOBUCHAR. Well, I really appreciate your candor about this. What do you think you learned from that experience that you will take to your new job, if confirmed?

Mr. MAYORKAS. Senator, I will, with extra vigilance, be mindful of the situations I've placed myself in so that my statements cannot be misconstrued with a very adverse effect.

Senator KLOBUCHAR. I really appreciate it. Thank you for explaining that.

Mr. MAYORKAS. Thank you, Senator.

Senator KLOBUCHAR. Mr. Schroeder, I guess you have Senator Kaufman's recommendation. He whispered over to me that you were amazing, so I don't even know if I have any questions for you as a result of that.

[Laughter.]

But one, I just—I bring this up repeatedly to people in the Justice Department just because we've always had a gem of a U.S. Attorney's Office in Minnesota, a political appointment had been made. Actually, Attorney General Mukasey put someone else in and sort of cleaned up the situation, and now we've nominated someone else that I think we're going to hear Thursday and their office is back in shape under the Acting U.S. Attorney, Frank McGill. I hope that the nomination of his friend and the next U.S. Attorney from Minnesota will be confirmed.

But I just wondered if you believed that the Office of Legal Policy will be involved in some of this work that needs to be done with the morale of the Justice Department, or work that needs to be done to look at ways to make sure that we correct some of these abuses from the past.

Mr. SCHROEDER. Thank you, Senator. I don't know what the intentions of the Attorney General—

Senator KLOBUCHAR. You don't have to comment on our—

Mr. SCHROEDER [continuing]. Are with respect to how he's going to staff dealing with this issue. I know that it's a top priority for him to repair any damage that might have been done and going forward to ensure the highest integrity in those selection processes and hiring and dismissal decisions.

Senator KLOBUCHAR. All right. Very good. Thank you very much. I appreciate all of your answers. Thank you. Good luck.

Senator FEINSTEIN. Thank you very much, Senator.

Mr. Schroeder, I have another question and it's on a bill that is directly in front of this committee for mark-up. It's the Reporter Shield bill. The goal of the bill is to protect journalists from over-reaching by the government and to ensure a thriving and free press.

Obviously the devil is in the details, and one of the details is, what is the definition of a journalist? I'm concerned that the definition is so broad, that it could cover anybody who Tweets regularly or who posts reports about current events on a Web site like Facebook, or even sites like Wikileaks that encourage people to disseminate classified information illegally.

My staff has met with your staff on this bill, but I'd like to ask you personally, would you review the bill carefully, and particularly the definition of journalist, and see if you can make some suggestions to the committee? Now, actually, the mark-up is tomorrow, but whether we'll get to that bill, I don't know. But I am very concerned by the definition of who is a journalist, and I would think that Justice would have an interest in looking at this issue as well.

Mr. SCHROEDER. Thank you, Senator. I'm sure the Department does have an interest in that question. I know the definitional question was the one that perplexed the Supreme Court when it faced this issue, and the reason it refused to recognize the constitutional journalist privilege was because of the—one of the definitional issues was one of the major concerns.

Of course, I'm not at the Department. I don't know what the—and as you say, the devil in these things is in the details. If I'm confirmed and the matter is still pending, I would look very much forward to working with you and the Committee to try to solve some of the problems that we face in trying to define a privilege of this nature.

Senator FEINSTEIN. Thank you very much.

Senator, do you have questions?

Senator SESSIONS. Yes. Thank you.

Mr. McLellan, treatment has its place, absolutely, in dealing with a drug and the addiction that comes with it. I know that you have expertise in that, and so does, I guess, our new leader. But I want you to be a voice within the administration, within the country, for a value system that says drugs are not good, they're dangerous, they lead to addiction and health problems, and death for many people, and that people should not use them, both because the law says they shouldn't and because it's bad to do so.

I just believe this country will suffer more loss than people realize if the voice of your office is not heard loud and clear, because we're in one of those moods now that, well, we should just legalize more and we shouldn't go through these processes. That's hard and

difficult. I noticed, I just saw Mexico may have legalized certain amounts of cocaine. I think they'll regret that as time goes by. So I just want to share that with you. It's something I've spent a lot of years and a lot of my time, volunteer time, working on. I saw the progress that came from a consistent, clear message and we need to maintain that.

Mr. Schroeder, with regard to the Fourth Amendment warrants dealing with non-U.S. citizens overseas outside the United States, where there are efforts to secure information or for foreign intelligence and national security reasons, including when non-U.S. persons subject to surveillance communicate with United States citizens in the United States, do you believe that this is legitimate, and do you believe any provisions of the FISA Amendments Act of 2008 is unconstitutional? Have you expressed previous opinions about that?

Mr. SCHROEDER. Thank you, Senator Sessions. I haven't studied the FISA amendments, most recent amendments, and haven't expressed an opinion on them. With respect to the questions of overseas warrants or constitutional protections for individuals who are being surveilled overseas, I think those are obviously questions that require analysis. I haven't given those questions that analysis. I don't have a view about them at the current time.

Senator SESSIONS. Well, you have been highly critical of the Bush administration, and I guess you've given some thought to these issues. But it seems to me when you legally are able to—well, if you get a warrant to wire tap a mafia leader and someone you don't expect calls in, unless it's a matter that needs to be mitigated, it's perfectly legitimate to listen to that conversation, even though one party of it was not a part of the warrant application process. It seems to me quite clear beyond any doubt that overseas non-U.S. citizens are subject to United States intelligence actions and activities. That's the international rule, widely accepted, and all nations participate in that.

Mr. SCHROEDER. Right.

Senator SESSIONS. It seems to me if you are involved in surveilling a terrorist, whether it's in Europe, Afghanistan, or Pakistan, and they make a call to the United States to somebody, that may be the most important call they've made. It may be a call that would identify a terrorist cell that plans to attack and kill Americans.

We've had great complaints in this Senate that somehow that's a violation of an America's right to not be surveilled without a warrant. I don't think, if the principle of warrants is applied properly, it is. No. 2, it's an area where national security should trump it anyway. Have you expressed an opinion on those things, and do you have any thoughts you'd like to share?

Mr. SCHROEDER. As to whether I've expressed an opinion, Senator, I don't believe I have. And let me say this. I'm not trying to disagree with you. You may be absolutely right. I just didn't want to give you a top-of-the-head answer on a complicated question that I really haven't thought about. Most of my writing with respect to surveillance issues and policies of the Bush administration, let me make two comments about them. They were addressed fundamen-

tally to issues that arise with respect to domestic surveillance, and the criticism that I—

Senator SESSIONS. They call that domestic surveillance. That's what members of this Senate have done, and they attacked the Bush administration repeatedly for surveilling Americans without a warrant, and that most of which are—

Mr. SCHROEDER. Overseas?

Senator SESSIONS. No, here. Because if you're surveilling someone legally, according to our laws, in a foreign country and they call the United States to set up a terrorist attack, we're supposed to not listen to that. That's all I'm telling you. That's what the debate was about, to me. Maybe there were some other factors involved, but I thought that was an unfair complaint because I thought at least traditionally that we've always done that, and if we wanted to change that we should discuss it. I think we've worked our way through that now with the PATRIOT Act and the other acts. So, I just want to ask your opinion because I know you've been a big critic of that, and I'll let that drop.

Thank you, all of you, for your testimony. I look forward to continuing to look at your records. I may submit some further questions, because each of you hold very important offices. Mr. Mayorkas, I think you understand the critical issues of your office and I know that you will do your best to comply with the law. If somebody tries to get you not to, I hope you will stand firm.

Mr. MAYORKAS. Most certainly, Senator.

Senator SESSIONS. Thank you, Madam Chairman.

Senator FEINSTEIN. Thank you very much, Senator.

There are no further questions to come before the Committee, so the hearing is adjourned. Thank you very much everybody.

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

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

QUESTIONS AND ANSWERS

Written Questions for Alejandro Mayorkas
Nominee to Serve as Director of USCIS
from Chairman Patrick Leahy
June 30, 2009

1. One-Year Filing Deadline in Asylum Cases

Asylum officers and immigration judges too often construe the one-year asylum filing deadline narrowly and in a manner that is inconsistent with congressional intent and with U.S. obligations under the Refugee Protocol. Exceptions were written into the law for extraordinary or changed circumstances to ensure that genuine asylum seekers would not be denied protection. Yet, a restrictive interpretation of the exceptions, combined with a patchwork of regulations and guidance, now govern the application of the exceptions. These inconsistent statements of administration policy, combined with a paucity of case law, negatively affect the claims of asylum seekers. Adjudicators rarely, if ever, recognize exceptions beyond those explicitly listed in the regulations.

Q. Will you issue policy guidelines affirming that the statutory exceptions to the deadline are to be broadly interpreted, consistent with congressional intent?

Q. Will you reconcile the various non-exhaustive lists of examples of exceptional or changed circumstances in policy guidance and other memoranda, adopting the most expansive lists, expanding lists of recognized exceptions if appropriate, and clarifying through policy guidance that the new set of examples is also non-exhaustive?

I fully recognize and appreciate the role and importance of our country in providing refuge to individuals fleeing persecution. It is a role steeped in our country's history. If I am confirmed, I will be committed to ensuring that this important and noble role of ours is fully realized as Congress intended.

If I am confirmed, I will promptly request the USCIS Office of the Chief Counsel and the Office of Refugee, Asylum and International Operations to review the lists of examples of exceptional or changed circumstances in current training and policy guidance and conduct a study of how these lists are applied in the field and with what results, so that USCIS better understands whether and how the exceptional or changed circumstances are considered in light of Congressional intent. I will then communicate with you and your Staff, and with the Committee and appropriate Department personnel, with the goal of issuing additional policy guidance if warranted, that will appropriately ameliorate any shortcomings, in USCIS' current interpretation or implementation of the one-year filing deadline.

2. EB-5 Regional Center Program

The EB-5 Regional Center program facilitates foreign investment in the United States and results in the creation of new domestic jobs. The program has been responsible for the investment of billions of dollars in communities around the United States, and the creation of tens of thousands of new jobs. I believe this program, if administered effectively, can play a significant positive role in the American economy, and should be a permanent part of our immigration system. Although 10,000 visas are authorized each year for this program, approximately 800 are issued each year, indicating that the program is substantially underused.

Q. If confirmed, will you work with Congress to ensure that this program is administered and supported in such a way that is workable, efficient, and as predictable as possible for American entrepreneurs and foreign citizens who seek to invest in the United States?

Q. Will you be responsive to feedback from domestic stakeholders who use the program to develop domestic investment projects?

I am aware of and appreciate the significant potential economic benefits of the EB-5 program.

If confirmed, I am committed to working with Congress and other stakeholders to ensure the EB-5 program -- and all immigration programs -- are properly supported and administered so that they are workable and efficient, and so that the applicable rules and expectations are well-publicized and predictable. Further, if I am confirmed USCIS stakeholders will find the agency under my administration to be a willing and eager partner dedicated to achieving the goals of our country's immigration laws and regulations. This is true with respect to the EB-5 program and its intent to develop critically important domestic investment projects.

3. H-2A and Dairy

An issue that I am also concerned about is the inability of dairy farmers to use the H-2A visa program. Due to the year-round nature of dairy farming, under current regulations dairy farmers cannot make the certifications necessary to obtain H-2A workers. As a result, dairy farmers in desperate need of workers sometimes turn to undocumented workers. Farmers should not be put in this position when the immigration laws contain an agriculture-specific visa.

Q. If confirmed, will you work with me, whether through comprehensive immigration reform or other legislation to refine the H-2A visa provisions so that dairy farmers can have access to lawful year-round workers?

Q. Apart from legislation, will you commit to exploring changes to current regulations that would allow dairy farmers to obtain workers through the H-2A visa program?

If I am confirmed, I look forward to studying the problem of dairy farmers' inability to avail themselves of a visa program to obtain lawful qualified workers due to the year-round nature of their work. If confirmed, I commit to exploring all avenues by which this problem can be addressed. I recognize, however, that the solution to the dilemma in which dairy farmers find themselves may lie only in legislation. I look forward to working with you, the Department of Labor, and other stakeholders to achieve a solution to this problem.

4. Relief for Surviving Spouses

Three Circuit Courts of Appeals have ruled in favor of surviving spouses who sought relief despite the fact that their U.S. citizen spouses died before an application for adjustment of status for the surviving spouse could be processed. These three circuits, the First, Sixth, and Ninth, analyzed the statute, 8 USC §1151(b)(2)(A)(i), and found that it clearly provided relief to such surviving spouses. The Third Circuit ruled for the government and against a surviving spouse petitioner. Litigation is pending at the district court level in several other circuits. Meanwhile, USCIS issued policy in June 2009 that will defer action on the removal cases of such surviving spouses and others for two years. In addition, legislation is pending in Congress to resolve the matter.

Q. If confirmed, how will you treat applications filed in the First, Sixth, and Ninth Circuits that fit the fact patterns of binding precedent in those circuits? See *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2005); *Lockhart v. Napolitano*, 561 F.3d 611 (6th Cir. 2009); *Taing v. Napolitano*, 567 F.3d 19 (1st Cir. 2009). Specifically, will you direct USCIS to grant relief to eligible surviving spouses whose U.S. citizen spouses applied for adjustment of status for the surviving spouse, but died prior to the adjustment being granted and prior to the length of the marriage reaching two years?

I am aware that on June 9, 2009, the Secretary of Homeland Security announced a policy providing that surviving spouses of U.S. citizens—as well as their unmarried children under 21 years old—who reside in the United States and who were married for less than two years prior to their spouse's death will be granted deferred action for two years, and that this policy was issued while dispositive legislation is pending. If I am confirmed, I will work with the USCIS Office of Policy and Strategy and Office of Chief Counsel, as well as the Department's Office of Policy and General Counsel, to ensure this policy is implemented fully, effectively, and in accordance with law.

5. **Application Fees**

Q. I remain concerned that the summer 2007 fee increases have put adjustment of status and naturalization out of reach for many eligible immigrants. If confirmed, what actions will you take to ensure that fee waivers are offered to all eligible persons in a transparent manner?

I am informed that the 2007 fee increase was needed to enable USCIS, as an agency whose funding is predominantly fee-based, to achieve its mission. At the same time, I am keenly aware of the prohibitive effect a fee increase can have on qualified applicants who cannot afford the greater costs. If I am confirmed, I will, as part of a full internal review of USCIS, review the fee waiver program. I am committed to sharing my findings with you, the full Committee, your Staff, and other stakeholders as USCIS, in coordination with the Department, considers any possible needed changes to the fee waiver program so that it more fairly and effectively achieves its objective.

6. **Family Reunification**

Petitions from refugees to have spouses and minor children join them in the United States (called the I-730 petition) should be treated as priority cases and processed expeditiously, ideally within three to six months. Presently, due to bureaucratic delay USCIS adjudicates I-730 petitions in approximately 18 months. Meanwhile, the families of many resettled refugees continue to face danger while they wait for permission to enter the United States.

Q. Will you agree to expedite these cases for humanitarian reasons as well as for family reunification?

Q. Will you issue USCIS policy guidance to clarify that minor children will not age-out of eligibility due to bureaucratic delay?

I recognize that the even temporary disruption of the refugee family unit during the pendency of the application process can have significant adverse, even tragic, consequences. If I am confirmed, I am committed to working with USCIS personnel as well as the Department of State to determine how the U.S. Government can most securely and effectively process I-730 petitions in the future, including a process for prioritizing cases in which there is an urgent humanitarian need.

Further, if I am confirmed, I will also work to develop, in coordination with the Department and with you, the Committee, your Staff, and other stakeholders to develop policy guidance to address the potential for minor children to lose eligibility by virtue of delays not attributable to family conduct.

7. Facilitate Timely Work Authorization for Legitimate Asylum Seekers

To prevent fraud, the immigration statute prevents an asylum seeker from lawfully working until his asylum application has been pending for 180 days. See INA §208(d)(2); 8 USC §1158(d)(2). However, asylum seekers often wait much longer than 180 days, because the “asylum clock” is stopped any time the asylum seeker delays the case. Delay is interpreted to include the denial by an asylum seeker of an expedited hearing date. Yet, accepting an expedited date often requires the asylum seeker to appear in court within days of filing his or her application, before securing counsel, medical and other expert witnesses, and before adequately preparing a case. While fraud may be deterred by this rule, the unfortunate consequence is that asylum seekers who seek time to prepare a case are penalized, and left to rely on charity while they await the ability to seek lawful employment.

Q. Will you issue policy guidance stating that when an asylum seeker declines an expedited hearing, it should not automatically toll the 180-day clock for work authorization? The guidance should balance deterrence of abuse and fraud with recognition of the asylum seeker’s need to retain counsel and prepare a case.

Q. Will you issue guidance authorizing asylum offices to keep the asylum clock running when an applicant requests rescheduling for good cause, such as a need to seek medical or psychological treatment, or that the application was filed in skeletal form to prevent the expiration of the one year deadline?

If I am confirmed, I commit to working with the Office of Refugee, Asylum, and International Operations to review and better understand the dilemma asylum seekers face when confronted with the workings of the “asylum clock,” and I will seek to ensure that the policies and procedures of USCIS to implement statutory mandates to prevent fraud and abuse are met while at the same time recognizing the asylum seeker’s right to retain counsel and need to prepare adequately his or her case and ensuring that an asylum seeker is not unfairly punished by the passage of time occasioned for good cause.

I also commit to evaluating how the “asylum clock” works and determining whether the process needs to be revised to strike the right balance between the legitimate case preparation needs of an asylum seekers and the Department’s interest in discouraging the submission of frivolous or fraudulent asylum applications in order to protect program integrity.

8. Naturalization Delays

The USCIS Ombudsman has described USCIS as following an “active case management” system, which defines certain applications as outside the production queue and therefore not part of the naturalization backlog. Files that await a background check are deemed by the agency to be outside the queue and therefore not

counted as part of the backlog. As a result, the agency reports numbers to the public and to Congress that are not wholly accurate.

Q. If confirmed, will you release statistics to Congress and the public that fully and accurately reflect the number of applications pending and the lengths of time they have been pending?

If I am confirmed, I am committed to improving USCIS' transparency and credibility. It will be one of my goals to ensure that Congress and the public understand fully the data USCIS publishes and have full confidence in its accuracy. USCIS will share its successes and its challenges with candor and openness, with the desire to work in partnership with all stakeholders to achieve the Agency's mission in the secure, fair, and effective administration of our country's immigration laws.

9. FBI Name Checks

According to the Department of Justice's Office of Inspector General, the FBI processes 86% of name checks within 60 days. The remaining 14% experience delays of several months to more than a year, with a small number of checks taking more than 3 years. In recent years, the FBI and USCIS have blamed one another, with each agency claiming that delays are largely the fault of the other.

Q. What specific actions will you take to improve cooperation between USCIS and the FBI to ensure that all naturalization applications are processed expeditiously?

Throughout my twelve years of experience in law enforcement, including my leadership of one of the largest United States Attorney's Offices in the country, I developed close and collaborative working relationships with varied federal agencies, including the FBI. If I am confirmed, I will promptly reach out to the FBI to expand the working group dedicated to improving the name check system, capitalizing on the progress made through the USCIS and FBI partnership over this past year.

**Senator Grassley's Written Questions for Alejandro Mayorkas to be Director of U.S.
Citizenship and Immigration Services at the Department of Homeland Security
June 24, 2009**

(1) Do you support the Executive Order that requires federal contractors to use E-Verify in order to obtain or keep contracts with the federal government? Will you work to ensure that this order is implemented as quickly as possible when you are confirmed by the Senate?

E-Verify is an important and useful tool that enables employers to verify the legal immigration status of their workforce. The contractor rule is currently under interagency review and has also been challenged in litigation. Whatever the outcome of the review and the litigation, I will work to ensure maximum participation by federal contractors in the E-Verify system, including giving full USCIS support to effective implementation of all federal rules dealing with contractor participation.

(2) Would you support an effort that would allow employers to voluntarily use E-Verify for their existing workforce, if an employer wishes to use the system and check all workers within a specified time frame?

If I am confirmed, I will look into this proposal. Any plans of this type must be evaluated based on a full understanding of the law, the broader implications, and the overall capacity of the E-Verify system, including that of the Social Security Administration, to deal with a possible sudden new load of mismatches needing manual resolution.

(3) Would you support efforts to allow self-verification for employees or pre-verification for employers?

If I am confirmed, I will study further the issues of employee self-verification and employer pre-verification, and I will communicate with the members of the Committee and their Staff to help ensure that E-Verify is used effectively in furtherance of the Department's law enforcement objectives.

(4) Will you work with Immigration and Customs Enforcement on non-confirmations? Specifically, will you make sure that ICE has a list of individuals that are not confirmed by employers who use E-Verify?

Throughout my twelve years of experience in law enforcement, I developed collaborative relationships with varied federal agencies to ensure the achievement of common goals. If I am confirmed, I will use the skills I previously developed to forge the most effective working relationship between USCIS and ICE. This would include USCIS' cooperation with ICE in the communication of information USCIS possesses that is relevant to ICE's enforcement efforts.

(5) What plans do you have for improving E-Verify in the next year?

I am informed that several initiatives already underway will bring further improvements to E-Verify, including enhancing Federal database accuracy; adding new tools to prevent fraud, misuse, and discrimination; strengthening training, monitoring, and compliance; and enhancing privacy protections. If I am confirmed, I will support these initiatives fully and look for additional improvements. I believe E-Verify is an effective law enforcement tool, and its improvement will better serve the enforcement of, and compliance with, federal immigration law.

(6) The FDNS unit has provided some valuable information with regard to visa fraud, namely in the religious worker and H-1B visa programs. What new areas of focus will you ask FDNS to study in the coming year or two?

If I am confirmed, I will promptly conduct a thorough review of USCIS programs to identify areas in need of improvement and in need of increased focus. I am aware of the existence of fraud in visa programs and, with my law enforcement background, I believe I am well-positioned to help develop new, improved, and more robust anti-fraud programs where needed.

(7) Do you agree that reforms to the H-1B visa program are needed? If so, what legislative changes do you believe are a priority to get at the fraud and abuse?

I believe the existence of fraud in the H-1B visa program needs to be addressed forcefully. To that end, if confirmed I will study the program and work with other members of the Department and with the Committee and its Staff to develop any legislation that could be effective in more ably preventing and responding to fraud in the program.

(8) The L visa program allows companies to use a "blanket" petition to transfer employees, but there is some concern that the State Department and USCIS do not work collectively to fully understand who is in the United States and to what extent individuals are screened under the petition.

- **What are your thoughts about retaining or striking this provision from the INA that allows employers to use the blanket petition?**
- **Will you work with the Department of State to improve communication and understanding of those that use this program?**

If I am confirmed, I will conduct a review of the petition process in the L visa program to evaluate the benefits and challenges of its use as well as whether the process, on balance, serves the goals of our immigration laws. I commit that, if I am confirmed, I will work with the Department of State -- and with all of USCIS' partners -- to ensure robust lines of communication and full cooperation.

(9) What do you plan to undertake administratively to reduce fraud in the H-1B and L visa programs? How will you work to reduce the use of body shops so foreign workers are not misused to replace American workers?

If I am confirmed, I will conduct a review of USCIS, including its anti-fraud efforts in specifically the H-1B and L visa programs, to understand how the immigration laws can be more effectively administered and violation of the laws can be more effectively addressed. I also will, if confirmed, work with the Committee and its Staff to achieve these goals.

The misuse of foreign workers to replace American workers is a problem that requires the collaboration of USCIS, ICE, and other agencies to develop an appropriately forceful response.

(10) Currently, many fraud detection agents across the country are uncovering fraud and abuse in the H-1B program, but many of the scams are not being pursued for criminal prosecution.

- **How will you work with the Department of Justice and the US Attorneys to bring more cases against employers who violate the law?**
- **Will you pledge to report any disagreements between CIS and USDOJ prosecutors over the decision to file criminal charges against employers who violate the law? Why or why not?**

If I am confirmed, I will develop a close working relationship with ICE to help ensure that fraud and abuse are addressed through criminal prosecution consistent with the goals of the Department. I will also work with ICE to better understand our current communication of information to ICE and the information needs in ICE's enforcement of criminal law. I believe ICE is the agency best positioned in the Department to refer potential criminal matters to the U.S. Department of Justice or to other law enforcement agencies, including state and local law enforcement authorities where appropriate.

**Questions of Senator Tom Coburn, M.D.
Nomination of A. Thomas McLellan, to be Deputy Director of the Office of National Drug
Control Policy
United States Senate Committee on the Judiciary
July 1, 2009**

1. Do you believe that marijuana should remain listed as a schedule I drug in the Controlled Substances Act?

Response – Yes, I do.

2. Do you support the use of smoked marijuana for medical purposes?

Response – The extracts from marijuana plants may have medical benefits. There are current NIH research studies designed to test these extracts for potency, purity and side effects. The medicines that may derive should be approved and regulated by the FDA in the same way all other medications are regulated.

3. As you know, the FDA is responsible for approving drugs as safe and effective for their intended uses. Although it has not approved marijuana for any medical use, some states have passed their own laws allowing such use in limited circumstances. In your opinion, is it either wise or safe for states to essentially bypass the FDA and permit use of a drug that has not been approved by that agency?

Response – The extracts from marijuana plants may have medical benefits. There are current NIH research studies designed to test these extracts for potency, purity and side effects. The medicines that may derive should be approved and regulated by the FDA in the same way all other medications are regulated.

4. Do you have any predispositions or personal conflicts of interest that might interfere with your ability to stringently enforce the nation's traditional drug control policies, particularly with respect to marijuana?

Response – No, I do not.

5. The Director of ONDCP, Gil Kerlikowske, recently said he wants to banish the idea that the U.S. is fighting a war on drugs suggesting that he favors a shift towards treatment over incarceration. Do you agree with that shift?

a. Specifically, Director Kerlikowske stated: "Regardless of how you try to explain to people it's a 'war on drugs' or a 'war on a product,' people see a war as a war on them." He also said that the Obama administration is going to deal with drugs as a matter of public health rather than criminal justice alone, with treatment's role growing relative to incarceration. Do you agree with these statements?

Response – Director Kerlikowske is on record as saying that ONDCP favor “a balanced program of drug control which utilizes law enforcement, prevention and treatment.” This is also the position of the Administration and it is mine as well.

6. During the presidential campaign, President Obama talked about ending the federal ban on funding for needle-exchange programs, which are used to stem the spread of HIV among intravenous-drug users. While I recognize that the Office of National Drug Control Policy could not end this ban by itself, if the administration asked for your opinion, would you support ending the ban?

Response – I and ONDCP will of course support all federal law regarding needle exchange. This policy is under review at this time and as I am not confirmed I do not have access to data under consideration. As a researcher, I think policies should be informed to the greatest extent possible by the available factual evidence. If confirmed I will of course review all existing evidence as part of policy considerations on this and all other issues.

7. What is your position on continuing drug-enforcement funding and other federal funds to “sanctuary cities” that refuse to enforce federal immigration laws?

Response – I and ONDCP will support all federal policies regarding drug enforcement, drug enforcement funding; and to the extent relevant, federal immigration laws.

8. In 2007, the Bush Administration announced the Merida Initiative— a multibillion dollar international counterdrug and judicial-system-building initiative between the United States and Mexico and Central American countries. Although the Administration designated the State Department as the lead federal agency, many program responsibilities are within DOJ. I have great concern that there are still no program metrics by which to evaluate the initiative's success. As you know, increasing violence in Mexico over the past year and a half caused by drug-cartels has claimed more than 7,000 lives and currently threatens U.S. homeland security. Deputy Attorney General David Ogden testified before Congress on DOJ's five-prong strategy to identify, disrupt, and dismantle the Mexican drug cartels, including the following steps: employing extensive and coordinated intelligence capabilities; ensuring the investigation, extradition, prosecution, and punishment of key cartel leaders; pursuing investigations and prosecutions related to the smuggling of guns, cash, and contraband for drug making facilities from the United States into Mexico; using traditional law enforcement approaches to address spillover effects of cartel violence in the United States; and prosecuting criminals responsible for the smuggling, kidnapping and violence, in federal court. Furthermore, DOJ must coordinate

with a number of federal agencies within DHS, such as Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP), to ensure an effective counter-narcotics strategy.

- a. What will you do as Deputy Director of the Office of National Drug Control Policy to ensure you are effectively advancing the strategy already outlined by DOJ and coordinating with ICE and CBP?

Response – If confirmed I would support Director Kerlikowske by working closely with agencies charged with implementing the Merida Initiative and Southwest border programs for the purpose of coordinating actions, reviewing results, and assuring focused application of resources to advance national counterdrug policy.

**Senator Grassley's Written Questions for A. Thomas McLellan to be Director of the
Office of National Drug Control policy
June 24, 2009**

(1) The Anti-Drug Abuse Act directs that the Deputy Director "shall assist the Director in carrying out the responsibilities of the Director under this title." It clarifies that the Deputy Director "shall carry out the duties and powers prescribed by the Director" and serve as the Director in his absence. These responsibilities include, among other things, assisting the Director in establishing policies, goals, objectives, and priorities of the National Drug Control Program, administering the National Drug Control Program, and preparing the National Drug Control Budget. How will you fulfill the responsibilities of the Deputy Director of the Office of National Drug Control Policy (ONDCP)?

Response – If confirmed I will be honored to assist the Director in establishing policies, goals, objectives, and priorities of the National Drug Control Program. Further, I will be pleased to assist Director Kerlikowske in administering the National Drug Control Program, and preparing the National Drug Control Budget in such manner as he directs.

(2) What qualifications do you have to be Deputy Director of ONDCP?

Response – I am a career researcher with 35 years of experience conducting evaluations of new and existing substance abuse treatments and treatment systems. I have specialized in helping turn research evidence into practical applications. As such, I can bring the ability to analyze and use scientific evidence in the development and evaluation of effective policies and programs.

(3) What measures will you utilize to upset the supply of illegal narcotics?

Response – If confirmed I will assist Director Kerlikowske in the implementation and refinement of the complement of supply reduction measures currently underway, including in the Andes, Central America, the Caribbean, Mexico, and along the Southwest Border, as well as in Central Asia. I will also assist in the enhancement of prevention and treatment initiatives to reduce the demand for illegal narcotics as an additional method of reducing the market for illicit drugs.

(4) What will be your plan to reduce demand for illegal drugs, if confirmed?

Response – If confirmed I will continue to augment the existing complement of prevention and treatment initiatives currently in place. Working with ONDCP staff and the interagency groups, I will ensure there is a process in place to review and make public the effects of these initiatives. Evaluation results will be used to change

and improve these initiatives. I will also assist in the integration of law enforcement and other efforts such as the HIDTA and PDMP programs to reduce the supply of drugs available for abuse, which should serve to reduce demand.

(5) What efforts will you use to prevent teenagers, young adults, and adults from trying illegal drugs?

Response – As a researcher I believe in the value of scientific evidence in creating policies and practices. As a result of a growing body of research findings from NIDA and NIAAA there are now many effective evidence-based prevention practices and programs in existence. If confirmed I will work with the ONDCP staff and with our federal partners to assure that these proven practices become available to federal, state and community providers.

(6) Some of ONDCP's partner agencies have complained of strained or nonexistent relationships with ONDCP. The partner agencies are vital to implementing a unified National Drug Control Policy. How will you rebuild the damaged relationships between ONDCP and National Drug Control Program agencies? How will you ensure these relationships are repaired at the staff level?

Response – I, Director Kerlikowske and ONDCP value the collaboration and joint efforts of our federal partners. To enhance working partnerships ONDCP has recently (April 2009) convened a revitalized Interagency Working Group on Demand Reduction involving high level personnel from all our partner agencies. ONDCP is also an active participant in the NSC process. These meetings are designed to integrate and support joint policies in supply and demand reduction. They have already produced improved working relationships and show every indication of sustaining collaboration. If confirmed I will continue to support these interagency efforts.

(7) President Obama and Director Kerlikowske have made support of needle exchange programs a high priority. The concept of needle exchange programs are to provide clean syringes to intravenous drug users in an effort to prevent the spread of HIV/AIDS and Hepatitis C through shared needles. These programs are not intended to prevent or discourage drug use and they rely on drug users to be responsible enough not to share their used needles while properly disposing them. However, evidence suggests giving drug users needles does not lessen the risk of HIV/AIDS or Hepatitis and may in fact worsen a drug epidemic while endangering the community at large.

- Do you believe needle exchange programs are an effective way to reduce drug use in this country?
- Do you believe taxpayer dollars should be used to support needle exchange programs?

- Will you speak out against any effort to use tax dollars to implement needle exchange programs?
- Do you believe public money would be better spent on efforts to discourage injection drug use?

Response – I and ONDCP will of course support all federal laws regarding needle exchange. I, Director Kerlikowske and this Administration support comprehensive, evidence-based policies and programs which lead drug users to eliminate their drug use. With this as the general goal, I think the needle exchange policy and all policies should be informed to the greatest extent possible by the available factual evidence. If confirmed I will of course review all existing evidence as part of policy considerations on this and all other issues.

(8) The National Youth Anti-Drug Media Campaign (campaign) remains the most visible facet of our nation's drug abuse prevention efforts. However, a Government Accountability Office (GAO) report, released in 2006 concluded that the campaign was ineffective in reducing youth drug use trends. The GAO further stated that the government should limit or eliminate funding for the campaign until ONDCP provides credible evidence that the campaign is having a positive impact in reducing youth drug use.

- Do you believe the media campaign is effective in preventing youth drug use? Why or why not?
- Do you believe that Congress should withhold funds from ONDCP until there is credible evidence that the campaign is having a positive impact? Why or why not?
- Will you commit to reducing duplicative or wasteful spending when it is identified?
- If confirmed, will you conduct a comprehensive review of ONDCP funding to ensure taxpayer dollars are not lost to fraud, waste, or abuse? Why or why not?

Response – There is great potential value from a properly designed and delivered, national media campaign as part of a larger strategy to prevent initiation of drug abuse among our nation's youth. There have been significant changes to the National Media Campaign since the 2004 data considered in GAO's report were gathered and if confirmed I will commit to a comprehensive review of those changes to assess improved effectiveness and to ensure efficient use of taxpayer dollars.

(9) The DEA and local law enforcement have encountered candy flavored meth on the streets in at least 12 states. Meth cooks are flavoring this highly addictive and destructive drug in order to make it more appealing to children under the age of 18. Current law enhances penalties for drug dealers who sell drugs to children, but there is no law in place that would enhance the penalties for those who flavor or disguise drugs to make them more attractive to children. Sen. Feinstein and I have introduced legislation that would

double (and in some cases triple) the criminal penalties for those who would manufacture, flavor, or disguise any drug in such a way as to make it appealing to children. We believe this legislation will greatly help law enforcement crack down on this disturbing trend of drug dealers trying to get children hooked on meth.

- Do you support doubling the federal criminal penalties for those who manufacture, flavor, or disguise drugs in order to make them more appealing to children under the age of 18? Why or why not?

Response – Methamphetamine ranks as one of the most insidious and devastating drug epidemics of the past 50 years. Efforts to make this dangerous drug more appealing to children are particularly sickening. I, Director Kerlikowske and this Administration support policies that promote prevention of drug initiation and that lead current drug users to eliminate their use. With this as the general goal, I think that proposed changes in criminal penalties should be informed to the greatest extent possible by the available factual evidence. If confirmed I will commit to assembling, reviewing and sharing with your office all relevant evidence on this proposed change to criminal penalties, in a joint effort to develop the most effective regulations and policies.

(10) The presence of performance-enhancing drugs in professional sports and entertainment continues to have a detrimental impact on America's youth and the integrity of sports. The ongoing revelations of "super-star" athletes turning to these destructive substances to cheat their way to the top raises concerns about the impact these stories and athletes have upon impressionable youth. For instance, the most recent National Survey on Drug Use and Health found that 2.2% of high school seniors have admitted to using steroids at least once in the last year. Furthermore, the 2008 Monitoring the Future Survey has also revealed an increase among high school seniors who have admitted using steroids in the past year.

- Since you have served as a drug policy advisor for the National Football League what, if confirmed, will you do at ONDCP to discourage young athletes from turning to performance-enhancing drugs?

Response – The use of performance enhancing steroids has been a pervasive and disturbing problem for both professional and amateur sports. Professional football has an active program of regular testing with sanctions combined with treatment and prevention activities. Research shows that these multi-faceted, coordinated efforts are the type of approach that have the best effects in reducing steroid and other performance enhancing drug use. In addition, effective testing programs must be able to respond to meet the always changing pharmaceutical enhancements that become available. I, Director Kerlikowske and this Administration support policies that promote prevention of steroids and other performance enhancing substances and that lead current users to eliminate their

use. As a career researcher I commit to bringing the most current, relevant evidence to the discussion of the most effective policies to reduce steroid abuse.

(11) Some groups have argued that legalizing marijuana would help reduce drug use because it would be controlled.

- Do you support the legalization of marijuana? Why or why not?
- Will you publicly oppose the legalization of marijuana?
- Do you support efforts by federal or state officials to decriminalize marijuana offenses? Why or why not?
- If confirmed, will you use your position as Deputy Director of ONDCP to encourage both federal and state law enforcement agencies to pursue marijuana crimes?
- Do you believe that federal anti-drug laws should be enforced regardless of corresponding state laws that conflict with federal law? Why or why not?

Response – It is important to reiterate that I, Director Kerlikowske and this Administration support policies that prevent initiation of drug use (all illegal drug use as well as non-prescribed use of legal medications); and that lead current drug users to eliminate their drug use. Marijuana is a Schedule I drug and neither I, Director Kerlikowske nor this Administration favor efforts to legalize marijuana. Though marijuana is widely used despite its current illegal status, all available research suggests that legalization would dramatically increase use and associated harms. There is no research evidence indicating greater availability or legalization would increase control of the drug or reduce its negative public health and safety consequences. Consistent with these values and this evidence base, it seems most prudent to examine the full range of educational, media, research, legal and behavioral options available to use in crafting policies that will reduce marijuana initiation and reduce existing use in the most cost-effective manner. If confirmed I will bring my research experience to address this significant issue and to help craft sensible, cost-effective policies consistent with the values expressed.

(12) In your testimony, you stated: “The position of ONDCP, the position of this Administration, is that marijuana is a Schedule II substance and should remain illegal.” In fact, marijuana is a Schedule I substance, which means there is no recognized medical purpose for its use. Was it your intention to state that marijuana is a Schedule I substance? If not, was your testimony meant to signal your belief that marijuana should be a Schedule II substance?

Response – I very much regret the misstatement during my testimony. I am very well aware that Marijuana is a Schedule I substance and as noted in prior responses, I do not favor changing that status.

(13) You have been a critic of the incarceration of addicted offenders. In an interview on PBS's program "Close to Home," you said that incarceration "postpones return to substance abuse and in some cases actually increases crime." However, in many cases, incarceration or the threat of incarceration acts as a catalyst for an addicted person to seek treatment. Additionally, violent offenders must be punished, and a criminal should not be allowed to hide behind one crime (illegal drug use) as a shield against punishment for another crime (e.g. assault).

- Do you believe that incarceration is warranted for those who violate the Controlled Substances Act? If not, why not?
- Do you believe that possession of a controlled substance alone should be punished with incarceration? If not, why not?
- Do you recognize the importance of incarceration as punishment and deterrence for criminal behavior?
- Do you plan to alter or install treatment programs in prisons and jails?
- Do you believe the Residential Substance Abuse Treatment (RSAT) program should be expanded? Why or why not?

Response – I am afraid that my comments were taken out of context. I am NOT a critic of incarceration for criminals who have been properly tried and sentenced for drug crimes. However, I have said repeatedly that just incarcerating or punishing drug related criminals without additional efforts to reduce the likelihood of return to drug use following incarceration – are an extreme waste of money, because these sentences by themselves, simply lead to re-addiction, re-arrest and re-incarceration. This is also the opinion of many police officers, prosecutors, public defenders and judges. This broad sentiment has formed the foundation for combined law enforcement and treatment efforts such as Drug Courts, the Second Chance Act, Re-Entry Programs and many other state and local efforts designed to bring a more comprehensive, integrated and efficient response to drug related crime than simple incarceration. ONDCP has actively supported Drug Courts and several other projects of this type. If confirmed I will bring my own knowledge of the substantial body of research in this area to the development of policies that maximize the contribution of all aspects of law enforcement (including incarceration) as well as the contribution of modern prevention and treatment efforts to reduce drug abuse.

(14) In the 1986 book "The Encyclopedia of Psychoactive Drugs: Escape from Anxiety and Stress," you advised teenage readers that infrequent use of drugs or alcohol can reduce stress, anxiety, and boredom, and you failed to sufficiently caution teenage readers of the great danger of taking medications or alcohol without a doctor's advice. As prescription drug abuse is rising at an alarming rate, it is important that ONDCP uses its position to adequately warn of the dangers of medicine abuse. Do you think the tone of your book was appropriate for a teenage audience? If confirmed, will you act as Deputy Director of ONDCP to unequivocally warn the public of the dangers of the abuse of prescription drugs and alcohol?

Response – I think my comments have been taken out of context. In my over 400 articles during my career there is a constant theme repeating the dangers of drug use and strong, evidence-based admonitions against initiating use. If confirmed, I will unequivocally warn the public of the dangers of illicit drug use and abuse of prescription drugs.

(15) Because of your background in drug abuse treatment, will you focus on treatment at the expense of prevention? Why or why not? Will you use a multi-faceted approach to combating the nation's drug abuse problems? Why or why not?

Response – I can assure you that I will not focus on treatment at the expense of prevention or law enforcement. I am committed to a coordinated, integrated multi-faceted approach to combating substance abuse.

(16) What role do you think prevention should play while lawmakers are attempting to reform health care?

Response – Based on existing research literature, I believe that prevention is the most cost-effective aspect of a total healthcare reform policy. One of the reasons prevention is particularly important is that addiction to nicotine, alcohol and other drugs is largely a time-limited illness with the ages of risk being approximately 12-20. If we are able to prevent substance use disorders through these years, most adults will not suffer addiction or the ravages of its effects on their lives and livelihoods, families, friends, communities, and our nation as a whole.

(17) Twenty-five years ago, you helped create the Addiction Severity Index as a tool to measure substance abuse, health, and social problems of addicts. In the years since, you have continued to make changes to improve it. Screening and Brief Intervention has been shown to be effective as a method for prevention. If confirmed, will you use your position as Deputy Director of ONDCP to encourage the use of Screening and Brief Intervention as a prevention tool?

Response – ONDCP is already committed to extending the cost-effective benefits of screening and brief interventions as part of the overall efforts at healthcare reform. I completely agree with this commitment and look forward to assisting in the effort if confirmed.

(18) Do you support medications to assist addicts in their detoxification and as maintenance programs? Do you support drug abuse treatment programs that do not rely on medications in the treatment process? What role should the ONDCP play in determining what approach is appropriate for drug abuse treatment programs?

Response – My research has shown that the more serious forms of substance use disorders – abuse and dependence – are best considered, treated, evaluated and insured as chronic illnesses. As is the case with other chronic illnesses, research and medical experience should be the basis for treatment content and duration. As is the case for other chronic illnesses, the nature and duration of treatment is between physician and patient, toward a goal of self-management of symptoms. Thanks to NIH research there are now potent, FDA-approved medications for the treatment of several forms of addiction. As is the case for other chronic illnesses, patients in treatment for addiction should be able to access these approved medications.

(19) I have long supported the Drug Free Communities program (DFC) because it relies on what works best, local communities joining together to prevent drug use in their areas.

- If confirmed, will you support this program?
- Will you use this successful model, which relies on active and effective community coalitions to produce local results, rather than a model that imposes a national agenda on state and local communities, in other programs?

Response – I have reviewed the research evidence evaluating the Drug Free Communities model and am impressed with the results. ONDCP has made a significant commitment to this program and I look forward to adding my own support to enhancing ONDCP’s work and that of its federal partners.

(20) The DFC’s application process was designed to be clear and easy for new coalitions to understand and use. Additionally, the drafters intended that the DFC Act provide grantees with a fair, transparent, and timely application and appeals process. Unfortunately, some of my constituents have told me that the application process has become more and more complicated, and some were not treated fairly or provided with an appeals process when they were defunded.

- Will you ensure the application process is easy to use?
- Will you make a fair, transparent, and timely appeals process for grantees and potential grantees?
- Do you pledge to work with my office to address any other concerns that may arise in the DFC grant program?

Response – I repeat my commitment to the Drug Free Communities Program. If confirmed I will use my best efforts to assure that the application and appeals process is easy, transparent, and most of all, fair to all applicants. I look forward to being able to work with your office to get the benefit of your ideas in continuing to improve this process.

(21) According to the Partnership for a Drug Free America, each day 2,500 teenagers use prescription medications to get high for the first time. Many times, the source for these medications is the family medicine cabinet. It is vital that we educate the public on how dangerous these prescription drugs can be if used without a doctor's advice, and the best ways to safeguard the family medicine cabinet. What will you do to educate the public and reduce prescription drug use if you are confirmed as Deputy Director of ONDCP?

Response – The issue of misuse and abuse of prescription medications is already a serious and growing public health problem. I know that ONDCP has already initiated preventive efforts through the National Media Campaign, the Drug Free Communities Program and its support and promotion of prescription drug monitoring programs. ONDCP's prevention efforts are also amplified by ONDCP's ongoing efforts to improve treatment for those who have become dependent upon prescription drugs. If confirmed I will bring my research experience to expand, coordinate and intensify all of ONDCP's efforts.

(22) The abuse of controlled substances is currently the fastest growing drug abuse trend in the country. According to the most recent National Survey on drug Use and Health nearly 7 million people have admitted to using controlled substances without a doctor's prescription. More than half of medicine abusers report that they get their drugs from the family medicine cabinet. Current law prohibits most people from transferring their old prescription narcotics to another person or entity for any reason, including for disposal. Senators Klobuchar, Feinstein, and I have recently introduced legislation to make it easier for people with old and unused prescription narcotics to safely transfer these drugs to another sanctioned person or entity so they do not linger in the medicine cabinet.

- If confirmed, would you support legislation, programs, or initiatives, such as drug takeback programs, that work to reduce the risks of controlled substance abuse?
- What actions would you recommend to combat this growing trend?

Response – I am aware of your efforts to improve the disposal of unused prescription medications and I applaud them. If confirmed I will work with your office, my ONDCP colleagues, and officials within DEA, FDA and EPA to design an effective, legal procedure that will be easy and efficient for those who wish to use it and that is not harmful to the environment.

(23) Congress has provided over \$700 million for the Merida Initiative, which provides funding for equipment, training, and technical assistance to Mexico to help address cross-border drug trafficking and organized crime. In addition, the Administration recently released the Southwest Border Counternarcotics Strategy to help coordinate the U.S. assets and resources.

- What role would you, as Deputy Director of ONDCP, play in implementing our counternarcotics programs at the Southwest Border?

Response – If confirmed I would support Director Kerlikowske by working closely with agencies charged with implementing Southwest border programs for the purpose of coordinating actions, reviewing results, and assuring focused application of resources to advance national counterdrug policy. I would not implement programs per se, nor do I believe it is the role of ONDCP to do so.

- What are your goals for the Merida Initiative, and how will you work with the other agencies to improve coordination of our limited resources?

Response – Because I am not yet confirmed I have not yet reviewed confidential information relevant to the Merida initiative and therefore have not formed a view about realistic and achievable goals. I can say that the data I have reviewed on the impact of Plan Colombia indicate that as a general matter there is a positive correlation between decreased violence and restoration of civil law, anticorruption efforts, and effective law enforcement associated with anti-drug programs. These results in Colombia's case make me optimistic that the Merida Initiative will produce similar results in Mexico. If confirmed I will be honored to work with DOJ, ICE, CBP and the State Department to advance and coordinate the drug control policies associated with the Merida Initiative. If confirmed I will review the Merida Initiative policy and program coordination mechanisms in place to assess their adequacy and to determine if we are operating with maximum efficiency. Depending on the results of that review I may propose some ideas to Director Kerlikowske and work with him and the operational agencies to improve efficiency and impact.

(24) Violence in Mexico has erupted, as President Calderon has cracked down on drug cartels and these cartels are fighting each other for territory. Some of this violence has spilled onto our borders. What do you think the ONDCP should do to keep Americans safe from drug cartel and gang violence?

Response – Safety of the American people can be advanced by a dual track policy of active collaboration with the government of Mexico to attack the international criminal organizations in both countries; and by strengthening our domestic capacity to reduce the flow of weapons and cash into Mexico, and reduce the flow of drugs into the United States. Because I am not yet confirmed, I have not yet reviewed confidential information relevant to the Southwest Border. I can say that the information that I have had access to regarding Mexico indicates that President Calderon has made a sincere and courageous commitment to controlling illegal trafficking in drugs and weapons that has led to so many deaths. If confirmed I will be honored to work with DOJ, DHS, the State Department and other participating agencies to advance and coordinate drug control policies involving the Southwest Border Counter-narcotics Strategy and the Merida Initiative with Mexico.

(25) Demand for illegal narcotics has risen in Mexico. This illustrates the principle that when combating drug use, you cannot ignore prevention. In the fight to reduce drug abuse, the Obama Administration is placing greater emphasis on treatment. While I understand the desire to reducing domestic drug consumption, I don't believe that this should be done at the expense of our efforts to reduce production and trafficking. Instead, I believe that we must maintain a strong supply reduction program that includes counternarcotics assistance to foreign countries as they fight drug production in their countries.

- What do you see as your role in formulating and implementing our national supply reduction policies?
- Given your extensive background with prevention and treatment programs, please explain how you would balance the supply reduction policies with the demand reduction policies that are part of this position.

Response – Role: I will be a counselor and facilitator for Director Kerlikowske on both supply reduction and demand reduction issues. I expect that I will frequently represent the Director and the Office of National Drug Control Policy at interagency policymaking meetings and in conversations with heads of agencies and their Deputies. My role will be to assure that the Director is fully informed on all drug control issues, to develop options and alternatives, to discuss issues in depth with him, and to carry out his decisions to the best of my ability.

Balancing Supply and Demand Reduction: Director Kerlikowske has said ONDCP favors “a balanced program of drug control which utilizes law enforcement, prevention and treatment.” This is also the position of the Administration and it is mine as well. I do not see drug policy as presenting a zero-sum set of alternatives in which a choice to improve supply reduction implies an off-setting reduction in prevention and treatment. We need to do both. I will recommend policies which in my judgment promote the greatest benefit to the greatest number of our citizens. In many cases it will be possible to implement programs that advance supply reduction and prevention and treatment. Thanks to extensive research over the past decade by NIH there are many new, effective, evidence-based prevention and treatment interventions that may be combined in a new spirit of collaboration and coordination with law enforcement, to devise and broadly implement comprehensive, cost-effective, balanced drug abuse reduction policies and strategies.

(26) I have often voiced concerns about measuring the success of our counternarcotics supply reduction program simply by measuring changes in the price and purity of heroin and cocaine available on the streets of the U.S., given that many factors account for changes in drug supplies.

- What performance measures do you consider most important for measuring the success or failure of interdiction and eradication programs in the international arena?
- What new performance measures would you implement and what would be your time frame for implementation?

Response – Single category performance measures of interdiction and crop eradication programs are inherently difficult and potentially misleading. For example, if drug seizures decrease along the Southwest Border it is impossible to determine, based on that alone, whether we are successful because the overall flow has decreased, or if we have failed because traffickers have found a new method to avoid seizures. We need to look at a variety of indicators in context, and make a judgment about significance. Increased U.S. retail price and reduced purity, combined with reduced border seizures, combined with reduced production potential in the field probably means our programs are performing well. I have no current opinion about which measures are the “most important,” but I am inclined to favor basing policy decisions on a process that evaluates several measures simultaneously. If confirmed I would review what measures are available and form a view as to their usefulness and reliability. As a researcher of 35 years, I am confident that my background will be helpful in constructing measures that accurately and appropriately evaluate the effectiveness of that strategy. I am eager to work with Director Kerlikowske, my ONDCP colleagues and your office to develop the clearest set of performance measures possible.

(27) The countries of the Andean Region continue to produce the majority of the cocaine and heroin consumed in the United States. What programs would you support and promote to most effectively achieve our counternarcotics goals in the Andean Region?

Response – The data I have reviewed on Plan Colombia indicate that since 2001 in Colombia there appears to have been an expansion of state presence in association with a reduction in cocaine production potential. It is not clear to me which is cause and which is effect. It seems possible that the two simply complement one another and that neither is effective alone or in the absence of minimal security to assure rule of law and the possibility of social assistance programs. Whatever the case, it is clear that counterdrug results are best achieved when the national government has both the will and capacity to move its people out of the drug business. I would support programs that enhance foreign government willingness to reduce drug flow in a meaningful way and produce measurable, significant, results. If confirmed, I will work with Director Kerlikowske, the State Department, DOJ, DHS and other agencies to advance and properly resource drug control policies to reduce the availability of drugs of abuse in our country and contribute to peace and prosperity in the Andes.

(28) Reports indicate that half of the cocaine produced in Colombia each year is transited through Venezuela. The Chavez Government does very little to halt cocaine movement. What steps do you recommend to resolve the drug trafficking and narcoterrorism problems in Venezuela?

Response –I have not yet reviewed confidential information relevant to the past and present policies governing our interactions with Venezuela as they pertain to drug control efforts. I can say that the information I have seen suggests that drug transit to the US involves more than just Venezuela; certainly many other Central American countries as well as Mexico. Because I do not yet have security clearance to the relevant information, I can only say at this time that I will work with Director Kerlikowske and all our federal partners to implement and continually refine drug control policies in that region.

(29) You acted as an advisor on drug abuse treatment to the government of Greece since 2000. Currently, Greece is experiencing a continued rise in drug abuse and addiction due to its geographic location on the Balkan route between major drug producing and drug consuming countries. Please describe in detail your advisory role with the Greek government. How will your experience advising Greece on its drug control policy inform the strategies you plan to use as Deputy Director of ONDCP?

Response – I advised the Greek government for four years on ways to use research to develop a comprehensive prevention, treatment and law enforcement strategy to reduce problems of drug dependence. I have resigned from that role as part of my acceptance of the offer of my present position. I do believe that experience has given me an appreciation for the different views about the nature of drug abuse problems and the different views about ways to reduce those problems. If confirmed I hope to bring that experience to bear in the current position, within the general approach of seeking a balanced, coordinated and integrated strategy of law enforcement, prevention and treatment.

Senator Jeff Sessions
Questions for the Record
A. Thomas McLellan

1. According to recent news reports, the Food and Drug Administration is taking action against the makers of Cheerios cereal on the basis that claims made on Cheerios labels are misleading. If the enforcement action is successful, Cheerios will be considered a drug and will be subject to FDA regulations. Inexplicably, as we discussed during your hearing, the FDA and its regulations do not cover medicinal marijuana.

- a. Do you believe that the FDA should regulate the use of medicinal marijuana in those states that have legalized the use of marijuana for medical purposes?
- b. Given that the FDA prohibits other drugs that can be smoked, such as opium, do you believe the FDA should prohibit medicinal marijuana?

Response – The extracts from marijuana plants may have medical benefits. There are current NIH research studies designed to test these extracts for potency, purity and side effects. The medicines that may derive should be approved and regulated by the FDA in the same way all other medications are regulated.

2. Under current federal law, federal dollars are not to be used to distribute needles to drug users. Do you agree with and support this policy?

Response – I am aware of the current law. I and ONDCP will of course support all federal law regarding needle exchange. I, Director Kerlikowske and this Administration support policies that lead to elimination of drug use. With this as the general goal, I think policies should be informed to the greatest extent possible by the available factual evidence. If confirmed I will of course review all existing evidence as part of policy considerations on this and all other issues.

3. In your 2000 JAMA article “Drug Dependence, a Chronic Medical Illness: Implications for Treatment, Insurance and Outcomes Evaluation,” you argue that drug dependence should be viewed as a chronic illness, like hypertension or asthma, which require ongoing treatment. You state that “it is essential that practitioners adapt the care and medical monitoring strategies currently used in the treatment of other chronic illnesses to the treatment of drug dependence.”

- a. Do you believe that health insurance should cover treatment for drug addiction?

Response – That article, in a premier medical journal, reported that the evidence indicates addiction qualifies as a chronic illness. Medical insurance should provide the same type and duration of coverage for addiction as for all other chronic illnesses.

o. If you believe that drug addiction is akin to an ongoing disease such as hypertension, do you believe insurance coverage and treatment should go on indefinitely?

Response – Like many other chronic illnesses, there is presently no cure for serious cases of addiction. Like other illnesses, the nature and duration of treatment is between physician and patient, toward a goal of self-management of symptoms. This type of care and this treatment goal should also apply in the treatment of serious addiction. The nature and duration of treatment should be determined by patient progress as it currently is for all other chronic illnesses.

c. If drug addiction was considered a chronic medical illness like hypertension, how would we measure whether a particular treatment is the most effective?

Response – The effectiveness of drug abuse treatment is measured in exactly the same manner and with the same rigor as all other chronic illnesses. The goals of addiction treatment are elimination of the cardinal symptoms (drug use and craving), the initiation or resumption of normal function (employment, family life, etc.) and the development of self-management skills that will reduce the likelihood of relapse. Based on these criteria, the effectiveness of addiction treatment is quite comparable to – but more cost effective than – the effectiveness of treatments for other chronic illnesses because not only is the addiction treated but the myriad of other illnesses exacerbated by addiction decline.

l. In July 2008, then-ONDCP Director John Walters sent a letter to the Department of Health and Human Services Secretary Mike Leavitt asking Mr. Leavitt to review and potentially reconsider current programs funded by HHS that involve providing cocaine and other stimulants to human research subjects who may be chronic drug users. In the letter, Mr. Walters listed a number of ethical questions regarding research that involves providing drugs to drug users.

- a. In your opinion, is providing cocaine to impaired and addicted individuals ethically appropriate given the current understanding of addiction?
- b. How can we insure that such individuals are able to provide informed consent or freely volunteer to use a substance to which we know they are addicted?
- c. Is the use of untreated victims of substance abuse and addiction in a research environment consistent with our fundamental obligation to get those suffering from drug addiction into treatment and recovery?

Response – The NIH has the most rigorous guidelines in the world for the approval of human research projects. As part of that approval process, research investigations are required to assure the protection of participants' health, safety, and confidentiality. Moreover, there is the additional requirement that the research must have the potential for providing important new knowledge that could ultimately benefit the health of others. In other words, there must be a clear and favorable risk-benefit ratio for the research to be approved. Finally, all research projects must show evidence that human participants have entered into the research project with full information and without coercion (including unreasonable positive incentives). These requirements have been carefully crafted and revised over the decades by agreement in the Scientific Community.

Senator Jeff Sessions

Questions for the Record

Christopher H. Schroeder

1. If confirmed to head the Office of Legal Policy (OLP), you will be the primary policy advisor to the Attorney General and the Deputy Attorney General and will be responsible for developing and implementing the Department's significant policy initiatives. At his confirmation hearing, Attorney General Holder stated that not only is the U.S. at war with al Qaeda, but that the nation was probably late in recognizing the existence of that state of war. In response to a question from Senator Graham, Attorney General Holder stated: "I think our nation didn't realize that we were at war when, in fact, we were. When I look back at the '90s and the Tanzanian -- the embassy bombings, the bombing of the Cole, I think we as a nation should have realized that, at that point, we were at war. We should not have waited until September the 11th of 2001, to make that determination."

- a. Do you agree with Attorney General Holder's statement?

Answer: Yes.

- b. In your view, what is the earliest period prior to 2001 (if any) that President Clinton would have been justified in using military force against al Qaeda?

Answer: I agree with the Attorney General that we can look back now and see that the nation was at war prior to September 11, 2001, but I do not believe it would be possible for me in hindsight, without benefit of the intelligence available to the President at the time, to give a specific response.

- c. The U.S. military frequently undertakes military action, including detention measures, against persons and organizations associated with, but not members of, al Qaeda. In your view, are members of terrorist organizations other than al Qaeda that threaten or have attacked U.S. interests (including through association with al Qaeda) lawfully subject to U.S. military action?

Answer: Congress has authorized the President to use military force "against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons." Authorization of the Use of Military Force, 115 Stat. 224 (2001).

2. You have spent a significant portion of your career advocating against conservative legal principles, principles you assert were expounded by President Reagan, President George H.W. Bush, and President George W. Bush. You served as counsel to Senator Biden

during the Bork and Thomas hearings and were one of the co-authors of the “Biden Report,” a sharply critical and, in my opinion, unfair assessment of Judge Bork and his record. In 1991, you wrote an op-ed in the *New York Times* stating that: “The Reagan and Bush Administrations have permitted the Supreme Court nomination process to be captured by ultraconservatives who want a judiciary that is far to the right of the nation as a whole. The faction . . . is the primary cause of our recent protracted acrimonious struggles to confirm Court nominees.” And, very recently, you co-authored a book entitled, *Keeping Faith with the Constitution*, published by the American Constitution Society, in which you criticize originalism and textualism as theories of Constitutional interpretation and argue that the Constitution should be interpreted “in light of the concerns, conditions, and evolving norms of our society.”

- a. If confirmed as the head of OLP, you will be instrumental in helping Obama choose his judicial nominees. As such, I am concerned that the types of judges you would favor are not those who would strictly apply the Constitution. What assurances can you give this Committee that that will not be the case?

As I have emphasized in my writings, any interpretation of the Constitution must begin with the document’s text, history, structure and purposes, as well as judicial precedent. The President and the Attorney General believe, and I concur, that a fundamental qualification for anyone being considered for a judicial appointment is that he or she understand the Constitution has binding force that must be applied faithfully in cases that come before any court, independent of his or her own policies or preferences.

That said, the President selects judicial nominees, and the tradition function of the Assistant Attorney General for Legal Policy is to evaluate candidates for judicial nomination with respect to their professional qualifications, integrity, temperament and other criteria established by the President. If confirmed, I would carry out the traditional function of the Office of Legal Policy.

- b. Do you believe the judges that President Obama has nominated so far fit the standards that you espoused in the aforementioned writings? Why or why not?

Answer: I have not yet been involved in evaluating any of President Obama’s judicial nominees, so I cannot express an opinion.

- c. What is your view on the Administration’s outsourcing of the vetting process for Judge Sotomayor’s nomination? Will you continue that process?

Answer: I have not participated in and have no personal knowledge of the vetting process for Judge Sotomayor’s nomination to the Supreme Court. However, I intend to follow the tradition of the Office of Legal Policy, as I understand it, of involving personnel inside the Administration in vetting candidates for U.S. District and Circuit Court vacancies.

3. You were critical of the Bush Administration's use of signing statements to suggest avoidance of the obligation to comply with certain laws. In 2006, you stated that President Bush has engaged in an "unjustifiable arrogation of power" in his use of signing statements.¹ The Clinton Administration claimed broad authority with respect to signing statements during the time you served. In 1993, Assistant Attorney General for the Office of Legal Counsel Walter Dellinger signed an opinion letter to the White House Counsel in which he stated the following:

[The President] may properly *announce* to Congress and to the public that he will not enforce a provision of an enactment he is signing. If so, then a signing statement that challenges what the President determines to be an unconstitutional encroachment on his power, or that announces the President's unwillingness to enforce (or willingness to litigate) such a provision, can be a valid and reasonable exercise of Presidential authority.²

- a. Were you aware of that statement during your service in the Justice Department? Do you agree with that statement?

Answer: I was aware of the 1993 statement of Assistant Attorney General Dellinger that is quoted above, and I agree with it. I believe that signing statements can appropriately be used to express presidential intentions not to enforce or comply with a statute, whether by President Bush or any other president. As the 2006 statement on "Untangling the Debate on Signing Statements" states: "The signing statement is a good thing: a manifestation of the Executive's intentions that helps us to understand the heart of the problem. If the President has decided to decline to enforce a statute because it's unconstitutional (see above) then it is much better that he tell the Congress and the public of his intentions, rather than keep it secret, because in that case the checks and balances of the constitutional system can be set to work." The objection I have raised with respect to some of President Bush's signing statements was that they expressed a broad view of the President's constitutional authority to disregard Acts of Congress beyond what the Constitution permits.

- b. In a 1994 opinion letter to the White House Counsel, Mr. Dellinger stated that "the President is not obligated to announce his reservations in a signing statement; he can convey his views in the time, manner, and form of his choosing."³

¹ "Untangling the Debate on Signing Statements," Dawn Johnsen, David Barron, Walter Dellinger, Neil Kinkopf, Marty Lederman, Chris Schroeder, Richard Shiffrin, and Michael Small for *Georgetown Law Faculty Blog*. July 31, 2006

² Memorandum for Bernard N. Nussbaum, Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, *The Legal Significance of Presidential Signing Statements*, 17 U.S. Op. Off. Legal Counsel 131, 134 Nov. 3, 1993 (emphasis in original).

³ Memorandum for Abner J. Mikva, Counsel to the President, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, *Presidential Authority to Decline to Execute Unconstitutional Statutes*, 18 U.S. Op. Off. Legal Counsel 199, 202, Nov. 2, 1994.

- i. Did you participate in the preparation of this statement?

Answer: Yes, I do recall participating in conversations involving the preparation of this statement.

- ii. If not, were you aware of this position during your tenure in the Justice Department?

Answer: See response immediately above.

- iii. Do you agree with this statement?

Answer: I do agree with the statement.

4. In *Guidelines for the President's Legal Advisors, an introduction to Principles to Guide the Office of Legal Counsel*, you stated that, among other things, OLC opinions should account for "the institutional traditions and competences of the executive branch as well as the views of the President who currently holds office." The OLC under President Clinton held that the president can go to war on his own authority; he can conduct the war as he sees fit; a war can exist between the United States and a non-state entity such as al Qaida; and Congress's ability to interfere is limited by the president's constitutional powers, including his Commander-in-Chief power.

- a. In your view, do traditions that encompass broad war-making powers, as the Clinton OLC repeatedly noted, fall under the "institutional traditions" that you mention?

Answer: Yes, the views of the Office of Legal Council as expressed in opinions of the Office during the Clinton Administration are part of the "institutional traditions" referred to in the Principles to Guide the Office of Legal Counsel.

- b. The Obama Administration's position on several war-on-terror related legal issues so far (e.g., the state secrets privilege, extraordinary rendition, and targeted killing) has been in line with the Bush Administration's position. Even on the largest issue of apparent difference – interrogation of terror suspects – the Obama Administration has left the door open to authorizing interrogation techniques beyond those in the Army Field Manual. As a critic of the Bush Administration, how will you reconcile your views with the present administration's positions if confirmed?

Answer: The issue of appropriate policy and the issue of the lawfulness of any policy are distinct questions. My primary criticism of some of the actions of the Bush Administration has not been directed at the policies motivating those actions but at their questionable legal basis.

As for the policies themselves, along with the President and the Attorney General, I am committed to a strong national defense and to policies and programs that protect the American people. I believe that the Constitution and the laws enacted by Congress provide a firm basis for such policies and programs to be carried out lawfully. For example, programs such as the terrorist surveillance program could have been conducted within the law by making appropriate amendments to the FISA statute, as was eventually done in 2008.

c. Do you still hold to all of your criticisms of the Bush Administration's conduct of the war on terror?

Answer: My primary criticism has been that the Bush Administration did not comply with the Constitution and the laws of the United States in some of its actions. I continue to hold to that view, and also to the view that the war on terror can be prosecuted effectively and lawfully.

d. What criticisms, if any, do you have of the Clinton Administration's practices or policies regarding the same issues?

Answer: Generally, I believe that the Clinton Administration sought to implement policies and conduct those policies guided by an appropriate understanding of the President's constitutional authorities and the laws of the United States. This is not to deny that legal analysis of a particular policy or practice might not have been subsequently shown to be in error.

5. At your hearing, I asked you whether, in your view, the Fourth Amendment's warrant requirement applies to surveillance activities directed toward non-U.S. persons overseas and designed to secure foreign intelligence and other national security information, including when non-U.S. persons subject to surveillance communicate with U.S. citizens in the United States. You answered that you did not have a view at that time. I also asked whether you believe that any provision of the FISA Amendments Act of 2008 is unconstitutional. You responded that you have not studied the amendments. Now that you have had time to reflect upon these issues and review the FISA Amendments Act of 2008, please provide an answer to the foregoing questions.

Answer: In United States v. Verdugo-Urquidez 494 U.S.259 (1990), the Supreme Court held that the Fourth Amendment's warrant requirement does not apply to non-U.S. persons outside the United States. Furthermore, in In re Directives Pursuant to Section 105B of the Foreign Intelligence Surveillance Act, 551 F.3d 1004 (For. Intel. Surv. Rev. 2008), the Foreign Intelligence Surveillance Court of Review recognized an exception to the warrant requirement for foreign intelligence surveillance, at least so long as foreign intelligence gathering is a significant purpose of the surveillance.

With respect to the FISA Amendments of 2008, several other legal challenges to aspects of those amendments have been filed but none has resulted in a judicial determination. I am

not aware of any provision of the 2008 Amendments that is unconstitutional on its face. Whether specific applications of the new authorities in the FISA are constitutional cannot be ascertained without knowledge of the particular facts of those applications.

6. At your hearing, Senator Feinstein asked whether you believe that the laws of armed conflict allow for the preventive detention of individuals if an Article 3 court has determined that they are enemy combatants or otherwise meet international standards. You responded that have not studied the issue enough to give a "personal answer." Now that you have had the chance to study the issue, please provide your personal answer.

- a. Do you believe the United States has the power to preventively detain terrorist suspects?

Answer: Yes, Hamdi v. Rumsfeld, 542 U.S. 507 (2004), held that the United States has the authority to preventively detain individuals who have been properly designated "enemy combatants." I understand that the President has established an interagency task force to review appropriate policy in this area.

- b. Must such detentions occur in the United States?

Answer: The question of whether the law compels such detentions to occur in the United States would be a legal determination within the normal purview of the Office of Legal Counsel, but I do not believe there is such a legal requirement. If the question is asking whether the best policy approach to such detentions is to have them occur within the United States, the President has established an interagency task force to resolve policy questions such as this, and I believe that such interagency collaboration is the best way to formulate policy in this area.

- c. Does the United States have no authority to detain except after Article III court determinations?

Answer: Hamdi v. Rumsfeld, 542 U.S. 507 (2004), recognized the authority of the United States to detain individuals who have been properly designated "enemy combatants" prior to any Article III court determination.

- i. What, in your view, constitutes the minimum of due process that should be required for tribunals that authorize or affirm detentions?

Answer: In Hamdi v. Rumsfeld, 542 U.S. 507 (2004), the Supreme Court indicated that the requirements of Due Process should be determined by balancing the government's national security interests against the individual interest in being free of erroneous or arbitrary detention. This is obviously not a bright-line test. Resolving specific procedural questions is a very fact-intensive and context-intensive determination that should be made only after consultation with all the many components of the executive branch that hold substantive expertise, as well as with Congress.

- ii. Would detainees before those tribunals enjoy a presumption of innocence or of guilt?

Answer: Hamdi intimated but did not decide that the tribunals could employ a presumption in favor of the government's evidence. Because the advisability and the legality of any specific procedural rule may depend upon the resolution of other procedural issues, I believe that such questions need to be resolved through the interagency and interbranch consultation and cooperation described in response to subparts b and c(i).

- iii. What evidentiary threshold would have to be met in those tribunals that review such cases? A preponderance of the evidence? Clear and convincing evidence? Beyond a reasonable doubt?

Answer: I believe that this question should be resolved through interagency consultation and cooperation.

- iv. Would you authorize the admission of evidence in such tribunals not admissible in civilian courts? How would you go about departing from the evidentiary rules that govern civilian courts?

Answer: It would not be the role of the Office of Legal Policy to make decisions of this sort.

- v. Would detainees have to be either released or brought to the United States?

Answer: A determination of what is legally required or allowed is a matter for the Office of Legal Counsel. The determination of what is the best policy within the parameters of the law is a matter that involves complicated calculations of not only legal policy but also military and foreign affairs policy. I believe it would be unwise to formulate a policy position on this or similar questions without first undertaking extensive consultations with relevant agencies, such as the State and Defense Department, as well as relevant units of the Department of Justice itself.

Questions of Senator Tom Coburn, M.D.

*Nomination of Christopher H. Schroeder, to be an Assistant Attorney General, Office of Legal Policy
United States Senate Committee on the Judiciary
July 1, 2009*

1. In a 1991 op-ed entitled "Low Roads to the High Court," you stated "The Reagan and Bush Administrations have permitted the Supreme Court nomination process to be captured by ultraconservatives who want a judiciary that is far to the right of the nation as a whole." Do you believe the current Justices on the Supreme Court who were nominated by Presidents Reagan and Bush are "far to the right of the nation as a whole?"

Answer: Such an assessment of a sitting Justice should be done on the basis of his or her entire body of opinions. On that basis, none of the current Justices is far to the right of the nation as a whole.

- a. If so, which positions in particular do you believe are "far to the right?"

Answer: See the response immediately above.

2. You have stated that judicial doctrine should incorporate "the evolving understandings of the Constitution forged through social movements, legislation, and historical practice." You also said that "[i]n many instances, a court cannot be faithful to the principle embodied in the text unless it takes into account the social context in which the text is interpreted. The relevant context includes not only social conditions and facts about the world, but also public values and social understandings as reflected in statutes, common law, and other parts of the legal landscape."

- a. When a judge takes into account the "evolving understanding of the Constitution" and "public values and social understandings" does that not give them more latitude to insert their own policies and preferences into their opinions? Why or why not?

Answer: I do not believe taking those matters into account gives judges more latitude. When applying the Constitution in a case, a judge's responsibility is to remain faithful to the written Constitution, not to insert his or her own policies and preferences.

- b. In *Roper v. Simmons*, Justice Kennedy relied in part on the "evolving standards of decency" to hold that capital punishment for any murderer under age 18 was unconstitutional. Do you agree with Justice Kennedy's ruling?

Answer: Although I have not studied the evidence upon which Justice Kennedy relied in Roper, I do agree that the Constitution's prohibition on cruel and unusual punishment embodies a principle whose application is appropriately informed by our society's understanding of cruelty and by what punishments have become unusual.

- c. How would you describe judicial activism?

Answer: I agree with Judge Frank Easterbrook who has written that the term "judicial activism" is "notoriously slippery" (Frank H. Easterbrook, Do Liberals and Conservatives Differ in Judicial Activism? 73 U. Colo. L. Rev. 1401, 1401 (2002)). Because it means

different things to different people. I do not think it is a phrase that helps us understand Constitutional interpretation or the work judges undertake.

3. President Obama has described the types of judges that he will select as follows: "We need somebody who's got the heart, the empathy, to recognize what it's like to be a young teenage mom. The empathy to understand what it's like to be poor, or African-American, or gay, or disabled, or old. And that's the criteria by which I'm going to be selecting my judges." What role do you believe that empathy should play in a judge's consideration of a case?

Answer: I agree with the President, who has also said that a judge should be an individual who is "dedicated to the rule of law, who honors our constitutional traditions, who respects the integrity of the judicial process and the appropriate limits of the judicial role," but that empathy is also "an essential ingredient for arriving at just decisions and outcomes." As such, all of these qualities should play a role in a judge's consideration of a case.

- a. What role will empathy play in your vetting process for future judicial nominees?

Answer: The traditional function of the Assistant Attorney General for the Office of Legal Policy is to evaluate candidates for judicial nomination with respect to their professional qualifications, integrity, temperament and other criteria established by the President. To the extent that it is important that nominees for judicial vacancies be able to see cases from all points of view and understand the positions of the variety of litigants that come before them, empathy should play some part in the vetting process. If confirmed, I would carry out the traditional function of the Office of Legal Policy.

- b. Do you believe President Obama's judicial nominees thus far embody this idea of empathy toward certain groups?

Answer: I have not yet been involved in evaluating any of President Obama's judicial nominees, so I cannot express an opinion.

SUBMISSIONS FOR THE RECORD
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July 8, 2009

The Honorable Patrick Leahy, Chairman
 Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, DC 20510

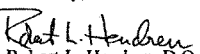
Dear Chairman Leahy,

On behalf of the American Academy of Child and Adolescent Psychiatry (AACAP), I write in full support of Dr. A. Thomas McLellan's nomination to become the next Deputy Director of the Office of National Drug Control Policy.

Dr. McLellan has spent a career promoting better understanding of addition and substance abuse, its causes and treatment, and has aided in de-stigmatizing the issue. He has been a promoter of early identification and prevention, with more than 400 scholarly publications in the area, and is currently a professor of psychiatry at the University of Pennsylvania and founder and Executive Director of the Treatment Research Institute, a not-for-profit research and evaluation institute in Philadelphia. As a leader in the addition field, Dr. McLellan has an expertise that will complement the President's agenda. His experience—research and clinical—is crucial in continuing to reduce illicit drug use, related crime and violence, and substance abuse health consequences.

The AACAP encourages the Judiciary Committee to schedule a vote on Dr. McLellan's nomination shortly and that a full Senate will confirm him with all deliberate speed. Again, the AACAP is pleased to support Dr. McLellan's nomination and looks forward to its continuous work with the Office of National Drug Control Policy.

Sincerely,


 Robert L. Hendren, D.O.
 President



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

April 13, 2009

The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the American Psychological Association (APA), I am writing to offer our strongest possible endorsement for A. Thomas McLellan, Ph.D., to serve as Deputy Director of the Office of National Drug Control Policy. Dr. McLellan has dedicated his scientific career to improving our understanding of substance use disorders and their treatment through innovative and groundbreaking research, and we are confident that he will bring that same level of commitment to the Office of National Drug Control Policy.

Highly regarded for his scholarship, Dr. McLellan has authored hundreds of research articles during his career and over the past decade has served as Associate Editor and Editor-in-Chief of the most important scientific journals in the addiction provider community. Beyond his vast contributions to our understanding of the diagnosis and treatment of substance use disorders, Dr. McLellan has demonstrated remarkable leadership in the translation of those research findings into practical applications. Perhaps best known for the development of the Addiction Severity Index and Treatment Services Review, clinical instruments used to measure multiple aspects of substance use and treatment efficacy, Dr. McLellan literally gave them away, and they are now the world's most widely used tools in the treatment of drug and alcohol addiction, having been translated into 20 languages.

Dr. McLellan has labored tirelessly to remove the stigma associated with drug addiction by likening it to many other chronic health conditions. As such, his seminal report in the *Journal of the American Medical Association* was the first to demonstrate that success rates for the management of substance use disorders are on par with success rates for the management of asthma, diabetes, and hypertension. Dr. McLellan's passion for educating the public and his pragmatic approach to policy evolved from trying to help those afflicted with drug addiction in his own family. With that level of personal involvement, Dr. McLellan has a well-earned reputation as a tireless and selfless public health advocate who simply wants to know what treatments work and how to effectively implement them.

Serving as the Chief Executive Officer of the not-for-profit Treatment Research Institute, Dr. McLellan has led an unparalleled research enterprise. But unlike so much research

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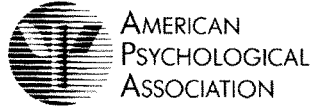
that becomes archived in academic medical school libraries, Dr. McLellan has nurtured relationships with individuals and organizations to extend the reach of those scientific findings to benefit millions of American lives. As just one example, in collaboration with the Partnership for a Drug Free America, his "Time to Talk" series is serving as an enormously successful prevention and intervention program to help parents help their children to stay drug free.

In closing, we are delighted that President Obama has nominated a scientist of Dr. McLellan's stature, who also has such a visionary and practical approach to rational policy-making, to serve as Deputy in the Office of National Drug Control Policy. Thank you for your serious consideration of Dr. McLellan for this position. The field of drug abuse treatment and the public health of our nation will be very well-served by Dr. McLellan's appointment.

Sincerely,



Norman B. Anderson, Ph.D.
Chief Executive Officer



July 9, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions,

On behalf of the organizations listed below, we want to thank you for holding Dr. Tom McLellan's confirmation hearing on June 24th for the position of Deputy Director of the Office of National Drug Control Policy. We hope that you will schedule a Judiciary Committee vote on Dr. McLellan's nomination as soon as the Committee's calendar permits and that a full Senate vote will follow soon thereafter.

We are delighted that President Obama has nominated a scientist of Dr. McLellan's stature, who also has such a visionary and practical approach to rational policy-making, to serve as Deputy in the Office of National Drug Control Policy. The public health of our nation will be very well-served by Dr. McLellan's appointment and we appreciate your stewardship during the confirmation process.

Alphabetical List of Organizational Endorsements:

Alcohol Policies Project, Center for Science in the Public Interest
American Academy of Addiction Psychiatry
American Academy of Child and Adolescent Psychiatry
American Osteopathic Academy of Addiction Medicine
American Psychological Association
American Society of Addiction Medicine
American Sociological Association
Association for Behavioral Health and Wellness
Association for Medical Education and Research in Substance Abuse
Association for Psychological Science
Betty Ford Center
Bradford Health Services
Center for Integrated Behavioral Health Policy
College on Problems of Drug Dependence
Community Anti-Drug Coalitions of America
Consortium of Social Science Associations
Drug Strategies
Entertainment Industries Council, Inc.

750 First Street, NE
Washington, DC 20002-4242
(202) 336-6067
(202) 336-6063 (Fax)
gmumford@apa.org

Geoffrey K. Mumford, Ph.D.
*Associate Executive Director for Government Relations
Science Directorate*

Faces and Voices of Recovery
 Federation of Associations in Behavioral and Brain Sciences
 Friends of the National Institute on Alcohol Abuse and Alcoholism
 Friends of the National Institute on Drug Abuse
 Friends Research Institute, Inc.
 Hazelden Foundation
 Hepatitis Foundation International
 International Nurses Society on Addictions
 Legal Action Center
 Mental Health and Substance Abuse Corporations of Massachusetts, Inc.
 NAADAC, The Association for Addiction Professionals
 National Association for Children of Alcoholics
 National Association for Children's Behavioral Health
 National Association of Addiction Treatment Providers
 National Association of Community Health Centers
 National Association of Drug Court Professionals
 National Association of Nurse Practitioners in Women's Health
 National Association of State Alcohol and Drug Abuse Directors
 National Center on Addiction and Substance Abuse at Columbia University
 National Council for Community Behavioral Healthcare
 National Council on Alcoholism and Drug Dependence, Inc.
 National Families in Action
 Operation PAR
 Partnership For a Drug-Free America
 Physicians and Lawyers for National Drug Policy
 Research Society on Alcoholism
 State Associations of Addiction Services
 Therapeutic Communities of America

cc: The Honorable Harry Reid, Senate Majority Leader
 The Honorable Mitch McConnell, Senate Minority Leader
 The Honorable Orrin Hatch, Committee on the Judiciary
 The Honorable Herbert Kohl, Committee on the Judiciary
 The Honorable Dianne Feinstein, Committee on the Judiciary
 The Honorable Charles Grassley, Committee on the Judiciary
 The Honorable Russ Feingold, Committee on the Judiciary
 The Honorable Jon Kyl, Committee on the Judiciary
 The Honorable Lindsey Graham, Committee on the Judiciary
 The Honorable Charles Schumer, Committee on the Judiciary
 The Honorable John Cornyn, Committee on the Judiciary
 The Honorable Richard Durbin, Committee on the Judiciary
 The Honorable Benjamin Cardin, Committee on the Judiciary
 The Honorable Tom Coburn, Committee on the Judiciary
 The Honorable Sheldon Whitehouse, Committee on the Judiciary
 The Honorable Amy Klobuchar, Committee on the Judiciary
 The Honorable Ted Kaufman, Committee on the Judiciary
 The Honorable Arlen Specter, Committee on the Judiciary
 The Honorable Al Franken, Committee on the Judiciary



LEROY D. BACA, SHERIFF

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



June 17, 2009

Chairman Patrick J. Leahy
433 Russell Senate Office Building
United States Senate
Washington, D.C. 20510
Via Fax (202) 224-3479

Ranking Member Jeff Sessions
335 Russell Senate Office Building
United States Senate
Washington, DC 20510
Via Fax (202) 224-3149

Dear Chairman Leahy & Ranking Member Sessions:

**RECOMMENDATION OF MR. ALEJANDRO MAYORKAS FOR DIRECTOR
OF THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES**

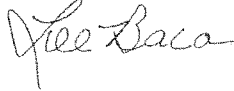
As the Sheriff of Los Angeles County, I am writing to recommend Alejandro Mayorkas for nomination to the position of Director of the United States Citizenship & Immigration Services. As the leader of a law enforcement agency that works regularly with federal law enforcement, I am very interested in doing everything I can to ensure that President Obama fills this critically important position with the most qualified person for the job. I believe that Alejandro Mayorkas is that person.

As United States Attorney, Mr. Mayorkas worked in conjunction with a number of local law enforcement agencies either individually or as part of various task forces. Under his leadership, the Civil Rights Section was created to prosecute hate crimes. He believes that goals of federal agencies can only be achieved through close collaboration and partnership with local law enforcement agencies. He respects the experience and commitment these agencies bring in working together with federal agencies.

As Sheriff, I am keenly aware of how effective law enforcement can be when federal and local agencies work together. All law enforcement agencies in Los Angeles County, whether federal or local, face significant challenges to maximize their resources. One of the best ways we can maximize our effectiveness is through cooperation with one another, and through his efforts as United States Attorney, Alejandro Mayorkas has demonstrated that he is committed to such cooperation. I firmly believe that citizenship and immigration services in Southern California will be enhanced if he is selected to be the Director of the United States Citizenship & Immigration Services.

In conclusion, it is with complete confidence that I recommend Alejandro Mayorkas for the position of Director of the United States Citizenship & Immigration Services.

Sincerely,



LEROY D. BACA
SHERIFF

GIBSON, DUNN & CRUTCHER LLP

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June 10, 2009

Direct Dial



Client No.

Fax No.

(202) 530-9548

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jefferson B. Sessions III
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Re: *Alejandro N. Mayorkas - Nominee for Director,
Citizenship and Immigration Services*

Dear Chairman Leahy and Ranking Member Sessions:

I write to you in support of the nomination of Alejandro Mayorkas for Director of Citizenship and Immigration Services (CIS). Having been a head of one of the Department of Homeland Security agencies, I understand the challenge that the next Director of CIS will face in reducing processing delays and implementing badly needed, but expensive, IT systems. The position requires a strong, experienced and capable leader.

By way of background, I have known Mr. Mayorkas for nearly twenty years and have followed his career closely since hiring him as Assistant U.S. Attorney for the Central District of California in 1989. On one level, Mr. Mayorkas distinguished himself as a federal prosecutor who handled and tried to jury a good many cases. He was effective, but he was also the consummate professional, courteous in his dealings with witnesses and opposing counsel. One sensed that he truly believed the Holmesian maxim that "the government always wins when justice is done." Because of his trial and teaching skills, he ultimately became a supervisor of the general crimes section of the U.S. Attorney's office where he trained and mentored dozens of

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PARIS MUNICH BRUSSELS DUBAI SINGAPORE ORANGE COUNTY CENTURY CITY DALLAS DENVER

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The Honorable Patrick J. Leahy
The Honorable Jefferson B. Sessions III
June 10, 2009
Page 2

newly hired Assistant U.S. Attorneys regarding trial practice and the ethical standards expected of Assistant U.S. Attorneys.

As an Assistant U.S. Attorney, Mr. Mayorkas was a talented trial attorney who always conducted himself with honor and dignity. He was the model of the federal prosecutor who took to heart the injunction found in United States v Berger that federal prosecutors may strike "hard blows", but never "foul ones".

In time, Mr. Mayorkas was appointed by President Clinton to be the United States Attorney for the Central District of California where for several years he oversaw the second largest U.S. Attorney's office in the nation. Having myself been the U.S. Attorney for Central District, I know that Mr. Mayorkas acquired management, budget and administrative skills of the type that are needed to run an agency such as CIS. Having headed several federal agencies myself, I also know how important this kind of experience is to running an agency in Washington, D.C.

After resigning as the U.S. Attorney here in 2001, Mr. Mayorkas became a partner in the Los Angeles office of O'Melveny & Myers, one of the most respected and prestigious law firms in Southern California and the country. He is highly thought of in this community as a lawyer of integrity and one who is devoted to the promotion of the highest standards of legal ethics. He is of the "old school" of lawyering where providing sound advice to clients is more important than firm profits. As an immigrant himself, I am confident that Mr. Mayorkas, if confirmed by the Senate, will approach the challenges of the CIS Director position with an understanding of the importance of the agency and the impact it has on those who lawfully seek to immigrate to the U.S. or adjust their status.

In sum, I believe that Mr. Mayorkas has the background, experience, managerial skills and judgment to make a superb Director of CIS; one who can improve the overall efficiency of that important agency of the Department of Homeland Security and do so consistently with the security interests of our nation.

Please do not hesitate to call me if you have any questions concerning the above or if I can be of any further assistance to you or the Committee.

Very truly yours,



Robert Bonner

RB/iem

999

LOS ANGELES POLICE DEPARTMENT

WILLIAM J. BRATTON
Chief of Police



ANTONIO R. VILLARAIGOSA
Mayor

P. O. Box 30158
Los Angeles, CA 90030
Telephone: (213) 485-3101
TDD (877) 275-5273
Ref #: 1.4

June 9, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Senator Leahy:

I wish to express my personal support for the nomination of Alejandro Mayorkas to be the new Director of the United States Citizenship and Immigration Services in the Department of Homeland Security.

For many years Alejandro has been a steadfast supporter of local law enforcement in the Los Angeles region; first as an Assistant United States Attorney, and later as the United States Attorney for the Central District of California. Time and again, Ali proved himself an energetic, creative and dedicated partner to the Los Angeles Police Department and to other police agencies in the region. Whether in the pursuit of street gang members through federal racketeering prosecutions, or in major cases against high-level narcotic dealers and money launderers, throughout his tenure in the Office of the United States Attorney, Ali has invariably displayed leadership and devotion on behalf of our communities.

I know that Ali's wonderful intellect, his leadership, experience, and especially his own compelling life story as an immigrant to our great nation, will be valuable assets as the new administration develops best policies and practices to better serve and protect all Americans.

If there are any questions regarding this correspondence, please have a member of your staff contact me at (213) 485-3101.

Very truly yours,

WILLIAM J. BRATTON
Chief of Police

Handwritten signature of Sergio G. Diaz in black ink.

SERGIO G. DIAZ, Deputy Chief
Commanding Officer
Operations-Central Bureau

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May 13, 2009

The Honorable Patrick Leahy
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

On behalf of Community Anti-Drug Coalitions of America (CADCA) and our more than 5,000 coalition members nationwide, I would like to express our strong support for Dr. A. Thomas McClellan's swift confirmation as Deputy Director of the Office of National Drug Control Policy (ONDCP). Throughout Dr. McClellan's stellar research career in alcohol, other drug policy and addiction, he has been widely recognized as one of the premier experts at the forefront of understanding the science behind the disease of addiction.

Dr. McClellan is not only the Chief Executive Officer at the Treatment Research Institute in Philadelphia, but a Professor of Psychiatry at the University of Pennsylvania, a psychologist, and has published more than 400 articles and chapters on addiction research. Two of his primary contributions to science include the Addiction Severity Index, and the Treatment Services Review, both of which have been translated into over 20 languages and widely used throughout the world.

Dr. McClellan is universally respected by the prevention and treatment fields as a result of his profound work to reveal that addiction is a brain disease that can be treated like other chronic illnesses, with successful outcomes. CADCA enthusiastically supports Dr. McClellan's nomination and strongly urges you to see that he is favorably considered and promptly confirmed as the Deputy Director of the ONDCP. Thank you for considering our views on this important nomination.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur T. Dean".

Arthur T. Dean
Major General, U.S. Army, Retired
Chairman and CEO

A handwritten signature in black ink, appearing to read "Sue Thau".

Sue Thau
Public Policy Consultant

cc: Bruce Cohen

Building Drug-Free Communities

Community Anti-Drug Coalitions of America
625 Slaters Lane, Suite 300, Alexandria, VA 22314
P 703-706-0560 F 703-706-0565 1-800-54-CADCA cadca.org



STEVE COOLEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

June 4, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United State Senate
Washington, D.C. 20510

The Honorable Jefferson B. Sessions III
Ranking Member, Committee on the Judiciary
United States Senate
Washington D.C. 20510

Dear Senators Leahy and Sessions:

I would like to express my support of the nomination of Alejandro Mayorkas as Director of the U.S. Citizenship and Immigration Services in the Department of Homeland Security.

From 1998 until 2001, Mr. Mayorkas was the United States Attorney for the Central District of California. He was recommended by Senator Dianne Feinstein and appointed by President Clinton as the chief federal law enforcement officer in the largest federal district in the nation. In that capacity he worked closely with federal, state and local law enforcement in leading 240 Assistant U.S. Attorneys in prosecuting cases of public corruption, investment fraud, civil rights violations, high-tech and computer-related crime, organized crime, environmental crime and international money laundering. He created the Civil Rights Section to prosecute hate crimes and other acts of intolerance and discrimination. I personally worked with Mr. Mayorkas when I was first elected Los Angeles County District Attorney in 2000.

From 2001 to the present, Mr. Mayorkas has been a partner with the law firm of O'Melveny & Myers. He was named as one of the "50 Most Influential Minority Lawyers in America" in 2008 by the National Law Journal. He serves on the Board of Directors of Bet Tzedek Legal Services, a non-profit organization dedicated to providing the disadvantaged with access to justice. He also serves on the Board of Directors of United Friends of the Children, a non-profit organization devoted to the well-being of foster youth in Los Angeles County.

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Mr. Mayorkas has the intelligence, work ethic, dedication and background necessary to serve as the Director of the United States Citizenship and Immigration Services in the Department of Homeland Security. I personally and wholeheartedly support his nomination and believe that he would be a valuable asset as the Director of this agency.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Cooley", with a large, stylized flourish at the end.

STEVE COOLEY
District Attorney

dp

1003



O'MELVENY & MYERS LLP

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July 14, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

WRITER'S DIRECT DIAL
[REDACTED]

WRITER'S E-MAIL ADDRESS
[REDACTED]

The Honorable Jeff Sessions
Ranking Minority Member
Committee on the Judiciary
United States Senate
SD-224 Dirksen Senate Office Building
Washington, DC 20510-6275

Dear Chairman Leahy and Senator Sessions:

I write to endorse the nomination of Christopher H. Schroeder of North Carolina to serve as Assistant Attorney General for the Office of Legal Policy.

I am sure the Committee on the Judiciary is well aware of Chris Schroeder's substantial record of academic accomplishment as a chaired professor at Duke Law School and of his distinguished public service with the Department of Justice Office of Legal Counsel and with the Senate Judiciary Committee. Perhaps less well known is Chris Schroeder's part-time private practice association with our law firm, O'Melveny & Myers, from January 2002 to the present, the last four years in an "of counsel" position. As Chair of the Firm, I can attest Chris has provided exemplary legal services to the Firm and its clients, while working on highly complex legal matters. His capacity for keen analysis, his great maturity and judgment, and his ability to work in a constructive and purposeful way with others, have impressed both his colleagues and our clients.


Chris Schroeder's experience as counsel to our firm adds yet another dimension to his qualifications for office, making Chris one of the rare individuals who has excelled in academic law, in public service to both the legislative and executive branches of the national government, and in private practice. This diversity of experience and perspective will serve the Justice Department and the country well if Chris is confirmed as head of the Office of Legal Policy.

O'MELVENY & MYERS LLP

The Honorable Patrick J. Leahy, The Honorable Jeff Sessions, July 14, 2009 - Page 2

From my time as White House Counsel to President Reagan until now, I know how important it is to have senior Justice Department office holders who not only are first-rate lawyers, but also have the requisite maturity, experience and confidence to work constructively across institutional, interest group and party lines to advance the public interest. I believe that Chris Schroeder will be one of those leaders. I am pleased to endorse his nomination.

Yours very truly,



Arthur B. Culvahouse, Jr.

Chair

O'MELVENY & MYERS LLP

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June 23, 2009

United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Christopher Schroeder to serve as Assistant
Attorney General

Dear Chairman Leahy, Ranking Member Sessions, and Members of the
Senate Judiciary Committee:

We are all former Department of Justice officials who worked closely with Chris Schroeder when he served as a Deputy Assistant Attorney General, and later Acting Assistant Attorney General, in the Office of Legal Counsel in the 1990s. Many of us have also known and worked with Chris in a variety of other settings. Based on our broad range of experiences, we all offer our enthusiastic support for Chris' nomination to serve as the Assistant Attorney General for the Office of Legal Policy.

Chris brings together a broad range of talents, experience and perspective that make him an ideal candidate to lead the Office of Legal Policy. First, Chris is a superb lawyer. He is a distinguished scholar, with an expertise in public law and policy. He has taught classes on constitutional and administrative law, on civil liberties and national security, and on the Congress. As acting head of the Office of Legal Counsel, he grappled with some of the most difficult legal issues in the executive branch and, in the course of doing so, earned the broad respect of others throughout the government.

Chris would also bring to the job extensive knowledge of the workings of the Department of Justice, and a deep respect for the Department as an institution. Equally importantly, Chris has worked extensively with other offices throughout the government, and he has a clear understanding of the interagency process. As a result, Chris would know how to ensure that

Department of Justice policy judgments are fully informed by others in the executive branch.

Similarly, Chris also understands how the legislative process works. He would be well positioned to ensure that the Department's policy judgments are consistent with the laws Congress enacts and that they are informed by the judgment and experience of those in the legislative branch. Chris served as chief counsel to the Senate Judiciary Committee, and he understands how important it is to work effectively with Members of Congress on both sides of the aisle in formulating effective public policy.

In addition, Chris would bring to the job the perspective of a lawyer who has engaged in the private practice of law. As a result, he would also understand how Department of Justice policy might affect the legal profession, and he has the experience to understand the practical implications of those policy decisions.

Finally, and most importantly, Chris is a balanced, fundamentally fair, and honest person. He has excellent judgment and a compelling sense of what is right. All of us have worked with Chris, and we can all affirm that he is a colleague of the highest order.

In short, Chris would bring to the job the perfect mix of experience: he is a distinguished scholar; he has worked in the Department of Justice, for the Congress, and in private practice; and he has the integrity and judgment the job demands. For all of these reasons, we believe that Chris is superbly well-qualified to serve as the Assistant Attorney General for the Office of Legal Policy.

Respectfully,

Eleanor D. Acheson
(former Assistant Attorney General for
the Office for Policy Development)

Walter E. Dellinger III
(former Assistant Attorney General for
the Office of Legal Counsel; former
Acting Solicitor General)

- 2 -

1007

Jamie S. Gorelick
(former Deputy Attorney General)

Randolph D. Moss
(former Assistant Attorney General for
the Office of Legal Counsel)

Beth Nolan
(former Deputy Assistant Attorney
General for the Office of Legal Counsel)

H. Jefferson Powell
(former Deputy Assistant Attorney
General for the Office of Legal Counsel;
former Principal Deputy Solicitor
General)

Teresa Wynn Roseborough
(former Deputy Assistant Attorney
General for the Office of Legal Counsel)

Lois J. Schiffer
(former Assistant Attorney General for
the Environment and Natural Resources
Division)

Howard M. Shapiro
(former General Counsel, Federal
Bureau of Investigation)

Richard L. Shiffrin
(former Deputy Assistant Attorney
General for the Office of Legal Counsel)

Seth P. Waxman
(former Solicitor General)

- 3 -

June 15, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jefferson B. Sessions III
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator:

I am writing in support of the confirmation of Alejandro Mayorkas to the position of Director of the U.S. Citizenship and Immigration Services in the Department of Homeland Security.

I have known and consider Ali Mayorkas a trusted friend and colleague for the past 11 years. I met Ali while I was assigned as the Federal Bureau of Investigation's Assistant Director in Charge of the Los Angeles Field Office. During my tenure as Assistant Director of the Los Angeles Field Office, I had regular contact with the United States Attorney's Office for the Central District of California. I regularly met with Ali on issues that were of importance to successful federal law enforcement in Los Angeles. During his tenure as United States Attorney, Ali ensured that the priorities of the United States Attorney's Office and the FBI were aligned to provide the most efficient and effective utilization of resources in addressing crime problems resulting in the fair and successful prosecution of cases. In that regard, Ali was a true partner in meeting and addressing issues of mutual concern. This was not only the case with the FBI Office but was true of his relationship with all federal law enforcement agencies. He established regular monthly meetings with federal law enforcement agency leaders to ensure that priorities and objectives were shared and effectively communicated.

Ali and I continue to enjoy a personal relationship as a result of the working partnership we built while serving together in Los Angeles.

Ali clearly understood and recognized the serious violent crime problem in the Central District and in response developed innovative approaches targeting criminals in possession of firearms. His office aggressively prosecuted street gangs by applying federal racketeering statutes. He also recognized the need for a balanced approach with active involvement at the U.S. Attorney's Office in the federal Weed & Seed Program providing resources to after-school and neighborhood programs for at-risk youth. He also created a Civil Rights Section in the U.S. Attorney's Office in order to more effectively respond to hate crimes and other acts of intolerance and discrimination.

The Honorable Patrick J. Leahy
The Honorable Jefferson B. Sessions III

Page 2

Ali Mayorkas has, throughout career, both in and out of Government, served with professionalism, honesty and integrity. He has brought leadership and value to both the Government and private sector. I believe that he will bring that same leadership and his exceptional legal and management skills to the position of Director of the U.S. Citizenship and Immigration Services in the Department of Homeland Security.

It was an honor to have served with Ali in the government and I believe he will be an asset to our Country to have him serve in a leadership position. It is my hope that you will act favorably in confirming the appointment of Alejandro Mayorkas.

Sincerely,

James V. DeSarno, Jr.
Assistant Director, FBI (Ret.)

1010



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Food & Drug Administration & OIG
HOMELAND SECURITY
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Coast Guard Investigative Service
Immigration & Customs Enforcement
Federal Air Marshall
Federal Emergency Management Agency
Federal Protective Service
US Secret Service
Transportation Security Administration
HOUSING & URBAN DEVELOPMENT - OIG
INTERIOR
Bureau of Indian Affairs
Bureau of Land Management
Fish & Wildlife Service
National Park Service
OIG
U.S. Park Police
JUSTICE
Bureau of Alcohol, Tobacco, Firearms & Explosives
Drug Enforcement Administration
Federal Bureau of Investigation
US Marshals Service
OIG
U.S. Attorney's Office-CI
LABOR, OIG & Racketeering
NATIONAL AERONAUTICS & SPACE ADMIN. - OIG
NUCLEAR REGULATORY COMMISSION - OIG
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National News & Director
SHANDON MASTA-MATHERSON
Legislative Consultants
M. Abinger and Quisen
Andy Quinn
Legislative Counsel
James & Hoffman
Lilgar N. Jones
Steve Phoenix

June 22, 2009

Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee
Senate Dirksen Bldg. 224
Washington, DC 20510

Dear Chairman Leahy:

As National President of the Federal Law Enforcement Officers Association (FLEOA), the largest nonpartisan professional association that exclusively represents federal law enforcement officers, I am writing to support President Obama's nomination of Alejandro Mayorkas as the Director of U.S. Citizenship and Immigration.

Mr. Mayorkas' depth of experience in immigration matters is truly impressive. His background incorporates a wealth of diversified experience, and he certainly has a superior grasp of the legal aspects of both citizenship and immigration. As one of the government's top prosecutors, Mr. Mayorkas has distinguished himself as superior litigator, and is quite capable of overseeing high profile, complex matters.

Since the horrific attacks on our homeland on September 11th, the need to have our government components work together has become even more crucial. I am optimistic that Mr. Mayorkas will work well with the leadership of ICE and CBP to ensure our citizenry is well protected.

Respectfully,
J. Adler
J. Adler
National President



Police Department

June 10, 2009

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jefferson B. Sessions III
Ranking Member, Committee on the Judiciary
United States Senate
Washington, D.C. 20510

RE: Letter of support for the nomination of Mr. Alejandro N. Mayorkas for the position of Director of the U.S. Citizenship and Immigration Services in the Department of Homeland Security (USCIS)

Dear Chairman Leahy and Ranking Member Sessions:

It is with great pleasure that I am writing this letter to recommend Mr. Alejandro N. Mayorkas for the position of Director of the U.S. Citizenship and Immigration Services in the Department of Homeland Security. I met Mr. Mayorkas over a decade ago when I was a member of the Los Angeles Police Department's (LAPD) management team and he was the United States Attorney (USA) for the Central District of California (CDC), appointed by President Clinton. During these dealings, I found Mr. Mayorkas to be the consummate professional, always willing to collaborate with local law enforcement to facilitate our public safety mission.

As the Commanding Officer of LAPD's Training Group during the aftermath of the Rampart corruption scandal, Mr. Mayorkas was instrumental with the development and implementation of a contemporary style of police training. This was a major undertaking for the LAPD with extreme time limitations. This training involved the training of dozens of police instructors, who in turn, provided training for over 9000 police officers in a period of one year.

This police training provided a high quality, realistic and interactive learning experience for our officers concerning the 4th and 14th Amendments to the United States Constitution. Thanks to Mr. Mayorkas we were able to develop training scenarios that were extremely intense and thought provoking.

130 North Robson Street
Mesa, Arizona 85201-6697
480.644.2211 Tel

1012

Mr. Mayorkas has proved time and time again to be a thoughtful leader able to work effectively with others. His leadership abilities have been recognized by many including being named one of the "50 Most Influential Minority Lawyers in America" in 2008 by the National Law Journal.

Please consider this letter a display of my strong support for Mr. Alejandro N. Mayorkas' bid to the position of Director of the U.S. Citizenship and Immigration Services in the Department of Homeland Security. As a Cuban immigrant himself, Mr. Mayorkas has the personal commitment and professional experience necessary to lead the over 15,000 diligent employees of the USCIS. If I can be of further assistance concerning this matter I can be contacted at [REDACTED]

Sincerely,

GEORGE GASCÓN
Chief of Police

130 North Robson Street
Mesa, Arizona 85201-6697
480.644.2211 Tel

TASC | Administrative Offices • 1500 North Halsted • Chicago, IL 60642
(312) 787-0208 • (312) 787-9663 fax • www.tasc.org

May 29, 2009

The Honorable Patrick Leahy
U.S. Senate Committee on the Judiciary
433 Russell Senate Office Bldg
Washington, DC 20510
Fax (202) 224-3479

RE: Letter of Support for A. Thomas McLellan

Dear Senator Leahy:

I am writing in support of President Obama's recent appointment of A. Thomas McLellan as the new Deputy Director of the Office of National Drug Control Policy (ONDCP).

Dr. McLellan is one of the nation's leading experts on drug and alcohol policy, one whose decades of experience and perspective will be critical assets in addressing the debilitating, costly impact of addiction on our country.

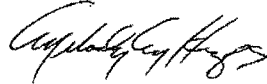
As a respected psychologist and behavioral researcher, McLellan is committed to the use of evidence-based strategies. He understands the need for collaboration by professionals in various health-related disciplines and governmental agencies. In 1992, he co-founded the non-profit Treatment Research Institute (TRI), an addiction research and development organization dedicated to the science-driven transformation of addiction policy and treatment that we in the field have come to rely on and trust.

McLellan will focus on demand reduction strategies with the capacity to prevent and treat substance abuse and addiction early in its progression. He understands that the nation's overreliance on incarceration and acute care addiction treatment approaches has not appropriately or adequately addressed our drug and alcohol problems. His strong leadership on these issues will advance the mission of the Office.

Since 1976, TASC, Inc. of Illinois (Treatment Alternatives for Safe Communities) has worked with people who have alcohol, drug, and mental health problems and who are chronic users of the courts, jails, prisons, and foster care. We have seen the trends in public health and justice over the years and advocated for creative, fair, and cost-effective programs and policies to anticipate and reverse these trends.

On behalf of TASC and the nearly 30,000 individuals we serve each year, we respectfully support the confirmation of Dr. McLellan as Deputy Director of ONDCP.

Sincerely,



Melody M. Heaps
President

1014



HARVARD LAW SCHOOL

Hauser Hall 522 • Cambridge, Massachusetts 02138

PHILIP B. HEYMANN
James Barr Ames Professor of Law
Director of Center for International Criminal Justice



06 May 2009

The Honorable Patrick J. Leahy, Chairman
The Honorable Arlen Specter
The Honorable Jeff Sessions, Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators Leahy, Specter, and Sessions:

I am writing to strongly recommend the confirmation of Dr. A. Thomas McLellan for the number two position, the Deputy, in ONDCP. I have come to know Dr. McLellan well and I am convinced that he would be a superb addition to ONDCP.

Dr. McLellan and I served together on the board of directors of Drug Strategies, a nonprofit research institute that identifies and promotes more effective approaches to the nation's drug abuse problems. Based on research Dr. McLellan had supervised at TRI on the increasing use of the internet to sell psychoactive drugs without prescription to young people, Drug Strategies and the Center for Criminal Law at Harvard Law School, along with Dr. McLellan, created a private-public working group to address this problem which had grown, almost unchallenged, to the point where about 10% of high school seniors had used a prescription narcotic within a year of the question being asked.

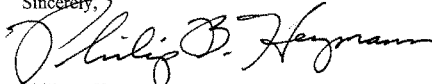
Dr. McLellan, Mathea Falco, and I brought together distinguished researchers, government officials from every relevant agency, key congressional staff, and high level representatives of credit card companies, internet service providers, and private carrier companies for a series of meetings at Harvard. The recommendations we developed, and circulated to the attendees for comments, became the subject of our testimony before the Judiciary Committee in May, 2007.

Dr. McLellan is a distinguished academic and a leader in the field of addiction research who combines that knowledge with a real understanding of how to bring it to bear on issues of public policy. He brings a rare combination of theory and practice that is urgently needed in rethinking our approach to drug abuse in this country.

1015

I did not know Dr. McLellan when I was Assistant Attorney General in charge of the Criminal Division or Deputy Attorney General, but I wish I had. I would have wanted to work with him on the most serious questions of drug policy. He will be a superb addition to the Office of National Drug Control Policy and will be a real help to this committee as it continues its attention to these issues. I recommend him to you with great enthusiasm.

Sincerely,



Philip B. Heymann

cc: The Honorable Herb Kohl
The Honorable Dianne Feinstein
The Honorable Russell D. Feingold
The Honorable Charles E. Schumer
The Honorable Richard J. Durbin
The Honorable Benjamin L. Cardin
The Honorable Sheldon Whitehouse
The Honorable Ron Wyden
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The Honorable Orrin G. Hatch
The Honorable Charles E. Grassley
The Honorable Jon Kyl
The Honorable Lindsey Graham
The Honorable John Cornyn
The Honorable Tom Coburn

June 5, 2009

The Honorable Jefferson B. Sessions III
Ranking Member
Committee on the Judiciary
United States Senate
Washington D.C. 20510

Dear Senator Sessions:

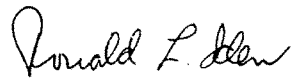
The purpose of this letter is to respectfully express my strong support for the appointment of Alejandro Mayorkas to the position of Director of the U.S. Citizenship and Immigration Services in the Department of Homeland Security.

I have had the pleasure of knowing Mr. Mayorkas for the past 11 years, and the honor of working with him during his service as the United States Attorney for the Central District of California between 1998 and 2001. In my capacity as Special Agent in Charge of the Los Angeles FBI's Counterterrorism and Counterintelligence Programs, then as Assistant Director in Charge of the Los Angeles Office of the FBI, I interacted quite frequently with U.S. Attorney Mayorkas on a number of issues pertaining to counterterrorism, civil rights and other criminal prosecutive matters within the Central District.

One of the most significant challenges we faced during that period was coordinating the investigative priorities and efforts of the myriad federal, state, and local law enforcement agencies comprising the Central District. I consistently found U.S. Attorney Mayorkas to be direct and fair in balancing, deconflicting and focusing priorities, to the benefit of all the people of the Central District. His strong and effective leadership as United States Attorney was recognized and appreciated by the leaders of each and every law enforcement agency in the region.

If I can be of any further assistance to you in your consideration of Mr. Mayorkas' nomination, please don't hesitate to contact me. Thank you.

Respectfully,



Ronald L. Iden
Senior Vice President
Chief Security Officer
The Walt Disney Company





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- Kenneth J. Smith**
Torcon, Inc.

May 12, 2009

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy,

I am writing to convey Integrity, Inc. strong support for the nomination of Dr. Tom McLellan for the position of Deputy Director of the National Office of Drug Control Policy (ONDCP).

As one of the leading researchers in the alcohol and other drug policy arena, Dr. McLellan's work at the Treatment Research Institute (TRI) has conducted cutting edge research that demonstrates that addiction is a treatable brain disease with outcomes equal to or better than other chronic illnesses. Dr. McLellan has also been at the forefront of engaging states in implementing pay for performance criteria for the purchase of public sector addiction treatment services that have yielded improved quality of care while reducing costs.

Dr. McLellan and his colleagues have also created measurement instruments such as the Addiction Severity Index (ASI) and the Treatment Services Review. These instruments have been translated into over 20 languages and are the most widely used instruments of their kind in the world. The instruments have been used to evaluate a wide variety of therapies, medications and interventions in the treatment of alcohol and drug dependence.

In conclusion, we believe Dr. McLellan will make an excellent ONDCP Deputy Director and we look forward to working with you in securing his nomination.

Sincerely,

David H. Kerr
President and CEO
Integrity, Inc.

Integrity, Inc. • 103 Lincoln Park • PO-Box 510 • Newark, New Jersey 07101

Newark (973) 623-0600
fax (973) 623-1852

Secaucus (201) 583-7100
fax (201) 583-7114

	Commission on Accreditation of Rehabilitation Facilities						
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The Supreme Court of Montana
Office of the Court Administrator

PARK AVENUE BUILDING
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TELEPHONE (406) 444-2621
Fax (406) 444-0834

June 219, 2009

United States Senator Patrick Leahy
433 Russell Senate Office Building
~~United States Senate~~
Washington, DC 20510

Dear Senator Leahy:

I am writing you to express my support for the nomination of Dr. Andrew Thomas McLellan to the position of Deputy Director for Demand Reduction at ONDCP.

Moreover, I want to express to you how important it is that Dr. McLellan be fast-tracked through the confirmation process.

Tom McLellan is known throughout the alcohol and other drug treatment field as the premier researcher in the area. He is the most well respected researcher in the world when it comes to treatment and the demand reduction area. Tom has first hand experience regarding the devastation caused by drug dependency as it has been very close to him familial-wise.

But to the heart of the problem, drug abuse is the number one issue in this country. It drives most of the offenses in the criminal justice system, results in over 200,000 deaths a year and a substantial portion of the admissions to emergency rooms. It is a major cause of foreign affairs problems, Mexico gang wars being only one of them. And the list of problems caused by alcohol and other drug abuse and dependency goes on and on. **You know this, no one has to tell you.**

We need Tom's confirmation fast tracked for two primary reasons:

1. President Obama is experiencing substantial popularity at this point in time. As a result of this, the President is in a very favorable position to appeal to our citizens with alcohol and other drug dependencies to resolve their problems and get in to treatment, that their continued addiction is causing them great personal harm and this country great problems and they can help resolve them. I believe a direct appeal from the President at this point in time could have substantial impact. We need a person in the position that can strategize around this issue and take advantage of the popularity of the President before it is too late.
2. We are losing the battle over the insidious drug, marijuana. I have been in this field for 40 years as a state alcohol and drug abuse director in three different states, the drug court administrator in St. Louis, Missouri and currently as the statewide drug court administrator in Montana. I can tell you that marijuana is a major problem in this country. It is the first illicit drug used in the hierarchy of illicit drug use and the one of the most difficult to give up. I continually am amazed at the inability of offenders to be able to stop using marijuana and it is often the first drug they go back to and it gets them into trouble. Ethan Nadleman has 45 staff funded by George Soros

whose sole goal is to normalize the use of this dangerous drug by either legalizing it for medical purposes (the AMA says there is always a better alternative than marijuana for medical problems), legalizing it for industrial use and related purposes, legalizing it for tax revenue purposes and to reduce the people in jail and prison (nobody goes to jail or prison for simple possession of marijuana), and anything else they can think of. When in fact, their sole purpose is to legalize it so they and others in the country can continue to get high on the drug. Ethan Nadleman is being successful because we do not have the ammunition to fight back. Tom McLellan understands all of this and has a strategy to fight back and turn the tide. We have organizations nation-wide ready to fight this battle but the accumulation of the research in one place in the proper format is not available to us. **We need Tom McLellan in this position right now.**

Senator Leahy, I hope you agree with me and will do everything possible to move Tom's confirmation forward as soon as possible. Thank you for your consideration.

Sincerely,



Jeffrey N. Kushner
Statewide Drug Court Administrator

1020



U.S. Department of Justice
Drug Enforcement Administration

Office of the Administrator

Washington, D.C. 20537

June 22, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jefferson B. Sessions III
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Sessions:

I am very pleased to recommend to you Mr. Alejandro Nicholas Mayorkas, whose nomination as Director of the U.S. Citizenship and Immigration Services, Department of Homeland Security, is before the Senate Judiciary Committee.

As the Committee considers Mr. Mayorkas for this important position, I would ask that you take note of the important role he has played throughout his career in support of safeguarding American citizens. During my tenure as the Special Agent in Charge of the Drug Enforcement Administration's (DEA) San Francisco and Los Angeles Field Division Offices, I had the good fortune to get to know and work with Mr. Mayorkas, both as an Assistant U.S. Attorney and as a U.S. Attorney. Mr. Mayorkas has been very supportive of DEA and its programs, including our Mobile Enforcement Team and Asset Forfeiture Programs. He has vehemently worked with DEA in bringing to justice violent drug traffickers and applying the RICO Statutes to the prosecution of street gang members. While this consummate professional has successfully prosecuted many cases, including one of our nation's largest money laundering cases, Operation Polar Cap, he is equally as dedicated and compassionate to community service. His compassion and dedication to providing resources to develop after school programs to economically disadvantaged, at-risk youth and working in these communities is awe inspiring. This is a man who truly cares about the well being of others.

Mr. Mayorkas is perfectly suited to meet the challenges as Director of the U.S. Citizenship and Immigration Services. Therefore, as the Acting Administrator of the DEA, I highly recommend that you give Alejandro Nicholas Mayorkas full consideration for this position in the Department of Homeland Security.

Sincerely,


Michele M. Leschaff
Acting Administrator



DAVID F. LEVI, DEAN
 DUKE UNIVERSITY SCHOOL OF LAW
 SCIENCE DRIVE AND TOWERVIEW ROAD
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 WWW.LAW.DUKE.EDU

June 19, 2009

The Honorable Patrick J. Leahy
 United States Senate
 433 Russell Senate Office Building
 Washington, DC 20510

The Honorable Jeff Sessions
 United States Senate
 304 Russell Senate Office Building
 Washington, DC 20510

Dear Senator Leahy and Senator Sessions:

I am the Dean of Duke Law School. Previously I was U.S. Attorney in the Eastern District of California (1986-1990) and then a United States District Judge in the same district (1990-2007). I am writing in my personal capacity to endorse the nomination of Christopher Schroeder to be Assistant Attorney General for the Office of Legal Policy.

Professor Schroeder is currently a distinguished member of the Duke Law School faculty, and the Charles S. Murphy Professor of Law. His scholarship is well recognized across a range of subject areas, including constitutional law, administrative, and environmental law. He is the author of dozens of articles and books in these fields, and has the reputation of a fair, thoughtful teacher who respects all points of view.

Professor Schroeder also directs Duke Law School's Program in Public Law. This Program in Public Law exposes law students to the opportunities and value of public service as part of their professional careers, through speaker series, workshops, conferences and other programs. The Program engages topics that are newsworthy and often controversial, in order to provide students an informed basis for evaluating the public debate about them. I have participated in a number of events sponsored by the Program and have been impressed both with the quality of Professor Schroeder's own contributions, and with the even-handedness of points of view that he consistently brings to the programming. His leadership of this program demonstrates, again, a balanced, fair-minded person who respects, and is respected by, people from many different backgrounds and perspectives. Professor Schroeder is not an ideologue.

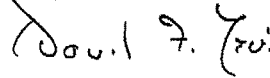
Professor Schroeder also has considerable government experience both in the Department of Justice and in the United States Senate. In the Department of Justice, he has served in the

The Honorable Patrick J. Leahy
The Honorable Jeff Sessions
June 19, 2009
Page Two

Office of Legal Counsel, including as its Acting Assistant Attorney General. Through that experience he has gained knowledge of the organization and operation of the Department, as well as of many of the policy issues that regularly face the Department of Justice. His prior work at Justice provides valuable preparation for the leadership position to which he has been nominated. In the United States Senate, he has served as Chief Counsel to the Senate Judiciary Committee and in several other capacities as well. I know from my conversations with him that he appreciates the responsibilities of the Senate and the Congress, and possesses a genuine respect for the role of the legislative branch in our constitutional system. This orientation, too, will be an asset in leading the Office of Legal Policy, which often works closely with members of Congress in developing policy initiatives.

Professor Schroeder possesses the intellect, skill, training, reliability, and disposition to make him an effective and dynamic director of the Office of Legal Policy. He is someone in whom the members of the Senate and the American people can be confident. He has distinguished himself in every endeavor that he has undertaken. I am certain that he will do so as the AAG for the Office of Legal Policy. I highly recommend him for this position.

Sincerely,

A handwritten signature in black ink, appearing to read "David F. Levi". The signature is written in a cursive style with a large initial "D" and a stylized "L".

**Statement of Alejandro Nicholas Mayorkas
To the Judiciary Committee of the United States Senate**

Today, I have the extraordinary honor of being before the Senate Judiciary Committee as President Obama's nominee to head the United States Citizenship and Immigration Services (USCIS). It is a privilege, and I humbly thank you for considering my nomination.

Thank you, Senator Feinstein, for your kind words of introduction. I am grateful you are here on what I hope will be my return to public service. As you know, I am very grateful for the opportunity I had to serve as an Assistant United States Attorney and then the United States Attorney for the Central District of California. It has always been a source of great pride that you, Senator Feinstein, recommended me to the President to serve as the United States Attorney. Those extraordinary years were formative and formidable ones, and I thank you for your confidence in me then, and again now.

I have many people to thank today. Many parents wish for their children a better life than the one they themselves have had. This is an aspiration difficult to even define for me. My father and mother sacrificed much to create for me a childhood and a path to accomplishment bounded only by my own performance. Unfortunately, my father was not well enough to travel here today. But my parents filled my life with three terrific siblings, my sister Cathy, and my younger brothers James and Anthony, both of whom are here today. I am also blessed to have the support of three wonderful women – my wife Tanya, my almost-nine-year-old daughter Giselle, and my four year-old daughter Amelia.

Lastly, I would like to thank my mother. I am sometimes asked why I work so hard. With any small good I achieve, if I do some small thing that makes life better for someone else, then I believe those around me will have met a little bit of my mother. A better soul and a warmer heart there could never be.

If this Committee and the Senate find me deserving of confirmation, I pledge my every effort to ensure that USCIS fulfills its mission with energy and focus. Key to this is ensuring clarity of mission, pursuing robust communication and outreach with Congress and stakeholders, anticipating and planning for future demands, and motivating and retaining personnel.

As you know, I previously had the honor to lead the United States Attorney's Office for the Central District of California, an office of 245 Assistant United States Attorneys responsible for the largest federal judicial district in the nation, comprised of approximately 180 cities with an aggregate population of 18 million people. I know what it takes and what it means to lead and what can be accomplished when the dedicated men and women of a federal agency are motivated to do their very best in the service of our country. From my nearly twelve years as a federal prosecutor, I learned what it means to enforce the law and to do so in furtherance of our national security and the public safety.

If I am confirmed I will conduct an overall review of the Agency. As a nominee, I have had an opportunity to engage with officials in USCIS and to begin, in my own mind, the task of outlining priorities.

First, clarity of mission is critical in enhancing the public profile of the Agency and instilling public confidence in the secure, fair, and effective administration of our nation's immigration laws. I am committed to ensuring USCIS delivers high-quality customer service to those who are eligible to receive benefits. Protecting our national security and public safety is a critical component of the USCIS mission, not an after-thought. This means we must continue to strive to improve the Agency's fraud prevention and detection operations, increase collaboration with US Immigration & Customs Enforcement (ICE) and other law enforcement agencies to respond to fraud, and improve the efficiency and accuracy of the E-Verify system.

Second, I believe it is critical to enhance transparency and improve the flow of information from the Agency to Congress and the appropriate stakeholders to ensure those concerned about particular issues understand USCIS actions and are able to enact effective immigration regulations and laws. I hope to build an effective relationship with this Committee, both members and your staffs, and to understand your priorities. I know this confirmation process is just the start. I also hope that, if I am confirmed and after I have completed an Agency review, you will be willing to hear from me about the needs of USCIS.

Third, we must always look to the future. It is critical to position USCIS to meet current and future immigration demands. To this end, we must ensure the successful progress and implementation of Business Transformation, increase the efficiency of domestic and international operations, and improve detection and prevention of system abuse.

Fourth, developing a motivated workforce is important to ensure high-quality service and retaining such a workforce is always a challenge. If I am confirmed, I commit to doing my very best to review the needs of the USCIS workforce and to implement programs and policies that serve to motivate and retain employees.

As one who was granted citizenship through the beneficence of our government and by virtue of my family's journey to this country, I understand deeply the gravity as well as the nobility of the mission to administer our immigration laws efficiently and with fairness, honesty, and integrity. The most important responsibility of USCIS is its authority to bestow citizenship. As a naturalized citizen, I have a deep understanding and appreciation of this mission.

My parents, sister, and I were once refugees. In 1960, we fled Cuba. My father lost the country of his birth, and my mother, for the second time in her young life, was forced to flee a country she considered home. But our flight to security gave us the gift of this wonderful new homeland. I know how very fortunate I am.

1026

I am honored to be before you today. I am deeply humbled the President nominated me to be the Director of the United States Citizenship and Immigration Services. Thank you for your consideration.

Alejandro Nicholas Mayorkas

1027



PERSONA

May 6, 2009

The Honorable Patrick Leahy, Chairman
U.S. Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Leahy,

As a former Director of the Office of National Drug Control Policy, I would like to state my strong support for the confirmation of Dr. Thomas McLellan as Deputy Director of the Office.

Dr. McClellan brings extraordinary expertise in the areas of addiction and treatment. Not only has he served as Editor in Chief of the highly respected Journal of Substance Abuse Treatment, but his work includes twenty-five years at Veterans Administration hospitals aiding in treatment, and he currently is professor of Psychiatry at the University of Pennsylvania. He is also CEO of the Treatment Research Institute in Philadelphia, a nonprofit organization dedicated to reducing dependence on alcohol and drugs.

Dr. McLellan is a leader in developing strategies assessing addiction and building treatment success. He has regularly advised ONDCP, as well as the World Health Organization and the Partnership for a Drug Free America.

As President Obama has pointed out in his statement nominating Dr. McLellan, Dr. McLellan's Addiction Severity Index and Treatment Services Review, measuring the severity of addiction and the effectiveness of treatment, have been adopted around the world, and have dramatically improved protocols to help patients. These measures have given a quantifiable, scientific basis to what has hitherto been a nebulous gauging. Dr. McLellan's nomination will bring as sharp focus on the need to expand science based treatment.

Just recently, Dr. McLellan's Journal of Substance Abuse Treatment printed an article with peer-reviewed findings that Internet based video substance abuse counseling is as effective as traditional group counseling even for patients with severe opiate addictions. It is this sort of creative, forward-thinking science that Dr. McLellan has spearheaded that can begin to make a dent in the nation's treatment gap.

According to SAMHSA, 23 million individuals are chronically addicted while less than four million currently receive treatment. Dr. McLellan, together with ONDCP Director-designate Gil Kerlikowske, will bring badly needed leadership in reducing this disparity which has greatly impacted the crime, job losses, and broken families in America today.

I urge prompt confirmation of Dr. McLellan.

Sincerely,

Barry R. McCaffrey

General, USA (Ret.)

Director, Office of National Drug Control Policy

1996-2001

Thank for your continued brilliant public service

**STATEMENT OF A. THOMAS McLELLAN
NOMINEE FOR DEPUTY DIRECTOR OF NATIONAL DRUG CONTROL POLICY
BEFORE THE COMMITTEE ON THE JUDICIARY
OF THE
UNITED STATES SENATE**

Chairman Leahy, Ranking Member Sessions, and Members of the Judiciary Committee, I am honored to come before you today seeking your confirmation of my nomination as Deputy Director of the White House Office of National Drug Control Policy (ONDCP). I appreciate the time and effort you and your staffs have spent with me over the past weeks to educate me about the drug-related issues which are of special importance to you and your constituents. I believe I am better informed as a result of these meetings and there is already a basis for continued collaboration.

In the course of your review of my qualifications, you may have seen that I have spent over 35 years doing research in all areas of substance abuse treatment and policy. Two colleagues in particular have been integral to all I have done professionally, and I want to acknowledge the special debt I owe to Drs. George Woody and Charles O'Brien. I have been awarded many national and international honors for the research done with these and other colleagues at the Treatment Research Institute and at the University of Pennsylvania. Finally, I would like to acknowledge my many colleagues in the field who are on the frontlines of this issue providing services and getting treatment for those who need it. I appreciate their support of my nomination and thank those who took the time to be here today.

Despite more than three decades in a career dedicated to advancing the science and understanding of the disease of addiction, I was unprepared to deal with it in my own family. All my expertise could not avert the losses of my brother four years ago and my son just last year to addiction. My wife and colleague, Deni Carise, my sister and colleague, Bonnie Catone, my son Andrew and my daughter-in-law Liz are here with me today. They have suffered with me through the pain from these losses. Worse, we are not alone. Over 20 million families are directly affected every year by addiction. There are tens of millions more families whose members have had car accidents, gotten arrested, or lost jobs or relationships due to substance abuse. So, while I am grateful to all of my research and academic colleagues for the knowledge they have helped me acquire; what I have learned from my family and friends who succumbed to

addiction; and particularly from family and friends who have achieved recovery, is equally valuable to my understanding of this terrible disease. Thus, if confirmed, I will join Director Kerlikowske and the rest of the ONDCP team to help other families and their communities avoid the kinds of losses my own family has experienced.

I can assure this committee that our country has a first-class team of capable, enthusiastic professionals who are eager to develop and implement a new approach to dealing with addiction in this country. In this regard, my prior research and my own experience suggest a need for focus on two critical issues. First, families and communities must become more aware of, and better able to act effectively upon the early signs of substance abuse. This is necessary for more effective prevention and early intervention. Second, families and communities must come to recognize substance dependence or addiction as a disease. This is the key to helping the afflicted acquire and support effective and enduring treatments to promote recovery.

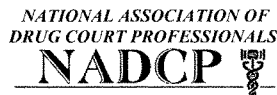
These two critical issues have obvious, direct public value in their own right, but they have less obvious and even greater indirect benefits. Substance dependence is found in no less than 60% of those incarcerated in jails and prisons, 70% of the parents of children in foster care, and 30% of emergency room cases. Drug abuse is a significant factor in the onset, failed management, re-treatment, and excessive costs associated with the treatment of common chronic illnesses such as diabetes, asthma, hypertension and many forms of cancer. Thus, our country simply *has* to help communities and families address substance use problems if we are to achieve the broader goals of healthcare reform, welfare and child welfare reform, and prison reform.

While the outcomes of addressing these two critical issues should be measurable at the national level, please note that I have stressed a focus on educating and empowering families and communities. Additionally, we must bring balance among the three elements of national drug control policy - law enforcement, prevention, and treatment, as well as, foster close collaboration and coordination within government at all levels and within the field.

There are excellent examples of sensible and effective collaborations at the community level. Drug courts were started by community judges who obtained the collaboration of district attorneys, public defenders, and addiction treatment providers to bring about not only sustained individual recovery, but also fewer new arrests and incarcerations by working together. Screening and brief interventions for substance abuse problems is a research- derived intervention originally developed with addiction research dollars. These interventions have

shown added health and economic value to trauma centers, emergency rooms, and primary care physicians, helping them identify and intervene early with emergent cases of substance abuse, and to reduce the attendant excessive healthcare costs produced by these unrecognized but omnipresent disorders. Again, a productive partnership between mainstream healthcare and the substance abuse field has led to added value and shared benefits.

I will close my testimony with thanks for the opportunity to appear. I bring experience and a passion for finding the solutions our country needs, but I have much to learn and many to learn from. I look forward to working with Director Kerlikowske, the rest of the ONDCP team, and this Congress to achieve the potential I know resides within our communities and families, for effective law enforcement, prevention and treatment of substance use problems. I look forward to answering any questions the Committee may have.



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CHIEF EXECUTIVE OFFICER
 West Huddleston

May 14, 2009

The Honorable Patrick Leahy
 Chairman
 Committee on the Judiciary
 United States Senate
 Washington, DC 20510

The Honorable Jeff Sessions
 Ranking Member
 Committee on the Judiciary
 United States Senate
 Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions,

On behalf of the over 22,000 judges, prosecutors, public defenders, probation and law enforcement officers, court administrators, substance abuse and mental health treatment professionals, and community leaders the National Association of Drug Court Professionals represents, it gives me great pride to strongly support the nomination of Dr. Thomas McLellan for the position of Deputy Director of the White House Office of National Drug Control Policy.

As a Professor of Psychiatry at the University of Pennsylvania School of Medicine and the cofounder of the Treatment Research Institute, a not-for-profit research and evaluation institute in Philadelphia where much of the leading research on Drug Court has been conducted, Dr. McLellan is at the forefront of the movement to improve substance abuse and treatment assessments.

Dr. McLellan's long established expertise in assessing the scientific and social complexities of addiction, coupled with his innovative, collaborative approach to engineer and improve effective substance abuse treatment modules, has helped transform our nation's criminal justice and healthcare systems. He truly understands that a strong relationship between treatment and enforcement, along with improved science and administrative structures, are key components to abolishing the drug epidemic in this country.

The nomination of Thomas McLellan presents an opportunity for the White House Office of National Drug Control Policy to stem the tide of substance abuse and crime by implementing a policy that incorporates science, treatment, prevention, and enforcement. Dr. McLellan is the right choice to help achieve these goals and his expedient confirmation is soundly endorsed by the National Association of Drug Court Professionals. Thank you for your continued leadership and for considering this letter of support.

Sincerely

West Huddleston
 Chief Executive Officer



National Association of State Alcohol and Drug Abuse Directors, Inc.

President
Flo Stein
North Carolina

May 7, 2009

First Vice President
Joe M. Hill
Arkansas

Senator Patrick Leahy
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Senator Jeff Sessions
Ranking Minority Member
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

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Renée Zito, CA

Region IX

Bethany Gadzinski, ID

Region X

Interim Executive Director
Robert L.L. Morrison

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the National Association of State Alcohol and Drug Abuse Directors (NASADAD), and our component organizations the National Prevention Network (NPN), and National Treatment Network (NTN), thank you for your leadership on the Senate Judiciary Committee. We appreciate your work and stand ready to continue our partnership on issues within the Committee's jurisdiction.

We are writing to express our full support of the nomination of Dr. A. Thomas McLellan, Ph.D. to serve as the next Deputy Director of the Office of National Drug Control Policy (ONDCP). We are hopeful that the Committee will soon consider this important nomination and recommend action that will lead to a quick confirmation process.

Dr. McLellan has dedicated his career to developing innovations and knowledge that have increased our understanding about the addiction field. For example, Dr. McLellan's research helped educate the public regarding the fact that addiction is a chronic illness that requires comprehensive and holistic care – including medications – along with supportive services that extend beyond the initial phase of treatment. In turn, more people now understand that treatment for substance use disorders leads to equal if not better outcomes when compared to other diseases.

Dr. McLellan and his colleagues also created the Addiction Severity Index (ASI), a measurement instrument that is widely used for clinical assessment and research purposes. States appreciate the development of tangible tools that can help providers ensure clinically appropriate care.

Finally, Dr. McLellan has worked with a number of NASADAD members to examine State systems and administrative mechanisms to improve service delivery. For example, Dr. McLellan has worked with States to develop contracting tools that help promote performance, outcomes and accountability. One of NASADAD's top public policy priorities is to "Implement an Outcome and Performance Measurement Data System." We agree that the States and federal government should continue to partner to develop State-specific solutions that improve the lives of the people we serve.

1025 Connecticut Avenue NW, Suite 605 • Washington, DC 20036 • (202) 293-0090 • Fax: (202) 293-1250 • Email: dcoffice@nasadad.org

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In sum, we strongly support the nomination of Dr. McLellan to serve as the next Deputy Director of ONDCP. We look forward to working with you as the nomination process moves forward. Should you have any questions, or require additional information, please do not hesitate to contact me at (202) 293-0090 x106 or email rmorrison@nasadad.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert I.L. Morrison". The signature is written in a cursive style with a large initial "R".

Robert I.L. Morrison
Interim Executive Director



May 20, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

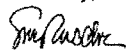
Dear Chairman Leahy and Ranking Member Sessions:

In behalf of parents across the nation, with whom we have worked since our founding in 1977 to help prevent the initiation of alcohol, tobacco, and other drug use by children and adolescents, we write to wholeheartedly endorse the nomination of A. Thomas McLellan to serve as Deputy Director of the Office of National Drug Control Policy. He will be a wonderful leader at ONDCP and as Deputy Director will help advance the field even more than he already has.

We knew of his work beforehand and have been delighted to work with Dr. McLellan since 2000, when he began to teach at our Addiction Studies Program for Journalists, which we co-sponsor with Wake Forest University School of Medicine. The program's goal is to provide journalists with a basic understanding of the science that underlies drug abuse and addiction and help them build relationships with scientists who can assist them with future stories. In 2005, we added two additional partners, Dr. McLellan's Treatment Research Institute and the National Conference of State Legislatures, to extend this program to state policy makers. Dr. McLellan serves on the faculty for this program as well. He is a superb researcher and a pioneer in establishing effective ways to treat addiction, has led and contributed much to the field, and has helped both journalists and state policy makers gain an understanding of addiction and how to effectively treat it. He has also done much to improve the ease with which parents with an addicted child can find appropriate treatment.

We are very grateful to President Obama for nominating Dr. McLellan to this position and urge that he be approved as quickly as possible. The nation needs his wisdom and guidance. Thank you for your leadership and for considering this letter of support.

Sincerely,


President and CEO
National Families in Action



www.parentcorps.org • www.nationalfamilies.org • www.addictionstudies.org
P.O. Box 133136 · Atlanta, GA 30333-3136 · 404-248-9676



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JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

19 June 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Jefferson B. Sessions III
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Sessions,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our support for Alejandro N. Mayorkas to be the next Director of the U.S. Citizenship and Immigration Services (USCIS) within the U.S. Department of Homeland Security.

Mr. Mayorkas began his career in public service in 1989 as an Assistant U.S. Attorney for the Central District of California. He prosecuted a wide array of Federal cases and specialized in white collar crimes cases involving money laundering as well as telemarketing and insurance frauds. From 1996 to 1998, he served as Chief of the Office's General Crimes section, overseeing the training and trial work of all new Assistant U.S. Attorneys in the Criminal Division.

In 1998, he was nominated and confirmed as the U.S. Attorney for the Central District of California, becoming the youngest U.S. Attorney in the nation at that time. He led an office of more than 240 Federal prosecutors and oversaw the prosecution of nationally significant cases in the largest Federal judicial district in the nation. As the U.S. Attorney, Mr. Mayorkas coordinated Federal and State law enforcement task forces to address gang violence, firearms crimes, and financial fraud schemes. He served in this role until 2001 and, over the course of his tenure, earned the trust and respect of the law enforcement community. We are proud that he has decided to leave the private sector and return to public service and pleased to be able to support his nomination.

I believe that President Obama has made a fine choice in Alejandro N. Mayorkas to head USCIS and, on behalf of the more than 327,000 members of the Fraternal Order of Police, I urge you and the Committee to report favorably his nomination. If I can be of any further assistance in this matter, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,


Chuck Canterbury
National President

—BUILDING ON A PROUD TRADITION—



MCV Campus

V i r g i n i a C o m m o n w e a l t h U n i v e r s i t y

May 25, 2009

Institute for Drug and
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Fax: 804 628-7962
TDD: 1-800-628-1120

Hon. Patrick Leahy, Chairman
 Hon. Jeff Sessions, Ranking Member
 Hon. Oren Hatch
 Hon. Arlen Specter
 U.S. Senate Committee on the Judiciary
 224 Dirksen Senate Office Building
 Washington, DC 20510

Dear Senators Leahy, Sessions, Hatch and Specter.

I take this opportunity to express my strong support for the early confirmation of Dr. A. Thomas McLellan whose nomination for service as Deputy Director of ONDCP is before the Committee. As a former Deputy Director of the predecessor White House Office of Drug Abuse Policy (1977-1979) I well understand the complexities faced by the office in balancing the competing agendas of the various federal agencies and community and professional organizations. Dr. McLellan's willingness to consider, and ability to understand those disparate views will place him in a unique position to guide the establishment of an appropriate Strategy which has been the congressional mandate of the office since the mid-1970's.

Dr. McLellan's leadership of the Treatment Research Institute has resulted in the establishment of the most widely used instruments in the world for measuring the effectiveness of treatment, and allowed informed decisions to be made by treatment providers and governmental agencies on the best methods of transferring research findings to competent health care practitioners and health authorities in order to develop informed policy.

His recognition of excellence by major professional societies and international medical associations speaks to the wide respect in which he is held both nationally and internationally.

Dr. McLellan's participation in discussions leading to this committee's deliberations and the ultimate enactment of one of the most important pieces of addiction treatment legislation of the century, the Drug Addiction Treatment Act of 2000, provides an example of his ability to work with a consortium of interests to develop policy in the best interests of the public health and safety.

It is with sincere enthusiasm that I support Dr. McLellan's nomination and encourage you to consider it favorably at the earliest possible time.

Sincerely,



Charles O'Keeffe
 Professor Epidemiology and Community Health
 VCU School of Medicine

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June 10, 2009

The Honorable Patrick Leahy
Chairman
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

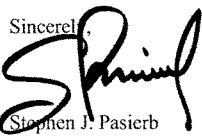
Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Partnership for a Drug-Free America, I write to express enthusiastic support for the nomination of Dr. A. Thomas McLellan for Deputy Director of the Office of National Drug Control Policy (ONDCP). The Partnership has worked closely with Dr. McLellan and we hold him in the highest esteem. He is one of the most knowledgeable scientists in the country on addiction issues and is an excellent choice for Deputy Director.

The Partnership is an organization dedicated to helping parents prevent and address drug and alcohol issues and the disease of addiction in preteens, teens and young adults. Dr. McLellan has been our lead partner in building an on-line resource center for parents and other caregivers to help them at all points on the drug and alcohol use continuum -- from first talking to their kids about the dangers of drugs to finding help for a teen in crisis. As part of this effort, Dr. McLellan and his team at the Treatment Research Institute have helped us translate the latest scientific findings on teen brain development and behavior so parents can better understand what they can do to keep their child healthy and safe. Dr. McLellan's ability to communicate complicated science in an easily understandable way will be a great service in his work at the ONDCP.

As the Deputy Director of ONDCP, Dr. McLellan will play a lead role in shaping our national drug control strategy. His expertise in treatment, prevention and the role of addiction in criminal behavior will be invaluable in that process. He will have our full support and cooperation.

For these reasons the Partnership for a Drug-Free America respectfully urges the Committee to act swiftly to confirm the nomination of Dr. A. Thomas McLellan for Deputy Director of the Office of National Drug Control Policy.

Sincerely,

 Stephen J. Pasierb
 President and CEO

405 Lexington Avenue • New York, NY 10174 • Phone (212) 922-1560 • Fax (212) 922-1570 • www.drugfree.org

1038

PEPPERDINE UNIVERSITY

School of Law

OFFICE OF THE DUANE AND KELLY ROBERTS DEAN

June 22, 2009

VIA FACSIMILE: [REDACTED]

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jeff Sessions
United States Senate
304 Russell Senate Office Building
Washington, DC 20510


Dear Senator Leahy and Senator Sessions:

It is my privilege to endorse, and heartily so, the nomination of Christopher Schroeder to be Assistant Attorney General for the Office of Legal Policy. Having known Chris for many years, I know him not only to be a distinguished professor at my beloved *alma mater*, but – as befits his fine reputation – I also know him to be a thoughtful and measured person. He has sound judgment. Indeed, Chris is quite well known, and again rightly so, for his balanced, careful writing.

Equally relevant, Chris served with great distinction in the Department of Justice in the highly important Office of Legal Counsel. He has thus been fully engaged in fashioning the advice and counsel that is foundational to our system of the rule of law. Having also served in the Article I branch, Chris has a particularly keen and nuanced sense of what the Founding generation was seeking brilliantly to achieve: balanced government. From both practical experience and engaged scholarship, he understands, deeply, the appropriate role of the co-ordinate branches.

In short, based on both his personal character and professional qualifications, I enthusiastically recommend him to you for confirmation to this very important role at the Justice Department.

Yours sincerely,



Kenneth W. Starr
Duane and Kelly Roberts Dean
and Professor of Law

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Center Point, Inc.

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CPMAIL@CPINC.ORG

May 17, 2009

Senator Patrick Leahy
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy,

Please accept this letter in full support of the confirmation of Dr. A. Thomas McLellan as the Deputy Director of the Office of National Drug Control Policy.

Over the course of his more than thirty-year career, Dr. McLellan has made many significant contributions to the addiction and treatment field. I am familiar with Dr. McLellan through his work at the Treatment Research Institute (TRI) and through the application of his research in influencing policy and treatment. Dr. McLellan is an excellent choice for this position. He has been a long-term advocate of addressing addiction through access to appropriate outcome driven treatment. His research has contributed to our understanding that addiction is a treatable chronic disease and that reducing the demand for drugs will lead to sustainable outcomes that benefit the individual, families, and communities as a whole. Dr. McLellan's perspective highlights the importance of education, prevention, intervention, and treatment as the most effective means of reaching these goals.

As the Chief Executive Officer of Center Point, Inc., I have developed and implemented effective treatment alternatives to incarceration for over thirty years. Dr. McLellan's research and the measurement tools created by TRI, such as the Addiction Severity Index, have made significant contributions to the development of effective therapies and interventions in the treatment of addiction.

I believe that Dr. McLellan will make an excellent Deputy Director of ONDCP and, on behalf of Center Point, I strongly support his nomination. Please contact me if further information would be helpful.

Sincerely,



Sushma D. Taylor, Ph.D.
Chief Executive Officer

